

**IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2026] SGHC(A) 22

Appellate Division / Civil Appeal No 36 of 2025

Between

- (1) Shipworks Engineering Pte Ltd
- (2) Lanka Marine Services Pte Ltd

... Appellants

And

- (1) Sembcorp Marine Integrated
Yard Pte Ltd
- (2) Jurong Shipyard Pte Ltd

... Respondents

Appellate Division / Civil Appeal No 42 of 2025

Between

- (1) Sembcorp Marine Integrated
Yard Pte Ltd
- (2) Jurong Shipyard Pte Ltd

... Appellants

And

- (1) Shipworks Engineering Pte Ltd
- (2) Lanka Marine Services Pte Ltd

... Respondents

In the matter of Suit No 1040 of 2020 (consolidated with Suit Nos 1042, 1051 and 1052 of 2020)

Between

- (1) Shipworks Engineering Pte Ltd
- (2) Lanka Marine Services Pte Ltd

... Plaintiffs

And

- (1) Sembcorp Marine Integrated
Yard Pte Ltd
- (2) Jurong Shipyard Pte Ltd

... Defendants

JUDGMENT

[Contract — Breach]
[Contract — Contractual discretion]
[Civil Procedure — Striking out]

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This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Shipworks Engineering Pte Ltd and another
v
Sembcorp Marine Integrated Yard Pte Ltd and another and
another appeal

[2026] SGHC(A) 22

Appellate Division of the High Court — Civil Appeal Nos 36 and 42 of 2025
Hri Kumar Nair JCA, Woo Bih Li JAD and Kannan Ramesh JAD
3 March, 22 May 2026

27 August 2026

Judgment reserved.

Kannan Ramesh JAD (delivering the judgment of the court):

Introduction

1 AD/CA 36/2025 (“AD 36”) and AD/CA 42/2025 (“AD 42”) (collectively, “appeals”) are cross-appeals from the decision of a Judge of the High Court (“Judge”) below in HC/S 1040/2020 consolidated with HC/S 1042/2020, HC/S 1051/2020 and HC/S 1052/2020 (collectively, “Suit 1040”). Suit 1040 was commenced by Shipworks Engineering Pte Ltd (“Shipworks”) and Lanka Marine Pte Ltd (“Lanka”) (collectively, the “plaintiffs”), against Sembcorp Marine Integrated Yard Pte Ltd (“SMIY”) and Jurong Shipyard Pte Ltd (“Jurong”) (collectively, the “defendants”). AD 36 is the plaintiffs’ appeal and AD 42 is the defendants’ cross-appeal.

2 The plaintiffs claimed at trial \$26,589,879.95 for three different categories of work they had carried out for the defendants: “Manpower Jobs”, “Sub-Task Jobs” and “Miscellaneous Jobs” (see below at [5]). The sum claimed comprised \$26,048,727.76 for 203 unpaid invoices for works and services across the three categories of work explained below (at [5]), and \$541,152.19 on *quantum meruit* for 12 completed Sub-Task Jobs for which invoices had not been issued.

3 The defendants disputed the claim and counterclaimed for \$20,822,519.59, comprising \$20,384,284.41 for moneys they allegedly overpaid to the plaintiffs on irregular invoices, and \$438,235.18 for administrative charges they were entitled to whenever they made partial payments to the plaintiffs, pursuant to agreements between the parties (see below at [15]).

4 The Judge partially allowed both the claim and the counterclaim. The Judge’s decision is recorded in *Shipworks Engineering Pte Ltd v Sembcorp Marine Integrated Yard Pte Ltd* [2024] SGHC 325 (“Liability Judgment”) and *Shipworks Engineering Pte Ltd v Sembcorp Marine Integrated Yard Pte Ltd* [2025] SGHC 40 (“Quantum Judgment”).

Background to the dispute

5 As mentioned (at [2]) above, the defendants engaged the plaintiffs for three categories of work:

- (a) Manpower Jobs: supplying manpower;
- (b) Sub-Task Jobs or “STJ”s: sub-tasks, such as spray-painting and high pressure washing; and

- (c) Miscellaneous Jobs: miscellaneous services such as cleaning toilets and supplying lorry cranes to transport equipment and materials.

6 The parties’ relationships were mainly governed by the following agreements:

- (a) The Subcontractor Registration Agreement (“SRA”) between Lanka and Jurong dated 13 May 2009;
- (b) The Subcontractor Work Agreement (“SWA”) between Lanka and Jurong dated 13 May 2009;
- (c) The Contractor Registration Agreement (“CRA”) between Shipworks and Jurong dated 10 April 2014;
- (d) The Contractor’s Registration Agreement (“2018 CRA”) between Lanka and SMIY dated 13 March 2018; and
- (e) The “Administrative Charges Agreements” between SMIY and
 - (i) Shipworks and
 - (ii) Lanka respectively, dated 27 July 2018.

7 When Suit 1040 was first commenced, the plaintiffs’ claim was based on 317 unpaid invoices for the three types of work and the *quantum meruit* claim for the 12 completed STJs for which invoices had not been issued (“Non-Invoiced Work” or “Non-Invoiced STJs”). The plaintiffs obtained summary judgment for 114 of the 317 invoices. Thus, as noted above (at [2]), the unresolved portion of the plaintiffs’ claim that proceeded to trial and which is the subject of these appeals only concerned the 203 unpaid invoices and the Non-Invoiced Work.

8 To establish their respective claims and resist the claims they faced, the parties adduced documents which were placed in their respective bundles of documents. Much of the contention of the parties centred on the authenticity and reliability, and the relevance of certain categories, of documents in the respective bundles for the claim and counterclaim. Allegations that the signatures of the defendants’ representatives in some of these documents were forged or fabricated were made by the defendants in an effort to challenge the authenticity and reliability of some documents. As we will explain, the Plaintiffs’ Set of Documents (“PSD”) comprised only copies of the relevant documents while the Defendants’ Set of Documents (“DSD”) comprised a mix of originals and copies.

The Plaintiffs’ Set of Documents

9 The PSD comprised *copies* of the following documents:

- (a) final invoices for the various works, with progress payments accounted for where applicable;
- (b) the work orders issued by the defendants (“WO”s); and
- (c) the following supporting documents:
 - (i) where manpower was supplied (*ie*, for all Manpower Jobs and some Sub-Task Jobs where additional manpower was required):
 - (A) timesheets in the plaintiffs’ format which recorded the *names* of the workers and the hours clocked *for a given day* (“Plaintiffs’ Timesheet”s or “PT”s);

- (B) timesheets in the defendants’ format which recorded the *number* of workers and the hours clocked by those workers *for a given day* (“Daily Timesheet”s or “DT”s); *or*
 - (C) timesheets in the defendants’ format which recorded the *names* of workers and the hours clocked by those workers per day *for that week* (“Weekly Timesheet”s or “WT”s);
- (ii) for the Sub-Task Jobs:
- (A) Job Completion Reports (“JCR”s);
 - (B) Sub-Task Work Lists (“STWL”s); *and/or*
 - (C) Payment Summaries;
- (iii) for the Miscellaneous Jobs:
- (A) where the work was cleaning of toilets, Work Completion Reports (“WCR”s); and
 - (B) where the work was the supply of lorry cranes, Transport Supply Timesheets (“TST”s).

10 A key feature of the plaintiffs’ case was that any one of these documents, *eg*, a PT, DT or WT, was on its own sufficient to establish their claim for the manpower supplied. This perhaps explains why the PSD was not consistent in terms of the type of supporting document that was required to establish the claim for the supply of manpower. We will return to this point when we address the work that was carried out and the payment processes that were used by the defendants to evaluate payment claims.

The Defendants' Set of Documents

11 The DSD comprised:

- (a) original final invoices;
- (b) original WOs; and
- (c) a mix of originals and copies of supporting documents in the following forms.
 - (i) where manpower was supplied, either PTs only, or DTs and/or WT.
 - (ii) for the Sub-Task Jobs, JCRs, STWLs and/or Payment Summaries.
 - (iii) for the Miscellaneous Jobs:
 - (A) where the work was the cleaning of toilets, WCRs; and
 - (B) where the work was the supply of lorry cranes, TSTs.

12 We make some preliminary observations. First, the defendants' case is not that all the documents in the DSD were received by the defendants from the plaintiffs prior to these proceedings. Some of the documents in the DSD were copies of documents the defendants obtained pursuant to a Notice to Produce issued by the defendants to the plaintiffs on 18 January 2021. Others were allegedly received by the defendants from the plaintiffs pursuant to the process for making payment claims. As we pointed out to counsel for the defendants Ms Koh Swee Yen SC ("Ms Koh") at the hearing of the appeals, this unnecessarily complicated matters. This was because there was no easy way to tell which

documents in the DSD the defendants assert they received pursuant to the Notice to Produce, and which they say they did not. Where necessary, we will distinguish the documents in the DSD in the following manner: (a) the documents that were *disclosed in the proceedings below pursuant to the Notice to Produce*, and (b) the documents the defendants say they *in fact* received from the plaintiffs pursuant to the payment processes (“Received Documents”)

13 Second, even the Received Documents were a mix of originals and copies. Ms Koh explained that some of the Received Documents were copies because that was what the plaintiffs had submitted to the defendants. For reasons that will become apparent later when we discuss the payment processes, it was unclear why that would be the case. This was never satisfactorily explained by the defendants.

14 Third, while the Received Documents were (according to the defendants) actually received from the plaintiffs, the defendants did not accept that they were relevant for making a payment claim. There was significant disagreement before the Judge and on appeal as to which documents were relevant for making payment claims for the supply of manpower, with the plaintiffs and the defendants each advancing their own version of the payment process and the documents relevant to the payment claims. We consider this below at [96]–[108].

Decision below – Liability Judgment

15 On 20 December 2024, the Judge partially allowed the claim and counterclaim (Liability Judgment at [82]). At this juncture, it suffices for us to note that the counterclaim was broadly segregated into three parts: (a) moneys overpaid on allegedly irregular invoices and supporting documents;

(b) administrative charges pursuant to the Administrative Charges Agreements; and (c) payments made on irregular invoices and supporting documents that were allegedly submitted by the plaintiffs in relation to 19 WOs on which the plaintiffs brought no claims (this counterclaim was made in HC/S 1042/2020 (“Suit 1042”). The overpayment component in (a) was addressed in the Liability Judgment on the basis of the Judge’s findings on ten types of irregularities (Types A to J) which the defendants pleaded in relation to the alleged irregular invoices. In this regard, the Judge preferred the PSD’s PTs where they were authenticated and rejected the defendants’ allegation of irregularity in respect of the corresponding WOs. In contrast, the Suit 1042 counterclaim in (c) was dealt with separately in the Quantum Judgment (see below at [78]).

16 For ease of reference, we summarise the Liability Judgment in a similar sequence as the Judge’s analysis set out below, addressing the relevant context as each issue arises:

- (a) First, the billing and payment processes that were common to all three categories of work;
- (b) Second, the extent of the defendants’ contractual discretion to determine the value of the work performed by the plaintiffs, under cll 9(a) and 17 of the CRA and SRA;
- (c) Third, the work process for the Manpower Jobs, as well as the “Types A to E” irregularities relating principally to the Manpower Jobs. For context, the defendants pleaded a total of ten types of irregularities (Types A to J) against the documents *in the DSD*. Depending on the evidence relating to a particular WO, an irregularity might defeat or reduce an unpaid claim, support the defendants’ counterclaim for

repayment, or have no consequence because the same work was proved by other reliable evidence. The Judge's task was therefore ultimately to determine, WO by WO, whether the work and amount claimed were proved, what evidential weight should be given to the relevant supporting documents, and what sum, if any, remained payable after accounting for earlier payments. In essence, the ten types of irregularities were:

(i) pertaining to the Manpower Jobs:

Type A: Absence of the WTs;

Type B: Fabricated DTs or forged signatures on the DTs;

Type C: Forged or fabricated signatures on the PTs;

Type D: Discrepancy between the records kept by the defendants and timesheets submitted by the plaintiffs;

Type E: The DTs submitted under the wrong WO;

(ii) pertaining to the STJs:

Type F: Duplicate claims for the same work;

Type G: Inflated claims for manpower (in relation to STWLs);

Type H: The STJ WCRs bore inflated claims;

Type I: Overcharging for work; and

(iii) pertaining to the Miscellaneous Jobs:

Type J: Unverified supporting documents for the Miscellaneous Jobs.

Each irregularity will be explored at their appropriate junctures below. As the Judge noted, Types A to C and E irregularities also applied to the STJs where additional manpower was requested.

(d) Fourth, the work process for the STJs and the corresponding Type F to Type I irregularities.

(e) Fifth, the work process for the Miscellaneous Jobs and the Type J irregularity.

(f) Sixth, the claim for the Non-Invoiced STJs.

(g) Seventh, the defendants' argument that the plaintiffs' entire claim should be struck out for forgery.

(h) Finally, the defendants' counterclaim for administrative charges pursuant to the Administrative Charges Agreements.

Billing and partial payment process

17 First, the parties agreed on the billing process for all three categories of work. For a full payment claim, the plaintiffs submitted the original invoice, WO and supporting documents to the defendants' finance department ("Finance Department"). Those documents were then circulated through several levels of review, including the Blasting and Painting ("BP") section, the Head of Department ("HOD") of the BP section ("BP Section"), the defendants' project manager ("Project Manager") and the defendants' Production Control and Production Department ("PCPD"). A broadly similar process applied to a request for partial payment, except that the PCPD could revise – usually by reducing – the sum requested before approving payment (Liability Judgment at [12]–[13]).

18 The parties, however, disagreed over the nature of the partial payments. The plaintiffs said that these were progress payments for work already performed while the defendants insisted that they were advances or loans intended to provide the plaintiffs with liquidity while work remained ongoing. This disagreement was significant because, on the plaintiffs’ case, the defendants paid attention to the supporting documents when approving these partial payments, which were paid without any issue, and which the defendants now sought to claw back. However, on the defendants’ case, since these partial payments were loans, the defendants had not assessed or ascertained the value of the works performed as indicated in the supporting documents before making the payments. The defendants should therefore be permitted to claw back these payments as they were made mistakenly.

19 The Judge accepted that these partial payments were progress payments because he found that the defendants examined the supporting documents and revised the sum to be paid with reference to the amount of work performed (Liability Judgment at [14]). This finding is significant in so far as a partial payment indicated that the claim and supporting documents had passed through the defendants’ internal review process and that the defendants had assessed and approved payment for work that had already been performed. However, that did not, without more, make the payment immune from challenge; the defendants could still allege that a particular payment was unsupported or exceeded the amount properly payable.

The defendants’ contractual discretion

20 Second, in relation to the defendants’ right to assess the works done by the plaintiffs, cl 9(a) of the CRA and SRA provided that Jurong reserved “the absolute right and discretion to decide on the value of the Works carried out by

[either plaintiff] regardless of any quotation, price or other quote or agreement” and “[either plaintiff] agrees not to challenge [Jurong]’s right or discretion unless and only if the same is fraudulently given or taken by [Jurong]”. Similarly, cl 17 provided that Jurong reserved and retained “the absolute right and discretion to decide the extent of the works completed and the commercial value of the Works completed by [either plaintiff]”. The defendants relied on these clauses as a catch-all argument that they had an “absolute” discretion to assess the value of works performed by the plaintiffs provided such assessment was not fraudulent.

21 The plaintiffs disagreed, arguing that the parties agreed that the defendants could assess the value of partially completed works – however, once the work was completed and verified to be completed, the defendants could not re-assess the value of the said work again. The plaintiffs also argued that cl 17 of the CRA and SRA, properly interpreted, only allowed the defendants to decide the ambit of the WO, and had no application once work had commenced or an invoice was issued. In any event, any contractual discretion was subject to the implied term that the discretion must be exercised rationally (*ie*, not *Wednesbury* unreasonably), and not arbitrarily or capriciously. The defendants disagreed that such a term could be implied.

22 The Judge agreed with the defendants that they had a discretion to assess the value of the plaintiffs’ work. However, he agreed with the plaintiffs that such a discretion had to be exercised rationally (or, in the words of the Judge, *Wednesbury* reasonably), and not arbitrarily or capriciously. The defendants could not disregard evidence that work had been completed or assign a commercial value without a rational basis. Whether a particular amendment to the amount claimed was permissible therefore depended on whether the

defendants had a rational basis for that amendment (Liability Judgment at [17]–[18]).

23 The question of the extent of the defendants’ contractual discretion was also relevant to the valuation disputes which arose under Type G and Type H irregularities (see below at [54]–[57]).

Manpower Jobs

Work process

24 Third, the analysis for the Manpower Jobs claims began with the work process for the Manpower Jobs. The work process was important because Type A to Type E irregularities turned principally on which records could establish the number of workers supplied and the hours that they had worked. In particular, the parties disagreed over whether the PTs were documents used and accepted in the payment process, as the plaintiffs asserted, or whether the Manpower Jobs claims had to be supported by the DTs and WTs generated through the online system operated by the defendants (“Defendants’ Online System” or “DOS”), as the defendants maintained.

25 Certain aspects of the process were not disputed. First, the defendants issued a hard-copy, computer generated Manpower WO to the plaintiffs at least one day before the job, containing a general description of the task, but without details on the number of workers or the duration of the work (Liability Judgment at [3]). Second, workers entered the defendants’ premises using a biometric security system, which involved tapping a biometric card and scanning a face/fingerprint for identification (Liability Judgment at [3]). The plaintiffs’ workers’ entries through the biometric security system were recorded as clock-in clock-out (“CICO”) data. However, the plaintiffs alleged that some workers

occasionally entered by tailgating or through non-functioning gantries, which the defendants disputed asserting that was not possible (Liability Judgment at [3]). Third, the defendants operated the DOS, which was meant to record the number and names of the plaintiffs’ workers and hours they had worked; the DOS also stored the CICO data (Liability Judgment at [4]).

26 The parties differed, however, over who determined the manpower that was required and how the work performed each day was recorded. On the one hand, the plaintiffs said that the defendants’ section engineer (“Section Engineer”) instructed them on the number of workers required and that their foreman prepared a PT at the end of each day. The PT was verified and signed by the defendants’ engineer or quality control personnel, consolidated weekly and submitted to the defendants’ BP section, before being returned to the plaintiffs for billing. On the other hand, the defendants said that the plaintiffs proposed the manpower required and were obliged to generate DTs and WTs through the DOS, using information stored in the DOS (Liability Judgment at [5]–[11]).

27 The Judge did not make comprehensive findings accepting either party’s account in every disputed aspect. Instead, the Judge made findings in the course of considering Type A to Type E irregularities: whether a particular form of timesheet was contractually required, whether the disputed timesheets had been submitted by the plaintiffs, and whether the signatures on those documents were fabricated or forged.

28 Against this background, the Judge considered Type A to Type E irregularities.

- (a) Types A and B concerned which forms of timesheet could support a Manpower Jobs claim and whether the WT's and DT's respectively were submitted by the plaintiffs.
- (b) Type C concerned the authenticity of the PT's on which the plaintiffs relied to support their claim.
- (c) Types D and E concerned, respectively, discrepancies with the biometric records and supporting documents placed under the wrong WO's.
- (d) Types A to C and E were also alleged where additional manpower was supplied for a Sub-Task Job (Liability Judgment at [52]).

Type A: Absence of the WT's

29 Type A irregularity raised a question of the sufficiency of the underlying documents: did the absence of a WT, without any further irregularity, prevent the plaintiffs from proving the manpower supplied? The defendants argued that, without a WT identifying the individual workers, they could not verify that those workers had entered the worksite.

30 The Judge held that the absence of a WT was not, by itself, fatal. The defendants paid for manpower according to the number of workers and hours worked, rather than the identity of the particular workers. Either a PT or a DT could therefore, in principle, establish the relevant manpower supplied and hours they had worked. However, the relevant PT or DT would not support the claim where the signature thereon was forged or fabricated (Liability Judgment at [20]).

Type B: Fabricated DTs or forged signatures on the DTs

31 The Type B irregularity raised a different question. The issue was not whether an authentic DT was capable in principle of proving manpower, but whether the particular DT was submitted and relied upon by the plaintiffs for their claims.

32 The defendants alleged that approximately 15,940 DTs contained reused serial numbers, misspelled headings or false, reproduced or forged signatures. The plaintiffs' answer was that they had not submitted or relied upon those DTs; they had instead submitted PTs and had been paid on that basis. They also contended that the defendants had not called a witness with sufficient knowledge of the DOS to establish that each DT was necessarily assigned a unique serial number (Liability Judgment at [21]–[22]).

33 The Judge concluded as follows:

- (a) PTs appeared even among the Received Documents, demonstrating that PTs had in fact been submitted for billing;
- (b) where a PT bore an unchallenged signature of the defendants' engineer or quality control personnel, that signature authenticated the PT and the manpower supplied and hours they worked recorded in it;
- (c) the contracts between the parties did not prescribe any mandatory form of timesheet;
- (d) the defendants had not proved that the DTs were submitted by the plaintiffs for billing as opposed to being documents that were generated or appended internally by the defendants;

(e) the Received Documents were incomplete, with missing documents and discrepancies, with the result that it was unclear whether the DTs were what the plaintiffs had submitted to the defendants when making payment claims;

(f) the fact that the PTs in the PSD were photocopies did not result in the Judge rejecting them, because the originals had been submitted to and would have been retained or lost by the defendants; and

(g) the photocopies of the PTs in the PSD were admissible under ss 67(1)(a)(i), 67(1)(a)(ii) and 67(1)(c) of the Evidence Act 1893 (2020 Rev Ed) (“EA”). Under ss 68(2)(d) and 68(2)(e) of the EA, there was no need for notice (Liability Judgment at [23]–[30]).

34 The Judge thus found that “the [p]laintiffs must stand and fall by the [PTs] disclosed in the [PSD]”. The DTs, and hence the forgery or fabrication thereof, were irrelevant in determining the plaintiffs’ entitlement to payment (Liability Judgment at [31]).

35 As the DTs were not relevant, the Judge determined the plaintiffs’ claims with reference to the PTs in the PSD. Read together, the Type A and Type B findings addressed different matters. Accordingly, while the Judge found that in relation to the Type A irregularity, a genuine DT could in principle prove the manpower that was supplied despite the absence of a WT, in relation to the Type B irregularity, the provenance of the disputed DTs did not have to be established. Instead, the plaintiffs’ claims should be tested against the PTs on which they relied, *ie*, those in the PSD.

Type C: Forged or fabricated signatures on the PTs

36 Once the Judge held that the plaintiffs’ Manpower Jobs claims stood or fell principally by the PTs in the PSD, the authenticity of the signatures on those documents became decisive. This was the subject of the Type C irregularity.

37 The defendants contended that certain signatures in some of the PTs *in the DSD* were forged or fabricated, relying on the expert opinion of their handwriting expert, Ms Lee Gek Kwee (“Ms Lee”), as well as the evidence of the persons whose signatures were allegedly forged (“purported signatories”). The plaintiffs adduced evidence of their handwriting expert, Ms Melanie Holt (“Ms Holt”), and contested the admissibility of the evidence of the purported signatories (Liability Judgment at [34]).

38 The Judge found that there was forgery and/or fabrication in relation to the signatures in some of the PTs. Ms Lee provided credible evidence of copy-paste fabrications and forged signatures, which the Judge accepted. He noted that Ms Holt raised only minor criticisms of Ms Lee’s methodology, which were insufficient to challenge Ms Lee’s findings (Liability Judgment at [33]). The Judge held that the evidence of the purported signatories was admissible under s 32(1)(j)(iii) of the EA. The Judge further found that any forgery and/or fabrication was the plaintiffs’ doing, as there was no other conceivable explanation otherwise. In particular, the defendants had no reason or motive to commit forgery or fabrication (Liability Judgment at [37]).

39 Thus, the Judge ruled that the PTs with impugned signatures or those too faint to examine did not entitle the plaintiffs to payment. Importantly, the Judge held that “where the defendants have successfully impugned a [PT] in the [DSD] which *matches* the [PT] in the [PSD], the defendants would have

successfully impugned the latter timesheet” (Liability Judgment at [38]). However, the plaintiffs could nonetheless claim amounts supported by valid evidence or admissions by the defendants (Liability Judgment at [39]). The Judge rejected the defendants’ *ex turpi causa* defence, stating that the plaintiffs’ entitlement arose from the contracts, not the forged timesheets.

40 Hence, for each WO, the defendants had to pay either the amount they had admitted, or the sum of all the amounts in the relevant PTs in the PSD which had not been successfully impugned by the defendants, whichever was the higher. Where the defendants had paid more than they should have, the plaintiffs were liable to refund the difference (Liability Judgment at [40]).

41 The Judge clarified that the plaintiffs could not be paid for duplicate manpower (where the same workers worked on different WOs on the same day), but only if such duplication was established based on the documents within the PSD (Liability Judgment at [41]).

Type D: Discrepancy between DOS data and the timesheets

42 Type D irregularity related to the Manpower Jobs only. The defendants argued that the plaintiffs’ alleged supply of manpower for certain invoices as stated in WTs exceeded the number of workers recorded in the DOS. We pause to note that the defendants’ arguments below related to the discrepancy between the WTs and the data in the DOS generally, and not merely the CICO data therein.

43 The Judge found that the discrepancies did not necessarily invalidate the plaintiffs’ claims based on the PTs where signatures of the defendants’ representatives were unchallenged. According to the Judge, the premise of the defendants’ contention was that the biometric security system was accurate,

which was not in fact supported by the evidence. The Judge accepted SMIY's security manager's testimony that workers might tailgate each other and not scan their passes (Liability Judgment at [42]). At first glance, this did not address discrepancies with data in the DOS which originated from other sources, *ie*, not the biometric security system.

44 However, the Judge went on to hold as follows: "In any event, ... where the defendants' representative's signature on the [PT] is unchallenged, that representative is taken to have endorsed the number of workers on the particular day. This irregularity thus does not affect the plaintiffs' entitlement to be paid." The Judge's holding in this regard did deal with the defendants' argument based on the DOS generally: discrepancies with the *defendants'* record (whether CICO data or otherwise) did not matter, so long as payment claims were made on *verified* PTs in the PSD. Accordingly, the primary reference was the PTs that were verified.

Type E: The DTs submitted under the wrong WO

45 The Type E irregularity concerned the DTs which were submitted under incorrect WOs. The question was whether those mismatches resulted from haphazard submissions by the plaintiffs or from the defendants' subsequent reconstruction of the DSD. The Judge held that the defendants had not established that the plaintiffs were responsible for any error. It was unlikely that the defendants' Finance Department would have approved such obviously mismatched submissions, particularly where partial payments had already been made for many of the affected WOs. The more probable explanation was that the errors arose when the defendants assembled the DSD from documents located in different places. In any event, the plaintiffs' Manpower Jobs claims stood or fell by the PTs in the PSD (Liability Judgment at [43]).

STJs

Work process

46 Fourth, the Types F to I irregularities related to the STJs. The parties’ respective cases on the STJ work process are summarised briefly here. We discuss the work process, and its significance to the issues on appeal, in detail when we explain our decision (at [172]–[174]) below.

47 The parties agreed on the following facts about the STJs’ work processes. First, the STJs’ WOs contained only general descriptions of the tasks, with the details to be provided by the Section Engineer. Second, STJs were billed by the area completed and not the number of workers deployed. Third, the plaintiffs’ foreman decided on the number of workers for the job. Fourth, the Section Engineer was on site daily for the duration of the job (Liability Judgment at [45]). STJs usually did not require timesheets, except where additional manpower was requested by the defendants (Liability Judgment at [51]). Also, the parties did not dispute that the verification of work completed for STJs required some form of documentation and approval process.

48 One of the supporting documents in contention between the parties was the *Work Completion Report*. We pause to note that, in the proceedings below, the terms “Work Completion Reports” and “Job Completion Reports” appear to have been used interchangeably. For the purposes of this judgment, *Job Completion Reports* relate to STJs, and *Work Completion Reports* relate to Miscellaneous Jobs (see [9] and [11] above).

49 The parties disagreed as to who prepared the supporting documents and the precise approval process that was adopted. The plaintiffs’ case was that the supporting documents were substantially prepared by the defendants before

being returned to the plaintiffs for billing. On the other hand, the defendants contended that the plaintiffs prepared the relevant documents for approval by the defendants' representatives. We set out these competing accounts, and our conclusions on the work process, in greater detail (at [172]–[174]) below.

50 The Judge did not make a general finding that every supporting document had been prepared by the defendants. His operative findings were narrower and issue-specific. For instance, under Type F, a genuine signature by the defendants' representative was evidence that the recorded work had been verified and, where applicable, that rework had been ordered. Under Type G, the Judge found that the defendants had admitted preparing at least some STWLs and failed to identify which STWLs had allegedly been prepared or altered by the plaintiffs. We turn to Types F to I irregularities.

Type F: Duplicate claims for the same work

51 Type F concerned whether similar descriptions of work at the same location under different WOs represented duplicate billing for the same work, or separate initial and remedial work.

52 The Judge held that the defendants had not proved double claiming merely by showing that similar work appeared more than once. The supporting documents bore the genuine signatures of the defendants' Section Engineer and Project Manager, indicating that the work had undergone at least two levels of verification. Progress payments had also been made under some of the affected invoices. Further, the later work could have constituted rework or remedial work, and the date appearing in a supporting document was not necessarily the date on which the physical work had been performed. The defendants' witness alleging duplication had not personally supervised the work, and the engineers

who had done so were not called to substantiate the allegation (Liability Judgment at [53]–[57]).

53 The Judge separately considered four WOs whose supporting documents contained allegedly forged signatures. Where forgery was proved, the plaintiffs could not recover the outstanding amount supported by the forged document. They could nevertheless retain progress payments which had themselves been genuinely approved and recover any amounts supported by unrelated genuine documents (Liability Judgment at [58]–[65]).

Type G: Inflated claims for manpower

54 The Type G irregularity raised two distinct questions. The first was factual: had the plaintiffs fabricated or altered the STWLs to inflate the quantities claimed? The second was contractual: even if the plaintiffs had not altered the documents, were the defendants entitled under cl 9(a) and 17 of the CRA and SRA to revise the quantities, rates or amounts payable?

55 On the first question, the Judge held that fabrication by the plaintiffs had not been proved. The defendants admitted that handwritten corrections had been made internally after the plaintiffs submitted an STWL approved by the Section Engineer. The defendants had also failed to identify which STWLs were said to have been prepared by the plaintiffs. The signed STWL submitted by the plaintiffs indicated that the Section Engineer had performed the relevant checks, while the unsigned version in the defendants’ internal records was accorded little weight (Liability Judgment at [66]–[67]).

56 On the second question, the Judge held that the defendants were entitled to pay the amended amount where the amendment represented a rational exercise of their contractual discretion. In this regard, the defendants’ standard

tariff rates constituted a rational basis for amendment. Most amendments therefore stood because the plaintiffs had not specifically proved them to be irrational, arbitrary or fraudulent. The exception was WO 17036146, where the amended figures were not supported by the asserted tariff basis; for that WO, the plaintiffs were entitled to the unamended amount (Liability Judgment at [68]).

Type H: The STJ WCRs bore inflated claims

57 Type H concerned the same valuation issue as Type G, but in relation to WCRs rather than STWLs. As the defendants' standard tariff rates provided a rational basis for the amendments, and the plaintiffs did not specifically prove that the amendments were irrational or fraudulent, the plaintiffs were entitled only to the amended amounts (Liability Judgment at [69]).

Type I: Overcharging for work

58 Type I concerned whether a final claim could be rejected merely because it was substantially greater than the sum that was paid out or percentage of completion reflected in an earlier partial payment request. The Judge found that an earlier progress-payment request was neither a final valuation nor a cap on the amount ultimately payable. The plaintiffs were entitled to the final sums so long as the works done were verified and approved by the defendants and supported by defendants' representatives' undisputed signatures which were not impugned (Liability Judgment at [70]).

Miscellaneous Jobs

Work process

59 Fifth, the Judge considered the work processes for Miscellaneous Jobs together with Type J irregularity. We only state the parties' positions broadly here. The work process and its relevance to the appeal are discussed in detail (at [196]–[197]) below.

60 The parties broadly agreed that the relevant WO contained only a general description of the service, that the Section Engineer supplied the necessary details orally, and that the plaintiffs prepared supporting documents for verification. The defendants verified and approved the Miscellaneous Jobs before making payment to the plaintiffs (Liability Judgment at [71]–[72]).

Type J: Unverified supporting documents for the Miscellaneous Jobs

61 The defendants argued that 18 invoices for the Miscellaneous Jobs should be invalidated as they lacked the necessary supporting documents: the plaintiffs only submitted JCRs or TSTs; the defendants never received any delivery orders. Even the JCRs and TSTs were received only after the commencement of the proceedings. Those documents on their own could not serve as proof of work done as they did not contain the defendants' representatives' signatures (Liability Judgment at [73]).

62 The plaintiffs contended that they had lost the delivery orders but had submitted the necessary supporting documents for the 18 invoices to the defendants. They were not required to provide any documents bearing any of the defendants' representatives' signatures. The defendants failed to raise the issue of missing supporting documents until after proceedings were commenced

even though the invoices dated as far back as 10 March 2017 (Liability Judgment at [73]–[74]).

63 The Judge determined the Type J claims with reference to the burden of proof and the surviving documents. The plaintiffs bore the burden of proving that the services had been performed. The JCRs bore only the plaintiffs’ representatives’ signatures, while the TSTs were unsigned. Those documents were insufficient to establish that the services represented by the 18 invoices had been rendered. The Judge therefore found that the plaintiffs’ claims under those invoices therefore failed (Liability Judgment at [73]–[74]).

The Non-Invoiced STJs

64 Sixth, Lanka separately claimed \$541,152.19 on a *quantum meruit* basis for 12 allegedly completed but Non-Invoiced STJs. This claim is different from their claim on the invoiced STJs (for which the defendants pleaded irregularities). This issue therefore returned to the STJ approval process. Lanka said that three WCRs were pending approval by the Section Engineer, eight had been approved by the Section Engineer but awaited the Project Manager’s approval, and one did not require the Project Manager’s approval (Liability Judgment at [75]).

65 The Judge considered that Lanka’s position as set out above was inconsistent with its evidence that a WCR submitted for processing would be returned to them for billing only after the necessary signatures had been obtained. Lanka had also failed to call the relevant foreman to prove that the work had been performed. Lanka therefore failed to prove submission of the WCRs or completion of the work in respect of 11 WOs. The claim succeeded only for the WO which did not require the Project Manager’s signature, subject

to the authenticity of the Section Engineer's signature being established (Liability Judgment at [76]–[77]).

Whether the entire claim should be struck out for forgery

66 The defendants relied on the established forgeries in two conceptually distinct ways. First, under the Type C irregularity, they invoked *ex turpi causa* to contend that the plaintiffs should recover nothing under a WO affected by forged evidence (see above at [39]). As explained above, the Judge rejected that argument because the contractual entitlement arose from the underlying contracts and could be supported by genuine evidence or admissions. Second, the defendants contended that the entire action should be struck out as an abuse of process. At this juncture, we note that the Judge separately addressed the defendants' contention that the entire claim should be struck out for forgery; by contrast, we think that this issue should have been dealt with under the Manpower Jobs because the principal forgery analysis arose there, while the STJs' and Miscellaneous Jobs' irregularities largely concerned different questions of duplication, valuation and proof. This is the approach that we will take below (at [155]–[169]).

67 The Judge accepted that the plaintiffs had forged or fabricated some signatures but held that their misconduct had not corrupted the trial process to such a degree that a fair trial was impossible. The defendants had been able to identify and impugn a considerable number of the documents, while other claims did not depend on forged evidence. The Judge therefore declined to strike out the plaintiffs' entire claim (Liability Judgment at [78]).

Administrative charges on partial payments

68 Finally, as mentioned above (at [15]), there were three parts to the defendants’ counterclaim: first, for moneys they paid which the plaintiffs were not entitled to due to the ten types of irregularities; second, for administrative charges under the Administrative Charges Agreements; and third, the Suit 1042 counterclaim (which was addressed in the Quantum Judgment). The first part has been addressed through the Judge’s conclusions on the irregularities pleaded by the defendants (see [29]–[63] above).

69 As for the second part, the Judge held that the Administrative Charge Agreements entitled the defendants to charge 1% of each qualifying partial payment, subject to the contractual aggregate cap of 4%. The defendants could claim such charges only in respect of partial payments made on or after 27 July 2018; they had not proved any contractual entitlement to charges on earlier payments (Liability Judgment at [79]–[80]).

Summary of Decision Below – Liability Judgment

70 In the result, the Judge approached the dispute as a WO-by-WO enquiry into what work had in fact been done, what documents were operative for payment, and what weight could be given to the competing document bundles, *ie*, the PSD and the DSD.

71 For the Manpower Jobs, the Judge held that the plaintiffs’ claims had to stand and fall by the PTs disclosed in the PSD, while the disputed DTs in the DSD were irrelevant to those claims. He further found that some PTs had forged or fabricated signatures, but that genuine signatures, admissions, and properly proved documents could still support the plaintiffs’ claims, subject to the exclusion of duplicate manpower found within the PSD itself.

72 For the STJs, the Judge rejected the defendants' allegations of Types F to I irregularities but accepted that the defendants' discretion to value the plaintiffs' works rationally could justify amendments to amounts claimed, save in the case of one WO where the amended figures lacked a proper tariff basis.

73 For the Miscellaneous Jobs, the plaintiffs failed under Type J irregularity because the surviving supporting documents did not sufficiently verify that the services in the 18 invoices had been performed.

74 For the plaintiffs' separate claim for the 12 Non-Invoiced STJs, it succeeded only in part because they did not prove submission or completion for 11 of those WOs.

75 The defendants' broader argument to strike out the plaintiffs' entire claim was rejected because the forged or fabricated documents did not show that the entire trial process had been corrupted.

76 The defendants succeeded on their administrative charges counterclaim only as regards the partial payments made after the Administrative Charge Agreements took effect (*ie*, 27 July 2018).

77 The Judge accordingly allowed both the plaintiffs' claims and the defendants' counterclaim (excluding the Suit 1042 counterclaim which was addressed subsequently in the Quantum Judgment) in part. He ordered the parties to jointly calculate the quantum of damages that each party owed to the other based on the Liability Judgment, with liberty to apply in case of disagreement (Liability Judgment at [82]).

Decision Below – Quantum Judgment

78 On 13 March 2025, the Judge delivered the Quantum Judgment. In respect of the Suit 1042 counterclaim, the Judge first rejected the plaintiffs’ submission that the defendants could not rely on the DSD, holding that the relevant findings in the Liability Judgment applied only to the plaintiffs’ claims and not to the Suit 1042 counterclaim. The Judge reasoned that the plaintiffs “had the *opportunity* to produce the [PTs] in respect of the Suit 1042 counterclaim but did not do so” [emphasis added] and hence allowed the counterclaim for all the timesheets impugned by Ms Lee (Quantum Judgment at [11]).

79 The Judge then noted that there was a discrepancy between the parties’ respective positions on the number of hours and rate charged for 13 of the WOs that formed the Suit 1042 counterclaim (Quantum Judgment at [13]). However, these discrepancies “could clearly have been resolved by the parties” as both the number of payment hours and the rate of payment *per* payment hour should not be in dispute (Quantum Judgment at [14]–[15]). The Judge therefore directed the parties to reach agreement on the sums in respect of those 13 WOs, failing which the parties were to jointly appoint an independent accountant to calculate the sums, whose calculations would be final and binding on the parties (Quantum Judgment at [15]). The sum payable to the plaintiffs, excluding the 13 WOs in dispute, was assessed by the Judge to be \$19,804,242.45.

80 We pause to observe that we have reservations in relation to the Judge’s direction for the parties to appoint an independent accountant to adjudicate disputes between the parties. While the Judge was undoubtedly seeking to resolve the disputes quickly and efficiently, unless the parties consent, directing the appointment of a third party such as an independent accountant to

conclusively resolve the parties’ differences whether that be in relation to liability or quantum would appear to be an impermissible delegation of the court’s duty to determine all the disputes between the parties: *Shipworks Engineering Pte Ltd v Sembcorp Marine Integrated Yard Pte Ltd* [2025] SGHC(A) 19 at [53]–[55]. As none of the parties took issue with the Judge’s direction in this appeal, we say no more about it.

Judge’s decision on pre-judgment interests and costs

81 Subsequently, counsel for the plaintiffs and the defendants respectively wrote to the court to seek pre-judgment interest on 18 March 2025 and 28 March 2025 respectively.

82 The Judge conveyed by letter to the plaintiffs’ counsel on 20 March 2025 his decision to reject the plaintiffs’ request for pre-judgment interest. The Judge stated that “[t]he action was tainted by [the] plaintiffs’ forgeries and false claims, and thus d[id] not merit the court’s discretion to grant pre-judgment interest in its favour”.

83 The Judge conveyed by letter to the defendants’ counsel on 2 April 2025 his decision to *partially allow* the defendants’ request for pre-judgment interest in respect of excess payments that had been sought and allowed in the counterclaim. The Judge refused to award pre-judgment interest *from the date of payments* (see above at [40]; Liability Judgment at [40]). The Judge reasoned that the defendants had made those payments without carrying out satisfactory checks. Indeed, the defendants admitted discovering the excess payments only after the plaintiffs had commenced proceedings. Thus, pre-judgment interest of 5.33% annum was awarded only from the date on which the defendants filed

their original Defence and Counterclaim (23 February 2021) until the date on which the Liability Judgment was released (13 March 2025).

84 Further, since the defendants only claimed for the administrative charges in the first amendment to their Defence and Counterclaim, the Judge awarded pre-judgment interest of 5.33% per annum from the date on which the Defence and Counterclaim (Amendment No 1) was filed (24 April 2021) to the date on which the Liability Judgment was released (13 March 2025).

85 On 21 May 2025, the Judge ordered that each party was to bear their own costs in Suit 1040.

The parties' cases on appeal

86 In essence, the parties' cases on appeal are as follows:

(a) In AD 36, the plaintiffs argue that the Judge erred in: (i) finding that forgery tainted their claims; (ii) allowing the defendants' Suit 1042 counterclaim; (iii) disallowing their claims for payment in relation to the Miscellaneous Jobs; (iv) disallowing their claims for eight of the Non-Invoiced STJs; (v) awarding administrative charges to defendants on partial payments; and (vi) refusing to award them pre-judgment interest or awarding excessive pre-judgment interest to the defendants.

(b) In AD 42, the defendants argue that the Judge erred in: (i) his findings on the work processes; (ii) accepting the plaintiffs' documents over the defendants' documents in the PSD and DSD respectively; (iii) refusing to strike out the claim for forgery; (iv) implying a rationality requirement on the exercise of their absolute contractual discretion; (v) dismissing parts of their counterclaim (see above at [15], [16(c)], [68]–

[69] and [78]–[79]); and (vi) refusing to award a higher pre-judgment interest on that part of their counterclaim which succeeded.

Issues to be determined

87 Seven key issues arise for determination in the appeals. Before setting them out, it is useful to explain why we framed the issues in this manner. The parties’ cases on appeal, much like the decision below, tended to address discrete points without returning to first principles. In our view, the proper analytical framework requires the court to first identify the operative document for each category of work, and then ask, in sequence, whether that document had been authenticated, whether it had been shown to be forged, and what consequences followed in each case. This framework also governs the Suit 1042 counterclaim.

88 For the Manpower Jobs, the first question is which document governs the payment process. The answer determines the evidential basis on which the plaintiffs’ claims stand and fall, and equally the basis on which the Suit 1042 counterclaim is to be assessed. Once the operative document is identified, two further questions arise. The first is whether the document’s authenticity was properly put in issue. The second is if it had been, whether authenticity was established on the evidence. These are distinct inquiries. Equally important is the distinction between establishing authenticity and proving forgery: the burden of the former lies on the party relying on the document (provided authenticity was properly put in issue), while the burden of the latter lies on the party alleging it. These burdens operate independently of each other though the factual inquiry may be co-related as it was on the facts of the present case.

89 For the STJs and Miscellaneous Jobs, the central question is more straightforward: whether the work was done, since these were pleaded either mainly or alternatively in *quantum meruit*. Given that the claim rested primarily in *quantum meruit*, the parties' dispute over the supporting documents for these categories of work was ultimately a dispute about the evidence of performance, not about which document was operative. Here the key point is that where the defendants' own representatives had signed off on supporting documents, those signatures represent a contemporaneous verification of the work done, and the defendants could not subsequently deny performance without addressing the evidence of performance as shown by those documents. The same principle applies to the defendants' failure to challenge the authenticity of those signatures.

90 Finally, discrete issues arising from the defendants' counterclaim for administrative charges, the defendants' discretion under cll 9(a) and 17 of the CRA and SRA, and the question of pre-judgment interest, are addressed separately at the end.

91 The seven key issues are therefore as follows:

- (a) In relation to the Manpower Jobs:
 - (i) What were the *operative* documents for payment claims, where there were conflicting records relating to the same WO in the same time period?
 - (ii) Was the authenticity of the documents in the PSD put in issue and was the authenticity of the documents in the PSD and DSD proven?

- (iii) What is the relevance of the defendants' failure to challenge the signature of the defendants' representatives in a document in the PSD or DSD, to the question of whether the work evidenced in the document was done? What is the consequence, if any, of the defendants' failure to challenge the signature of their representatives in the relevant document that serves as a record of the work that was carried out and the workers that were involved?
- (iv) Whether the plaintiffs' entire claim should be struck out for forgery, as the defendants argue? We note that the Judge dealt with this as a discrete issue (see above at [66]). However, as mentioned, it should have been dealt with under the Manpower Jobs because the principal forgery analysis arose there.
- (b) In relation to the Sub-Task Jobs, has Lanka discharged its burden of proof that the Non-Invoiced Work *was* done?
- (c) In relation to the Miscellaneous Jobs, have the plaintiffs discharged their burden of proof that the work *was* done?
- (d) In relation to the administrative charges:
 - (i) under what circumstances were the defendants entitled to levy the administrative charges; and
 - (ii) how were the administrative charges to be calculated.
- (e) In relation to the defendants' discretion under cll 9(a) and 17 of the CRA and SRA: whether cll 9(a) and 17 gave the defendants absolute discretion to assess (i) the extent of works carried out and (ii) the commercial value of work.

(f) Whether the Judge erred in allowing the defendants' Suit 1042 counterclaim on the basis that the plaintiffs had failed to produce the relevant documents to disprove the Suit 1042 counterclaim.

(g) Finally, whether the Judge's findings on pre-judgment interest in relation to either the plaintiffs' claim or the defendants' counterclaim should be disturbed.

Our decision

Manpower Jobs

92 We begin with the Manpower Jobs. As we have mentioned (at [9(c)(i)] and [11(c)(i)]) above, the plaintiffs relied on *copies* of the PTs, DTs and WTs, while the defendants relied on a mix of originals and copies of the PTs, DTs and WTs. In most instances, the parties relied on different *types* of supporting documents. Specifically, for many WOs, the plaintiffs relied on the PTs while the defendants relied on the DTs. In these situations, the question is which documents were operative for the purpose of making and processing payment claims. In our judgment, the Judge rightly found that the PTs were the operative documents: as long as they were *properly* prepared, they contained an accurate record of the number of workers and the hours they had worked. Once that is accepted, the Types A, B, D and E irregularities fall away. Types A, B and E are contingent on the DTs and WTs being the operative document. The Type D irregularity is fundamentally inconsistent with PTs being an accurate and relevant contemporaneous record.

93 Regardless of the *type* of supporting document that the plaintiffs are relying on to establish their claim, there are two relevant issues. First, since the plaintiffs only adduced copies, are they entitled to prove the PSD by secondary

evidence under s 67 of the EA? Second, did the plaintiffs establish authenticity of the PSD? In so far as the supporting documents in the PSD were the PTs, we answer both questions in the affirmative.

94 However, that does not mean that all the PTs in the PSD should be accepted. In particular, if the defendants are able to show that some of the PTs were forged, those PTs would then not support the plaintiffs' claim. This is a crucial point. This is because it was always open to the defendants to establish that the PTs in the *PSD* were forged. If they had done that, the basis of the plaintiffs' claim would have been undermined as the plaintiffs rely solely on the PTs in the PSD in support of their claim. However, as it will soon become clear, the defendants did not instruct Ms Lee to examine the PTs in the PSD. It is unclear to us why the defendants made this decision. As the following discussion will show, their focus was solely on the documents in the DSD, with the result that the defendants only managed to lead evidence on those PTs in the PSD for which there are identical versions in the DSD. No evidence was led on all the other PTs in the PSD. This is the last issue we deal with in our analysis of the Manpower Jobs: whether any PT in the PSD is shown to be forged. In our view, Type C irregularity affects the plaintiffs' claim in so far as a PT in the PSD is shown to be forged where an *identical* PT exists in the DSD *and* the Section Engineer's signature on the latter has been shown to be forged.

95 Accordingly, in our view, the PTs in the PSD support the plaintiffs' claims save where the defendants have proven that the signature of the Section Engineer in identical PTs in the *DSD* has been forged. To this extent, we depart from the Judge's conclusion that the defendants would have successfully impugned the PTs in the PSD which match PTs in the DSD where the signatures of the defendants' representatives (*ie*, either the Section Engineer or the section

manager at the BP Section (“Section Manager”)) in the latter have been shown to be forged. We elaborate.

The PTs were the operative documents

96 The first question is whether the PTs or the DTs/WTs were the operative documents for payment claims for Manpower Jobs. We agree with the Judge that the PTs were the operative documents for the Manpower Jobs (Liability Judgment at [23]–[31]). In other words, where a PT was prepared, it was the defining document for the work process (particularly on the work that was carried out, and the number of workers deployed and the hours they had worked) and for supporting the plaintiffs’ payment claims.

(1) Work process

97 Before explaining why, in our judgment, the PTs were of significance between the parties, it is necessary first to set out the work process for the Manpower Jobs:

(a) The defendants would issue a hard-copy, computer-generated WO to the plaintiffs (Liability Judgment at [3]). This is not challenged on appeal.

(b) The defendants would record a number in the DOS manually which *purported* to represent the number of workers who were actually present and working on the defendants’ worksite that day, for a particular WO (“Reported Quantity”). In our view, the Judge erred in finding that the Reported Quantity originated from the plaintiffs’ foreman (see Liability Judgment at [4]). That finding is not sustainable when the accuracy of the Reported Quantity is considered. For instance, in relation to WO 16015831, the DOS does not show any worker

attending before 7 March 2017. However, the defendants made progress payments for the WO for work periods prior to 7 March 2017, starting as early as 1 July 2016. Under cross-examination, the defendants' assistant section manager from the BP Section, Mr Woi Cha How ("Mr Woi"), confirmed that there must have been workers onsite during those work periods, contradicting the Reported Quantity. There was no reason for the plaintiffs to under-report numbers, if the information indeed came from the plaintiffs' foreman.

(c) Each day, the plaintiffs' foreman would record the attendance of the workers in the PTs (Liability Judgment at [6]). The plaintiffs' foreman would then sign the PTs and bring the original hard copy to the Section Engineer/quality control personnel, who were onsite, for verification and signature, which was done in each case where the defendants have not successfully disowned or otherwise impugned the Section Engineer's signature (Liability Judgment at [6], [24] and [26]).

(d) Each week, the original hard copies of the daily PTs that were verified and signed by the Section Engineer/quality control personnel would be consolidated and submitted to the defendants' BP Section (Liability Judgment at [7]). The consolidated PTs would be approved and signed by the defendants' Section Manager (not the Section Engineer). After one to two weeks, the originals of the verified and signed PTs would be returned to the plaintiffs for the purpose of submitting payment claims.

(e) When making their payment claims, the plaintiffs would submit to the defendants: (i) the original WO, (ii) the *original* PTs that were verified and signed by the Section Engineer/quality control personnel

and the Section Manager, and (iii) either (A) a final invoice, or (B) a partial invoice (together with a request form for partial payment) (see Liability Judgment at [12]–[13]).

98 While this process was generally followed, there were occasions when it was not (see Liability Judgment at [11]). For example, when specifically requested by the defendants, the plaintiffs would generate and print the DTs from the DOS. The DTs would then reflect the Reported Quantity. The WTs were also prepared through the DOS as well to supplement the DTs.

(2) The PTs are more accurate and reliable than the DTs/WTs

99 As a matter of work process, it is clear to us that the PT was the operative document, where it was prepared. Compared to the DTs/WTs, the PTs were a much more accurate and reliable record of the number of workers for a WO on a given day.

100 As regards accuracy, the evidence clearly shows that the DOS had shortcomings. To begin with, the DOS contained CICO data which *should* arguably have been the most accurate. However, the defendants themselves did not rely on the CICO data as the correct record, because the defendants probably knew, as the plaintiffs point out, that some of the gantries were not functional, there were additional workers whom the plaintiffs sourced from subcontractors and who did not have biometric cards, and the incidences of tailgating. We note that, on appeal, the parties disputed whether there was in fact tailgating among the plaintiffs' workers. In our view, this is a red herring as the defendants themselves do not rely on the CICO data. Instead, the defendants rely on the Reported Quantity as the accurate record of the number of plaintiffs' workers on the ground on any given day. While this may mitigate the concerns with the

automatically generated CICO data, even the manually entered Reported Quantity has been shown to be inaccurate. In this regard, as noted (at [97(b)]) above, the example of WO 16015831 illustrates the inaccuracy of the Reported Quantity information in the DOS.

101 As regards reliability, the PTs are clearly superior because they were verified by the defendants’ representatives. The verification happened at two levels: first on a daily basis by the Section Engineer/quality control personnel *who were onsite*, and second, on a weekly basis by the Section Manager at the BP Section. As we alluded to (at [95] above), the defendant’s representative’s signature represents a genuine and informed *endorsement* of the number of workers and the numbers of hours they clocked on a particular day as recorded in the signed PT: Liability Judgment at [24] and [42]. Mr Lee Kwang Yong (“Mr Lee”), the defendants’ manager in the PCPD at the material time, admitted under cross-examination that the defendants’ supervisors on the ground “kn[e]w exactly how many workers are on the ground for which contract doing what work” and “kn[e]w what they are signing because they kn[e]w exactly what manpower was supplied”. In contrast, the DT does not, on its face, appear to have been prepared with the involvement of the plaintiffs. The only signature is that of the defendants’ representatives. The evidence on whom the handwritten marks belonged to was also inconsistent and equivocal. The PTs therefore represented the best and most reliable record of the number of workers and the hours they clocked for the relevant WO on any given day.

(3) The defendants made payments on the PTs

(A) THE PTs WERE ACCEPTED AT THE MATERIAL TIME

102 That the PTs were the operative documents is further reinforced by the fact that the defendants made payments relying on them.

103 It is undisputed that the defendants *received* PTs in support of some of the plaintiffs’ invoices. In fact, it is also undisputed that the defendants made some partial payments where the plaintiffs submitted PTs. Mr Lee admitted in cross-examination that the defendants paid the plaintiffs not on the basis of the CICO data of the DOS, but rather, on the basis of the PTs. Therefore, payments were made based on the PTs that were submitted in support of payment claims – so the critical question here is whether the defendants paid out pursuant to the PTs *knowingly*. If they did, the defendants’ case that the PTs were unauthorised supporting documents cannot be sustained.

104 In this regard, the defendants say that, at the material time, they had not verified the supporting documents or whether work had in fact been done (see [18] above). In other words, they did not *knowingly* use the PTs to process payments. It was only when preparing for Suit 1040 that they reviewed the documents they had received from the plaintiffs and realised that they had erroneously made payments pursuant to the *unauthorised* PTs. To this end, the defendants assert that they had made advance payments and not progress payments. They did not therefore ascertain or verify that the works and services had indeed been performed. We disagree with the defendants. The Judge correctly found that the partial payments were progress payments (Liability Judgment at [14]).

105 Critically, the Judge noted that if the partial payments were merely advances or loans, there would have been no need to refer to the supporting documents to assess the value of the works performed. The defendants argue that their revisions of the partial payment amounts were based on mere estimates to prevent cost overruns, and were not based on supporting documents. They refer to the evidence of Mr Chow Meng (“Mr Chow”), the head of the PCPD, that he did not review the underlying supporting documents as the payments

were advances and hence there was no need to be “accurate” about the amount disbursed. This was contradicted by Mr Chow himself when he stated that there was a need to be “safe” in the sense of not approving a payout in excess of the value of the work that had been done, and by Mr Lee who gave evidence that the payments were not loans. We see no reason to disturb the Judge’s finding that the partial payments were progress payments. If these were indeed progress payments, it follows that the defendants relied on the PTs to evaluate the quantum of payment. That is consistent with the view that the PTs were the operative document.

106 Further, the defendants’ multi-layered approval system for approving and making payments buttresses the conclusion that the PTs were accepted as supporting documents. It is simply not credible that this system, which was – by Mr Chow’s own account – designed to ensure the integrity of the payment process, repeatedly approved payments without anyone at any level noticing or objecting to the fact that the supporting documents for the claims were the PTs, and not the DTs/WTs (which the defendants say were the only authorised supporting documents).

107 The defendants did not merely permit the plaintiffs’ submission of the PTs without protest; they made *progress* payments on the basis of each PT. In the circumstances, we are satisfied that the defendants accepted the submission of the PTs by the plaintiffs.

(B) THE PTs WERE AUTHORISED AT THE MATERIAL TIME

108 The defendants pleaded that the submission of the PTs for payment claims was not authorised. That raises two key questions. First, why would the plaintiffs then submit the PTs in support of their payment claims? It must surely

be in the plaintiffs’ interest to submit an authorised document to facilitate payment. Second, if the PTs were unauthorised, why did the defendants not reject them or put out to the plaintiffs that they were non-compliant? These questions were never answered by the defendants, apart from making the general point that they never noticed that that they made payments on the basis of the unauthorised documents (*ie*, the PTs) until after proceedings were commenced, which we found to be a completely unsatisfactory and indeed absurd explanation.

109 In any case, we are satisfied that there was a general authorisation for the submission of the PTs by the plaintiffs. This is corroborated by the Manpower Quotations, which were agreements for the plaintiffs to supply additional manpower to the defendants. Clause 5 of the “Terms & Conditions” provided that “[Lanka] daily timesheets [were] to be prepared *manually* by [Lanka] and must be verified and approved by [the defendants’] representatives upon job completion”. Both the reference to *Lanka*’s timesheets and the *manual* preparation thereof make it quite clear that the parties were referring to the PTs and not the DTs/WTs.

110 The defendants take issue with Mr Navin Kumar’s evidence that the Manpower Quotations *recorded* an agreement (“Alleged Agreement”) between Mr Navin Kumar, on behalf of the plaintiffs, and Mr Gan Hon Keng, the defendants’ Section Manager, that additional manpower would be sourced from the plaintiffs’ subcontractors and the PTs would be used to record such manpower since they would not be tagged to the plaintiffs on the DOS. The defendants argue that the Manpower Quotations predated the Alleged Agreement and hence could not have recorded it as such. We think that this misses the point. Whatever may be the relationship between the Manpower Quotations and the Alleged Agreement, the Manpower Quotations provided a

contractual basis for the submission of the PTs. Indeed, Mr Lee acknowledged that the Manpower Quotations permitted the plaintiffs to submit the PTs, and that there were WOs where the only timesheets submitted by the plaintiffs were the PTs.

111 In the final analysis, perhaps the strongest indicium that the PTs were the operative documents is the fact that they were acted upon by the defendants in making payments on the plaintiffs' payment claims, never once being rejected. If indeed the DTs/WTs were understood to be the operative documents, one would have expected the defendants to withhold payment in every case where no DTs/WTs were submitted. This was never done. In the circumstances, we are satisfied that the PTs were the operative documents.

The PTs in the PSD were delivered to the defendants and hence proved

112 We now turn to the proof of the PSD. Specifically, since the supporting documents in the PSD were all copies, were the plaintiffs entitled to prove the PSD by secondary evidence under s 67 of the EA? The Judge held that the plaintiffs had satisfied s 67 of the EA (Liability Judgment at [30]). On appeal, the defendants do not challenge the Judge's interpretation of s 67 of the EA. They only challenge the Judge's application of s 67 of the EA to the facts: specifically, they argue that the originals of the PSD's PTs were never delivered to them (*cf* Liability Judgment at [23] and [29]). Accordingly, the originals ought to be with the plaintiffs and ought to have been produced. For the reasons that follow, we agree with the Judge that the originals of the PTs in the PSD were submitted to the defendants (Liability Judgment at [29]). Hence, the PTs in the PSD could be and were proved under s 67 of the EA.

113 To begin with, the defendants' position that they only received the Received Documents is not supported by credible evidence:

(a) There are irreconcilable differences in the evidence of Mr Lee, Mr Woi and Mr Chow in relation to the chain of custody of the Received Documents:

(i) Mr Lee's evidence is internally inconsistent. As the plaintiffs point out, Mr Lee first testified that some of the documents were handed over from Mr Chow to him. He subsequently said that, since the documents were submitted to the finance department, they were retrieved therefrom – by Mr Lee himself.

(ii) Mr Lee's evidence is also inconsistent with Mr Woi's in two respects:

(A) Mr Woi testified that, as a matter of process, the final custody of the documents laid with the finance department. How Mr Chow came into possession of the documents remains unexplained.

(B) Mr Woi also testified that the BP Section (his team) was involved in retrieving the documents. This was inconsistent with Mr Lee testifying that the officers of the PCPD were the ones retrieving the documents as part of the investigation conducted by the PCPD.

(iii) Similarly, Mr Chow's evidence also did not stack up fully with *either* Mr Lee *or* Mr Woi. Unlike Mr Woi who said that the BP Section was involved in retrieving the documents, Mr Chow aligned with Mr Lee that it was the PCPD that

retrieved all the documents. However, Mr Chow diverged from Mr Woi *and* even Mr Lee (his own subordinate) on the point of the source of the documents. Mr Chow testified that some of the bills “sit in the [BP] section”. This was inconsistent with the defendants’ own case. Whether final or partial payment was sought, it was never the defendants’ case that the documents were finally left with the BP Section. Their case was that, following review by the BP Section, the invoice and supporting documents were always returned to the PCPD/finance.

In our view, the inconsistent evidence on the chain of custody of the Received Documents (and how they were thus put together) leads to the inference that in all likelihood, the defendants themselves did not implement a coherent process for the collecting, sorting, organising, archiving or storing of documents received from the plaintiffs. Put simply and bluntly, the defendants’ housekeeping of documents was, in our view, haphazard and even shambolic. They cannot now credibly claim that the Received Documents represented the exact corpus of documents which they had received from the plaintiffs.

(b) Furthermore, that claim is also fundamentally inconsistent with the defendants’ robust review process. If the partial payments were *progress* payments, then it defies logic to think that the defendants would have reviewed and *approved* documents in the DSD’s present state – whether they are PTs or DTs.

114 We thus reject the defendants’ submission that the DSD was in fact the entire corpus of documents that were received from the plaintiffs. Type E irregularity therefore falls away as the PTs were operative and, *in any case*,

given the poor housekeeping of the defendants they fail to show that the submission of the DTs under the wrong work order was attributable to the plaintiffs.

115 Nevertheless, it does not *necessarily* follow that the PSD, in its entirety, was delivered to the defendants. It was the plaintiffs’ burden to prove that fact below. Having considered the evidence and the submissions, the Judge excluded even the DTs and the WTs *in the PSD*, holding that the plaintiffs “must stand and fall by the [PTs] disclosed in the [PSD]” (Liability Judgment at [31]). In AD 36, the plaintiffs do not challenge this aspect of the Judge’s decision. Therefore, we only consider the issues raised by the defendants in AD 42 in so far as they related to the *PTs* in the PSD: (a) were the *PTs* in the PSD delivered to the defendants; and (b) are the *PTs* in the PSD authentic (see [121]–[130] below)? In this section, we first deal with the former. We agree with the Judge that the *PTs* were delivered to the defendants.

116 First, Mr Navin Kumar, who oversaw the business and operations of the plaintiffs as the sole director of both Shipworks and Lanka, gave consistent evidence that the originals of the *PTs* in the PSD should have been – *and were in fact* – delivered to the defendants:

(a) In his Affidavit of Evidence-in-Chief (“AEIC”), Mr Navin Kumar deposed that the plaintiffs “*would* prepare a hard copy final invoice accompanied by originals of the [PTs]” [emphasis added]. These *PTs* “*would be* delivered by hand to the defendants’ office and placed in a box labelled ‘FINANCE’” [emphasis added]. The use of the word “*would*” signifies not only that generally this was the process but also specifically that it was followed. This may be contrasted with the words “*were to*” if a process was being described in the abstract. Indeed, he

goes on to state that the defendants “*were expected to*” [emphasis added] make payment, indicating that this aspect was part of the process but was not always followed.

(b) In his written cross-examination answers, Mr Navin Kumar stated that these PTs were “*delivered* by Jeff, Sumesh and Manivel” [emphasis added].

117 Second, significantly, the defendants neither challenged Mr Navin Kumar’s evidence as set out above at the trial nor challenged the chain of custody of the PTs in the PSD. In other words, Mr Navin Kumar’s evidence that the originals of the PTs, which were *prepared* by the plaintiffs, were *delivered* by the plaintiffs to the defendants in support of payment claims was not challenged. However, on appeal, in response to written questions dated 23 March 2026 which we posed to counsel after the first hearing of the appeal (“Written Questions”), the defendants submitted, *for the first time*, that an adverse inference be drawn against the plaintiffs for not calling Jeff, Sumesh and/or Manivel to testify *on the issue of delivery*. Their objection against Mr Navin Kumar’s evidence on this issue was that “he was not the one who delivered the supporting documents and invoices” to the defendants. While the defendants did seek an adverse inference below and in the Defendants’ Combined Case on appeal, that was principally in relation to the plaintiffs’ failure to call Jeff, Sumesh and Manivel to testify *on the issue of the authenticity of the defendants’ representatives’ signatures*. There were references below and in the Defendants’ Combined Case on appeal to the issue of delivery. However, the defendants’ case on delivery was parasitic on their case on preparation – the thrust of their complaint was that because Jeff, Sumesh and Manivel were not called to verify the authenticity of signatures of the defendants’ representatives in the PTs, the plaintiffs cannot establish that the PTs were properly prepared

and *hence* delivered. This is not a sustainable argument in light of our holding below (at [127]–[130]) that the PTs in the PSD are authentic.

118 We do not see how Jeff, Sumesh and/or Manivel could have added to Mr Navin Kumar’s evidence on *the issue of delivery*. As explained above (at [116]), the tenor of Mr Navin Kumar’s evidence was that he *knew* Jeff, Sumesh and Manivel *did deliver* the originals of the PTs in the PSD to the defendants. It was not the defendants’ case that Mr Navin Kumar had no basis to believe that such delivery had taken place. Indeed, at the trial, the defendants’ principal complaint as regards the absence of Jeff, Sumesh and/or Manivel was centred on them having “*prepared*” the timesheets – *not* on them having *delivered* the timesheets. We see no reason why Mr Navin Kumar was not in as good a position as Jeff, Sumesh and/or Manivel to give evidence on the delivery of the PTs in the PSD. After all, Mr Navin Kumar oversaw the business and operations of the plaintiffs and testified that he was familiar with the documentation involved in the relevant work and payment processes. In the final analysis, if the PTs in the PSD are authentic, as we have concluded below (at [127]–[130]), it would follow that they would have been delivered by the plaintiffs to the defendants to support the plaintiffs’ payment claims. That would be consistent with and reinforce Mr Navin Kumar’s evidence on delivery and obviate the need to call Jeff, Sumesh and/or Manivel.

119 If the PTs were delivered to the defendants, as we have concluded, the originals must be in their possession. The onus was thus on the defendants to produce these documents: see Liability Judgment at [29]. A comparison between the PTs in the DSD and the PSD demonstrates that there are PTs in the PSD not found in the DSD. In our judgment, this is explicable on the basis that the originals were not produced because the defendants had misplaced the

original PTs the plaintiffs submitted when making payment claims because of poor housekeeping: see [114] above.

120 In upholding the Judge’s finding that the originals of the PTs in the PSD were in fact delivered to the defendants, three important implications follow:

(a) First, neither the DSD nor the Received Documents is a comprehensive record of all the originals of the PTs that were received by the defendants.

(b) Second, in so far as there is a PT in the PSD for which there is no *identical* version in the DSD, the former is proof of the plaintiffs’ claim provided that its authenticity is established (to the extent authenticity has been properly challenged), and the defendants have failed to show that it was forged or fabricated. This is discussed (at [138]–[154]) below.

(c) Third, as the original PTs were delivered to the defendants, the plaintiffs would only have copies (see [116] above). This was the only ground on which the defendants challenge the Judge’s application of s 67 of the EA. As we agree with the Judge in this respect, we see no reason to disagree with the Judge’s application of s 67 of the EA. Proof of the PTs in the PSD by secondary evidence under ss 67(1)(a)(i), 67(1)(a)(ii) and 67(1)(c) of the EA is therefore permissible where the DSD does not contain the originals of those documents (Liability Judgment at [30]).

The PTs in the PSD are authentic

121 Proof of the PTs in the PSD is distinct from proof of the authenticity of those PTs in the PSD. On the latter, the defendants appeal against the Judge’s finding that the PTs in the PSD are authentic so long as it bears the unchallenged signature of the defendants’ representatives. This turns on whether the defendants have put the authenticity of the PTs in the PSD in issue. In our view, the defendants have not put the authenticity of the PTs in the PSD in issue and are thus not entitled to raise the point.

122 The defendants argue that they had put the authenticity of the PTs in the PSD in issue either in their pleadings or the Notice of Non-Admission dated 27 September 2023 (“NONA”). We disagree.

123 First, the Defence and Counterclaim (“D&CC”) did not challenge the authenticity of the PTs *in the PSD*. Instead, the defendants focused their pleadings on the forgery and/or fabrication of the PTs *in the DSD*. The challenge to the authenticity of the signatures on the PTs must be read in context. The defendants preface the relevant paragraphs in the D&CC by saying that “it has conducted *internal* investigations of the invoices and Supporting Documents” [emphasis added] which led to its discovery of the alleged irregularities. Thus, the alleged irregularities necessarily only relate to the Received Documents or, at best, all the documents in the DSD. Further, the defendants themselves clarify that their “position is that the [DSD] comprise the documents submitted by the Plaintiffs to the Defendants”. There was “thus no reason” for the defendants to have Ms Lee, their expert, examine the PSD “which were never submitted to them”. Consistent with this, Ms Lee restricted her views to the documents in the DSD. The defendants’ focus throughout the proceedings below, and especially in their pleadings, was always on the PTs in the DSD.

124 In response to the Written Questions, the defendants submit that they challenged the authenticity of the PSD’s PTs when they pleaded that (a) they did not *receive* all of the PSD’s PTs, and (b) the submission of the PTs for billing was *unauthorised*. Neither of these points go towards the *authenticity* of the PTs in the PSD.

125 Second, the NONA was filed out of time and without any good reason proffered as to why, and hence it was ineffective in challenging the authenticity of the PTs in the PSD. The NONA purports to dispute the authenticity of the supporting documents (*ie*, the PTs) in the PSD, but these documents were contained in the Plaintiffs’ List of Documents filed *15 months prior*, on 27 June 2022. Under O 27 r 4(2) of the Rules of Court (2014 Rev Ed), a NONA must be served before the expiration of 14 days after the time limited for inspection expires. The defendants were given until 8 July 2022 to inspect the documents listed in the Plaintiffs’ List of Documents. The NONA thus had to be served on the plaintiffs by 22 July 2022. Instead, the NONA was filed and served on 27 September 2023, well past the deadline of 22 July 2022.

126 The defendants did not provide *any* reason, much less a good reason, for their failure to file the NONA timeously. A day after the NONA was filed, the plaintiffs informed the defendants that the NONA was filed “outside the requisite window of time”. There was no response from the defendants or an application for permission to file out of time. The objection was raised again in the Plaintiffs’ Closing Submissions. The Defendants’ Closing Submissions and the Defendants’ Reply Submissions (which was filed *after* the Plaintiffs’ Closing Submissions) both merely stated that the NONA was *filed*, without dealing with the fact that it was filed out of time. On appeal, the plaintiffs raise the same point; the defendants again have no answer. At various junctures both before the Judge and on appeal, the defendants had the opportunity to, but did

not, explain the delay for their filing of the NONA. In our judgment, the NONA should not be accepted. Thus, authenticity of the PTs in the PSD has not been properly placed in issue either in the pleadings or the NONA.

127 In any event, even if the authenticity of the PTs in the PSD were properly put in issue by the defendants, in our view, the authenticity of the PTs was established on the evidence. We explain. Mr Navin Kumar gave evidence on the lifecycle of the PTs, beginning with the preparation thereof:

(a) In his AEIC, Mr Navin Kumar stated that “Shipworks’ foreman *would* prepare and sign [PTs] ... At the end of each day, the day’s [PT] *would be verified* by SMIY’s Engineer-in-Charge [who] would then confirm the verification by signing the [PT]” [emphasis added].

(b) Further, the Plaintiffs’ Summary of Processes, introduced through Mr Navin Kumar at trial, stated: “The [plaintiffs’] foreman *keeps track* of the workers’ attendance and *prepares* the [PT] at the end of the day. He *signs* the [PT] and *brings* the original hard copy *to be verified and signed* by the [defendants’] Engineer” [emphasis added].

(c) At trial, Mr Navin Kumar confirmed that he *could* and *did* speak to the *proper* preparation of the PTs, *ie*, that the defendants’ representatives *did in fact* pen their signatures to the PSD’s PTs; he was not merely testifying on what was *supposed to be done*. He disagreed that he did not have personal knowledge about how the timesheets “*were prepared*” [emphasis added], effectively testifying that he *knew* his instructions to the foreman on the preparation of the PTs were followed.

128 The next step involving the PTs was the delivery of the originals to the defendants. As we discussed (at [116]) above, this was also established on the evidence.

129 The last link tying everything together was Mr Navin Kumar's unchallenged evidence that the plaintiffs made copies of the PTs before delivery and kept them on file, and these copies were ultimately discovered by the plaintiffs and ended up in the PSD.

130 This entire process (spanning the creation and submissions of the originals of the PTs, the storage of the copies of the PTs, and the retrieval of the copies for the purpose of Suit 1040) was not meaningfully challenged by the defendants when Mr Navin Kumar was cross-examined. As far as the submission of the PTs is concerned, as noted earlier, the defendants' primary argument is that although PTs were in fact submitted, the plaintiffs were never authorised to submit the PTs. We have dealt with this (at [108]) above. The remaining aspects of the plaintiffs' work process relating to the PTs were not challenged at all and, thus, the plaintiffs have established the chain of custody of the PSD. The chain of custody is sufficient to satisfy the requirements for proving authenticity. The PTs in the PSD are therefore to be treated as authentic documents, *even* assuming their authenticity was properly put into issue.

The plaintiffs cannot claim payment on forged PTs

131 Even if the authenticity of the PTs in the PSD might not have been put in issue in the pleadings or by the NONA, it is nonetheless open to the defendants to allege and prove forgery/fabrication as regards specific PTs that are relied on by the plaintiffs in support of their claim (see *CIMB Bank Bhd v*

World Fuel Services (Singapore) Pte Ltd [2021] 1 SLR 1217 (“*CIMB*”) at [36(a)]). The burden is on the *defendants* to prove the forgery or fabrication.

132 In *CIMB*, the Court of Appeal was of the view that an allegation that signatures on a document are forged went towards the authenticity of the document. However, the Court of Appeal’s observations were specific to that case:

54 However, *CIMB*’s arguments that the authenticity of a document and the authenticity of signatures therein are two distinct issues is incorrect. ***In the present case***, they overlap. *CIMB* had assumed that the authenticity of a document and the authenticity of a signature were separate questions, similar to how the question of whether a document had been properly adduced would be analysed separately from the question of the authenticity of a signature therein. In truth, the authenticity of a document may be put in issue *because* the authenticity of the signatures was disputed. ***In such a case, they would not be distinct issues***. A party who has the burden of proving the authenticity of a document first has to produce primary or secondary evidence thereof, *ie*, the alleged original or a copy, within the provisions of the EA. Thereafter, it also has to prove that the document is what it purports to be. This would include proving the authenticity of the signatures ***if authenticity was in dispute ...***

[emphasis in original in italics; emphasis added in bold italics]

133 A key distinction between *CIMB* and the present case is that, in the former, authenticity of the relevant debenture was validly put in issue through a notice of non-admission, whereas in the latter, as we have explained, authenticity of the PTs in the PSD were not validly put in issue.

134 The authenticity of a document and the authenticity of a signature therein are not inherently inseparable questions. The former simply asks whether the document is genuine, *ie*, is what it purports to be (*CIMB* at [50]). That may entail proving the latter, along with the handwriting and execution of a document, but what has to be proved to show authenticity ultimately depends

on the circumstances of each case. In the present case, while the PTs originated from the plaintiffs, it was common ground that the preparation of the PTs involved both the plaintiffs and the defendants. The plaintiffs could at most testify as to the generation of the PTs as a product of the work process for the Manpower Jobs and that this work process was adhered to resulting in the submission of the PTs in support of each payment claim. This would include showing that the PTs were submitted to the Section Engineer/quality control personnel for verification and thereafter returned to the plaintiffs with their signatures therein. This would have been sufficient to prove the authenticity of the PTs, assuming it was properly put in issue. The plaintiffs were not required to positively and additionally show that the signatures of the Section Engineer/quality control personnel in the PTs were *not* forged. If the defendants wished to show that those signatures were forged, it was on them to do so: (see *CIMB Bank Bhd v World Fuel Services (Singapore) Pte Ltd* [2020] SGHC 117 at [29]). To complete the point, the situation may be different where the plaintiffs seek to rely on a document which emanated from the defendants and contains signatures of the defendants' representatives. If the defendants challenge the authenticity of such documents, the plaintiffs will have to prove its authenticity which may extend to establishing that the signatures therein are genuine.

135 As discussed (at [123]) above, the defendants pleaded, among other things, that there were forged and/or fabricated signatures on the PTs *in the DSD*. Significantly, there was no allegation that there were forged or fabricated signatures in the PTs *in the PSD*. The parties and the Judge used the term “forgery” to refer to hand-written forgery by someone other than the purported signatory, and the term “fabrication” to refer to copy-paste fabrication. We use these terms similarly.

136 Before we analyse the extent to which the defendants have established such forgery or fabrication, we deal briefly with a related issue. The defendants had instructed Ms Lee to provide her expert opinion on whether some of the signatures in the DSD were forged or fabricated. In the course of her examination of the documents, Ms Lee reported that some signatures were too faint to be examined (“Faint Signatures”). We find this state of affairs to be unsatisfactory and difficult to understand. The defendants’ position is that the DSD was received from the plaintiffs. It follows that the originals of those documents would be with the defendants. If the expert whom they instructed had difficulty examining copies, they should have provided the originals to the expert. This way, Ms Lee could come to a conclusive opinion on whether the documents were forged or fabricated. To be fair to the defendants, they asserted that they did not have originals of some of the documents in the DSD, because the plaintiffs submitted copies when making payment claims (see [13] above). If so, the defendants had to allege and prove which payment claims were supported by copies of documents submitted by the plaintiffs. The defendants failed to do so. In any event, as we have alluded to, the defendants did not explain why copies were in fact submitted by the plaintiffs. It is more likely that originals were submitted to the defendants and the defendants subsequently misplaced them. In the circumstances, the Faint Signatures should not be counted against the plaintiffs.

137 In any case, the existence of the Faint Signatures did not in and of itself mean that the PTs were *not authentic*. It is one thing to say that *Ms Lee* thought that the Faint Signatures were too faint *to have their genuineness examined*; it is another thing to say that they were objectively too faint *to establish authenticity of the PTs*. In our view, the Judge erred in holding that for the PTs containing the Faint Signatures, “the plaintiffs have not satisfied their burden of

proof as to the authenticity of those timesheets” (Liability Judgment at [38]). On the contrary, the PTs containing the Faint Signatures (as identified by *Ms Lee*) were legible enough to prove the number of workers and hours those workers had worked. Further, as we mentioned (at [121]) above, the defendants never put the authenticity of the PTs in the PSD in issue. It thus fell on them to allege and prove *forgery and/or fabrication* of those PTs to exclude them. If *Ms Lee* could not tell whether the Faint Signatures were forged or fabricated, then there is simply no evidence from the defendants that the Faint Signatures were indeed forged or fabricated.

138 We return to the signatures which the defendants allege were forged or fabricated. Consistent with their pleaded case, the defendants’ lay and expert witnesses only gave evidence of forgery and fabrication as regards the PTs *in the DSD*. Thus, the defendants’ allegation of forgeries and/or fabrications is only relevant to the PTs *in the PSD* to the extent there is overlap between the PTs in the DSD and the PSD. We explain in greater detail below. For present purposes, it suffices to state that the defendants can *only* prove forgery or fabrication of a PT *in the PSD* where there is an *identical* PT in the *DSD* (“Matching PT”) and the defendants have established forgery or fabrication of the latter. In that situation, as the PT in the PSD is shown to be forged or fabricated, it cannot sustain the plaintiffs’ claim, subject to one qualification which relates to which signature has been shown to be forged or fabricated (which we discuss at [149]–[150] below).

139 Accepting the evidence of the defendants’ expert, *Ms Lee*, the Judge held as follows (Liability Judgment at [38]):

38 ... [T]he defendants had *succeeded* in impugning the signatures on the [PTs] in the [PSD] which *Ms Lee* opines are the result of *copy-paste fabrication*, **or** are not written by ... the relevant maker of the signature [*ie*, handwritten forgery].

[emphasis added in italics and bold italics]

To the extent that the Judge thought that there were *Matching* PTs impugned on the basis of copy-paste fabrications, we disagree. While Ms Lee did opine that there were copy-paste fabrications in some PTs, these were the PTs which exist solely in the DSD. It is common ground between the parties that there are no Matching PTs impugned by Ms Lee on the basis of copy-paste fabrications. We thus focus our analysis solely on the handwritten forgeries.

140 The Judge did not err in finding that there were handwritten forgeries. First, the Judge rightly considered the evidence of the purported signatories, adduced through the AEIC of Mr Woi, that the relevant signatures were not theirs, holding that such evidence (save for that of Mr Yong Kai Leong) was admissible under s 32(1)(j)(iii) of the EA (Liability Judgment at [36]). On appeal, the plaintiffs argue that such evidence was inadmissible because (a) the defendants did not put forward a statement by any of the absent witnesses, instead relying on communication with them, embellished by Mr Woi’s statements and conjecture; (b) no evidence was put forward on the efforts made to secure their attendance; and (c) the defendants had not shown why it was not practicable to secure their attendance. We disagree for these respective reasons:

(a) There is no requirement of a “statement” made by the absent witnesses. Section 32(1) of the EA expressly contemplates that the statements sought to be adduced can be made in any manner – “whether orally, in a document or otherwise”. Thus, the communications between the defendants and the witnesses constitute “statements” under s 32(1) of the EA.

(b) There was evidence on the efforts of the defendants to secure the attendance of these three ex-employees. The letters from the defendants’

counsel to the three persons were in evidence. These letters were prepared on the defendants' instruction, at a time when Mr Woi was still Head of Department of the BP Section.

(c) Mr Woi testified that the three signatories had left the employ of the defendants and were no longer in Singapore. His personal knowledge of these facts was not challenged in cross-examination.

141 Second, Ms Lee opined that those signatures were indeed forged. We disagree with the plaintiffs that the Judge erred in relying on Ms Lee's evidence. The plaintiffs argue that the Judge should not have accepted Ms Lee's evidence in light of Ms Holt's criticisms of the methodology adopted by the former, and that the Judge did not properly consider Ms Holt's evidence.

142 We disagree. The Judge expressly considered Ms Holt's opinion and found that she "has not directly challenged Ms Lee's findings" but "merely raised possible shortcomings and limitations in relation to Ms Lee's methodology" (Liability Judgment at [33]). Importantly, Ms Holt stated that Ms Lee's methodology "appear[s] to conform in a general manner to the [industry standards]". Ms Holt only stated that she had "concerns with the strength of [Ms Lee's] opinions, in particular the instances where a definitive elimination opinion was provided". Ms Holt was of the view "that a more moderate (i.e., qualified) opinion is required". In conclusion, Ms Holt stated that Ms Lee's definitive elimination opinions "were far too strong".

143 We agree with the Judge that there is no basis to reject Ms Lee's evidence on the forgeries. Crucially, Ms Holt did *not* express a contrary opinion, *ie*, that there were *no* handwritten forgeries, because she had not herself undertaken any forensic examination for forgery. Her evidence was limited to

the degree of certainty with which Ms Lee expressed her conclusions. This was a question of degree as opposed to a difference of views. The Judge was able to assess the evidence of both expert witnesses and preferred Ms Lee’s evidence. We see no reason to disturb the Judge’s finding, which was based on Ms Lee’s expert evidence.

144 In their responses to our Written Questions, the plaintiffs raised an issue with the specimen signatures relied upon by Ms Lee. This does not affect our analysis. We explain.

145 Ms Holt’s disagreement with Ms Lee’s collection of the specimen signatures, while reasonable, does not necessarily mean that Ms Lee’s method was *unreasonable* such that it affected the *consistency, logic or coherence* of her opinion. Indeed, Ms Holt did not seem to suggest that. For instance, she merely stated that it would be “*prudent*” [emphasis added] to have obtained specimen signatures over more varied sources. She then went on to state her “*personal* approach” and what she would have done “as an *extra* precaution” [emphasis added].

146 Further, Ms Holt’s disagreement with Ms Lee on this point only led her to express the view that Ms Lee’s opinions were “too strong”. Ms Holt neither directly challenged Ms Lee’s findings nor gave a contrary opinion (see [143] above).

147 In the circumstances, it cannot be said that the Judge erred in relying on Ms Lee’s evidence to arrive at the finding that there were in fact Matching PTs that were tainted by handwritten forgeries.

(1) Matching PTs

148 Accordingly, where there are Matching PTs, and the defendants have impugned the signatures of the defendants’ representatives in the relevant PT in the DSD, it would follow that the exact copy in the PSD would not be able to sustain the plaintiffs’ claim. This is subject to one qualification which turns on whether the signature that is established to be forged is that of the Section Engineer or otherwise.

149 Where the impugned signature is the Section Engineer’s, the PT should be excluded. Based on the work process described (at [97(c)]) above, it was the Section Engineer who verified the PTs on a daily basis. As we explained above, the Section Engineer would only sign off after he had verified that the work had been done by the workers listed in the PT. Thus, if the Section Engineer’s signature was established to be a forgery, the PT cannot stand as proof that that work was done by the workers listed therein.

150 Conversely, the Section Engineer’s unchallenged signature on a PT is in our view by itself sufficient proof that the work was carried out by the workers listed therein. The PT would therefore be admissible and reliable evidence for that purpose. This would be the case even if the *Section Manager’s* (not the Section Engineer’s) signature was successfully impugned. It was clear that the *Section Engineer* was the only representative of the defendants who independently assessed and verified the number of workers onsite and hours they worked; the approval layers after him, including the Section Manager, were more concerned with ensuring that the signatures of those who carried out the verification – which in this case was the Section Engineer – was present on the relevant supporting document, *ie*, the PT, before theirs in the process were present. Thus, the genuineness of the Section Engineer’s signature is

determinative: where the Section Engineer's signature is established to be forged, the PT cannot stand.

(2) Corresponding PTs

151 Having addressed the Matching PTs, there is one further category of the PTs which we address for completeness. These would be the PTs in the PSD and DSD that relate to the same WO number, but do not have identical content ("Corresponding PT"s). Which PT then serves as the relevant record for the manpower that was supplied? If the signature in the PT in the DSD is impugned as a forgery, does that mean that the plaintiffs' claim fails? In our view, it does not.

152 The starting point for the analysis is what was in fact received by the defendants. Here, we return to our earlier conclusion that the originals of the PTs in the PSD were delivered to the defendants by the plaintiffs (see [119] above). It follows that for every authentic PT in the PSD, there should be an original Matching PT in the defendants' possession which should have been produced and placed in the DSD. It is clear that the DSD was not comprehensive and the defendants cannot thus insist that the DSD comprised *all* the documents received by them, to the exclusion of the PSD. In particular, Ms Koh accepted that the DSD was not a comprehensive record before us. What follows from this is that it does not assist the defendants to point to a Corresponding PT in the DSD where the signatures therein have been impugned to resist the plaintiffs' claim. The relevant and operative document is the Corresponding PT in the PSD. In short, the Corresponding PTs that are relevant to a particular WO are those which are in the PSD. Demonstrating that the *Corresponding PTs in the DSD* were forged does not undermine the *Corresponding PTs in the PSD*. In the round, the defendants had two options. First, produce the original Matching PT

of the Corresponding PT in the PSD and impugn the signatures therein. Alternatively, as the plaintiffs' claim rested on the PTs in the PSD, impugn the signatures in those documents. As to the former, the defendants did not produce the Matching PTs. As to the latter, for reasons that are not clear to us, Ms Lee did not examine the signatures in the Corresponding PTs in the PSD and given that their authenticity was not put in issue and in any event established, as we have concluded, the PTs in the PSD must stand.

153 The defendants refer to certain pairs of Corresponding PTs which are inconsistent. For example, one pair of Corresponding PTs pointed out by the defendants has *some* common workers listed. In our view, such inconsistency does not mean that there are *no* originals of the PTs in the PSD which the defendants have received and subsequently misplaced. As the authenticity of the PTs in the PSD have not been put into issue, or alternatively has been proven, those PTs in the PSD should stand, unless the defendants can show that the Corresponding PTs in the *DSD* are the *only* PTs for the works in question. They have not done so and, indeed, cannot do so since the DSD was an incomplete record of supporting documents received (see [112]–[120] above).

154 We summarise our analysis on the forgeries:

- (a) The defendants could only impugn the PTs in the PSD by proving that a Matching PT in the DSD was forged or fabricated. They did not challenge the authenticity of the PSD generally.
- (b) The Judge erred in treating the Faint Signatures as rendering the relevant PTs inauthentic. Ms Lee merely concluded that *she* could not examine them for genuineness, not that they were forged.

- (c) The Judge correctly found that certain handwritten forgeries had been established. The evidence of the purported signatories was admissible, and Ms Lee's expert opinion was properly accepted. Ms Holt's evidence did not undermine Ms Lee's conclusions.
- (d) Accordingly, where a PT in the DSD is shown to be forged:
 - (i) If there is a Matching PT in the PSD, it too is forged.
 - (ii) If there is only a Corresponding PT in the PSD, it cannot be said without more that it is forged.
- (e) Whether a Matching PT in the PSD can support the plaintiffs' claim depends on whose signature has been shown to be forged:
 - (i) A forged Section Engineer's signature is fatal because that signature is supposed to verify the work performed.
 - (ii) A forged Section Manager's signature *alone* does not invalidate the PT if the Section Engineer's signature is genuine.
- (f) Overall, save for the Matching PTs where the Section Engineer's signature has been established to be a forgery, the PTs in the PSD prove that the workers listed therein performed the work on the relevant date for the attributed hours in relation to the relevant WO.

Whether claim should be struck out on grounds of forgery

155 In our judgment, the Judge rightly held that the plaintiffs were not barred from bringing any claim against the defendants on account of the forgeries that have been established in relation to the supporting documents in the DSD.

156 We note that the parties rely on UK authorities on this issue. However, the court’s power to strike out the plaintiffs’ claim is found in O 18 r 19 of the Rules of Court 2014, which states as follows:

Striking out pleadings and endorsements (O. 18, r. 19)

19.—(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that —

- (a) it discloses no reasonable cause of action or defence, as the case may be;
- (b) it is scandalous, frivolous or vexatious;
- (c) it may prejudice, embarrass or delay the fair trial of the action; or
- (d) it is otherwise an abuse of the process of the Court,

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a).

(3) This Rule shall, as far as applicable, apply to an originating summons as if it were a pleading.

157 Nevertheless, the UK authorities are instructive, for the reasons that follow.

158 First, the rule relied on in the UK authorities is similar to O 18 r 19. *Masood v Zahoor* [2009] EWCA Civ 650 (“*Masood*”) (cited by the defendants) and *McDonald v Excalibur & Keswick Groundworks Ltd* [2023] 1 WLR 2139 (“*Excalibur*”) (cited by the plaintiffs) were decided on the basis of the UK Civil Procedure Rules 1998 r 3.4(2)(b). Rule 3.4(2) states (*Excalibur* at [18]):

Power to strike out a statement of case

...

3.4(2) The court may strike out a statement of case if it appears to the court—

(a) that the statement of case discloses no reasonable grounds for bringing or defending the claim;

(b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of the proceedings; or

(c) that there has been a failure to comply with a rule, practice direction or court order ...

Rule 3.4(2)(b) is materially similar to O 18 rr 19(1)(c) and 19(1)(d).

159 Second, the Singapore authorities on striking out pertain to pre-trial applications for striking out. This is not to say that the court is not empowered to strike out a claim *after the commencement of trial*, as O 18 r 19 states that the court may do so “at any stage of the proceedings”. Thus, in relation to the threshold required to strike out *after* the commencement of the trial, the UK authorities, in our view, are more pertinent to the situation before us.

160 The defendants argue that *Masood* stands for the proposition that where a claimant is guilty of misconduct in relation to proceedings which is so serious that it would be an affront to the court to permit him to continue to prosecute his claim, the claim may be struck out as the claimant would have “forfeited the right to have the proceedings determined”. The defendants argue that the plaintiffs will benefit from their fraud if their claim is allowed, as they have forged documents, which was illegal conduct under the Penal Code 1871 (2020 Rev Ed) and a breach of cl 13 of both the CRA and SRA which requires them to comply with the laws of Singapore.

161 The plaintiffs rely on the *Excalibur* which states that unless the claimant’s conduct has corrupted the fairness of the trial process, the court should not strike out a claim for forgery. In determining whether the claimant’s

conduct meets this high threshold, the court will consider if the claimant has pursued proceedings with the objective of preventing a fair trial. The plaintiffs argue that no such motive can be ascribed to them. The Judge cited *Excalibur* in deciding against striking out the plaintiffs’ claim (Liability Judgment at [78]). The defendants argue that even applying the proposition in *Excalibur*, the extent of the plaintiffs’ forgery and fabrication is such that it corrupted the trial process so as to put the fairness of the trial in jeopardy. The claim should therefore be struck out.

162 We do not accept the defendants’ submissions for two reasons.

163 First, in our view, the applicable test is that stated in *Excalibur*. In *Excalibur*, the court considered the authorities on striking out, including *Masood*, and held that the approach involves a consideration of both the overriding objective of the use of court time (*Excalibur* at [46]–[47]) and the serious nature of the litigant’s conduct as would warrant a striking out (*Excalibur* at [47]). On the latter, the court must ascertain whether “the litigant’s conduct [is] of such a nature and degree as to corrupt the trial process so as to put the fairness of the trial in jeopardy”. The approach of the court is not to ascertain “whether the litigant’s conduct rendered a just or fair trial *impossible*” [emphasis in original] (at [49]). We note from the defendants’ reply submissions that they do not dispute the application of *Excalibur*.

164 Second, the court in *Excalibur* considered *Arrow Nominees Inc v Blackledge* [2000] 2 BCLC 167 (“*Arrow Nominees*”) which in our view is instructive on the emphasis of the high threshold for striking out proceedings on the basis of false evidence. *Arrow Nominees*, like the present case, involved the falsification of disclosed documents. However, in striking out the proceedings, the court in *Arrow Nominees* also considered the petitioner’s own false evidence

which made it *impossible* for the trial judge to distinguish between forged and authentic evidence, thereby creating a real risk of substantial injustice (*Excalibur* at [46], citing the discussion on *Arrow Nominees* in *Hughes Jarvis Ltd v Searle* [2019] 1 WLR 2934 at [47]).

165 In the present case, as the Judge held, the plaintiffs’ conduct was not of such a nature and degree as to corrupt the trial process so as to put the fairness of the trial in jeopardy. In contrast to *Arrow Nominees*, the plaintiffs’ conduct did not involve the systematic falsification of disclosed documents or the giving of false evidence that would make it *impossible* to distinguish between authentic and fabricated evidence. While the plaintiffs disclosed *some* forged documents, there was not a proliferation of such documents. The forgery was limited to the Matching PTs. Such conduct falls short of the threshold and as applied in *Arrow Nominees* where the forgery was so extensive that it created a real risk of substantial injustice manifesting in the trial process.

166 Crucially, the parties exchanged documents during discovery, with the result that the defendants were able to engage experts to examine and take a position on the integrity of the documents disclosed by the plaintiffs. However, as noted earlier, the defendants *did not to avail* themselves of this opportunity (choosing instead to have Ms Lee examine *only* the DSD) and yet now seek to strike out the plaintiffs’ *entire* claim based on allegations of forgery. We emphasise that, given how the defendants conducted their case, the *only* documents in the PSD that have been tainted are the Matching PTs which Ms Lee has impugned. It cannot thus be said that the forgery corrupted the trial process to the extent that fair adjudication was impossible. In our judgment the defendants are seeking a wholly disproportionate remedy that goes far beyond what is warranted by their specific complaints.

167 Furthermore, with the assistance of expert witnesses, the Judge *was able* to distinguish between genuine and forged signatures. The defendants did not allege that any witness was deliberately lying on the stand, and it remained possible for the Judge to make findings, based on the plaintiffs’ burden of proof, despite the disputes concerning authenticity of the documents.

168 We also highlight that the defendants’ position on this issue reveals an inherent contradiction in their argument. The defendants’ ability to identify *specific* documents which they say are forged undermines their contention that the forgery corrupted the entire trial process. If the defendants were able to distinguish between the forged documents and those that were not, that demonstrates that the trial process retained its integrity and the court’s fact-finding function was not fundamentally compromised. This should be contrasted with the situation in *Arrow Nominees*.

169 Thus, in our judgment, the plaintiffs’ conduct did not fundamentally undermine the court’s ability to assess the evidence fairly and reach a just determination on the merits. For the same reasons, we are of the view that court time was not wasted by allowing the claim to progress. Accordingly, the Judge did not err in refusing to strike out the plaintiffs’ claim.

STJs

170 Two aspects arise from the plaintiffs’ appeal and the defendants’ cross-appeal on the STJs: first, the claim for payment based on invoices, which were challenged by the defendants’ pleaded irregularities, namely Types F to I generally and, where additional manpower was requested, Types A to C and E as well; and second, Lanka’s *quantum meruit* claim for eight of the 12 Non-Invoiced STJs. We note that the Liability Judgment addressed these separately.

However, since they involve the same type of work (the STJs) and work process (see above at [64]), it is neater to deal with them together. For the reasons that follow, the former can be dealt with on the basis that we prefer the PSD over the DSD, and as for the latter, we allow Lanka's appeal on the Non-Invoiced STJs because Lanka has proven that such work was in fact carried out.

171 To properly situate the appeal on the STJ claims, it is necessary to first set out the work process for STJs.

Work process

172 On the defendants' case, the work process for STJs was as follows. First, the defendants' WO for a Sub-Task Job only contained a general description of the task. Thus, prior to the commencement of work under each WO, the Section Engineer would orally assign the number of sub-tasks to be carried out by the plaintiffs and provide the necessary details for each sub-task. Upon the completion of each sub-task, the Section Engineer would prepare, or the plaintiff would prepare for the Section Engineer's review and approval, a STWL which set out the sub-task carried out by the plaintiffs, the quantities of work and dimensions of the structures to which the sub-task related, and the rate and total sum which the plaintiffs were entitled to charge the defendant for the sub-task carried out. The plaintiffs were then required to prepare a final JCR based on the STWL. The JCR set out the same information as the STWL. The JCR was submitted to the Section Engineer and Project Manager for verification and thereafter returned to the plaintiffs for invoicing.

173 The plaintiffs instead contend that any one of the STWLs, JCRs and Payment Summaries was sufficient to prove the claim. There was no consistent practice as to which type of supporting document the defendants would issue

(Liability Judgment at [47]). For these eight Non-Invoiced STJs which are the subject of their appeal, *Lanka adduced only JCRs*.

174 Importantly, the parties do not dispute that (a) the plaintiffs’ representative would sign the JCRs under that part of the document identified as “prepared by”, (b) the JCRs would then be submitted to the Section Engineer and the Project Manager for verification, and (c) the JCRs would thereafter be returned to the plaintiffs for billing. This is significant because if the JCR adduced by Lanka had been signed by the Section Engineer, it would follow that he had verified the work that the plaintiffs had carried out, unless his signature had been impugned. By the defendants’ own account, the Section Engineer is the person on the ground who issued the WOs, scoped the work to be carried out, and verified the JCRs upon completion of work. This was not challenged by the defendants. The Section Engineer was on site daily, meaning his signature represented first-hand verification of the completed work. The Section Engineer’s signature on a JCR therefore reflects his personal knowledge that the work itemised therein was carried out and proves that the defendants had verified and approved the work done. The defendants have neither disputed the authenticity of the Section Engineer’s signatures on the relevant JCRs nor adduced evidence that these signatures were forged. These are significant points for reasons we explain below (at [192]).

The invoiced STJs

175 The defendants argue that they have proven the irregularities in the DSD, which include those they had pleaded in relation to the plaintiffs’ STJ claims that were invoiced. However, these irregularities are premised on discrepancies in the DSD, and since we prefer the PSD over the DSD (see above

at [120]), the defendants’ pleaded irregularities in relation to the invoiced STJs therefore fall away and we dismiss their appeal on the invoiced STJs.

The Non-Invoiced STJs

176 Turning to Lanka’s appeal on the Non-Invoiced STJs, we allow it in respect of the eight WOs with partially signed JCRs (valued at \$366,463.49). We note that Lanka does not appeal against the Judge’s findings on the other three WOs.

(1) The parties’ arguments

177 Lanka argues that the Judge wrongly disallowed their claim on the eight WOs because the Section Engineer signed the JCRs and the defendants did not challenge those signatures. Furthermore, Lanka argues that when the defendants contended that the Non-Invoiced Work (in respect of all 12 WOs) should have been valued at \$507,909, minimally, the defendants were essentially conceding that the work *was* done. Also, Lanka maintains that its explanation for receiving the partially signed JCRs is logical: the documents were returned with only the Section Engineer’s signature so that Lanka could follow up with the Project Manager for approval, which is consistent with their case about re-submitting these JCRs for signing again at a meeting with the defendants in February 2020 (“February 2020 meeting”). We will return to this issue of the two different points in time at which these JCRs were handed over (see below at [183]). Finally, Lanka emphasises that its claim was on a *quantum meruit* basis. It did not therefore matter that cl 17 of the SRA, cl 17 of the CRA and cl 15(a) of the 2018 CRA requiring Lanka to invoice the defendants “as soon as possible but not later than one week after completion” with full details of the work carried out was not followed.

178 Conversely, the defendants argue that Lanka failed to comply with work and payment processes by failing to submit fully signed JCRs for the Non-Invoiced Work. Further, as the Judge had found, it was “illogical and inconsistent with the plaintiffs’ evidence” for the partially signed JCRs to be returned to Lanka (Liability Judgment at [77]). The defendants explain that their estimate of the valuation of works was merely an alternative position contingent on accepting the documents as genuine. They emphasise that Lanka has the burden to prove the authenticity of their supporting documents and the quantum of work performed. Further, they rely on Lanka’s failure to invoice the defendants “as soon as possible but not later than one week after completion” of the works and services “with full details of the work carried out” pursuant to cl 17 of the SRA, cl 17 of the CRA and cl 15(a) of the SRA 2018. This means that Lanka should not be entitled to be paid any sums for the Non-Invoiced work.

(2) Whether work was done in respect of the eight Non-Invoiced STJs

179 In our judgment, the question is not whether Lanka has complied with the defendants’ work and payment processes. This is because, once the claim is framed as one in *quantum meruit*, as is the case here, the focus shifts from contractual compliance with invoicing or certification mechanisms towards the substantive question of whether work or services were *in fact* rendered and, if so, the reasonable remuneration that is due for such work (see *Comfort Management Pte Ltd v OGSP Engineering Pte Ltd and another* [2020] SGHC 165 at [127]–[130]). We therefore reject the defendants’ argument that Lanka’s failure to invoice the defendants timeously and with full details as required under the relevant agreements bars Lanka from claiming payment. Where, as here, the parties do not dispute the applicable rates, those rates provide the basis for quantifying reasonable remuneration once the work

is proven to have been done. Thus, what is in issue here is whether there is cogent evidence that the work was done.

180 We are therefore of the view that the Judge erred in disallowing Lanka's claim for the eight WOs, by unduly focusing on whether the JCRs were handed over to the defendants (Liability Judgment at [77]) when the inquiry should have been directed at whether work was in fact done. The defendants' case on appeal suffers from the same error.

181 In our judgment, Lanka has proven that work was done. Before explaining why, we first address the threshold question on the admissibility of the copies of the partially signed JCRs, since Lanka relies on them as part of its case. We then explain why Lanka has discharged its evidential burden, and why the defendants have failed to answer it.

(A) ADMISSIBILITY OF THE JCRs

182 The admissibility of the relevant JCRs is a threshold issue because Lanka has only adduced copies and therefore s 67(1) of the EA must be satisfied before the copies can be admitted into evidence. The provision requires a party relying on a copy to show that the original is in the possession of the other party. We are satisfied that this requirement is met on the evidence before us.

183 The *ordinary* work process, as described by Mr Navin Kumar, was that a JCR, once signed by both the Section Engineer and the Project Manager, would be returned to Lanka as an approved supporting document for billing. For the eight disputed WOs, the JCRs bear only the Section Engineer's signature. The defendants have not challenged this signature as a forgery. Nor have they challenged the authenticity of the JCRs. Thus, it must follow that, consistent with what the plaintiffs have stated (above at [177]), they must have handed the

JCRs to the Section Engineer who had signed and returned them to the plaintiffs (“First Handover”). Otherwise, the existence of the Section Engineer’s signature would be inexplicable. That left the plaintiffs with only one of the two signatures that was needed in the JCRs in order to submit a payment claim, the other being the signature of the Project Manager. It was therefore absolutely in the interest of the plaintiffs to have handed the partially signed JCRs post the First Handover to the defendants in order for the Project Manager to sign the same. If Mr Navin Kumar’s evidence is accepted, that would have happened at the February 2020 Meeting (“Second Handover”). Mr Navin Kumar’s evidence was that following the Second Handover, the Project Manager refused to sign the JCRs because the parties’ relationship had broken down by then. That Lanka only had copies of the partially signed JCRs is readily explicable on the basis that the originals were submitted to the defendants at the February 2020 meeting and remain in the defendants’ possession. If indeed the originals of the JCRs, partially signed or otherwise, were in Lanka’s possession, it would plainly be in Lanka’s interest to produce them in support of its claim for payment on a *quantum meruit* basis.

184 The Judge had found that it was “illogical and inconsistent” for the partially signed JCRs to have been returned to Lanka (Liability Judgment at [76]–[77]). With respect, this reasoning was flawed on two levels.

185 First, it was premised on a misreading of Mr Navin Kumar’s evidence. Mr Navin Kumar was describing the ordinary work process, *ie*, what *should* happen, when he testified that the JCRs would only be returned to Lanka after both signatures had been obtained. He was not testifying that this was invariably what happened in every case. In fact, the Judge found that the defendants did not make clear whether Lanka had to approach the Section Engineer and Project Manager separately or together before getting the JCRs back (Liability

Judgment at [46]). Even taking the defendants' case at its highest, any inconsistency in Mr Navin Kumar's evidence goes no further than the First Handover, a point which we will elaborate on below (at [186]).

186 Second, and more fundamentally, the finding of inconsistency is unsustainable because it presupposes that there is something suspicious about the JCRs that justifies scrutinising how they came to be in Lanka's possession. Yet, the defendants neither challenged the authenticity of the JCRs nor as noted above, the Section Engineer's signatures on them. Without that evidential foundation, any alleged inconsistency of evidence in relation to the First Handover cannot bear on the authenticity of the JCRs. Once it is accepted that Lanka has JCRs that bear the Section Engineer's *unchallenged* signature, the question of what happened after the First Handover is a matter of logic driven by the agreed work process and Lanka's self interest in ensuring that it obtained the requisite documents for the purpose of submitting payment claims. This is key. The Judge unfortunately did not address this at all in his analysis of the facts. Neither do the defendants in their submissions. The fact that Lanka has produced only copies of the partially signed JCRs therefore points to the originals having been handed over to the defendants at the February 2020 meeting. The Judge's finding that they were not is therefore unsustainable and we reverse it, concluding that the originals of the JCRs with the signature of the Section Engineer therein were handed over to the defendants' representatives at that meeting. It follows from the finding that the originals of the partially signed JCRs with the Section Engineer's signature are in the defendants' possession and that the copies of the same that Lanka has are secondary evidence of the originals within the meaning of s 67(1) of the EA.

(B) LANKA HAS DISCHARGED ITS EVIDENTIAL BURDEN

187 Lanka’s case rests on two planks: Mr Navin Kumar’s evidence and the eight partially signed JCRs. Mr Navin Kumar’s evidence that the work was performed was based on his personal knowledge and not derived from a review of the JCRs. For instance, he derived the sum payable from tariff rates used for previous STJs, and not from the JCRs themselves. The eight partially signed JCRs corroborate his evidence – they are Lanka’s contemporaneous record of the work carried out, and each bears the Section Engineer’s signature.

188 The Section Engineer’s signature is the critical piece of evidence. As we have explained above at [174], the Section Engineer was the defendants’ own representative on the ground. He issued the WOs, scoped the work, and was responsible for verifying the completion of the works. His signature on a JCR is therefore a contemporaneous, first-hand verification by the defendants’ own representative that the work itemised therein was carried out. Taken together, Mr Navin Kumar’s evidence and the Section Engineer’s signed JCRs constitute cogent evidence that the work was done.

189 Mr Woi’s evidence is further and independent corroboration that the Non-Invoiced Work was performed. Mr Woi testified that the *claim* for the Non-Invoiced Work was “conceded 100%” pending complete submission of supporting documents. It is clear to us that Mr Woi had conceded that *the work was performed*. His only objection to payment stemmed from his belief that the plaintiffs were only entitled to payment upon submission of the supporting documents. His only reservation went to the contractual preconditions for payment and not to whether the work was done. Those are distinct matters, and the former does not bear on Lanka’s entitlement to recovery on a *quantum*

meruit basis. We see no basis to treat Mr Woi's admission as merely an alternative position.

190 On the totality of the evidence, Lanka has discharged their evidential burden of proving that the relevant work was *prima facie* performed.

(C) THE DEFENDANTS HAVE NOT DISCHARGED THEIR EVIDENTIAL BURDEN OF PROVING THAT WORK WAS NOT DONE

191 Given that Lanka has discharged its evidential burden, it fell to the defendants to discharge their evidential burden that work was *not* done. In this regard, the Judge wrongly directed the inquiry when he held it against the plaintiffs that they “ha[d] not called Lanka’s foreman to testify as to whether work was done” (Liability Judgment at [77]). We also reject the defendants’ argument that Lanka should have done so. In our judgment, the defendants have failed to show that the work was not done.

192 The defendants’ biggest challenge is their failure to challenge the authenticity of the JCRs and the Section Engineer’s signatures therein. If the defendants’ position is that the work was never done, the most direct way to advance that case would have been to dispute the authenticity of the JCRs and adduce evidence that the JCRs were forged, including calling the Section Engineer(s) to disown the signatures. They did not do that. Ms Lee did not examine the signatures on the JCRs at all. One of the JCRs was signed by Mr Alagappan Deivasigamani, who did not disavow his signature despite purporting to dispute thousands of his signatures on other documents through Mr Woi. By leaving the Section Engineer’s signatures entirely unchallenged and not disputing that they were authentic, the defendants effectively conceded that the JCRs were an accurate record of the work that was carried out as verified

by their own representative, the Section Engineer. They cannot now maintain that the work was never done.

193 There is also a conspicuous absence of any positive evidence that the work was not performed by Lanka. The WOs were issued for each STJ, and non-performance would have been a breach of the contract. If the work had not been done, one would expect evidence of the defendants complaining of non-performance or engaging alternative contractors. There is none. The defendants also did not call their Section Engineers to testify that work was not done, which is a significant omission given that the Section Engineers' signatures on the JCRs were left unchallenged.

194 We are therefore satisfied that Lanka has proven that the works in respect of the eight WOs were performed, and its appeal on the Non-Invoiced Work should be allowed.

Miscellaneous Jobs

195 We allow the plaintiffs' appeal on the Miscellaneous Jobs. Similar to the analysis on the STJs, it is important to situate the plaintiffs' claim for the Miscellaneous Jobs within its proper context.

Work process

196 The parties do not disagree with the Judge's finding on their respective cases as regards the work process for the Miscellaneous Jobs. In relation to their respective cases, the Judge found as follows:

- (a) On the defendants' case, a WO for a Miscellaneous Job only contained a general description of the services which the defendants required the plaintiffs to provide. Accordingly, the defendants' engineer

would verbally provide the details of the services to the plaintiffs. The defendants say that the plaintiffs would prepare and/or provide various supporting documents evidencing the quantities of the service provided, and the defendants would verify and approve the Miscellaneous Jobs before paying the plaintiffs (Liability Judgment at [71]).

(b) The plaintiffs broadly agreed with the defendants but distinguished between the process for toilet cleaning jobs and the supply of lorry cranes (Liability Judgment at [72]).

(i) For the toilet cleaning jobs, Lanka would prepare a WCR certifying the work done and the relevant time period, usually every month, and no Payment Transaction Slip or signature by the defendants' representatives was required.

(ii) For the supply of lorry cranes, Lanka would pass a delivery order for each lorry crane and record the number of hours used for the lorry crane. SMIY's engineer would thereafter sign to confirm the defendants' use of the lorry cranes. Lanka would retain only a carbon copy while SMIY retained the original signed delivery order. Using the information in the delivery orders, Lanka would prepare a TST recording the details over multiple days. The TSTs were unsigned as they were summaries of the data already captured in the signed delivery orders.

197 The work process here, as it is with the STJs above, sheds light on the evidentiary weight to be placed on the different supporting documents. The TSTs, though unsigned, were not standalone documents prepared unilaterally by the plaintiffs. They were summaries of data already captured in delivery

orders which had been signed by SMIY's engineers on site. The absence of the defendants' signature on the TSTs therefore does not undermine their reliability as a contemporaneous record of the lorry crane services that were provided. The WCRs that were prepared for toilet cleaning jobs stood as the plaintiffs' contemporaneous record of the services carried out. The defendants have not alleged that the WCRs were falsified. Nor have they alleged that the TSTs were based on delivery orders that contained forged (*ie*, where the signature on the face of the document was not made by the person whose signature it purports to be) or fabricated (*ie*, where the signature was cut and pasted) signatures of the defendants' engineers.

The parties' arguments

198 The plaintiffs argue that the Judge erred in finding that they were not entitled to claim for the Miscellaneous Jobs totalling \$213,938.39 for 18 WOs, where the defendants alleged the Type J irregularity (Liability Judgment at [74]). They contend that their documentation was adequate for the following reasons.

(a) First, the WCRs were adequate to prove that the toilet cleaning work was done. The WCRs did not require the defendants' signatures, given that billing was based on the period of work done.

(b) Secondly, the TSTs were adequate to prove lorry crane supply as it summarised data from delivery orders which were already signed by the defendants' engineers.

199 The plaintiffs further argue that the Judge's findings were inconsistent with the summary judgment previously granted for Invoice No SMIY-MV/05/2018, involving similar crane supply work which was only supported

by unsigned TSTs. The plaintiffs also argue that the Type J irregularity is unsubstantiated, as Mr Lee did not have personal knowledge of whether the relevant service was performed. The plaintiffs suggest that the Type J irregularity was an afterthought.

200 The defendants contend that the Judge correctly dismissed the claim on the basis that it was unsupported by verified documentation. The defendants emphasise that the plaintiffs submitted WCRs with only their own signatures and unsigned TSTs. The defendants say that the plaintiffs' reliance on Invoice No SMIY-MV/05/2018 is misleading as that invoice was supported by complete documentation including verified delivery orders. They argue that the plaintiffs have impermissibly attempted to reverse the burden of proof by expecting the defendants to prove that the services were not performed or show that alternative contractors were engaged to carry out the Miscellaneous Jobs. Finally, the defendants argue that the Type J irregularity was not an afterthought as they faced delays in their investigations, which were understandable given the passage of time and volume of documents.

Whether work was done in respect of the Miscellaneous Jobs

201 As the plaintiffs have pleaded an alternative claim in *quantum meruit*, the relevant question is whether the work was done. The defendants' argument on the Type J irregularity that the plaintiffs should not be entitled to payment because they did not submit duly *verified* and *approved* supporting documents (such as WCRs and TSTs) is therefore not an answer to a claim in *quantum meruit*, where there is persuasive evidence that the work was done.

202 On whether the work was done, the starting point is that WOs were issued. Thus, contracts were formed, and if those contracts were not performed,

the defendants would ordinarily have, at some point, complained of non-performance. There is no evidence that they did. The plaintiffs have adduced positive evidence of performance in the form of contemporaneous WCRs and TSTs. The TSTs in particular carry evidentiary weight as contemporaneous records because they summarised data from delivery orders which had been signed by SMIY's own engineers on site. The WCRs similarly stand as the plaintiffs' contemporaneous record of the toilet cleaning services that were provided. On the totality of the evidence, the plaintiffs have discharged their evidential burden of proving that the work was performed.

203 The evidential burden then shifts to the defendants to show that the work was not done. The defendants have not discharged this burden. There is no evidence or allegation that work was not performed. As noted above, WOs were issued for the Miscellaneous Jobs, and non-performance would have been a breach of contract. Yet, there is *no* evidence alleging non-performance and/or that the defendants engaged (or even attempted to engage) alternative service providers to carry out the work. The defendants' main argument remains that the supporting documents were unverified, but as explained above, this does not address the central question of whether the work *was done*. The defendants have therefore not discharged their evidential burden.

204 We are therefore satisfied that the plaintiffs have discharged their legal burden of proving their claim and their appeal on the Miscellaneous Jobs should be allowed. Accordingly, the Judge erred in dismissing the plaintiffs' claim on the Miscellaneous Jobs.

Administrative charges

205 We turn to the defendants’ counterclaim for administrative charges. This is one of the three parts of the defendants’ counterclaim (see above at [15]). We agree with the defendants that the Judge erred in finding that they were not entitled to levy the 1% administrative charge on partial payments made *before* 27 July 2018 (Quantum Judgment at [4]). We emphasise that there were two issues relating to the administrative charge. First, *when* the defendants were entitled to levy the 1% administrative charge (“Entitlement Issue”). Second, whether the defendants were entitled to base the 1% administrative charge on all previous partial payments, including those disbursed *before* 27 July 2018 (“Quantum Issue”). The two issues were conflated in the Liability Judgment (at [80]), but subsequently treated separately in the Quantum Judgment (at [4]).

206 The right of the defendants to levy administrative charges for partial payments issued to the plaintiffs arises from two Administrative Charge Agreements: one between Shipworks and SMIY, the other between Lanka and SMIY. Both were dated 27 July 2018. The operative clause was cl 5 of both agreements:

5. In consideration of SMIY providing the administrative services for managing the advance/progress payment accounts of [Shipworks/Lanka], [Shipworks/Lanka] shall pay to SMIY an administrative charge of one percent (1%) per advance/progress on each account based on the total amount of advance/progress payments made provided that the total aggregate of such administrative charge shall not exceed four percent (4%) per annum.

207 We first deal with the Entitlement Issue. It was common ground between the parties that the administrative charge applied to *payments made after* 27 July 2018 in relation to *invoices or requests issued after* 27 July 2018. However, the parties disagree on whether the charge applied to *payments made after* 27 July

2018 in relation to *invoices or requests issued before* 27 July 2018. The plaintiffs’ position was that it did not and the defendants’ position was that it did. In our judgment, it did not. The chapeau of the Administrative Charge Agreements makes it clear that administrative charges applied to “advance/progress payments to be made in respect of the sub-contract work *to be performed* by [the plaintiffs]” [emphasis added]. The words “to be performed” necessarily meant that administrative charges could only be levied on works performed and invoiced *after* 27 July 2018. In this regard, we agree with the Judge (Quantum Judgment at [4]).

208 As for the plaintiffs’ argument that they were under pressure to sign the Administrative Charge Agreements, we see no merit in it. The plaintiffs did not ask for the Administrative Charge Agreements to be vitiated because of duress or some other vitiating factor, nor did they plead the same. The “pressure” which the plaintiffs experienced, if at any, has no relevance.

209 We, however, disagree with the Judge on the Quantum Issue. The Judge disagreed with the defendants that “they are entitled to charge an administrative charge of 1% based on the *aggregate* quantum of partial payments for Work Orders under which a partial payment was made after 27 July 2018 ... because they have not satisfactorily proven any agreement which entitles them to such administrative charges” [emphasis added] (Quantum Judgment at [4]). In our judgment, the plain and ordinary language of the Administrative Charge Agreements demonstrates the defendants’ entitlement to such administrative charges.

210 First, cl 5 provided that the administrative charge was “of one percent (1%) per advance/progress on each account based on the *total* amount of advance/progress made” [emphasis added]. The 1% multiplier therefore applied

not to the multiplicand of *that* particular partial payment, but instead the multiplicand of the *total* amount of advance/progress made “on each account”, *ie*, relating to the same WO.

211 Second, cl 5 also contained a proviso that “the total aggregate of such administrative charge shall not exceed four percent (4%) per annum”. The Judge’s construction (which had as the multiplicand the very partial payment that triggered the administrative charge) would have rendered the proviso entirely redundant. If the administrative charge were simply 1% of the progress payment that triggered the charge, there would *never* be a situation where the 4% limit would be reached. Instead, the total amount of administrative charges collected would always be equal to 1% of the total amount of partial payments made.

212 Hence, for example, the administrative charge for a third progress payment within a given WO would be 1% of the aggregate of the first, second and third progress payments made in that WO and not just the third one alone.

213 However, although we are of the view that the Judge erred in accepting the plaintiffs’ construction in relation to the Quantum Issue, we do not agree entirely with the defendants’ construction. In particular, the defendants seek to apply the 4% limit without regard to the annual limitation. As mentioned, the proviso limited the total aggregate of the administrative charges to “four percent (4%) per annum”. Thus, the total aggregate of the administrative charges collected must not exceed 4% of the total amount of partial payments made within any given contract year starting from 27 July 2018.

214 There is no merit to the plaintiffs’ argument that the rates are arbitrary, since it was contractually agreed upon by the parties. It is entirely irrelevant

whether and how the defendants can commercially justify the stipulated rate. In any event, the plaintiffs’ argument that a contractual term of reasonableness should be implied into the Administrative Charge Agreements does not pass muster. The express limit contained in the proviso demonstrates that the parties consciously considered that the total administrative charges to be collected should not defeat the purpose of the partial payments which was to provide liquidity to the plaintiffs. There is thus no true gap which a term may be implied to fill.

215 To summarise, the defendants are entitled to levy administrative charges every time a partial payment invoice/request was submitted *after* 27 July 2018. For purposes of computing the quantum of each administrative charge, the 1% multiplier applied to the *total* partial payments made in relation to that WO thus far – whether or not the constituent partial payments were themselves made after 27 July 2018. However, the total administrative charge collected each time must not exceed 4% of the total amount of partial payments made within any given contract year starting from 27 July 2018.

Whether the defendants have the absolute discretion to value the plaintiffs’ works

216 Next, we deal with the defendants’ argument that they have an absolute discretion to value the plaintiffs’ work, subject only to the exception of fraud, pursuant to cll 9(a) and 17 of the CRA and SRA. We agree with the Judge on the implication of a term that prohibited the defendants from assessing the commercial value of the plaintiffs’ works “irrationally”, “arbitrarily or capriciously” (Liability Judgment at [17]) – but with a gloss. We do not agree that the standard is that of *Wednesbury* unreasonableness as the Judge had found (see [228] below).

217 The defendants argue that the Judge’s implication of a term such that “the defendants must have a basis for exercising their discretion, and that basis cannot be *Wednesbury* unreasonable” (Liability Judgment at [18]) contradicts the express text of the CRA and SRA. Pursuant to cll 9(a) and 17 of both the CRA and SRA, the defendants have the absolute right to decide on the value of the works and services carried out by the plaintiffs, and the plaintiffs can only challenge the defendants’ exercise of discretion on the ground of fraud.

218 The plaintiffs argue that the Judge rightly found that these clauses do not entitle the defendants to exercise their contractual discretion in an irrational, arbitrary or capricious manner, as they are not worded in such a way to exclude the defendants’ obligation to exercise their discretion rationally.

219 The parties agree that although the CRA was formally between Shipworks and Jurong, in practice, the parties proceeded on the basis that this agreement also applied between Shipworks and SMIY. Similarly, while the SRA and SWA were formally between Lanka and Jurong, they also applied between Lanka and SMIY. It is common ground that the defendants assessed all the plaintiffs’ works pursuant to clauses 9(a) and 17, which state as follows:

9. Work Progress
 - a) The Company reserves the absolute right and discretion to decide on the value of the Works carried out by the [Contractor/Subcontractor] regardless of any quotation, price or other quote or agreement deemed to have been or entered into, accepted by or given to the Company, its employees and representatives by the [Contractor/Subcontractor]. The [Contractor/Subcontractor] agrees not to challenge the Company’s right or discretion unless and only if the same is fraudulently given or taken by the Company.
 - b) The Company reserves the absolute right to suspend the Works or any part thereof if progress is unsatisfactory and to deduct from the contract amount or running account of the [Contractor/Subcontractor] with the

Company, the total expenses incurred by the Company in completing the Works or any part thereof. If the aforesaid total expenses exceeded the contract amount then the excess shall be borne by the [Contractor/Subcontractor].

- i) The works shall be commenced upon the date specified in the contract or, if no date is specified, upon the date to be agreed between the Parties or ordered by the Company.
- ii) The Works shall be executed diligently and be completed by the due date for completion specified in the contract, subject to Clause 9(b)(iii), failing which the [Contractor/Subcontractor] shall pay liquidated damages to the Company at a rate to be decided by the Company and which shall not be challenged by the [Contractor/Subcontractor] as unfair, unreasonable or punitive or as a penalty in any way except for fraud. The liquidated damages to be paid by the [Contractor/Subcontractor] for any of the Works shall be up to 10% of the Contract Price for the completed Works as determined by the Company.
- iii) The [Contractor/Subcontractor] shall be entitled to such extensions of time for the performance of the Works as may be reasonable for any delay in the execution thereof not attributable to the fault of the [Contractor/Subcontractor], howsoever caused.
- iv) The [Contractor/Subcontractor] warrants and guarantees that the Works shall be performed in a workman-like manner fit for the purpose intended, merchantable and in accordance with the Owners' specifications. The [Contractor's/Subcontractor's] warranty for replacement owing to bad workmanship, defective materials and defects in the Works shall be for a minimum period of one year from the acceptance of the completion of the Works by the Owners.

The [Contractor/Subcontractor]'s account of amounts due by the Company to the [Contractor/Subcontractor] in respect of the Works agreed and determined for the value otherwise shall be treated as a running account and the Company reserves the right to set off any

amounts due by the [Contractor/Subcontractor] to the Company accordingly.

...

17. Bills and Report

The [Contractor/Subcontractor] shall bill the Company as soon as possible but not more than one week after completion of the contract with full details of the work carried out. Compliance with this condition will ensure early processing and upon approval prompt payment to the [Contractor/Subcontractor].

The Company reserves and retains the absolute right and discretion to decide the extent of the works completed and carried out and the commercial value of the Works completed by the [Contractor/Subcontractor].

220 The defendants’ arguments can be dismissed on two fronts: first, their reliance on cl 9(a) is misplaced as it only applies to works in progress, not completed work; and second, while the defendants do have a discretion under cl 17 to value the commercial value of the works, it is not unfettered. We explain.

The defendants’ reliance on cl 9(a) is misplaced

221 We begin with cl 9(a). Clause 9 refers to “Work Progress” and it is clear from the language and structure of cl 9 that it is concerned with the valuation of work in progress, not completed work. Clause 9(a) gives teeth to cl 9(b), which provides for the defendants’ right to suspend work and make certain claims as a consequence of unsatisfactory progress, including by way of set-off. It is significant that cl 9 does not provide for any payment to be made by the defendants to the plaintiffs upon valuation. The valuation under cl 9(a) is undertaken for the specific and limited purpose of assessing whether the plaintiffs’ progress is satisfactory, which is why the clause expressly permits the defendants to disregard “any quotation, price or other quote agreement”, a latitude that makes sense in the context of a mid-performance assessment but

would be commercially absurd if extended to final payment. If the defendants were right that cl 9(a) could apply to final payments, they would be entitled to disregard any agreed quotation or rate even at the point of payment for the services already rendered, a result that will be inconsistent with the overall scheme of the CRA and SRA and would render cl 17 meaningless.

222 The defendants sought to resist this reading by referring to cl 36, which provides that the headings of the terms and conditions are inserted for convenience of reference only and are not intended to affect the meaning or interpretation of any of the terms and conditions of the agreement. On that basis, the defendants argued that the heading of cl 9, “Work Progress”, should not limit the scope of the clause. We disagree. As we have explained, our conclusion that cl 9(a) is confined to work in progress does not rest on its heading. It rests on the language and structure of cl 9 read as a whole. Clause 36 therefore does not assist the defendants.

223 At this juncture, we deal with the plaintiffs’ argument that irrespective of cl 36, cl 9(a) is concerned with the valuation of “work” as such and cannot extend to the supply of manpower or services or equipment. We disagree with the plaintiffs’ reading of cl 9(a). There is nothing in cl 9(a) that restricts its operation to STJs only, as the plaintiffs argue. Clause 9(a) is concerned with the *progressive* valuation of *all three types of work*. In any event, their case is sufficiently made by cl 17 being the only operative provision for final payment (see below at [225]).

224 It follows that the defendants’ reliance on cl 9(a) as a *carte blanche* right to reassess the value of completed works, subject only to the limitation that such exercise is not fraudulent, is misconceived. If cl 9(a) does not apply to final payment, the defendants’ argument that they have, pursuant to cl 9(a), an

unfettered discretion to value the plaintiffs’ work at that stage, subject only to fraud, falls away entirely.

The defendants’ discretion under cl 17 is not unfettered

225 That leaves cl 17, which is the operative provision for final payment. Before turning to the substance of cl 17, it is necessary to address the threshold question of whether a term limiting the defendants’ discretion can be implied at all. That is because any term that seeks to curtail a contractual discretion in the manner proposed by the plaintiffs may only be imposed on the parties by implication (see *Leiman, Ricardo v Noble Resources Ltd* [2018] SGHC 166 (“*Leiman*”) at [112]–[113]).

226 The proper starting point is that a term may only be implied where there is a true gap in the contract, *ie*, where the contract is silent on a particular issue (*Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [101(a)]). Where the contract already contains an express term covering the situation at hand, the court will not imply a term that contradicts it (*Foo Jong Peng v Phua Kiah Mai* [2012] 4 SLR 1267 at [36]).

227 The defendants’ argument was that cll 9(a) and 17, read together, expressly addressed the scope of their discretion and the grounds on which it could be challenged, leaving no room for implication. This argument, however, depended entirely on cl 9(a) applying to the valuation of completed works at the final payment stage. As we have explained above, it does not. Clauses 9(a) and 17 cover different situations: the former governs valuation of work in progress, while the latter governs final payment upon completion. Since cl 9(a) does not apply to final payment, the fraud carve-out in cl 9(a) cannot be read as applying to cl 17 as well. Clause 17 does *not* expressly provide the grounds on which the

defendants’ exercise of discretion may be challenged. The parties therefore did not contemplate, and the contracts do not address, the circumstances in which the plaintiffs may challenge the defendants’ exercise of their discretion to value completed works at the final payment stage. A true gap exists.

228 We turn to what term should be implied to fill that gap. The law in Singapore is settled that a contractual discretion, even one expressed in absolute terms, must be exercised in good faith and not arbitrarily or capriciously (Liability Judgment at [17], citing *Carlsberg South Asia Pte Ltd v Pawan Kumar Jagetia* [2022] SGHC 74 at [124] and *MGA International Pte Ltd v Wajilam Exports (Singapore) Pte Ltd* [2010] SGHC 319 (“MGA”) at [102]–[103]). We note that the Judge approached the matter from the perspective of *Wednesbury* unreasonableness, and there is authority that suggests that the *Wednesbury* standard (which originated from *administrative* law) and the common law standard for the exercise of *contractual* discretion may be broadly similar in terms of content (see *Braganza v BP Shipping Ltd* [2015] UKSC 17 at [19], [28], [30] and [32]; *Leiman* at [112]–[114]; *MGA* at [104]). However, *Wednesbury* unreasonableness is a doctrine that operates in the distinct context of administrative law as a restraint on the exercise of statutory powers or discretion and is not directly applicable to the present context of a contractual discretion. The basis for implying a term that contractual discretion must be exercised in good faith and not arbitrarily or capriciously is rooted in contract law and does not depend on any transposition of administrative law principles. Whether the substantive content of the two standards is in fact the same is a question we need not resolve, as the position at common law is clear and sufficient for present purposes. The term to be implied in the CRA and SRA is that the defendants’ discretion under cl 17 must be exercised in good faith and not arbitrarily or capriciously.

229 With that, we turn to the substance of cl 17, which confers a discretion on the defendants to decide two distinct matters: first, the extent of the works completed and carried out; and second, the commercial value of those works. We address each in turn.

230 As regards the first aspect, *ie*, discretion to decide the extent of works completed, where the defendants' own representatives have verified and signed off on timesheets and other supporting documents at the material time, the signatures count as acknowledgements that the workers were on site and the work was done. There is no room to retroactively reassess the extent of works completed in those circumstances. Any attempt to do so would be in bad faith and outside the scope of the discretion conferred by cl 17. This applies to all Manpower Jobs and Sub-Task Jobs. As for Miscellaneous Jobs, as we have found that the unsigned supporting documents prove that the recorded work was done, the same position follows: the defendants cannot purport to exercise a discretion to deny the extent of works that the evidence establishes were completed.

231 As regards the second aspect, *ie*, discretion to decide the commercial value of the works, the correct approach is to ask whether the defendants' representatives approved the applicable rates or quantum at the material time. Where they did, any departure from those approved or agreed rates is, absent strong justification, arbitrary and/or capricious. No such justification has been offered by the defendants. Where the rates were not approved beforehand, the defendants' standard rates apply as the default position. In any event, the parties are in agreement on the applicable rates, and therefore there can be no genuine exercise of discretion to be made on the question of the commercial value of the works.

232 In conclusion, the defendants’ appeal on this issue is dismissed. Clause 9(a) does not apply to the valuation of completed works at the final payment stage. Clause 17 is spent to the extent that the defendants have already verified the extent of works done and agreed on the applicable rates. To the extent any residual discretion remains under cl 17, it must be exercised in good faith and not arbitrarily or capriciously, and the defendants have offered no basis for departing from the rates that were agreed or approved at the material time.

The defendants’ counterclaim in HC/S 1042/2020

233 We turn next to deal with the defendants’ Suit 1042 counterclaim. This is one of the three parts of the defendants’ counterclaim (see above at [15]). The counterclaim effectively sought to claw back final payments already made to the plaintiffs for 19 WOs in the Received Documents. The counterclaim was premised on the forgeries and/or fabrications in the supporting documents for these 19 WOs. For the reasons that follow, we disagree with the Judge’s analysis on the Suit 1042 counterclaim and dismiss the Suit 1042 counterclaim.

234 As we have mentioned (at [96]) above, we agree with the Judge that the operative documents for the Manpower Jobs are the PTs. As long as the PTs were prepared, verified and submitted, the information therein should be treated as accurate. The complication as regards the Suit 1042 counterclaim, which does not arise in relation to the plaintiffs’ claims in Suit 1040, is that the plaintiffs have not produced any supporting documents, including verified PTs, for the relevant WOs (Quantum Judgment at [10]).

235 The Judge reasoned that the plaintiffs “had the *opportunity* to produce the [PTs] in respect of the S[uit] 1042 counterclaim but did not do so” [emphasis added] and hence allowed the counterclaim for all the timesheets impugned by

Ms Lee (Quantum Judgment at [11]). Similarly, in attempting to resist this aspect of the plaintiffs’ appeal, the defendants argued that the plaintiffs “chose not to produce” the documents. We disagree with how the Judge and the defendants have framed the omission of the supporting documents for the relevant WOs from the PSD.

236 Critically, the Judge erred in failing to consider the reason put forth by the plaintiffs for being *unable* to produce the relevant supporting documents. The plaintiffs have explained that they disposed of the supporting documents for these WOs, which go back as far as 2014, because they had received full and final payment thereon. The defendants did not challenge Mr Navin Kumar on this point. Therefore, there was no reason to conclude that the plaintiffs’ explanation is not credible. It is not so much that the plaintiffs *did not* produce the relevant supporting documents, but rather that they *could not* do so.

237 Whether or not there were supporting documents in the PSD, the burden of proof was on the defendants to establish the counterclaim. The key question is whether the *defendants* have discharged their burden. The important point here is that the counterclaim rests on the supporting documents in the Received Documents that Ms Lee had impugned. But it must be kept in mind that the PTs were the operative documents. Thus, the defendants have to show:

- (a) where the counterclaim was based on the PTs in the Received Documents that were impugned, that the payment that they sought to recover was initially made based on *that* PT, *ie*, the original of that PT which was submitted in support of the payment claim; and
- (b) where the counterclaim was based on the DTs/WTs that were impugned, that no PTs were in fact submitted.

238 The defendants have failed on both accounts. Crucially, as we explained (see [113] and [120(a)]) above, the defendants’ inconsistent evidence on the retrieval of the documents cast serious doubt over the comprehensiveness of the DSD.

239 We make an additional observation as regards [237(b)] above. Consistent with their decision to premise their case on the court accepting the Received Documents as the accurate and complete record of documents received by them, the defendants never ran the alternative case that, for the WOs relevant to [237(b)] above, the plaintiffs were specifically requested to submit DTs/WTs (to the exclusion of any PTs). Their argument was run on the basis that PTs were never authorised and therefore never allowed in any circumstance, which we did not accept at [108] above).

240 It is *not* the defendants’ case that, even if the PTs were sometimes allowed, the PTs were specifically not allowed for the WOs relevant to [237(b)] above. If they did, there may have been some merit to the counterclaim, especially since the only documents in evidence for the counterclaim were in the Received Documents. Hence, while there was evidence that – *on some occasions* – the DTs/WTs were the relevant supporting documents (see [98] above), it would not be correct to conclude that this was so for the WOs in [237(b)] above.

241 Therefore, in relation to the Suit 1042 counterclaim, we agree with the plaintiffs that the Judge erred in accepting that the supporting documents in the DSD were the only supporting documents the plaintiffs in fact delivered to the defendant. Instead, it is likely that the plaintiffs submitted verified PTs in support of payment claims for those WOs, pursuant to which the defendants made payment. These PTs were not adduced by the defendants because of their

poor housekeeping. The forgeries and/or fabrications in other supporting documents which were not relied on for issuing payment thus have no bearing on the counterclaim.

Pre-judgment interest

242 Finally, we dismiss both the plaintiffs and defendants' cross-appeals on pre-judgment interest, subject to the consequential setting aside of pre-judgment interest on the Suit 1042 counterclaim.

243 The plaintiffs argue that they ought to have been awarded pre-judgment interest on at least the claims that they succeeded in. In any event, their action was not tainted by their forgeries and false claims, which was the reason cited by the Judge in refusing to award the plaintiffs pre-judgment interest. The plaintiffs also contend that the scope of the pre-judgment interest awarded to the defendants was too broad: first, no sums have been overpaid by the defendants because the plaintiffs' claims have not been tainted by forgery, and second, in any event, on the Judge's own reasoning, the defendants are only entitled to claim pre-judgment interest from the date they discovered the forgery, which was September 2023, when it was first pleaded, and not when the Defence and Counterclaim was first filed as the first iteration of that pleading did not contain allegations of forgery.

244 The defendants disagree. The defendants argue that the Judge was right that the action was tainted by the plaintiffs' forgeries and false claims and should not be entitled to pre-judgment interest. Further, the defendants argue that the pre-judgment interest granted to the defendants was not broad; in fact, they should be allowed to claim pre-judgment interest from the dates such payments were made to the plaintiffs. The defendants also argue that the

plaintiffs should not be allowed to take advantage of the fact that the defendants did not discover the fraud earlier.

245 The award of pre-judgment interest lies in the court’s discretion “to enable the courts to achieve justice across the infinite range of factual permutations that may confront the court by tailoring the award to fit the unique circumstances of each case” (*Grains and Industrial Products Trading Pte Ltd v Bank of India* [2016] 3 SLR 1308 at [138]). The cross-appeals on pre-judgment interest should be dealt with in three parts.

246 First, the plaintiffs have not succeeded in their appeal for pre-judgment interest *on their claim*, at least not completely. The Judge refused to award pre-judgment interest to the plaintiffs because their action was tainted by their forgeries and false claims. That would still apply as we have concluded forgeries, in so far as they exist on the Matching PTs, would taint the plaintiffs’ claim (see above at [131]–[154]).

247 Second, the plaintiffs’ challenge to the period awarded on the successful aspects (see [15] above) of the defendants’ counterclaim (*ie*, the counterclaim relating to administrative charges and overpayments made on the Matching PTs in which the Section Engineer’s signature has been established to be forged) is also rejected. Although there is some force to the plaintiffs’ argument that, based on the Judge’s own reasoning, the interest should only begin from when the defendants first discovered and alleged forgery, and not from when the first version of the Defence and Counterclaim was filed, we also see force in the defendants’ argument that the overpayments arose from the plaintiffs’ own fraud. That weighs against the plaintiffs even if the defendants could have discovered the fraud had they adopted an even more robust verification and approval system. On balance, the filing of the first Defence and Counterclaim

fell between both dates suggested by the parties on appeal, and we see no reason to disturb the Judge's decision in this regard.

248 Third, the defendants' broader submission that interest should instead run from the dates the payments were made is not accepted for the same reason. However, once the plaintiffs succeed in their appeal against the Suit 1042 counterclaim, the Judge's award of pre-judgment interest on the Suit 1042 counterclaim must be set aside (see above at [83]). In contrast, the award of pre-judgment interest on the administrative charges stands, because the defendants could have brought the claim for administrative charges much earlier. The Judge's award of pre-judgment interest, of 5.33% per annum only from the date of the Defence and Counterclaim (Amendment No 1) until the date on which the Liability Judgment was rendered, is to stand in this regard.

Conclusion

249 In conclusion, we allow both appeals in part:

(a) The defendants' appeal, AD 42, succeeds only on the Quantum Issue relating to the administrative charges. The defendants do not otherwise succeed on their challenges to the Judge's findings on the work processes, the operative documents, authenticity, forgery, the striking out application, or the contractual discretion issue.

(b) The plaintiffs' appeal, AD 36, succeeds on four substantive matters:

(i) first, on the Manpower Jobs, the plaintiffs are entitled to rely on the PTs in the PSD as the operative documents, save that any Matching PT tainted by a forged Section Engineer's signature cannot stand;

- (ii) second, the plaintiffs succeed on their *quantum meruit* claim for the Non-Invoiced STJs insofar as the eight partially signed JCRs prove that the relevant work was done;
 - (iii) third, the plaintiffs succeed on the Miscellaneous Jobs, because the evidence as a whole shows that the work was performed notwithstanding the absence of fully verified supporting documents; and
 - (iv) fourth, the plaintiffs succeed in having the Suit 1042 counterclaim dismissed, because the defendants did not discharge their burden of proving the existence of forgeries and/or fabrications, on which they sought to claw back payments on the operative documents.
- (c) As for pre-judgment interest, the parties' cross-appeals are dismissed:
- (i) the plaintiffs do not obtain interest on the claims on which they succeeded;
 - (ii) the defendants obtain neither the earlier start date, nor the application to a broader scope of their counterclaim, of prejudgment interest;
 - (iii) the award of interest on the Suit 1042 counterclaim falls away consequentially with the dismissal of that counterclaim; and
 - (iv) the award of interest on the administrative charges stands.

250 In light of the foregoing, we direct the parties to agree on the sums payable on the claim and counterclaim in accordance with this judgment, so that judgment may be entered for the specific amounts accordingly. The parties are granted liberty to apply in the event they are unable to agree. The parties are to revert on this issue within 14 days of the date of this judgment. We will address costs after the issue of quantum is resolved.

Hri Kumar Nair
Justice of the Court of Appeal

Woo Bih Li
Judge of the Appellate Division

Kannan Ramesh
Judge of the Appellate Division

Devathas Satianathan, Harish Kumar s/o Champaklal, Marissa Zhao Yunan, Kiran Jessica Makwana and Yong Yi Xiang (Rajah & Tann Singapore LLP) for the appellants in AD/CA 36/2025 and the respondents in AD/CA 42/2025;
Koh Swee Yen SC, Lin Chunlong, Chua Xinyi Cindy, Suraj Lingaraj Bagalkoti, Loh Zhi Wei Reinvs and Koh Chiu Hwee (WongPartnership LLP) for the respondents in AD/CA 36/2025 and the appellants in AD/CA 42/2025.
