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DISTRICT JUDGE JONATHAN NG PANG ERN
5 MAY 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 151

District Court Originating Claim No 1223 of 2024

Between

AP MEDIA PTE LTD

… *Claimant(s)*

And

MOTOR IMAGE
ENTERPRISES PTE LTD

… *Defendant(s)*

JUDGMENT

[Contract — Contractual terms]
[Contract — Discharge — Breach]
[Contract — Formation]
[Contract — Remedies — Liquidated damages]

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AP Media Pte Ltd
v
Motor Image Enterprises Pte Ltd

[2026] SGDC 151

District Court Originating Claim No 1223 of 2024
District Judge Jonathan Ng Pang Ern
12, 13 January, 21 April 2026

5 May 2026 Judgment reserved.

District Judge Jonathan Ng Pang Ern:

1 This is a trial arising from a planned video advertisement for the Subaru Forester sports utility vehicle.

2 The Claimant, an advertising agency, and the Defendant, the sole distributor of Subaru vehicles in Singapore, were in talks over a video advertisement for the Subaru Forester. The parties had lofty aspirations for the collaboration. The video advertisement was to capture the Subaru Forester's concept of adventure. And, by having the Claimant employ avant-garde technology, the Defendant would eventually be able to put out different video advertisements in different countries, with each video advertisement appearing as though it had been shot in a different country when, in fact, there would only have been one live shoot.

3 The Claimant did considerable work for the video advertisement. However, after reviewing five draft videos from the Claimant, the Defendant assessed that the Claimant would not be able to deliver the video advertisement to its satisfaction. The Defendant never made any payment to the Claimant, and the video advertisement ultimately never came to fruition. The Claimant thus commenced the present action on the basis of what it says is the Defendant's breach of contract and, in the alternative, the Defendant's unjust enrichment.

4 Was there a valid contract between the parties and, if so, did the Defendant breach this contract? If the Claimant's claim for breach of contract fails, does the Claimant nevertheless have a valid claim in unjust enrichment? Having considered the evidence and the parties' submissions, I allow the claim based on the Defendant's breach of contract. These are the reasons for my decision.

Background

5 The Claimant is a small and medium-sized enterprise involved in advertising activities and the provision of virtual production and video marketing services.[1] The Defendant, on the other hand, is a wholly-owned subsidiary of Tan Chong International Limited, and is the sole distributor of Subaru vehicles in Singapore.[2]

6 The parties got acquainted with each other sometime in May 2023, after the Claimant's Managing Director, Mr Tan Guan Cheong ("Nick"), reached out to Tan Chong International Limited's Deputy Chairman and Managing

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1 Statement of Claim (Amendment No 1) at para 1; Certified Transcript for 12 January 2026 at p 30.

2 Defence (Amendment No 2) at para 2; Affidavit of Evidence-in-Chief of Lu Han Koon at para 4.

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Director, Mr Glenn Tan ("Glenn").[3] It is undisputed that, following this initial introduction, representatives from both the Claimant and the Defendant met on 22 September 2023 (the "22 September Meeting") regarding the virtual production of a video advertisement for the Subaru Forester (the "Project").[4] Virtual production, as I am given to understand, is a technology that allows for a video's background to be readily changed. This was attractive to the Defendant: as the Defendant needed to put out different video advertisements in different countries, the ability to change the video advertisement's background meant that the Defendant could avoid having to shoot multiple video advertisements in multiple countries. Instead, with just one live shoot, several video advertisements, each appearing as though it were shot in a different country, could be produced.[5] Notably, the video advertisement was to capture the Subaru Forester's concept of adventure.[6]

7 It is undisputed that the Claimant started work on the Project shortly after the 22 September Meeting.[7] On 3 November 2023, the Claimant sent a quote to the Defendant (the "Fee Quote") via an accounting platform known as Xero.[8] The Fee Quote set out 13 categories of line items, each comprising the

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3 Affidavit of Evidence-in-Chief of Tan Guan Cheong at para 7; Affidavit of Evidence-in-Chief of Lu Han Koon at para 6; Certified Transcript for 12 January 2026 at pp 78-79.

4 Statement of Claim (Amendment No 1) at para 3; Defence (Amendment No 2) at para 3; Affidavit of Evidence-in-Chief of Tan Guan Cheong at paras 17-18; Affidavit of Evidence-in-Chief of Lu Han Koon at paras 12-13.

5 Affidavit of Evidence-in-Chief of Lu Han Koon at paras 9-10; Certified Transcript for 12 January 2026 at pp 6-7 and 18.

6 Defence (Amendment No 2) at para 3(b).

7 Statement of Claim (Amendment No 1) at para 3; Defence (Amendment No 2) at para 3; Affidavit of Evidence-in-Chief of Tan Guan Cheong at para 23.

8 Statement of Claim (Amendment No 1) at para 4; Defence (Amendment No 2) at para 4.

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description, the quantity, the unit price and the total price. The contract price in the Fee Quote was $301,200. Crucially, the Fee Quote also contained the following terms:[9]

> Payment Term:
>
> 50% - Upon Confirmation of Project
>
> 50% - Upon Delivery of Project
>
> Terms and conditions:
>
> …
>
> 5. In the event of cancellation, customer is required to pay 50% compensation on the full amount of the order.
>
> …

8 The Defendant accepted the Fee Quote on Xero on 8 November 2023.[10] On 27 November 2023, the Defendant issued a Purchase/Works Order to the Claimant (the "PO"). The PO stated the "[d]elivery [d]ate" as 22 November 2023, and also contained the following terms:[11]

> Terms and Conditions
>
> (1) We reserve the right to reject goods supplied or service rendered which are not satisfactory or do not satisfy our requirement stated in this order.
>
> (2) Please confirmed with the contact person on the PO prior to commencement of the work.
>
> (3) We reserve the right to cancel this Order if delivery is not made within the time specified.

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9 Statement of Claim (Amendment No 1) at para 4; Defence (Amendment No 2) at para 4; Affidavit of Evidence-in-Chief of Tan Guan Cheong at pp 172-174.

10 Statement of Claim (Amendment No 1) at para 4; Defence (Amendment No 2) at para 4.

11 Statement of Claim (Amendment No 1) at para 7; Defence (Amendment No 2) at paras 6-7; Affidavit of Evidence-in-Chief of Lu Han Koon at p 62.

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> (4) Documents relating to this Order are to bear this Order number.
>
> (5) Goods supplied to an employee of this Company are chargeable to the employee personally and not to the Company.

9 The live shoot for the video advertisement took place in Johor, Malaysia from 20 to 22 December 2023.[12] Between 26 December 2023 and 26 January 2024, the Claimant sent a total of five draft videos to the Defendant.[13] The Defendant gave feedback for these draft videos: the evidence of the Defendant's Director, Mr Lu Han Koon ("Han Koon"), was that, between the first and final draft videos, the Defendant gave "extensive feedback" to the Claimant over "numerous meetings and discussions".[14] But the Defendant was not happy with these draft videos and ultimately assessed that the Claimant would not be able to deliver the video advertisement to its satisfaction.[15] Subsequent to this, the Claimant made several requests and demands for payment, but the Defendant never made any payment to the Claimant at any point.[16]

10 Accordingly, the Claimant commenced the present action on 26 July 2024. The Claimant's primary claim is for breach of contract. The Claimant's case is that there was a valid contract between the parties arising from: (a) an oral agreement reached between the parties at the 22 September Meeting;[17] or (b) at the very latest, the Defendant's acceptance of the Fee Quote on Xero on

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12 Affidavit of Evidence-in-Chief of Tan Guan Cheong at para 61.

13 Statement of Claim (Amendment No 1) at para 11; Defence (Amendment No 2) at para 11.

14 Lu Han Koon's Affidavit of Evidence-in-Chief at para 38.

15 Defence (Amendment No 2) at para 17.

16 Statement of Claim (Amendment No 1) at paras 6-17; Defence (Amendment No 2) at paras 6-21.

17 Statement of Claim (Amendment No 1) at para 3.

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8 November 2023.[18] According to the Claimant, the Defendant was in repudiatory breach of this contract by failing to make the first 50% payment required under the Fee Quote "[u]pon [c]onfirmation of Project" (the "First 50% Payment").[19] Pursuant to cl 5 of the Fee Quote, which requires the payment of 50% compensation "[i]n the event of cancellation" (the "50% Cancellation Fee"), the Claimant claims liquidated damages in the sum of $164,154 (being 50% of $301,200 plus goods and services tax ("GST")).[20] In addition to this, the Claimant also has an alternative claim in unjust enrichment.[21]

11 On its part, the Defendant resists the Claimant's claim on the basis that there was no valid contract between the parties.[22] According to the Defendant, there was no agreement reached between the parties at the 22 September Meeting.[23] Nor did the Fee Quote represent an agreement as the Defendant's act of accepting the Fee Quote on Xero on 8 November 2023 was merely an "administrative step".[24] Even if there was a valid contract between the parties, the Claimant breached the terms set out in the PO as well as several implied terms,[25] and cl 5 of the Fee Quote is an unenforceable penalty clause.[26] Finally,

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18 Statement of Claim (Amendment No 1) at para 5.

19 Statement of Claim (Amendment No 1) at paras 14 and 16(a); Claimant's Closing Submissions at paras 66-67.

20 Statement of Claim (Amendment No 1) at paras 16-17.

21 Statement of Claim (Amendment No 1) at para 19.

22 Defence (Amendment No 2) at para 14.

23 Defence (Amendment No 2) at paras 3-4.

24 Defence (Amendment No 2) at para 4.

25 Defence (Amendment No 2) at paras 15-18 and 21.

26 Defence (Amendment No 2) at para 20.

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in relation to the Claimant's claim in unjust enrichment, the Defendant denies having benefitted or being enriched in any way.[27]

Issues arising

12 Given the parties' respective cases, the following issues in relation to the Claimant's primary claim for breach of contract arise for my determination:

(a) whether there was a valid contract between the parties ("Issue 1");

(b) if the answer to Issue 1 is "yes", whether the Defendant breached the contract ("Issue 2"); and

(c) if the answers to both Issues 1 and 2 are "yes", what the appropriate remedy is ("Issue 3").

13 If the Claimant's primary claim for breach of contract fails, I will also need to determine whether the Claimant's alternative claim in unjust enrichment is made out ("Issue 4").

Issue 1: Whether there was a valid contract between the parties

14 I turn first to Issue 1, which is whether there was a valid contract between the parties. As mentioned earlier (see [10] above), the Claimant's case is that a valid contract was formed either: (a) at the 22 September Meeting; or (b) on 8 November 2023 when the Defendant accepted the Fee Quote on Xero. I shall therefore proceed to consider whether a valid contract was formed on either of these occasions.

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[27] Defence (Amendment No 2) at para 23.

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Whether a valid contract was formed at the 22 September Meeting

15 I start with the 22 September Meeting. Nick's evidence is that, at the 22 September Meeting, the Claimant and the Defendant orally agreed that the Defendant would engage the Claimant for the Project. However, the intention was for the specific details of the Project (such as the schedule for delivery of the draft videos and the final product) to be subsequently agreed.[28] In contrast, the Defendant takes the position that the 22 September Meeting was simply a "preliminary discussion".[29]

16 At the outset, I agree with the Claimant's observation that, despite knowing that the Claimant had pleaded that there was an oral agreement reached between the parties at the 22 September Meeting, the Defendant chose not to call any witnesses to challenge the Claimant's version of events. Instead, the Defendant's sole witness was Han Koon, who confirmed, at the trial, that he was not present at the 22 September Meeting.[30]

17 Be that as it may, in my view, a valid contract was not formed at the 22 September Meeting because even if there was an oral agreement reached between the parties at the 22 September Meeting, such an agreement would have been incomplete. As observed by the authors of *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ("*The Law of Contract in Singapore*") (at para 03.200), an agreement must be complete before there can be a concluded contract in law. An agreement that is incomplete has terms that do not (but should) exist, and the non-existence

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[28] Affidavit of Evidence-in-Chief of Tan Guan Cheong at para 18; Certified Transcript for 12 January 2026 at p 11.

[29] Affidavit of Evidence-in-Chief of Lu Han Koon at para 12.

[30] Claimant's Closing Submissions at para 7; Certified Transcript for 12 January 2026 at p 68.

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of these terms make the agreement incomprehensible (*The Law of Contract in Singapore* at para 03.200). Put another way, a contract will only be regarded as concluded if the parties had reached substantial or essential agreement (*The Law of Contract in Singapore* at para 03.233).

18 However, even on the Claimant's own case, the oral agreement reached between the parties at the 22 September Meeting was incomplete as to at least one important term: price. Even though there seems to have been some communication as to the price range the Defendant was looking at,[31] from the messages in a Telegram chat group set up for the purposes of the Project (the "Telegram Chat Group"), "[c]ost" was listed as one of the things the Claimant was supposed to get back on after the 22 September Meeting.[32] Indeed, as will become evident (see [19]-[20] below), the parties did not agree on price until 3 November 2023. Significantly, this is not a case where the contract price was unimportant and could be left open-ended. As the Defendant points out, this was not a contract involving a small sum of money.[33] Furthermore, the Fee Quote did eventually contain a term on price (see [21] below), showing that this was, to the parties, an important term. I therefore find that a valid contract was not formed at the 22 September Meeting.

Whether a valid contract was formed on 8 November 2023 when the Defendant accepted the Fee Quote on Xero

19 I now consider whether a valid contract was formed on 8 November 2023 when the Defendant accepted the Fee Quote on Xero. As mentioned earlier (see [7] above), it is undisputed that the Claimant started work on the Project

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31 Certified Transcript for 12 January 2026 at p 11.

32 Affidavit of Evidence-in-Chief of Tan Guan Cheong at para 21 and p 59.

33 Defendant's Reply Submissions at para 10.

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shortly after the 22 September Meeting. This included doing up a draft storyboard, revising the storyboard in response to feedback from the Defendant and the creative agency that the Defendant was working with, Fiftyfull, and attending weekly virtual meetings with the Defendant and Fiftyfull.[34] There does not appear to be any meaningful discussion on the contract price during this initial period.

20 However, the parties were discussing the contract price by 31 October 2023. This much is evident from a series of exchanges that took place in the Telegram Chat Group.[35] On 31 October 2023, the Claimant's Senior Producer, Ms Mabel Koh ("Mabel"), circulated a pre-production manual ("PPM") deck in the Telegram Chat Group.[36] This PPM deck included a proposed budget breakdown, showing the contract price as $349,700 (before GST).[37] On 1 November 2023, Glenn stated in the Telegram Chat Group that this was too expensive. Eventually, Glenn provided feedback, through the Defendant's Senior Manager - Regional Marketing, Mr Mark Siew ("Mark"),[38] regarding several line items in the proposed budget breakdown. On 3 November 2023, Mabel circulated a revised PPM deck showing the contract price as $301,200 (before GST),[39] and asked the Defendant to "update by end day if we are good to proceed". After some confirmations were requested and provided, Mark asked the Claimant at 5.08pm to "prepare official quotation please".

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34 Affidavit of Evidence-in-Chief of Tan Guan Cheong at paras 17 and 23.

35 Affidavit of Evidence-in-Chief of Tan Guan Cheong at pp 77-81.

36 Affidavit of Evidence-in-Chief of Tan Guan Cheong at paras 20 and 28.

37 Agreed Bundle of Documents at pp 488-490.

38 Affidavit of Evidence-in-Chief of Tan Guan Cheong at para 11.

39 Agreed Bundle of Documents at pp 525-527.

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21 Minutes later at 5.49pm, Mabel sent a link to the Fee Quote (which was hosted on Xero) in the Telegram Chat Group. Consistent with the revised PPM deck, the Fee Quote stated the contract price as $301,200.[40] It is undisputed that the Defendant accepted the Fee Quote on Xero five days later on 8 November 2023 at 1.58pm.[41]

22 The Claimant submits that the Fee Quote constituted an offer which the Defendant accepted on 8 November 2023 at 1.58pm.[42] On its part, the Defendant's submissions on this issue are, with respect, a hodgepodge of disparate ideas.[43] To the best that I am able to discern, there seems to be two threads to the Defendant's submissions.

23 The first has to do with how the parties had not yet agreed on a time for delivery. The argument here is that this was an "essential term" as the Defendant intended to use the video advertisement at the Singapore Motorshow 2024 in January 2024.[44] However, in my view, the time for delivery was not an essential term of the contract.

24 First, it is disproportionate to suggest that the time for delivery (specifically, in time for the Singapore Motorshow 2024) was an essential term of the contract. This is because it cannot be the case that the video advertisement would be useless just because it was delivered after the Singapore Motorshow 2024. Indeed, Han Koon fairly conceded in cross-examination that the Defendant continued to follow up with the Claimant on the video advertisement

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40 Affidavit of Evidence-in-Chief of Tan Guan Cheong at pp 172-174.

41 Affidavit of Evidence-in-Chief of Tan Guan Cheong at p 176.

42 Claimant's Closing Submissions at paras 18-22.

43 Defendant's Closing Submissions at paras 45-70.

44 Defendant's Closing Submissions at para 48.

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after the Singapore Motorshow 2024, and that even if the deadline for the Singapore Motorshow 2024 could not be met, the video advertisement could still be used subsequently.[45] In fact, Han Koon clarified in re-examination that the intention was to showcase the video advertisement at the Singapore Motorshow 2024, and thereafter to use it in "the rest of the markets".[46]

25 Second, as mentioned earlier (see [7] above), the Fee Quote set out 13 categories of line items, each comprising the description, the quantity, the unit price and the total price. It was a comprehensive, workable and, therefore, complete contract. If the time for delivery was so important to the Defendant, the Defendant ought to have requested or, indeed, insisted that the Fee Quote include such a term. In addition, as I will come to (see [35] below), the Defendant's case is that, even if there was a valid contract between the parties, the terms of the contract were found exclusively in the PO. However, the PO indicated the delivery date as 22 November 2023, which is a date before the PO was even issued on 27 November 2023 (see [8] above). As the Claimant submits, if the time for delivery was an essential term, the Defendant would have taken care to ensure that it was accurately stated in the PO.[47] The fact that the Defendant inserted a delivery date in the PO which was either arbitrary or nonsensical indicates that the Defendant was not very much concerned about the time for delivery.

26 Third, the Defendant's reliance on *Compaq Computer Asia Pte Ltd v Computer Interface (S) Pte Ltd* [2004] 3 SLR(R) 316[48] is misplaced. In that case,

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45 Certified Transcript for 12 January 2026 at pp 130-131.

46 Certified Transcript for 13 January 2026 at p 16.

47 Claimant's Reply Submissions at para 14.

48 Defendant's Closing Submissions at paras 49-53.

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the Court of Appeal found that the letter of award in question was not a binding contract because, among other things, it expressly stated that the parties' agreement was "subject to final terms and conditions being agreed". In the present case, the Defendant did not intimate any such qualification alongside its acceptance of the Fee Quote on Xero.

27 The second thread to the Defendant's submissions has to do with how the Defendant had not "confirmed" the Project. Although not entirely clear, the argument here seems to be premised on how the Fee Quote required the First 50% Payment to be made "[u]pon [c]onfirmation of Project" (see [7] above). According to the Defendant, as the First 50% Payment had not been made, the Defendant had not "confirmed" the Project.[49] Apparently, the Defendant did not make the First 50% Payment as it was still awaiting internal approvals.[50] While not stated in so many words, the argument, as I understand it, is that the Fee Quote was an offer which the Defendant would have to accept, not by way of accepting it on Xero, but by making the First 50% Payment. However, this argument turns the logic of contractual offer and acceptance on its head. In my judgment, it is eminently clear that the First 50% Payment was a *term* of the contract and not the *means* by which the Defendant was to accept the Claimant's offer. As for the point about how the Defendant was still awaiting internal approvals for the First 50% Payment, I agree with the Claimant that this is irrelevant to whether there was a valid contract between the parties.[51] This question turns on what the Defendant had objectively communicated to the Claimant, and not on the Defendant's internal processes.

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[49] Defendant's Closing Submissions at para 55.

[50] Defendant's Closing Submissions at paras 58-61.

[51] Claimant's Closing Submissions at para 30.

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28 At the end of the day, it is well established that, where the law of contractual formation is concerned, the test of agreement or of inferring *consensus ad idem* is objective (*Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [40]). And, when objectively construed, the Defendant's acceptance of the Fee Quote on Xero on 8 November 2023 was the point when the parties reached substantial or essential agreement. Using the language of contractual offer and acceptance, and as the Claimant submits (see [22] above), the Claimant's Fee Quote sent on 3 November 2023 constituted an offer, and the Defendant's acceptance of the Fee Quote on Xero on 8 November 2023 constituted an acceptance of that offer. The Defendant's act of accepting the Fee Quote on Xero on 8 November 2023 was not, as the Defendant claims (see [11] above), merely an "administrative step".

29 This finding is further reinforced by the parties' subsequent conduct. Although the position is not completely settled, the weight of authority leans in favour of the view that subsequent conduct can be used to find prior agreement (*Spamhaus Technology Ltd v Reputation Administration Service Pte Ltd* [2023] SGHC 294 at [36]; *The Law of Contract in Singapore* at paras 03.195-03.196). If this is correct, then there are two further points that reinforce my finding that the Defendant's acceptance of the Fee Quote on Xero on 8 November 2023 constituted an acceptance of the Claimant's offer made by way of the Fee Quote.

30 First, the Defendant did not originally dispute its liability to make the First 50% Payment and in fact took steps to effect such payment. After the Defendant accepted the Fee Quote on Xero on 8 November 2023, the Claimant issued an invoice on the same day, requesting for payment of $162,648 (being

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the First 50% Payment plus the then-prevailing GST).[52] On 9 November 2023, Mark sent a message to Mabel, stating that the Claimant would "need to wait for [the Defendant's] PO number to add into [the Claimant's] invoice".[53] Eventually, Mark sent across the PO on 27 November 2023. Pursuant to this, the Claimant issued, on the same day, a revised invoice which included the Defendant's PO number (the "Revised Invoice").[54] On 29 November 2023, Mark sent an email to the Defendant's employees, asking them to "settle the first 50% for payment for this PO". This email also attached the Fee Quote, the Revised Invoice and the PO, as well as a payment approval form and a payment voucher indicating that the payment had been approved by Glenn.[55] And even as late as 4 January 2024, Mark was still assuring Nick that the Defendant would make the First 50% Payment, which was only "pending CFO approval after memo is approved by 2 directors".[56]

31 Second, the Defendant put the Claimant to considerable work on the Project. Indeed, as mentioned earlier (see [9] above), the live shoot for the video advertisement took place from 20 to 22 December 2023. Thereafter, the Claimant sent a total of five draft videos to the Defendant between 26 December 2023 and 26 January 2024. These draft videos incorporated the Defendant's "extensive feedback" to the Claimant over "numerous meetings and discussions".

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52 Affidavit of Evidence-in-Chief of Tan Guan Cheong at para 38; Affidavit of Evidence-in-Chief of Lu Han Koon at para 18.

53 Affidavit of Evidence-in-Chief of Tan Guan Cheong at para 39 and p 182.

54 Affidavit of Evidence-in-Chief of Tan Guan Cheong at para 40 and pp 191-193; Affidavit of Evidence-in-Chief of Lu Han Koon at paras 19-21 and p 62.

55 Affidavit of Evidence-in-Chief of Tan Guan Cheong at paras 45-46 and pp 195-198.

56 Affidavit of Evidence-in-Chief of Tan Guan Cheong at para 63 and p 249.

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32 Finally, and for completeness, I should also address an alternative submission made by the Claimant, which is that there was already a meeting of minds when Mark asked the Claimant to "prepare official quotation please" on 3 November 2023 at 5.08pm (see [20] above).[57] There is some merit to this submission because this message from Mark was sent in response to the revised PPM deck circulated by Mabel. In this revised PPM deck, the proposed budget breakdown already contained the 13 categories of line items that eventually found their way into the Fee Quote. However, this position is not pleaded. Indeed, the Statement of Claim only identifies two possible dates of contract formation: 22 September 2023[58] and 8 November 2023.[59] I therefore disregard this alternative submission.

33 In the circumstances, I find that a valid contract was formed on 8 November 2023 when the Defendant accepted the Fee Quote on Xero.

Issue 2: Whether the Defendant breached the contract

34 Having found that there was a valid contract between the parties, I now turn to Issue 2, which is whether the Defendant breached the contract. Given the parties' submissions (see [10]-[11] above), there are three sub-issues that I have to determine: (a) whether the terms of the contract included the terms of the PO; (b) whether the terms of the contract included any implied terms; and (c) whether the Defendant was in repudiatory breach of the contract.

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57 Claimant's Closing Submissions at para 17.

58 Statement of Claim (Amendment No 1) at para 3.

59 Statement of Claim (Amendment No 1) at para 5.

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Whether the terms of the contract included the terms of the PO

35 I first consider whether the terms of the contract included the terms of the PO. I have set out the circumstances leading to the issuance of the PO at [30] above. The Defendant's case is that, even if there was a valid contract between the parties, the terms of the contract were found *exclusively* in the PO.[60] I am unable to accept this submission.

36 First, as I have found that a valid contract was formed on 8 November 2023 when the Defendant accepted the Fee Quote on Xero (see [33] above), it follows that the terms of the Fee Quote must form at least part of the contract at first instance. Thus, I agree with the Claimant that, legally, the only way the terms of the PO could have had contractual force was if there was a variation of the contract.[61] However, as the Claimant submits, this is not the Defendant's pleaded case.[62] Nor has the Defendant showed how the legal requirements of a contractual variation have been satisfied.

37 Second, the Defendant's case does not make sense. The PO is a bare document that contains a single line item: "3 days TVC production".[63] It is illogical to suggest that the terms of the contract were found in their entirety in the PO. To be clear, the PO does refer to the Fee Quote by including a reference to the Fee Quote's quote number. But the Defendant's case is *not* that the terms of the contract included *both* the terms of the Fee Quote and the terms of the PO. As mentioned earlier (see [35] above), it is that the terms of the contract were found *exclusively* in the PO.

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60 Defendant's Closing Submissions at para 71.

61 Claimant's Closing Submissions at para 57.

62 Claimant's Closing Submissions at para 57.

63 Affidavit of Evidence-in-Chief of Lu Han Koon at p 62.

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38 All said, I agree with the Claimant that the insertion of the Defendant's PO number in the Revised Invoice was simply an (and, indeed, the real (see [28] above)) "administrative step".[64] Accordingly, I find that the terms of the contract did not include the terms of the PO.

Whether the terms of the contract included any implied terms

39 I next consider whether the terms of the contract included any implied terms. The Defendant's case is that, even if there was a valid contract between the parties, such a contract contained *both* the terms of the PO *and* three implied terms.[65] Although not entirely clear, it seems that this is an alternative to the Defendant's case that the terms of the contract were found exclusively in the PO (see [35] above). According to the Defendant, the three implied terms required the Claimant to:[66]

> (a) produce a video advertisement that was of satisfactory quality (the "First Allegedly Implied Term");
>
> (b) produce a video advertisement that was fit for the particular purpose made known by the Defendant to the Claimant (*ie*, to be used to advertise the Subaru Forester and to market its adventure element) (the "Second Allegedly Implied Term"); and
>
> (c) complete the production of the video advertisement by the second week of December 2023 so that the Defendant could use the same at the Singapore Motorshow 2024 (the "Third Allegedly Implied Term").

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64 Claimant's Closing Submissions at para 59.

65 Defence (Amendment No 2) at para 15.

66 Defence (Amendment No 2) at para 15.

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40 The Court of Appeal set out a three-step test for the implication of terms in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp Marine*") (at [101]):

> It follows from these points that the implication of terms is to be considered using a three-step process:
>
> > (a) The first step is to ascertain how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap.
> >
> > (b) At the second step, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.
> >
> > (c) Finally, the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at time of the contract. If it is not possible to find such a clear response, then, the gap persists and the consequences of that gap ensue.

41 Despite having quoted the above test from *Sembcorp Marine* in its closing submissions,[67] the Defendant has, inexplicably, not explained how each of these three steps is satisfied in the present case. Be that as it may, I am of the view that the First, Second and Third Allegedly Implied Terms do not satisfy the three-step test set out in *Sembcorp Marine*.

42 I deal with the First and Second Allegedly Implied Terms together as they both broadly have to do with the quality of the video advertisement. At this point, it is important to emphasise that the Defendant's case is that, even if there was a valid contract between the parties, such a contract contained *both* the terms of the PO *and* the First, Second and Third Allegedly Implied Terms (see [39] above). It is also important to highlight that under cl 1 of the PO (see [8]

67 Defendant's Closing Submissions at para 85.

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above), the Defendant already reserved the right to "reject goods supplied … which [were] not satisfactory". In these circumstances, I agree with the Claimant that if, on the Defendant's own case, the parties had already agreed to an express term on quality by way of cl 1 of the PO, then there is simply no gap in the contract.[68] The First and Second Allegedly Implied Terms therefore fail at the first step of the *Sembcorp Marine* test.

43 As for the Third Allegedly Implied Term, this has to do with the time for delivery of the video advertisement. To the extent that cl 3 of the PO (see [8] above) already has to do with the time for delivery, the reasoning at [42] above applies with equal force here. Accordingly, the Third Allegedly Implied Term also fails at the first step of the *Sembcorp Marine* test. In addition, I have also found that the time for delivery was not an essential term of the contract (see [23]-[26] above). To the extent that the Third Allegedly Implied Term appears to suggest otherwise, it would have *contradicted*, rather than given effect to, the parties' intentions. For this reason, it also fails at the second and third steps of the *Sembcorp Marine* test.

44 It has been observed that an implied term is "so often the last desperate resort of counsel in distress" (*Panwah Steel Pte Ltd v Koh Brothers Building & Civil Engineering Contractor (Pte) Ltd* [2006] 4 SLR(R) 571 at [8] quoting R E Megarry, *Miscellany-at-Law* (Stevens & Sons Limited, 1955) at p 210). Seeing as to how the Defendant has not even attempted to articulate how each step of the *Sembcorp Marine* test is satisfied (see [41] above), such desperation was regrettably blatant in the present case. For the reasons I have given, I find that the terms of the contract did not include any implied terms.

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68 Claimant's Closing Submissions at para 54.

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Whether the Defendant was in repudiatory breach of the contract

45 I now consider whether the Defendant was in repudiatory breach of the contract. As mentioned earlier (see [10] above), the Claimant's case is that the Defendant was in repudiatory breach of the parties' contract by failing to make the First 50% Payment, which was required "[u]pon [c]onfirmation of Project" (see [7] above).

46 A repudiatory breach is one that gives the innocent party a right to terminate the contract (*The Law of Contract in Singapore* at para 17.009). The situations where such a right arises were set out by the Court of Appeal in *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 ("*RDC Concrete*"). I have found that a valid contract was formed on 8 November 2023 when the Defendant accepted the Fee Quote on Xero (see [33] above). Accordingly, the First 50% Payment would have become due, presumably at that point. However, as mentioned earlier (see [9] above), the Defendant never made any payment to the Claimant at any point despite the Claimant's requests and demands for payment. In my view, the Defendant's refusal to make the First 50% Payment would fall under at least two of the situations in *RDC Concrete*. These are Situation 2 (*ie*, where the defaulting party, by his words or conduct, renounces the contract by clearly conveying to the innocent party that he will not perform his contractual obligations at all) (*RDC Concrete* at [93]) and Situation 3(b) (*ie*, where the breach in question will give rise to an event which will deprive the innocent party of substantially the whole benefit which it was intended that he should obtain from the contract) (*RDC Concrete* at [99]). I therefore find that the Defendant was in repudiatory breach of the contract.

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47 Before leaving Issue 2, I make two concluding observations. First, as I alluded to earlier (see [42] above), both cl 1 of the PO and the First and Second Allegedly Implied Terms have to do with the quality of the video advertisement. I have found that the terms of the contract did not include the terms of the PO (see [38] above) or any implied terms (see [44] above). However, even if I were wrong on these points, I agree with the Claimant that there would still not have been a breach of cl 1 of the PO and/or the First and/or Second Allegedly Implied Terms. This is because the quality of the video advertisement must, as the Claimant submits, be assessed by reference to the final product.[69] However, as Han Koon accepted at the trial, the five draft videos were not the final product.[70] Indeed, there was *never* any final product to speak of. In these circumstances, it is impossible for there to have been a breach of cl 1 of the PO and/or the First and/or Second Allegedly Implied Terms.

48 Second, even if the terms of the contract included the terms of the PO and/or the First, Second and/or Third Allegedly Implied Terms, and even if the Claimant had breached any of these terms, I agree with the Claimant that the Defendant has not articulated how, as a matter of law, this would exempt the Defendant from its *own* obligation to make the First 50% Payment.[71] Thus, although I have considered the sub-issues of whether the terms of the contract included the terms of the PO and any implied terms in some detail (see [35]-[44] above), I am inclined to agree with the Claimant that its alleged breaches of the contract are ultimately irrelevant in this action.[72] The breach in question

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69 Claimant's Closing Submissions at para 69.

70 Certified Transcript for 13 January 2026 at p 11.

71 Claimant's Closing Submissions at para 68.

72 Claimant's Reply Submissions at para 6.

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is the Defendant's breach of the contract, and this turns solely on the term relating to the First 50% Payment, rather than the terms of the PO or any implied terms.

Issue 3: What the appropriate remedy is

49 Having found that there was a valid contract between the parties and that the Defendant breached the contract, I turn to Issue 3, which is what the appropriate remedy is. As mentioned earlier (see [10]-[11] above), the Claimant relies on cl 5 of the Fee Quote and claims the 50% Cancellation Fee, which is essentially liquidated damages in the sum of $164,154 (being 50% of $301,200 plus GST). On the other hand, the Defendant's position is that cl 5 of the Fee Quote is an unenforceable penalty clause.

50 The rule against contractual penalties has its origins in Lord Dunedin's speech in the House of Lords' decision in *Dunlop Pneumatic Tyre Company, Limited v New Garage and Motor Company, Limited* [1915] AC 75 ("*Dunlop*"). Notwithstanding developments in this area of the law in other common law jurisdictions, the Court of Appeal in *Denka Advantech Pte Ltd and another v Seraya Energy Pte Ltd and another and other appeals* [2021] 1 SLR 631 ("*Denka Advantech*") affirmed (at [185(b)]) that the legal criteria to ascertain whether the rule applies remains the statement of principles enunciated by Lord Dunedin in *Dunlop*, with the focus being on whether the clause concerned provided a genuine pre-estimate of the likely loss at the time of contract. As the Court of Appeal observed in *Denka Advantech* (at [66], citing *Dunlop* at 87-88), Lord Dunedin posited four such principles: (a) that the provision would be penal if the sum stipulated for is extravagant and unconscionable in comparison with the greatest loss that could conceivably be proved to have followed from the breach; (b) that the provision would be penal if the breach consisted only in the

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non-payment of money and it provided for the payment of a larger sum; (c) that there was a rebuttable presumption that the provision would be penal if the sum stipulated for was payable on a number of events of varying gravity; and (d) that the provision would not be penal because of the impossibility of precise pre-estimation in the circumstances of the true loss.

51 Crucially, it is well established that the burden of proof lies squarely on the party alleging that a contractual clause is a penalty clause. Thus, the Court of Appeal held in *Phoenixfin Pte Ltd and others v Convexity Ltd* [2022] 2 SLR 23 ("*Phoenixfin*") (at [66]) that:

> It is uncontroversial that *the burden is on the party challenging contractual clauses to show why they are proscribed penalty clauses as a matter of fact* in the light of the applicable legal principles. The burden of proof was therefore on the appellants to have *led evidence* and to *make good the factual foundation* for arguing that the clauses were invalid as proscribed penalty provisions. … [emphasis added]

52 The Defendant's submissions on Issue 3 may be summarised as follows: (a) the Defendant "does not agree" that the sum of $150,600 is a genuine pre-estimate of loss; (b) the Claimant has not indicated and/or provided any evidence to show the stage of production the Claimant was at when the contract was purportedly repudiated and why the sum of $150,600 is in line with the Claimant's pre-estimation of the losses suffered; and (c) Nick's evidence was that the 50% Cancellation Fee applied regardless of when the Project was cancelled; and (d) the Claimant's evidence regarding the losses it suffered is unsatisfactory.[73]

53 It is not necessary for me to consider these submissions in detail. In essence, the Defendant's submissions take issue with the *Claimant's* evidence

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[73] Defendant's Closing Submissions at paras 95-100.

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on Issue 3. However, to use the language of the Court of Appeal in *Phoenixfin*, the Defendant has not itself led any evidence or made good the factual foundation for arguing that cl 5 of the Fee Quote is a penalty clause. In this regard, it is settled law that where the *legal* burden of proving the existence of any relevant fact rests on a particular party (and the burden of proof referred to at [51] above must, I think, be a legal burden of proof), that party also bears the initial *evidential* burden of adducing some (not inherently incredible) evidence of the existence of such fact (*Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 ("*Britestone*") at [60]). It is only upon adduction of that evidence that the evidential burden shifts to the other party to adduce some evidence in rebuttal (*Britestone* at [60]). Accordingly, it is no good for the Defendant to take issue with the Claimant's evidence on Issue 3 when it has not itself *first* adduced any evidence to show that the 50% Cancellation Fee is not a genuine pre-estimate of the likely loss at the time of contract.

54 Accordingly, I am unable to agree that cl 5 of the Fee Quote is an unenforceable penalty clause. Instead, I find that the appropriate remedy is the 50% Cancellation Fee, which is essentially liquidated damages in the sum of $164,154 (being 50% of $301,200 plus GST).

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Issue 4: Whether the Claimant's alternative claim in unjust enrichment is made out

55 Finally, I turn to Issue 4, which is whether the Claimant's alternative claim in unjust enrichment is made out. As I have found for the Claimant in respect of its primary claim for breach of contract, it is not necessary for me to determine Issue 4.

Conclusion

56 In summary, I find that: (a) a valid contract was formed on 8 November 2023 when the Defendant accepted the Fee Quote on Xero (see [14]-[33] above); (b) the Defendant was in repudiatory breach of the contract (see [34]-[48] above); and (c) the appropriate remedy is liquidated damages in the sum of $164,154 (see [49]-[54] above).

57 Accordingly, I allow the claim based on the Defendant's breach of contract and enter judgment for the Claimant for the sum of $164,154. Unless the parties can agree on costs and interest, they are to file written submissions on the same, limited to five pages each, within two weeks from the date of this judgment.

58 Despite having put the Claimant to considerable work on the Project, the Defendant refused to make payment because it assessed that the Claimant would not be able to deliver the video advertisement to its satisfaction. The overarching question presented in this trial is not whether this assessment was correct. Instead, it is whether the Defendant was entitled to refuse payment. In resisting the Claimant's claim, the Defendant raised a litany of defences to impugn the parties' contract from its formation right through to the remedy for its breach. I have found these defences to be devoid of legal merit. The Claimant, having

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been put to work, should have been paid in accordance with the terms of the parties' contract, and the Defendant was not entitled to refuse payment. In the final analysis, I am compelled to agree with the Claimant that this is a case of buyer's remorse,[74] and nothing more.

Jonathan Ng Pang Ern
District Judge

Ng Hui Min and Mok Zi Cong (Dentons Rodyk & Davidson LLP) for the Claimant;
Kesavan Nair and Dorothy Grace Tan Jun Wen (Bayfront Law LLC) for the Defendant.

[74] Claimant's Closing Submissions at para 1.

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