Jaya Sarana Engineering Pte Ltd v GIB Automation Pte Ltd
[2007] SGHC 49

Case Number : Suit 1/2006

Decision Date : 02 April 2007

Tribunal/Court : High Court

Coram : Sundaresh Menon JC

Counsel Name(s) : Tan Teng Muan, Wong Khai Leng, Alia Mattar (Mallal & Namazie) for the plaintiff; Kanagavijayan, S Rajan (Kana & Co) for the defendant

Parties : Jaya Sarana Engineering Pte Ltd — GIB Automation Pte Ltd

2 April 2007 Judgment reserved.

Sundaresh Menon JC:

1 This is a case that is related to Suit 360 of 2005 which involved related though not identical parties. I also heard that matter and my judgment in *GIB Automation Pte Ltd v Deluge Fire Protection (SEA) Pte Ltd* [2007] SGHC 48 sets out some of the background to the deterioration in the commercial relationship between these parties. To that extent, it may usefully be referred to.

Background

2 The plaintiff, Jaya Sarana Engineering Pte Ltd and the defendant, GIB Automation Pte Ltd, entered into an agreement on 10 March 2004 ("the contract") under which the plaintiff was engaged by the defendant to carry out certain works in relation to a fire alarm system at the Singapore Management University ("SMU"), hereinafter referred to as "the SMU project", for the agreed lump sum price of $310,000. There were 2 sites involved in this project: the "Bras Basah ("BB") site" and the "Victoria site". The main contractors for the SMU project were Obayashi Corporation ("Obayashi") and Koon Seng Contractors Pte Ltd ("Koon Seng") for the BB site and the Victoria site respectively, hereinafter referred to collectively as "the main contractors".

3 The plaintiff initiated this suit, bringing a claim for the sum of $186,000 in respect of the work that it had allegedly completed under the contract but for which it had not been paid ("the balance contract sum"). It is not in dispute that the plaintiff has already been paid a sum of $123,400. In addition, the plaintiff claimed payment for various other variation/additional works that it had allegedly carried out but for which it had not been paid. These works were said to be valued at a sum of $125,330.

4 The defendant responded to the suit by bringing a counterclaim for damages for various alleged breaches of the contract by the plaintiff. The defendant quantified its counterclaim for damages at a sum of $472,542.04 (which includes a 10% "administration charge").

5 Prior to the commencement of the trial, it was agreed between the parties that the trial of this suit would be bifurcated, and that the first tranche of hearings would be devoted solely to determining the question of liability with the issues of quantum to be decided on another occasion, if necessary. This judgment therefore only deals with issues of liability.

Preliminary observations

6 Before analysing the various claims and the evidence, I think it is appropriate to make some observations about the manner in which the parties approached the conduct of this case. Some of the pleading points taken by the plaintiff struck me as being unduly technical to the point of being unhelpful. There is no gainsaying the fact that pleadings play a crucial aspect in defining a party's case, and I do not advocate a lax approach in respect of the need for clear and proper pleadings. However, undue emphasis on technical arguments can result in distracting or delaying the parties and the court from the substantive issues in the case.

7 Purely to illustrate the point, I list a couple of the objections made by the plaintiff which I found to fall in this category. First, the plaintiff contended that the defendant had not specifically pleaded its denial of the plaintiff's claim for the balance contract sum. However, a quick perusal of the Defence and Counterclaim showed that although the defendant had not pleaded specific particulars and arguably had not specifically denied that the balance contract sum was due, in paragraph 3 of the pleading, the defendant had denied all the particulars and figures claimed for by the plaintiff. In my view, this was more than sufficient in the circumstances. Moreover, there could have been no real doubt that this was the defendant's essential position.

8 Further, the plaintiff at several points in its submissions raised an objection that the defendant's pleadings did not specifically state the evidence for the assertions contained therein. However, O 18 r 7 of the Rules of Court (Cap 322, R5, 2006 Rev Ed) is explicit in directing that pleadings must contain *only* material facts and not the evidence by which those facts are to be proved.

9 I make one other observation. This is with regard to the nature and structure of the written closing submissions that would be appropriate, especially in a factually intensive case such as the present. These submissions are meant to assist the court in reaching its decision and it is imperative in my view, that the written closing submissions make specific reference to the evidence in the case. It does not assist the court when general and sweeping statements are made as to the effect of or the conclusions to be drawn from the evidence with not a single reference to where the relevant evidence may be found in the transcripts. This was especially surprising in the present case since I had made it clear that I expected counsel to include specific reference to the transcripts. The difficulties facing the court are compounded when the factual matrix is complex and a significant amount of time has elapsed between the hearing of the matter and the filing of the written submissions. In this regard, I found the defendant's closing submissions to be quite unhelpful.

The plaintiff's claims

10 I turn now to consider the various claims advanced by the plaintiff which may be categorised as follows:

(a) The claim for the balance contract sum;

(b) The claim for abortive works, *ie*, works which had to aborted or redone; and

(c) The claim for variation works, *ie*, works which were varied as required by the main contractors.

The claim for the balance contract sum

11 This portion of the plaintiff's claim required the most analysis and a fairly detailed assessment of the witnesses and their evidence. As will be apparent below, a large part of this assessment and

my findings thereon are to some degree related to the other claims in issue.

The sub-contract

12 The brief background facts have been mentioned above (see [2] and [3]). The plaintiff apparently sub-contracted the material portions of the works it was supposed to carry out under the contract to Wing Lee Electrical Service ("Wing Lee") ("the sub-contract"). These portions are in relation to the supply and the installation of a fire alarm system. According to Mr Donald Cheo, the operations director of the plaintiff, the sub-contract was an oral one. It appeared that this sub-contract was for the sum of $170,000. However, no document which evidenced the sub-contract was ever produced in court despite the assertion by Mr Cheo that such a document did exist. The following extract from the cross-examination of Mr Cheo, by Mr Kanagavijayan, counsel for the defendant, reflects these points:

> Q: Did you have a written subcontract between the plaintiffs and Wing Lee, as far as this subcontract is concerned?
>
> A: We have a document. Not submitted it.
>
> Q: Not submitted?
>
> A: Isn't submitted.
>
> Q: Why didn't you submit this subcontract?
>
> A: I think we have missed out.

This may be contrasted with the evidence of Mr Tan Ching Guan, who also gave evidence for the plaintiff and who was the sole proprietor of Wing Lee. Mr Tan Ching Guan stated unequivocally that there was no documentation in relation to the contract.

13 Since no such document was produced in evidence and no reasonable explanation was given for its non-production, and in view of the directly contradictory evidence (of the plaintiff's own witness) on this point, I find that the sub-contract between the plaintiff and Wing Lee was oral and that its terms were not reduced into writing. Thus, I approach this matter on the basis that there were no written terms of the sub-contract.

14 The plaintiff's case is straightforward: it maintains that it has completed *all* the works required of it under the contract but has not been paid in full; thus, it is entitled to the balance contract sum. The plaintiff relies on the evidence of its sub-contractor, Wing Lee, through its representatives, Mr Tan Ching Guan and Krishnan Venugopal ("Mr Krishnan"). The latter was a supervisor in the employ of Wing Lee. They are collectively referred to in this judgment as "the sub-contractors". Essentially, the evidence of the sub-contractors was that they completed all the works under the sub-contract. In order to prove that it had indeed carried out the works required of it, the plaintiff takes the position that the works that the sub-contractors carried out were exclusively those which were required of the plaintiff under the contract. In other words, the sub-contractors completed the work that was required of the plaintiff, and so fulfilled the plaintiff's obligations under the contract.

15 The evidence of the sub-contractors was a crucial part of the plaintiff's case. This was especially significant because the defendant alleged that some of the same works had in fact been

done by the *defendant's* workers, a point that is addressed below (see [32]-[35]). The real issue before the court is whether *all* the work had been done by *the plaintiff*?

16 As mentioned above at [13], there were no written terms of the sub-contract. If, as the plaintiff alleges, the sum agreed under the sub-contract was $170,000, that would have been more than half the value of the contract. One might have expected that the arrangements would have been set out in writing in detail. Yet, this was not done.

17 More significantly, Mr Tan Ching Guan said during cross-examination that he had not had sight of the contract between the plaintiff and the defendant until "discussions with the lawyer" before trial. It follows from this that at the time of carrying out the work, Wing Lee had no meaningful reference point with respect to the scope of what they were supposed to do under the sub-contract. This increases my doubt as to whether the sub-contractors actually knew enough to be in a position to say "Yes, we did all the work". The following extract from Mr Kanagavijayan's cross-examination of Mr Tan Ching Guan is instructive:

> Q: Mr Tan, you did not know exactly what they did. You mentioned that earlier. How can you presume that the installation works undertaken by the defendant's workers did not fall within the contract between the plaintiff and the defendant?
>
> A: Because we did all the work.
>
> Q: You did all the work?
>
> A: Except for additional work.
>
> Ct: Who is "we"?
>
> A: I mean my company. By "we", I am referring to my company.
>
> Ct: I thought your evidence was that you didn't know what the terms of the contract were between the plaintiffs and the defendants?
>
> A: I am a very experienced person, your Honour, so we know what we are supposed to do. We only need confirmation of the points.

18 The witness's last response in this extract does not serve to explain how Wing Lee could maintain that it had done all the work the plaintiff was required to do under its contract with the defendant. It also raises another query. If the sub-contractors were not working with any reference point, how was the work of Wing Lee defined in the first place? Mr Tan Ching Guan testified that this was a lump sum contract based on "the number of points" Wing Lee had to provide. Yet, he could not remember how many points he was supposed to provide. I found this incredible since, according to the witness, this was the only measure by which the price, and so presumably, the profitability of the sub-contract as far as Wing Lee was concerned could be gauged. This undermined Mr Tan Ching Guan's credibility (see below at [27]), and it did not remove my doubts as to the exact scope of work under the sub-contract. Furthermore, there were many other components in the contract which could not be categorised according to the "number of points".

19 In short, although the sub-contractors were the key witnesses for the plaintiff in respect of the work done under the contract, I was of the view that the foundation of their evidence was shaky indeed since there was some uncertainty with regard to the work Wing Lee was engaged to do and

how that related to the plaintiff's scope of work under the contract and no satisfactory explanation was given for this.

The plaintiff's witnesses and the evidence

20 The plaintiff submitted that the sub-contractors were independent witnesses and submitted that this was relevant when I considered the weight to be given to their evidence. I turn to consider the evidence of the sub-contractors, and their testimony.

21 There are some preliminary points in this regard. First, I did not agree with the plaintiff's submission that the sub-contractors could properly be regarded as independent witnesses. Mr Tan Ching Guan stated in his affidavit of evidence-in-chief that he had been told by the plaintiff that he could not be paid because the plaintiff itself had not been paid by the defendant. It was thus clear to me that it was in Wing Lee's interest for the plaintiff to be paid so that it in turn could be paid. Although that did not mean that the evidence of the sub-contractors was automatically to be rejected, I also did not consider it appropriate to accord special weight to their evidence. Clearly, these witnesses were not *independent* in the sense urged by the plaintiff.

22 Second, the plaintiff produced a series of timesheets which purportedly recorded the strength of the manpower on a daily basis at both work sites. However, I was satisfied that these timesheets could not safely be relied upon. The timesheets contained numerous inconsistencies. These inconsistencies were identified by the plaintiff itself and it later sought to admit into evidence amended timesheets which removed these inconsistencies. I remained unconvinced of the evidential value of these timesheets (whether the original or amended versions) for the following reasons:

(a) The timesheets were not primary evidence. The actual attendance and the movement of the workers at the sites were recorded in the workers' individual time cards. This primary evidence was not produced;

(b) The maker of these timesheets was not called as a witness to give evidence on the process by which these timesheets were produced; and

(c) From the evidence of the sub-contractors, it appeared to me that there was no systematic way in which the information contained in the timesheets was recorded.

23 I thus rejected the evidence contained in the timesheets. Further, insofar as the sub-contractors relied on the timesheets in support of their evidence, and in some instances clearly based their evidence on the timesheets, I gave little, if any, weight to the affected portions of the evidence.

24 Turning to my evaluation of Mr Krishnan as a witness, I was generally of the view that he was a fairly reliable witness. Although he spoke through an interpreter, I had the sense that his English language proficiency was of a sufficient degree for him to be able to communicate at the work site. He also struck me as having a reasonably good idea of how things were being carried out at the site.

25 However, there were two occasions where he contradicted himself in material respects, and it became apparent to me that his assertions in those respects had to be treated with caution. First, in his affidavit of evidence-in-chief, Mr Krishnan stated that a representative of the defendant, one Chee Choon Peng ("Ah Fai"), brought in a few workers to do some installation work at some time in late 2004 or early 2005. Mr Krishnan said that he did not know what these "installation works" were.

He had not seen any of Ah Fai's workers doing work. He only assumed that they were doing installation works because of the tools they brought in. However, under cross-examination, he testified that these workers were "not doing much work". This was patently inconsistent with his earlier evidence that he had not seen them doing work at all.

26 Second, in his affidavit of evidence-in-chief, Mr Krishnan stated that the defendant required certain work to be done very urgently which resulted in some of the defendant's workers (*ie*, men under the supervision of Ah Fai) assisting Wing Lee's workers to complete the work. However, under cross-examination, he denied that there was any shortage in manpower that led to the defendant's workers assisting with the work. Instead, he asserted that the real reason was because the main contractor wanted to see more workers, and in any case, the defendant's workers were not competent. These differing explanations as to the reason for the introduction of workers under Ah Fai's supervision were inconsistent.

27 Mr Tan Ching Guan was a crucial witness for the plaintiff. In my view, however, he was not an impressive witness. He was prone to making statements without a basis for them. He would assert that something was or was not within this or that contract when he clearly did not know what the contract in question required to begin with. He was also willing to make up explanations in his evidence as he went along. One such instance was when I queried him as to how he would know that Ah Fai's workers were doing work that did not fall within the contract since his evidence had been that he did not know the terms of this contract. In reply, he made reference to the contract between the main contractor, Obayashi, and the defendant; it was however clear to me that he had made this up as it subsequently transpired that he did not have knowledge of the terms of that contract.

28 Further, in relation to the timesheets, Mr Tan Ching Guan's own evidence was that he did not really study the timesheets before these were forwarded to Mr Tan Teng Muan, counsel for the plaintiff. Yet, he placed considerable emphasis on them when giving evidence. Moreover, he also gave evidence that his workers had been working at other sites apart from the BB site and the Victoria site, and this casts yet more doubts on the reliability of the timesheets.

29 In Mr Tan Ching Guan's affidavit of evidence-in-chief, he asserted that he deployed up to twelve workers on site. However, upon cross-examination, he said that this was only an approximate figure. He then turned to the timesheets before saying that the figure of six to eight workers was the accurate one. I have already commented on the reliability of the timesheets. I also note that the later evidence was clearly not in his affidavit of evidence-in-chief. Mr Krishnan also had never mentioned this in his evidence.

30 Mr Tan Ching Guan also gave evidence that apart from his own workers, he had employed four to five workers from another contractor and brought them in to assist with the works at the site. Mr Kanagavijayan challenged this saying that no security passes had been obtained for them. Mr Tan Ching Guan's reply was that he had not applied for a security pass for these workers as he claimed that they knew how to get into the site in such a way that did not require them to have security passes. He also claimed that the workers were Singaporeans and also produced evidence to show that the external contractor had been paid a total of $6,500 for these workers. However, these workers had been working at the site over a period of six months. Even if this was not on a daily basis, the sum is a derisory one considering that these were allegedly Singaporean workers. I found this altogether unsatisfactory. I might also point out that even if I was to accept that external workers were brought in to assist in the completion of the works, this only meant that Wing Lee, and so the plaintiff, was already behind schedule and/or had a shortage of manpower.

31 In summary, I found the evidence that the plaintiff relied on to establish that it completed all

the works required of it under the contract altogether unsatisfactory. It seemed to me that the sub-contractors had no meaningful reference point on the basis of which they could maintain that they in fact had done all that the plaintiff was required to do under its contract with the defendant. Further, the evidence adduced to show the resources in fact committed by the sub-contractors to the project was not altogether reliable. I turn now to consider the evidence of the defendant.

The defendant's evidence

32 Juxtaposed against the plaintiff's evidence is the fact that it was not disputed that the defendant had sent its own workers to the site to assist the plaintiff, and that this took place for at least a period of two weeks. The defendant alleged that the plaintiff faced an acute manpower shortage at the sites. The defendant's case was that it had written to the plaintiff on various occasions highlighting the shortage of workers and despite these letters, the plaintiff had failed to increase the number of workers. The plaintiff denied any shortage and argued in any event that the content of these letters was not inconsistent with the plaintiff's case.

33 I disagreed with the plaintiff's argument. The letters indicated that the parties were in active discussions over the manpower issue and the supply of the defendant's workers to the plaintiff. The crux of the matter, and this was where the letters *were* inconsistent with the plaintiff's case, was that in these letters the defendant had specifically expressed concerns over a shortage of manpower.

34 I found it impossible to disregard the fact that despite numerous letters being written to the plaintiff highlighting the shortage of manpower, there was not one single written reply by the plaintiff. This lack of correspondence on the part of the plaintiff took place over a period of a few months from October to December 2004. This is to be contrasted with the period from January 2005 onwards, when the plaintiff began actively writing to the defendant, even though it was precisely in response to the *same* complaints of insufficient manpower by the defendant, which had been raised from October 2004.

35 I formed the impression that the plaintiff only started writing letters to the defendant when it realised that it stood to be challenged on its entitlement to be paid and it then sought to enhance its position. In fact, Mr Donald Cheo stated in his affidavit of evidence-in-chief that he began to pay more attention to the SMU project *only* in January 2005 onwards. If the defendant's allegations of a lack of manpower were completely unfounded, I would have expected some form of denial, and this would have been put into writing much earlier. Yet there was none. When a string of letters making adverse allegations are sent without response, the inference to be drawn in the absence of a coherent explanation is that the allegations are true. Mr Cheo's response was that his work style was not to write letters. I did not find his evidence credible. Moreover, it was also untrue since he did write letters later. In any case, a letter written by Mr Cheo dated 21 February 2005 seems to accept that workers engaged by the defendant were on the site at this time. Finally, in this connection, Mr Tan Teng Muan took issue with the admissibility of these letters on the basis that the writer of the letters had not given evidence. I do not think this was a well-founded objection. I rely on the letters not as evidence of the truth of their contents but of the fact they were sent (which was not disputed). It is then a question of what inference is to be drawn from the fact that there was no response to them.

36 I was satisfied having regard to the evidence as a whole that there was at least some shortage of manpower at the sites. After repeated requests to the plaintiff to increase manpower which went unmet, the defendant sent in its own workers to assist in the completion of the works.

37 Putting the evidence together and looking at it as a whole, I conclude that the plaintiff did

not complete all the works required of it under the contract. It was apparent to me that the defendant had carried out some measure of the works, and this was ultimately not denied by the plaintiff.

38 This gives rise to a potential difficulty. The contract is a lump sum contract, and the plaintiff's case as pleaded was for the full amount of the balance contract sum. In the light of my findings above, it would have been unfair for me to award the plaintiff the full amount of the balance sum. On the other hand, there was no dispute the plaintiff had done some substantial work.

39 I invited counsel for both parties to address me on how they considered this should be resolved were I to reach such a conclusion. Both counsel agreed that if indeed I reached such a conclusion on the facts, I should grant interlocutory judgment for the plaintiff for the amount of the balance contract sum subject to an omission to be valued representing the cost of the labour supplied by the defendant to complete the work. This omission is to be deducted by way of set-off from the balance contract sum. In view of my finding that the plaintiff did some but not all the works required of it under the contract, I grant interlocutory judgment in favour of the plaintiff. The value of the omission is to be assessed as aforesaid and then deducted from the balance contract sum.

The claim for abortive works

40 It is useful for me first to recount the manner in which the plaintiff pleaded its case in respect of its claim for abortive works. The particulars provided in the statement of claim for the sum of $125,330 were set out under the description "variation orders". However, according to Mr Cheo, this global sum was meant to include abortive works as well as variation works. The plaintiff's claim was not initially apportioned between the claim for variation works and the claim for abortive works.

41 In the further and better particulars provided by the plaintiff upon the defendant's request, a summarized breakdown of the sum of $125,330 was provided. However, it was again unclear on the face of the figures provided what amounts were for variation works and what were for abortive works; the figures were broken down according to the various parcels or locations of work at the two sites.

42 Having said that, it was clarified during the course of the trial that a claim for variation work more properly referred to a claim which was based on an instructed variation, and there was only one such item claimed for by the plaintiff ("AI/275"), which I address under the heading "The claim for variation works" below. The rest were in fact claims for damages based on the alleged failure by the defendant to give proper drawings ahead of the time at which these were required which then allegedly resulted in abortive works being done.

43 Mr Cheo's affidavit of evidence-in-chief contained some minimal references to the abortive works and/or variation works. It is useful to append one of the relevant portions, at para 23:

> 23. Upon the completion of the works, the plaintiffs submitted to the defendants a summary of the variation claim for the SMU Project on 31 May 2005. The variation works were informed to me by Wing Lee. Many of these variation works were based on the abortive works caused by the defendants' failure to proper (sic) co-ordinate their work with the main contractors. There was also variation work directed by the main contractors eg. the relocation of mimic panels from the basement to the 7th storey in C2.

44 Although the plaintiff had referred to a letter dated 31 May 2005 which set out the various alleged abortive and variation works, there were no specific facts pleaded as to when each of these

works was aborted; in what circumstances they were so aborted; the reasons for their abortion; and who informed the plaintiff or Wing Lee to abort these works. In short, the plaintiff had not particularised its claim for abortive works with any specificity at all.

45 However, after the trial, the plaintiff brought an application to amend its statement of claim and likewise the further and better particulars. I allowed it because all the evidence had already been adduced and Mr Kanagavijayan had already cross-examined the plaintiff's witnesses on these matters. As amended, the plaintiff now pleaded in its statement of claim that there was an implied term in the contract that the defendant would do all things necessary and reasonable to enable the plaintiff and its workers to perform the contract. It further averred that the defendant had breached the said term by failing to furnish to the plaintiff the approved shop drawings. This breach of the defendant's obligation resulted in works which the plaintiff had done but which later had to be aborted and re-done when the proper drawings were made available. The effect of the amendments to the further and better particulars was that a distinction was drawn between abortive works and "additional works" – the latter being what I have termed "variation works" in this judgment.

46 In the light of these amendments, no real objection could be taken with the plaintiff's pleading and I turn to the substantive issues. In my view, there was such an implied term in the contract as pleaded by the plaintiff: see *Jet Holding Ltd & ors v Cooper Cameron (Singapore) Pte Ltd & Another and other Appeals* [2006] 3 SLR 769 at [89]. To be fair, there was also no dispute that the defendant was obliged to provide the plaintiff with the approved shop drawings.

47 The real argument was over whether or not the drawings the defendant had provided the plaintiff were *approved shop drawings*. In my view, that turned out to be immaterial. This was because the defendant's managing director, Mr Benjamin Gan, accepted under cross-examination that other drawings, apart from those that the defendant had provided the plaintiff which were also the only ones produced in evidence, would have been required for the plaintiff to fulfil its obligations under the contract. In other words, Mr Gan accepted that the plaintiff could not have done its work properly without some other drawings. Although Mr Gan appeared to suggest during cross-examination that the plaintiff did have these other drawings available to them, this was not mentioned in his affidavit of evidence-in-chief. Nor were these drawings produced in court despite their importance to the defendant's case. I therefore find that not all the required drawings had been provided to the plaintiff and/or its sub-contractors. I should make it clear that given the nature of the defendant's case, which was that the plaintiff had all the drawings it needed, I did not think it was open to the defendant, at the same time, to maintain that the plaintiff ought not to have commenced the work based on the drawings it did have.

48 In my judgment, the defendant was therefore in breach of its obligations under the contract. It remains for the plaintiff to prove, in the assessment of damages that the damages said to have been sustained on account of each piece of abortive work was in fact *caused* by the defendant's breach. I therefore, enter interlocutory judgment for the plaintiff in this respect with damages to be assessed.

The claim for variation works

49 As mentioned above, it became apparent in the course of the trial (and this was confirmed in the plaintiff's closing submissions) that the plaintiff was making a claim in respect of only one particular item of variation work. This was referred to in the affidavit of evidence-in-chief of Mr Cheo at para 23 (see [43] above). This piece of work was the relocation of mimic panels from the basement to the 7th storey in parcel C2, referred to both in the documents and hereinafter as "AI/275" (see [42] above).

50 The relevant provision of the contract is Clause 8.0 of the contract which is entitled "Instructions /Variations" and which reads as follows:

> …The [plaintiff] shall not act upon any unconfirmed order for the variation of [the contract] works which is directly received by it from [the main contractors] or any other party but shall refer any such matter to [the defendant] for its instructions or directions…

51 The plaintiff accepted that there were no instructions from the defendant with regard to AI/275. However, the work had been done. The defendant seemed to agree that the work had actually been done by Wing Lee – it made no attempt whatsoever to dispute this nor did it claim to have completed the work itself. The defendant's case was that since there were no written instructions or directions forthcoming from the defendant, the plaintiff was not entitled to carry out AI/275; nor was it entitled to be paid for it.

5 2 It was accepted that the defendant had been notified by the plaintiff in a letter dated 2 March 2005 that this work would have to be done but that it was still on hold pending advice as to the precise location. It does not appear that there was any response to this letter by the defendant. The plaintiff then proceeded to carry out AI/275 as it had indicated it would in its letter. What then is the effect of this evidence?

53 In my view, the purpose of Clause 8.0 of the contract is to protect the defendant from claims or liabilities arising from work done upon instructions of which it has no knowledge. Once the defendant is apprised of the instruction or the intended work and does not within a reasonable time inform the plaintiff that it is not to do the work, it simply does not avail the defendant to say subsequently, *after the work has been done,* that the plaintiff is not entitled to payment. In the present case, the defendant did not adduce any evidence to show that it did not want the work to be done. If the defendant wished to rely on Clause 8.0 of the contract in order to stop the work being done, it could and should have raised its objections much earlier. I also do not regard Clause 8.0 as operating so as to require a formal written instruction as a condition precedent to the plaintiff's right to be paid for any variation works which it did.

54 In the premises, I find the defendant liable to the plaintiff for the costs of the work done in relation to AI/275 which are to be assessed.

The defendant's counterclaim

55 The defendant alleges various breaches of the contract by the plaintiff. It will be helpful to list them out:

(a) Failure to abide by the defendant's work schedule;

(b) Failure to carry out cabling works, cable continuity test and device bar code labelling ("the miscellaneous works");

(c) Failure to provide a competent full-time English-speaking supervisor ("site supervisor");

(d) Failure to increase the number of workers ("the manpower issue");

(e) Walking out of the BB site without completion of installation works ("the alleged walkout");

(f) Failure to deliver project installations on time;

(g) Failure to assist in testing and commissioning of fire alarm system at the BB site ("the T&C issue");

(h) Failure to provide works as provided in the main contracts between the defendant, and Obayashi and Koon Seng respectively ("the main contract works"); and

(i) Failure to indemnify the defendant against any claims, damages, loss or expenses ("the indemnity claim").

Work schedule

56 The defendant contended that the plaintiff had failed to abide by the work schedule provided by the defendant.The defendant pleaded that the plaintiff was in breach of "Clause 1 item 3" of the contract, which reads as follows:

> "You shall be held liable for all cost incurred in complying with the specifications should your works be found to be non-compliance (sic) with the specifications and drawings."

As is obvious from a plain reading of the provision, this has nothing to do with an obligation to abide by a work schedule; there is not even any mention of the words "work schedule" in this provision. It is unclear to me how the plaintiff could be in breach of this provision even if I were to find that it has failed to abide by a work schedule (and assuming that it has such an obligation to begin with). It did not seem to me that this was the relevant provision.

57 It may be pertinent then to note Clause 4.0 of the contract, which reads as follows:

> **4.0 Programme for the works**
>
> "You are at all times required to follow the progress of [the main contractors], site conditions, project programmes and revisions, without change to [the contract] sum.
>
> We shall issue a programme for the works in due course, in accordance with the Main Contract Works Programme. You are required to collaborate with us to prepare and submit a detail programme showing [the contract] works. It should be noted that the overall completion date for this project is 31st December 2004."

58 Although this clause was not explicitly referred to or pleaded in the defence, it seems more relevant, but even then, to the extent the defendant relies upon Clause 4.0 to maintain that the plaintiff had to complete its work by 31 December 2004, in my judgment, this would be misplaced. Clause 4.0 does not impose an affirmative obligation on the plaintiff to complete its work by 31 December 2004 without regard to the prevailing site conditions. Rather, it requires the plaintiff to follow the progress of the work having regard to such things as site conditions, revisions etc.

59 Mr Gan accepted in cross-examination that this date would change depending on site conditions. It was evident, as the defendant itself admitted, that the defendant had not complied with the schedule in terms of the delivery of the equipment and according to the defendant, delivery had taken place after 31 December 2004 because site conditions did not permit otherwise. This showed that site conditions in fact rendered the 31 December 2004 date inapplicable.

60 In my judgment, the defendant's claim for breach of contract due to the failure of the plaintiff to abide by the work schedule must be dismissed because the defendant failed to prove a specific date by which the plaintiff was required to complete its work; and also failed to prove what it was that the plaintiff failed to carry out by this date.

The miscellaneous works

61 This claim related to some cabling and related works. The defendant did not plead its claim with any specificity at all. Its submissions also did not assist the court. By way of example, the defendant stated in its reply submissions that the failure of the plaintiff to carry out the miscellaneous works had been cited in the "various letters mentioned in the affidavit of evidence-in-chief of Mr Gan and which letters are found in the Agreed Bundle Vols 1 and 2". Turning to the defendant's pleadings, when further and better particulars were sought by the plaintiff, the defendant merely made reference to 3 letters (dated 6 September 2004; 4 February 2005; and 3 March 2005). In its submissions, there was a further reference to another letter dated 6 January 2005.

62 All these letters did not make specific reference to the nature of the defendant's claims in relation to the cabling works, cable continuity tests and device bar code labelling and if anything, one is left to *infer* that cabling works were possibly behind schedule. In any event, these allegations are not even to be found in the defendant's evidence. In these circumstances, I am of the view that the defendant has simply not pleaded or proved its claim and the claim must therefore be dismissed.

Site supervisor

63 The defendant contended that the plaintiff was obliged but failed to provide a site supervisor at both sites on a daily basis. The burden is therefore on the defendant to show that the plaintiff had failed to provide a site supervisor. I rejected the defendant's attempt to reverse the burden by arguing that the plaintiff did not adduce any documentary evidence to show that it had supplied such a supervisor. The defendant's case initially related to both sites but when it emerged that one Mr Jason Kwok had been assigned to supervise the plaintiff's works at the Victoria site, the defendant's attention shifted to the BB site. The defendant argued that Mr Kwok was in fact at the Victoria site in connection with another contract involving a related company of the plaintiff, Deluge Fire Protection (SEA) Pte Ltd but this did not appear to me to be material.

64 As to the BB site, each party contended that the other's representative was either not on site, or did not meet the requirements, or was not carrying out the duties/work of a supervisor while on site, while at the same time 'nominating' its own employee as a 'candidate' to fulfil the role of site supervisor. In the end, I was left to consider whether Mr Krishnan and/or one Koh Kim Ting, a worker that was deployed by the plaintiff at the BB site sometime in September 2004, met the requirements.

65 There were two letters dated 17 June 2004 and 2 July 2004 respectively written by the defendant to the plaintiff. These letters showed that there was a request to the plaintiff to provide a full time supervisor by 1 July 2004. However, the letters only go so far as to suggest that by 2 July 2004, there was no supervisor; this was not inconsistent with the plaintiff's evidence that Mr Krishnan was deployed from the middle of July onwards. I also note that there was no further request or complaint by the defendant regarding a site supervisor after 2 July 2004. The letters referred to me by the defendant in its submissions only addressed the general manpower issue and not the lack of a supervisor. The only other letter from the defendant about a site supervisor was issued on 3 March 2005 in which the defendant stated that it "*will* deploy a supervisor" of its own.

6 6 With that in mind, I now turn to consider what the obligation of the plaintiff was in this

regard. Apart from the language proficiency issue which I will come to in a moment, some argument was also made by counsel on the nature of the work carried out by the 'candidates', in particular Mr Krishnan. It was accepted that the site supervisors would also perform other duties at the site apart from his supervisory duties. In my judgment, this would not derogate from the requirement of a full-time supervisor. I was satisfied that Mr Krishnan could fulfil the role of a supervisor while carrying out some works on his own. Moreover, as I have mentioned at [24] above, I was of the view that Mr Krishnan could speak English well enough for the purposes of communication at the site and he seemed to have a good sense of how things were being carried out at the site.

67 In my judgment, there was a site supervisor during the period when works were being carried out. Thus, it follows that the defendant has not made out its claim against the plaintiff. I accordingly dismiss this part of the defendant's counterclaim.

The manpower issue

68 I have already addressed in detail the defendant's evidence on the manpower issue (see above [32] – [37]). This was closely related to the plaintiff's claim for the balance contract sum. I do not propose to repeat my observations and findings above, save to say that I was satisfied that there were indeed periods of time when there was a shortage of manpower and the plaintiff failed to increase the number of workers. However, as noted above, this is to be valued as an omission and then deducted from the balance contract price.

Alleged walkout

69 This head of claim, like that in respect of the miscellaneous works, is once again made without any degree of specificity. Further, I found no credible evidence of the allegation. The defendant relied on 2 letters sent in June 2005 alleging a walkout in February or March 2005. No credible explanation was given for this lapse of time. I reject this portion of the defendant's counterclaim on the basis that the defendant has not properly pleaded or proved its claim.

Delivery of installations on time

70 In my view, the position with this head of claim is not materially different to the claim brought in respect of the alleged failure of the plaintiff to adhere to the work schedule. The delivery date of the installations was based on the work schedule. And as I have held at [56] – [60] above, this was at best subject to such things as site conditions. The defendant did not plead or prove that there was any specific date by which the plaintiff had to install specific equipment having regard to the site conditions. I therefore dismiss this claim.

The T&C issue

71 This head of claim is linked to the defendant's allegations of a walkout by the plaintiff. There is again no specificity in the way the claim was pleaded. It was also not proved and it is therefore doomed to fail.

The main contract works

72 It was not immediately apparent what provisions in the main contract had allegedly been breached by the plaintiff. Under cross-examination, Mr Gan referred again to the allegations made under the other heads above. The pleadings also do not provide these particulars. When further and better particulars were sought, the reply provided was: the failure to 'install the remaining conduit

and field devices'. However, during the cross-examination of Mr Gan, he made no reference whatsoever to this alleged failure. In my judgment, this head of claim was without substance, and I accordingly dismiss it.

The indemnity claim

73 The defendant has admitted that this is not a separate claim which stands alone from the other heads of claim made above. I therefore do not need to deal with this separately.

Other expenses

74 The defendant also pleaded certain heads of various expenses it claimed to have incurred due to the plaintiff's breaches. However, although the expenses were pleaded, the facts that might warrant these expenses being charged to the plaintiff were not. In particular, the defendant did not state how these expenses related to the plaintiff. The defendant may have alluded to these expenses in fleshing out the evidence for the other heads of claim but it certainly did not put these expenses into the specific contexts in which they could then be charged to the plaintiff. The defendant also did not specifically plead the basis for claiming these other expenses. I therefore dismiss this claim.

Other matters

75 The defendant also made an allegation in its closing submissions that the relationship between the parties had become so strained by February 2005 that the plaintiff may have wanted to "sabotage" the inspection of the fire alarm system at both sites. This was not pleaded as a basis of claim. Nor was any relief sought on this basis. The plaintiff took issue with this in the strongest terms and I think the objection was well-founded. I therefore disregard this.

Conclusion

76 I summarise my findings and orders:

(a) The plaintiff did some but not all the works required of it under the contract. I accordingly grant interlocutory judgment in favour of the plaintiff for the balance contract sum subject to an omission in respect of the work in fact done by the defendant which is to be assessed and which may be set-off against the balance contract sum;

(b) The defendant was in breach of its obligations under the contract in not providing the plaintiff with drawings that were reasonably necessary for the plaintiff to carry out the works. I accordingly grant interlocutory judgment in favour of the plaintiff with damages to be assessed;

(c) The defendant is liable to the plaintiff for the costs of the work done in relation to AI/275 which are to be assessed;

(d) The plaintiff failed to provide sufficient manpower which necessitated the defendant having to do so. The defendant's entitlement is for a sum to be valued and this is to be set off against the balance contract sum as set out at sub-paragraph s(a) above. Save in this respect, the defendant's counterclaim is dismissed.

76 The plaintiff has substantially succeeded in its claim and is therefore entitled to have its costs of the action and of defending the counterclaim.