Ng Chee Koon (Huang Zhiqun) and Another v Aprim (Far East) Pte Ltd [2000] SGHC 221

Case Number	: Suit 1401/1999
Decision Date	: 31 October 2000
Tribunal/Court	: High Court
Coram	: Lai Siu Chiu J
Counsel Name(s)	: Lee Tow Kiat (Lee Tow Kiat & Co) for the plaintiffs; Joseph Lopez (Choy & Lopez) for the defendants
Parties	: Ng Chee Koon (Huang Zhiqun); Ng Chee Beng (Huang Zhiming) both formerly trading as B & K Interior Decoration — Aprim (Far East) Pte Ltd

JUDGMENT:

Cur Adv Vult

The facts

1. The plaintiffs who are twin brothers were, at the material time a partnership which did interior decoration and renovation works; the partnership was first set up by the plaintiffs in January 1994 with the assistance of their father Ng Kim Tiaw (Ng). On 16 June 1999, the partnership was terminated. On 19 March 1999, the two brothers incorporated (and became shareholders) of a limited company called B & K Interior Dcor Pte Ltd (the company). Before the partnership was registered, the plaintiffs worked for their father's company Lian Hing Trading (Pte) Ltd (Lian Hing) which was/is a furniture maker (with a factory in Johore Baru) and which also carried out renovation and interior decoration works.

2. The defendants were incorporated in Singapore in 1989 and are general contractors for renovation works. They only carry out renovation works for a niche market namely, the French business and expatriate community in Singapore, one if not the main reason(s) being that their managing-director Jacqueline Deromedi (Jacqueline) is a French national; she has resided in Singapore for many years now and is a permanent resident. The other director of the defendants is Jacqueline's son Jean Marc Deromedi (Jean Marc). The defendants number amongst their clients such organisations/companies as the French Embassy, Air-France, Renault, AXA Insurance, the AGF group, Hugo Boss and French cosmetic houses Lancome and L'oreal.

3. Sometime in March 1998, the plaintiffs and their father were introduced to Jean Marc and Lamine Guendil (Lamine) who was the defendants' business development manager. Thereafter, the plaintiffs commenced doing renovation works contracted by the defendants, starting with a piecemeal job (for Renault) at Nos. 31 and 33, Scotts Road where the plaintiffs took over renovation works from another contractor (DH Dcor). Indeed, as far as the plaintiffs were concerned, they became the defendants' sole general subcontractor. From March 1998 until 2 March 1999 when the parties' relationship terminated, the plaintiffs carried out renovation works on more than 20 projects for the defendants, including the following (apart from Renault):-

(i) Prestige Products Distribution (for 'Hugo Boss' counters at Seiyu and Metro (Causeway Point and the Paragon) department stores;

(ii) Parsing (FE) Pte Ltd;

(iii) Perising Pte Ltd;

(iv) French Business Centre S'pore Pte Ltd;

(v) Rochas (for perfume counters at Metro Causeway Point);

(vi) Lancome;

(vi) Cosmopolitan Cosmetics Pte Ltd (for 'Gucci' counters at Seiyu and Metro Paragon);

(vii) AXA Insurance Singapore Pte Ltd (AXA)

(viii) Vivendi Asia Pacific Pte Ltd (Vivendi);

(ix) AGF Asset Management Asia Ltd;

(x) French Embassy staff quarters at Hillcrest Arcadia;

(xi) Dragages S'pore Pte Ltd;

(xii) L'oreal S'pore Pte Ltd;

(xiii) Publicis Eureka Pte Ltd;

(xiv) Eurasia Fragrance;

(xv) Euro RSCG (S) Pte Ltd;

(xvi) Renault Motor Show;

(xvii) Air-France.

The above projects resulted in the present suit wherein the party named as the original plaintiff was described as **B & K Interior Dcor Pte Ltd formerly trading as B & K Interior Decoration.** It claimed the company carried out all the works it had contracted from the defendants but were either not paid or not paid in full, by the latter. Contact between the present parties ceased when the plaintiffs 'abandoned' the last project (Air France's first class passenger lounge at Changi Airport) on or about 2 March 1999 resulting (according to the defendants) in delayed completion (by 3 months) as the defendants were forced to look for another contractor to finish off whatever work the plaintiffs had started but had not finished or, had not done at all.

The pleadings

4. As stated earlier, when the writ of summons was first filed on 23 September 1999, it was the company which was the plaintiff. Consequently, the defendants denied owing the company the sum claimed (of $507,086.45) in the original defence which they filed on 8 February 2000. Furthermore, the original statement of claim merely stated:-

> 1. The plaintiff's claim against the defendants is for the sum of $507,086.45 being the balance due and owing in respect of work done and materials sold and delivered at the defendant's request, particulars of which are known to the defendants and brief particulars are as follows:-

Date	Description	Amount
26 July 1999	Statement of account	$507,086.45

5. Not unexpectedly, counsel for the defendants by his letter dated 19 October 1999 requested for Further and Better Particulars of the all too brief statement of claim. Instead of complying with the request, counsel for the plaintiffs took the easy way out by adopting an unorthodox approach. He did not render requisite particulars of when and what sort of services the plaintiffs had provided, relating to the sum claimed. Instead, he filed as annexure 'A' a list which he had directly lifted from the company's

ledger of trade debtors, pertaining to the claim amounts. The statements comprised the plaintiffs' invoices, their quotations and the defendants' purchase orders.

6. The so-called Particulars filed on 23 November 1999 did not satisfy the defendants and their counsel applied to court (the first application) and obtained on 8 December 1999 an order for the same set of Further and Better Particulars he had earlier requested. The plaintiffs did not comply with the order within the deadline stipulated. Consequently, the defendants applied on 14 January 2000 (the second application) for an 'unless order' that the plaintiffs' claim be dismissed with costs unless they furnished the set of Further and Better Particulars the defendants had previously requested. Before the second application could be heard however, the plaintiffs, in purported compliance with the order made under the first application, filed their second set of Further and Better Particulars on 21 January 2000; it was only a slight improvement on their first set. The second application heard on 3 March 2000 was resisted by the plaintiffs whose counsel contended they had rendered adequate Particulars. In lieu of ordering the plaintiffs to file a third set of Further and Better Particulars, the court granted the defendants leave to file a Rejoinder pursuant to the plaintiffs' Reply.

7. On 7 April 2000, the defendants obtained a third order of court for the company (as the then plaintiffs) to furnish security for the defendants' costs in the amount of $100,000 by way of a banker's guarantee. In the affidavit which she filed to support this application, Jacqueline deposed that at all times the defendants dealt with the two brothers/present plaintiffs and her company had nothing to do with **B & K Interior Dcor Pte Ltd** which she pointed out was a $2 paid up company only incorporated on 19 March 1999.

8. On the first day of trial (5 May 2000) counsel for the plaintiffs finally seemed to realise his mistake and applied to court to amend the writ of summons and all subsequent pleadings to reflect the correct position that the two brothers, not the company, are the plaintiffs. I granted the application despite objections from counsel for the defendants and made the usual consequential orders for amendments to the defendants' own pleadings and costs. Counsel for the plaintiffs also applied to amend his clients' claim on the Renault project (31 Scotts Road) from $37,293.50 to $12,293.50 and that for Dragages from $32,994 to $32,651, thereby reducing the plaintiffs' original claim of $507,086.45 to $481,743,45. Contrary to the final submission made by counsel for the defendants, that sum does exceed the current jurisdiction ($250,000) of the district courts.

9. As a consequence of the change in name of the plaintiffs in the pleadings, the defendants filed an amended Defence and Counterclaim on 8 May 2000 in which they raised (for the first time) a counterclaim ($119,884.10) for over-payments they made to the plaintiffs on the AXA Insurance and Euro RSCG projects. In her written testimony, Jacqueline reduced the counterclaim by $26,154.50 to $93,729.60. With regards to some of the other projects, the defendants admitted there were balance sums owed to the plaintiffs but raised the defence of set-off alleging that the plaintiffs' works were unsatisfactory and or defective; rectification works were therefore required which rectification works were not carried out by the plaintiffs or if carried out, were not done properly. For other projects like AGF, 31 Scotts Road, Renault Motor Show and Hillcrest Arcadia, the defendants contended they had paid the plaintiffs' claims in full and nothing more was due from them. The defendants put the plaintiffs to strict proof of their claims for Publicis Eureka, L'oreal and Dragages.

10. In the course of the trial, it emerged that the defendants saw most of the quotations (upon which the plaintiffs based a substantial part of their claim), only on or about 16 April 2000 when the documents were made available for inspection at the office of the plaintiffs' solicitors. The defendants contended they had neither received nor seen those quotations previously whereas the plaintiffs claimed that the same had been forwarded/handed to the defendants or their representatives earlier.

The evidence

11. Because of the number of projects involved and the number of witnesses (5 for the plaintiffs and 11 for the defendants), trial took 17 days even though (as I informed the parties at the commencement) I would only determine liability and leave the quantum of damages if any, pertaining to both the claim and counterclaim to be assessed by the Registrar at a later stage. Equally, it would be impossible to conduct a detailed examination of all the testimony adduced from the 16 witnesses. For

expediency therefore, I propose to deal with both the claim and counterclaim and make my findings on a project by project basis. I should also point out that the plaintiffs did not carry out the projects in succession but very often, a number of projects overlapped which factor I believe did affect their performance.

(i) Renault

(a) 31 & 33 Scotts Road

12. In their documentation, the defendants described 31 Scotts Road as the main house and 33 Scotts Road as the back-house/outhouse. According to the first plaintiff, the outhouse is 2-3 times smaller than the main house. The defendants had admitted they withheld $12,292.50 (after paying the plaintiffs $162,582.47) on both houses for purposes of their set-off and counterclaim, due to the following defects in the plaintiffs' work which they claimed were not rectified:

> (i) the external walls were not water-jet washed and plastered before painting, resulting in paints peeling within a month after hand-over to Renault;
>
> (ii) some pieces of wood on the wooden deck at the rear yard broke within a month of hand-over because of the poor quality wood used by the plaintiffs;
>
> (iii) the cabling works short-circuited within a few weeks which caused illumination spotlights not to work and had to be replaced.

As a result of the plaintiffs' bad workmanship, the defendants asserted they had no alternative but to give a discount to Renault in the amount of $4,590.71 (see DB170).

13. The plaintiffs called their painter Teo Boon Liew (who claimed to have 40 years' experience) to rebut the defendants' allegation that they failed to do a proper job of the water-jet cleaning and painting works. Teo Boon Liew (PW5) testified that (accompanied by the plaintiffs' father) he had rented a water-jet machine and obtained his supply of paint from a shop at Balestier Road in September 1998. He had used the water-jet machine to spray the walls before applying sealant and two (2) coats of paint. It took him about two (2) weeks to water-jet wash, plaster and paint the walls. Teo said he received no complaints after he finished nor was he asked by the plaintiffs to do any rectification works. If indeed the paint peeled, Teo speculated that it could be due to either the wall (very old) or the weather; he disagreed it could be due to his workmanship. Questioned by the court, Teo revealed he did not pay for the paint; presumably Ng did. That being the case, Teo was in no position to say whether the paints selected by Ng were weather-proof and or meant for outdoor/exterior use.

14. The defendants on the other hand called their own supervisor/handyman Lim Kim Leng (LKL) to testify to the contrary. LKL (DW5) testified that he and his assistant Tan Eng Huat were instructed by the defendants in late January 1999 to attend to Renault's complaints which included the cracked/discoloured paint on the external walls and the broken wooden deck. While he only had to replace 2-3 pieces (costing around $50) of the deck, Lim Kim Leng said his assistant had to repaint the walls entirely using weather-proof paint after first using a water-jet to wash off the discoloured paint. In her written testimony, Jacqueline said the defendants engaged another contractor Relion Plasterceil Electrical & Dcor to supply and install new cables. She also produced her company's credit note evidencing the discount of $4,590.71 given to Renault.

15. As I am only concerned with liability for all the projects, I need only determine whether the defendants have made out their case on their counterclaim on a balance of probabilities, so as to defeat the plaintiffs' admitted claim for $12,293.50; I do not concern myself with the quantum of the defendants' counterclaim as that is a matter for assessment if necessary. I find on the evidence that the defendants have succeeded on their counterclaim. As neither counsel questioned the plaintiffs' painter on the point, there is no evidence on the weather conditions prevailing at the time Teo Boon Liew testified he plastered and then applied sealant and two(2) coats of paint to, the walls. Consequently, I am unable to say whether wet weather could have had an

adverse impact when the plaintiffs' painter did the work. Speaking from my knowledge acquired from previous similar cases and given that Teo Boon Liew himself testified he took about 2 weeks to complete the entire job, I can only speculate that the walls were not given sufficient time to dry both before and after, the application of the first coat of paint; this would then cause the first and subsequent coat(s) of paint to peel and discolour.

16. Apart from denying their workmanship was poor/defective, the plaintiffs did not call evidence from their workers or subcontractors (who carried out the actual work) to rebut LKL's testimony or the defendants' photographs (see DSB38-41) evidencing the broken wooden deck. Instead, they obtained a letter dated 8 May 2000 (exhibit P10) from Renault signed by Pascale Mao, the assistant to their vice-president, stating that *the renovations which have been carried out at no. 31 and 33 Scotts Road have been done in a very professional and satisfactory manner and that there are no defects whatsoever*. Exhibit P10 has no evidential value whatsoever as Pascale Mao (so stated in the letter) has no personal knowledge of the renovations having joined Renault in July 1999, well after the plaintiffs completed their work and far more important, after the defendants had rectified the plaintiffs' defective works.

17. Even if I am wrong in my findings, I am of the view that the plaintiffs are precluded from making any claims in relation to 33 and 31 Scotts Road because their father Ng had signed a final account with the defendants on 7 December 1998 (at DB157 and 159) which stated:

> There will be no further claim (sic) acceptable after the signing of this document for the above project completed at 31 Scotts Road on the 7th November 1998.

A similar final account (see AB276A) was signed by the plaintiffs with the defendants also on 7th December for the motor show which project I next turn my attention to.

(b) the motor show

18. According to Ng, Lamine had agreed (N/E 307) with him to pay the plaintiffs $3,900 to 'compensate' the plaintiffs for the loss they suffered on the Renault motor show. Ng claimed that in his presence, Lamine had instructed the defendants' accountant Chua Kok Chuan (David Chua) to issue a purchase order to the plaintiffs for $3,900 and he (Ng) had signed the final account on that understanding.

19. The defendants on the other hand contended that there was nothing owing as the plaintiffs' father had signed the final account with Lamine on 7 December 1998 together with that for 31 Scotts Road containing the sentence set out in para 17 above. Accordingly, the defendants argued, if the plaintiffs were to be paid an extra $3,900, Ng should not have signed the final account but having done so, the plaintiffs were precluded from making that or any other, claim(s). David Chua (N/E 631) testified that Ng approached him a few days after signing the final accounts and claimed that Lamine had agreed to compensate the plaintiffs $3,900. As he was not authorised to approve costing of projects, David Chua (DW9) told Ng to seek Jean-Marc's or Lamine's approval but Ng did not revert thereafter. Ng and Lamine signed the final accounts for the motor show and 31 and 33 Scotts Road simultaneously in David Chua's presence without discussing any compensation.

20. The plaintiffs' statements of account showed that their last invoice for 31 Scotts Road (AB64) was dated 4 December 1998 whilst that for 33 Scotts Road was dated 30 October 1998. Initially, when he was questioned on these invoices (N/E 314) Ng had agreed he could not claim. However, after the lunch break on 16 May 2000, Ng changed his mind and said he was not prepared to withdraw the plaintiffs' claim (which had been reduced to $12,293.50 on the first day of trial). Lamine's testimony was not particularly helpful on 31 and 33 Scotts Road either; he merely confirmed that he had agreed to compensate the plaintiffs $3,900 for the motor show, that the total contract price for 31 Scotts Road was $174,875.97 (N/E 395) but no final account was necessary for 33 Scotts Road.

21. On the evidence, I am satisfied that final accounts were signed between the plaintiffs and the defendants for all three jobs

undertaken for Renault. In his cross-examination of David Chua, counsel for the plaintiffs had suggested that for smaller projects such as 33 Scotts Road and Hillcrest Arcadia, work would be carried out by the plaintiffs based on purchase orders and no final accounts would be rendered. David Chua agreed but denied that was the case for Renault's projects. He pointed out that the (signed) final account (DB160) for 33 Scotts Road (with a figure of $105,926.50) added to $68,949.47 for 31 Scotts Road (at DB158) totalled $174,875.97 which was the contract sum as confirmed by Lamine.

22. I accept the defendants' contention – I see no reason why the plaintiffs should be allowed to renege from their agreement (that they would have no more claims) as encapsulated in the final accounts for 31 and 33 Scotts Road and for the motor show. Accordingly the plaintiffs' claims for the three Renault projects fail. As stated earlier, the defendants succeed on liability in their counterclaim against the plaintiffs. Their damages would include the credit note of $4,590.71 given to Renault for 31 & 33 Scotts Road and $9,509.35 (DB357) for the motor-show if found to have been reasonably incurred in order to pacify Renault for the plaintiffs' shoddy workmanship. Incidentally, the credit note for $4,590.71 was prepared by David Chua (N/E 654) on Lamine's instructions with the consent of the defendants' directors. It was Jacqueline's testimony (N/E704) which I accept, that Renault would not pay the defendants otherwise. It was also her testimony (N/E 697) which the plaintiffs did not or could not challenge, that the plaintiffs did not make a claim for the Renault project for 1 ' years. Why the delay one would ask, if indeed the plaintiffs' claim was genuine?

No. 26 Plymouth Avenue

23. Besides the main claims (3) pertaining to Renault, the plaintiffs also had a small claim ($2,600) under invoice no. 2157 touching on work done at the residence (No. 26 Plymouth Avenue) of the Renault's manager-director Saint Martin. Lamine testified that (N/E 395) he made a commercial decision to do the work gratis on the defendants' behalf in the hope that it would lead to new projects from Renault. However, he also said it did not mean that the plaintiffs were precluded from charging the defendants. My view is that if the defendants cannot claim from Renault, then neither can the plaintiffs. This is especially so when the other works done for Renault by the plaintiffs were less than satisfactory and the defendants are unlikely therefore to reap the benefit of Lamine's personal generosity.

(ii) ***Hugo Boss***

24. The second plaintiff was in charge of the Hugo Boss project. He complained that the defendants did not pay a cent even though they admitted owing the plaintiffs $45,520. He acknowledged the ten (10) display counters built by the plaintiffs had minor defects but those defects only needed to be rectified … (i) the glass panels needed adjusting; (ii) the stainless wires which held the shelves in place needed to be tightened; (iii) the Hugo Boss logo sticker had to be adjusted and (iv) the cabinet doors needed to be aligned. The defects did not warrant the total replacement of all the counters by Kemvet Interiors Pte Ltd (Kemvet) at the purported cost of $25,750. The second plaintiff blamed poor design or other factors as the reason for the plaintiffs' defective works. He cited as examples the cracking of the semi-circular plastic panel from the heat generated by the down-light; he had forewarned the defendants' designer Delphine Leoni (Delphine) of this possibility. However, questioned by counsel for the defendants, the second plaintiff would not commit himself on whether the drawings for Hugo Boss counters (from its parent company Procter & Gamble's designer) called for curved instead of the flat square panels which the plaintiffs actually fabricated nor whether 'brand' counters would be expected to come supplied with logo stickers (for which the plaintiffs claimed $500); he merely said he followed the designs and instructions of Delphine. The second plaintiff explained that because the counters were installed at various departmental stores where Hugo Boss had outlets, installation of the counters could only take place at night after 10pm when the stores had closed. For that reason, the plaintiffs billed the defendants the cost ($500) of dismantling and removing the existing counters which charges the plaintiffs asserted were not included in the contract price for the job.

25. The defendants disagreed with the second plaintiff's testimony that the counters had only minor defects. They blamed the

plaintiffs' poor workmanship as the cause for rejection by the local agent Prestige Products Distribution (Prestige), of all the Hugo Boss counters; this adversely affected the defendants' goodwill with Prestige with consequential loss of further business to the defendants. To substantiate their contention, the defendants produced correspondence they had exchanged with Prestige which they reinforced with Delphine's testimony.

26. According to Delphine (DW8), the plaintiffs told her the oval-shaped glass for the counters was difficult to obtain in Singapore. They therefore sourced for the glass in Kuala Lumpur but, when the same arrived, it could not fit the counters which doors were also not aligned. The plaintiffs then suggested acrylic as a replacement. In order to use acrylic, the design had to be changed, using a lot of wood whereas the original design incorporated a lot of glass. Because of time constraints, Prestige had no choice but to accept the alternative proposed. However, after a month, the acrylic cracked due to bending and the counters were again rejected by Prestige. Delphine said the plaintiffs attempted to solve that and other problems with the counters for over four (4) months without success. She denied the second plaintiff's claim that the original designs were for flat squarish panels … from the start, the panels were oval shaped according to Procter & Gamble's designs. The defendants engaged Kemvet to modify the plaintiffs' counters but were told it was not practical. Kemvet used the same designs/drawings originally given to the plaintiffs to fabricate the new counters.

27. The defendants called Kemvet's managing-director Wong Chin Seng (WCS) to corroborate Delphine's testimony. WCS (DW3) testified that Delphine and Jean Marc approached him in May 1999 to rectify the existing back panels, back walls and crack-lines in the plaintiffs' counters. He inspected the counters in the presence of representatives of Prestige who highlighted the defects to him and as well as the rectification works required. Although rectification was possible, WCS was of the view that rectification would cost more than making new counters because the plaintiffs had not fabricated according to specifications. Hence his company made new counters for which curved glass had to be fabricated. Although they were completed in August 1999, Kemvet did not complete installation of the last lot of new counters until February 2000 after installing two lots at shopping centres in August and October 1999. Because he had a back-to-back agreement with the defendants as regards payment, WCS said he did not expect to be paid (the balance less deposit) for the 10 counters until the defendants were first paid by Prestige. WCS said the defendants issued a purchase order for the counters without which (save where work was required to be done urgently) it was his company's practice not to commence work.

28. Having reviewed the evidence, I have no doubt that the plaintiffs did not do a proper job in fabricating the counters thereby necessitating their total replacement by Kemvet. I am equally certain that the reason was because (as admitted by the second plaintiff) the plaintiffs lacked experience in manufacturing such counters. That fact however does not exonerate them. As Jacqueline said (N/E 728), if the plaintiffs could not do the work, they should not have accepted the order. The plaintiffs also claimed $500 for shelving works carried out at an office at TradeMart building for either Prestige or Cosmopolitan, they were not very certain who the owner was. What was certain though is, that the defendants did not request for such works nor were they aware it was done at the material time. Lamine had testified that (N/E 395) the work was carried out at the client's request for their accountant who needed a pigeon-hole below the side-return of her desk. I cannot see how the defendants can be liable for these works which were not even in the plaintiffs' pleadings. The plaintiffs should look to either Cosmopolitan for payment or failing that, claim from Lamine personally.

29. The defendants had issued two (2) purchase orders for Hugo Boss totalling $45,520 over and above which the plaintiffs claimed $3,000 by way of three (3) quotations. I have touched on their quotations(2) on transport and dismantling charges. Giving the plaintiffs the benefit of the doubt that the defendants' purchase orders did not include the 2 items, their claim of $1,000 for both is allowed. That leaves the plaintiffs' remaining quotation for $2,000 pertaining to 4 curved poster panels with wooden frame and acrylic. In the light of the evidence adduced, this claim is disallowed. Against the increased contract price of $46,520 ($45,520 +$1,000) the defendants are entitled to set-off the costs they incurred in engaging Kemvet to dismantle and replace the plaintiffs' counters which were rejected by Prestige. Counsel for the plaintiffs had sought to suggest that as his clients' counters were used for 14 months (from October 1998 to February 2000) before the defendants replaced them, the same was necessitated by wear and tear and not due to the plaintiffs' faulty workmanship; I disagree. It is common ground that the plaintiffs' counters were placed in departmental stores/shopping centres and the defendants/Prestige/Kemvet could not replace them without approval from the buildings' owners. It should also be noted that Kemvet was first instructed in May 1999 to try to make improvements on the plaintiffs' counters and failing that, to fabricate new ones. It is noted however that Jacqueline has

withdrawn the defendants' claim (N/E 723) for $17,250 for a sum due and outstanding from Hugo Boss which was paid by the time she testified.

(iii) ***AXA Insurance***

30. The plaintiffs were requested to renovate AXA's regional office at Battery Road for a total sum of $213,556.24 based on 12 purchase orders of the defendants variously dated between 17 August 1998 and 20 January 1999. The defendants asserted they paid $242,545 on the contract thereby overpaying the plaintiffs by $28,988.76 which refund they counter-claimed. The plaintiffs did not deny the defendants' payments but contended that their claim totalled $284,975.02 because of a lot of additional work done; hence the defendants still owed them $42,430.02.

31. According to the second plaintiff (who personally supervised the project assisted by his father), the defendants themselves had prepared final accounts for this project based on the plaintiffs' claim of $284,173.84 (see AB207). Although he acknowledged the alleged final accounts were not signed by either party, the second plaintiff claimed that was because after David Chua gave him the final accounts, he called the latter to say that the plaintiffs agreed to the same but he was not asked to return to the defendants' office to sign in exchange for the defendants' cheque. The second plaintiff testified that the plaintiffs issued 11 quotations for variations and or additions because the works were outside the scope of the original contract. Jacqueline not Lamine, was in charge of this project and she would know of the additions and variations claimed.

32. David Chua testified (N/E 630) that he prepared the alleged final accounts on the defendants' behalf based on the plaintiffs' figure of $284,173.84 as a draft for discussion purposes; that was why he deleted the date 6/1/99. He wrote the words *'to issue purchase orders'* 13 times against the plaintiffs' various quotations to remind Jean Marc (who was then not in Singapore) of the plaintiffs' request that purchase orders be issued for those. He had received the plaintiffs' quotations from the first plaintiff all at one time when the latter came to his office. He had also told the first plaintiff (who denied it) that the final accounts were subject to approval. In any case, he was not authorised to sign final accounts on the defendants' behalf (this was confirmed by Jacqueline); the authorised persons were Jacqueline and Jean Marc and in their absence, Lamine.

33. Jacqueline confirmed that the plaintiffs were overpaid for this project; she listed out the 6 cheques whereby the defendants paid the plaintiffs a total of $242,545. However in the course of trial, the defendants admitted liability (but not quantum) for electrical and cabling works set out in the plaintiffs' quotation no. BK 8983 (see AB 174). Jacqueline explained it was because she checked and realised that no provision was made for such work in the defendants' bill of quantities. The defendants also admitted another item (supply of a magazine rack at $650) claimed by the plaintiffs. Even so, the defendants had still overpaid the plaintiffs although the figure would be reduced.

34. Although the plaintiffs' stand was that the defendants' draft final accounts accepted their claim of $284,173.84, they had also withdrawn certain items claimed in the course of trial. By way of illustration, the first plaintiff withdrew (N/E 142) the plaintiffs' claim for the supply of labour ($480) admitting that it should be included in the Preliminaries item in the bill of quantities. The plaintiffs also withdrew their claims for pantry tiles ($1,350) and gypsum board partitions at the PD room ($1,020). In so doing, the plaintiffs made a tacit admission that the figure of $284,173.84 was not final but, as the defendants argued, subject to negotiations.

35. I do not accept that the plaintiffs are entitled to any more monies apart from what the defendants have admitted; I also accept that the defendants have overpaid the plaintiffs and are entitled to a refund of the overpaid sum on their (reduced) counterclaim not to mention that the plaintiffs' workmanship was not up to mark. It was the evidence of the defendants' supervisor LKL (N/E 557) that the plaintiffs' shoddy workmanship included a failure to install rear-panels for some file cabinets. However, when he informed Delphine (DW8) who informed Jacqueline in turn, LKL was chided by Lamine who said LKL should have informed Lamine first before anyone else. Cross-examined on this evidence, LKL added that he did not ask the plaintiffs' representatives about the missing panels because past experience told him the latter would take no action and they would only convey what he said to Lamine. Much was made by the first plaintiff (N/E 147-148/167) of what he claimed was a design fault for a door (and

some drawer cabinets) which necessitated Jacqueline and Jean Marc visiting the plaintiffs' Johor factory which problem he gave himself credit for solving. Delphine however testified (N/E 592-593) on the shortcomings in the plaintiffs' carpentry works and their inability to follow her designs properly especially for the full height main door, necessitating a revision in her drawings. She pointed out that other contractors did not encounter any difficulty in following the same drawings for the door.

(iv) ***Vivendi***

36. According to the plaintiffs, their father was in charge of this project assisted by the first plaintiff. In his written and oral testimony, Ng said he agreed with Lamine to do the project for $200,000 a reduction from his original asking price of $250,000; this was reflected in the defendants' purchase order no. 1534 (see AB 265) dated 23 September 1998 with completion scheduled for 20 October 1998. The price was low because Lamine said that Vivendi had a tight budget. For that reason, the defendants paid the plaintiffs up-front a deposit of $50,000 on 24 September 1998. The plaintiffs claimed for additions and or variation works which they asserted were either ordered by the defendants or by Vivendi; they denied the defendants' contention that they undertook the project on a turn-key basis.

37. Ng testified at length on the plaintiffs' additional claims. He produced drawings (see 2AB1-95) to support his contention that there were numerous design changes after he was given the first drawing dated 22 September 1998 (2AB5) upon which he agreed to do the project for $200,000. Ng claimed that after the plaintiffs had done the work according to the original drawing, the defendants made amendments which changes affected partitions and work stations which had been erected and, electrical cables. The plaintiffs also supplied new furniture as Vivendi decided not to use its existing (system) furniture. These major changes added $101,441.61 to the contract price after taking into account the defendants' payments totalling $220,522.84. The plaintiffs also worked under time constraints as the project was completed by 20 October 1998.

38. The commencement date was however disputed by the defendants who produced Vivendi's endorsement signalling approval of the defendants' drawings to prove that work could only have commenced on or after 7 October 1998. The defendants also produced a memorandum (exhibit D1) from Vivendi dated 11 October 1998 stating that only certain works needed to be completed by 28 October 1998 for the visit to Singapore by the president of Vivendi. Lamine however said (N/E 458) that by end October the plaintiffs had completed 70% of the partition works.

39. Contrary to the defendants' stand, Ng said the plaintiffs' scope of works excluded submission fees by the appointed architects (DP Architects) and M & E engineers (Meinhardt Pte Ltd). He said this was made clear by the defendants' bill of quantities dated 23 September 1998 (see 2AB7-8) which contained the following note (the Note):-

> This quotation does not include:
>
> 1. Submission fee to DP Architects and Meinhardt Pte Ltd
>
> 2. M & E Woks are subjects for actual site measurement.

In any case Ng argued, the architects and engineers were not appointed by the plaintiffs but by the owners of Centennial Tower, so why should the plaintiffs be responsible for their fees?

40. In the above regard, Lamine had testified (N/E 454) which evidence was echoed by the first plaintiff (N/E 232), that he and the first plaintiff signed the bill of quantities because the *payment was way below the normal cost and [he] wanted a strong commitment on the price;* other contractors would have charged easily $300,000. Yet Lamine also said (N/E 437) that the project was not a lump sum contract. The plaintiffs produced their copy of the bill of quantities (exhibit P8) which contained the Note whereas it was missing from the defendants' copy (exhibit D2).

41. On the signatures in the bill of quantities, Jean Marc testified (N/E 779) that as he was/is in charge of purchase orders, why

should anyone else sign for the defendants? He added that when he handed the bill of quantities to Ng, it did not contain either Lamine's or the first plaintiff's signatures nor the Note. He pointed out that in lump sum contracts, quantities are never specified. Conversely, if quantities are specified, it would not be a lump sum contract.

42. The defendants' interior designer Anthony Acaban (who is also in charge of costing together with Jean Marc) testified (N/E 576) that when he prepared the bill of quantities it did not include the Note; he first discovered there were signatures (which he did not recognise) on the Vivendi bill of quantities when P8 was shown to him by the defendants' solicitors in May 2000. Acaban (DW7) said that P8 should not be with the plaintiffs as the defendants normally fax or gave a photocopy of, but not the original, bill of quantities to their contractors. When he checked his own computer copy of the bill of quantities, Acaban found there was no annotation thereon other than for GST (goods and services tax). Acaban explained that the software (Microsoft's EXCEL) used to print bill of quantities was commonly used in the defendants' office and his files were accessible to everyone (including Lamine) as they were not locked but kept on a window-ledge; no one needed his permission to look at the files. When counsel for the plaintiffs (N/E 625) showed the originals (exhibits P11-12) of other bills of quantities (L'oreal, Rogers & Wells, AXA) as well as Vivendi's to him, Acaban said he did not know how the same came to be in the plaintiffs' possession as he had not handed them the originals; on Jacqueline's instructions, original bills of quantities were kept in the defendants' files. Acaban noted that the second original (P11) of the Vivendi bill of quantities produced by the plaintiffs had 12 October 1998 as the date whereas the first (P8) bore the date 23 September 1998.

43. Jacqueline deposed that because the plaintiffs failed to do the requisite submissions, the defendants engaged DP Architects Pte Ltd and professional engineers Meinhardt to submit all the necessary plans, blueprints and drawings to the relevant authorities and to oversee the project at a cost of $4,680 and $12,793.84 respectively (see DB337). She further alleged that the plaintiffs failed to provide certain (decorative) light fittings and the plaintiffs had to obtain them from Million Lighting Pte Ltd at a cost of $1,450. She also complained about the plaintiffs' workmanship and the poor quality of their materials resulting in pieces of furniture being rejected by Vivendi, relying on correspondence in the defendants' bundle of documents between the plaintiffs, defendants and Vivendi in support thereof. These defects caused the defendants to be out-of-pocket (by $23,071) in having to engage other contractors to carry out rectification works. Jacqueline pointed out that if rectification works resulted from the plaintiffs' mistakes, the defendants would not issue a purchase order to acknowledge liability. Her allegations were denied by Ng who said the plaintiffs' only responsibility was to provide ordinary not decorative lights and, the plaintiffs' workmanship was acceptable, given the time constraints.

44. A perusal of the drawings (see 2AB1-95) for the Vivendi project revealed that the drawings had dates which varied from 9 September 1998 to 5 January 1999. Against Ng's claim that the plaintiffs started work on 22 September 1998, the defendants produced a letter dated 18 August 1998 (see DSB50) from Centennial Tower's owners (Marina Properties Pte Ltd) to Vivendi giving notice that the fitting-out period would be one (1) month from 1 October 1998. This was reinforced by a letter to Vivendi from Millenia Singapore (see 2AB96) which stated that the fitting out works would commence on 1 October 1998 and be completed by 10 November 1998.

45. I had also noted that the two (2) copies of the bills of quantities exhibited in court namely the plaintiffs' (P8) and the defendants' copy (D2) did not have unit costs; however the plaintiffs' second copy (P11) had the unit charge as well as the total cost. I find it strange that the plaintiffs should have what appears to be two (2) originals of the same bill of quantities and yet the two copies are not mirror images of each other … they bore different dates and different contents. In the light of the testimony of Acaban and Jean Marc which I believe, I am certain that it was not the defendants but Lamine, who handed P8 or P11 to the plaintiffs. The following observations are also pertinent:-

> i. the plaintiffs' bundle of documents filed on 2 May 2000 did not include P8 or P11 although they included the defendants' purchase order no 1534 dated 23 September 1998 for $200,000; the purchase order stated ***Please see details enclosed*** but the details presumably the bill of quantities, was missing from their bundle;
>
> ii it was only in their second bundle of documents filed on 15 May 1998 that the

plaintiffs included the bill of quantities which original was P8; this was after Ng had started his testimony. The plaintiffs produced P11 on 25 May 1998 after Acaban was recalled to the witness stand;

iii. neither P8 nor P11 appeared in the plaintiffs' list of documents.

The question which arises is, why did the plaintiffs not produce their copies of the bill of quantities earlier? I surmise the plaintiffs deliberately withheld disclosing the document earlier because the original format (D2) was unfavourable to their claim. It is also my belief that P8 and P11 came into their possession through Lamine who printed out the same using EXCEL software after altering the contents to suit the plaintiffs' claim. Similarly it was Lamine who procured for the plaintiffs the other original bills of quantities shown to Acaban. Lamine gave the plaintiffs two versions of the bill of quantities which differed from D2 to help them overcome the problem that they had agreed (through their father) to do the project for a lump sum of $200,000. I note that neither Ng nor Lamine proffered any explanation why they would have two originals of the same bill of quantities but with different contents.

46. It is equally noteworthy that although Lamine supported Ng's evidence that submission to the relevant authorities was outside the plaintiffs' scope of work, he himself had written to Meinhardt on 8, 12 and 13 October (see DSB57-59) requesting for M & E drawings. Earlier on, by a letter dated 17 September 1998 (DSB55) to Vivendi (copied to the defendants and attentioned to Lamine) from Marina Properties Pte Ltd, Vivendi was *required to engage the landlord's consultants for the necessary submission to relevant authorities for the above by 21 September 1998*. It therefore does not lie in the mouth of Lamine to assert otherwise. He well knew that the entire project was to be undertaken by the plaintiffs on the defendants' behalf; if submission was part of the defendants' obligation, there was no reason for the defendants not to pass the responsibility onto the plaintiffs. Sometimes, I could not understand Lamine's evidence. I cite as an example, his testimony that carpets were part of the plaintiffs' scope of works (N/E 460); yet, in the next breath, Lamine said the work was not done by the plaintiffs *like most of the projects*.

47. In the light of my findings, I am of the view that the plaintiffs' claim for Vivendi is highly suspect. They could not have commenced work by 23 September 1998 as Ng claimed let alone completed the project by 20 October 1998 (although that may have been the target date) when Vivendi was only allowed to commence work on 1 October 1998. Their evidence that they had to re-do approximately 85% of the work done by 9 October 1998 because of design changes was also refuted by Delphine (N/E 594) who said that was not possible when the plaintiffs had only started work on 1 October 1998. Further, the plaintiffs' quotations were largely duplications of works requested in the defendants' 13 purchase orders. Those purchase orders added up to $34,629.50 for extra works not included in the bill of quantities dated 23 September 1998. Therefore it was incorrect for the plaintiffs to claim the contract was only for a lowly $200,000 … the actual figure was $234,629.50. There were also numerous complaints from Vivendi on the plaintiffs' workmanship; these went unheeded or were not satisfactorily attended to. The plaintiffs were responsible for but failed to make, submissions through DP Architects and Meinhardt Pte Ltd for what was actually a turn-key project.

48. Accordingly, the plaintiffs are liable on the counterclaim for the expenses the defendants incurred in engaging the aforementioned architects and engineers to do the necessary submissions and for failing to supply some of the lights provided in the bill of quantities. The bill of quantities in D2 governs this contract, not P8 or P11 which documents I reject for the reasons set out earlier. Against the total contract value of $234,629.50 the defendants have paid $220,522.84. They are entitled to retain the difference ($14,106.66) pending the determination of their counterclaim. It was also Jacqueline's evidence (N/E 757) which I have no reason to doubt, that the defendants' final measurements showed omissions of $23,000 from the plaintiffs' scope of works. These included the plaintiffs' failure to supply and install carpets for which the defendants engaged Palova Marketing & Services (Palova) to do so at a cost of $1,045, according to the testimony of Palova's director Koh Swee Lian. Accordingly, the defendants are entitled, after assessment by the Registrar, to payment from the plaintiffs for such omissions.

(v) ***L'oreal***

49. I move next to the L'oreal fitting-out contract at Winsland House; this was the last project the plaintiffs completed for the defendants before their relationship soured; it was also the largest in terms of value, being $597,309.12 if one relies on the defendants' bill of quantities dated 17 December 1998. The defendants admitted owing the plaintiffs a balance of $67,150.12 which payment they said they withheld because of the plaintiffs' inferior workmanship and materials. It necessitated the defendants having to engage three (3) other contractors to rectify or do works omitted by the plaintiffs which cost ($2,817.80) they sought to set-off against the balance sum owed to the plaintiffs. One of the contractors engaged by the defendants was Parisan Interior Dcor whose sole-proprietor Lim Kim Mook (DW2) testified he visited the site with David Chua in March and July 1999 after which he carried out remedial works on the instructions of L'oreal's representative. He charged and was paid, $4,473 for his work. Another contractor called to testify by the defendants was Palova whose director Koh Swee Lian (DW4) said her company was instructed by the defendants to supply and install carpets and wallpaper in December 1998, in the total sum of $42,940.20.

50. The plaintiffs on the other hand originally claimed $611,045.63 for this contract. They then deducted $41,501.73 for carpets, chairs and wallpaper which they admitted were not supplied thereby reducing their claim to $569,543.90 of which a balance of $63,500 was still owing by the defendants. The first plaintiff who was in charge of the project, denied the defendants' allegations of poor workmanship and materials. He also denied that the plaintiffs failed to carry out rectification works which in any case were minor defects which only required touch-ups. The rush job had to be completed in just 5 weeks and, in order to meet the deadline, the plaintiffs had at least 200 workers on site day and night for 2 weeks. The designers ERA Construction (ERA) were surprised but pleased so much so that the plaintiffs were given more work by L'oreal which they were still doing as at the date of trial.

51. The first plaintiff claimed there were no complaints from ERA after the plaintiffs handed over the project in January 1999. He said the plaintiffs had based their scope of works on the defendants' bill of quantities dated 11 December 1998 (AB163) in the sum of $585,017.23 notwithstanding that the plaintiffs received the later bill of quantities dated 17 December 1998. He denied that the parties were still in negotiations on the bill of quantities as at 17 December 1998 insisting that the price of $611,045.63 had been orally agreed. In any case the defendants gave the plaintiffs 4-5 bills of quantities for this project.

52. The first plaintiff acknowledged that sometimes the plaintiffs sent more than one quotation for the same item (tempered glass door being an example). However, this was to allow the defendants to select and the plaintiffs would only charge the defendants for, one quotation. Contrary to the defendants' assertion that they only paid against purchase orders they issued to the plaintiffs, the first plaintiff highlighted various quotations the plaintiffs had issued to and which were paid by, the defendants without purchase orders being issued by the latter. Re-examined by his counsel, the first plaintiff added that the plaintiffs had in fact under-claimed as they had omitted to include certain quotations and variations orders for this project.

53. The defendants on the other hand relied on the later bill of quantities dated 17 December 1998 (see DB429-433) which terms (item 1) clearly stated it superseded a previous quotation dated 24 November 1998 while item 24 stated: *This quotation are[sic] subject for actual site measurement*. Consequently, the defendants argued, whatever the bill of quantities issued to the plaintiffs, the final amount payable to the plaintiffs was subject to measurements.

54. As for the bill of quantities (dated 11 December 1998) upon which the plaintiffs relied, Acaban explained that it was subject to additions and deletions of items of work as requested by L'oreal; that was one of five (5) bills (he prepared) which were given to the plaintiffs in on-going negotiations on the scope of work and pricing. He confirmed that he did take into account where warranted, the plaintiffs' variation claims, by issuing purchase orders on the defendants' behalf. According to counsel for the defendants, the plaintiffs duplicated in some of their variations orders, work for which purchase orders had been issued by the defendants.

55. In her testimony, Jacqueline said she was in charge of the site as L'oreal did not want Lamine's presence. Hence, she knew exactly what work the plaintiffs did or omitted to do. She explained that (N/E 696) she did not accept the late suggestion of plaintiffs' counsel to appoint a quantity surveyor to assess the work done by the plaintiffs because the defendants had done substantial rectification works and what can be seen at site would not reflect the plaintiffs' work/workmanship. Although the defendants had been paid on its last invoice (N/E 769), Jacqueline said there was no and could be no, final account with L'oreal

upon which the defendants could claim because her company was still attending to defects. Even so, she was convinced she did not owe the plaintiffs anything.

56. At a late stage, the plaintiffs produced a copy of the defendants' tax invoice no. 048-99 in the sum of $698,850.13 addressed to Cosmetique De France (the agents/distributors of L'oreal) to support their claim. They argued that if the defendants themselves claimed variations orders from L'oreal and were paid, the defendants could not deny the six (6) variation claims of the plaintiffs. For that reason, counsel for the plaintiffs attempted (during the trial) to have the defendants produce (inter alia), their invoices, variation orders, quotations, receipts etc rendered for 13 projects including Vivendi. The notice to produce was objected to by counsel for the defendants which objection I upheld not only because it was made after the 10th day of trial but, also because it would not achieve the plaintiffs' intended purpose.

57. In the above regard, I noted that throughout the trial the plaintiffs (as well as their counsel), repeatedly maintained that the defendants were/are main contractors who sub-contracted entire projects to the plaintiffs; the defendants then marked-up the plaintiffs' prices when they invoiced their own clients in order to make a profit. That is too simplistic a view and with respect, it is also erroneous. Jacqueline, when questioned by counsel for the plaintiffs as to Lamine's and her role on site, said (N/E 675) he/she represented the client, not the defendants; this is correct. The defendants' role, contrary to the plaintiffs' perception was not really that of a main contractor. It was more akin to that of a clerk-of-works entrusted with the task of supervising projects for their employer. Hence, the defendants charged their clients a profit and attendance fee. They assumed a supervisory role because the defendants' clients did not wish to do so or, to engage a clerk of works and, they were happy to pay the defendants to take over the responsibility. That being the case, the plaintiffs' argument that they were entitled to be paid in turn if the defendants had been paid by their own clients is misconceived.

58. In the course of cross-examination, counsel for the defendants had suggested (N/E 239) to the first plaintiff that just before the L'oreal project was awarded to the plaintiffs, the plaintiffs and their father had already planned to set up a company with Lamine on the latter's representations that he would be able to secure French clients for the new company and thereby by-pass the defendants. However, because Lamine was not able to deliver what he had promised (save for small jobs from Renault and L'oreal) the plaintiffs and Lamine then decided to make this claim against the defendants. That was the reason why the defendants were not even aware of some quotations as the work done therein was meant to be gratis. Counsel highlighted the fact that although L'oreal project was twice that in value of Publicis Eureka, yet the plaintiffs only issued 6 variation orders as against 18 for the latter. He suggested to the first plaintiff that the reason was because the plaintiffs realised that they could no longer inflate or make double claims because Lamine was no longer in charge of the defendants' projects. This allegation was vehemently denied by the first plaintiff. I shall make my observations on Lamine's testimony at a later stage.

59. I find it strange that the defendants would issue subsequent bills of quantities if indeed only that dated 11 December 1998 was meant to govern the L'oreal project. The defendants must have issued the (undisputed) 4-5 bills of quantities for purposes of negotiations as Acaban testified. That being the case, the plaintiffs cannot conveniently rely on an earlier bill of quantities and not those that came later which one can safely assume would revise or supersede the former. I suspect they did so in order to avoid item 24 (supra para 53) of the terms stated in the defendants' bill of quantities dated 17 December 1998 … that it was a measurement contract. That being the case, the plaintiffs' work is subject to measurements and until measured, their claim for this project is premature.

(vi) ***Publicis Eureka (Publicis)***

60. This project at King's Centre was under the charge of the first plaintiff and was completed in December 1998. On the defendants' part, Lamine was removed from charge, in accordance with the wishes of Publicis, although this was denied by Lamine who claimed he was still on very good terms with the company. The plaintiffs claimed $299,772.10 on which a balance of $59,772.10 was still outstanding, the defendants having paid $240,000.

61. The defendants on the other hand contended that the contract value was $281,820.50 based on their bill of quantities dated

20 November 1998 (see DB375). They alleged that the plaintiffs failed to complete the work specified in the said bill of quantities necessitating the defendants having to engage third parties to do so. In her written testimony (para 81), Jacqueline listed 11 omissions and 9 items of the plaintiffs' work which required rectification. The defendants produced photographs (see DSB2-36) to substantiate their allegations and also letters from Publicis dated between 22 December 1998 and 15 November 1999 containing complaints on the defects; it included a letter dated 11 May 1999 to Jacqueline from Ivan Chong the CEO of Publicis which contained the following paragraph:

> We are disappointed that the workmanship is not up to standard. All the locks and doorknobs gave way within weeks and as you mentioned, the office is just 4 months old! The Boardroom table was badly done despite the touching up work. The joints have cracked.

Jacqueline and David Chua said they also had to suffer the indignity of being shouted at by Ivan Chong (N/E 635, 680) in the presence of the staff of Publicis because of the plaintiffs' bad workmanship. The defendants (via Jacqueline) had to give a letter of warranty to Publicis (see DB400-401) dated 3 June 1999 covering manufacturing defects by reason of design, materials and workmanship; otherwise the defendants would not be paid the balance sum owed by Publicis. The defendants contended they were entitled to deduct from the balance owed to the plaintiffs the costs of work and rectification totalling $41,820.50. In fact, according to Jacqueline (N/E 771) the defendants were still attending to defects in Publicis which they were not claiming from the plaintiffs.

62. To substantiate the defendants' allegation of defects, Lim Kim Mook of Parisan Interior Dcor testified that he accompanied David Chua for a site inspection in April 1999 after which, on the instructions of someone from Publicis, he carried out rectification works for which he billed the defendants and was paid, $6,895. The defendants' supervisor LKL (DW5) also testified that for flooring works, the plaintiffs provided ordinary paint instead of epoxy floor finish as stipulated in the bill of quantities; according to Jacqueline (N/E 775) epoxy floor finish was more than a paint -- it provided protection, had 5-10 years guarantee and could withstand heavy traffic. It was therefore better suited for workshops and factories.

63. The first plaintiff did not deny that the plaintiffs failed to carry out certain works. He had deducted the cost ($16,344.40) of three (3) items which the plaintiffs did not do namely: (i) painting ($6,000), (ii) chairs ($2,920) and carpets ($7,424.40) from the contract sum of $281,820.50 thereby reducing it to $265,476.10. However, he claimed a further $34,296 for additional works and variations carried out by the plaintiffs; hence the contract amount increased to $299,772.10. He denied there were defects but said touch-ups were required (N/E 129). The first plaintiff spent considerable time in the witness box detailing the work which comprised the plaintiffs' additional claims. When shown an invoice (DB379-380) of Kemvet dated 10 February 2000 engaged by the defendants to attend to four (4) defects, the first plaintiff denied it was to rectify the plaintiffs' work. Kemvet's managing director WCS (DW3) however testified he carried out the work on an urgent basis for the defendants; his testimony was not challenged by the plaintiffs.

64. In an attempt to reduce the areas of dispute (touching on additional as well as rectification works) between the parties, I had instructed the parties to visit the premises of Publicis in the midst of trial. According to the plaintiffs, the defendants refused entry to Lamine but the defendants countered that access was denied by Publicis, who considered Lamine *persona non grata* apparently because he had a skirmish with the company's top management (N/E 260) at the beginning of the project. The outcome of the site visit on 13 May 2000 (see N/E 258-260) was, that some measurements were taken but not completed; the defendants but not the plaintiffs, were willing to continue the inspection exercise on Sunday 14 May 2000. Measurements for partitions, cornices and skirting were agreed to by the plaintiffs. Part of the difficulty was due to the fact that alterations were made after the plaintiffs completed the project and the defendants were unable to verify whether certain items were variation orders. Hence, nothing conclusive or useful came out of the site inspection.

65. There were some items in the Publicis project for which the defendants are clearly not liable. The first was an item of work directly requested by Publicis -- to supply power to two separate divisions. In their quotation BK1350 (see SAB29) the plaintiffs themselves stated: *Please be informed that according to owner [sic] instruction…We have quoted owner $1,000 for the above separation*. The plaintiffs should look to Publicis for this claim. In addition, the plaintiffs are not entitled to their claims for

mounting of the logo and television set, as set out in their quotation BK 9243. According to Delphine (N/E 594/613), the plaintiffs mounted the television set on the wall instead of on the ceiling as it was intended, because the ceiling board they provided at the reception area could not take the weight. The gypsum board they installed could not support the logo and had to be reinforced. Had the plaintiffs visited the old office of Publicis as they should have, they would have known beforehand of the size and weight of both items and the positioning requirements. Why then should the defendants have to pay for works which they either did not order or were necessitated by the plaintiffs' own fault? Neither can the plaintiffs claim for the work done in BK 9264 to provide a wood-cap/cover for the projector screen. It was Jacqueline's testimony that when Ivan Chong shouted at her in the presence of the first plaintiff for the poor (but expensive) workmanship of the plaintiffs and Ivan Chong inquired whether it was too much to ask for the screen to have a cover, the first plaintiff indicated he would provide the same but did not mention he would charge for it.

66. If a picture is worth a thousand words, then the photographs taken by the defendants spoke volumes of the plaintiffs' workmanship as they showed:-

> (i) inferior materials being used (empty plywood) for cabinets rendering the table-tops being too weak to take the weight of such equipment as monitors;
>
> (ii) ordinary paint instead of epoxy finish being used for flooring;
>
> (iii) skirting which was cracked or badly joined or fell off or not done at all exposing wiring which should have been concealed;
>
> (iv) poor tiling works;
>
> (v) cracks on joints between partitions;
>
> (vi) uneven plastering;
>
> (vii) cracking of laminate;
>
> (viii) cracks in ceiling boards.
>
> (ix) door handles which dropped off and faulty keys which could not lock.

Delphine had also testified on the plaintiffs' poor workmanship (N/E 612). She said the plaintiffs could not as they were supposed to, dismantle the boardroom table from Publicis' previous office, for reasons unknown to her. Hence, the plaintiffs manufactured a new boardroom table which cracked as did the table they made for Ivan Chong.

67. The plaintiffs had agreed to the defendants' measurements (see AB341 and N/E 282) after the joint site visit on 13 May 2000 but not to the defendants' deduction of 1,581.12m for omissions from the bill of quantities. The first plaintiff explained that was because what he saw at site was not what was handed over by the plaintiffs in 1998 – items such as partitions had been removed as could be seen from the photographs in exhibit P2 which he took.

68. In the light of the bad workmanship shown in the defendants' photographs in DSB2-36, the plaintiffs cannot succeed on their reduced claim for $55,788.10 ($59,772.10 less the sums of $1,545, $1,380 and $1,059 conceded by the first plaintiff); their work was not of an acceptable standard. I do not see why the defendants should be liable for defective works which they or Publicis subsequently removed; such removal would not have been necessary had the plaintiffs done the work properly in the first place. Accordingly, the defendants are entitled to a set-off for the omitted works totalling 1,581.12m when assessed as well as for the costs of rectification.

(vii) ***Lancome***

69. The defendants admitted owing the plaintiffs a balance of $400 on this project (for counters) but not the sum claimed of $5,240 based on three (3) variation quotations issued by the plaintiffs in October 1998. The defendants pleaded that payment was withheld pending final accounting and rectification of defective works. Jacqueline deposed that the defendants neither received nor accepted the October quotations. On the other hand, the second plaintiff who was in charge of this project, blamed the defendants' designer (who he did not name); he alleged she was not sure about the design and had reduced the height by 200 mm after the plaintiffs had completed the work with consequential alterations having to be made to doors and other structures involving additional costs. Questioned on whether the plaintiffs followed the defendants' drawing/layout, the second plaintiff could only remember there were some alterations but not whether they were due to changes in drawings (N/E 41). Although he had testified (N/E 14) it was his practice to write the word **done** on the plaintiffs' quotations to indicate work which had been carried out and he had so written on BK 9129 (see AB25) for the supply of stools, under cross-examination (N/E 46/97), the second plaintiff conceded that it was the defendants who purchased the counter stools.

70. Delphine had testified (N/E 592/602) that the plaintiffs' fabrication of the counters was 350 mm short of the required 3.5m and some work was not done while the finish was poor. She further testified that she had purchased the mirrors which formed part of the plaintiffs' claim in BK 9084 on which again the second plaintiff had written the word **done**. The poor quality of the plaintiffs' work was reflected in Lamine's faxes (2) to them dated 22 October 1998. The new counters were the subject of one of the plaintiffs' additional claims. Another problem was the promo-tank showcase meant for promotion of Lancome's products. The acrylic piece provided by the plaintiffs for the counter top did not fit properly with the result that Lancome rejected the same and ordered a replacement from France. Because of the defects, all the counters at Metro store (at The Paragon) had to be replaced. The defendants produced faxes from Delphine and Lamine to the plaintiffs (DB109-112) in this regard.

71. It would seem that, like the Hugo Boss project, the Lancome project was further proof of the plaintiffs' inexperience with counters. The second plaintiff was evasive when cross-examined on this project. I do not see why the defendants have to pay the plaintiffs twice, once for counters which were not properly fabricated and the second time for replacement of the rejected counters, nor for the alteration of the promo-tank when all the additional works resulted from the plaintiffs' bad workmanship and inability to follow the defendants' drawings. It was also undisputed that the plaintiffs did not supply the counter stools. Accordingly, the plaintiffs' claim for $5,240 is rejected while the sum ($400) admitted by the defendants to be still owing to them with be withheld pending assessment of the defendants' counterclaim.

(viii) ***The French Embassy***

72. The plaintiffs claimed the sum of $14,321.50 over and above the sum of $6,631 the defendants agreed to pay under two (2) purchase orders. The work was carried out at two (2) apartments occupied by staff of the French Embassy at Block 253 #03-10 and at Block 255C #14-23 respectively, at Hillcrest Arcadia. The defendants refused to accept the plaintiffs' quotations for $14,321.50 on the basis that the works stated therein were not requested by them.

73. The first plaintiff was in charge of Hillcrest Arcadia. He testified that the works were carried out at the request of embassy staff and on the instructions of Lamine. These included changing a door lock, clearing waste water pipe blockage, supplying and installing ceiling fans, aluminium sliding doors, mosquito netting, hot water heater, drawer cabinet etc. However, he withdrew claims in items 1 and 4 of the plaintiffs' quotation BK 9020 totalling $650.

74. At my suggestion, representatives of the defendants visited the 2 apartments after which their counsel informed the court (N/E 137) that the defendants would not contest claims for items which the plaintiffs installed provided that the latter were able to produce invoices or receipts evidencing such purchases. The defendants also conceded liability on the plaintiffs' quotation BK 9048/A (see AB 296-7) for $1,750 save for one item (no. 3 for $100) and agreed to pay the sum of $240 claimed in BK 9013. The burden is now on the plaintiffs to substantiate the sum claimed therein as well as furnish proof of purchase of the ceiling fans quoted in BK 9028. Consequently, the plaintiffs succeed in this claim on liability only and the quantum of their claim has to

be agreed with the defendants or failing that, to be assessed.

(ix) ***AGF Insurance***

75. The defendants asserted they had paid the plaintiffs in full the contract sum totalling $6,400 encapsulated in three (3) purchase orders. The plaintiffs claimed a further sum of $650 in their quotation BK 9017 (AB 270) dated 1 September 1998 for dismantling and disposing of partitions. This claim was subsequently withdrawn during the trial.

(x) ***Other projects***

a. Parsing (FE) Pte Ltd

76. The defendants did not deny owing the plaintiffs a balance of $8,986 on the contract sum of $10,286. They asserted (through Jacqueline) that they withheld the balance as retention monies pending the finalisation of accounts and as a set-off against the cost of rectifying the plaintiffs' defective works. In the light of my earlier findings, the defendants were justified in withholding payment of the balance sum.

b. Perising Pte Ltd

77. Similarly, the defendants did not dispute liability for the small sum of $480 claimed by the plaintiffs but again raised the defence of set-off for the cost of remedying defects in the plaintiffs' work. Again I am of the view that they were entitled to do so.

c. Rochas

78. The defendants requested the plaintiffs to make and supply display racks, cabinets etc at Metro outlets (Woodlands and The Paragon) and at Seiyu. They did not pay the plaintiffs the contract sum of $20,270 at all, again for the reasons stated in para 76. I hold they were justified in not paying.

d. Cosmopolitan - Gucci

79. The defendants similarly did not pay the admitted contract sum of $12,000 for the same reasons given above, for which I believe they were justified.

e. Dragages Singapore Pte Ltd (*Dragages)*

80. The defendants admitted to a contract sum of $24,657 by their bill of quantities dated 8 February 1999 on which they had paid $20,000 by a personal cheque from Jacqueline. They further maintained that the bill of quantities was a final account between the parties. The second plaintiff (who was in charge of this project) denied this however and claimed another $32,651 on top of the contract sum (reduced from $32,994 by their counsel on the first day of trial). The figure of $32,651 is also incorrect

and should be $32,551. In fact, the plaintiffs initially contended that the contract price was $25,000 until the defendants produced the bill of quantities. The second plaintiff said the further sum pertained to variations and additions for the renovation works carried out on two (2) floors of Jit Poh Building between August and October 1998. Although he initially denied receiving the bill of quantities in February 1999 (see N/E 64 which document was not in the plaintiffs' bundle of documents), the second plaintiff subsequently testified (N/E 68) that the bill of quantities was the main contract given to him before work commenced. Cross-examined, in particular on whether he had double-invoiced the defendants for items already included in the bill of quantities, the second plaintiff's stock answers were either *'can't remember'* or *'not sure'* or *'I have to check*' which supposed checks came to nought. His cross-examination (see N/E 67-70) revealed that the plaintiffs were clearly attempting (in their quotations) to recover the costs of rectifying defects in their works or the cost of dismantling works which had been previously rejected by the defendants.

81. I totally reject the plaintiffs' claim on the Dragages project. It was clear from the highly unsatisfactory answers given by the second plaintiff under cross-examination coupled with examples of double claims which counsel for the defendants had highlighted to him, that the claim for $32,994 was completely unmeritorious. What is even more obvious was that the bill of quantities was dated four (4) months after the plaintiffs had completed the project. Its purpose could only have been that it was meant to be a final account between the parties, not for the plaintiffs to commence work and that final account took into consideration all variation works. Yet, the plaintiffs deliberately failed to disclose the document (which had been faxed to them) or even to refer to it either in their (limited) pleadings or in the second plaintiff's written testimony because, it was to their disadvantage to do so. I should add that at one stage, I reprimanded the second plaintiff and reminded him that he was giving evidence under oath with the consequences of perjury as, he was testifying with a complete disregard for the truth. The defendants will have to pay the plaintiffs the balance of $4,657 subject to the right of set-off for sums found on assessment to be due to the defendants on their counterclaim.

f. Cosmopolitan - Seiyu (Bugis Junction)

82. The contract sum for this project was $40,116 on which the defendants paid $31,576. They asserted payment of the balance ($8,540) was withheld because of defects in the plaintiffs' works. The second plaintiff who was in charge of this project, claimed he negotiated and agreed with Lamine, on additional sums totalling $4,355 reflected in the plaintiffs' seven (7) quotations variously dated between 14 August and 9 November 1998. Cross-examined, the second plaintiff could only assert that the work described in the quotations was done at Lamine's request; he denied they related to abortive or remedial works or works which were already included in the defendants' purchase orders (10) issued for this project.

83. What is remarkable about this claim is, that the plaintiffs' quotations of which BK 8900 (AB35) is an example, contained these words:

> Terms of payment: 40% downpayment under confirmation
>
> 30% progressive payment
>
> 30% upon completion of job

At other times, as can be seen from BK 8930 (AB36), the plaintiffs' quotations contained these words:

> Agreed & Confirmed by
>
> ……
>
> APRIM (FAR EAST) PTE LTD

Why then would the plaintiffs do the work which they claimed they did when they were neither paid a deposit nor was the

quotation confirmed, by the defendants? I entertain considerable doubts on the authenticity of this claim and I believe, for reasons which I will elaborate on later, that these quotations were fabricated by the plaintiffs – the alleged works reflected therein were not done.

g. French Business Centre (No 89 Neil Road)

84. The defendants admitted owing the plaintiffs the contract sum of $1,180 which again they refused to pay pending final accounting and rectification works; I agree they were justified in so doing.

h. Eurasia Fragrance

85. There was a small claim for $180 by the plaintiffs for installation of a cabinet lock. The defendants denied liability on the ground they did not request for the lock. Cross-examined (N/E 72), the second plaintiff said other than his own testimony, he had no evidence such as an invoice to prove this claim. Accordingly, this claim is rejected.

i. EURO RSCG

86. On this project it was the defendants who claimed a sum of $99,729.60 from the plaintiffs alleging that the latter have been overpaid by that amount as the plaintiffs had omitted certain works and or provided less quantities (after measurements) than that set out in the contract. The second plaintiff did not deny that the plaintiffs owed the defendants some monies on this contract but claimed he did not know the exact amount. The first plaintiff claimed (N/E 136) he was confused because when the defendants paid the plaintiffs $100,000 by payment voucher no. 5680 on 4 December 1998 (DB531B), there was no mention in the payment voucher that part of the payment $59,043.40) was meant for EURO RSCG. The second plaintiff complained that the defendants would pay the plaintiffs and then change their minds later on what the payments were for.

87. David Chua however, testified (N/E 629) that after the plaintiffs were paid $100,000 by payment voucher no. 5680, he had sent them a fax on 17 December 1998 (DB531A) giving a breakdown for the amount including $59,043.40 for EURO RSCG. Contrary to the plaintiffs' allegations, David Chua said it was only occasionally that he changed the payment details by faxing to the plaintiffs a few days after they had been paid. I accept that the plaintiffs were overpaid by $99,729.60 by the defendants and accordingly the defendants succeed on their counterclaim for this amount.

The testimony of the witnesses

88. I turn now to make some observations on the key witnesses for this case. The second plaintiff (PW1) had testified (N/E 14/20) that it was his practice to write the word *done* whenever he completes a job. His brother (the first plaintiff) on the other hand (see N/E 160) said sometimes he ticked but at other times he did not, items when the works were done but, when not done, he would write the words *not done*. At another stage of his cross-examination, the first plaintiff (N/E 189) changed his testimony to say when he wrote the words *job done*, he meant it was an additional job required. I am unable to accept his testimony at face value. As an example, I refer to the plaintiffs' quotation BK 9129 at AB25 which has already been discredited. Although the word *done* was written thereon by the first plaintiff, he had admitted under cross-examination, that the plaintiffs did not supply the counter stools to Lancome. There is no assurance that he did not make the same mistake with regards to other quotations where he wrote the word *done*.

89. Counsel for the defendants had also suggested (N/E 180) to the first plaintiff that his family had planned (in December 1998) to set up another company to compete with the defendants. It was then that the plaintiffs started to issue the quotations which were the subject of their claim and which had been previously rejected by Lamine. Although the first plaintiff denied counsel's suggestion, he nevertheless could not satisfactorily explain why he, his father or brother, never thought of approaching the defendants' directors to inquire why the latter did not pay the outstanding amounts under the numerous quotations, particularly when the second plaintiff admitted he was at the defendants' office practically every day (N/E 37). The first plaintiff could only say lamely that his father had requested payment; the requests were all verbal save for one letter to the defendants in February-March 1999.

90. In the course of cross-examination, counsel for the defendants had inquired of Lamine (N/E 481) why all the plaintiffs' invoices (which formed the basis of their claim) were variously dated between August and December 1998, after Lamine had broken up with Jacqueline. The defendants contended that Lamine initiated this claim to exact his revenge on Jacqueline whose relationship with him terminated after Jean Marc (and his sister) came from France to join the defendants around September 1997. Lamine naturally denied (N/E 392) this allegation, he claimed he was not involved in let alone that he had masterminded, this suit. He said he only knew he would be called as a witness by the plaintiffs very late in the day.

91. At this juncture, I need to digress to consider the testimony of an independent witness called by the defendants to corroborate their claim that Lamine indeed had an axe to grind against them. The witness was Frans Karel Bogaert (Bogaert) a senior vice-president of a multinational company and a personal friend of Jacqueline. I should also point out that counsel for the plaintiffs objected strenuously to paras 5 and 6 of Bogaert's written testimony, complaining that the paragraphs were scandalous and frivolous (N/E 385). Bogaert had alleged that when he met up with Lamine for lunch on 3 January 1999 after the latter's return from Australia, Lamine seemed extremely agitated and drove his car in a dangerous fashion. Lamine had also told Bogaert that Jacqueline had refused to lend him $50,000 even though the amount was **small money** to her and Lamine had added **'I swear to you that she will pay me one way or another'** and, when Bogaert attempted to cool him down and asked what he planned to do, Lamine had replied **'You'll see'**. I overruled counsel's objections as the paragraphs were clearly relevant on the issue of Lamine's motives and whether he was the instigator of this suit as the defendants alleged.

92. Contrary to the protestations of plaintiffs' counsel, when he took the stand, Lamine did not deny he had said the words **small money** to Bogaert. He testified (N/E 391-2) that even if he had made the threats alleged, Bogaert should have understood that the words were said out of stress and anger but he did not mean them – he was disturbed having broken up a relationship with Jacqueline after three (3) years, he had no job and no accommodation. He did ask Jacqueline for $50,000 but she had not responded to him as was expected of a girlfriend and of someone whom he had helped for three (3) years to develop her business.

93. When he took the stand however, Bogaert disagreed with Lamine. He said he was shocked (N/E 566) by what Lamine said and did not view Lamine's words as an idle threat. It was not the fact that Lamine wanted a loan at short notice which Bogaert found objectionable but, the way Lamine intended to procure the money. Neither did Lamine explain or justify his demand. Bogaert's experience with Lamine (when the defendants renovated the office of his previous company) told him that Lamine could be quite short tempered; Bogaert felt that this case would not have come to court if not for Lamine's revenge.

94. Throughout his testimony, Lamine consistently maintained that he always acted in the defendants' best interests inter alia, in negotiating prices with contractors especially with the plaintiffs whose prices (he claimed) were among the cheapest in the market. He described the plaintiffs in glowing terms as honest, hardworking, very committed, very reactive, able to negotiate pricing with him, flexible in their prices and basically nice people to deal with (N/E 390). Further, they were like a second family to him as he had no one in Singapore; they even visited him when he was warded in hospital. Lamine was particularly grateful that after he left the defendants' employment with no job, prospects or home and he approached the plaintiffs' father for work, he was taken on. Regrettably, I do not share Lamine's opinion of the plaintiffs or their father.

95. Having seen the demeanour of all the key witnesses who each spent a considerable amount of time in the witness box, I am inclined not to accept or believe, the testimony presented by the plaintiffs, their father and Lamine. Indeed, where Lamine was concerned, the more he said he acted in the defendants' best interests, the less I believed him. He was not a truthful witness and

neither were the plaintiffs nor their father. Lamine was the proverbial nigger in the woodpile; in the words of David Chua, he is not very scrupulous (N/E 633). I have no doubt that Lamine did instigate the plaintiffs to initiate this suit which they would not have done otherwise. I do not believe, from my observance of them in court, that the plaintiffs are capable of prosecuting this claim on their own and by that, I do not mean their lack of formal education. Not only did Lamine make use of the plaintiffs (who were willing accomplices) to carry out his personal vendetta against the defendants/Jacqueline, he had also (as counsel for the defendants suggested) attempted to take away the defendants' business by incorporating LG Interior Fitting & Contract Pte Ltd on 22 September 1999 with the first plaintiff (while he was still in the defendants' employment) to offer the same services as the defendants. In this regard, it was foolish of the second plaintiff to say and to expect the court to believe (when asked by counsel for the defendants), that the letters **LG** stood for Lucky Go (N/E 74) when it was so very obvious that they referred to Lamine's initials.

96. Just as the defendants sought to persuade the court that Lamine was not a credible witness, the plaintiffs similarly attempted to discredit Jacqueline. In his final submissions, counsel for the plaintiffs contended that Jacqueline's testimony that she did not see (most of) the plaintiffs' quotations before April this year cannot be true. He argued that she lied by referring to selective portions of her testimony to highlight what he considered were inconsistencies; I do not agree with counsel. Indeed, on the whole, I preferred the testimony of the defendants' witnesses. I did not form the impression that anyone of them, whether from the defendants or from outside the company, were evasive or not forthright when they testified.

97. Counsel for the plaintiffs had also submitted at length on the issue of whether the defendants paid the plaintiffs only against purchase orders as the defendants contended or, against quotations as well, as the plaintiffs contended. I shall deal with this issue now when I consider Jacqueline's testimony.

98. The evidence from Jacqueline, both in her written testimony as well as in the witness stand was, that the defendants only recognised their own purchase orders as a basis for payment to the plaintiffs; she never wavered from this stand, contrary to the submissions of counsel for the plaintiffs. What she did say however was, that sometimes, the defendants would recognise the plaintiffs' quotations by taking them into account in the final accounts for a particular project and in those instances no purchase orders were issued by the defendants. Before the parties' relationship soured, they adopted a 'give and take' attitude with one and another. This was not only not denied by the plaintiffs but indeed was confirmed by the first plaintiff (see N/E 292). On his part, the second plaintiff had testified (N/E 23) that he had agreed with Lamine that because the plaintiffs had 20 projects from the defendants, once work was completed, *we will sort it out in final accounts*.

99. The expectation of final accounting however did not materialise because the plaintiffs demanded $200,000 from Jacqueline before they would carry on with the Air-France project. Jacqueline testified she refused to accede to the demand because she had already paid the plaintiffs a deposit of $80,000 and $210,000 was the total value of that contract. She felt the plaintiffs were attempting to hold her to ransom (which they were) and she decided that enough was enough even though she was aware that refusing their unreasonable demand meant that she had to find another contractor, with the consequential delay, to finish the Air-France project. As it turned out, that was what happened and the plaintiffs were 3 months' late in completing the project. When I suggested to Jacqueline at one point whether low pricing was possibly the reason she continued to use the plaintiffs' services, Jacqueline said it was not. Indeed, it was David Chua's testimony (N/E 642) that the plaintiffs' prices were inflated and their quotations were least 30% more than what the defendants issued in their purchase orders. He added that the plaintiffs' quotations leave a lot of room for negotiations. Jacqueline had also testified that at the beginning, the quality of the plaintiffs' work was reasonable/acceptable but it deteriorated over time when more projects were given to them. Sometimes it was a question of having to put up with the plaintiffs as she could not get another contractor to take over from them mid-stream for an on-going project. As for the plaintiffs' complaint that their resources were stretched because of having to do so many projects which often overlapped, Jacqueline's answer (see N/E 729) was short and to the point -- why take them on if the plaintiffs could not cope? They could have but they did not, turn down the projects; no one forced them to accept.

100. Yet another complaint made by the plaintiffs and repeated by their counsel was, that the defendants sometimes did not pay a cent on certain projects, Hugo Boss being an example. Again this allegation is untrue. The plaintiffs conveniently omitted to take into account (according to David Chua) the general advances made by the defendants periodically totalling $400,000 to tide them over their cash flow problem (N/E 646). Counsel for the plaintiffs also sought to suggest that it was the defendants who

had cash-flow problems, resulting in their inability to pay the plaintiffs. I reject that suggestion as being unfounded, save for a brief period during the regional economic crisis. In any event, as Jacqueline pointed out, she paid the plaintiffs using her own personal cheques (for Dragages and Air-France) if the defendants were indeed short of funds (N/E 765).

101. Counsel for the plaintiffs had also complained that it was unfair of the defendants not to settle the final accounts for the various projects and thereby withhold payment from his clients. In this regard he had apparently overlooked Jacqueline's evidence which I accept – that the defendants did not have the chance to sort out the final accounts for the various projects because the plaintiffs ceased all works for and communications with, the defendants on or after 2 March 1999. In any case, the plaintiffs blew hot and cold -- where there were final accounts as in the case of Renault, they denied the same because the accounts were unfavourable to them.

102. I turn next to Jacqueline's testimony. She came across as a remarkably capable woman whose background in construction enabled her to run the defendants' business successfully. I cannot imagine that the exclusive French clientele which she secured for the defendants is solely due to her being a French national. I am certain it was because she does a good job and takes pride in what she does even though she has other responsibilities (which includes being a trade advisor to the French government for Singapore and being the vice-chairperson of the French Business Association). This was exemplified in her candid apology (N/E 671) in court for the 'terrible work' done for Publicis which she considered unacceptable. She was equally candid when she testified that because Lamine was more than an employee, he was less accountable to her (N/E 677). Jacqueline's testimony was unshaken under cross-examination and as stated earlier, I did not form the impression she was not telling the truth, or that she was evasive or inconsistent, throughout the considerable period she was in the witness box. Equally, it is to Jacqueline's credit that notwithstanding her personal relationship with Lamine had broken down, she gave him (through David Chua) a testimonial (see exhibit P9) and a gratuity of $12,000 when he left the defendants' services. Unfortunately, Lamine repaid her generosity by changing camps.

Conclusion

103. To conclude, I find that on a balance of probabilities, the defendants have proven their counterclaim whereas the plaintiffs have failed to discharge their burden to prove that all the work (save for those admitted by the defendants) encompassed in their quotations were done or, that those quotations were indeed sent around the dates stated therein, to the defendants. I had pointed out to counsel that the plaintiffs' quotations are not sacrosanct as he seemed to think – his clients not only had to prove that the quotations were sent to the defendants but also that the same were accepted and, the work described in the documents was carried out. What emerged from the evidence adduced in court was, that a large number of the quotations were not contemporaneous but were issued well after their supposed dates, they were not sent to the defendants but were handed to David Chua (on or about 6 January 1999) or, were only seen by the defendants for the first time in April 2000.

104. Accordingly the plaintiffs' claim is dismissed. From the time counsel for the plaintiffs amended his pleadings to reflect the correct position that the plaintiffs, not the company were the claimants, the defendants had (in their amended Defence and Counterclaim) not disputed that they owed the plaintiffs the balance outstanding on the projects in question (save for EURO RSCG, AXA and Renault). Had the plaintiffs formulated their claim properly for the undisputed balance owed to them from the very beginning, the trial may well have been obviated. Unfortunately, the plaintiffs went further than that and attempted to claim more than their entitlement on which they failed. Accordingly, in the exercise of my discretion, I deny the plaintiffs any costs.

105. On the other hand, the defendants have succeeded on their counterclaim. I therefore award them interlocutory judgment with damages to be assessed by the Registrar; assessment would include the overpayments they claimed to have made to the plaintiffs on EURO RSCG and AXA. Accordingly, they are entitled to their costs from the plaintiffs and such costs would include any court fees which I had previously ordered them to pay. In this regard, I direct that the defendants are entitled to retain the security for costs of $100,000 previously furnished by the company until such time as the defendants' costs are taxed on a standard basis or otherwise agreed

106. In the event the parties encounter any difficulties arising out of my decision, I give them liberty to apply.

Lai Siu Chiu

Judge