Singland Transportation Pte Ltd
v
Alpha Focus (S) Pte Ltd

[2017] SGHC 186

High Court — Suit No 86 of 2016
Lee Seiu Kin J
27-30 March, 15 May 2017

Contract — Contractual terms — Implied terms

Contract — Breach — Election to terminate

28 July 2017 Judgment reserved.

Lee Seiu Kin J:

Introduction

1 In suit no 86 of 2016 ("Suit 86") the plaintiff claimed against the defendant for $17,355.43 for works done in October 2012. The defendant counterclaimed $319,698.00 or damages to be assessed arising from the plaintiff's alleged breach of contract. At the commencement of trial, the defendant withdrew its defence against the plaintiff's claim and proceeded with the counterclaim. Having heard the parties' evidence in the trial and having considered the written submissions of counsel, I find that the defendant had failed to make out its counterclaim and set out the reasons below.

Undisputed facts

2 The plaintiff is a Singapore-incorporated company carrying on the business of providing transportation services, landscape care and maintenance services, and landscaping and civil works. The defendant is also a Singapore-incorporated company in the business of, *inter alia*, piling works. On 10 August 2011, the parties entered into a contract under which the plaintiff would provide lorries to clear earth for the defendant's project at Bedok Reservoir for the Downtown Line Stage 3 tunnels ("the Contract"). The defendant was the piling sub-contractor of main contractor for the Bedok Reservoir works, Sato Kogyo (S) Pte Ltd ("Sato Kogyo").

3 The plaintiff's claim is for works done between 1 and 15 October 2012 for a sum of $67,355.43. The defendant paid $50,000 but not the remaining sum of $17,355.43. This was not disputed by the parties.

4 The defendant's counterclaim is based on the Contract, which was contained in the plaintiff's quotation dated 8 August 2011, which was accepted by the defendant on 10 August 2011. The Contract provided that the plaintiff would dispose of a total of 170,000 cubic metres of good earth and between 40,000 to 50,000 cubic metres of wet or mixed soil. The defendant would pay the plaintiff $110 per lorry load of good earth and $160 per lorry load of wet or mixed soil. The price could be adjusted by mutual agreement. The project duration was 21 months. The defendant needed to place its order for the plaintiff's lorries at least one day in advance, or in emergency situations, three hours in advance.

5 In December 2011, the soil at the defendant's worksite had piled up to four or five metres in height ("the stockpile"). This led to the Land Transport Authority ("LTA") issuing a site memorandum for the breach of "safety rules and regulations" on 5 December 2011 ("the LTA site memorandum"). The

defendant forwarded the LTA site memorandum to the plaintiff on the same day. The defendant said that the stockpile was the "direct result" of the plaintiff's lack of lorries and asked the plaintiff to increase the number of lorries to clear the stockpile. Otherwise, a stop work order could potentially be issued against the defendant.

6 The plaintiff replied on 6 December 2011 denying responsibility for the events. It asked the defendant to provide it with disposal tickets for the LTA's dumping grounds as it had exhausted its own tickets for its own dumping grounds. The defendant rejected the plaintiff's request on 7 December 2011. The defendant said that it had "no other choice but to engage another transporter so that [its] work [could] move and not delay further". But by this time, the defendant had requested a quotation from Koh Kock Leong Enterprise Pte Ltd ("KKL"). In fact, KKL provided the quotation on 6 December 2011 and the defendant accepted it on the same day. Under the quotation, KKL was to dispose bored out soil to an approved dumping ground at $170 per lorry load. The contract was valid with immediate effect, *ie*, from 6 December 2011.

7 The plaintiff and defendant continued exchanging correspondence from 7 to 9 December 2011. Both parties expressed their intentions to get the work done and achieve their mutual goals. On 22 December 2011, the parties increased the amounts payable for good earth and for wet or mixed soil by mutual agreement to $113 and $164 per lorry load respectively. On the same day, the plaintiff also sent a letter to the defendant alleging that the stockpile was due to the defendant's failure to provide the plaintiff with disposal tickets for a dumping ground. On 29 December 2011, the defendant rejected this position and stated that the stockpile was no longer there as KKL was engaged to remove the earth. Nevertheless, the parties again increased the amounts payable by mutual agreement to $143 per lorry load for good earth and $194

per lorry load for wet or mixed soil on 4 June 2012. This was later revised downwards to $133 per lorry load for good earth and $184 per lorry load for wet or mixed soil by a letter dated 12 June 2012.

8 On 30 May 2012, the defendant engaged another sub-contractor, Poh Li Heng Building Construction Pte Ltd ("PLH"), to transport earth to an approved dumping ground for $280 per lorry load.

9 The plaintiff filed its claim on 22 May 2014. The defendant's counterclaim totalled $319,698.00. This amount was the difference between what the defendant paid KKL and PLH and what it would have paid the plaintiff to complete the works. The defendant claimed for the period of 31 December 2011 to 31 May 2012 in relation to the KKL works; and from 22 June 2012 to 21 September 2012 for the PLH works.

Issues

10 The only dispute at trial was whether the defendant's counterclaim was made out. There was no dispute that the parties entered into the Contract. The following three issues arose:

(a) Did the plaintiff breach the Contract?

(b) Did the defendant elect to terminate the Contract?

(c) Was the defendant entitled to claim the difference between what it paid KKL and PLH and what the plaintiff would have charged from December 2011 to October 2012?

Parties' submissions

Defendant's submissions

11 The defendant said the plaintiff breached an implied term in the Contract to "deploy sufficient number of lorries for the timely and efficient disposal of the earth". The defendant said that this was consistent with the other terms of the Contract since the plaintiff was required to clear a specific amount of earth within a specified time period of 21 months. This would surely require the plaintiff to clear the earth expeditiously with a sufficient number of lorries. The defendant rejected the plaintiff's argument that the latter only had an obligation to remove earth from the Bedok Reservoir site on an ad-hoc basis.

12 According to the defendant, the plaintiff breached this implied term in December 2011 when the stockpile was formed but not cleared. The defendant forwarded the LTA site memorandum to the plaintiff on 5 December 2011 and asked the plaintiff to provide enough lorries to clear the stockpile. The plaintiff failed to do so in breach of contract. The defendant said that it terminated the Contract by its letter of 29 December 2011. Although this was not pleaded in the defendant's counterclaim, it was the evidence of its director, Low Koon Heng ("Low"), during cross-examination.

13 As a result of this breach, the defendant engaged three third-party contractors to dispose the earth that the plaintiff was supposed to dispose of under the Contract:

(a) KKL from December 2011 to May 2012;

(b) PLH from June 2012 to September 2012; and

(c) Ming Hui from October 2012 until "the end of [the] project".

The defendant initially claimed a total sum of $319,698.00, which comprised of two sums. First, the difference between the amount paid to KKL and the amount payable to the plaintiff, being $142,197.00. Second, the difference between the amount paid to PLH and the amount payable to the plaintiff, which was a further $177,501.00. The defendant did not claim in relation to Ming Hui as there was no difference in price charged between Ming Hui and the plaintiff.

14 However, after the trial, the defendant reduced its claim from $319,698.00 to $245,838.00, on account of the following:

(a) In relation to the KKL works, the claim was reduced from $142,197.00 to $68,337.00. Low accepted during cross-examination that the total amount of lorry loads by KKL should have been reduced by 1,019. Those were loads of earth that KKL disposed of for the defendant's sub-contractors and not the defendant. These loads were later charged back to the defendant's sub-contractors and therefore the defendant had suffered no loss.

(b) In 1,550 invoices, it was not stated whether the soil was good earth or wet/mixed soil. Given that the price for the former was lower than that for the latter category, it was not valid to make the claim for these based on the price of the latter. The defendant conceded this fact and submitted that the claims under these invoices should be split evenly between good earth and wet/mixed soil. This would mean that the defendant's claim would be reduced by pricing 750 lorry loads under the good earth category.

15 The defendant said that it reasonably mitigated its loss considering the urgent circumstances. It referred to the safety issues due to height of the stockpile which Sato Kogyo's Po Sze Long ("Po") explained would cause the

piling work to be halted due to the potential danger to the personnel and machinery in the area. This led the defendant to engage third parties to clear the stockpile. The defendant said that it communicated this decision to the plaintiff in two letters: a letter dated 8 December 2011 where it stated that the "Main Contractor only start to arrange for other lorries to transport from the stockpile after the letter from LTA"; and a separate letter dated 29 December 2011 where the defendant said that "the Main Contractor engage KKL to remove the stockpile after the letter from LTA and is still engaging KKL to remove the earth from our bored pile site as they do not want a repeat of what happen in November".

16 In response to the plaintiff's submissions that there was another implied term in the Contract that the defendant would supply disposal tickets for a dumping ground (see below at [19]), the defendant said this was untenable because the amount payable to the plaintiff under the Contract already included the dumping fee. This was why the Contract price was pitched at $164 per lorry load (per the revised sum on 22 December 2011), rather than the $50 per lorry load it would have cost to transport earth to the defendant's own construction site. In any case, the plaintiff had never claimed against the defendant for any dumping fee which suggests that it never considered there to be such an implied term.

Plaintiff's submissions

17 The plaintiff said that there was no term, express or implied, that the plaintiff would provide sufficient lorries to dispose of earth in a timely fashion as and when the defendant asked it to do so. Instead, the plaintiff said that the contract was an "ad-hoc" one, meaning that the plaintiff only needed to provide as many lorries as the defendant asked *if* the defendant gave one day's advance

notice as required under the Contract. In an emergency the defendant could give only three hours' notice, but the plaintiff would only be bound to "try [its] very best to schedule the delivery", rather than being absolutely bound to do so.

18 Even if there was an implied term, the plaintiff said it did not breach that term. There was no breach between January and October 2012 since Low agreed under cross-examination that the plaintiff supplied sufficient lorries during that period. There was also no breach during December 2011. During the period of August to December 2011, the plaintiff rented its spare tipper lorries to the defendant, suggesting that it had the lorries and indeed supplied the lorries to the defendant when the latter asked for them. Rather, the failure to provide lorries was because of the defendant's own conduct. The plaintiff said that the defendant did not give the plaintiff enough notice. Another director of the defendant, Soong Chee Keong ("Soong"), admitted under cross-examination that the defendant only contacted the plaintiff on the afternoon before the lorries were required, which was not one day's advance notice.

19 The plaintiff also said that there was a separate implied term in the Contract that the defendant would provide it with disposal tickets for a dumping ground. It was not clear what the relationship of this implied term was to the defendant's counterclaim, but presumably the plaintiff was arguing that because the defendant failed to do so, the plaintiff had nowhere to dump the soil and therefore it could not come to clear the stockpile when the defendant eventually requested it to. The plaintiff said that the prices it quoted showed that the dumping fee was to be borne by the defendant. If the plaintiff was required to pay for the disposal tickets on its own it would make no profit.

20 Even if the plaintiff breached the Contract, the plaintiff submitted that the defendant did not validly terminate the Contract. The plaintiff first

contended that this was never pleaded in any of the defendant's pleadings and affidavits and was therefore an afterthought. But even considering the merits of the argument, the defendant did not terminate because it did not communicate the alleged termination to the plaintiff, as Low conceded under cross-examination. The defendant also acted as if the Contract was still afoot by paying all 45 invoices that the plaintiff issued until October 2012, even though the alleged termination was on 29 December 2011.

21 Finally, the plaintiff said that even if the Contract was terminated, the defendant could not claim for the entire difference between what it paid to KKL and PLH, and what it would have paid the plaintiff:

(a) The amounts claimed in relation to KKL were too high. The plaintiff contended that the defendant could only claim the difference during the period where KKL was working to clear the stockpile and no more. Depending on when the stockpiles were finally cleared in December 2011, this would leave the defendant's claim at between $22,980 and $28,140; these numbers being the number of lorry loads carried by KKL to clear the stockpile.

(b) The defendant could not claim the amounts in relation to PLH at all since PLH was only engaged after the stockpile was cleared.

My decision

Whether the plaintiff breached the Contract

22 I must first decide whether there were terms governing the issue of expeditious clearing of earth before deciding whether the plaintiff breached any such terms. There is no express term in the Contract concerning expeditious clearing. But I find that there is such an implied term in the Contract, although

the scope of the implied term only requires the plaintiff to clear a reasonable amount of earth in a reasonable period of time. Given the scope of the implied term, I find that the plaintiff did not breach it. I now explain.

Implying a term of expeditious clearing into the Contract

23 The test for implying a term into a contract was summarised by the Court of Appeal in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp Marine*") at [101] as follows:

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

24 The first step requires the Contract to have a gap in relation to expeditious clearing that the parties did not contemplate. I find that this is satisfied. None of the terms of the Contract deal with this situation. The Contract only provides for the defendant to place its orders for lorries with the plaintiff, for the lorries to "remove and dispose" of good earth, wet soil, or mixed soil, and then for the payment to the plaintiff to be calculated per lorry load. The Contract also provides that eventually the plaintiff would dispose of an estimated volume of 170,000 cubic metres of good earth and 40,000 to 50,000 cubic metres of wet or mixed soil and that this would be done within 21 months.

In short, the contractual terms are premised on the fundamental assumption that the plaintiff, after sending its lorries to the site, would use those lorries to clear the earth.

25 But what is not addressed is the situation confronting the parties in December 2011. Soil brought up by the defendant's plant had been stockpiled over a considerable period and the defendant was required to remove them in a short period of time. This is the gap in the Contract. This gap was clearly not contemplated by the parties.

26 The second step is the business efficacy test, *ie*, the court can only imply a term in the Contract if it does not function commercially or practically without it. The court will not imply a term simply to improve the bargain between the parties. The plaintiff's core duty under the Contract was to clear the earth that was dug up by the defendant as and when the defendant dug up this earth in the course of its pilling works. The other express terms in the Contract facilitated this core duty by regulating the amount of earth cleared, the proposed duration of the entire project, and how the defendant was going to call the plaintiff to the site to clear the earth. As the Contract calls for the disposal of a total of some 220,000 cubic metres of soil within 21 months, there would certainly be an implied term that the plaintiff would be required to at least have the capacity, on a constant daily or weekly basis, to dispose of that quantity within the contract period.

27 The third step assumes that a term can be implied. The court then considers precisely what term should be implied. This step applies the "officious bystander" test: the term must be so obvious to the parties that if it had been suggested to them at the time of contracting they would have agreed immediately. As I noted above, given that the Contract envisages that the

plaintiff would clear some 220,000 cubic metres of soil within 21 months, there would certainly be an implied term that the plaintiff would be required to remove soil at the defendant's maximum anticipated daily or weekly production rate. To the extent that the defendant's rate of production fluctuates between different periods, there could also be an implied term that the plaintiff must have sufficient capacity to dispose of soil produced by the anticipated peak boring capacity of the defendant.

28 However, it cannot be the case that the plaintiff would be required to have the capacity to do so at *multiple* times of that rate, which was what removal of the stockpile would entail (and which was also what the defendant was asking this court to find). While the implied term called for the plaintiff to have the capacity to remove the earth at the maximum rate at which it is being dug out, it is another proposition altogether to require the plaintiff to have a capacity to remove many days of production within a few days. For this reason, I find that there was no implied term that the plaintiff would clear the entire stockpile as and when the defendant required it. Rather, the implied term only required the plaintiff to clear soil at a reasonable rate, *ie*, at a rate which it reasonably anticipated the defendant to dig up soil.

29 Implying a term that is limited in this way also accords with the express terms of the Contract. One of the express terms of the Contract is that in an emergency situation, the defendant may request for lorries from the plaintiff with a shorter notice period of only three hours instead of one day in advance. But in such a situation the plaintiff's obligation is qualified. It only needs to "try [its] very best" to schedule the delivery. This suggests to me that the parties were cognisant of the possible difficulties that the plaintiff would face and have allowed some latitude to the plaintiff in certain circumstances. To the extent that the defendant's case is that there is an implied term that the plaintiff must

provide sufficient lorries to clear earth at the rate demanded of it in December 2011, I find that this would sit uneasily with the express terms of the Contract. The plaintiff would have been unlikely to agree to the term had it been proposed at the point of contracting.

30 Accordingly I find an implied term in the Contract that the plaintiff would clear the earth on the defendant's work site expeditiously. But this term only required the plaintiff to clear a reasonable amount of earth in a reasonable period of time, and at most, at the rate that the defendant was reasonably anticipated to produce at peak production.

Whether the plaintiff breached this term

31 Given the scope of the implied term, I find that the plaintiff did not breach it. To recap, the defendant contended that the plaintiff breached the implied term by failing to clear the stockpile and so the defendant had to call in third parties to clear the stockpile instead.

32 The defendant notified the plaintiff of the stockpile on 5 December 2011 when it forwarded the LTA site memorandum to the plaintiff. The defendant provided no further documentary or oral evidence that it called the plaintiff to clear the stockpile before 5 December 2011. Although the defendant's letter to the plaintiff dated 8 December 2011 noted that the "situation of the stockpile arises from the facts that over the last few weeks, you did not provide adequate lorries to remove the bored out earth from the working area", the defendant did not provide any further evidence of it calling the plaintiff to inform the latter about the situation *before* 5 December 2011. Indeed, while Soong admitted under cross-examination that the defendant's usual practice was to order lorries

from the plaintiff using telephone calls, the defendant did not call any witnesses to testify that such calls were made before 5 December 2011.

33 The defendant also cannot argue that the plaintiff was expected to be at the site even if the defendant did not call the plaintiff. Low stated during cross-examination that the plaintiff's obligation under the Contract was "[as] and when I tell them to send how many lorries, they must send to clear the soil from my site." In other words, the plaintiff could rely on the defendant's notification to send lorries to the work site. This is also consistent with the notice requirement under the Contract.

34 The defendant is the claimant in the counterclaim and bears the burden of proving its case. Since it did not adduce cogent evidence to show that it told the plaintiff of the stockpile before 5 December 2011 or that the plaintiff should have been at the site without notification, I find that it only informed the plaintiff of the stockpile on 5 December 2011 when it forwarded the LTA site memorandum to the plaintiff. The question is whether the plaintiff, having only received notice of the stockpile on 5 December 2011, breached the Contract by failing to send sufficient lorries to clear enough of the stockpile within a reasonable time.

35 In assessing this question, it is relevant that the defendant did not appear to have taken serious steps to get the plaintiff to clear the stockpile at all. The defendant forwarded the LTA site memorandum to the plaintiff on 5 December 2011. By 6 December 2011, just one day later, the defendant received a quotation from KKL for the same project. The title of the letter was "RE: QUOTATION – DISPOSE OF BORED OUT SOIL @ DTL STAGE 3 C928 BEDOK TOWN PARK STATION AND ASSOCIATED TUNNELS". It was directly addressed to Low. It stated: "Thank you for giving us opportunity to

service to your esteemed company and we wish to assure you of our best service at all times." So although KKL's assistant contract manager, Koh Kong Wen, could not recall why KKL submitted a quotation to the defendant on 6 December 2011, it must have been because the defendant had asked KKL to do so. The fact that KKL had replied to the defendant on 6 December 2011 – just one day after the defendant forwarded the LTA site memorandum to the plaintiff – suggests that the defendant had asked for this quotation at the latest by 5 December 2011, which is the same day that it forwarded the LTA site memorandum to the plaintiff.

36 It appears that at that time the plaintiff was on site and ready to perform, albeit having provided fewer lorries than the defendant expected. The plaintiff sent a letter to the defendant dated 6 December 2011 asking the defendant to "expedite on the requisition of the disposal tickets so that we can increase our tipper lorries to at least 10 fleets", indicating that some lorries were already on site. This was confirmed by the defendant's reply on 7 December 2011 stating that the plaintiff had promised ten lorries "but only 4 turn up". This was probably why the defendant engaged KKL to clear the stockpile as it felt that the plaintiff provided insufficient lorries.

37 The evidence suggests that KKL finished clearing the stockpile sometime between 9 and 14 December 2011. On 22 December 2011 the plaintiff sent a letter to the defendant stating:

> We have been diligently disposing out the earth from your site since last Tuesday, 14 December 2011 continuously with 6 fleet of lorries. However, our workers have raised a concern that they had to wait for work constantly as they have already cleared the stockpile. …

And in the plaintiff's letter to the defendant on 9 December 2011, the plaintiff said that it was still trying to apply for a staging ground in relation to the

stockpile. So the stockpile would have been cleared sometime between 9 and 14 December 2011. This is also consistent with Soong's testimony. Soong conceded during cross-examination that the stockpile was cleared within one or two weeks, although he could not remember when precisely it was cleared. In other words, the defendant engaged KKL on 6 December 2011 and KKL entered the site and cleared the stockpile by 14 December 2011 at latest.

38 But the plaintiff was not notified of KKL's involvement in the project. Low conceded during cross-examination that the defendant did not inform the plaintiff that it would engage KKL to clear the stockpile. The defendant cannot rely on its letters to say that it informed the plaintiff:

(a) The defendant's letter of 7 December 2011 which stated that they had "no choice but to engage another transporter" was said in the context of a similar stockpiling situation in another project between the parties in Seletar, and did not even mention KKL.

(b) The defendant's letter of 29 December 2011, which Low relied on during re-examination where the defendant specifically said that KKL had been engaged, was only sent after the stockpile had already been cleared.

39 The above evidence shows the following chronology of events: the plaintiff was informed of the stockpile on 5 December 2011. On that same day or earlier, the defendant asked KKL for a quotation for the same work, which KKL provided. The defendant accepted this quotation one day later. By this time the plaintiff was on site and willing to perform albeit slower than the defendant would have liked. The defendant procured KKL to clear the stockpile within a week or so, but did not tell the plaintiff that it would do so. This was a

situation in which the defendant had chosen to engage a third party to help with the stockpile and did not inform the plaintiff of it.

40 On these facts, I find that the plaintiff did not breach the implied term to clear a reasonable amount of earth within a reasonable amount of time for the December 2011 stockpile.

41 The defendant did not claim that the plaintiff had breached the Contract on any other occasion. Indeed, Low admitted during cross-examination that the plaintiff supplied sufficient lorries to meet the defendant's needs between January to October 2012. Hence, given that I have found that the plaintiff was not in breach during the period of December 2011, the defendant's claim is not made out.

Whether the defendant validly terminated the Contract

42 Since I found that the plaintiff did not breach the Contract, there is no need for me to determine whether the defendant validly terminated the Contract. But for the sake of completeness and since the parties spent a substantial amount of time on this during the trial and in their written submissions, I give brief reasons why I would have found that the defendant did not validly elect to terminate the Contract.

43 It is trite that a breach of contract does not automatically mean that the contract is terminated. The innocent party still needs to elect to terminate the contract and must communicate this to the party allegedly in breach. But there was no such election in this case. Low conceded during cross-examination that he did not expressly terminate the Contract by writing to the plaintiff. His evidence was that he believed that he had terminated the Contract on 29 December 2011 by writing to the plaintiff on that date, and he viewed the

Contract as terminated because the plaintiff did not respond. Clearly, a subjective intention to terminate is insufficient as it must be communicated to the other party.

44 The subsequent conduct of both parties also indicates that *objectively*, they considered the Contract to still be alive. As late as 4 June 2012, 11 June 2012, and 7 August 2012, the plaintiff was still submitting price revisions to the defendant, as it was allowed to under the Contract. This was conceded by Low under cross-examination, and indeed the following extract from Low's cross-examination is apposite:

> Q: So after 29th December 2011, which is the date of that letter, you---in your mind, you have terminated Singland but even from January to October 2012, you also use Singland for C928, correct?
>
> A: Yes, correct.
>
> Q: And during the entire period they service you for C928, you also didn't tell them that actually you have terminated them, correct?
>
> A: Correct.

The defendant not only continued corresponding with the plaintiff (through price revisions) as though the Contract was still afoot but it continued to engage the plaintiff's services until as late as October 2012. And not only did the defendant engage the plaintiff's services under the Contract but it also continued paying for those services even up until 31 October 2012. Having corresponded with, engaged, and paid the plaintiff, the defendant cannot now deny that it affirmed the Contract with the plaintiff.

45 Accordingly, even if the plaintiff had breached the Contract in December 2011, I would have found that the defendant had not elected to terminate the Contract. Whatever Low may have subjectively believed, this was

not communicated to plaintiff nor was it expressed in the subsequent conduct of both parties.

Conclusion

46 Given my findings on issues (a) and (b), there is no need for me to address issue (c), which is the amount that the defendant could have claimed had the plaintiff breached the Contract (see above at [10]). Accordingly, I find that the defendant's counterclaim is not made out. I therefore dismiss the counterclaim. The plaintiff is therefore entitled to its claim for $17,355.43. I will hear counsel on the question of costs.

Lee Seiu Kin
Judge

Doris Chia and Wong Wan Chee (David Lim & Partners LLP) for the plaintiff;
Tang Gee Ni (G N Tang & Co) for the defendant.