Ho Seng Lee Construction Pte Ltd v Nian Chuan Construction Pte Ltd [2001] SGHC 274

Case Number : Suit 151/2000

Decision Date : 21 September 2001

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Irving Choh and Twang Kern Zern (Chong Yeo & Partners) for the plaintiffs; Wong Kah Chiew and Teh E-Von (Wong & M Seow) for the defendants

Parties : Ho Seng Lee Construction Pte Ltd — Nian Chuan Construction Pte Ltd

Contract – Mistake – Common mistake – Lease of metal-forms for constructing buildings – Quantity of metal-forms less than agreed quantity – Whether subject matter radically or essentially different from subject matter which parties believe to exist

Contract – Mistake – Unilateral mistake – Lease of metal-forms for constructing buildings – Quantity of metal-forms less than agreed quantity – Whether plaintiffs knows defendants to be mistaken as to quantities of metal-forms on site

: The plaintiff company carries on the business of leasing metal-forms to builders for use in constructing buildings. These metal-forms are used as moulds for liquid concrete or cement.

The defendant company is in the construction business. In 1999, it entered into three agreements with the plaintiffs under which it rented metal-forms from them. The plaintiffs now claim that there is outstanding rental due to them from the defendants arising under the three agreements.

Pleadings

The statement of claim was straightforward. The plaintiffs alleged that by a written agreement dated 1 May 1999 and two further agreements both made on 1 June 1999, the plaintiffs agreed to lease and the defendants agreed to hire metal-forms for use at three Housing and Development Board (`HDB`) projects then underway. These projects were known as Sengkang N3C3 (`Sengkang`), Woodlands N5C14 (`Woodlands`) and Ang Mo Kio RC12 (`Ang Mo Kio`). Under the agreements, payment of hire was to be made within 30 days of invoicing by the plaintiffs. The defendants failed to pay the plaintiffs rental amounting to $268,802.49 and the plaintiffs therefore claimed that sum and interest thereon at 1.5% per month in accordance with the terms of the agreements.

The defence recited first the background to the agreements. It stated that before the defendants commenced work on the relevant HDB projects, another contractor, namely, Kong Siong Construction Pte Ltd (`Kong Siong`) had been constructing the buildings. Kong Siong required metal-forms for its work on these projects and leased the same from the plaintiffs. While construction was underway, the defendants took over the projects and agreed with the plaintiffs to lease the metal-forms previously leased to Kong Siong.

Paragraph 4 of the defence stated that the quantities of metal-forms leased to the defendants were, in the lease agreements, stated to be 80,003 pieces for Sengkang, 47,630 pieces for Woodlands and 12,235 pieces for Ang Mo Kio (in fact there was a mistake in the defence in that there the quantities for Woodlands and Ang Mo Kio were mixed up and the correct numbers were 47,630 pieces for Ang Mo Kio and 12,235 pieces for Woodlands). In actual fact, as the defendants discovered subsequently, the quantities of metal-forms leased were much smaller. The defendants averred that the quantities actually leased were not in accordance with the quantities stated as leased in the three agreements.

By para 5 the defendants went on to allege that at the time the agreements were executed by the parties both, alternatively the defendants alone, mistakenly but honestly believed that the quantities of metal-forms leased were as in the agreements. This was because when the defendants took over the projects from Kong Siong, the metal-forms had already been set up at the sites or were lying on the ground and it was virtually impossible to count how many pieces were indeed handed over to the defendants.

In para 6 of the defence, it was stated that the plaintiffs had been unwilling to rectify the agreements so as to reflect the correct quantities of metal-forms leased. The defendants were only willing to pay rental in respect of the actual quantities leased. The defendants went on to assert that the three agreements were not binding on or enforceable against them. They denied that the sum outstanding due to the plaintiffs was $268,802.49 and asserted that the correct rental over the period from May 1999 to March 2000 should have been $235,634.01. The defendants had paid $225,818.71 leaving a balance of only $9,815.30 outstanding.

In para 10 the defendants put in a counterclaim to have the lease agreements rectified so as to embody the contracts actually made. Alternatively, they claimed for rescission of the agreements.

The issues that arose from the above pleadings were:

(1) in respect of each site, how many metal-forms were on that site as of the date that the plaintiffs and the defendants signed the rental agreement for those metal-forms;

(2) whether there was a common mistake at the time the agreements were executed as to the subject matter of the agreements;

(3) alternatively, whether there was a unilateral mistake on the part of the defendants as to the number of metal-forms on each of the sites and whether the plaintiffs were aware of such mistake; and

(4) if (2) or (3) is answered in the affirmative, whether the defendants are entitled to rectification of the contracts.

The evidence

THE PLAINTIFFS` WITNESSES

The first witness for the plaintiffs was Mr Yeo Kiong Yong, their marketing manager. He confirmed that in 1995 the plaintiffs had leased metal-forms to Kong Siong for the latter`s use at the HDB sites at Sengkang, Woodlands and Ang Mo Kio. In early 1999, Kong Siong faced financial difficulties and handed these projects to the defendants. The defendants then approached the plaintiffs to allow them to continue leasing the metal-forms.

Mr Yeo asserted that prior to taking over the projects the defendants had wanted to take over Kong Siong itself and that they knew the outstanding debts of Kong Siong. He then said that it could be inferred that at all times the defendants knew of the quantities of metal-forms on the three sites. He said he had shown the last quantity of metal-forms leased to Kong Siong, including all previous invoices, to one Ms Kelly Low and one Mr Atan, both of the defendant company. They went through

all the plaintiffs` delivery orders and invoices and found them to be correct.

On 1 May 1999, the plaintiffs and defendants had entered into the metal-form rental agreement in respect of Ang Mo Kio and on 1 June 1999, they entered into similar agreements in respect of the metal-forms at Woodlands and Sengkang. Mr Yeo said that before signing the three agreements, the plaintiffs had allowed the defendants to inspect and count all the metal-forms at the various sites. In fact he personally had told the defendants to return the metal-forms that were on site and then re-lease them from the plaintiffs in order that they would know the exact quantity taken. The defendants declined this offer.

According to Mr Yeo, out of goodwill the plaintiffs agreed to give the defendants an allowance of 25% for missing pieces when the metal-forms were returned by the defendants to the plaintiffs. He stressed that this discount of 25% was only for missing metal-forms and was not a discount on rental. Initially, only a discount of 10% was proposed but Mr Wang Quan Cheng, the defendants` managing director had wanted a further discount as he said the three projects had already lost money.

From May to the end of July 1999, the defendants paid the rental in respect of metal-forms as per the quantities set out in the agreements without complaint. In September 1999, there was a slight problem regarding the condition of returned metal-forms. Subsequently, the defendants were slow in effecting payment of rental for the months of September, October and November 1999. On 13 January 2000, the plaintiffs sent the defendants a letter asking for immediate payment of an outstanding balance of $168,541.92. They threatened to take legal action if payment was not received within seven days. No payment was received and a solicitor`s letter was sent out on 26 January 2000.

On 8 March 2000, a meeting was held between the plaintiffs` director, Mr Benjamin Tan, Mr Yeo himself and the defendants` Mr Wang, and their contract manager, Ms Annie Hor. According to Mr Yeo it was only at this meeting that the defendants raised the issue that the quantity of metal-forms leased was incorrect. This position was reiterated in a follow-up letter from the defendants dated 28 March 2000 where it was stated that the quantities stated in the plaintiffs` breakdowns for the three projects were incorrect when compared with the actual quantities of metal-forms on site. The defendants also referred to the drawings for the projects and said that the quantities of metal-forms required according to the drawings were different from those that the plaintiffs said they had supplied.

The plaintiffs replied on 29 March 2000 and rebutted the defendants` claim. They stated that right from the start the plaintiffs had allowed the defendants` key personnel to verify the quantities of metal-forms on site and had even factored in a discount for damaged metal-forms. The plaintiffs insisted on full payment.

In a second affidavit, Mr Yeo replied to some of the points raised by the defendants` witnesses. He stated that the transferring of metal-forms and/or materials on site was a common occurrence and even after the defendants had taken over the sites from Kong Siong, metal-forms and materials may still have been transferred out without their knowledge. Also it must not be forgotten that there are always other foremen in charge at the sites and one cannot rule out the possibility that the metal-forms had been transferred to other projects of the defendants. The thrust of the second affidavit was to put the responsibility for custody of the metal-forms onto the shoulders of the defendants and to dispute the defendants` calculations of the rental payable and the quantity of metal-forms actually on site based on the drawings rather than on the quantity breakdowns which the plaintiffs had furnished to the defendants at the time of signing of the respective agreements.

It should be noted that each of the rental agreements was exhibited to Mr Yeo`s first affidavit. Also exhibited was a letter from the plaintiffs to the defendants setting out the details of all metal-forms leased pursuant to a particular rental agreement. Although typed on the plaintiffs` letterhead, the letter took the form of an acknowledgement by the defendants of the quantities of metal-form received from the plaintiffs. In respect of the Ang Mo Kio project, the letter was dated 1 May 1999 but the defendants signed it on 26 May 1999. In respect of the Woodlands project, the letter was dated 1 June 1999 but the defendants signed it on 13 July 1999. In respect of the Sengkang project, the letter was also dated 1 June but it was signed by the defendants on 13 July 1999. At the bottom of the two letters relating to Woodlands and Sengkang, there is a handwritten term stating:

> *Hirer is to return all mentioned metalform to the owner. However, in the event of any loss of metalform, hirer are (**sic**) only liable for missing quantity exceeding more than 25%*

That was the discount agreed to.

In cross-examination, Mr Yeo admitted that although the metal-forms would have been delivered to the various sites on pallets, once they were used they would no longer be neatly stacked on pallets. He agreed that after Kong Siong had taken delivery of the metal-forms from the plaintiffs, it had used them for their projects at the various sites. He also confirmed that the invoices that the plaintiffs had sent Kong Siong and that he had shown to the defendants` representatives did not state how many pieces had been rented out. Instead, the document only referred to the total area of the metal-forms rented out.

As regards the Ang Mo Kio site, Mr Yeo confirmed that 47,630 pieces of metal-form had been rented and delivered to Kong Siong. He asserted that when Kong Siong left the site, there were still 47,630 pieces there. He agreed that he had made the defendants acknowledge receipt of that number of pieces. Mr Yeo was then shown a number of documents showing metal-forms that had been returned from the Ang Mo Kio site in May 1999. He was asked whether Kong Siong had returned all these forms and asserted, `No, the defendants had returned them`, even though Kong Siong`s stamp appeared on the documents. He disagreed that his records were in a mess or that the figures that he made the defendants acknowledge were not the right figures. Shortly thereafter, however, the witness went on to agree that in court he was not able to explain logically and clearly from the documents and calculations how the figures were derived and in the circumstances the defendants were unable to verify whether the figures were correct.

Later in cross-examination, Mr Yeo conceded that he was not interested in the number of metal-forms that were required by the defendants to complete the job on site. Nor did it matter to him that there were more metal-forms on site than the defendants actually needed. It did matter to him whether or not the numbers of metal-forms acknowledged by the defendants were on site but he agreed that he could not ensure that those number were correct. To ensure that, all of the forms would have had to be dismantled from the buildings, picked up from the site and stacked according to their sizes and then counted. This had not been done. As far as he knew, Kong Siong had stopped work in February 1999, though not totally, and its carpenters would have to detach the forms. However, he himself had not visited any of the sites, apart from one short visit for the Ang Mo Kio site, so he did not know exactly what had happened on site. Mr Yeo agreed that taking the forms out would have cost the plaintiffs a lot of money. He said the plaintiffs could not get these forms back when Kong Siong stopped work because they had a working relationship with Kong Siong and secondly, the projects belonged to HDB and they would not let the plaintiffs on site to take the forms out.

Subsequently, Mr Yeo was asked whether metal-forms had been transferred out of the sites by Kong Siong before the agreements with the defendants were signed. His answer was `I wouldn`t know but that might have happened`. He agreed that transferring of metal-forms between sites was a common occurrence. Whilst Mr Yeo agreed that Kong Siong had many projects for which they took metal-forms from the plaintiffs he stated that he would have been surprised if Kong Siong had moved metal-forms around their various projects since they were not allowed to do so according to the terms of the rental agreement.

Mr Yeo was shown photographs of the sites and he was asked whether he was telling the court that in chaotic sites like the ones shown one would be able to verify and count the metal-forms. His answer was that this could be done if the site was sorted out. He agreed that if the defendants had not wanted the metal-forms they would have been under no duty to return the forms to him since the forms had originally been leased by Kong Siong.

The next witness was the plaintiffs` director, Mr Benjamin Tan Hai Seng. His affidavit was short. He agreed with all that Mr Yeo had said. He reiterated that the defendants did not misinterpret the three agreements. He stated that he had invited the defendants at that time to get their quantity surveyor to ensure that the correct quantity of metal-forms had been leased but the defendants declined and proceeded to sign the agreements. Out of goodwill he had agreed to give the allowance of 25% for missing pieces and it was only when it came to payment in December 1999 that the defendants had raised the problem of the quantities. In Mr Tan`s view, the issues raised by the defendants were simply a ploy to justify delay in paying the amounts rightfully due to the plaintiffs.

In cross-examination it appeared that Mr Tan had only met the defendants` representatives once during the period from April 1999 to March 2000. That meeting had been in March 2000 when the unpaid bills were discussed. However, on one occasion before the agreements were signed, Mr Wang had telephoned him. Mr Wang had asked for a discount in respect of the missing and damaged metal-forms.

Mr Tan admitted that he did not know how many pieces of metal-forms were actually on site when the defendants signed the agreements with the plaintiffs. He did know that some contractors do move metal-forms and other equipment between sites.

THE DEFENDANTS` WITNESSES

The defendants` first witness was Mr Wang Quan Cheng. He stated that at the beginning of 1999 he learnt that Kong Siong was in financial difficulty and was unable to fulfil its obligations under its many agreements for various projects. The defendants agreed to take over the Sengkang, Woodlands and Ang Mo Kio projects from Kong Siong. For the Sengkang project, the defendants had to complete construction of five blocks of HDB flats whereas for Woodlands, Kong Siong had completed almost all of the works and the defendants only had to complete the construction of one linkway. As for Ang Mo Kio, Kong Siong had only constructed about a third of the project and the defendants had to complete the construction of four blocks of HDB flats and a multi-storey car park.

The defendants agreed to lease the metal-forms from the plaintiffs because the projects were very massive and messy and it was inconvenient and next to impossible to engage another company to supply metal-forms. Further, the defendants had to work within a very tight schedule and had to mobilise their workers within a short time. Mr Wang decided that it would be time consuming to take down the plaintiffs` metal-forms from the buildings, return them to the plaintiffs and then put up another contractor`s forms. He therefore decided to continue using the plaintiffs` metal-forms.

After the agreements were signed, the plaintiffs gave the defendants three letters, one for each project, setting out the balance quantity of metal-forms supposedly received by Kong Siong. The plaintiffs wanted Mr Wang to acknowledge receipt of the number of pieces of metal-form stated in their letters. There was a tremendous amount of pressure from the plaintiffs to sign the agreements and acknowledge the metal-forms received. The plaintiffs had threatened to take back all their metal-forms if these were not signed and this would have been disastrous for the defendants because at least a week to ten days would be required to dismantle the metal-forms and obtain a new supplier.

Mr Wang said that, therefore, he had signed the letter for the Ang Mo Kio project without having the opportunity of checking that the defendants had actually received the 47,630 pieces of metal-form mentioned in the letter. The defendants` project manager, who had since left their employ, signed the two similar letters of acknowledgement for the Sengkang and Woodlands projects. Mr Wang averred that in any case it was next to impossible to check the number of pieces on site as the defendants were taking over half constructed projects and pieces of metal-form were all over the place, on the buildings and on the ground. His foreman and project engineer told him that to do a physical count of the number of pieces on site would be too time consuming and also impractical since the situation on the sites was chaotic and the defendants were operating on a tight schedule.

Mr Wang said that he trusted the plaintiffs to keep an accurate record of the number of pieces leased to Kong Siong and the number of pieces returned by them. So when the plaintiffs asked him to sign the acknowledgement letter for Ang Mo Kio, he just signed it, after adding the 25% wastage clause. Thereafter, he approved payments to the plaintiffs without protest because he did not realise at first that anything was amiss. Halfway through the projects, however, he felt that something was not correct. He noticed that the plaintiffs were charging the defendants a hefty sum for metal-forms for the Woodlands project even though that was almost complete.

It was only then that Mr Wang discovered that for Woodlands the plaintiffs had allegedly delivered 12,235 pieces of metal-form to the defendants. He considered this figure an astoundingly high one considering the fact that the defendants had only to construct one linkway on that site. For that work, Mr Wang estimated that a maximum of 500 pieces would be required. As for the other two projects, it also appeared to him that the plaintiffs had supplied the defendants with an excess of metal-forms. When he discovered the mistake he asked the defendants` quantity surveyor to calculate the quantity of metal-forms actually required by calculating the surface area to be covered by the metal-forms and to then adjust payment to the plaintiffs according to the actual quantities used.

Under cross-examination, Mr Wang clarified that the defendants had not taken the contracts over directly from Kong Siong. Instead, a company called Wan Soon had taken Kong Siong`s place as the main contractor with HDB and the defendants had acted as Wan Soon`s sub-contractor for the three projects. As regards the amount of work that the defendants had to do for each project, Mr Wang confirmed that he only knew exactly what this was in July 1999 for Sengkang and Woodlands whilst for Ang Mo Kio he had confirmed the scope of works in May 1999.

Mr Wang was taken through the reasons why he had agreed to lease metal-forms from the plaintiffs. He agreed that his first three reasons, ie (1) that the projects were massive, (2) the messiness of the site and (3) the inconvenience of the removal, had been apparent to him when he took over the sites. As for the fourth reason, ie that it was impossible to engage another supplier, he explained that he had said this because the defendants were short of time, the boss of the plaintiffs was his friend and the price quoted was reasonable, and thirdly, the price from another supplier might not have been as good. Moreover, the supply of metal-forms was only 2% of the work for the three projects and he

did not want the 2% to affect the other 98% of the work. He continued to assert that the plaintiffs had put pressure on him to sign the lease agreements. This had been done by Daniel Yeo and Benjamin Tan who had kept pestering him to sign.

Mr Wang confirmed that he had signed the three contracts and had read them before signing. He agreed that he was prepared to lease metal-forms from the plaintiffs and that this agreement had been reached either in June or July. He also agreed that it was only proper to have a document setting out the terms and conditions of the lease. He then said it was not possible to take down the metal-forms and return them to the plaintiffs so that a proper accounting could be done.

The deadlines for the Woodlands and Sengkang projects had, according to Mr Wang, been set by the HDB. He tried obtaining longer deadlines but his application was not approved by the HDB. He said that he had no choice but to accept the deadlines given as it was a condition of the government. He had to accept these deadlines if he wanted to be Wan Soon`s sub-contractor.

Mr Wang said at the time he signed the agreement to lease the metal-forms, he had agreed only to the price and not to the quantities. He had not considered the quantities at that time. He only thought that the issue of quantities was important after Woodlands was completed and the defendants were calculating the number of remaining metal-forms.

The agreement for Sengkang was made on 1 June 1999. Mr Wang was asked whether he was given the acknowledgement and list of metal-forms for Sengkang at the time the agreement was made. His answer at first was no, the list was not given to him then. He said the list was given later after the agreement was signed but he could not remember how long after. As regards the acknowledgement for the metal-forms at Ang Mo Kio, Mr Wang confirmed he had signed that list and that next to his signature was the date 26 May 1999. He said he had not written the date. He also said he did not know when he had signed the document but he was sure that it was not on the date written there. After being asked to give an estimate he said that he probably signed it sometime in June. Mr Wang also asserted that he had told Mr Tan that he signed the document purely on the basis of trust. He did not have the invoices of the materials supplied to Kong Siong by the plaintiffs and therefore he was not in a position to verify the quantities.

Mr Wang agreed that at the time he signed the documents the defendants had the drawings of the projects with them and that his only reason for not looking at the drawings was that time was of the essence. He also agreed that six months later, when he found out that there were discrepancies in the quantities of the metal-forms, the defendants had time to look at the drawings. He explained that he needed six months to look at the drawings because if he had calculated the amount of metal-forms needed from the drawings at the time he took over the projects, he would have had to spend two to three months on calculation per project. Secondly, he did not have a quantity surveyor at that time.

Mr Wang said that he had not approached the plaintiffs for the 25% discount on missing metal-forms. This offer had been made to him by Benjamin Tan. There was no discussion on the offer and it was made for all three sites. He then agreed with counsel`s correction that the 25% discount was only for the Sengkang and Woodlands sites. He did not agree that he had made a mistake in saying that he had signed the letter for the Ang Mo Kio project after adding the 25% wastage clause since that clause had not appeared in the Ang Mo Kio letter but in the letters for the other two projects. Those had been signed by his manager. Mr Wang`s explanation was that Benjamin Tan had telephoned him and they had agreed the clause over the telephone and he had then directed his general manager to sign the other two contracts with the clause. He had to be responsible for it as the general manager had signed those contracts on his behalf.

It was suggested to Mr Wang that it would have been apparent to him in July when the defendants took over Woodlands that, since there was only one linkway left to complete, the number of metal-forms required was small. Yet he had taken three months to discover the anomaly. His response was that the defendants did not only do the linkway but also did the architectural work in the units. He then confirmed he needed the metal-forms only for the linkway and not for the architectural works. I asked if that was the case why it had taken him three months to realise he had more metal-forms than required. His response was that when the defendants took over the project at Woodlands, there was $10m worth of work undone whilst the linkway work was worth $100,000 and the metal-forms required for the linkway were worth $5,000. He repeated that at the time the defendants did not pay much attention to the fact that the number of metal-forms hired, 12,235 pieces, was far greater than the number required, because the project was messy and the linkway job formed a small percentage of the work. The linkway work was also low priority. Mr Wang denied that in the time period the defendants had before working on the linkway, they could have verified the number of metal-forms required by them. He said that they were rushing to complete the work at the site and had no time to do this.

As regards the acknowledgement of receipt of 47,630 pieces of metal-forms for Ang Mo Kio, Mr Wang stated that he discovered his mistake in acknowledging that amount either at the end of 2000 or at the beginning of 2001. He agreed that when he signed the rental agreement for Ang Mo Kio, he had known that the defendants would be liable for the hire of the metal-forms. Yet without checking he had taken the risk and signed first. It was only after the problems arose at the Woodlands site that he calculated the number of forms required for Sengkang and Ang Mo Kio and found out that there were discrepancies in the numbers required for those projects as well.

I must state that I did not find Mr Wang to be a very satisfactory witness. He was evasive and not forthright. He was not willing to admit his mistakes even when these were obvious. Very often he sounded as if he was simply making excuses for the defendants` and his own careless conduct.

The next witness was Mr Neo Choon Kang who had been the managing director of Kong Siong at all material times up to the time it was wound up in August 1999. Mr Neo stated that Kong Siong had leased metal-form from the plaintiffs for more than 15 years. He also stated that because of Kong Siong`s many projects, the company had frequently transferred the plaintiffs` metal-forms from one construction site to another depending on the needs and timing of the projects. He knew that under the rental agreements with the plaintiffs, Kong Siong was not supposed to transfer metal-forms between sites. Notwithstanding this, however, Kong Siong had made the transfers in order to save time, costs and manpower.

Mr Neo averred that he did not consider the transfer of metal-forms between sites to be a serious breach of the rental agreement since the metal-forms would still be used by Kong Siong and Kong Siong would still pay rent for them. He went on to say that after a few projects, it became impossible to tell where the metal-forms in any of Kong Siong`s sites came from or where they were transferred. It did not matter to the plaintiffs so long as rental was paid and pieces were eventually returned. When it came to closing of accounts for one project, Kong Siong would collect the metal-forms from the relevant site and, if those were insufficient, they would make up the difference by using metal-forms from another site.

Mr Neo stated that during the course of construction, some of the plaintiffs` metal-forms would be damaged because they were subject to rough and frequent use. He also believed that at the end of a project, some of his workers might have buried damaged metal-forms on site so as to save themselves the hassle of accounting for and disposing of the damaged pieces. Some small pieces of metal-forms may have been accidentally buried during construction as well. As managing director of

Kong Siong, Mr Neo did not keep track of how much metal-form was leased from the plaintiffs. Usually his site staff would make the necessary calculations and order the required amount.

Towards the middle of 1998, Kong Siong was in financial difficulties. By February 1999, its cashflow problems were so severe it had difficulty paying its suppliers, sub-contractors and even employees. Many sub-contractors and workers stopped work and suppliers began to make demands for payment.

Mr Neo said that Kong Siong had returned quite a number of metal-forms to the plaintiffs in respect of the Woodlands, Ang Mo Kio and Sengkang sites. He also knew for a fact that Kong Siong had transferred out a lot of metal-forms from these three sites to other Kong Siong sites when it needed to account to the plaintiffs for the metal-forms taken for those other Kong Siong sites. He also remembered distinctly that for the Woodlands project, metal-form was required only for the construction of one linkway and those 12,235 pieces of metal-form were not needed. Nor was that quantity present on site at the time the defendants took over the works. The bulk of metal-forms hired had already been returned and/or transferred out and the project was almost ready to be handed over to the HDB. How Mr Neo could remember such distinct facts for one site in respect of a time when his entire company was collapsing was not explained.

Mr Neo stated that the sites of the three projects were in a very messy state and even for an experienced contractor it was impossible to count the pieces of metal-form on site given the tight schedule for completion. He was not able to say exactly how many pieces of metal-form were on site when the defendants officially took over the three projects. However, given the way the metal-forms were transferred between sites, he would not be surprised to learn that there were far fewer pieces than the numbers the plaintiffs had claimed for.

In court, Mr Neo confirmed that as on 1 May 1999 and 1 June 1999, he did not work out with the plaintiffs how many pieces he was supposed to return in respect of the three sites. Mr Neo said that when the plaintiffs supplied materials to Kong Siong, they had billed Kong Siong every month but Kong Siong did not know how many pieces it had. When a project ended, the plaintiffs` employee and the Kong Siong employee would check and count the pieces and then he would settle any balance due. This count would take into account what had been lost and damaged. He confirmed that for these three sites as of 1 May and 1 June 1999, no such checking and counting procedures were carried out.

Mr Neo also confirmed that when the plaintiffs delivered metal pieces to a Kong Siong site, its site personnel would check and count the number of pieces that came in. After doing so, they would sign the plaintiffs` delivery order.

Under cross-examination, Mr Neo elaborated that Kong Siong had transferred a lot of metal-forms from Woodlands to cover shortages on the other sites because the work at Woodlands was almost completed. It did not transfer much from Ang Mo Kio because that was only one third completed. Sengkang was 70% to 80% completed so they transferred a little material out. He averred that he had not told the defendants about these transfers before they took over the three sites from Kong Siong because before 1 May this was a matter between Kong Siong and the plaintiffs only.

Mr Neo confirmed that the defendants inspected the three sites with him before they took over the sites. He agreed that they had therefore known about the condition of the sites before they took over the projects.

It was suggested to Mr Neo that the plaintiffs were never aware of Kong Siong moving the metal-forms between sites. Mr Neo disagreed and said the plaintiffs were aware of these transfers. He then agreed that he had not told the plaintiffs of the transfers as and when the same were effected but

asserted that they knew all along that this was done because if a particular site needed the metal-forms, then Kong Siong needed to transfer them from another site so as to allow work to proceed. He was pressed as to how that statement meant that the plaintiffs knew of the transfer. Mr Neo`s reply was that it was because all along Kong Siong would only settle with the plaintiffs when the project was completed. He was asked again how these matters meant that the plaintiffs knew Kong Siong was transferring forms to and fro. This time, his answer was that it was because his employee Mr Koh Lee Heng had informed the plaintiffs each time Kong Siong had to move forms from one site to another. He then admitted that he had never heard Mr Koh do this and that he had no personal knowledge whether or not Mr Koh had ever told the plaintiffs of this practice. At the end of his testimony, it was clear that Kong Siong had never informed the plaintiffs of its practice of transferring metal-forms between sites. Further much of Mr Neo`s evidence was of a speculative nature based on what he thought was usual procedure rather than on actually witnessed events on the sites in question. Although Mr Neo was presented as an independent witness, the sweeping statements he made without documentary backup suggested to me that he was not as impartial as he was made out to be.

Next was Ms Hor Ann Li, a quantity surveyor employed by the defendants. She testified that she had done calculations to ascertain, based on the drawings, how much metal-form was required for the construction of the linkway between blocks 584 and 586A of the Woodlands project. Her calculations showed that the plaintiffs` invoices for metal-forms leased for Woodlands were based on a much larger area as compared with her calculations of the actual area of the four columns required for the linkway. For the month of June 1999, her calculations showed that the total surface area of the four columns for the linkway was only 44sq m which was equivalent to approximately 500 pieces of metal-form. The plaintiffs, however, charged the defendants for 2,100.912sq m of metal-form for that month.

Calculations in respect of the area of metal-form required for the construction works at Sengkang and Ang Mo Kio were carried out by Ms Loh Hwee Lian, a quantity surveyor employed by the defendants. Her calculation showed that for the Sengkang project, the defendants would require 12,692.05sq m of metal-form whilst for Ang Mo Kio they required 6,629.7sq m of metal-form. She was told that the plaintiffs had instead charged the defendants for an area of 18,161.6187sq m of metal-form for Sengkang and 10,965.1574sq m of metal-form for Ang Mo Kio.

The defendants` final witness was Simon Mo Shui Wing, their project manager at Ang Mo Kio. He was engaged as project manager for this project when the defendants took it over in May 1999. Before he joined the defendants, Mr Mo had been working for Kong Siong as their project manager for the same project. He had worked on it since September 1998.

Mr Mo recalled that the situation at the Ang Mo Kio site had been very messy just before the handover. Construction work was not going smoothly as Kong Siong`s sub-contractors had stopped work and the suppliers had stopped delivery of materials because they had not been paid by Kong Siong. He averred that there was a possibility that metal-forms on the site were transferred to another site.

Mr Mo also recalled that other contractors had gone to the Ang Mo Kio site to collect their machinery or equipment. In the course of this, a concrete pump which had been hired by Kong Siong went missing. Such an occurrence was not unusual during the few months just before the defendants took over the project. Many suppliers and sub-contractors who had not been paid went in and out of the site to collect their equipment and materials. There was no control at that time because Kong Siong did not pay some of their employees and security was virtually non-existent. He believed that metal-forms could easily have been removed from the site unnoticed during the period of transition.

In court, Mr Mo stated that before the transition stage, ie in April 1999, and during the transition as well, he had seen metal-forms being transferred out of the site. Usually the metal-forms were for specific phases of the work. For example, formwork used during the foundation stage could not be used for the next phase. So, it would be transferred out. This meant it should have been sent back to the supplier. He confirmed that when the metal-forms left the site he would not have known where they were going. He also confirmed that he had very little knowledge of the metal-form works. He did say that after the defendants took over the site, the security was tightened up.

Analysis and findings

The first issue relates to the number of metal-forms on each site at the time the respective rental agreements were entered into between the parties. At the beginning of the case, it was the plaintiffs` position that the respective quantities on site correlated with the numbers mentioned in the respective rental agreements.

The plaintiffs sought to establish their position by way of documentary evidence. They produced all their delivery orders and metal-form return invoices. The delivery orders were the documents signed by the recipients of the metal-forms on delivery of these items to the sites and the metal-form return invoices were the documents signed by the plaintiffs` employees as and when pieces of metal-form were returned to them from the sites. These documents were not challenged by the defendants. The majority of the delivery orders were signed by Kong Siong`s employees but this was not an issue as it was not the defendants` case that the plaintiffs had not delivered the materials to Kong Siong.

Mr Daniel Yeo gave evidence on the plaintiffs` system of keeping track of the quantities of the metal-forms leased. Apart from keeping a record of the delivery orders and the metal-form return invoices, the plaintiffs also made a summary listing the area of each type of metal-form leased and returned and forwarded these summaries to Kong Siong or the defendants as the case may be together with their monthly invoices. It was also Mr Yeo`s evidence that their documentation, ie the most recent summaries, delivery orders and metal-form return invoices were shown to the defendants before the three agreements were signed. Further, the plaintiffs showed that their last invoice to Kong Siong for each of the three sites matched and was consistent with the quantities that the defendants had taken over. All this was, however, a matter of the paper trail only. It was not in dispute that the plaintiffs had not been to the sites after delivery to Kong Siong and prior to handover to the defendants to conduct a physical count of the metal-forms remaining there. The plaintiffs were not able therefore to give evidence of the numbers of metal-forms actually on site at the material dates as opposed to the numbers of metal-forms theoretically on site then.

The defendants relied on various pieces of evidence to substantiate their position that the actual numbers of metal-forms on site were far lower than the numbers shown in the plaintiffs` documents. Mr Neo told the court that Kong Siong had the practice of transferring metal-forms from one site to another and that when closing an account, Kong Siong would make up shortages from metal-forms taken from another site. Further, invariably some pieces of metal-form would go missing in the course of construction. It must be pointed out that Mr Neo`s evidence was of what usually occurred and was somewhat lacking in detail. For example, although Mr Neo stated that he knew for a fact that Kong Siong had transferred out a lot of metal-forms from these three sites to other Kong Siong sites, he did not produce any documentation to show that such transfers had been made, nor name the sites to which metal-forms had taken nor specify even the rough periods during which this had occurred. No specific figures of the number of transferred metal-forms were furnished.

There was, however, evidence that at about the time Kong Siong ceased work or slowed down in its work at these three sites and until the time the defendants took the sites over, security at the sites was very lax. The sites were in a chaotic state and very messy. Mr Mo`s evidence was that suppliers were removing their supplies from the Ang Mo Kio site and Mr Neo had stated that this had happened at the other sites as well. In these circumstances, it is not improbable that some of the metal-forms could have been removed either accidentally or deliberately by Kong Siong or by third parties. I note Mr Mo stated that metal-forms were removed from the Ang Mo Kio site. His evidence on this was not very helpful as he was not directly concerned with the metal-form works and did not know whether the forms being removed were taken to another site or simply being returned to the plaintiffs.

The other piece of evidence that the defendants relied on was that even after they had returned all the metal-forms that they found at the three construction sites there was still a huge shortfall of forms. This shortfall was larger than could be accounted for by damage or accidental burying whether the same was effected by Kong Siong`s workers or the defendants` workers. For example, even after the defendants had returned all the metal-forms from the Woodlands site, there was still a shortfall of about 10,000 pieces. The defendants inferred from this evidence that either there had never been 12,235 pieces at Woodlands at the first place or that there had been a massive transfer out of forms prior to their taking over the site.

Having considered all the evidence, I am satisfied that, on the balance of probabilities, at the time the defendants took over the sites they did not physically contain the exact numbers of metal-forms mentioned in the respective agreements. I accept that the plaintiffs` figures represent the quantities of metal-forms delivered to the sites after deducting all those pieces that had been returned by Kong Siong prior to the dates of the agreements. What I have concluded is that some time between the delivery dates and the return dates, pieces were lost due to damage, burying and, perhaps, removal.

I am not able to come to any conclusion as to exactly how many pieces there were on each site on those relevant dates. This is because no figures (not even guesstimates) were given to me of the numbers of forms transferred out of the sites and also the number of forms on site originally could not be worked out from the number returned by the defendants to the plaintiffs since their own evidence was that there was a considerable amount of wastage on site through accidental damage or burying. This being the case, even the actual numbers on site at the time that the defendants took over would have been reduced in the course of the defendants` work.

My finding that on the relevant dates the number of metal-forms on each site was not the number stated in the rental agreements does not, however, mean that the defendants are able to escape from their contractual liability to pay hire in respect of the contractually stated numbers. Whether they can do so or not depends on whether their contracts with the plaintiffs have been vitiated by mistake.

There are two types of mistake that the defendants rely on here. The first is common mistake and the second is unilateral mistake. The doctrine of common mistake was commented on at length in **Associated Japanese Bank (International) v Cr,dit du Nord SA** [1988] 3 All ER 902 which reiterated the principle established in **Bell v Lever Bros** [1932] AC 161[1931] All ER Rep 1 that a contract would be void ab initio for common mistake if a mistake by both parties to the contract renders the subject matter of the contract essentially and radically different from that which both parties believed to exist at the time the contract was executed. However, the party seeking to rely on the mistake must have had reasonable grounds for entertaining the belief on which the mistake was based.

In the course of his judgment, Steyn J reviewed the authorities on common mistake and then put

forward what he considered to be the correct way of approaching the subject (at pp 912-913):

> *Logically, before one can turn to the rules as to mistake, whether at common law or in equity, one must first determine whether the contract itself, by express or implied condition precedent or otherwise, provides who bears the risk of the relevant mistake. It is at this hurdle that many pleas of mistake will either fail or prove to have been unnecessary. Only if the contract is silent on the point is there scope for invoking mistake. That brings me to the relationship between common law mistake and mistake in equity. Where common law mistake has been pleaded, the court must first consider this plea. If the contract is held to be void, no question of mistake in equity arises. But, if the contract is held to be valid, a plea of mistake in equity may still have to be considered: see* ***Grist v Bailey*** *[1966] 2 All ER 875[1967] Ch 532 and the analysis in* ***Anson`s Law of Contract*** *(26th edn, 1984) pp 290-291. Turning now to the approach to common law mistake, it seems to me that the following propositions are valid although not necessarily all entitled to be dignified as propositions of law.*
>
> *The first imperative must be that the law ought to uphold rather than destroy apparent contracts. Second, the common law rules as to a mistake regarding the quality of the subject matter, like the common law rules regarding commercial frustration, are designed to cope with the impact of unexpected and wholly exceptional circumstances on apparent contracts. Third, such a mistake in order to attract legal consequences must substantially be shared by both parties, and must relate to facts as they existed at the time the contract was made. Fourth, and this is the point established by* ***Bell v Lever Bros Ltd****, the mistake must render the subject matter of the contract essentially and radically different from the subject matter which the parties believed to exist. While the civilian distinction between the substance and attributes of the subject matter of a contract has played a role in the development of our law (and was cited in the speeches in* ***Bell v Lever Bros Ltd****), the principle enunciated in* ***Bell v Lever Bros Ltd*** *is markedly narrower in scope than the civilian doctrine. It is therefore no longer useful to invoke the civilian distinction. The principles enunciated by Lord Atkin and Lord Thankerton represent the ratio decidendi of* ***Bell v Lever Bros Ltd****. Fifth, there is a requirement which was not specifically discussed in* ***Bell v Lever Bros Ltd****. What happens if the party who is seeking to rely on the mistake had no reasonable grounds for his belief? An extreme example is that of the man who makes a contract with minimal knowledge of the facts to which the mistake relates but is content that it is a good speculative risk. In my judgment a party cannot be allowed to rely on a common mistake where the mistake consists of a belief which is entertained by him without any reasonable grounds for such belief: cf* ***McRae v Commonwealth Disposals Commission*** *[1951] 84 CLR 377 at 408. That is not because principles such as estoppel or negligence require it, but simply because policy and good sense dictate that the positive rules regarding common mistake should be so qualified. Curiously enough this qualification is similar to the civilian concept where the doctrine of error in substantia is tempered by the principles governing culpa in contrahendo. More importantly, a recognition of this qualification is consistent with the approach in equity where fault on the part of the party adversely affected by the mistake will generally preclude the granting of equitable relief: see* ***Solle v Butcher*** *[1949] 2 All ER 1107[1950] 1 KB 671.*

The above extract provides guidance in my analysis of the present case. The first `rule` is really more of a timely reminder on the nature of the law than a rule proper: the statement that the law ought to uphold rather than destroy apparent contracts makes it clear to the judge considering such an issue that to grant a party relief from a contractual obligation on the basis of a mistake is

something that is not lightly or commonly done. Application of the second to fourth rules to the facts of the present case, however, establishes that the doctrine of common mistake cannot be relied on by the defendants.

The second principle, that the common law rules as to a mistake regarding the quality of the subject matter are designed to cope with the impact of unexpected and wholly exceptional circumstances on apparent contracts, is capable of direct application to particular factual circumstances. In relation to this rule, the plaintiffs` submission is that any discrepancy in the quantities of metal-forms arose purely from the defendants` failure to check them before signing the acknowledgements despite being given ample opportunity to do so. The circumstances are neither unexpected nor exceptional.

The above submission is a strong one. In the case of the Ang Mo Kio site, the plaintiffs gave the defendants a letter setting out the quantities of metal-forms purportedly at the site and asking the defendants to acknowledge receipt of those quantities. This letter was dated 1 May 1999 and was handed over at the same time as the metal-form rental agreement. Mr Wang only signed the acknowledgement on 26 May 1999. As for the other two sites, similar letters were handed over on 1 June 1999 but were signed and returned by the defendants on 13 July 1999.

The defendants thus had three weeks in the case of Ang Mo Kio (or perhaps longer given Mr Wang`s evidence that he signed the acknowledgement after 26 May 1999 and the date was inserted by someone else) and six weeks in the case of Sengkang and Woodlands to verify the quantities of metal-forms on site. They did not even attempt to do so. Mr Wang made all sorts of excuses for this omission: he alleged that the plaintiffs were pressuring him to sign the acknowledgements, he alleged the sites were messy, he alleged that he was under tremendous time pressure imposed by the HDB. None of those excuses seem to me to justify the defendants` omission. He was not able to explain exactly how the plaintiffs had put pressure on the defendants apart from referring to pestering phone calls which to me seem to be a rather mild form of pressure. Further, the defendants were aware of the condition of the sites before they took them over, having inspected them prior to those dates. Even if the inspections were cursory, they were sufficient to show the defendants that it was not going to be an easy job to ascertain how many pieces of metal-form were on site. Finally, as far as the time pressures of construction were concerned, these were pressures that the defendants undertook voluntarily when they contracted with Wan Seng and took on the terms that the HDB had imposed on Wan Seng. If these terms were not reasonable, the defendants should have negotiated for extensions of time before signing on the dotted line. Any pressure that the defendants experienced in the construction had nothing to do with the plaintiffs.

There was quite a bit of evidence on the expense that would have been incurred and the amount of time that would have been involved had the defendants physically dismantled those pieces of metal-form that were being used on site and stacked them for counting purposes with other pieces of metal-form that had been delivered to the site. The defendants were not willing to undertake this expense themselves. Nor were they willing to ask the plaintiffs to take back all the pieces of metal-form and then re-deliver the quantity that the defendants required for their works. Doing this and hiring fresh pieces of metal-form either from the plaintiffs themselves or from other suppliers would have taken too much time. This, however, would have been a fail-safe way of determining exactly how many pieces were on site and were being leased. The other alternative was to work out from the drawings of the projects how much metal-form was required to complete the work. Although the defendants had these drawings with them from the beginning, it was only when they discovered the substantial difference between the number of pieces they had leased for Woodlands and the number they were returning to the plaintiffs that it occurred to them to do such calculations.

Considering the evidence as a whole and the fact that the defendants had been in the construction

business for some time even though they considered themselves novices when it came to taking over projects halfway, I am of the opinion that in this case, there were no unexpected and wholly exceptional circumstances. The defendants must have been aware that pieces of metal-form are sometimes damaged or buried. Further, given the chaotic situation on site and the lack of security, the potential for theft was always there. The defendants had the opportunity to check whether the numbers of metal-forms on site tallied with the paper quantities and should have taken this opportunity. They had the plaintiffs` records and they called no evidence to rebut the plaintiffs` allegations that the records had been showed to their then general manager at the time.

The third rule is that the mistake, in order to attract legal consequences, must substantially be shared by both parties and must relate to facts as they existed at the time the contract was made. In this case, I have found that the quantities on site were probably not the quantities reflected in the rental agreements. In relation to this finding, both parties were mistaken. The plaintiffs were mistaken because they genuinely believed that the quantities leased were on site. Their belief was based on their records of deliveries made and returns received which they had kept in proper order. They were also ignorant of the mass removals allegedly made by Kong Siong. The defendants were mistaken because they had looked at the plaintiffs` records and their acknowledgement forms and accepted the figures without verification.

The real question is whether the subject matter of the three rental agreements was essentially different from what it was reasonably believed to be. I accept the plaintiffs` submission that there was absolutely no mistake by either party, at the time each contract was entered into, as to the quantity of the metal-forms intended to be leased. This is manifested in Mr Wang`s own evidence which showed a clear understanding that the contracts were based on the reasonable price of the metal- forms and his trust that the papers were correct. The dispute as to quantity arose solely as a result of the defendants` failure to check on the quantities of metal-form on the sites. If the defendants had carried out these checks, there would still have been rental agreements between the parties - the only difference would have been that the number of forms reflected in each agreement would have been different.

It is also significant that in respect of the Sengkang and Woodlands sites, Mr Wang insisted that the defendants should be given a discount of 25% in respect of the return of metal-forms. This meant that they were not responsible for loss of up to 25% of the quantity leased. The Sengkang and Woodlands agreements were entered into a month after the Ang Mo Kio agreement and this term was only inserted on the acknowledgement form signed a further six weeks later. It appears to me that by that time, if not sooner, the defendants had realised that construction work would necessarily involve loss of metal-forms and they were deliberately providing for a limitation of their responsibility both for losses incurred while they were in possession of the sites and losses incurred prior thereto. In these circumstances, it is hard for the defendants to say that they were mistaken about the number of metal-forms on site. No doubt they did not know what the number of metal-forms on site were. They were, however, aware that the number of metal-forms on site was quite likely to be less than the number of metal-forms reflected in the agreements and they entered into the agreements despite such awareness.

The observations above bring me to the fourth rule which is that the mistake must render the subject matter of contract actually and radically different from the subject matter which the parties believed to exist. This is, in some respects, the most important rule. To apply it one must determine what the subject matter of the contract is. In the present case the contracts were for the lease of metal-forms and the mistake pleaded related only to the quantity of items leased. The essence of the contract, the lease of metal-forms, was not diminished and in fact the defendants had at all times possession of substantial quantities of the plaintiffs` metal-forms on all three sites and made use of a

number of the forms in the course of their construction work. What the defendants wanted out of the agreements was a sufficient number of metal-forms for the purposes of their work on the projects. This aim was achieved since the number of metal-forms on each site was more than sufficient for the construction work undertaken by the defendants. The defendants hired the same quantities of metal-forms as had been hired by Kong Siong on the assumption that they needed those quantities for their works. Even though that was a mistaken assumption, since the defendants in fact received more than sufficient metal-forms though not as many as stated on the agreements, the subject matter of the contracts was not radically or essentially different from the subject matter which the parties believed to exist.

As I do not consider the defendants to have satisfied me in relation to the fourth rule, there is, strictly, no need to move on to the fifth rule and consider whether there were no reasonable grounds for the defendants` belief. I do observe, however, that this would be a difficult task. The defendants did have some grounds for their belief as to the quantities on site since they had been shown the plaintiffs` records establishing those quantities. On the other hand, they were fully aware of site conditions and the lack of security and the possibility of loss or damage and, for their own protection, these circumstances called for care to be taken when it came to acceptance of those figures.

The defendants quoted cases like **Barrow, Lane & Ballard v Phillip Phillips & Co** [1929] 1 KB 574 to back up their submission that the rental contracts here had to be void because the quantities of metal-forms on site were not as stated in the contracts. In the case cited, the plaintiff buyers purchased 700 bags of Chinese groundnuts from the defendants but unknown to both parties, 109 bags had been stolen from the wharves when the contract was made. The plaintiff failed to count the bags as it would have been difficult to do so and assumed that the parcel was intact. The court held that the plaintiff`s carelessness did not affect the court`s finding that the contract was void. That decision was, however, based on the specific provisions of s 6 of the Sale of Goods Act 1893 which stated that in the case of a contract for the sale of specific goods, where the goods without the knowledge of the seller had perished at the time when the contract was made, the contract would be void. This case is not a sale of goods case and cannot be decided on the same basis.

When the defendants signed the acknowledgements of receipt they were accepting that they had taken on lease the contractually specified quantities of metal-forms and further that these quantities had been delivered to them. They had the chance to check on the quantities either physically or by calculation. They did not utilise that opportunity. In my view, they were if not precisely negligent certainly reckless and cannot now complain if they have been disadvantaged by their own conduct.

The defendants also relied on unilateral mistake. There only one of the parties is mistaken and the other knows, or must be taken to know of his mistake. In that situation, there are two possible legal consequences: the mistaken party can choose to have the contract declared void or alternatively, the mistaken party can choose to enforce the contract on his own terms. The test is an objective one based on what a reasonable person would have known in similar circumstances. Most of the cases in which unilateral mistake has been considered have been cases involving fraud or a very high degree of misconduct on the part of one party leading to the mistake being made by the other party to the knowledge of the first.

In the present case, the defendants are unable to satisfy the essential element of unilateral mistake in that they cannot show that the plaintiffs knew that the defendants were mistaken about the quantities of metal-forms on each site. First, the plaintiffs themselves believed those quantities of metal-forms to be on site. Second, the defendants signed the acknowledgements freely and in the absence of any fraud or misrepresentation. Mr Wang stated in court that he felt pressurised to sign the documents because the deadlines were tight. These deadlines were imposed by third parties and

accepted by the defendants when they took on the projects. Thus, the plaintiffs did not cause the pressure experienced by the defendants. Third, since the acknowledgement forms were returned several weeks after the signing of the written agreements, it would not have been unreasonable for the plaintiffs to assume that the defendants had conducted checks to verify the quantities stated in the forms. The plaintiffs had no reason to believe that the defendants had made a mistake when signing the forms especially since the defendants had negotiated a discount for lost forms.

Conclusion

The defendants have not been able to establish that the defence of mistake is open to them. Accordingly, they are bound by the contracts that they signed. There will be judgment for the plaintiffs in the sum of $268,802.49. The defendants` counterclaim is dismissed.

With respect to interest, the plaintiffs have claimed it at the rate of 1.5% per month calculated 30 days after the date of invoice until the date of payment. Although the rental agreements each contained a clause (cl 4) providing for payment of interest in such terms, this clause was partially deleted in the Ang Mo Kio agreement and thus the interest payment provision appeared only in the Sengkang and Woodlands agreements. Accordingly, in respect of the hire outstanding for the Ang Mo Kio agreement, I award the plaintiffs interest thereon at 6%p[thinsp]a from the date of the writ and in respect of the hire outstanding for the other two agreements, I award interest as claimed.

As for costs, each of the agreements contained a clause providing that all legal fees incurred by the plaintiffs in the recovery of outstanding rental shall be borne by the hirer on an indemnity basis. I therefore award the plaintiffs their costs of this action on the indemnity basis.

Outcome:

Claim allowed.