IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 51

Suit No 169 of 2014

Between

Seaquest Enterprise Pte Ltd

… *Plaintiff*

And

Agile Accomm Pte Ltd

… *Defendant*

Suit No 170 of 2014

Between

Lim Siew Fern

… *Plaintiff*

And

1. Tan Beng Yong
2. Ho Shen Shen
3. Agile Accomm Pte Ltd

… *Defendants*

And

Tan Meng Hin

… *Third Party*

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GROUNDS OF DECISION

[Contract] – [Contractual terms]

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Seaquest Enterprise Pte Ltd
v
Agile Accomm Pte Ltd and another suit

[2016] SGHC 51

High Court — Suit Nos 169 and 170 of 2014
Edmund Leow JC
14-16, 22-24, 27-31 July 2015; 3 August 2015; 19 October 2015; 3 December 2015; 25 January 2016

1 April 2016

Edmund Leow JC:

Introduction

1 The present case concerned two separate actions: a claim against the Defendant based on invoices relating to a contract for the supply of labour and materials ("Invoices Claim") under Suit No 169 of 2014 ("S 169/2014"), and a minority oppression claim against the Defendant and its shareholders ("Oppression Claim") under Suit No 170 of 2014 ("S 170/2014"). Under the Invoices Claim, the key question related to the nature of the oral agreement between the parties concerning the mark-up to be charged on the labour and materials supplied, and whether the Plaintiff was entitled to the claim amount based on a contractual debt and as proven by its invoices provided to the court. By way of an oral judgment dated 3 December 2015, I dismissed the Invoices Claim and allowed the Oppression Claim. The Plaintiff in the Invoices Claim

has since appealed against my decision, and I now set out the grounds for my decision.

2 The Invoices Claim commenced by the Plaintiff concerned two separate issues: (a) whether the parties had agreed on a fixed mark-up that the Defendant would be charged on the invoices to cover the Plaintiff's overheads; and (b) whether the Plaintiff had proven its claim on the basis of the invoices provided. In respect of (a), the Plaintiff claimed that the parties had agreed that a percentage of the Plaintiff's costs of labour and materials would be charged as a mark-up to cover its overheads (*ie,* costs not associated directly with labour and materials, such as office staff salary, office rental, utilities, *etc*), and that this percentage eventually rose to 20% when the Plaintiff realised that its overheads were more than 20% of its revenue. On the other hand, the Defendant submitted that the agreed mark-up was either 5% or 7%, and that the agreement between the parties had never included the 20% mark-up currently asserted by the Plaintiff. In respect of (b), the Plaintiff argued that it had proven its claim on the basis of the invoices and other supporting documents provided to the Defendant and the court. The Defendant, however, submitted that the supporting documents were fraught with inconsistencies and could not be relied upon to justify the claim amounts in the invoices. After the trial had concluded and closing submissions had been tendered, I dismissed the Invoices Claim as I found that the parties had agreed on a fixed mark-up of 7% under issue (a), but that under issue (b), the Plaintiff had not proven its claim as to the total claim amount.

Parties to the dispute

3 The Plaintiff, Seaquest Enterprise Pte Ltd ("Seaquest") was incorporated in 2003 and had been in the business of, *inter alia,* shipbuilding

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and ship repairing. Tan Meng Hin ("Clement Tan") was a director and majority shareholder of Seaquest holding 51% of Seaquest's shares. According to Seaquest, Clement Tan had been holding his shares in Seaquest on trust for himself and two of his close friends, Tan Cheng San ("Sunny Tan") and Liew Ken Foon ("Ken Foon") in equal proportions. Lui Kee ("Ricky") held the remaining shares in Seaquest.

4 The Defendant, Agile Accomm Pte Ltd ("Agile") was incorporated in 2009 to carry on the business of marine accommodation work for shipbuilding. Tan Beng Yong ("Bill Tan") was a director and majority shareholder of Agile. His wife, Ho Shen Shen ("Lynn Ho") was also a shareholder of Agile.

5 Lim Siew Fern ("Mdm Lim") was the Plaintiff in S 170/2014 and the registered owner of 45,000 shares in Agile ("the Shares"). Mdm Lim is the wife of Sunny Tan.

Factual background

6 It was undisputed that Clement Tan and Bill Tan became acquainted sometime in 2008 when Bill Tan's other company, Exquisite Accomm Pte Ltd ("Exquisite"), was supplying Seaquest with products from BIP Industries Co. Ltd. (a company incorporated in Korea which supplied ceiling panels, wall panels and doors – materials which Seaquest required for the marine accommodation projects it was involved in) ("BIP"). Shortly after Agile was incorporated, Agile was awarded the Saudi Aramco Project in late 2009 at Jurong Shipyard. After Agile was awarded the Saudi Aramco Project, sometime in February 2010, Clement Tan, on behalf of Seaquest, and Bill Tan, on behalf of Agile, entered into an oral agreement ("the Agreement"). Pursuant to the Agreement, Seaquest was to provide labour and materials to

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Agile for projects involving the construction, repair and conversion of marine vessel accommodation, and in consideration for Seaquest's assistance, Agile was to pay Seaquest the cost of the materials procured and labour supplied and *in addition* a percentage of Seaquest's costs to cover Seaquest's overheads.

7 For the Saudi Aramco project, which was the first project that the parties worked on together, it had been agreed that Seaquest would charge Agile at cost plus a 5% mark-up. Seaquest justified this payment on the fact that the Saudi Aramco Project had been well underway by the time Seaquest came on board and thus it was not required to supply materials but merely required to supply labour for that particular project, resulting in a lower sum of overheads. The exact mark-up that had been agreed upon for the remaining projects, however, was the subject of some dispute.

8 According to Seaquest, sometime in October 2011, Clement Tan instructed Yeo Pick Har ("Iris Yeo"), the Accounts Manager in Seaquest, to conduct an internal review of Seaquest's accounts to ascertain the profit margin in Seaquest and the proportion that Seaquest's overheads were in relation to Seaquest's revenue. It was through this internal review that Seaquest discovered that its overheads were at least 20% of its revenue. Clement Tan therefore instructed Iris Yeo to invoice Agile an administrative charge of 20% on all its invoices for labour and materials to reflect Seaquest's overheads, and this was to take effect immediately.

9 Sometime in 2013, the relationship between the parties became strained. Clement Tan met up with the other partners in Seaquest - Ricky, Sunny Tan and Ken Foon, and made a decision to stop supplying labour and materials to Agile as they claimed that Agile's directors were paying themselves excessively high remuneration. Pursuant to this discussion,

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Seaquest stopped supplying labour and materials to Agile on 22 February 2013 and pulled out of the Noble Jack 1104 Project ("NJ 1104"). It also demanded that Agile make payment for all the outstanding invoices relating to the supply of labour and materials. Pursuant to the above, Seaquest commenced proceedings against Agile in respect of the Invoices Claim and Mdm Lim commenced proceedings against Agile in respect of the Oppression Claim.

The Oppression Claim

10 Even though the decision in relation to the Oppression Claim has not been appealed against, I find it useful to set out briefly the parties' respective positions at trial relating to the Oppression Claim and the findings made therein. It was undisputed at trial that Mdm Lim was the registered owner of the Shares. What was disputed, however, was whether the share transfer was merely intended to be a temporary transfer, and whether she held the Shares as a nominee of Clement Tan in person or as a nominee of Seaquest. In relation to the former, Agile asserted that Clement Tan had himself stated during settlement negotiations that if the invoices were resolved, the 45,000 shares would be transferred back to Agile. This allegedly indicated a temporary transfer. But these statements were expressed in the context of settlement negotiations whereby both parties were seeking to resolve their disputes amicably. Consequently, they were not necessarily an indication of their intentions at the time the Agreement was formed. In fact, the manner in which Seaquest attempted to use the Shares as a bargaining tool to persuade Agile to pay off the invoices may actually go toward evidencing that the Shares were actually beneficially owned by Seaquest. If they were not beneficially owned by Seaquest, Seaquest would not have been able to leverage on the potential return of the Shares as a negotiation tactic. Most importantly, Bill Tan himself

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had stated in an email dated 23 November 2012 to Clement Tan that "[w]hether it is financing of the project or Agile company share *given*, you and me know it very well. From starting till date, I have never changed by mind on the support we agreed and even done my part for *giving* the share" [emphasis added]. The fact that Bill Tan expressed the Shares as having been given to Seaquest contradicts its contentions at trial that the share transfer was meant to be a temporary one.

11 Further, Agile contended that Mdm Lim held the Shares as a nominee of Clement Tan as he was the instructing individual in both the Invoices Claim and the Oppression Claim and had instructed Mdm Lim not to attend the meetings in Agile or sign off on Agile's accounts. But the key question which was not asked was, in what capacity had Clement Tan been giving Mdm Lim such instructions – as the managing director of Seaquest, or on behalf of himself? The answer to that question was apparent in the context of the case. The Agreement entered into between Seaquest and Agile allowed Agile to be able to procure labour and materials at a rate that was lower than the market rate. Pursuant to the Agreement, Agile transferred 45% of its shares to Mdm Lim, the wife of one of Clement Tan's partners in Seaquest (*ie*, Sunny Tan). In the context of the Agreement, I found that Mdm Lim held the Shares as a nominee for Seaquest because Seaquest's shareholding in Agile was in effect *quid pro quo* for Seaquest's supply of labour and materials at below-market prices, reflecting the reality that when businessmen come together, both would expect mutual benefits and be willing to make certain compromises. This arrangement would allow Seaquest to own the Shares and thus earn profits through dividends from other projects undertaken by Agile.

12 At trial, Seaquest had alleged that how Bill Tan and Lynn Ho had conducted themselves in relation to Agile's Adjourned AGM and Adjourned

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EGM in April and May 2013 respectively had been commercially unfair, had departed from the standards of fair dealing, and were violations of the conditions of fair play which a shareholder was entitled to expect. For example, resolutions were passed notwithstanding the lack of quorum and, as a result, Mdm Lim's interest in Agile as a nominee of Seaquest was diluted from 45% to 9%. An additional 400,000 Agile shares were also issued pursuant to the Adjourned EGM which were never offered to Mdm Lim, and both of these actions were in breach of Agile's Articles of Association ("the Articles"). Further, Bill Tan and Lynn Ho, as directors of Agile, chose to pay a large amount of directors' remuneration for the financial year 2012 without the concurrent declaration of any dividends, evincing an attempt to distribute the profits of Agile between the directors only. In respect of the Oppression Claim, and in the light of the incidents detailed above, I found in respect of S 170/2014 that there had been a clear breach of Mdm Lim's legal rights under the Articles, as a nominee of Seaquest. I ordered for Mdm Lim to be bought out to enable her to realise the value of the Shares held as a nominee of Seaquest at a fair value pursuant to s 216(2)(*d*) of the Companies Act (Cap 50, 2006 Rev Ed) as valued by an independent valuer, on the basis of a fair market value as of the date of the oral judgment (*ie*, 3 December 2015). This was on the assumption that the 400,000 new shares had not been issued and the excessive directors' remuneration for the financial year 2012 had not been paid out. I will now deal with the Invoices Claim.

Seaquest's position on the Invoices Claim

13 Seaquest had pleaded that it was in a partnership with Agile not in the sense of a formal partnership structure, but in the sense that it was a business partnership; an informal joint venture (but admittedly without a written joint venture agreement). To support its claim, it raised a few examples as evidence

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of how the relationship between the parties was not merely that of a sub-contractor and main contractor but had instead resembled a partnership:

(a) Clement Tan had acted as a mediator to a dispute between Exquisite and BIP;

(b) Clement Tan procured the transfer of distributorship rights over Sung Mi products from Sung Mi (Asia) Pte Ltd ("Sung Mi Asia"), Seaquest's wholly-owned subsidiary, to Exquisite in or around early 2009 free-of-charge;

(c) Agile provided financial information to Seaquest for the proposed takeover of Seaquest by Kaefer, a German company;

(d) Seaquest was able to instruct Agile to purchase hardware from Xing Wan Hardware Pte Ltd ("Xing Wan"); and

(e) Seaquest would assist Agile in its tender submissions.

14 Seaquest submitted that the terms of the oral agreement were: (a) Seaquest would provide Agile with labour and materials at cost plus a mark-up to cover Seaquest's overheads; and (b) Agile would arrange for 45,000 Agile shares to be transferred to Seaquest's nominee. Seaquest submitted that given that the mark-up was to cover Seaquest's overheads, the mark-up was a variable figure. This was at times 5%, 7% and, subsequently, pursuant to the internal review conducted in 2011, allegedly ascertained to be 20% of Seaquest's costs. Seaquest also submitted that it was entitled to be paid according to the invoices that had been issued to Agile.

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Agile's position on the Invoices Claim

15 Agile submitted that Seaquest had been engaged as a general labour sub-contractor and supplier of wooden furniture for various projects and not as a joint venture partner, but was of the view that the differing characterisation of the relationship between the parties was ultimately irrelevant to the adjudication of the dispute. Agile's position on the mark-up that had been agreed upon was not always consistent. At times, it had asserted that there was no agreement between the parties that Seaquest could charge a percentage of costs to cover Seaquest's overheads, and that the invoices did not reflect such a charge. At the same time, Agile had pleaded that the parties had agreed upon a mark-up of 5%. Further, Bill Tan conceded at trial that there was a subsequent agreement for Seaquest to charge Agile 7%. But on all occasions, Agile took objection to the fact that a variable mark-up had been agreed to which would allow Seaquest to charge Agile at *whatever* percentage of Seaquest's revenue Seaquest's overheads may be. This would include the 20% mark-up that Seaquest eventually charged Agile. Agile further submitted that the documents and the witnesses provided by Seaquest had not assisted the court in identifying whether the charges in the invoices were Seaquest's actual costs and that Seaquest was thus not entitled to payment on the basis of the invoices provided to Agile and to the court.

Issues

16 The following issues had to be determined in the present case:

(a) whether the parties had agreed on a fixed mark-up, and if so, whether it was 5%, 7% or 20% of Seaquest's costs ("Issue 1");

(b) whether Seaquest had satisfactorily proven its claim amount based on the invoices provided to Agile and the court ("Issue 2"); and

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(c) whether Agile was entitled to its counterclaim of laminates and additional labour cost incurred ("Issue 3").

Analysis of Issue 1

Whether the parties had agreed on a fixed mark-up in the Agreement

17 In examining the terms of the Agreement, and in particular whether there was an agreed mark-up to cover Seaquest's overheads as part of the Agreement, the events leading up to the Agreement and what they demonstrated about the relationship of the parties may be of some relevance. Seaquest had devoted a considerable amount of time at trial and in its closing submissions detailing the relationship between the parties, and asserted that the parties enjoyed a "special relationship" that was not akin to that of a sub-contractor and main contractor. But it was not entirely clear what Seaquest was seeking to prove through these various assertions about the relationship between the parties and how they had a bearing on the resolution of the case. In my judgment, even if I accepted Seaquest's portrayal of the events (which I did not), these events were not very persuasive one way or another as they did not lead to the inevitable conclusion which Seaquest sought to establish – that because of the allegedly close relationship that Agile and Seaquest shared,akin to partners in a partnership rather than that of a sub-contractor and main contractor, Agile was in the likely position to have agreed to a *variable mark-up* as a term of the Agreement that was sufficient to cover Seaquest's overheads, whatever they may currently be. For Seaquest to succeed in justifying its claim based on the invoices which had a 20% mark-up in them, the court would have to find on the facts of the case that the mark-up could be varied at any point in time according to the fluctuations in Seaquest's overheads relative to its revenue. Thus, I was of the view that these events were ultimately only tangentially relevant to the case at hand. However, I will

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still address the submissions made in this regard first because Seaquest had devoted a considerable amount of the time to them, both at trial and in its closing submissions.

Seaquest's allegations relating to the relationship of the parties

18 First, Seaquest alleged that in 2009, it had assisted Agile in procuring the transfer of distributorship rights for Sung Mi products from Sung Mi Asia to Exquisite free-of-charge. To this end, Seaquest relied on an email from Clement Tan to Bill Tan dated 26 November 2012 in which Clement Tan stated "please don't forget that agency of Sung Mi is allocated to you FOC as well … FYI, Seaquest paid $123,602.00 to KE wood for the agency. I can provide information to you if you want to take a look". Seaquest further relied on the fact that Bill Tan did not reply to Clement Tan's assertion regarding the Sung Mi distributorship being free-of-charge by way of email to buttress its assertion that it had procured the Sung Mi distributorship for Agile on account of their special relationship. Prior to the transfer of the distributorship rights, it was Sung Mi Asia which was the sole distributor of Sung Mi products in Singapore. On Seaquest's own admission, Sung Mi Asia was not able to sell Sung Mi products successfully to Seaquest's competitors because it was common knowledge that Sung Mi Asia was associated with Seaquest. Further, even after the distributorship rights had been transferred to Exquisite, Sung Mi Asia retained the right to obtain Sung Mi products directly from Sung Mi Co Ltd. In assessing Seaquest's allegations relating to the Sung Mi distributorship, it may be noted that both parties did not produce further documentary evidence relating to the transfer of the Sung Mi distributorship, and in my view it was difficult for the court to come to a firm conclusion on the matter in the absence of such evidence. In any event, I observed that even after the transfer of the distributorship, Seaquest retained the benefit which

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was useful to itself – the ability to obtain Sung Mi products directly, and the rest of the agency (which Seaquest could not exploit even when it had the distributorship) was given away to Agile. This transfer of the distributorship agreement, even free-of charge, was not, to my mind, evidence of the special relationship which Seaquest sought to prove (and pursuant to which Seaquest had forsaken some benefit), for Seaquest had merely done what was reasonable and commercially sensible for businessmen to do, *ie*, to give away what it could not exploit.

19 Secondly, Seaquest asserted that Agile was merely a shell company between 2009 to 2010 with little or no business of its own. Seaquest argued that this was demonstrated by the fact that Agile's register of sales for June 2009 to December 2010 only documented one customer, Exquisite, for the period between June and December 2009. However, I was of the view that this did not get Seaquest very far in its case. Both parties did not dispute that Agile was a small company and that the Saudi Aramco Project offered to Agile was its first major project. But companies cooperate for mutual benefit and in my view, each one needs the other in an agreement, whatever the relative strength and size of the parties may be. In fact, as Clement Tan had admitted, working together with Agile on the Saudi Aramco Project sounded like a good business opportunity for Seaquest as well, because the project was at a shipyard in which Seaquest had no foothold, *ie*, Jurong Shipyard. Merely because one contracting party was relatively small in comparison did not mean that it had no benefit to offer the other contracting party. Rather, this enables both parties, as reasonable businessmen, to contract for mutual interests.

20 Thirdly, Seaquest highlighted that Agile's provision of "intimate" financial information to Seaquest when Kaefer was considering a potential takeover of Seaquest demonstrated that the relationship between Seaquest and

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Agile was not that of a mere sub-contractor and main contractor. But at this point in time, the transfer of the shareholding in Agile had taken place and Seaquest held a 45% shareholding in Agile through its nominee. Indeed the relationship between the parties was not merely that of sub-contractor and main contractor, as Seaquest did own 45% of Agile through its nominee. Given that the Shares formed part of Seaquest's ownership of assets and that Seaquest had the potential to receive dividends as a result of such shareholding, it was only natural, and perhaps even somewhat of an expectation, for Agile to furnish Seaquest with such information in the context of a potential takeover. In my judgment, this had very little bearing on the nature and terms of the Agreement.

21 Finally, Seaquest also alleged that it was able to instruct Agile to purchase hardware from Xing Wan because of this alleged partnership and/or informal joint venture. To this end, Seaquest relied on a text message sent from Clement Tan to Bill Tan on 23 November 2012 which appeared to give an instruction to "[p]ut a standing order down" for the purchase of hardware. But a few messages later, on 6 December, Clement Tan sent another message to Bill Tan stating "[a]t the mean time, don't need to give order to the shop, I don't want to be seen as begging for order from agile". This seemed to contradict the forcefulness of the "direction" previously given. A proper consideration of the communication between the parties should also not simply focus on the manner in which Clement Tan communicated with Bill Tan, but consider how Bill Tan responded. There was no evidence before the court to show that Bill Tan felt compelled to comply with whatever direction had been given by Clement Tan regarding Xing Wan. In any event, Seaquest's submissions in this regard were weak in seeking to persuade the court that the parties had agreed on a variable mark-up on account of their "special relationship".

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22 From the foregoing, it was clear that Seaquest's submission on the alleged partnership and/or informal joint venture were not very persuasive. Even if a few examples were slightly more noteworthy, like the fact that Seaquest would assist Agile in its tender submissions from time to time, the incidents, in my view, merely pointed to the fact that Clement Tan and Bill Tan enjoyed a close working relationship and friendship. There may thus be certain matters on which Seaquest and Agile would provide assistance to each other that may not be common in the industry, but these could easily be explained as the help that they rendered to each other on account of their friendship, and not necessarily because they were in an partnership and/or informal joint venture. Even businessmen who are in a business relationship without an existing friendship may ask favours from the other party or make certain requests, and the other party may choose whether to accede to the favour or request. Ultimately, in my assessment of the facts and circumstances of the case, Seaquest and Agile retained their freedom to make choices in line with their individual business interests and remained separate companies, albeit separate companies with managing directors in a close working relationship.

Whether the parties had agreed on a variable mark-up in the Agreement

23 In any event, even if I accepted Seaquest's submissions on the alleged partnership and/or informal joint venture, I did not see how this finding would necessarily lead to the conclusion that the Agreement between Seaquest and Agile was for *whatever percentage* of costs was sufficient to cover Seaquest's overheads at that point in time of invoicing. For Bill Tan to agree to a unilateral and variable figure based on data not made available to Agile would be akin to writing a blank cheque to Seaquest. It may be noted that after the internal review was conducted, at no point in time was Agile consulted for a

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subsequent agreement to be reached on a 20% mark-up on all future invoices. In contrast, Clement Tan had consulted Bill Tan when he had decided to charge a 7% mark-up on the invoices, given his reasons, and then the parties had reached an agreement. If there really had been a term in the Agreement providing for a variable mark-up without the need for prior consultation, why was there a prior consultation carried out at the point in time when Seaquest started to invoice Agile at a 7% mark-up? In my view, there was insufficient evidence to conclude that the parties had agreed that Seaquest would be able to charge any mark-up it desired. Given that the only agreement which we had sufficient evidence of, based on Bill Tan's own admission at trial, was the mark-up of 7% which had been subsequently agreed upon between the parties, I found that the parties had agreed that Agile would be charged a 7% mark-up on Seaquest's labour and materials cost in the invoices.

Analysis of Issue 2

Whether Seaquest is entitled to its claim of $1,933,172.57 based on an allegedly unpaid contractual debt

Seaquest was not entitled to charge a mark-up of more than 7%

24 Moving on to the invoices, given that I had found that Seaquest was only entitled to charge a mark-up of not more than 7%, the first objection that I had to Seaquest's claim on the invoices was that the claim based on the invoices which were issued after the internal review had allegedly been conducted in October 2011 and which had a 20% mark-up on them should not be allowed.

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The invoices could not be relied on to justify payment

25 The second objection to the invoices was that even if I accepted Seaquest's submissions that a variable mark-up had been agreed upon by the parties, I was not satisfied that the invoices listed in its Statement of Claim could be relied on to justify payment because Seaquest had not satisfactorily proved how the claim amount based on an allegedly unpaid contractual debt had been arrived at. In this case, Seaquest's claim amount, though appearing to be a single lump sum when looking at the total amount of $1,933,172.57, is in actual fact not a single lump sum claim amount, but a claim based on 61 different invoices. Seaquest had produced the invoices which formed the total claim amount in Iris Yeo's affidavit of evidence-in-chief and there was thus *prima facie* evidence of the 61 different charges which formed the total claim amount. However, Agile had raised numerous objections which, in my judgment, were borne out by the weight of the evidence and cast serious doubt on the veracity of different components of Seaquest's invoices. The various invoices and the charges contained therein had to be proved separately for Seaquest to prove the total claim amount. But as there was insufficient credible evidence in the present case which could be relied upon to verify the individual components of the invoices or to justify a lower sum to be ordered, I dismissed Seaquest's claim. For the avoidance of doubt, it is not my view that in every claim for a liquidated sum based on an alleged contractual debt a claimant has to provide, over and above the invoices, every single piece of supporting document to justify every single category of charges listed in the invoices which form the total claim amount. However, in the present case, given that Agile, as the Defendant, had raised sufficient objections to the charges stated in Seaquest's invoices to cast serious doubt on the veracity of the individual components of Seaquest's claims and ultimately on the total claim amount, Seaquest had failed to justify its claim.

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(1) The invoices

26 Seaquest's claim in S 169/2014 was for the sum of $1,933,172.57 pursuant to invoices and credit notes issued between June 2012 and April 2013. The invoices which form the basis of the claim were set out in the Annex of the Statement of Claim. The invoices are in respect of the PRM Offshore Heavy Industries Pte Ltd ("PRM") shipyard projects, Jurong Shipyard Heavy Industries Pte Ltd ("JSY") shipyard projects, and other claims including an office renovation claim. The invoices can largely be divided into two time periods – invoices issued before and after 10 April 2013.

27 For those issued prior to that date, Seaquest's invoices did not clearly reflect a mark-up on the face of the invoices, except four invoices that reflected an additional 7% administration charge. The charges were set out in lump sum amounts under the categories of "labour" and "purchase" with little breakdown of manpower or items.

28 Between 10 April 2013 and 25 April 2013, Seaquest issued invoices which reflected a 20% additional charge which was described as an "administrative charge". "Labour", "Other Purchases" and "Local Purchases" were set out in lump sum amounts, though items under "Furniture Supply as per Delivery Orders" were set out with their quantity and unit prices.

(2) Analysis

29 The parties had raised a preliminary issue relating to the burden of proof in respect of the invoices as Agile had submitted that Seaquest should be put to "strict proof" of its claim while Seaquest had submitted that the standard of proof in civil cases is on a balance of probabilities and "strict proof" does not, and cannot, elevate the burden of proof to one of beyond

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"reasonable doubt" or worse, beyond "all doubt". A defendant putting the plaintiff to "strict proof" merely evinces an express non-admission of the material allegations made against the said defendant. In my view, it was clear that the standard of proof to be applied is that of a balance of probabilities. The proper way to analyse Seaquest's claim on the invoices was to consider the supporting documents provided by Seaquest for its claim, then to consider the allegations raised by Agile in relation to those same supporting documents, and conclude as to whether Seaquest had discharged its burden of proof and satisfied the court of its claim based on an alleged contractual debt and as proven by the supporting documents tendered.

30 The charges on the invoices produced by Seaquest can broadly be divided into the following categories:

(a) Labour: workers' wages, dinner claims and dormitory and levy charges:

(i) allegedly supported by Seaquest's Summaries of Manpower, PRM's Sub-Contractor Daily Manpower Records, JSY's time-in and time-out entries, Work Record Cards, Dinner Claims and Salary Sheets.

(b) Purchases, whether "Other Purchases" or "Local Purchases", and furniture:

(i) allegedly supported by Third Party Invoices, Seaquest Malaysia Sdn Bhd's ("Seaquest Malaysia") purchase orders, Seaquest invoices to Seaquest Malaysia and Seaquest Malaysia's delivery orders.

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31 In respect of Seaquest's claim relating to the workers' wages, which form the bulk of the labour charges in the invoices, I found that they had not been satisfactorily proven for the following reasons. First, although Seaquest's witness, Iris Yeo, had testified that the Salary Sheets were the appropriate category of documents to rely on (to determine the labour charges) and that they were, in turn, based on the Work Record Cards, it had been uncovered at trial that there were numerous inconsistencies between the Salary Sheets and the Work Record Cards. When the Salary Sheets and Work Record Cards were compared to ascertain which project a particular worker had been working on on a particular date, it became evident that at times, the Salary Sheets recorded a worker as having worked on an Agile project on a particular date, but according to the Work Record Cards, on the very same date that worker had not actually worked on an Agile project, but on a non-Agile project. This had serious implications on the charges which Seaquest were using to charge Agile because it would mean that Seaquest had factored in the time which a worker spent working on a non-Agile project as an Agile project, and charged Agile for such number of hours as was required to perform the services in respect of another shipyard project. This was not the only type of discrepancy that had been identified by Agile at trial. At other times, the Work Record Card for a particular worker indicated a certain time period in which the worker had worked at the shipyard, but the Salary Sheets would show a different time period for the same day, the same worker, and presumably for the same project. Even though the Salary Sheets were held out by Seaquest as supporting documents which evinced the labour charges in the invoices, and which were allegedly used to pay the workers, these documents were fraught with errors and inconsistencies with the primary documents which they were allegedly based upon.

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32 Secondly, there were no means of justifying the sums claimed based on the Work Record Cards. Seaquest's invoices to Agile that have been tendered as proof of its current claim were classified on a project-by-project basis. But the Work Record Cards were classified on a worker-by-worker basis instead of being divided by projects. It was almost impossible for Agile, or anyone for that matter, to compare the Work Record Cards with the amount of labour charged in the invoices given to Agile, and determine whether the charges were accurate. Indeed, in my view, it was not the court's role to do so in an adversarial system where the burden of proof lies on the plaintiff to prove its case on a balance of probabilities. It was not satisfactory for a plaintiff to merely provide documents in bulk and assert that these documents, taken together, justified a particular amount claimed in the invoice where there was no coherent basis on which to analyse the quantum claimed and verify the accuracy of the sums.

33 Thirdly, in any event, even if we look beyond the Salary Sheets and the Work Record Cards, the other documentary evidence we have to prove the labour charges such as the PRM and JSY records are ultimately of limited utility in supporting Seaquest's claim as to the labour charges. PRM's Sub-contractor Daily Manpower Records were limited to the period between 1 October 2012 to 31 January 2013, and could not be used to verify the projects which fell outside of this time period. For the JSY Records, JSY's representative Mr Kenneth Wong Keh Woei, had also clarified that certain records were incomplete because there were times at which the Records would display a time-in entry but no time-out entry or *vice versa* due to either the clock readers at JSY's guardhouse failing or a worker failing to punch in or out. The JSY Records also did not track the type of project or vessel for which the workers whom had clocked in were working on, and for whom they were working for on a particular day. These records from the shipyards were thus of

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limited utility in justifying Seaquest's claim. Further, given that Seaquest had clarified that it was not relying on Seaquest's Summaries of Manpower reports to prove its claim I decided it was neither appropriate nor necessary to analyse Seaquest's claim with reference to Seaquest's Summaries of Manpower reports.

34 In respect of Seaquest's claim relating to purchases and furniture, Agile had similarly raised inconsistencies in the evidence provided by Seaquest to justify its claims. Iris Yeo had produced invoices from Seaquest Malaysia, Seaquest's wholly-owned subsidiary ("the Seaquest Malaysia Invoices"), to support the unit prices and quantities of furniture which appeared in the breakdown of furniture in the invoices. However, a simple comparison between the Seaquest Malaysia Invoices and various tax invoices from Seaquest Malaysia ("the Seaquest Malaysia Tax Invoices") in relation to furniture for some of the Shipyard projects – *eg,* Hull 765, 766 and ARC II – demonstrated that the unit prices of the furniture were much lower in the Seaquest Malaysia Tax Invoices when compared to the Seaquest Malaysia Invoices even though they appeared to relate to the same transaction. Further, the only explanation proffered by Clement Tan to address the difference was that the Seaquest Malaysia Tax Invoices were used for customs purposes only and the figures in these invoices were not the actual cost price and would not be reflected in Seaquest's accounting books. Clement Tan also argued that the financial statements of Seaquest Malaysia, which showed that it had negligible profit or even no profit in some years, strongly suggested that Seaquest Malaysia was not profiteering from the furniture that it made for Seaquest. But the fact that Seaquest Malaysia did not enjoy sizeable profits can be explained by any number of reasons, and does not necessarily lead to the conclusion that it must have been charging Seaquest at reasonable rates. Profits can be earned but then depleted because of a confluence of different factors. Clement Tan's

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explanation of the difference between the invoices was also nothing more than a bare assertion on his part given that there was no evidence to prove that the Seaquest Malaysia Invoices reflected the actual unit prices and quantities that eventually went into Seaquest's audited accounts.

35 I thus found that Agile's objections to the invoices were valid because they demonstrated that the claim amounts which Seaquest sought to charge Agile for were not corroborated by supporting documents and could, in fact, be contradicted by various documents of a similar nature.

The invoices were not transparent

36 The third and final objection that I had to the invoices was that in any event, the invoices were not transparent and did not enable the recipient of the invoices to verify the charges contained therein. Seaquest's position at trial was that, pursuant to the Agreement, it was entitled to charge Agile a 20% mark-up in the invoices to cover overheads. This had allegedly been decided pursuant to an internal review conducted by Seaquest on its overheads in comparison to its revenue sometime in October 2011. However, even if I were to accept Seaquest's position at trial, this 20% mark-up did not appear on the invoices till the April 2013 invoices some one and a half years later, contrary to Seaquest's version of events. Furthermore, even in respect of the April 2013 invoices, the "20% Admin Charge" did not appear consistently on all of them. Iris Yeo herself admitted at trial that the invoices were often subject to a mark-up of 20% but it was never stated as such. When she was questioned on why this was so, Iris Yeo's only explanation was that this manner of billing was new to Seaquest and there had not been any discussion about the proper layout of the invoices before Seaquest started to bill Agile. But it would have been near impossible for Agile to verify the charges contained in the invoices

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without being able to tell whether or not the charges therein had already been subjected to a mark-up. On Seaquest's own admission, its manner of invoicing Agile was different from how it would invoice an arms-length purchaser, and given that I have found at [22] above that the parties were not related companies or engaged in a partnership and/or informal joint venture, Seaquest's manner of invoicing Agile should be comparable to its manner of invoicing other purchasers who were not related companies. This standard had not been met on the facts of the present case. It was also acknowledged that although the level of detail which Seaquest had to provide Agile with may be of a high standard (as Seaquest would need to justify the labour and materials costs incurred), this standard was not unreasonable or unduly onerous in light of the nature of the Agreement, *ie*, that Agile would be charged on the basis of costs, unlike other companies which were charged on the basis of quotations.

Analysis of Issue 3

Whether Agile is entitled to its counterclaim for laminates and additional cost of labour incurred

37 Agile has counterclaimed $112,315 being the value of the laminates ordered by, delivered to and used by Seaquest and $180,000 being the additional cost of labour incurred due to Seaquest's withdrawal of labour for NJ 1104 on or around 22 February 2014. In respect of the laminates, Clement Tan has himself admitted that Agile has delivered about 400 pieces of laminates which remains in Seaquest's possession. Although he disputed the fact that these laminates had been ordered by Seaquest, he stated that he was prepared to return them to Agile. It was clear from the documentary evidence that Agile had ordered laminates, paid for them, and delivered them to Seaquest to be used. Further, Bill Tan has stated that the laminates are no longer useful because they were produced for specific projects which have

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been completed. I thus ordered Seaquest to compensate Agile for the remaining pieces of laminates which are in Seaquest's possession according to a sum corresponding to the value of laminates.

38 As to Agile's counterclaim pertaining to labour, it was undisputed that on 22 February 2013, Seaquest had withdrawn labour and support from NJ 1104. Agile had compared the cost expended in Noble Jack 1103 ("NJ 1103") with what Agile was eventually charged by Excel Marine Pte Ltd and Atwin Offshore Engineering Pte Ltd in NJ 1104 to derive the amount of its claim. Agile's submission related to the fact that Seaquest did not give any notice for the termination of labour. As a result of this lack of notice, Agile had to incur a higher cost of labour than it otherwise would have needed to incur because it now had to source for an alternative source of labour at short notice. Seaquest had also in fact already commenced invoicing Agile for NJ 1104 as the labour and furniture sub-contractor for the project. In response, Seaquest had submitted that there was no agreement for it to provide labour for NJ 1104 for any specified time or indefinitely. The implication of its submission in response to Agile's claim was that Seaquest could withdraw its supply of labour at any point in time. Seaquest also relied on Bill Tan's evidence at trial to assert that since Agile cannot rely on an express agreement to evince the pre-conditions necessary prior to termination, Agile is merely relying on a "moral obligation" to justify its counterclaim.

39 But Agile's key contention was not that Seaquest had agreed to supply labour indefinitely such that it could never terminate its supply of labour, but that no notice was given prior to the termination. Agile thus had to source for other sub-contractors on an urgent basis and incur a higher cost for labour than if Seaquest had performed its obligation after being engaged as the labour and furniture sub-contractor for NJ 1104. As to whether notice should have been

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given, and what a reasonable notice period would have been in these circumstances, these were issues which had not been adequately addressed in Seaquest's submissions. Seaquest had also not objected to Agile's characterisation of NJ 1103 and NJ 1104 as comparable projects. In the light of the fact that Seaquest had been engaged as the labour and furniture sub-contractor for the project, and taking into account the parties' course of dealings so far, Agile had relied on Seaquest's conduct that it would continue to fulfil its engagement as the relevant sub-contractor for the project to its detriment, and I allowed Agile's counterclaim of $180,000 against Seaquest.

Conclusion

40 In conclusion, in the light of the foregoing, I dismissed Seaquest's Invoices Claim and allowed Agile's counterclaim in respect of the laminates and additional cost of labour. I further ordered Agile to have the costs of the proceedings in S 169/2014 and Seaquest to have the costs of the proceedings in S 170/2014, but the costs in the latter proceedings were to be borne by Bill Tan and Lynn Ho personally. Costs were to be taxed if not agreed.

Edmund Leow
Judicial Commissioner

Derek Kang, Charmaine Kong and Edwin Chua (Rodyk & Davidson LLP) for the plaintiff;
Lakshanthi Fernando and Natalie Tan Wei Ling (Holborn Law LLC) for the defendants.

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