Hua Rong Engineering Pte Ltd
v
Civil Tech Pte Ltd

[2017] SGHC 179

High Court — Originating Summons No 289 of 2017
(Summons No 1555 of 2017)
Tan Siong Thye J
15, 30 May 2017

Building and construction law — Sub-contracts — Claims by sub-contractor

Building and construction law — Statutes and regulations

24 July 2017 Judgment reserved.

Tan Siong Thye J:

Introduction

1 Summons No 1555 of 2017 ("SUM 1555") is an application to set aside an adjudication determination ("the AD") made under the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) ("the SOP Act") by an adjudicator, Mr Chung Khoon Leong John ("the Adjudicator"), on 15 February 2017. SUM 1555 arises in the context of an ongoing application for leave to enforce the AD, *vide*, Originating Summons No 289 of 2017 ("OS 289").

The facts

2 The applicant in OS 289 and the respondent in SUM 1555 is Hua Rong Engineering Pte Ltd ("HRE"). The respondent in OS 289 and the applicant in SUM 1555 is Civil Tech Pte Ltd ("CTP").

3 The parties were involved in two construction projects by the Land Transport Authority, the T211 project (the Bright Hill MRT station of the Thomson–East Coast Line) and the C933 project (the Jalan Besar MRT station of the Downtown Line). CTP was a sub-contractor of the main contractor, which is not involved in these proceedings. HRE in turn was a sub-contractor engaged by CTP to supply labour for construction relating to both the T211 project and the C933 project. I shall refer to the contracts between CTP and HRE relating to the two projects as "the T211 contract" and "the C933 contract" respectively.

4 On 6 December 2016, HRE submitted Daywork Claim No 13 for the amount of $601,873.40. This was for work done in respect of the T211 contract for the period from 1 April to 30 July 2016. CTP accepted this claim and acknowledged this amount as owing to HRE, but in CTP's Payment Certificate 9 (which the parties accepted as having functioned as a payment response) it certified a negative value, *ie*, that nothing was due to HRE. This was because CTP alleged that HRE had made false and fraudulent payment claims under the C933 contract when HRE had not in fact performed those works. Thus, as stated in Payment Certificate 9, CTP claimed that it had overpaid HRE in respect of the C933 contract and sought to withhold a sum of $1,468,276.32.

5 On 11 January 2017, HRE lodged an adjudication application in respect of Daywork Claim No 13 after giving due notice to CTP. The latter in its

adjudication response relied on the same grounds (fraud and overpayment in respect of the C933 contract) that it had stated in Payment Certificate 9. CTP argued that the fraud and overpayment in respect of the C933 contract entitled CTP to set off this amount (*ie*, $1,468,276.32) from the payment claim of $601,873.40 under the T211 contract. The dispute was referred to the Adjudicator, who ruled that CTP could not as a matter of law set off a counterclaim based on another contract. In his view, the SOP Act only allowed him to take into consideration cross-claims, counterclaims and set-offs arising under the same construction contract. Hence, he ruled that CTP had to pay HRE the amount of $601,873.40.

6 CTP was dissatisfied with the decision of the Adjudicator and filed SUM 1555 which is now before this court.

The issues

7 The pivotal issue in this summons is whether the Adjudicator was right to confine his deliberation to matters concerning the T211 contract, to the exclusion of the C933 contract. Put more generally, the question is whether, in an adjudication under Part IV of the SOP Act, a respondent is entitled to raise, and an adjudicator is entitled to consider, cross-claims, counterclaims and set-offs which arise *outside of the context of the particular contract* which is the subject of the payment claim in question. This is essentially a question of jurisdiction, as it concerns whether cross-claims, counterclaims and set-offs of that nature fall within the scope of matters which an adjudicator is empowered to consider and decide in an adjudication application.

8 In order to address this main question, it is necessary to closely examine two provisions in the SOP Act which are especially germane to this case. The

first provision is s 15(3), the relevant portion of which prohibits a respondent from including in an adjudication response, and prohibits an adjudicator from considering, "any reason for withholding any amount, including but not limited to any cross-claim, counterclaim and set-off" unless it was included in the payment response. The other key provision is s 17(3), which lists the matters which the adjudicator "shall only have regard" in the determination of the adjudication application, thereby limiting the scope of matters that the adjudicator can consider.

9 In addition, other provisions of the SOP Act as well as, in a supplementary role, the Building and Construction Industry Security of Payment Regulations (Cap 30B, Rg 1, 2006 Rev Ed) ("the SOP Regulations") provide necessary context for the analysis. In line with the purposive approach to statutory interpretation, I must consider the SOP Act as a whole and from a broader perspective in order to ascertain whether the proposed reading of the aforesaid provisions are congruous with, and accord with, the overall purposes and objectives of the SOP Act.

10 In addition to the main issue, two other issues are whether the Adjudicator breached s 17(3) of the SOP Act (which sets out the matters which an adjudicator shall consider) and whether CTP's allegations of fraud and unjust enrichment are made out.

The parties' submissions

11 Following the initial round of written submissions and the first oral hearing, I formed the view that further submissions were necessary on issues including the purpose of the SOP Act and the position taken by other jurisdictions in relation to similar legislation. There were a total of three sets of

written submissions by HRE, four sets of written submissions by CTP, and two oral hearings before me. I summarise the salient points below.

CTP's submissions

12 CTP submits that the plain reading of s 15(3) of the SOP Act permitted the Adjudicator to consider any cross-claim, counterclaim or set-off arising from another contract that was not the subject matter of the payment claim in question, so long as that claim or set-off was included in the payment response. Thus, the Adjudicator should have allowed CTP to set-off CTP's claim in respect of the C933 Contract against HRE's claim under the T211 contract.

13 CTP argues that the references in s 15(3) to "cross-claim" and "counterclaim" indicate that a respondent is entitled to raise a cross-claim or counterclaim arising from another contract. If Parliament had intended to confine the payment response to the same contract, it would not have included the references to "cross-claims" and "counterclaims", as these suggest that it is permissible for an adjudicator to consider separate and independent claims from a contract or contracts other than the contract which was the subject of the payment claim in question. CTP further contends that if Parliament had intended to limit s 15(3) to cross-claims, counterclaims or set-offs arising from the same contract, clear language along those lines would have been used.

14 CTP places reliance on s 36(4) of the SOP Act, which provides that nothing in the SOP Act (except for s 36(1), which effectively prohibits contracting out of the SOP Act) shall "limit or otherwise affect the operation of any other law in relation to any right, title, interest, privilege, obligation or liability of a person arising under or by virtue of a contract or an agreement." CTP further relies on the common law presumption that a statute does not, in

the absence of either express wording or a clearly evinced intention, limit the non-statutory (common law and equitable) rights which individuals have. CTP also refers to the similar principle applicable to contractual interpretation, set out in *Gilbert-Ash (Norton) Limited v Modern Engineering (Bristol) Limited* [1974] AC 689 ("*Gilbert-Ash*"), that "one starts with the presumption that neither party intends to abandon any remedies for its breach arising by operation of law, and clear express words must be used in order to rebut this presumption" (at 717, *per* Lord Diplock). On these bases, CTP argues that s 15(3) should be read consistently with the rights of cross-claim, counterclaim and set-off arising under the common law and in equity. Accordingly, CTP asserts that it was entitled to raise the alleged fraudulent claims relating to the C933 contract as a cross-claim, counterclaim or set-off against HRE's payment claim in the T211 contract.

15 Furthermore, CTP adds that s 17(3)(*d*) requires an adjudicator to have regard to the payment response. In this case, CTP had explained in the payment response that there were fraudulent claims made by HRE under the C933 contract. This resulted in HRE being enriched to the amount of $1,468,276.32. Hence, CTP was entitled to withhold payment relating to the T211 contract.

16 CTP buttresses its arguments with a comparison to the approach taken in other jurisdictions in relation to similar legislation: specifically, that in the United Kingdom, the Australian states of New South Wales and Victoria, and New Zealand. CTP's argument is that with the exception of Victoria (which has an express statutory exclusion of cross-contract cross-claims, counterclaims and set-offs), none of these jurisdictions have interpreted their legislation as excluding cross-contract cross-claims, counterclaims and set-offs.

17 CTP also raises the policy argument that HRE's interpretation (which, for convenience, I shall refer to as "the single-contract interpretation") would adversely affect the standard form contracts used in the building and construction industry.

18 CTP further submits that the Adjudicator's refusal to consider the payment response and the adjudication response was not a mere error of law (which would, without more, not be a reason to disturb the AD: see Chow Kok Fong, *Security of Payments and Construction Adjudication* (LexisNexis, 2nd Ed, 2013) at para 19.37), but one of a type requiring the AD to be set aside. CTP also makes a number of substantive factual and legal arguments regarding the validity of its claim under the C933 contract which is the subject of its cross-claim, counterclaim or set-off.

HRE's submissions

19 HRE urges the court to dismiss this application on the basis that the SOP Act, and in particular s 15(3), requires that any withholding of a payment relate to the same contract that is the subject of the adjudication application. Hence, the Adjudicator was right to disregard the reasons for withholding stated in the payment response as they were an attempt to raise cross-claims, counterclaims or set-offs arising from a different contract, *ie*, the C933 contract. The rest of HRE's submissions are mostly responsive to those of CTP.

My decision

20 I shall now deal with the various issues that I have raised above (at [7]). For ease of reference, I will hereinafter refer to the reasons for withholding payment of the sums stated in the payment response as "withholding reasons".

Issue 1: Whether s 15(3) of the SOP Act allows cross-contract cross-claims, counterclaims or set-offs, or whether it is restricted to withholding reasons arising under the same contract

The overall purpose of the SOP Act

21 Before I deal with the main issue in these proceedings, I would like to state the purpose of the SOP Act so as to place the issue in its proper context. This is necessary not only as a matter of common sense, but also because s 9A(1) of the Interpretation Act (Cap 1, 2002 Rev Ed) mandates the court to prefer "an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not)".

22 The object and purpose of the SOP Act was definitively set out by Sundaresh Menon CJ, delivering the judgment of the Court of Appeal in *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 ("*W Y Steel*"). To paraphrase, the court held (at [18]) that Parliament had introduced the SOP Act to provide the construction industry with a low-cost, efficient and quick process for the adjudication of payment disputes so that main contractors do not unfairly or unreasonably delay or withhold payment from their sub-contractors. Such actions or strategies by main contractors would invariably hinder the downstream cash flow which is the life blood of the construction industry. This was and is of special concern given that sub-contractors often do not have much financial resilience, and may rely on the anticipated payments coming in on time in order to meet their own obligations to other parties. Thus, disputes between contractors and sub-contractors over entitlements to payment could have serious knock-on effects on other players in the construction industry. In the absence of a mechanism to speedily resolve such disputes, the proliferation of such

disputes, and the delay in the resolution of such disputes, would carry the potential to cause insolvencies and significantly disrupt the industry as a whole.

23 As observed in *W Y Steel*, the SOP Act was intended to solve this problem in the following manner:

> 18 … The Act achieves its stated purpose of facilitating cash flow in the building and construction industry in two principal ways. First, it establishes that parties who have done work or supplied goods are entitled to payment as of right: see s 5 of the Act. Second, it creates an intervening, provisional process of adjudication which, although provisional in nature, is final and binding on the parties to the adjudication until their differences are ultimately and conclusively determined or resolved: see s 21 of the Act. This is what is referred to as temporary finality.
>
> 19 As stated by Mr Cedric Foo Chee Keng ("the Minister of State"), the then Minister of State for National Development, in his speech at the second reading of the Building and Construction Industry Security of Payment Bill 2004 (Bill 54 of 2004) ("the SOP Bill"), which was later enacted as Act 57/2004 (see Singapore Parliamentary Debates, Official Report (16 November 2004) vol 78 at col 1112 ("Singapore Parliamentary Debates vol 78, col 1112")):
>
> > The SOP Bill will preserve the rights to payment for work done and goods supplied of all the parties in the construction industry. It also facilitates cash flow by establishing a fast and low cost adjudication system to resolve payment disputes. …

24 At the same time, Parliament recognised that quick justice may not be perfect. An adjudication process that was speedy enough to ensure that payment was made before its withholding became commercially dangerous was necessary. It was acknowledged that the adjudication process might not be expected to provide the same level of scrutiny and sophisticated legal analysis as would be available before a court or an ordinary arbitral tribunal. In that sense, adjudication under the SOP Act delivers a "roughshod" kind of justice, which is compensated for by the fact that the adjudication only has "temporary

finality", *ie*, finality until the dispute is "reopened at a later time and ventilated in another more thorough and deliberate forum" (*W Y Steel* at [22]). As the court further observed in *W Y Steel* (at [20]), one aspect of this notion of temporary finality is:

> … the idea that the parties to a construction contract should "pay now, argue later": *per* Ward LJ in *RJT Consulting Engineers Ltd v DM Engineering (Northern Ireland) Ltd* [2002] 1 WLR 2344 at [1]. *The appeal of this philosophy is apparent: payments, and therefore cash flow,* ***should not be held up by counterclaims and claims for set-offs*** *that may prove to be specious at the end of lengthy and expensive proceedings that have to be undertaken in order to* ***disentangle the knot of disputed claims and cross-claims****. …*
>
> [emphasis added in italics and bold italics]

As this passage recognises, arguments concerning cross-claims, counterclaims and set-offs can easily grow out of control, such that they can only be resolved through long and tedious deliberation and analysis. Implicit here is the recognition that in order to fulfil its purpose, an SOP Act adjudication cannot be expected to embrace every matter which a party would be entitled to raise in litigation or arbitration. Some arguments are best pursued in another forum.

25 Bearing this important backdrop in mind, I turn to the specific provisions of the SOP Act which guide me in the present case.

The relevant provisions of the SOP Act

26 As I earlier stated, ss 15 and 17 of the SOP Act are of particular relevance. However, some of the earlier provisions of the SOP Act (namely, ss 2, 5, 10 and 12) which set out the relationship between progress payments, payment claims, and adjudication applications are also important. This is because the language used in those provisions casts light on whether the

adjudication process was intended to be confined to a single contract, or to potentially encompass matters relating to multiple contracts.

27 In this connection, the recent decision of Vinodh Coomaraswamy J in *Rong Shun Engineering & Construction Pte Ltd v C.P. Ong Construction Pte Ltd* [2017] SGHC 34 ("*Rong Shun*") is instructive and merits reproduction at some length. That case concerned whether a payment claim, and an adjudication application based thereon, can arise out of more than one contract, or whether a rule of "one payment claim, one contract" applied. Coomaraswamy J considered the relevant provisions (namely, ss 2, 5, 10 and 12 of the SOP Act) and concluded that such a rule did apply, for the following reasons:

> 30 It is true that no provision in the Act expressly stipulates that a payment claim within the meaning of the Act must arise from only one contract. However, the Act in all but one section consistently uses only the singular noun "contract" coupled with either the singular article "a" or "the". There is only one section in the entire Act which refers to "contracts", *i.e.* in the plural. That is s 4(2)(*c*). But that section deals only with the disapplication of the Act to a prescribed "class of contracts". That provision is not relevant to this question or to the analysis of it which follows in this judgment.
>
> 31 I begin the analysis by considering four sections which are fundamental to the scheme of the Act. I consider them only insofar as they relate to construction contracts within the meaning of the Act, leaving aside for the moment supply contracts. These four sections are ss 2, 5, 10 and 12. They define or establish, in turn: (i) a progress payment, (ii) a claimant's entitlement to a progress payment; (iii) a claimant's power to serve a payment claim in respect of a progress payment; and (iv) a claimant's entitlement to make an adjudication application.
>
> 32 Section 2 defines a "progress payment". It speaks expressly of a progress payment as a payment arising under "a contract":
>
> > "progress payment" means a payment to which a person is entitled for the carrying out of construction work, or the supply of goods or services, under *a contract* …;
> >
> > [emphasis added]

33 Section 5 confers, for present purposes, a statutory entitlement to a progress payment on every person who carries out construction work. It too speaks expressly of an entitlement to a progress payment arising under "a contract":

> **Entitlement to progress payments**
>
> 5. Any person who has carried out any construction work, or supplied any goods or services, under *a contract* is entitled to a progress payment.

34 A person who is or claims to be entitled to a progress payment under s 5 is defined by s 2 of the Act as "a claimant". A claimant has the power, under s 10(1) of the Act, to serve a payment claim in respect of "a progress payment". Both ss 10(1)(*a*) and 10(1)(*b*) again refer expressly to "*the* contract":

> **Payment claims**
>
> 10.—(1) A claimant may serve *one payment claim* in respect of a progress payment on —
>
> > (a) one or more other persons who, under *the contract* concerned, is or may be liable to make the payment; or
> >
> > (b) such other person as specified in or identified in accordance with the terms of *the contract* for this purpose.
>
> [emphasis added]

The purpose of these subsections is to stipulate on whom a payment claim must be served, rather than to tie one payment claim back to one contract. But the clear tenor of the subsections is that the service which they contemplate takes place pursuant to only one contract in connection with any one payment claim.

35 Section 10(3)(*b*) then requires the payment claim to be "made in such form and manner…as may be prescribed". The form and manner is prescribed by rule 5 of the Building and Construction Industry Security of Payment Regulations (Cap 30B, Rg 1, 2006 Rev Ed). Rule 5(2)(*b*) once again contemplates a payment claim arising from only one contract. It requires a payment claim to "identify *the contract* to which the progress payment that is the subject of the payment claim relates" (emphasis added).

36 Finally, s 12(1) of the Act establishes a claimant's entitlement to make an adjudication application subject to

> certain conditions being met. This provision too uses the singular: "a … contract":
>
> > **Entitlement to make adjudication applications**
> >
> > 12.—(1) Subject to subsection (2), a claimant who, in relation to *a construction contract*, fails to receive payment by the due date of the response amount which he has accepted is entitled to make an adjudication application under section 13 in relation to the relevant payment claim.
> >
> > (2) Where, in relation to *a construction contract* —
> >
> > …
> >
> > (3) A claimant who has served a payment claim in relation to *a supply contract* is entitled to make an adjudication application under section 13 in relation to the payment claim if —
> >
> > …
> >
> > [emphasis added]
>
> 37 The respondent is therefore correct that the Act mandates that a "payment claim" within the meaning of s 10 of the Act must arise from one contract. …

28 To summarise the reasoning in the above passage from *Rong Shun*, Parliament's consistent use of the phrase "a contract", and variations thereon similarly adopting the singular form, indicated that payment claims as well as adjudications under the SOP Act were both intended to be confined to a single contract. Each adjudication application is to relate to one payment claim, and each payment claim is to relate to one contract.

29 I note that although *Rong Shun* was the first judicial decision to establish this position, Coomaraswamy J's astute analysis was not unprecedented. Reasoning along similar lines, albeit in a necessarily truncated form, had been employed by the adjudicator Mr Raymond Chan in *AJB Pte Ltd v AJC Pte Ltd* [2011] SCAdjR 588 ("*AJB*") (at [36]–[45]). In that adjudication determination, Mr Chan noted an additional provision which reinforced his conclusion:

reg 7(2) of the SOP Regulations, which provides that every adjudication application shall "contain the particulars of *the relevant contract*" [emphasis added]. Again, the word is used in the singular form, implying that there can only be one "relevant contract" for the purpose of an adjudication.

30 To the provisions discussed in *Rong Shun* and *AJB*, I would add the following:

(a) Section 11(1) of the SOP Act, which requires "a respondent named in a payment claim served in relation to *a construction contract*" [emphasis added] to respond to the payment claim.

(b) Section 11(1)(*a*), which states that the payment response to the claimant has to be done "by the date as specified in or determined in accordance with the terms of *the construction contract*" [emphasis added].

(c) Section 11(3), which indicates what should be included in the payment response and uses the phrase "[a] payment response provided in relation to *a construction contract*" [emphasis added].

(d) Section 15(3)(*a*), which clearly refers to "*a construction contract*" [emphasis added].

(e) Regulation 6 of the SOP Regulations, which uses (in reg 6(1) as well as reg 6(2)) the phrase "payment response provided in relation to *a construction contract*" [emphasis added].

These provisions were highlighted by HRE both in this application and before the Adjudicator, who referred to them in the AD (at [34]). CTP was unable to

draw the court's attention to any provision that indicates that an adjudicator can consider matters relating to any other contract between the parties.

31 I am in full agreement with the position stated in *Rong Shun* and *AJB*. That said, the question before me in this application is not whether a *claimant* may base his claim on multiple contracts, but whether a *respondent* may rely on withholding reasons that arise in relation to multiple contracts. In theory, the answer to both questions need not be the same: perhaps a claimant can only rely on one contract as the basis for a payment claim, but a respondent is entitled to rely on any contract (or, indeed, any non-contractual reason) to resist that claim. That would, however, be a curious conclusion, and in determining whether that is indeed what Parliament intended, the reasoning and conclusion in *Rong Shun* and *AJB* provide a useful starting point and an indication of the general philosophy underlying the SOP Act.

32 This brings me to the provisions with which this application is most closely concerned. Section 15 of the SOP Act deals with adjudication responses and it reads as follows:

> **Adjudication responses**
>
> 15.—(1) A respondent shall, within 7 days after receipt of a copy of an adjudication application under section 13(4)(*a*), lodge with the authorised nominating body a response to the adjudication application.
>
> (2) The adjudication response —
>
> (*a*) shall be made in writing addressed to the authorised nominating body;
>
> (*b*) shall identify the adjudication application to which it relates;
>
> (*c*) shall contain such information or be accompanied by such documents as may be prescribed; and
>
> (*d*) may contain or be accompanied by such other information or documents (including expert reports,

> photographs, correspondences and submissions) as the respondent may consider to be relevant to the adjudication response.
>
> (3) *The respondent shall not include in the adjudication response, and the adjudicator shall not consider, any reason for withholding any amount, including but not limited to any cross-claim, counterclaim and set-off, unless —*
>
> (*a*) where the adjudication relates to *a construction contract*, the reason was included in the relevant payment response provided by the respondent to the claimant; or
>
> (*b*) where the adjudication relates to *a supply contract*, the reason was provided by the respondent to the claimant on or before the relevant due date.
>
> …
>
> [emphasis added]

The most pertinent part of this section is subsection (3), the salient parts of which I have italicised above.

33 Additionally, s 17 of the SOP Act concerns, among other things, an adjudicator's subject-matter jurisdiction, and provides that one of the matters to which an adjudicator shall have regard is "the provisions of *the contract* to which the adjudication application relates" [emphasis added] (see s 17(3)(*b*) of the SOP Act).

34 The crucial question with regard to ss 15(3) and 17(3)(*b*) is whether the language used indicates that Parliament intended that the same position which applies to payment claims applies as well to withholding reasons which can be considered in an adjudication under the SOP Act – namely, that they must arise out of a single contract only. Logically, this must be so. The language used is functionally identical: just as the SOP Act refers to "a" or "the" contract in the provisions concerning progress payments, payment claims and adjudication applications, it also refers to "a" or "the" contract in the provisions concerning

adjudication responses and withholding reasons. It is this clear language which HRE primarily relies on, and which the Adjudicator found to be determinative (the AD at [52]–[54]).

The policy justification for single-contract interpretation

35 The analysis thus far has been primarily textual in nature. Looking now beyond the language used in the relevant provisions, I observe what is, to my mind, a convincing reason of policy (not as a freestanding interpretation of the law, but one that takes into account the object and purpose of the SOP Act as well as the motivations underlying Parliament's introduction of the SOP Act) which militates toward adopting the single-contract interpretation. That reason is essentially what was identified in *Rong Shun* ([27] *supra*) (at [48]), where it was observed that:

> … [a]llowing claims and disputes which arise from several contracts – which may contain materially different terms, including materially different payment terms – to be confounded in one payment claim and thereafter in one adjudication application has the potential to cause unfairness to the respondent, to increase the decision-making burden on the adjudicator and thereby to increase costs and to increase delay in adjudication. All of that is antithetical to the purposes of the Act.

36 Coomaraswamy J was referring in the above passage to the situation if a *claimant* were permitted to bring a payment claim and an adjudication application based on multiple contracts, but in my view his comments apply equally, *mutatis mutandis*, to the present scenario. Just as bringing in multiple contracts as the basis for a claim would unduly prolong and complicate an adjudication, so, too, would bringing in multiple contracts as the basis for cross-claims, counterclaims or set-offs. This cannot have been the intention of Parliament; otherwise, what was meant to be a simple, quick and fair process for the resolution of payment disputes may instead become entangled in a web

of contractual complexity which would dramatically slow down the adjudication process.

37 Indeed, it appears to me that if CTP's interpretation were to be adopted, it would have consequences going beyond requiring an adjudicator to consider multiple construction contracts in a single adjudication. CTP's interpretation implies that there is *no limit* to the scope of matters which an adjudicator must consider as potentially valid withholding reasons in an adjudication determination. An adjudicator may, if CTP is right, be called upon to decide legal and factual issues relating to anything under the sun – for instance, contracts other than construction contracts, or tortious claims unrelated to construction contracts – so long as they are asserted to give rise to a liquidated monetary claim by the respondent against the claimant.

38 Such an interpretation appears to me to be unrealistic given the practical limitations of adjudication under the SOP Act. Aside from the tight timelines that apply (which the Adjudicator noted in [59] of the AD), I note as well that under the eligibility requirements for appointment as an adjudicator under s 29(1) of the SOP Act, read with reg 11(1) of the SOP Regulations, legal training is only one of many possible qualifications for a person to serve as an adjudicator. Thus, while an adjudicator will invariably be well-equipped to deal with matters arising in connection with a construction (or supply) contract, he or she may not be equally well-equipped to deal with the legal intricacies from diverse areas of the law or with factual controversies arising in different contexts. I am not the first to foresee this undesirable consequence. As Young JA observed (albeit in *obiter*) of similar New South Wales legislation in *Perform (NSW) Pty Ltd v MEV-AUS Pty Ltd* [2009] NSWCA 157 ("*Perform*") (at [135]):

> … the adjudicator under the Act is intended to be a person skilled in the administration of construction contracts. It would be odd for the legislature to compel such a person to consider cross-claims which might involve other contracts.

It was for that reason that Young JA expressed doubts (at [141]) as to whether equitable set-off could be raised in such an adjudication, although it was not necessary to decide the issue in that case, as the cross-claim there had not been listed in the payment response.

39 In the present dispute, it is true that the Adjudicator was in fact an experienced solicitor, and that the matters raised by CTP fell well within those ordinarily dealt with by an adjudicator, albeit they pertained to a different construction contract. But this was merely fortuitous: the appointed adjudicator could have had any approved background, and CTP would, on its own case, have been entitled to raise *any* cross-claim, counterclaim or set-off (or, indeed, any other withholding reason) arising from *any* set of facts. The point remains that CTP's expansive reading of the withholding reasons available under an SOP Act adjudication, if accepted, could potentially require an adjudicator to consider an unbounded universe of claims and arguments. This would cut against the statute's purpose of offering a contained and expedited means of giving temporary finality to payment disputes. It would also open the process up to abuse: an unscrupulous main contractor could, if he wished, bring in a multitude of dubious arguments, including cross-claims, counterclaims and set-offs, in order to enlarge and obfuscate the primary payment dispute, bog down the adjudication process, and overwhelm the sub-contractor bringing the claim. The philosophy of "pay now, argue later" which lies at the heart of the concept of temporary finality (see the passage from *W Y Steel* at [20], quoted at [24] above) would be hollowed out.

40 For these reasons, I am of the view that both the language of the SOP Act and the SOP Regulations, and their underlying object and purpose, require the court to adopt the single-contract interpretation.

Counter-arguments raised by CTP

41 Naturally, CTP seeks to persuade me that the single-contract interpretation is, despite the above reasons, not the correct interpretation. It raises five main counter-arguments to that end. Although I appreciate CTP's counsel's assiduous research on these points, I am ultimately unconvinced. I shall discuss each counter-argument in turn.

(1) The wording of s 15(3) of the SOP Act – would the interpretation proposed by HRE require it to be drafted differently?

42 First, CTP argues that the wording of s 15(3) is unclear, and that if Parliament had intended (as HRE contends) to confine the cross-claims, counterclaims and set-offs only to the same construction contract, then subsection (3) should have been drafted in this manner:

> The respondent shall not include in the adjudication response, and the adjudicator shall not consider, any reason **which does not arise in relation to the same contract** for withholding any amount, including but not limited to any cross-claim, counterclaim and set-off …
>
> [hypothetical addition in bold]

CTP asserts that the fact that such language was *not* used shows that Parliament intended to allow respondents to raise *cross-contract* cross-claims, counterclaims and set-offs. CTP further argues that the words "including but not limited to" confirm that the withholding reasons are not limited in scope.

43 I do not agree. As the Adjudicator noted (in the AD at [58], regarding the Court of Appeal's comments on s 15(3) of the SOP Act in *W Y Steel* ([22] *supra*)), the function of s 15(3) is to set out what a respondent *shall not raise* and an adjudicator *shall not consider*. If the words "which does not arise in relation to the same contract" had been added, it would mean that the respondent shall not include in the adjudication response any cross-claim, counterclaim and set-off which does not arise in relation to the same contract. In other words, the withholding reasons in the payment response would have to relate to other contracts and not the contract from which the payment claim originated. CTP's proposed hypothetical wording seems absurd. This may not be the intention of CTP's suggestion and I understand what CTP is advocating, but the point remains that it is simply untrue that Parliament would have needed to add any further words to support the single-contract interpretation. The words which CTP suggests could have been added would, in fact, have changed the meaning of the provision entirely.

44 As for the words "including but not limited to", CTP appears to have misunderstood the scope of this phrase. The function of s 15(3) is to prohibit the respondent from raising withholding reasons unless the reasons are in the payment response that is served on the claimant. Thus, the significance of "including but not limited to" is that it *broadens the prohibition*. Without that phrase, s 15(3) might give the impression that *only* cross-claims, counterclaims and set-offs need to be listed in the payment response in order to be raised and considered in adjudication. By adding that phrase, Parliament made it clear that, regardless of its precise nature, a withholding reason *could not* be raised or considered in adjudication unless it had been listed in the payment response. The phrase could not be read to imply the reverse, *ie*, that there is no further

restriction other than the requirement of having been listed in the payment response.

45 On a related note, CTP also argues that since there are some places in the SOP Act (namely, ss 10(4), 24(3) and 26(5)(*b*)) where the phrase "the same contract" is used, the absence of the word "same" elsewhere would imply that in the latter case, no such restriction applied. I find this logic too tenuous. Those other provisions all concern payment claims or defaults occurring in the past. It is natural and prudent, therefore, for the drafters to have included the word "same" there, in order to make clear that those provisions would not apply to past payment claims or defaults in relation to different contracts between the same parties. It does not follow that every other reference to a contract which lacks the modifier "the same" should be read as meaning "the same or a different contract". In my view, the instances referred to by CTP only serve to further emphasise the fact that the SOP Act is meant to operate on, and resolve disputes concerning, one contract at a time, and not to entangle multiple contracts in a single dispute.

46 In my view, s 15(3) as drafted makes it crystal clear, when read in its proper context, what the true position is: where a construction contract is concerned, withholding reasons (of whatever nature) can only be considered if they were included in the payment response *and* they arise in relation to the same contract. The second conjunctive requirement is admittedly implicit, but that does not mean it is unclear.

(2) Section 36(4) of the SOP Act and the *Gilbert-Ash* principle

47 Secondly, CTP relies on s 36(4) of the SOP Act, the principle in *Gilbert-Ash*, and the principle that Parliament should not be taken to have removed

common law and equitable rights in the absence of express wording or a clearly evinced intention. I have summarised this argument in sufficient detail at [14] above, but in short, CTP argues that s 15(3) should be read to preserve a respondent's common law and equitable rights, such that CTP was entitled to set-off the amounts that were paid to HRE for false and fraudulent claims arising from the C933 contract against the claim under the T211 contract.

48 CTP's argument is erroneous. The common law and equitable rights of cross-claim, counterclaim and set-off are indeed available and are expressly provided in s 15(3). CTP would be entitled to rely on them as long as they were stated in the payment response. However, the *scope* of these common law and equitable rights is limited to the same construction contract that gives rise to the adjudication application. This interpretation does not offend s 36(4), as that provision only operates "except as provided in subsection (1)". Referring back to s 36(1), that subsection in turn provides that "[t]he provisions of this Act shall have effect notwithstanding any provision to the contrary in any contract or agreement." The question in the present application, which is also the question which was before the Adjudicator, is this: what *is* the effect of s 15(3)?

49 For the reasons earlier discussed, I agree with the Adjudicator that the effect of s 15(3) is clearly and implicitly to restrict the scope of withholding reasons to those arising in relation to the contract that gave rise to the payment claim and not in relation to other or multiple contracts. Once that has been determined, s 36(4) can be of no assistance to CTP. Likewise, I am not disregarding the presumption against the removal of rights. Rather, I am of the view that the SOP Act, properly understood, does clearly evince Parliament's intention to restrict the scope of potential withholding reasons to those relating to the construction contract at hand.

(3) The words "cross-claim, counterclaim or set-off" – do they imply that cross-contract withholding reasons can be considered?

50 Thirdly, CTP argues that the words "cross-claim, counterclaim or set-off", by their very definitions, included cross-contract situations.

51 This point can be dealt with summarily. It is indisputable that the three words are not, by their definitions, *necessarily* limited to a single-contract context. They are not inherently so restricted – they may arise in relation to a single contract, or multiple contracts. I do not think the Adjudicator meant to suggest otherwise. However, the question in this dispute is not whether these words were necessarily and in every instance limited to a single-contract context, but rather, whether the SOP Act included an implicit single-contract restriction on withholding reasons generally.

(4) The position taken by other jurisdictions

52 Fourthly, CTP argues that the United Kingdom, the Australian state of New South Wales, and New Zealand interpret their equivalent legislation as allowing cross-contract cross-claims, counterclaims and set-offs to be raised and considered, and that Singapore should follow suit.

THE UNITED KINGDOM

53 With regard to the United Kingdom, I note first that any jurisprudence or case law relating to the previous version of the Housing Grants, Construction and Regeneration Act 1996 (c 53) (UK) ("HGCRA") is of little guidance. This is because the previous s 110(2)(*b*) of the HGCRA, which expressly allowed cross-contract set-off ("set-off or abatement… by reference to any sum claimed to be due *under one or more other contracts*" [emphasis added]), has since been repealed by Part 5 of Schedule 7 of the Local Democracy, Economic

Development and Construction Act 2009 (c 20) (UK) ("LDEDCA"). As for the post-amendment position, it appears that the issue has yet to be tested in court. CTP was only able to point to two academic sources for the proposition that cross-contract set-off continues to be available under the post-amendment HGCRA.

54 The first is Dominique Rawley QC *et al*, *Construction Adjudication and Payments Handbook* (Oxford UP, 2013) (at para 13.138), which states:

> … all reference to cross-contract set-off has been removed and the 2009 Act [*ie*, the LDEDCA] is silent on the matter. It is thought that, where the right to set-off exists, the right to do will remain and that the set-off should continue to be the subject of a valid payment or pay-less notice.

No authority for this proposition, and no further elaboration as to the reasoning behind this proposition, is provided. With respect, this appears to be merely an unsupported opinion of the author, and it is difficult to give much weight to it for that reason.

55 The second authority cited by CTP is Crispin Winser, "Set off in adjudication" (2014) 30(2) Construction Law Journal 103, which first notes the silence in the amended HGCRA and the LDEDCA and then states (at 105):

> … Strictly speaking, there is therefore no right to bring a counterclaim in an adjudication other than insofar as it operates as a substantive defence (i.e. by way of equitable set-off).

It is difficult to see how this advances CTP's case. The question in the present application is not whether equitable set-off can be raised in an SOP Act adjudication but rather whether it has to be one that arises in relation to the same contract that the adjudication concerns. Winser's article has nothing to say about

that. Moreover, like the first academic source, no authority or reasoning is given for this particular point.

NEW SOUTH WALES, AUSTRALIA

56 CTP recognises that there is one unfavourable authority in the form of the *Perform* case ([38] *supra*), in which Young JA expressed doubt as to the applicability of equitable set-off in adjudications under the New South Wales Building and Construction Industry Security of Payment Act 1999. However, CTP seeks to downplay the significance of *Perform*, as Young JA's comments were *obiter* and were not reasoned in great detail. While it is true that the comments were *obiter* and not based on any lengthy examination of the authorities, I find Young JA's observation on the scope of an adjudicator's expertise to be a sensible one.

57 Although I do not consider *Perform* to weigh strongly against CTP, it also cannot be said that the New South Wales case law does much to support CTP's proposition. The only case which CTP asserts as positive authority is *Downsouth Constructions Pty Ltd v Jigsaw Corporate Childcare Australia Pty Ltd* [2007] NSWC 597. This was a case which was decided on the basis that the respondent had failed to properly set out its withholding reasons in the payment schedule and/or had failed to make out a set-off (at [62]–[63]). The issue of whether a cross-contract set-off or other cross-contract withholding reasons could be validly raised was apparently never argued by either party, and the court at no point discussed it. Thus, even if the respondent had succeeded in establishing the set-off, the case would be of limited persuasive value. Its value is diminished even further given that the respondent's attempt to raise the set-off was instead dismissed on other grounds, removing the necessity to consider the cross-contract issue entirely.

NEW ZEALAND

58 The sole authority relied on from New Zealand is the case of *Cube Buildings Solutions Limited v Thomas Frederick Mazlin King and Judith Ruth King*, CIV 2009 409 000034 (High Court of New Zealand, Christchurch Registry). That case concerned s 79 of the Construction Contracts Act 2002 (New Zealand), which prevents the court from giving effect to set-offs unless they are the subject of a judgment or are undisputed. The specific question was whether the inclusion of two set-offs which did not meet those requirements meant that the whole payment schedule was invalid. The court held that their inclusion did not invalidate the whole payment schedule (at [62] and [64]–[65]).

59 It is rather difficult to see how this case is relevant to the present application. The New Zealand court was simply not concerned with whether cross-contract set-offs were possible under the New Zealand statute, and indeed, it is unclear whether the set-offs raised in that case were cross-contract or not.

VICTORIA, AUSTRALIA

60 For completeness, CTP recognises that Victoria prohibits cross-contract set-offs, cross-claims and counterclaims, although this is pursuant to an express provision to that effect.

CONCLUSION ON THE SURVEY OF OTHER JURISDICTIONS

61 Simply put, I am not persuaded that the jurisdictions surveyed indeed supported CTP's position. CTP is ultimately unable to point to *a single clear example* of a court interpreting a statute like the SOP Act as allowing cross-contract withholding reasons to be raised in adjudication. The question has yet to be ruled on by the respective courts of these jurisdictions, and there is nothing

to indicate that they might not, in time, arrive at the same single-contract interpretation that I set out earlier.

62 Indeed, it seems that the overall legislative and judicial attitude in these other jurisdictions is generally suspicious of cross-contract cross-claims, counterclaims and set-offs, even though they have not (with the exception of Victoria) taken the further step of expressly excluding such remedies from their construction adjudication frameworks. In the United Kingdom, for instance, there was considerable discomfort and dissatisfaction expressed concerning the availability of cross-contract set-offs among the respondents surveyed by Sir Michael Latham in his 2004 supplementary report on possible amendments to the HGCRA. The same is true of the respondents surveyed for the follow-up consultation by the UK Department of Trade and Industry and the Welsh Assembly Government in 2005, the results of which were published as a report entitled "Improving Payment Practices in the Construction Industry" in 2006 ("the 2006 report"). This discomfort apparently stemmed from the same concern raised in *W Y Steel* ([22] *supra*): namely, the complexity and delay to cash-flow which could result. There were, however, disagreements as to the degree to which equitable set-offs should be permitted (see paras 7–7.2 of the 2006 report). Ultimately, in part due to what were seen as definitional problems as a matter of drafting, no express prohibition was introduced in the 2009 amendments. Nonetheless, the fact that the express provision permitting cross-contract set-offs was *removed* suggests that the legislature was not keen on encouraging such set-offs to be raised. Although such doubts (like those expressed by Young JA's *obiter* in *Perform* ([38] *supra*)) are certainly not determinative, they further fortify my conclusion that the single-contract interpretation is justified as a matter of policy in light of the object and purpose of the SOP Act.

(5) Implications for the standard form contracts used in the construction industry

63 Fifthly and finally, CTP argues that adopting the single-contract interpretation would be harmful to the construction industry because it would affect many commonly used standard form contracts. CTP refers to the wording of the Public Sector Standard Conditions of Contract for Construction Works 2014 (7th Ed) ("PSSCOC"), the Land Transport Authority Conditions of Contract ("LTACOC"), the Articles and Conditions of Building Contract (Lump Sum Contract, 8th Ed, 2008) issued by the Singapore Institute of Architects ("SIACOC"), and the Real Estate Developers' Association of Singapore Design and Build Conditions of Contract (3rd Ed, 2010) ("REDAS"). The relevant wording used in the more relevant provisions of these standard form contracts can be summarised in the following table:

Name	**Relevant provisions**	**Wording used**
PSSCOC	Clause 32.2(1)	Payment certificates may include "deduction of any sums which might have been or may become due and payable by the Contractor to the Employer under the Contract or otherwise".
	Clause 32.6	The obligation to pay the amount due is "subject to the Employer's right to deduct or set-off any sum or damages for which the Contractor is or may be liable under the Contract or in any other way".

LTACOC	Clause 67.7	"In addition to any right of set-off or other general lien or similar right to which the Authority may be entitled in law, the Authority may at any time and without prior notice to the Contractor set-off any monies whatsoever which may at any time be due to the Contractor for any liabilities of the Contractor arising under this Contract."
SIACOC	Clause 28.(5)	Makes calculation of the sums due to the Contractor "[s]ubject to any defence set-off or counterclaim of the Employer under or by virtue of this Contract".
REDAS	Clause 22.2.1	"The Interim Payment Certificate may include deductions for sums which have been or may become due and payable to the Employer by the Contractor."
	Clause 24.4.2	Calculation of Final Payment Certificate takes into account "any deductions made and any deductions not yet made whether by way of liquidated damages or otherwise".

64 From this, I draw the following conclusions:

(a) The PSSCOC allows same contract set-off but does not expressly allow cross-contract set-off as it states "under the Contract or in any other way". It might be argued that this impliedly allows cross-contract set-off, but that is not clearly provided.

(b) The LTACOC expressly allows same-contract set-off, as indicated by the words "any liabilities of the Contractor arising under this Contract". The phrase "any monies whatsoever" modifies the phrase "which may at any time be due to the Contractor", *ie*, the payments

against which the Authority is entitled to raise a set-off, rather than the rights giving rise to a set-off. There is no mention of cross-contract set-off.

(c) The SIACOC expressly allows same-contract set-off. There is no mention of cross-contract set-off.

(d) The REDAS expressly allows deductions to be made, without specifying whether they may arise out of a different contract.

65 Based on the above, it appears that only the PSSCOC could arguably provide for cross-contract set-off. The other standard forms surveyed either provide for same-contract set-off (which is not affected by the single-contract interpretation) or do not specifically contemplate cross-contract set-off (in which case the exclusion of cross-contract set-off for the purpose of an SOP Act adjudication will not take away anything that the parties actively expect to have).

66 What would be the implications of the single-contract interpretation on the PSSCOC? The PSSCOC, although widely used for public projects, is ultimately still a *pro forma* contract adopted by the agreement of the parties. As far as any dispute resolution mechanism that operates outside the SOP Act regime is concerned, the parties are free to use their privately contracted rights as agreed. Once a dispute between the parties enters the SOP Act adjudication system, however, it is the SOP Act that governs. Parties will have to adapt their expectations to what the statute provides; it is not the statute that must bend to their contractual expectations. Therefore, even if, assumingly the PSSCOC permits cross-contract set-off, there is nothing unusual or problematic about the fact that the respondent cannot rely on that contractual term to frustrate the claimant's adjudication payment claim under the SOP Act.

67 In any event, I am not convinced that the single-contract interpretation would lead to any severe adverse effects on the industry. CTP's sole argument to the contrary is that the exclusion of cross-contract set-offs and other withholding reasons from an SOP Act adjudication would be unfair to the main contractor and could have adverse implications, due to the public nature of these works, on the public purse. CTP makes this argument through the following hypothetical scenario:

> For example, a sub-contractor may have five (5) HDB projects. However, the sub-contractor may only have performed satisfactorily for only two (2) of the projects. If no cross-contract set-off or counterclaim is allowed to be raised, the sub-contractor could then cherry-pick and only claim for payment for the two (2) projects, while the Employer will be prohibited from withholding payment for the sub-contractor's unsatisfactory or non-performance in the other three (3) projects. Not only is this immensely unfair to the Employer, the more pertinent concern is that the public purse will be adversely affected.

68 I cannot agree that there is immense unfairness in the above scenario. This hypothetical employer has received satisfactory performance in respect of two projects and will be required to make payment in respect of that performance. If the sub-contractor *later* makes payment claims followed by adjudication applications in respect of the three remaining projects, the employer will at that point be entitled to raise the unsatisfactory performance or non-performance of the sub-contractor as a reason to withhold payment *in respect of those three payment claims/adjudication applications*. It is difficult to see how any of this could prejudice the public purse.

Conclusion on the correct interpretation of s 15(3) of the SOP Act

69 To summarise, I find that when the SOP Act is looked at from a broad perspective with its object and purpose in mind, it is clear that Parliament intended to limit the adjudication procedure to a single construction contract.

The Adjudicator's decision on this point cannot be faulted, and it is therefore unnecessary to address the further question of whether the (non-existent) error by the Adjudicator to disallow CTP's set-off arising from the C933 contract amounted to an error as to jurisdiction or a breach of natural justice.

Issue 2: Whether the Adjudicator breached s 17(3) of the SOP Act

70 CTP further argues that in finding that the cross-contract set-off should be disregarded, the Adjudicator breached s 17(3) of the SOP Act.

71 Section 17(3) prescribes the scope of the adjudicator's jurisdiction. It reads:

> (3) Subject to subsection (4), in determining an adjudication application, an adjudicator shall only have regard to the following matters:
>
> (*a*) the provisions of this Act;
>
> ***(b) the provisions of the contract to which the adjudication application relates;***
>
> (*c*) the payment claim to which the adjudication application relates, the adjudication application, and the accompanying documents thereto;
>
> ***(d) the payment response to which the adjudication application relates (if any), the adjudication response (if any), and the accompanying documents thereto;***
>
> (*e*) the results of any inspection carried out by the adjudicator of any matter to which the adjudication relates;
>
> (*f*) the report of any expert appointed to inquire on specific issues;
>
> (*g*) the submissions and responses of the parties to the adjudication, and any other information or document provided at the request of the adjudicator in relation to the adjudication; and
>
> (*h*) any other matter that the adjudicator reasonably considers to be relevant to the adjudication.

[emphasis added in bold italics]

72 Sub-paragraphs (*b*) and (*d*) above are salient in these proceedings. CTP argues that under s 17(3)(*d*), the Adjudicator must consider the payment response and the adjudication response, and that he failed to do so as he had indicated in the AD that he was constrained by s 17(3)(*b*).

73 Section 17(3)(*b*) clearly requires the adjudicator to focus on "the provisions of the contract to which the adjudication application relates". In this case, that would be the T211 contract as the adjudication application was lodged with the Singapore Mediation Centre by HRE on 11 January 2017. This relates to Daywork Claim No 13 of the T211 contract. HRE did not lodge an adjudication application for any payment claim pertaining to the C933 contract.

74 Under s 17(3)(*d*), the Adjudicator was required to consider CTP's payment response. The payment response and the adjudication response were focused primarily on CTP's belief that the purported false and fraudulent claims were made and subsequently approved and paid to HRE under the C933 contract. Hence, CTP wanted to withhold Daywork Claim No 13 of the T211 contract on the basis that it was entitled to set off this claim against the payments that it claimed to have wrongfully made under the C933 contract to HRE. CTP did not deny that HRE was otherwise entitled to Daywork Claim No 13.

75 It stands to reason that although s 17(3)(*d*) requires an adjudicator to consider a respondent's payment response and adjudication response, that directive is still subject to s 15(3), which concerns the kinds of withholding reasons which may be raised and considered in an adjudication. Thus, if an adjudicator considered a payment response and/or adjudication response (as required under s 17(3)(*d*)) and found that it included matters which should not be considered under s 15(3), he would then disregard those matters (but not

without having first directed his mind to whether they should properly be considered).

76 In the present case, the Adjudicator had considered and comprehensively summarised the various allegations of fraudulent claims postulated by CTP in his adjudication deliberation (at [22]–[32] of the AD). However, the Adjudicator also stated (at [49]) as follows:

> The central issue in this [adjudication application] is whether under the SOP Act, a respondent is entitled to set-off claims from a different contract against monies due to a claimant under the contract to which the adjudication relates. This issue must be determined first before consideration of the merits of the set-off in respect of the C933 Project. At the adjudication conference, both parties agreed that this was the first issue I had to decide.

77 In other words, the Adjudicator did consider the adjudication response and the payment response. This does not necessarily mean that the Adjudicator had to *accept* CPT's contentions in those responses. The Adjudicator was right to ascertain that the central issue was whether CTP was legally entitled to set-off claims from a different contract against monies due to HRE under the contract to which the adjudication relates.

78 Ultimately, the Adjudicator came to the decision that he had to reject the allegations in the payment response and the adjudication response. He did so on the combined basis of his interpretation of s 15(3) of the SOP Act (which, as I earlier stated, is in my view correct) and the directive in s 17(3)(*b*) to the adjudicator to focus on "the contract to which the adjudication application relates". Although the Adjudicator rightly recognised that he had to also consider the payment response and adjudication response, he concluded (at [59]) that:

> … I do not think it was the intention of Parliament under s. 17(3)(b), that an adjudicator should also consider a contract other than the construction contract to which the adjudication relates, even if a respondent includes documents relating to another contract(s) in its payment response. If it were otherwise, there would be no end to the number of other contracts a respondent can include in its payment response, as in the construction industry, subcontractors often work for main contractors on several projects at a time under different contracts.

Not only do I agree with the Adjudicator's conclusion, I find that his reasoning here clearly shows that he had properly considered the contents of the payment response and adjudication response. His rejection of the withholding reasons raised therein was thus a product of that proper consideration.

Issue 3: Whether the allegations of fraud and unjust enrichment are made out

79 Finally, although CTP's submissions comprehensively deal with the allegations of fraud and unjust enrichment which CTP asserts resulted in a total failure of consideration in the payment claims arising from the C933 contract, I do not consider it necessary to make any findings or observations in that respect. Since I have ruled that the Adjudicator was right to confine his deliberation to the T211 contract, it follows that the alleged fraud and unjust enrichment regarding the C933 contract are immaterial, and it is not necessary to consider the various issues (including whether there was in fact fraud) relating to the purported wrong payment claims made under the C933 contract. If CTP wishes to pursue these allegations further, it is perfectly entitled to do so in a separate action.

Conclusion

80 In summary, it is common in the construction industry for the same parties to have several different contracts. If they were allowed to bring in any

contracts they pleased in an adjudication under the SOP Act, this would open the floodgates to unchecked expansion of the scope of materials which must be dealt with in an adjudication. In the worst case scenario, this may give rise to unmanageable complexity, with numerous issues spanning several contracts with different terms and conditions. The SOP Act would then no longer be capable of providing a simple, low cost, efficient and quick resolution of payment claims. In short, CTP's proposed interpretation of the law could potentially bring the industry back to the pre-SOP Act era of frequent delays or non-payments with little practical recourse. Sub-contractors could find themselves once again – to borrow the words of Menon CJ in *W Y Steel* ([22] *supra*) (at [20]) – "held up by counterclaims and claims for set-offs that may prove to be specious at the end of lengthy and expensive proceedings that have to be undertaken in order to disentangle the knot of disputed claims and cross-claims." This cannot be the intention of Parliament. Instead, the simplest, quickest procedure as stipulated by the SOP Act is to confine the issues of payment claims to those arising in relation to a single construction contract.

81 This should not be thought to work an injustice. The adjudication determination is not the final determination of the parties' rights. It provides only temporary finality. CTP is at liberty to take a separate action against HRE for the purported false and fraudulent claims in the C933 contract. It is also free to raise those claims as withholding reasons if HRE makes a subsequent payment claim *in relation to the C933 contract*. In fact, the issues relating to CTP's claims in the C933 contract are diverse and distinct from HRE's payment claims under the T211 contract. It is only right that CTP's set-off claim should not be joined in the same action, as HRE's payment claim is straightforward and not disputed by CTP.

82 I therefore dismiss CTP's application to set aside the AD.

83 I shall hear the parties on costs.

Tan Siong Thye
Judge

Ho Chye Hoon and Fong Wei Li (KEL LLC) for the plaintiff in OS No 289/2017 and the respondent in Summons No 1555/2017;
Tan Tian Luh and Ngo Wei Shing (Wu Weishen) (Chancery Law Corporation) for the defendant in OS No 289/2017 and the applicant in Summons No 1555/2017.