

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

[2023] SGHC 186

Originating Application No 616 of 2022

Between

JP Nelson Equipment Pte Ltd

... Applicant

And

Builders Hub Pte Ltd

... Respondent

FOUNDATIONS OF DECISION

[Building And Construction Law — Building and construction contracts]

[Building And Construction Law — Dispute resolution — Alternative dispute resolution procedures]

[Building And Construction Law — Jurisdictional objection]

[Building And Construction Law — Statutes and regulations]

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JP Nelson Equipment Pte Ltd

v

Builders Hub Pte Ltd

[2023] SGHC 186

General Division of the High Court — Originating Application No 616 of 2022

Lee Seiu Kin J

2 February, 27 March 2023

5 July 2023

Lee Seiu Kin J:

Introduction

1 In this case, the applicant sought to set aside an adjudication determination and adjudication review determination under the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) (the “SOPA”) on the basis of non-compliance with the provisions of the SOPA and on the ground of fraud. I allowed the application in part on the ground of fraud and ordered that the review determination award be reduced by \$155,160. The following are the grounds of my decision.

Facts

The parties

2 JP Nelson Equipment Pte Ltd (“JP Nelson”) is a Singapore-incorporated company and the employer of a building project, the “Proposed New Erection of Front Four-Storey with Roof Garden Office, Dormitory and Rear Three Storey Factory with Office on Lot 0196K MK at 28 Benoi Road, Singapore 629899” (the “Project”).¹

3 Builders Hub Pte Ltd (“Builders Hub”) is a Singapore-incorporated company, and was the main contractor of JP Nelson for the Project, until their contractual relationship ended on 26 August 2022.²

Background to the dispute

4 On 8 June 2018, JP Nelson awarded Builders Hub a contract for the Project (the “Contract”).³ The Contract price was \$9,942,280 and the Contract incorporated the Real Estate Developers’ Association of Singapore Design and Build Conditions of Contract (Third Ed, October 2010) (the “REDAS Conditions”), among other documents.⁴

5 On 20 May 2022, Builders Hub served Payment Claim No 37 on JP Nelson for the sum of \$2,287,156.69 (including GST) for works carried out

¹ Seh Yin Yoke’s affidavit dated 29 September 2022 at para 8.

² Teong Boo Bing’s affidavit dated 21 November 2022 at para 13 and TBB-1 at pp 35–37.

³ Seh Yin Yoke’s affidavit dated 29 September 2022 at para 8.

⁴ Seh Yin Yoke’s affidavit dated 29 September 2022 at para 9 and NS-1 at p 157.

from 11 September 2018 to 20 May 2022 (“PC 37”).⁵ Subsequently, on 10 June 2022, JP Nelson served its payment response, Interim Valuation No 37, on Builders Hub for the sum of \$329,284.98 (inclusive of GST) (the “Response Amount”), based on works completed as of 31 May 2022 (the “Payment Response”).⁶

The adjudication application

6 On 24 June 2022, Builders Hub lodged adjudication application SOP/AA 099 of 2022 for PC 37, because it disputed the Response Amount of \$329,284.98 (inclusive of GST). Builders Hub claimed for JP Nelson’s “**response amount** which [had] not been paid and the difference between its claimed amounts and [JP Nelson’s] certified amounts for **certain items of the variation works**”⁷ [emphasis in original], which totalled \$1,500,623.51 (including GST) (the “Adjudication Application”).⁸ The breakdown is as follows:

Item	Claimant’s claimed amount in PC 37 (\$)	Respondent’s certified amount in PR 37 (\$)	Difference
VO items disputed in this AA	1,464,395.70	248,052.47	\$1,216,343.23
<u>Less</u> 10% retention			(\$121,634.32)

⁵ Seh Yin Yoke’s affidavit dated 29 September 2022 at para 10 and NS-1 at pp 572–664; Lawrence Lee’s affidavit dated 26 October 2022 at para 6.

⁶ Seh Yin Yoke’s affidavit dated 29 September 2022 at para 11 and NS-1 at pp 665–696.

⁷ Seh Yin Yoke’s affidavit dated 29 September 2022 at NS-1 at p 704.

⁸ Seh Yin Yoke’s affidavit dated 29 September 2022 at para 12 and NS-1 at pp 698–721.

<u>Total amount claimed for VO Items in this AA (excluding GST)</u>	\$1,094,708.91
Add GST	\$76,629.62
<u>Add Response Amount in PR37 which has not been paid (incl GST)</u>	\$329,284.98
<u>Total amount claimed in this AA (including GST)</u>	<u>\$1,500,623.51</u>

7 On 4 July 2022, JP Nelson lodged its adjudication response. Among other things, JP Nelson objected to the Adjudication Application on the basis that it was filed prematurely, in breach of s 13(3)(a) of the SOPA. JP Nelson argued that Builders Hub should have filed the Adjudication Application between 7 and 13 July 2022, instead of 24 June 2022.⁹

8 On 4 August 2022, the adjudicator (the “Adjudicator”) issued his determination (the “Adjudication Determination”). The Adjudicator dismissed JP Nelson’s jurisdictional objection and found that the Adjudication Application was not filed prematurely. Further the Adjudicator determined that JP Nelson was liable to pay Builders Hub \$847,381.92 (inclusive of GST) (the “Adjudicated Amount”).¹⁰ As shown in the table below extracted from the Adjudication Determination, part of the Adjudicated Amount included the Response Amount of \$329,284.98.

Total determined value of disputed VO claims	\$786,055.51
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⁹ Seh Yin Yoke’s affidavit dated 29 September 2022 at paras 13–14 and NS-1 at pp 1102–1144.

¹⁰ Seh Yin Yoke’s affidavit dated 29 September 2022 at paras 16–17 and NS-1 at pp 60–133; Lawrence Lee’s affidavit dated 26 October 2022 at para 10.

Less total amount responded in PR-37 for disputed VO claims	(\$248,052.47)
Sub-Total	\$538,003.04
Less 10% retention	(\$53,800.30)
Sub-Total	\$484,202.74
Add GST	\$33,894.20
Add Response Amount in PR-37 (with GST)	<u>\$329,284.98</u>
Amount Due (with GST)	\$847,318.92

The adjudication review application

9 On 11 August 2022, JP Nelson filed an application for the review of the Adjudication Determination in SOP/ARA 006 of 2022 (the “Adjudication Review Application”). In the Adjudication Review Application, JP Nelson maintained its objection that Builders Hub’s Adjudication Application was premature and should have been rejected.¹¹

10 Then, on 26 August 2022, JP Nelson terminated Builders Hub’s employment under the Contract by way of letter, pursuant to cl 30.2 of the REDAS Conditions, for allegedly committing various breaches of the Contract.¹² That same day, Builders Hub, by way of letter, also terminated the Contract based on alleged repudiatory breaches of contract by JP Nelson.¹³

¹¹ Seh Yin Yoke’s affidavit dated 29 September 2022 at paras 18–19 and NS-1 at pp 1241–1272; Lawrence Lee’s affidavit dated 26 October 2022 at para 11.

¹² Teong Boo Bing’s affidavit dated 21 November 2022 at para 13 and TBB-1 at pp 35–36.

¹³ Teong Boo Bing’s affidavit dated 21 November 2022 at para 13 and TBB-1 at p 37.

11 The adjudicator for the Adjudication Review Application (“Review Adjudicator”) issued his determination on 12 September 2022 (the “Adjudication Review Determination”). *Inter alia*, the Review Adjudicator upheld the Adjudicator’s determination that the Adjudication Application was *not* prematurely lodged.¹⁴ The Review Adjudicator also reduced the review adjudicated amount payable by JP Nelson to Builders Hub by \$329,284.98 from the Adjudicated Amount of \$847,381.92 (inclusive of GST) to the final adjusted sum of \$518,096.94 (inclusive of GST) (the “Review Adjudicated Amount”). This was because JP Nelson had already paid the sum of \$329,284.98 to Builders Hub on 1 July 2022, but the sum was nonetheless included in the Adjudication Determination so as to amount to a patent error.¹⁵

12 On 29 September 2022, JP Nelson filed the present application in HC/OA 616/2022 (“OA 616”) to set aside (a) the Adjudication Review Determination; and (b) the Adjudication Determination.¹⁶

13 Following the filing of OA 616, JP Nelson discovered the alleged fraud committed by Builders Hub. As I will elaborate below, this alleged fraud formed one of the key pillars of JP Nelson’s case in the present setting aside application.

¹⁴ Seh Yin Yoke’s affidavit dated 29 September 2022 at para 23 and NS-1 at pp 23–59; Lawrence Lee’s affidavit dated 26 October 2022 at para 12.

¹⁵ Seh Yin Yoke’s affidavit dated 29 September 2022 at para 21 and NS-1 at p 55–56.

¹⁶ HC/OA 616/2022 filed 29 September 2022.

Alleged fraud by Builders Hub

(1) Discovery of the alleged fraud

14 Cappitech Engineering Pte Ltd (“Cappitech”) was a subcontractor of Builders Hub and had supplied air-conditioning systems for the Project before Builders Hub stopped work on the Project.¹⁷

15 On 15 November 2022, Mr Teong Boo Bing (“Mr Teong”), an employee of Infield Projects Pte Ltd (“Infield”) which was JP Nelson’s representative for the Project,¹⁸ approached Cappitech to ascertain whether Cappitech was prepared to continue supplying air-conditioning systems for the Project after JP Nelson appointed a new main contractor following Builders Hub’s termination. During a conversation with an employee of Cappitech, Mr Teong was informed that Cappitech had only received \$6,000 from Builders Hub for the Project. This surprised Mr Teong, as Builders Hub had informed him that it had paid Cappitech at least \$242,842.06 for the supply of air-conditioning equipment and provided documentary evidence to support this statement.¹⁹

16 On the same day, by way of email, Mr Teong sought Cappitech’s confirmation of: (a) whether Cappitech had received a Builders Hub cheque for \$242,842.06; and (b) whether Cappitech had issued four documents to Builders Hub (which will be elaborated below at [18]). Cappitech replied by way of an email dated 16 November 2022, and confirmed that it had never issued the four

¹⁷ Teong Boo Bing’s affidavit dated 21 November 2022 at para 16.

¹⁸ Teong Boo Bing’s affidavit dated 21 November 2022 at paras 10 and 12.

¹⁹ Teong Boo Bing’s affidavit dated 21 November 2022 at para 16.

documents to Builders Hub, nor had it received any cheque (“Cappitech’s 16 November Email”).²⁰

17 On 16 November 2022, Builders Hub responded to Cappitech’s 16 November Email, which I reproduce here:²¹

Dear Ms Evelyn Chen

Refer to your email below is correct and further to our conversation that we had not claimed and they also did not pay us too. It is our side that my staff had mixed up with other projects and lumped all the labour aircon equipments [sic] with piping work and installation with fresh air ductwork together with your aircon equipments [sic] bill and never separated them.

Nevertheless, the total tender contract amount is still the same.

As for the progress approval claim from the owner QS, we confirm they have not paid for any of the aircon equipments [sic] at all and attached the JP nelson QS last report progress claim for your reference which highlights in yellow.

We are sorry for the inconvenience caused.

In its email, Builders Hub agreed that Cappitech’s version of events was correct.

(2) The Five Cappitech Documents

18 Between 22 November 2021 and 8 March 2022, JP Nelson received the five allegedly false documents from Builders Hub (collectively, the “Five Cappitech Documents”):²²

²⁰ Teong Boo Bing’s affidavit dated 21 November 2022 at paras 20–22 and TBB-1 at pp 47–63.

²¹ Teong Boo Bing’s affidavit dated 21 November 2022 at paras 25–26.

²² Teong Boo Bing’s affidavit dated 21 November 2022 at para 19 and TBB-1 at pp 38–46.

(a) **Proforma Invoice No 21-0086:** The first document was a proforma invoice from Cappitech to Builders Hub dated 10 October 2021. It recorded a payment of \$84,034.80 (excluding GST) by Builders Hub as a 30% downpayment for the sum of \$280,116 (“Proforma Invoice 21-0086”).²³

(b) **17 January Quotation:** The second document was a quotation from Cappitech to Builders Hub dated 17 January 2022 for the sum of \$310,990 (excluding GST) (the “17 January Quotation”).²⁴

(c) **Sales Receipt:** The third document was a sales receipt from Cappitech to Builders Hub dated 25 January 2022 (the “Sales Receipt”). It stated that Cappitech had received \$84,034.80 from Builders Hub via cheque no. 128834 (“Cheque No. 128834”).²⁵

(d) **Cheque No 128899:** The fourth document was cheque no 128899 dated 25 January 2022. It was sent from Builders Hub and addressed to Cappitech for the sum of \$242,842.06 (“Cheque No. 128899”).²⁶

(e) **Proforma Invoice No 22-0030:** The fifth document was a proforma invoice from Cappitech to Builders Hub dated 17 January 2022 (“Proforma Invoice No 22-0030”). It provided a

²³ Teong Boo Bing’s affidavit dated 21 November 2022 at p 13, 17 and TBB-1 at pp 76–112.

²⁴ Teong Boo Bing’s affidavit dated 21 November 2022 at p 11 and TBB-1 at pp 140–146, 203–208.

²⁵ Teong Boo Bing’s affidavit dated 21 November 2022 at p 12 and TBB-1 at pp 140–147, 209.

²⁶ Teong Boo Bing’s affidavit dated 21 November 2022 at p 10 and TBB-1 at pp 140–148.

quotation of \$310,990 (before GST) and stated that Cappitech had received \$84,034.80 in a downpayment through Cheque No 128834 dated 25 October 2021.²⁷

19 The Five Cappitech Documents were sent by Builders Hub to JP Nelson in the following sequence:

Date	Documents received by JP Nelson from Builders Hub	Remarks
22 November 2021	Proforma Invoice No 21-0086	Sent by way of an email ²⁸
24 February 2022	<ul style="list-style-type: none"> • Cheque No 128899 • The 17 January Quotation • The Sales Receipt 	Sent by way of an email together with Builders Hub's submission of Progress Claim 34 ²⁹
8 March 2022	<ul style="list-style-type: none"> • Proforma Invoice No 22-0030 	Sent by way of an email, upon JP Nelson's request on 8 March 2022 that Builders Hub show them the proforma invoice for the "down payment for ACMV equipment and Vinyl Flooring" ³⁰

²⁷ Teong Boo Bing's affidavit dated 21 November 2022 at p 14 and TBB-1 at pp 192–199.

²⁸ Teong Boo Bing's affidavit dated 21 November 2022 at TBB-1 pp 76–112.

²⁹ Teong Boo Bing's affidavit dated 21 November 2022 at para 33.

³⁰ Teong Boo Bing's affidavit dated 21 November 2022 at para 38 and TBB-1 p 193.

7 April 2022	<ul style="list-style-type: none"> • Cheque No 128899 • The 17 January Quotation • The Sales Receipt 	Sent by way of an email ³¹
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20 The Five Cappitech Documents had been sent to JP Nelson as proof that Builders Hub had paid Cappitech for the supply of the air-conditioning equipment.³² In its email of 16 November 2022, Builders Hub did not dispute that these documents were false.

The parties' cases

JP Nelson's case

21 JP Nelson contended that the Adjudication Determination and Adjudication Review Determination (“Adjudication Determinations”) should be set aside on the following grounds.

The timeliness of the Adjudication Application

22 First, JP Nelson submitted that the Adjudication Application was served prematurely in breach of s 13(3)(a) of the SOPA and should have been rejected on this basis.³³ JP Nelson disagreed with the findings of both the Adjudicator and Review Adjudicator (collectively, the “Adjudicators”): (a) that there was an agreement to vary the payment claim’s contractual date of service;³⁴ and (b) that JP Nelson was estopped from relying on cl 22.1.1 and cl 22.1.4 of the REDAS

³¹ Teong Boo Bing’s affidavit dated 21 November 2022 at TBB-1 pp 203–210.

³² Teong Boo Bing’s affidavit dated 21 November 2022 at para 19.

³³ Seh Yin Yoke’s affidavit dated 29 September 2022 at paras 26–31.

³⁴ JP Nelson’s written submissions dated 16 November 2022 at para 2.1; Seh Yin Yoke’s affidavit dated 29 September 2022 at paras 32–41.

Conditions because JP Nelson did not make any representations contrary to an email from Builders Hub implying that the contractual date of service had been varied.³⁵

The fraud ground

23 Second, JP Nelson contended that the Adjudication Determinations were tainted by fraud. JP Nelson averred that Builders Hub had fraudulently created the Five Cappitech Documents and delivered them to JP Nelson in order to deceive JP Nelson into making a total downpayment of \$155,160 to Builders Hub (the “Downpayment”). This sum amounted to 45% of the contract price (being \$344,800) between JP Nelson and Builders Hub for air-conditioning systems.³⁶ JP Nelson relied on the two-step process set out by the Court of Appeal in *Facade Solution Pte Ltd v Mero Asia Pacific Pte Ltd* [2020] 2 SLR 1125 (“*Facade Solution*”) to argue that the Adjudication Determinations should be set aside.³⁷

Builders Hubs’ case

24 Builders Hub submitted that the Adjudication Determinations should not be set aside.

The timeliness of the Adjudication Application

25 Builders Hub had three primary arguments. Firstly, Builders Hub averred that JP Nelson was seeking to review the merits of the Adjudicators’

³⁵ JP Nelson’s written submissions dated 16 November 2022 at para 2.2; Seh Yin Yoke’s affidavit dated 29 September 2022 at paras 44–50.

³⁶ JP Nelson’s supplemental submissions dated 26 January 2023 at paras 11–16.

³⁷ JP Nelson’s supplemental submissions dated 26 January 2023 at paras 33–73.

decisions, which was outside the court’s supervisory jurisdiction. This was because JP Nelson’s setting aside application was centred on the issue of whether the Adjudication Application lodged on 24 June 2022 was premature, which had been fully canvassed in the Adjudication Determinations.³⁸ Secondly, Builders Hub submitted that JP Nelson only filed the present setting aside application after undue delay and not within a reasonable time.³⁹ Thirdly, Builders Hub argued that in any event, the Adjudicators had correctly found that the Adjudication Application was not prematurely filed. Builders Hub also argued that pursuant to s 11(1)(a) of the SOPA, even if the payment claim submission date was not varied by parties, the Adjudication Application was still lodged on time.⁴⁰

The fraud ground

26 Builders Hub countered that JP Nelson did not satisfy the requirements of the two-stage *Facade Solution* test. First, the Adjudicators did not rely on the facts of the fraud in making their respective determinations. The Five Cappitech Documents were not even submitted as part of the adjudication bundle of documents.⁴¹ Further, it was completely without merit for JP Nelson to argue that the Adjudicators relied on the facts of the fraud because the Adjudicators relied on Interim Valuation No 37, which certified a sum inclusive of the Downpayment induced by fraud.⁴²

³⁸ Lawrence Lee’s affidavit dated 26 October 2022 at paras 28–36; Builders Hub’s written submissions dated 16 November 2022 at paras 43–64.

³⁹ Lawrence Lee’s affidavit dated 26 October 2022 at paras 20–27; Builders Hub’s written submissions dated 16 November 2022 at paras 13–42.

⁴⁰ Lawrence Lee’s affidavit dated 26 October 2022 at paras 37–54; Builders Hub’s written submissions dated 16 November 2022 at paras 65–111.

⁴¹ Builders Hub’s supplemental submissions dated 26 January 2023 at paras 9–12.

⁴² Builders Hub’s supplemental submissions dated 26 January 2023 at paras 14–16.

27 Second, JP Nelson failed to satisfy the second step of the test as the facts in question were not material to the issuance of the Adjudication Determinations. The Five Cappitech Documents were not material because they related only to the main contract works and not to any part of the claims for variation works (as the only disputed claims) on which the Adjudication Determinations were based. Further, the Response Amount, which JP Nelson claimed was tainted by fraud, was paid before the Adjudication Determination was issued. Additionally, JP Nelson’s liability to Builders Hub was reduced by the Response Amount in the Adjudication Review Determination to reflect the payment made by JP Nelson. Therefore, no part of the amount eventually awarded to Builders Hub by the Adjudicators contained the sum of \$329,284.98.⁴³

28 In any event, Builders Hub also argued that the costs for the air-conditioning systems under Item H1a of the original contract works were not claimed in PC 37. In PC 37, Builders Hub claimed 5% of the contract sum under Item H1a of Bill No 6. This claim was solely based on *work done* for the completion of piping, ducting and cable work for the air-conditioning system. Therefore, this excluded the Downpayment monies that were tainted by fraud.⁴⁴

Orders sought by the applicant

29 Based on its claims, JP Nelson sought the following orders:⁴⁵

⁴³ Builders Hub’s supplemental submissions dated 26 January 2023 at paras 17–23.

⁴⁴ Builders Hub’s supplemental submissions dated 26 January 2023 at paras 24–29.

⁴⁵ HC/OA 616/2022 filed 29 September 2022; JP Nelson’s supplemental submissions dated 26 January 2023 at para 74.

- (a) That the Court set aside: (a) the Adjudication Review Determination dated 12 September 2002 made in SOP/ARA 006 of 2022; and (b) the Adjudication Determination dated 4 August 2022 made in SOP/AA 099 of 2022.
- (b) That Builders Hub pay JP Nelson the sum of \$518,096.94 (being the Review Adjudicated Amount).
- (c) That Builders Hub pay the costs of and incidental to OA 616 to JP Nelson on an indemnity basis.
- (d) Such further order(s) that the Court deems just.

Issues to be determined

30 A preliminary issue to JP Nelson’s first ground was whether the court had jurisdiction to determine the timeliness of the Adjudication Application, notwithstanding that the issue had been canvassed in the Adjudications.

31 Assuming that the preliminary issue was answered in the affirmative, the issue then was whether the Adjudication Application had been lodged prematurely.

32 In terms of the second ground, the question was whether the Adjudication Determinations should be set aside because they were tainted by fraud.

Issue 1: The timeliness of the Adjudication Application

The law

33 The fundamental rule underlying the court’s role in hearing and determining an application to set aside an adjudication determination is that the court should not review the merits of the adjudicator’s decision: *Lee Wee Lick Terence (alias Li Weili Terence) v Chua Say Eng (formerly trading as Weng Fatt Construction Engineering) and another appeal* [2013] 1 SLR 401 (“*Chua Say Eng*”) at [66]. A non-exhaustive list of grounds for the court to set aside an adjudication determination is set out in s 27(6) of the SOPA. Section 27(6)(d) of the SOPA provides that a party to an adjudication may commence proceedings to set aside an adjudication determination where the adjudication application or the adjudication review application was not made in accordance with the provisions of the SOPA.

34 In this case, the relevant provisions in the SOPA relate to the timelines for the adjudication process. This was well summarised by Quentin Loh J (as he then was) in *Newcon Builders Pte Ltd v Sino New Steel Pte Ltd* [2015] SGHC 226 (“*Newcon Builders*”) at [22]:

(a) A payment claim is to be served at such time as specified in the contract or determined in accordance with the terms of the contract, or where the contract does not contain such provision, by the last day of each month following the month in which the contract is made: see s 10(2) of the [SOPA] read with reg 5(1) of the Building and Construction Industry Security of Payment Regulations (Cap 30B, Rg 1, 2006 Rev Ed) (“the Regulations) [*sic*].

(b) A payment response shall be provided to the claimant by the date as specified in or determined in accordance with the terms of the contract, or within 21 days after the payment claim is served, whichever is the earlier, or where the construction contract does not contain such provision, within 7 days after the payment claim is served: see s 11(1) of the [SOPA].

(c) The claimant is entitled to make an adjudication application in relation to the payment claim if, by the end of the dispute settlement period (*ie*, the period of 7 days after the date on which or the period within which the payment response is required to be provided), the dispute is not settled or the respondent does not provide the payment response: see s 12(2) read with s 12(5) of the [SOPA].

(d) An adjudication application shall be made within 7 days after the entitlement of the claimant to make an adjudication application first arises: see s 13(3)(a) of the [SOPA].

Preliminary objection

35 I first addressed a preliminary objection by Builders Hub. Builders Hub submitted that JP Nelson was seeking an examination of the merits of the Adjudication Determinations.⁴⁶ In the adjudication proceedings and review adjudication proceedings, JP Nelson had already extensively argued that the adjudication application was lodged prematurely, and both Adjudicators rejected this argument.⁴⁷ Once again, in OA 616, JP Nelson was canvassing the same argument. Here, JP Nelson’s case was predicated on its disagreement with a finding of fact made by the Adjudicators – that parties had varied the contractual date for submitting payment claims.⁴⁸ If the court were to consider whether the Adjudication Application was made prematurely, and to subsequently make a finding on whether parties had varied the contractual date for submitting payment claims, that would amount to reviewing the merits of the Adjudication Determinations. This would fall outside the court’s supervisory jurisdiction.

36 In my view, it was entirely within the court’s supervisory jurisdiction to determine whether Builders Hub had lodged the Adjudication Application

⁴⁶ Builders Hub’s written submissions dated 16 November 2022 at paras 43–44.

⁴⁷ Builders Hub’s written submissions dated 16 November 2022 at paras 50–51.

⁴⁸ Builders Hub’s written submissions dated 16 November 2022 at para 61.

prematurely. The timeliness of the Adjudication Application was a question that determined compliance with s 12(2) and s 13(3)(a) of the SOPA, and therefore went to the jurisdiction of the Adjudicator. I agreed with Builders Hub that the Adjudicators were fully entitled to make a finding in relation to the Adjudicator's jurisdiction, but the court was not bound by this finding. These are for the reasons that I explain below.

37 The Building and Construction Industry Security of Payment (Amendment) Act 2018 (Act 47 of 2018), which took effect on 15 December 2019, introduced a non-exhaustive list of grounds for setting aside an adjudication determination under s 27(6) of the SOPA. Section 27(6)(d) of the SOPA specifically provides that a party can commence court proceedings where the adjudication application was not made in accordance with the SOPA. In this case, if the Adjudication Application was lodged prematurely, it would be non-compliant with ss 12(2) and 13(3)(a) of the SOPA: see *Newcon Builders* at [30]. Section 13(3)(a) prescribes that an adjudication application must be made within seven days “*after the entitlement ... first arises*” [emphasis added]. The wording of the statute makes clear that the entitlement to make an adjudication application must have first arisen. This entitlement is governed by s 12(2) of the SOPA, which, *inter alia*, provides that where the claimant disputes a payment response by the respondent, and the dispute is not settled *by the end of the dispute settlement period*, the claimant is entitled to make an adjudication application under s 13 of the SOPA. Therefore, if the Adjudication Application was made before Builders Hub's entitlement to do so arose, it was not a valid adjudication application.

38 Prior to the enactment of s 27(6)(d) of the SOPA, the Court of Appeal had already made clear in *Citiwall Safety Glass Pte Ltd v Mansource Interior*

Pte Ltd [2015] 1 SLR 797 at [49] that a court in a setting aside application is concerned with:

... the propriety of the [adjudication determination] itself (that is to say, with *issues relating to the jurisdiction of the adjudicator, including non-compliance with the SOPA*, and procedural propriety in the adjudication, including whether there was a breach of natural justice).

[emphasis added]

39 I recognised that on a plain reading of s 27(6)(d) of the SOPA, the provision could conceivably cover any breach of the Act regardless of the materiality of the breach. This contrasted with the seemingly narrower view taken in the case law prior to its enactment. The Court of Appeal in *Chua Say Eng* observed that an adjudication determination could be set aside if:

... the claimant, in the course of making an adjudication application, had not complied with one (or more) of the provisions under the Act *which was so important that it was the legislative purpose that an act done in breach of the provision should be invalid ...*

[emphasis added]

40 However, I made no finding on whether Parliament intended to invalidate all adjudication and review applications that were “not made in accordance” with the provisions of the SOPA. In the case of *Newcon Builders*, which was decided before the enactment of s 27(6)(d) of the SOPA, Loh J found that an adjudication application made before the expiry of the dispute settlement period was invalid. Further, Loh J held that the court was entitled, as part of its supervisory jurisdiction, to set aside an adjudication determination which had been rendered pursuant to a premature adjudication application in breach of ss 12(2) and 13(3)(a) of the SOPA (*Newcon Builders* at [45]). Loh J provided extensive reasoning for this conclusion (at [23]–[45] of *Newcon Builders*), with which I respectfully agree. In my judgment, these arguments applied with even

greater force in this case, where the Adjudication Application was alleged to be made even earlier than in *Newcon Builders*, ie, before the dispute settlement period arose.

41 In my judgment, it made no difference that the Adjudicators had determined the validity of the Adjudication Application. In my earlier decision of *Lendlease Singapore Pte Ltd v M & S Management & Contracts Services Pte Ltd* [2019] SGHC 139 (“*Lendlease*”), I considered an application to set aside an adjudication determination on the grounds that the adjudication application had been lodged by the defendant out of time, in breach of s 13(3)(a) of the SOPA (*Lendlease* at [1]). Crucially, this jurisdictional objection had been canvassed in the adjudication process. The plaintiff had already detailed its objections that the adjudication application was lodged out of time in the plaintiff’s adjudication response, and the adjudicator below dismissed the plaintiff’s objection in the adjudication determination (*Lendlease* at [4]–[5]). Nonetheless, I set aside the adjudication application because the contractual terms clearly showed that the time for lodging the adjudication application began to run from the date of physical service of the payment, as opposed to the date stated in the payment claim, which meant that the application was lodged out of time (*Lendlease* at [18]–[19]).

42 Builders Hub also relied on the case of *Emergent Engineering Pte Ltd v China Construction Realty Co Pte Ltd* [2022] SGHC 276 (“*Emergent Engineering*”) to support its position that JP Nelson was essentially mounting a backdoor attempt to review the merits of the Adjudicators’ decisions.⁴⁹ In my judgment, Builders Hub had misapplied the decision in *Emergent Engineering*. In that case, the respondent had sought to set aside the adjudication

⁴⁹ Builders Hub’s written submissions dated 16 November 2022 at paras 57–63.

determination on the basis that the applicant was not entitled to serve payment claim 25 (“PC 25”) because the respondent had terminated the sub-contract (*Emergent Engineering* at [48]). However, the court in *Emergent Engineering* held that there was no genuine question of the adjudicator acting in excess of his jurisdiction. The respondent in that case did not allege that any of the requirements for service of payment claims, stipulated under s 10 of the SOPA, were breached. In fact, it was undisputed by parties that PC 25 was compliant with all the payment claim requirements under s 10 of the SOPA. Therefore, the respondent’s case was not based on s 27(6)(a) of the SOPA, which provides that a party to an adjudication may commence proceedings to set aside an adjudication determination on the ground that the payment claim was not served in accordance with s 10 of the SOPA (*Emergent Engineering* at [48]). Instead, it was premised fundamentally on the respondent’s disagreement with the adjudicator’s finding that the respondent had not validly terminated the sub-contract. This contrasted with the present case, where the finding of whether the parties had varied the contractual date for submitting payment claims has a bearing on s 27(6)(d) of the SOPA.

43 In short, JP Nelson was entitled to seek a review of whether the Adjudication Application had been lodged prematurely. For completeness, I was also unconvinced by Builders Hub’s submission that the setting aside application should be dismissed as OA 616 was not brought within a reasonable time.

The decision

44 I held that Builders Hub did not lodge the Adjudication Application prematurely. Therefore, I did not set aside the Adjudicators’ Determinations on this ground.

45 According to JP Nelson, pursuant to cl 22.1.1 of the REDAS Conditions, Builders Hub was contractually required to serve its payment claims on the last day of each month following the month in which the Contract was made:⁵⁰

22.1.1. The Contractor shall serve on the Employer with a copy to the Employer's Representative a Payment Claim on the last day of each month following the month in which the Contract is made (or otherwise by such time or on such day as stated in Appendix 1) showing the amount which the Contractor considers himself to be entitled for that month together with the relevant supporting documents.

[emphasis added]

As the Contract was entered into on 8 June 2018, and as Appendix 1 did not stipulate a date, Builders Hub would be required to serve each payment claim on the eighth of each month.⁵¹ Correspondingly, the deadline for serving PC 37 was 8 June 2022.

46 JP Nelson posited that pursuant to cl 22.4 of the REDAS Conditions, it would then be required to serve the Payment Response within 21 days after PC 37 was served on the Employer, *ie*, JP Nelson:⁵²

22.4. The Interim Payment Certificate issued under clause 22.2.1 or the Final Payment Certificate issued under clause 24.4 shall be deemed the Payment Response from the Employer to the Contractor under the SOP Act in the event that the Employer fails to provide any Payment Response to the Contractor within 21 days after the Payment Claim is served on the Employer by the Contractor. Where the Employer provides a Payment Response within 21 days after the date the Payment Claim is served in compliance with the SOP Act, the Employer's Payment Response shall take precedence over the Interim Payment Certificate issued under clause 22.2.1 or the Final

⁵⁰ JP Nelson's written submissions dated 16 November 2022 at para 7.

⁵¹ JP Nelson's written submissions dated 16 November 2022 at para 8.

⁵² Seh Yin Yoke's affidavit dated 29 September 2022 at TBB-1 p 209; JP Nelson's written submissions dated 16 November 2022 at para 14.

Payment Certificate issued under clause 24.4 and shall constitute the Payment Response to the Contractor.

47 However, cl 22.1.4 of the REDAS Conditions stipulated that even if Builders Hub served its payment claim early, JP Nelson would not be required to issue its payment response earlier than if Builders Hub had served its payment claim in accordance with the contractual date in cl 22.1.1:⁵³

22.1.4. In the event that the Contractor serves his Payment Claim earlier than the time period as provided under clause 22.1.1 above, the Employer's Representative shall not be required to issue the Interim Payment Certificate or the Employer to issue the Payment Response earlier than the case if the Contractor had served his Payment Claim in accordance with clause 22.1.1.

48 Therefore, JP Nelson argued that notwithstanding that Builders Hub served PC 37 on 20 May 2022, the *deemed* date of service of PC 37 was 8 June 2022. Applying cl 22.4 of the REDAS Conditions, JP Nelson contended that the last day for JP Nelson to serve the Payment Response would then be 29 June 2022.⁵⁴

49 According to ss 12(2) and 12(6) of the SOPA, if Builders Hub disputed a payment response provided by JP Nelson, Builders Hub would only be entitled to make an adjudication application at the end of the dispute settlement period, which meant the “7 days after the date on which ... the payment response is required to be provided under section 11(1)”. On the basis that the Payment Response was required by 29 June 2022, the dispute settlement period was from 30 June 2022 to 6 July 2022.⁵⁵ After the dispute settlement period, Builders Hub

⁵³ Seh Yin Yoke's affidavit dated 29 September 2022 at TBB-1 p 209.

⁵⁴ JP Nelson's written submissions dated 16 November 2022 at para 14.

⁵⁵ JP Nelson's written submissions dated 16 November 2022 at para 14.

had seven days to make an adjudication application, *ie*, from 7 July 2022 to 13 July 2022: s 13(3)(a) of the SOPA.⁵⁶

50 I have summarised JP Nelson’s account of Builders Hub’s entitlement to file the Adjudication Application:

Event	Basis	Date
Date of the Contract		8 June 2018
Service of PC 37 by Builders Hub to JP Nelson		20 May 2022
Deemed date of service of PC 37	Clauses 22.1.1 and 22.1.4 of the REDAS Conditions	8 June 2022
Payment Response filed by JP Nelson		10 June 2022
<i>Adjudication Application filed by Builders Hub</i>		<i>24 June 2022</i>
Last date for JP Nelson to serve the Payment Response	Clause 22.4 of the REDAS Conditions	29 June 2022
Dispute resolution period	Sections 12(2) and 12(6) of the SOPA	30 June 2022 to 6 July 2022
<i>Builders Hub’s entitlement to file the Adjudication Application</i>	Section 13(3)(a) of the SOPA	<i>7 July 2022 to 13 July 2022</i>

51 Therefore, JP Nelson averred that Builders Hub filed the Adjudication Application prematurely on 24 June 2022, before it was entitled to do so from 7 July 2022 to 13 July 2022.

⁵⁶ JP Nelson’s written submissions dated 16 November 2022 at para 15.1.

52 However, Builders Hub’s case was that the contractual submission date for payment claims had been varied to the third week of the month, *ie*, Builders Hub was required to serve each payment claim between the 15th and 21st of each month (both dates inclusive). If the Contract was varied, the Adjudication Application would not be premature.

53 Builders Hub submitted that parties had varied the requirement of submitting a payment claim on the 8th of each month. The agreement was allegedly made at a meeting held on 7 October 2020 and attended by representatives of both parties (“Meeting No 35”). This meeting was apparently a usual project meeting held every two weeks between the key representatives of JP Nelson, Builders Hub and JP Nelson’s representative, Infield, for the Project.⁵⁷ The contents of this meeting were recorded in the Minutes of Meeting No 35 (the “Minutes”). In particular, Item E(2) of the Minutes stated that “[p]rogress claim shall be submitted on every 3rd week of the month”.⁵⁸

54 The Adjudicators agreed that the submission date for payment claims had been varied during Meeting No 35.⁵⁹ Having reviewed all the evidence before me, I held that the Adjudicators came to the correct decision. The evidence was strong that both parties intended to vary the contract terms on submission for payment claims.

55 I highlighted the following facts. Firstly, the language of the agreement recorded in the Minutes was mandatory and not permissive. The Minutes stated that Builders Hub “*shall*” submit progress claims on every third week of the

⁵⁷ Seh Yin Yoke’s affidavit dated 29 September 2022 at p 77.

⁵⁸ Seh Yin Yoke’s affidavit dated 29 September 2022 at pp 857–860.

⁵⁹ Seh Yin Yoke’s affidavit dated 29 September 2022 at NS-1 at pp 37–40, 77–80.

month. It was unsustainable for JP Nelson to argue that at most, the Minutes suggested that Builders Hub *could* serve its payment claim on the third week of each month.⁶⁰ Furthermore, it did not make sense for parties to record that Builders Hub was *permitted* to serve its payment claim on the third week of each month, because Builders Hub was clearly already allowed to do so under cl 22.1.1 read with cl 22.1.4 of the REDAS Conditions of the original contract. Therefore, I agreed with the Adjudicator’s finding that the sentence “was probably intended as ... a direction that delivered a mandatory requirement”.⁶¹ It also bears noting that the Minutes were prepared by JP Nelson’s Project Manager. Subsequently, in the Minutes of Meeting No. 36, it was recorded in Item A(1) that “[a]ll parties ... agreed that there [was] no amendment to previous minutes of meeting”.⁶² In fact, the Minutes of Meeting Nos. 36 and 37 both reiterated that the progress claim “shall” be submitted on every third week of the month.⁶³ No objection was raised by JP Nelson.

56 Second, I considered the email sent by Builders Hub to JP Nelson on 18 April 2022 with the subject “28 Benoi Road – Claim No 36” (the “18 April Email”). In the 18 April Email, Builders Hub informed JP Nelson of the following:⁶⁴

...

Kindly be informed that for this month we will need a little more time to prepare our claim. *We will therefore only be able to submit it on the last day of the 3rd week based on what you had previously directed in the meetings. Should we not hear from you otherwise, we will submit our claim accordingly on 21 April 2022.*

⁶⁰ JP Nelson’s written submissions dated 16 November 2022 at para 35.

⁶¹ Seh Yin Yoke’s affidavit dated 29 September 2022 at NS-1 p 38.

⁶² Seh Yin Yoke’s affidavit dated 29 September 2022 at pp 861–865.

⁶³ Seh Yin Yoke’s affidavit dated 29 September 2022 at p 864, 868.

⁶⁴ Seh Yin Yoke’s affidavit dated 29 September 2022 at p 1206.

...

[emphasis added]

57 The 18 April Email was consistent with a finding that there was an earlier agreement in Meeting No 35 to submit payment claims every third week of the month. I was unconvinced by JP Nelson’s argument that the 18 April Email was completely unrelated to PC 37. According to JP Nelson, this was illustrated by how the subject title stated “Progress Claim no. 36”, not PC 37, and how the reference to requiring more time to prepare the claim was in relation to “this month”, as opposed to any other payment claim.⁶⁵ In my view, if there had been no agreement to vary the dates for payment claim submissions, there was no reason for Builders Hub to inform JP Nelson that they needed “a little more time to prepare our claim”. This was because, based on the original contract, Builders Hub would only have had to submit payment claim 36 by 8 May 2022, *ie*, it had a period of three weeks from the 18 April Email to furnish payment claim 36. Furthermore, it was undisputed that JP Nelson did not respond to the 18 April Email. If JP Nelson disagreed that it had previously directed that payment claims are to be served on the third week of the month, it would be more probable for JP Nelson to have replied to the 18 April Email and to have expressed its disagreement.

58 For completeness, Builders Hub’s conduct after the alleged variation of Contract was a neutral factor. JP Nelson argued that in spite of the alleged variation, 15 out of the 20 claims served by Builders Hub after Meeting No 35, *ie*, payment claims 18 to 37, were not served on the third week of the month. On the other hand, none of those payment claims were served on the eighth of the month either. Therefore, I found that the contractual terms on service of

⁶⁵ JP Nelson’s written submissions dated 16 November 2022 at paras 41–44.

payment claims had been varied by parties, and the Adjudication Application was not premature.

59 In the alternative, Builders Hub averred that JP Nelson was estopped from insisting that PC 37 was required to be submitted on the 8th day of each month. JP Nelson’s failure to respond to the 18 April Email and failure to object that there was an agreement amounted to a representation that Builders Hub was to submit its payment claims on the third week of the month.

60 The Adjudicator found that even if parties had not agreed to vary the Contract:⁶⁶

a clear representation had been made by the Respondent to the Claimant to submit its payment claims within a certain time period at the said meeting. The Claimant, as can be seen from its email of 18 April 2022, was evidently under the impression that this direction had to be complied with and had indicated it would submit it on the 21st of April 2022 if it did not hear from the Respondent otherwise. It is quite indisputable that such a direction was given. If the Respondent stayed silent when a reply was clearly awaited if what was asserted in the said email was incorrect, it is inequitable for and the Respondent should be estopped now to make the assertion that it is now making.

61 I had no reason to disagree with this finding. In its submissions, JP Nelson’s disagreement was premised on its claim that the 18 April Email was confined to payment claim 36,⁶⁷ which I found to be inaccurate. Therefore, I found that in the alternative, JP Nelson was estopped from insisting that PC 37 was required to be submitted on the eighth day of the month. On this basis, the Adjudication Application was not lodged prematurely.

⁶⁶ Seh Yin Yoke’s affidavit dated 29 September 2022 at p 80.

⁶⁷ JP Nelson’s written submissions dated 16 November 2022 at para 44.1.

Issue 2: Fraud

The Law

62 Section 27(6)(h) of the SOPA provides that a party to an adjudication may commence proceedings to set aside an adjudication determination where the making of the adjudication determination was induced or affected by fraud or corruption.

63 In the case of *Facade Solution*, the Court of Appeal established a two-step test to determine when an adjudication determination should be set aside on the ground of fraud. The burden of establishing both steps falls on the party seeking to set aside the adjudication determination, *ie*, the innocent party (*Facade Solution* at [38]).

64 In the first step, the innocent party must show that the adjudication determination was based on facts which the party seeking the claim knew, or ought reasonably to have known, were untrue. The objective test of knowledge would apply to every stage of the adjudication proceedings (*Facade Solution* at [29]). To set aside the adjudication determination, the innocent party would therefore have to establish (*Facade Solution* at [30]):

- (a) The facts which were relied on by the adjudicator in arriving at the adjudication determination.
- (b) That those facts were false.
- (c) That the claimant either knew or ought reasonably to have known them to be false.

(d) That the innocent party did not, in fact, *subjectively* know or have *actual* knowledge of the true position throughout the adjudication proceedings.

65 Notably, the requirement set out at [64(d)] is restricted to subjective or actual knowledge because there is no need for the innocent party to show that the evidence of fraud could have been obtained or discovered with reasonable diligence during the adjudication proceedings (*Facade Solution* at [31]). This is because parties, in dealing with the adjudicator, are expected to act with utmost probity, and a fraudulent party should not be allowed to get away with fraud because he had not been found out earlier in the course of the adjudication proceedings (*Facade Solution* at [33]).

66 In the second step, the innocent party must establish that the facts in question were material to the issuance of the adjudication determination. Materiality would be established if there was a real prospect that the outcome of the adjudicator's determination *might* have been different, had he known the truth. In other words, the facts must have been an operative cause in the issuance of the adjudication determination, based on the reasoning and arguments at the time the determination in question was made (*Facade Solution* at [35]).

67 Where an adjudication determination was obtained by fraud, the court is generally unsympathetic to the claimant, as the claimant would have engaged in deliberate and dishonest conduct to acquire benefits to which it was not entitled. On this basis, fraud unravels all and the starting point is that the adjudication determination that was corrupted by fraudulent conduct would be tainted in its entirety, and the whole must fail. This serves to discourage claimants from committing fraud. However, in exceptional circumstances, the court may exercise its discretion to sever the impugned portion of an

adjudication determination to permit the claimant to retain the balance adjudicated sum. This discretion would be exercised where the fraud was *de minimis* both in terms of nature and quantum, such that the policy consideration of facilitating cash flow under the SOPA would outweigh the need to uphold public confidence in the administration of justice. The factors that the court should consider include: the nature of the fraud, the quantum of the claim affected by the fraud and the requirements of textual and substantial severability as enunciated by the High Court in *Rong Shun Engineering & Construction Pte Ltd v CP Ong Construction Pte Ltd* [2017] 4 SLR 359 at [155]: see *Facade Solution* at [61].

The decision

68 Before I considered the elements of the test in *Facade Solution*, I made the following findings of fact.

The falsity of the Five Cappitech Documents

69 Firstly, I found that Builders Hub had fraudulently submitted the Five Cappitech Documents to deceive JP Nelson. It was undisputed that Builders Hub sent the Five Cappitech Documents to Builders Hub (see above at [18]–[19]). On the face of it, each document, except for Cheque No 128899 (which was allegedly sent by Builders Hub to Cappitech), originated from Cappitech. However, in Cappitech’s 16 November Email, it denied ever issuing the four documents to Builders Hub, nor receiving Cheque No 128899. JP Nelson also provided the following counterevidence in relation to each of the Five Cappitech Documents:

- (a) **Proforma Invoice 21-0086:** In Cappitech’s records, its proforma invoice no. 21-0086 was dated 29 March 2021 for No 9 Tuas

Link 2 for the sum of \$24,289. It was not for a downpayment of \$84,034.80 (excluding GST).⁶⁸

(b) **17 January Quotation:** According to Cappitech, its quotation to Builders Hub was dated 16 February 2022, for the sum of \$162,000 (excluding GST), and not \$310,990.⁶⁹

(c) **Sales Receipt:** Cappitech confirmed that it does not issue sales receipts because their accounts had been “outsourced to public accountant [*sic*]”.⁷⁰

(d) **Cheque No 128899:** Cappitech confirmed that it had *only* received cheque no 128912 for \$6,259.50 from Builders Hub.⁷¹

(e) **Proforma Invoice No 22-0030:** In Cappitech’s records, its proforma invoice no 22-0030 was dated 22 February 2022 and for the sum of \$162,000 (before GST), and Cappitech confirmed that this invoice was not paid for.⁷²

70 In Builders Hub’s response to Cappitech’s 16 November Email, it claimed that its “staff had mixed up with other projects and lumped all the labour aircon equipments [*sic*] with piping work and installation with fresh air ductwork together with your aircon equipments [*sic*] bill and never separated

⁶⁸ Teong Boo Bing’s affidavit dated 21 November 2022 at p 13 and TBB-1 at p 56.

⁶⁹ Teong Boo Bing’s affidavit dated 21 November 2022 at p 11 and TBB-1 at pp 57–58.

⁷⁰ Teong Boo Bing’s affidavit dated 21 November 2022 at p 12 and TBB-1 at p 48.

⁷¹ Teong Boo Bing’s affidavit dated 21 November 2022 at p 10 and TBB-1 at pp 62–63.

⁷² Teong Boo Bing’s affidavit dated 21 November 2022 at p 14 and TBB-1 at pp 48 and 61.

them”.⁷³ I found this explanation to be unbelievable. As JP Nelson had given evidence that Cappitech did not create the four documents or receive Cheque No 128899, it was implausible for Builders Hub to simply mix up otherwise non-existing documents with that of other projects. Further, in its submissions and affidavits, Builders Hub did not deny that it created the Five Cappitech Documents. On the whole of the evidence, I found that Builders Hub had fraudulently submitted the Five Cappitech Documents to deceive JP Nelson.

JP Nelson’s reliance on the Five Cappitech Documents

71 Next, I found that the Five Cappitech Documents represented to JP Nelson that Builders Hub had made payments to Cappitech, and in reliance on these representations, JP Nelson was induced to make the Downpayment totalling \$155,160 to Builders Hub.

72 According to JP Nelson, after JP Nelson received the fake Invoice No 21-0086, which represented that Builders Hub had paid Cappitech \$84,034.80, JP Nelson agreed to pay Builders Hub 30% of the \$344,800 contract price between JP Nelson and Builders Hub for air-conditioning systems, *ie*, \$103,440, as a downpayment for aircon equipment. This downpayment was reflected in Interim Valuation 31 dated 16 December 2021 under Items H(1)(a)(i) and H(1)(a)(ii) for “Air-conditioning System”. The remarks to Items H(1)(a)(i) and H(1)(a)(ii) stated that the payments were for “Downpayment for Aircon equipment”.⁷⁴

⁷³ Teong Boo Bing’s affidavit dated 21 November 2022 at TBB-1 p 64.

⁷⁴ JP Nelson’s supplemental submissions dated 26 January 2023 at para 22; Teong Boo Bing’s affidavit dated 21 November 2022 at TBB-1 p 131.

73 Subsequently, on receipt of Cheque No 128899, which represented that Builders Hub had paid Cappitech an additional \$242,842.06, and the 17 January Quotation for \$310,990, JP Nelson agreed to pay 50% of the quoted \$310,990 equipment cost. This agreement was recorded in JP Nelson’s email to Builders Hub dated 10 March 2022. Mr Teong informed Builders Hub that JP Nelson agreed to pay 50% of the aircon equipment cost, based on a total equipment cost of \$310,000, “as per Cappitech’s Proforma Invoice”.⁷⁵ This advance payment was then reflected in Interim Valuation 34 dated 9 March 2022, prepared by Infield, under items H(1)(a)(i) and H(1)(a)(ii) for “Air-conditioning System”. It was stated that JP Nelson would pay an additional 15% of the \$344,800 contract price between JP Nelson and Builders Hub for air-conditioning systems, amounting to \$103,440. The remarks stated that this additional payment was for “downpayment for aircon equipment”.⁷⁶

74 Thereafter, JP Nelson made the Downpayment of \$155,160 to Builders Hub, amounting to 45% of the \$344,800 contract price between JP Nelson and Builders Hub for air-conditioning systems.⁷⁷

75 Builders Hub did not deny that the Five Cappitech Documents led to the \$155,160 Downpayment. On the balance of probabilities, I found that the Five Cappitech Documents induced JP Nelson to make the \$155,160 Downpayment.

⁷⁵ Teong Boo Bing’s affidavit dated 21 November 2022 at para 39 and TBB-1 at p 200.

⁷⁶ JP Nelson’s supplemental submissions dated 26 January 2023 at paras 25.1–25.3 and TBB-1 at p 229.

⁷⁷ JP Nelson’s supplemental submissions dated 26 January 2023 at para 25.3.

The Facade Solution test

76 In my judgment, JP Nelson did not satisfy the requirements of the *Facade Solution* test. Principally, this was because the facts of the fraud were not relied on by the Adjudicators in arriving at the Adjudication Determinations, *ie*, JP Nelson did not satisfy Step 1(a) of the *Facade Solution* test.

77 According to JP Nelson, the Adjudicator relied on the facts of the fraud because he relied on Interim Valuation 37, which provided the Response Amount of \$329,284.98. It is undisputed that the Adjudicator found that JP Nelson was liable to pay the Response Amount of \$329,284.98 (as set out at paragraph 221 of the Adjudication Determination).⁷⁸ The connection to the fraud was that in Interim Valuation 37, JP Nelson certified that Builders Hub was entitled to 75% of the contract sum for Items H(1)(a)(i) and H(1)(a)(ii) on “Air-conditioning system”.⁷⁹ This certified amount of 75% was inclusive of the 45% Downpayment that had been tainted by fraud through the fraudulent Five Cappitech Documents.⁸⁰ Further, in PC 37, Builders Hub had claimed an additional 5% of the contract sum for Items H(1)(a)(i) and H(1)(a)(ii), and this was certified by JP Nelson, therefore forming part of the Response Sum payable to JP Nelson.⁸¹ Therefore, the Adjudicator relied on Interim Valuation 37, which in turn relied on the Five Cappitech Documents, to issue the determination.⁸²

78 In the Adjudication Review Determination, the Review Adjudicator reduced the amount that JP Nelson had to pay Builders Hub by \$329,284.98.

⁷⁸ Teong Boo Bing’s affidavit dated 21 November 2022 at TBB-1 p 415 and 445.

⁷⁹ JP Nelson’s supplemental submissions dated 26 January 2023 at paras 43.2 and 46.

⁸⁰ JP Nelson’s supplemental submissions dated 26 January 2023 at para 47.

⁸¹ JP Nelson’s supplemental submissions dated 26 January 2023 at paras 48–49.

⁸² JP Nelson’s supplemental submissions dated 26 January 2023 at para 53.

This was to avoid a double count because JP Nelson had paid the sum of \$329,284.98 earlier on 1 July 2022. However, according to JP Nelson, Builders Hub was still retaining the fruits of its fraud as it retained the \$329,284.98 paid by JP Nelson.⁸³ Builder's Hub should not be entitled to the Response Amount as it was made by Builders Hub's fraud.⁸⁴

79 In my view, Interim Valuation 37 had not been tainted by fraud. In PC 37, under Items H(1)(a)(i) and H(1)(a)(ii) on "Air-conditioning system", Builders Hub only claimed an additional 5% of the contract sum from the previous payment claim. The percentage increase was from 70% in payment claim 36 to 75% in PC 37. Subsequently, in Interim Valuation 37, JP Nelson certified the 5% claimed under Items H(1)(a)(i) and H(1)(a)(ii). This 5% then formed part of the Response Amount of \$329,248.98. To be clear, however, the remaining 70%, had been claimed in previous payment claims, and was therefore not part of the 5%. Further, in Interim Valuation 37, Builders Hub stated that the "*Reason for Difference*" from the previous valuation was "Based on Workdone". Even on JP Nelson's case, by Interim Valuation 37, Builders Hub had completed 5% of the works.⁸⁵ Therefore, none of the Downpayment tainted by fraud formed part of the 5% certified in Interim Valuation 37. As such, when the Adjudicator relied on the Response Amount set out in Interim Valuation 37 to award that sum to Builders Hub, it was untainted by fraud.

Fraud unravels all

80 However, notwithstanding that the present case does not pass the test in *Façade Solution*, in my view, the court there did not intend it to be the only

⁸³ JP Nelson's supplemental submissions dated 26 January 2023 at para 66.2.

⁸⁴ JP Nelson's supplemental submissions dated 26 January 2023 at para 63.

⁸⁵ JP Nelson's third written submissions dated 20 March 2023 at para 12.

situation under which a court may intervene. As succinctly enunciated by Denning LJ in *Lazarus Estates Ltd v Beasley* [1956] 1 QB 702 at 712 (and affirmed by the Court of Appeal in *Facade Solution* at [22]), no court would allow or assist a person to retain any advantage obtained by fraud since fraud unravels everything:

... No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever ...

81 In my judgment, Builders Hub was still holding onto the fruits of its fraud, and this was something that the court had the power to interfere with.

82 On 26 August 2022, the Contract between JP Nelson and Builders Hub was terminated. It was undisputed that Builders Hub had received at least 75% of the price for the air-conditioning system works. However, Builders Hub never supplied the air-conditioning units to JP Nelson. In relation to the contract for air-conditioning system works, Builders Hub only completed the piping, ducting and cable tray works for the air-conditioning systems. *Prima facie*, this meant that 75% of the contract price for air-conditioning system works was apportioned to ducting, piping and cable tray works. Otherwise, JP Nelson would have overpaid for its air-conditioning system works.

83 Both parties had tendered further submissions on the 75% valuation for the air-conditioning works in Interim Valuation 37. JP Nelson argued that the costs of the air-conditioning units would far exceed the 25% of the contract price that Builders Hub had quoted, and therefore there had been overpayment. Based on Builders Hub's computations, which relied on Cappitech's fake quotation sum of \$310,990, the air-conditioning equipment cost roughly 54% of the

contract sum, and the piping and cable tray works cost about 46% of the contract sum.⁸⁶ In contrast, Builders Hub concluded that the air-conditioning equipment costs amounted to \$91,740.73, *ie*, 26.61% of the total contract price of \$344,800 for air-conditioning works.⁸⁷ This also exceeded the 25% allocation for air-conditioning units installation that Builders Hub had claimed. Therefore, on both parties' cases, Builders Hub had been overpaid for the air-conditioning works contract. Taking Builders Hub's case at its highest, it had been overpaid by a sum of \$5,540.73.

84 By the end of their contractual relationship, JP Nelson had overpaid Builders Hub, and this was a result of the Downpayment that had been induced by fraud. These monies continued to remain in the hands of Builders Hub. Further, by virtue of its fraud, Builders Hub also acquired another substantive benefit – it secured an early payment in the form of the Downpayment. Conversely, when JP Nelson made early payment, it was exposed to risk of losing the Downpayment, especially if Builders Hub became insolvent. The court takes a serious view towards fraud, and there is no public interest in allowing a litigant who had acted fraudulently to retain the fruits of its fraud. According to Builders Hub, this amounted to about \$5,540, and JP Nelson was unable to provide a figure that was substantially higher. As Denning LJ said, “fraud unravels everything” The question then is, what constitutes “everything”? In my judgment, to simply order Builders Hub to repay the sum overpaid would be an inadequate expression of the court's disapprobation towards fraud. Builders Hub would hardly be worse off, and this order would not account for the early payment received by Builders Hub. Such a lenient view

⁸⁶ JP Nelson's third written submissions dated 20 March 2023 at paras 9–12.

⁸⁷ Builders Hub's third written submissions dated 20 March 2023 at paras 17–20; Lawrence Lee's affidavit dated 2 March 2023 at p 16 and 17.

would be insufficient to deter fraudulent conduct. On the other hand, to invalidate the entire Payment Claim would unfairly punish Builders Hub as the amount claimed was far in excess of the \$155,160 which was the subject of the fraud. In the circumstances of the case, I held that the Review Adjudicated Amount should be reduced by the amount that the Builders Hub had unlawfully gained as a result of its fraud, *ie*, \$155,160.

Conclusion

85 In the circumstances, JP Nelson succeeded on its ground on fraud. I ordered that the Adjudication Review Amount be reduced by the amount of \$155,160, and Builders Hub is ordered to repay JP Nelson the sum of \$155,160, being the sum that Builders Hub had unlawfully gained by the fraud. As JP Nelson had partially succeeded in its application, and in view of the conduct of Builders Hub, I ordered costs in favour of JP Nelson. Having regard to parties' submissions, as well as all the relevant factors, I awarded JP Nelson \$12,000 in legal costs (inclusive of disbursements) plus GST. Builders Hub shall pay these costs to JP Nelson, with interest from the date of judgment at 5.33%.

Lee Seiu Kin
Judge of the High Court

Chuah Chee Kian Christopher, Tan Jia Wei Justin, Huang Zixian,
Chiam Yunxin, Koh Huini Valerie and Lim Qin Yong
(WongPartnership LLP) for the applicant;
Lee Peng Khoon Edwin, Amanda Koh Jia Yi, Smrithi Sadasivam and
Yap Wei Xuen Mendel (Eldan Law LLP) for the respondent.
