Great Eastern Hotel (Pte) Ltd v Ng Yew Seng and Others (Ang Kho Thang, Third Party) [2001] SGHC 343

Case Number	: Suit 21/2001/W
Decision Date	: 19 November 2001
Tribunal/Court	: High Court
Coram	: Woo Bih Li JC
Counsel Name(s)	: Sushil Nair, Julian Kwek and Chan Wei Meng (Drew & Napier LLC) for the plaintiffs and the Third Party; Tan Shiew Hwa and Tan Phuay Khiang (Tan Loh & Wong) for the defendants
Parties	: Great Eastern Hotel (Pte) Ltd — Ng Yew Seng; Vegold Corporation (S) Pte Ltd; Brendma Eastern Hotel Pte Ltd — Ang Kho Thang

Judgment

GROUNDS OF DECISION

BACKGROUND

1. The Plaintiff is Great Eastern Hotel (Private) Limited (GEH). It is controlled by the Third Party Ang Kho Thang (Mr Ang).

2. The First Defendant is Ng Yew Seng, also known as Martin Ng (Mr Ng). He controls the Second Defendant Vegold Corporation (S) Pte Ltd (Vegold). Vegold is a building contractor. Mr Ng also controls the Third Defendant Brendma Eastern Hotel Pte Ltd (Brendma).

3. Brendma was operating a hotel at a 7-storey building at 165 Kitchener Road Singapore (the Property) for the year 2000 under the name of Brendma East Park Hotel. The hotel rooms were located at the fourth to seventh floors.

4. Also, Mr Ng was, and still is, operating a health centre, also called a health spa, at the second and third floors of the building at the Property although the current name under which he is operating the health centre was not made clear to me.

5. There was (and may still be) a food court on the first floor but that is not in issue before me.

6. The Property is owned by GEH. The numerous claims and counterclaims are in respect of the hotel rooms and the health centre in the building at the Property.

THE FIRST RENOVATION PACKAGE AND COUNTERCLAIM FOR $103,721 (para 55(a) of Defence and Counterclaim)

7. Mr Ng alleged that in the middle of 1998 he had agreed with Mr Ang for Vegold to carry out renovation work for the lift lobbies at the first floor and fourth to seventh floors of the building for $100,000, excluding GST. His Counsel referred to this as the First Renovation Package and I will adopt this description.

8. The works were supposed to comprise ten items but item 10 i.e the installation of a canopy at the main entrance, was not carried out.

9. Hence, Mr Ng claimed $98,700 for the remaining nine items.

10. The remaining nine items are the subject of two invoices from Vegold to GEH dated 30 September 1998 (AB 6) and 14 January 1999 (AB 15).

11. Mr Ang did not dispute the agreement or that he received the invoices. However he disputed:

(a) the amount claimed for all the nine items, and
(b) that item 9 was done.

12. There was no quotation for the works. Accordingly I had to assess the amount to be attributed to the works done as well as decide whether item 9 was done or not.

13. Mr Sushil Nair and Mr Julian Kwek, Counsel for GEH and Mr Ang, submitted that the evidence of the Defendants expert Mr Paul Crispin Casimir-Mrowczynski (Mr Casimir), a chartered building surveyor, was not admissible because he did not see Vegold carry out any works nor had he been provided with supporting invoices from non-parties or evidence of payment by Vegold to non-parties.

14. I am of the view that Mr Casimirs evidence is admissible although for a limited purpose i.e his assessment as to whether the works have been completed and the cost thereof.

15. He did not profess to have personal knowledge that the works were done by Vegold. Vegold was relying on the evidence of Mr Ng for that. Also, for some of the works, there was no dispute that they had been done by Vegold.

16. Once it is established that any of the items claimed was done by Vegold, then it is entitled to some payment whether or not it pays anyone else.

17. Furthermore, GEH was itself relying on the evidence of its independent expert Mr Chin Cheong, who is also a chartered building surveyor, and he too did not have personal knowledge as to whether the works claimed to be done by Vegold were in fact done by Vegold. His evidence was also in respect of the extent of the work done and the cost of doing the same.

18. I would add that Mr Casimirs assessment of the cost for each of the items in the First Renovation Package, as well as the other packages which I shall refer to below, was based on the quantum claimed by Vegold.

19. As for Mr Cheong, he had used the valuations of one Ms Kee Bee Kheng, a chartered quantity surveyor to value the first eight items of the First Renovation Package. However, Ms Kee was not called to give evidence.

20. Instead of attempting to assess each of the eight undisputed items, I have decided to start with the agreed figure of $100,000 for the ten items and then deduct therefrom those items which were not done.

21. As I have said, item 10, comprising the installation of the canopy at the main entrance, was not done. Mr Ng had attributed $1,300 for this item but he did not elaborate as to how he derived that figure.

22. Mr Cheong valued item 10 at $15,000. He said this was based on a briefing on site by Mr Ang about the type of canopy that was to be installed but he did not check with a supplier for a similar

canopy. The $15,000 figure was his own estimate.

23. I am of the view that Mr Cheong had inflated the figure for item 10 just as Mr Ng had under-declared the figure for the same item.

24. The evidence for this item is unsatisfactory but I have to make a determination. I am of the view that the appropriate figure for item 10 is $5,000.

25. I now come to item 9. This was supposed to be the supply of a marble top for the hotel lobby.

26. Mr Ng claimed that this work was done.

27. Mr Casimir also initially said that he had seen the marble top. However, it was pointed out to him that Mr Ngs Counsel had, during cross-examination, questioned Mr Cheong on the basis that the marble top was installed but subsequently removed by someone else. If this was true, Mr Casimir could not have seen the marble top because his inspection was done later.

28. Mr Casimir said that at the time of his inspection, there was a marble top at the hotel lobby. However he did not have a photo of this item in his report. Nor was it mentioned under the items he said in his report that he had inspected (AB 340 to 345).

29. He also referred to Mr Cheongs Table 1 in which a comment Valuation of incomplete work was made for item 9.

30. It seems to me that Mr Casimir had assumed that the marble top had been supplied and installed in the light of Mr Cheongs comment, even though that comment indicated that the work had not been completed.

31. I also see no reason, nor was any canvassed, as to why the marble top would be removed, if it had indeed been supplied and installed.

32. Accordingly, I find that this item was not supplied.

33. The next question is the sum to be attributed for item 9.

34. As I have mentioned, there was no quotation. Mr Ng simply claimed $7,500 for this item. Mr Casimir adopted Mr Ngs figure.

35. On the other hand, Mr Cheong attributed $12,000 for this item. Initially, he said that he had in mind a marble top for a budget hotel but then changed his evidence to a medium-class hotel (NE 89 line 1 to 8).

36. It was common ground that the hotel in question was a budget hotel. I am of the view that Mr Cheong had inflated the sum for item 9 so that it would further reduce the overall sum to be paid under the First Renovation Package.

37. On the other hand, Mr Ng had already claimed $7,500 for item 9 in the invoice at AB 15 dated 14 January 1999 and there was no reason then for him to under-declare the sum for this item as he was expecting to be paid for it.

38. I determine the sum for item 9 to be $7,500.

39. Accordingly the overall sum for the First Renovation Package is $100,000 less $5,000 for item 10 and less $7,500 for item 9, working out to be $87,500 excluding GST. With GST, it is $90,125. This is prima facie payable to Vegold but is subject to what I have to say about the First Tenancy Agreement and the First Supplementary Agreement referred to below.

THE FIRST TENANCY AGREEMENT (18 NOVEMBER 1998) AND THE FIRST SUPPLEMENTARY AGREEMENT (18 NOVEMBER 1998)

Whether these two agreement bind Mr Ng and the period for which rent is payable

40. GEH alleged that it had entered into two agreements each dated 18 November 1998 with Mr Ng and one Yeoh Hock Lam (Mr Yeoh) to let the second and third floors of the building on the Property to Mr Ng and Mr Yeoh for three years from 1 November 1998 to 31 October 2001 at a rent totalling $22,000 per month (the First Tenancy Agreement and the First Supplementary Agreement respectively). The second and third floors were to be used as a health centre.

41. These two agreements were signed by Mr Yeoh and not Mr Ng although both of them were named as parties to the agreements opposite GEH. Damis Ang, a son of Mr Ang, signed for GEH.

42. At the trial, Mr Ng alleged that he had in fact signed another agreement earlier i.e in October 1998 in respect of the letting of the second and third floors of the building.

43. This October 1998 agreement was allegedly also signed by Damis Ang on behalf of GEH.

44. Mr Ng alleged that the October 1998 agreement had the following additional terms:

> (a) Mr Ng could set-off the costs of the First Renovation Package against the rent of the health centre.
>
> (b) GEH would be responsible for delivering the second and third floors ready for the operation of a health centre, including a Temporary Occupation Permit and licence for the same, and all necessary furniture, fixtures, fittings and equipment for such an operation, and
>
> (c) Mr Ang would arrange for his nominee Mr Yeoh to withdraw from the business known as Eastern Park Health Spa once Mr Yeoh transferred his health centre licence to Mr Ng. Eastern Park Health Spa was the name under which the health centre was to be run.

45. He also alleged that Mr Ang and Mr Yeoh had conspired to injure him because Mr Yeoh had signed the November 1998 agreements without these terms.

46. It transpired that GEH was not disputing that the rent under the First Tenancy Agreement and the First Supplementary Agreement could be set off against the First Renovation Package.

47. Also, the withdrawal of Mr Yeoh from Eastern Park Health Spa was not a material point.

48. The most material point about the alleged October 1998 agreement was Mr Ngs allegation that he was to be provided premises ready for the operation of a health centre including the necessary furniture, fittings, equipment, the TOP and the health centre licence.

49. Mr Ng alleged that the October 1998 agreement was drafted by GEHs solicitors. However he did not produce a copy of it. He said he did not have a copy and he did not ask for a copy from GEHs solicitors because he was of the view that it was not right for him to get a copy from the solicitors (NE 239 line 1 and 2). The solicitor was Ng Kai Ming, a friend of Damis Ang (NE 157 line 7 to 9).

50. Mr Ng relied on a copy of a letter dated 22 October 1998 signed by Damis Ang and addressed to Eastern Park Health Spa to try and establish the existence of the October 1998 agreement.

51. The letter states:

> 22 October 1998
>
> Eastern Park Health Spa
> 165 Kitchener Road #02-00
> Singapore 208532
>
> Dear Sir,
>
> **Tenancy Of Premises At #02-00, #03-00, 165 Kitchener Road**
>
> We hereby confirm that notwithstanding the terms of the Tenancy Agreement signed in respect of the above premises, the Tenant may terminate the said Tenancy by giving one months written notice of his intention to do so to the Landlord.
>
> In the event that the Tenant exercises the aforesaid right, the deposit paid by the Tenant under the tenancy Agreement shall be forfeited by the Landlord.
>
> Save for the above, all other terms and conditions in the Tenancy Agreement remain.
>
> Yours faithfully,
>
> [Signature] [Signature of Mr Ng]
> . ..
> Damis Ang We Agree
> Exec. Director
> [Emphasis added.]

52. Damis Angs evidence about this letter was not satisfactory.

53. His evidence was that the only tenancy agreement signed in respect of the second and third levels in October/November 1998 was the First Tenancy Agreement and the First Supplementary Agreement.

54. He said that these agreements were handed to the tenants for signature before 22 October 1998 but were signed on 16 or 17 November 1998. They were not signed by either party as at the date of his letter dated 22 October 1998 even though his letter referred to the terms of the Tenancy Agreement signed in respect of the above premises .. [Emphasis added.]

55. On the other hand, Mr Sushil Nair, for GEH and Mr Ang, pointed out that in Mr Ngs affidavit in respect of O 14 proceedings in DC Suit NO 1129/2000/F (before the action was transferred to the

High Court), Mr Ng had said in para 5:

> . Then sometime on 18th November 1998, we (Mr. Ang on behalf of his company as the landlord of the one part and Mr. Yeoh and myself for our partnership of the other part as the tenant) entered into a tenancy agreement in respect of the health spa premises. I am now shown and produce herewith a copy of the said health spa premises tenancy agreement dated 18th November 1998 and marked as exhibit "A".

56. Two agreements were exhibited in exhibit "A" i.e the First Tenancy Agreement and the First Supplementary Agreement.

57. In cross-examination, Mr Ng said, from NE 155 to 156:

> Q You informed Ang Kho Thang that you are not bound by the 18 November 1998 agreements?
>
> A I have asked him why the tenancy agreement was not the same. I accepted his explanation purely on trust.
>
> Q Refer to your affidavit filed on 30 August 2000. It was affirmed by you for the purpose of defending the Plaintiffs application for summary judgment?
>
> A Yes.
>
> Q .
>
> A .
>
> Q No where in that paragraph do you make reference to any agreement other than the 18 November 1998 agreements?
>
> A Correct because that is the only tenancy agreement I have.
>
> Q In that affidavit, you assert the existence of the 18 November 1998 tenancy agreement?
>
> A Yes.
>
> Q Would you agree that the position you have taken in this affidavit is that you are bound by the 18 November 1998 tenancy agreement and the supplemental agreement?
>
> A No. At that time, the Defendant was Brendma Eastern Hotel Pte Ltd. I was not included as 1st Defendant. At that time these were the only agreements I could remember and produce.
>
> Q You are saying that at the time of this affidavit, you had forgotten that you had signed an earlier agreement prior to the 18 November 1998 agreements?
>
> A Yes.

58. At NE 157 to 158:

Q AEIC para 24. You say you were surprised in November 1998 to learn that Mr Yeoh had entered into the two 18 November 1998 agreements?

A Yes.

Q In the middle of para 24, "At the material time, I was naively induced to trust the third partys oral assurance that it was all right to accept the alleged first tenancy agreement". What is the material time you are referring to?

A Around November 1998.

Q So you did accept at that time that the two 18 November 1998 agreements would bind you?

A I accepted Mr Ang Kho Thangs explanation provided the terms and conditions tally with the terms in the earlier agreement such as tenantable condition, off-setting renovation work under 1st renovation package against the rent and the number of massage rooms.

Q Para 24 AEIC, "When I confronted the third party he kept orally assuring me that the arrangement to off-set the rentals of $22,000 would still be valid ". From that, the only representation you were concerned about was the right to off-set the $22,000 rental against the costs and charges due under the 1st renovation package?

A Yes.

Q Isnt it true that you were in fact allowed that off-set?

A Yes.

Q So does it not follow that you did in fact accept the two November 1998 agreements?

A I agree because of Ang Kho Thangs credibility.

Q Did you accept also because of his oral assurance about the off-setting?

A But the oral assurance that he gave tallied with the terms stated in the October 1998 agreement.

59. At NE 159:

Q Is it your position that under the two November 1998 agreements, you cannot make a claim against the landlord for letting premises to you that were not in a tenantable condition and which had not valid TOP?

A Yes.

60. At NE 160:

> Q Put: On the basis of your evidence in your affidavit filed for the summary judgment application, in August 2000, you had admitted to being bound by the two November 1998 agreements.
>
> A That was the situation at the time.

61. For completeness, I would add that two questions later, Mr Ng disagreed that he was bound by the two November 1998 agreements.

62. I am of the view that the alleged agreement signed in October 1998 was in fact the two agreements each subsequently dated 18 November 1998. There was no other agreement then. Accordingly, Mr Ng was bound by these two agreements.

63. Therefore, Mr Ngs allegation that Mr Ang and Mr Yeoh had conspired to injure him, by Mr Yeoh entering into the two November 1998 agreements on behalf of Mr Ng and Mr Yeoh himself, without the alleged additional terms, must fail.

64. Mr Ng had referred to these two agreements in his O 14 affidavit without alleging an earlier agreement or complaining that he did not sign these two agreements.

65. Subsequently Mr Ng chose to allege the existence of an earlier but different agreement because he wanted to introduce a provision about GEHs obligation to get the premises ready for the operation of a health centre and the TOP and health centre licence

66. Even if there was such an earlier agreement, it would have been superceded by the two agreements, each dated 18 November 1998.

67. Coming to the First Tenancy Agreement, Clause 4(7) thereof provided that the inability or delay in obtaining the requisite licence to operate the health centre would not be a reason to delay or refuse payment under the agreement and that it was the obligation of the tenant to apply for and to obtain the licence.

68. The licence to operate the health centre was obtained by Mr Ng on 26 April 1999 (see his AEIC para 33) but he started operations on 15 June 1999 (see his AEIC para 34). Mr Ngs Counsel submitted that Mr Ng was only liable to pay rent for the health centre from 15 June 1999 to 24 November 1999. No reason was given as to why the obligation to pay rent should stop on 24 November 1999.

69. I am of the view that as the obligation to get the requisite licence was not on GEH, but on Mr Ng and Mr Yeoh as the tenants, the tenants were obliged to pay rent from 1 November 1998.

70. As there was subsequently a Third Tenancy Agreement, which covers the health centre as well, commencing 1 January 2000, the period for the letting under the First Tenancy and the First Supplementary Agreements lapses on 31 December 1999 and the obligation to pay rent thereunder is from 1 November 1998 to 31 December 1999 i.e 14 months.

The quantum of the rent

71. The First Tenancy Agreement specified rent of $12,000 per month apportioned as to (a) $6,000

per month for the premises and (b) $6,00 per month for hire charges for furniture, fittings and decoration. The First Supplementary Agreement specified that the tenants were to reimburse the landlord for renovation work by monthly instalments of $10,000 per month.

72. It is clear to me that the real intention was for the tenants to pay $22,000 per month as rent for the premises. The device of using a supplementary agreement or a side letter was perhaps to evade stamp duty or income tax or the clutches of GEHs creditors or some or all of these reasons. This device was also used for subsequent agreements which I will come to later.

73. Coming back to the First Tenancy Agreement, Clause 4(9) thereof stated that it was the tenants obligation to provide all articles necessary for the efficient running of the health centre. I find that that was the true intention of the parties notwithstanding the apportionment of the rent mentioned above.

74. Mr Ng alleged that the rent should be $18,000 per month and not $22,000 per month because the rent was based on $1,000 per month for each massage room and there were only 18 of such rooms. He claimed that Mr Ang had represented to him that there were 22 rooms and he had trusted Mr Ang but he did not discover the truth until after the two agreements were signed and he only obtained the keys to the premises later.

75. The allegation about the representation of 22 rooms is not found in the Defence and Counterclaim.

76. Secondly, it would offend the rule of evidence which precludes the introduction of oral evidence to contradict documentary evidence.

77. Thirdly, I notice that in the Third Tenancy Agreement, which I shall come to later, 18 massage rooms are specifically mentioned but the rent, for the health centre, remains at $22,000 per month.

78. If Mr Ng had been short-changed in respect of the number of massage rooms, the rent for the health centre under the Third Tenancy Agreement would have been reduced.

79. I also did not believe that Mr Ng had simply trusted Mr Ang. Mr Ng is not nave and knew what he was getting into. He had done renovation work at the building before, although not for the second and third floors. He would not have agreed to pay any rent without checking the premises in question for himself.

80. Accordingly, I find that there was no such representation and the rent was $22,000 per month. The period from 1 November 1998 to 31 December 1999 (see para 70 above) is 14 months. The total rent to be paid is $22,000 x 14 = $$308,000. Although GEH claimed GST, there was no evidence that it was liable to pay GST. Accordingly, I disallow its claim for GST.

81. The $308,000 is more than sufficient to pay or set-off against the $90,125 payable to Vegold under the First Renovation Package (see para 39 above).

82. Accordingly, no sum is payable to Vegold under the First Renovation Package.

83. As GEH has not claimed any rent under the First Tenancy Agreement and First Supplementary Agreement, I need not grant any judgment to GEH for any sum under these agreements.

Counterclaim for loss of profit - $200,000 (para 16 and 51(b) of Defence and Counterclaim)

84. In view of my findings, Mr Ngs counterclaim for loss of profit amounting to $200,000 (at $25,000 per month for eight months) for the late start of the health centre must fail. It was not GEHs obligation to obtain the hotel licence.

85. In any event, there was no evidence to support the claim for $200,000 loss of profit.

Counterclaim for fittings and equipment - $63,600 (para 16 and 51(a) of Defence and Counterclaim)

86. Mr Ngs counterclaim for $63,600 for fittings and equipment for the health centre must also fail as it was not GEHs obligation to provide the same.

87. Furthermore, the $63,600 was based solely on invoices from Hong Mun Li Agencies which was a business operated by Mr Ngs wife. Neither Mrs Ng or any other person gave evidence on these invoices. There was no other evidence that the items claimed were in fact supplied and no other evidence on the cost of such items.

Counterclaim for $3,000 personal loan (paras 13 and 53 of Defence and Counterclaim, also included in Brendmas invoice no 001/2000 claimed under paras 46(a) of Defence and Counterclaim)

88. Mr Ng also alleged that, at Mr Angs request, he had lent Mr Ang $3,000 which was handed to Mr Yeoh to obtain TOP for the health centre. He counterclaimed the payment of this alleged personal loan against Mr Ang. Mr Ang is not a plaintiff but only a third party.

89. More importantly, the personal loan is not borne out by the documents.

90. In an invoice from Hong Mun Li Agencies to Eastern Park Health Spa dated 11 December 1999 (AB 66) there is an item described as To pay Mr Yeoh consultation fee for FSB as instructed by you (Mr Ang K.T.). This invoice was not addressed to Mr Ang.

91. The same item is claimed in a second document i.e Brendmas invoice No 001/2000 to GEH dated November (presumably 2000). The description therein is similar to that in the Hong Mun Li Agencies invoice.

92. There was no mention of a personal loan in Brendmas invoice.

93. Also, the existence of the same item in the two invoices cast doubts on the bona fides of the invoices.

94. Thirdly, I have found that the obligation to obtain the TOP and the relevant licence was on the tenants.

95. In the circumstances, the counterclaim for the $3,000 personal loan must also fail.

SECOND RENOVATION PACKAGE

96. Mr Ng alleged that sometime in May 1999, Mr Ang had requested Vegold to supply materials and provide services in respect of a Second Renovation Package.

97. Paragraph 17 of the Defence and Counterclaim summaries the works under the Second Renovation Package as follows:

> (a) works for obtaining of TOP and then CSC [Certificate of Statutory Completion] which include engaging the service of an architect;
> (b) works for complying with the requirements of the PUB;"
> (c) works for complying with the requirements of the FSB;
> (d) re-wiring work from the generators set to the main switch board;
> (e) re-wiring work of the lift;
> (f) the supply and installation of new air-conditioning system;
> (g) the supply and installation of TV antennas and laying of cables from the TV antennas to the main distribution points on the respective 4^{th} to 7^{th} floors of the hotel; and
> (h) the installation of 2 water heaters and the piping to the hotel rooms.

98. Some details are found in five quotations each dated 10 June 1999 from Vegold to GEH at AB 22 to 26.

99. Mr Ng alleged that the total of the works was $462,000, excluding GST.

100. However I notice that in one of the quotations (in AB 25) a sum of $8,000 was deleted. So the total was actually $454,000, excluding GST.

101. The works included, inter alia,

> <u>Under AB 23</u>
>
> (i) Doing up room power cut-off point (1 lot)
> (j) Re-patching the wall paper for the hotel (1 lot)
> (k) Removing the existing cooling tower, water heater, piping air con duct from 4^{th} to 7^{th} storey, AHU unit from 4^{th} to 7^{th} storey
>
> <u>Under AB 25</u>
>
> (l) Engaging an M&E engineer to apply for PUB licence for the building (in connection with (b) above).
>
> <u>Under AB 26</u>
>
> (m) Supplying and installing a water tank system and removing an existing water tank.

102. Mr Ng alleged that as early as March 1999, Mr Ang had proposed that the costs of the Second Renovation Package be set-off against the rent from another letting, this time the letting of all the hotel rooms in the building. Consequently, the parties entered into a Second Tenancy Agreement dated 23 June 1999 but this was in respect of the hotel rooms and not the health centre.

103. There was disagreement as to who initiated the ideas leading to the Second Renovation

Package and the Second Tenancy Agreement and who was responsible for the drafting of the Second Tenancy Agreement. However it was not disputed that Mr Ang and Mr Ng had agreed to the Second Renovation Package and the Second Tenancy Agreement.

104. Each of the five quotations for the Second Renovation Package was signed by Mr Ng and counter-signed by Mr Ang.

105. The Second Tenancy Agreement, and a side letter also dated 23 June 1999, were also signed by Mr Ng and Mr Ang.

106. Some of the works under the Second Renovation Package were completed but not all.

107. Mr Ng alleged that Mr Ang had not signed on plans/drawings and had sent his own contractors to interfere with Vegolds works. He also alleged that Mr Ang had deprived Vegold of the services of the mechanical engineer it had engaged, one Gilbert Choo, by engaging the engineer after the engineer had been engaged by Vegold.

108. Mr Angs position was that Vegold had been dilatory in completing the works.

109. I will deal with these allegations and counter-allegations as well as the sums claimed for the completed or partially completed items in greater detail below.

THE SECOND TENANCY AGREEMENT (23 JUNE 1999) AND SIDE LETTER (23 JUNE 1999)

110. A Second Tenancy Agreement dated 23 June 1999 and a side letter also dated 23 June 1999 in respect of the hotel rooms were subsequently entered into. The parties to the Second Tenancy Agreement were GEH and Mr Ng. The parties to the side letter were Mr Ang of GEH and Mr Ng. Both documents were signed by Mr Ang and Mr Ng.

111. Clause 3(a) of the Second Tenancy Agreement specified the monthly rent for the hotel rooms to be $12,500.

112. Clause 5(r) stated that the tenant was to pay $12,500 for furniture fitting and $10,000 for the maintenance of the hotel. These two sums were not stated expressly to be payable monthly but this was not really in dispute. The side letter specified that $10,000 out of the rent of $35,000 was to be handed to Mr Ang.

113. The period in the Second Tenancy Agreement was stated to be an indefinite period from 1st day of October 1999 subject to termination, after three (3) years leased (sic) period, by either party for whatever reason upon giving to the other three (3) months written notice of termination of the tenancy.

114. Under the side letter, the starting date was 15 October 1999, and not 1 October 1999, as stated in the Second Tenancy Agreement.

115. However, Clause 6(k) of the Second Tenancy Agreement permitted the tenant a period of two months for renovation rent-free. The date from which rent was to be payable was therefore 15 January 2000.

Counterclaim for loss of profit - $425,646 (paras 26 and 52 of Defence and Counterclaim)

116. Mr Ng alleged that Mr Ang had represented to him that there was an existing hotel licence in the name of Damis Ang which would be transferred to Mr Ng. However he only learned in August 1999, after the Second Tenancy Agreement and the side letter were signed, that the hotel licence had been revoked in April 1999 as the TOP for the building had lapsed (on 27 October 1998).

117. He alleged in cross-examination that TOP was subsequently obtained again in September 1999 (NE 181 line 22).

118. He also alleged that he had to apply for a hotel licence and managed to secure one in early December 1999 (para 25 of the Defence and Counterclaim).

119. In para 79 of his AEIC, he said he was granted a hotel licence on 6 December 1999 after he had told the Hotel Licensing Board that Vegold would undertake to FSB (i.e Fire Safety Bureau) that all defective work would be rectified.

120. I note that the hotel licence he had exhibited with his AEIC and also found in AB 105 is in fact dated 1 January 2000.

121. I do not see how Mr Ng could have been misled about the existence of a TOP and hotel licence prior to the Second Tenancy Agreement and side letter.

122. According to him, Vegold was engaged to carry out works under the Second Renovation Package to obtain TOP and CSC. The discussion was in about May 1999 culminating in the five quotations dated 10 June 1999 i.e before 23 June 1999 being the date of the Second Tenancy Agreement and of the side letter.

123. His evidence at NE 180 line 6 to NE 181 line 3 confirms that he was aware at the time that he entered into the Second Tenancy Agreement that the TOP had lapsed and that he could not operate a hotel without a TOP:

> Q Since May or June 1999, you knew that the TOP for the building had lapsed?
>
> A Yes.
>
> Q You entered into the 2nd tenancy agreement relating to hotel rooms on 23 June 1999?
>
> A Yes.
>
> Q So at the time you entered into the 2nd tenancy agreement, you knew that the buildings TOP had already lapsed?
>
> A Yes.
>
> Q Your company Vegold was supposed to do the necessary work to obtain TOP?
>
> A Yes.
>
> Q From your knowledge as a contractor can a building be run as a hotel with

occupants if it had no valid TOP?

A Cannot.

Q At the time you entered into the 2nd tenancy agreement, you knew the building could not be operated as a hotel until the TOP was obtained?

A Yes.

124. Then at NE 184 line 20 to 24, he sought to resile from this position:

Q Suggest: You knew at the time of the execution of the 2nd tenancy agreement that without TOP a party cannot hold a valid hotel licence.

A Disagree. As long as the Hotel Licensing Board did not revoke the licence, the licence is considered as existing even though there is no TOP. In fact this happened last year in respect of this hotel.

125. Mr Ng also relied on Clause 6(l) of the Second Tenancy Agreement which requires GEH to do the following:

l) Transferring of all existing license pertaining to the operation of the Premises to Mr. Ng Yew Seng, NRIC number S1319773/C, in which all fee pertaining to the transfer of licensing will be bare (sic) by the Landlord.

126. Mr Nair submitted that this refers to the transfer of a licence if it was existing as at the date of the Second Tenancy Agreement. By that date, Damis Angs hotel licence had been revoked.

127. I accept this submission. Besides, I find that Mr Ng also knew, before he signed the Second Tenancy Agreement, not only that the TOP had lapsed, but that the hotel licence had been revoked as well.

128. Furthermore, all the hullabaloo about the hotel licence was a red herring. Mr Ng had made this allegation to counterclaim loss of profit of $425,464 from 15 October 1999 to 31 December 1999 for being unable to operate the hotel during this period.

129. However, it will be recalled that under Clause 6(k) of the Second Tenancy Agreement, he was granted a two month rent-free period for renovation. When this provision is read with the start date of 15 October 1999 under the side letter, it is clear that he was not expected to commence hotel operations until 15 January 2000.

130. Furthermore, the evidence of his own witness Ho Quek Wee (also known as Simon Ho) was that Mr Ng had asked Mr Ho to do a survey first before commencing hotel operations. The survey was done between May to December 1999. A forecast for the year 2000 was also done between May to December 1999. Mr Ho did not say that he was doing a survey and a forecast up to December 1999 because there was no hotel licence yet.

131. Clearly, Mr Ng was not intending to start hotel operations until 1 January 2000 at the earliest.

132. Accordingly, Mr Ngs counterclaim for $425,464 for loss of profit under the Second Tenancy Agreement must fail.

Counterclaim for work, furniture and fittings - $281,129 (paras 44 to 46 and 60(a) of Defence and Counterclaim)

133. Mr Ng also counter-claimed $281,129 for expenses allegedly incurred under eight invoices.

134. Two were from Brendma No 001/2000 and 002/2000 with a date Nov (presumably 2000).

135. The remaining six invoices were from Hong Mun Li Agencies to Brendma. Five were dated between 26 November 1999 to 13 December 1999. The last one was dated 14 April 2000 (i.e Invoice No 5023) for three items totalling $12,800.

136. The basis of this claim was muddled.

137. Paragraph 23 of the Defence and Counterclaim mentions Clause 6(b), (d), (f), (g) and (l) of the Second Tenancy Agreement. However the actual claims under these invoices were not pleaded as having been made under the Second Tenancy Agreement but under the Third Tenancy Agreement (see paras 44 to 46 of the Defence and Counterclaim).

138. Then, in Mr Ngs AEIC para 90, he made the claims for these invoices under the Second Tenancy Agreement without specifying in para 90, or the previous paragraph, i.e para 89, which provision of the Second Tenancy Agreement he was relying on.

139. In closing submissions, Mr Tan Shiew Hwa for Mr Ng submitted that he was relying on Clause 12(i) of the Third Tenancy Agreement which provided that the landlord was to ensure that the premises was free of defects and in tenantable condition. He submitted that this was to be prior to handing over of the premises but this qualification was not stated in Clause 12(i) of the Third Tenancy Agreement.

140. The qualification was, instead, found in Clause 6(g) of the Second Tenancy Agreement.

141. In any event, even if it was GEHs obligation to ensure that there was no defect and the premises was in a tenantable condition, I have to bear in mind that Mr Ngs Vegold had been engaged to carry out various works.

142. Secondly, there was no supporting document for the works furniture and fittings itemised in the invoices, beyond the invoices themselves and some of the items were repeated in different invoices.

143. For example, the single largest item for this counterclaim was in Invoice No 5014 from Hong Mun Li Agencies dated 26 November 1999 (AB 56). The item was for $100,000 and was supposed to be for the supply of marble and granite for the floor and wall of main entrance, reception area and fourth to seventh floor lift lobby.

144. However Mr Ng accepted that this was actually the same work under the First Renovation Package for which Vegold had sent two earlier invoices No 9781/98 dated 30 September 1998 (AB 6) and No 9812/99 dated 14 January 1999 (AB 15) to GEH.

145. I cannot see how Hong Mun Li Agencies could bona fide send an invoice for the same item to Brendma on 26 November 1999, several months later. This cast even more doubt on the bona fides of all the Hong Mun Li Agencies invoices as well as on the two invoices from Brendma to GEH.

146. Thirdly, some of the items have nothing to do with defects or making the premises tenantable.

147. For example, I note that in one of the invoices from Brendma No 001/2000 to GEH (at AB 511) there was a charge of $10,860 for 40 TV sets. In my view, the absence of TV sets does not make the premises defective or untenantable.

148. Also, it was not the landlords obligation to provide TV sets whether under the Second or the Third Tenancy Agreement.

149. Fourthly, besides Mr Ng, no one else gave evidence on these expenses except Mr Casimir for the limited purpose I have mentioned.

150. I will now come to the items specifically claimed under this head and use the numbering in Mr Casimirs report which in turn follows the numbering in Mr Cheongs report. Where any item in any of the eight invoices is not listed in the reports, it will be disregarded. The items claimed under this head and found in the reports are items 30 to 47.

Item 30 - To supply one set of telephone system

151. There were two invoices for this item.

152. AB 150 is an invoice (without letterhead) naming GEH as the customer. It claims $26,000 for the supply of one set of telephone system.

153. AB 511 and 512 is another invoice. This is Brendmas invoice to GEH No 001/2000 dated November (presumably 2000). One of the items therein was for the supply and installation of a full set of telephone system for the hotel. It claimed $45,000. This claim is for item 46.

154. Mr Casimir did not agree that there was an overlap between items 30 and 46 (NE 146 line 1 to 3) but Mr Cheongs report and evidence (NE 101 line 1 to 13) were that they are overlapping. I accept Mr Cheongs evidence for items 30 and 46.

155. In Mr Cheongs Table 1, he accepted that this item had been done. However, I am not persuaded that this was due to any breach by GEH as there was no evidence of such a breach.

156. Accordingly, items 30, and 46, are disallowed.

Item 31 - Re-wiring and checking alarm system, changing I.C. panel and replace all dummy smoke detectors

157. Item 31 is the subject of an invoice No 5013 dated 11 December 1999 from Hong Mun Li Agencies (AB 67) for $16,000.

158. The same item is found in Brendmas invoice No 001/2000 to GEH.

159. I do not see how this item could have been the subject of a bona fide invoice in December 1999 when Brendma was still complaining about the alarm system in January 2000 (AB 103) and June 2000 (AB 162).

160. Furthermore, PW4 Nancy Lim, the manager and owner of Systron Technic Engineering, gave evidence that her firm had been engaged in May 2000 by GEH to rectify the fire alarm wiring system. In June 2000, she, or her engineer, discovered some defects with one of the heat detectors and a battery. Also, in or about June 2000, her firm was engaged by GEH to revamp the entire fire alarm system and wiring circuit (paras 4 to 6 of her AEIC and NE 66 line 5 to NE 67 line 16).

161. I saw no reason to disbelieve her.

162. I disallow the claim for item 31.

Item 32 - Repair air-con cooling tower and water heater

163. This item for $1,800 is found in an invoice dated 11 December 1999 and No 5012 from Hong Mun Li Agencies to Eastern Park Health Spa (AB 66) i.e the health centre.

164. Yet it is also found in an invoice two weeks earlier dated 26 November 1999 and No 5015 from Hong Mun Li Agencies to Brendma (AB 57) for $4,800 for servicing of cooling tower and AHU units from fourth to seventh floors.

165. The invoices were suspicious as the later one had a smaller serial number i.e 5012 than the earlier one i.e 5015.

166. The item for repair is also found in Brendmas invoice No 001/2000 in AB 511.

167. Furthermore, PW3 Sng Yak Joo a director of Pitney Enterprise Pte Ltd (Pitney) gave evidence that in May 2000, Pitney had been engaged by GEH to carry out general repair and servicing of a cooling tower at the Property. Pitney was also engaged to do other work (see paras 4 to 7 of his AEIC and NE 61 line 3 to 21).

168. I saw no reason to disbelieve Mr Sng.

169. I disallow the claim for item 32.

Item 33- Repair main power room and main switch board with replacement of switch

170. This item for $3,750 is found in an invoice No 5012 dated 11 December 1999 from Hong Mun Li Agencies to Eastern Park Health Spa (AB 66).

171. Yet in a subsequent letter dated 1 January 2000 from Brendma to GEHs Mr Ang, Brendma was claiming that the manual generator was not working.

172. This item is also found in Brendmas invoice 001/2000 (AB 511).

173. Yet in the evidence of DW3 Ho Quek Wee, at NE 249 line 16 to 17, he said that no one had rectified the problem.

174. I disallow the claim for item 33.

Item 34 - Repair of pool chiller (at health centre)

175. This item for $6,750 is found in an invoice No 5012 dated 11 December 1999 from Hong Mun Li Agencies to Eastern Park Health Spa (AB 66).

176. It is also found in Brendmas invoice No 001/2000 (AB 511).

177. However, there was no evidence before me that this work was in fact done beyond the invoices themselves.

178. There was also no evidence before me as to why this should be attributed to a breach by GEH.

179. I disallow the claim for item 34.

Item 35 - Payment to Mr Yeoh

180. This item for $3,000 is a duplication of the sum mentioned in paras 88 to 95 above.

181. I disallow the claim for item 35.

Item 36 - Supply labour and materials for telephone wires, new TAS line, repair water pump leakage, repair air-con drainage pipe, check and inspect jacuzzi, sauna bath, steam bath

182. This claim is for $1,000. The parties agreed quantum at $500.

183. The claim is one of the items in Brendmas invoice No 001/2000 to GEH (AB 511).

184. There was no evidence that all the works done under this item were due to a breach or breaches by GEH.

185. I disallow the claim for item 36.

Items 37 - (a) To check and connect speaker for audio system
and 38 (b) Supply and lay TV cable, speaker cable and movie room

186. These items are found in Hong Mun Li Agencies invoice No 5011 dated 11 December 1999 (AB 65) to Eastern Park Health Spa.

187. They are also found in Brendmas invoice No 001/2000 to GEH (AB 511).

188. Again there was no evidence hat they were done due to a breach by GEH even if they were in fact done.

189. I disallow the claims for items 37 and 38.

Item 39 - 40 sets of TV

190. I have already dealt with this item in paras 147 and 148 above.

191. The claim for item 39 is disallowed.

Items 40 to 45 - Various works

192. The quantum for these items was agreed at $1,450. They are found in Hong Mun Li Agencies invoice No 5011 dated 11 December 1999 to Eastern Park Health Spa (AB 65) and Brendmas invoice No 002/2000 (AB 512).

193. There was no evidence that they were done due to a breach by GEH even if they were in fact done.

194. I disallow the claims for items 40 to 45.

Item 46 - To supply and install full set of telephone system for hotel

195. I have already dealt with this item when item 30 was dealt with.

Item 47 - Payment for amendment of drawings

196. It was agreed that the quantum for this item be nil.

Collection of furniture and articles

197. I would add that some time in or about October 1999, Mr Ng had arranged to collect furniture and articles from another hotel owned by GEH for use in Brendma Eastern Hotel. The other hotel was at MacPherson Road and was known as Great Eastern Hotel. It was being sold, apparently without the furniture and articles therein.

198. Mr Ng had tried to rely on this collection of furniture and articles to illustrate that GEH was obliged to provide the same for Brendma Eastern Hotel.

199. I am of the view that this was a situation whereby Mr Ang had agreed to assist Mr Ng since Great Eastern Hotel was being sold and GEH had no use for the furniture and articles in that hotel.

200. GEH was under receivership then but Mr Ang had agreed, and the receivers did not object, that Mr Ng could collect the furniture and articles in Great Eastern Hotel for use in Brendma Eastern Hotel. However this did not mean that GEH was obliged to provide the same.

201. In the circumstances, I am of the view that the counterclaim for the alleged expenses under the eight invoices must fail.

Complaint about the number of hotel rooms

202. In para 96 of his AEIC, Mr Ng complained that the building had 68 hotel rooms only instead of

78 contrary to what the Second Tenancy Agreement had stated.

203. However, this is not the subject of any specific claim in the Defence and Counterclaim.

204. Moreover, when the Third Tenancy Agreement was entered into, the number of hotel rooms was stated therein to be 68 and there was no change in the rent.

205. Accordingly, I need not concern myself any further about the allegation of 68 hotel rooms.

THIRD RENOVATION PACKAGE

206. According to Mr Ng, he discovered in or about September 1999 that additional works were required to obtain TOP and eventually CSC.

207. A quotation of these additional works dated 15 November 1999 was sent by Vegold to Mr Ang (AB 49 and 50). Mr Ang was agreeable to these additional works but wanted to pay for them through the rental received (see Mr Ngs AEIC paras 82, 84 and 85).

208. As a result, the parties entered into yet another tenancy agreement dated 24 November 1999 (the Third Tenancy Agreement) and a side agreement dated 25 November 1999 entitled Mutual Agreement.

209. I summarise the works under the Third Renovation Package as follows:

> <u>FSB requirements</u>
>
> (a) To appoint an M&E engineer to obtain CSC (which appears to be already included under the Second Renovation Package) and the appointment of RI (Registered Inspectors) to obtain CSC.
>
> (b) Pressurized fans for (i) stair, (ii) corridor (third to seventh storeys), (iii) smoke free lobby (third to seventh storeys).
>
> (c) To construct smoke free lobbies from second to seventh storeys.
>
> (d) (i) To construct half an hour fire rated doors for corridors from fourth to seventh storeys.
>
> (ii) To construct three hour fire rated concrete wall for second and third storeys
>
> (e) To construct pressurized air duct from rooftop to second storey, fourth to seventh storey corridors.
>
> <u>LTA requirements</u>
>
> (f) To construct three mechanical car park barriers in front of the building .

210. Other details are found in the quotation.

211. Some of the works under the Third Renovation Package were done but not all. I will deal with the works allegedly done later together with the works allegedly done under the Second Renovation

Package.

THIRD TENANCY AGREEMENT (24 NOVEMBER 1999) AND MUTUAL AGREEMENT (25 NOVEMBER 1999)

212. As I have mentioned, a Third Tenancy Agreement dated 24 November 1999 and a Mutual Agreement dated 25 November 1999, were subsequently entered into.

213. The parties to the Third Tenancy Agreement were stated to be GEH and Brendma (not Mr Ng). Mr Ang signed this agreement on behalf of GEH and Mr Ng signed it on behalf of Brendma. Mr Ang and Mr Ng also signed the Mutual Agreement.

214. The Third Tenancy Agreement refers to 68 hotel rooms (instead of 78 under the Second Tenancy Agreement) and 18 massage rooms.

215. The term is three years from 1 January 2000 with an option to renew for another three years.

216. The rent is supposed to be a total of $57,000 per month i.e $35,000 for the hotel rooms (as per the Second Tenancy Agreement) and $22,000 for the health centre (as per the First Tenancy Agreement).

217. However the Third Tenancy Agreement refers to a total of $37,000 per month only, i.e $20,000 per month for the rent of the premises and $17,000 per month for the rent for furniture and fittings.

218. The balance of $20,000 per month is to be set-off against Vegolds works under the Second and Third Renovation Packages. Leaving aside some minor contradictions on the figures, the total was supposed to be $831,730.

219. The set-off is covered by the Mutual Agreement dated 25 November 1999. On this point, I am aware that the Mutual Agreement provided that Mr Ng is to pay $720,000 on behalf of Mr Ang of GEH to Vegold and the monthly rent for Brendma is to be reduced by $20,000 over 36 months, which totals $720,000.

220. Although Mr Ng, Vegold and GEH are separate legal entities, the intention was obviously for a set-off to be effected as between what Brendma has to pay GEH and what GEH has to pay Vegold.

221. Accordingly, I find that GEH need not pay Vegold any sum in view of the set-off under the Mutual Agreement, unless the amounts due and payable by it under the Second and Third Renovation Packages total more than $720,000.

222. If Vegolds completed works under the Second and Third Renovation Packages cost $831,730, there will be a balance of $111,730 due to it since the set-off of $20,000 per month over 36 months totals $720,000 only. Nothing was said as to how the $111,730 is to be paid. This sum is different from and is in addition to the sum of $100,000 under the First Renovation Package.

223. In any event, as it turns out, the total cost of Vegolds completed works under the Second and Third Renovation Packages is less than $720,000. I will elaborate on this later.

224. Mr Ng gave the following reasons for entering into the Third Tenancy Agreement and the Mutual Agreement (see paras 94 to 102 of his AEIC):

(a) First, he alleged that Mr Ang, and Mr Angs assistant one David Tien, had represented to him in November 1999 that they wanted to persuade Malayan Banking Berhad (MBB) to grant GEH additional facilities and a renovation loan. However because Clause 6(m) of the Second Tenancy Agreement provided that the full renovation cost of $475,860 (under the Second Renovation Package) would be set-off against the deposit and rent payable thereunder, GEH would not be receiving any rent for some time.

(b) Accordingly, the Third Tenancy Agreement was proposed whereby Clause 6(m) would be deleted.

(c) The Third Tenancy Agreement, however, would reflect rent of $37,000 per month only to hide the true rent of $57,000 per month from the tax authority.

(d) As Mr Ang was desirous of applying for a renovation loan in addition to the additional facilities, the parties were to enter into the Mutual Agreement which would be shown to MBB to persuade it to grant the renovation loan.

(e) The Mutual Agreement would also serve as an I.O.U of the monies owing to Vegold under the Second and Third Renovation Packages.

225. Mr Angs version was that Mr Ng wanted to remove Mr Yeoh as a named party in the First Tenancy Agreement and Mr Ng also wanted to provide for all the amounts due under the Second and Third Renovation Packages to be set-off against the rent. So, it became necessary to end the First and Second Tenancy Agreements for a fresh one to be entered into (see para 35 of Mr Angs AEIC).

226. I doubt that the Mutual Agreement was to be shown to MBB. If it was shown, it would have disclosed that a substantial part of the renovation costs would be paid by way of set-off against part of the rent. This would have obviated the need for any renovation loan.

227. I also doubt that GEH was going to seek additional facilities from MBB because no purpose was stated for such additional facilities.

228. In any event, even if the intention was to seek additional facilities from MBB, I am of the view that it was not the only or main reason for the Third Tenancy Agreement and the Mutual Agreement.

229. In my view, the Third Tenancy Agreement was intended to consolidate the First Tenancy Agreement and the Second Tenancy Agreement into one agreement. Hence it covered the tenancy of both the health centre and the hotel rooms. It also specified the number of massage rooms (18) and hotel rooms (68) presumably to avoid any dispute thereon.

230. The Mutual Agreement was also to consolidate the agreements to set-off rent against the costs of the Second and the Third Renovation Packages, since the Second Tenancy Agreement covered the cost of the Second Renovation Package only.

231. As the Mutual Agreement mentioned the sums relating to the costs under the Second and Third Renovation Packages, this was a tentative IOU subject to verification of the work done.

232. The Third Tenancy Agreement and the Mutual Agreement also spread out the set-off over 36 months so that GEH would derive some income from the start thereof.

233. Under Clause 12(n) of the Third Tenancy Agreement, the rent for the hotel rooms is to start from 15 January 2000. This effectively means that no rent is payable under the Second Tenancy Agreement because under that agreement and the side letter relating thereto, rent was also payable from 15 January 2000.

234. Under Clause 12(n) of the Third Tenancy Agreement, the rent for the health centre is to be payable from 1 January 2000.

235. This distinction illustrates the fact that the rent of $57,000 per month was actually derived from two components, i.e $35,000 per month for the hotel rooms and $22,000 per month for the health centre, although the entire sum of $57,000 per month and the two components are not expressly mentioned in the Third Tenancy Agreement.

236. The monthly rent of $57,000 is mentioned only in the Mutual Agreement which also does not apportion the rent expressly between the two components. The components are derived from the First and Second Tenancy Agreements.

237. I digress briefly to reiterate that the $22,000 per month rent for the health centre is not changed under the Third Tenancy Agreement even though the number of massage rooms is expressly stated under the Third Tenancy Agreement to be 18 (and not 22) rooms. That is one of the reasons why I concluded that Mr Ngs allegation that the rent under the First Tenancy Agreement should be reduced to $18,000 per month must fail (see paras 77 and 78 above).

238. As I have mentioned, Mr Ng managed to obtain a hotel licence effective 1 January 2000.

239. However, Mr Ng said that he was unable to renew it from 1 January 2001 as the landlord had failed to give an undertaking to FSB. Accordingly Brendma had to cease hotel operations from 1 January 2001 although the operations of the health centre are carrying on.

240. I was also informed by Counsel for the parties that Brendma is still occupying the hotel premises although not operating the hotel and is waiting for GEH to do all the works necessary to enable a hotel licence to be obtained, although Mr Julian Kwek, for GEH and Mr Ang, intimated that there was some difficulty in getting access to the hotel premises. This situation is likely to give rise to some more claims and counterclaims in the future.

GEHs claim for rent (paras 23 to 25 and prayer (a) of the Re-Amended Statement of Claim)

241. At present, GEHs claim for rent relates to the rent of $37,000 per month (for the hotel rooms and health centre after set-off) under the Third Tenancy Agreement for the period from 15 January 2000 to 14 June 2000, i.e for five months. This works out to $185,000. There is no separate claim for the rent for the health centre for the period 1 to 14 January 2000.

242. GEH will also give credit for $44,000 received as part payment of rent i.e $22,000 in March 2000 and $22,000 in April 2000. The net amount claimed is $141,000 (see para 67 of GEHs Closing Submission) and not $159,500 as pleaded in paras 23 to 25 of the Re-Amended Statement of Claim.

243. Prima facie GEH is entitled to payment of $141,000. GEH is also claiming interest. I note that Clause 4 of the Third Tenancy Agreement provides for rent to be paid on or before the 14th day of every calendar month and Clause 5 provides for interest to be payable at 10% per annum. Although Clause 4 also provides for GST to be paid to GEH, there was no evidence that GEH is in turn liable to

pay GST.

Counterclaim for personal loans of $44,000 (paras 43 and 54 of Defence and Counterclaim)

244. I should add that initially Mr Ng alleged that the two payments of $22,000 each were loans by him to Mr Ang (para 109 of his AEIC) even though the payment vouchers described the payments to be for rental for the months I have mentioned. He sought to give a convoluted explanation to circumvent these payment vouchers (paras 109 to 111 of his AEIC) and even counterclaimed re-payment of these sums.

245. However, Mr SH Tan conceded during the trial that these were part payments of rent and withdrew the counterclaim for the two sums of $22,000 each (NE 27 line 12 to 19).

246. Notwithstanding this concession, paras 3 and 4 of the Defendants Reply to the Plaintiffs/Third Partys Closing Submission sought to resurrect the allegation that the payments were personal loans and not payment of rent. This did not reflect well on Mg Ng or his Counsel.

Allegation that $300,000 would be paid first by GEH or Mr Ang

247. Mr Ng alleged that in October 1999 Mr Ang had represented to him that the sale of Great Eastern Hotel was going to be completed and that Mr Ang, as a majority shareholder of GEH would receive about $3m. Also Mr Ang was in the process of selling one of his properties in Geylang. Mr Ang had promised to pay not less than $300,000 for the renovations by March 2000.

248. In view of this, Mr Ng said he was induced to lend two personal loans totalling $44,000 and to enter into the Mutual Agreement (see paras 94 and 101 of his AEIC).

249. However, he also alleged that the representation was made in mid-March 2000 (see para 109 of his AEIC).

250. Mr Ng was trying to give the impression that the obligation to pay rent was dependent on Vegold having received the $300,000 first.

251. I do not accept Mr Ngs allegation about the $300,000 lump sum payment.

252. First, there is the discrepancy in the dates as to when the alleged representation was made.

253. Secondly, there was no evidence that as at October 1999 or March 2000, Mr Ang had satisfied himself that renovation works costing $300,000 under the Second and Third Renovation Packages had been completed.

254. Thirdly, the Mutual Agreement did not mention this $300,000 payment at all.

255. Fourthly, the $44,000 sum was not the result of personal loans but were in fact partial payments of rent as conceded by Mr S H Tan.

GEHs claim for an account and inquiry, alternatively for damages (paras 28 to 32 and prayers (b) and (c) of Amended Statement of Claim)

256. GEH has also claimed an account and inquiry as to how the $720,000 (comprising the set-off of $20,000 a month x 36 months) has been applied, and alternatively, damages.

257. I am of the view that neither is an appropriate relief.

258. The $20,000 a month is to be used to pay whatever sums are due and payable to Vegold under the Second and the Third Renovation Packages. If the sums due and payable to Vegold total less than $720,000, then Brendma must pay the difference in the form of rent.

259. For example, if the sums due and payable to Vegold under the Second and the Third Renovation Packages total, say, $200,000, then the set-off of $20,000 per month will apply for ten months only and the full rent of $57,000 per month will be payable from the eleventh month.

260. However, this does not mean that any of the Defendants must account for the balance of $520,000 or is liable for damages.

261. I also do not agree that Mr Ng had received $720,000 for the specific purpose of discharging the costs of the renovation works or that this could amount to some sort of trust as submitted for GEH (see paras 83 and 84 of Plaintiffs and Third Partys Closing Submission).

262. The agreement to set-off was a contractual one simpliciter and did not give rise to a trust.

263. Accordingly, GEHs claim for such reliefs is disallowed.

Counterclaim for loss of profit - $632,506.05 (para 46(a) to (e) and para 60(b) of Defence and Counterclaim)

264. Brendmas counterclaim for loss of profit for defective premises was initially for $632,506.05. Some heads of claim were withdrawn during the trial leaving a total of $367,224.

265. The counterclaim for loss of profit was for the entire year 2000. However, as the counterclaim is deemed to have been commenced from the date of the action, any claim for loss of profits in this action should not go beyond 15 June 2000, the Writ having been filed on 16 June 2000.

266. I would reiterate that Vegold was supposed to carry out works under the Second and Third Renovation Packages.

267. However, by a letter dated 5 May 2000 from Vegold to GEHs Mr Ang, Vegold decided to relieve itself from further responsibility to obtain the CSC. It said that its works had come to a standstill because of constant interruption caused by GEH bringing in outside contractors (AB 131).

268. Since then, if not earlier, Mr Ang appears to have engaged others to do rectification works.

269. Then in a letter dated 9 June 2000, from Drew & Napier for GEH, Drew & Napier stated that Vegold had failed to complete a substantial portion of the works it was to do and that it was agreed that GEH would engage others and no other work was to be done by Vegold. This was reiterated in Drew & Napiers letter dated 16 June 2000.

270. Accordingly, by May or June 2000, Vegold was relieved from doing any further rectification works.

271. Coming back to Brendmas counterclaim for loss of profits, Brendma relied on various provisions i.e Clause 11, 12(f), 12(i), 12(e) and 12(o) of the Third Tenancy Agreement (paras 44 and 46 of the Defence and Counterclaim).

272. Under Clause 11 of the Third Tenancy Agreement, the landlord was to service and upgrade the lift. If the lift was totally unservicable, the landlord was to bear all costs of replacing another lift.

273. Under Clause 12(f) it was the landlords obligation to insure the premises against fire and public liability.

274. Clause 12(i) refers to the landlords obligation to ensure that the premises was free of defects and was in a tenantable condition. I have referred to this provision in para 139 above.

275. Clause 12(e) was a provision on quiet enjoyment of the premises by the tenant without interruption by the landlord.

276. Clause 12(o) referred to the transfer of all existing licences to the tenant.

277. At the outset, it is obvious that Clause 12(f) on insurance is not relevant and Clause 12(o) on the transfer of existing licences is also not relevant as Brendma was operating under a valid hotel licence for the entire year 2000.

278. In para 185 of his AEIC, Mr Ng claimed that his hotel manager Simon Ho had told him that the hotel lost revenue in the year 2000 due mainly to the leaking ceiling problems. Mr Ng alleged lost revenue of $343,000 for the year.

279. Therefore, Clause 11 on the lift is not material. Neither is Clause 12(e) about quiet enjoyment.

280. Only Clause 12(i) on defects and tenantable condition is relevant.

281. In Simon Hos letter of complaint dated 1 January 2000 (AB 102) to Mr Ang, various complaints were made.

282. As Mr Ngs allegation on loss of profit is confined mainly to the leaking ceiling, I shall focus on that only. However, I would also mention that the letter of complaint was sent on the very first day when Simon Ho was engaged as manager of the hotel and the hotel had begun operations. Prior thereto, he was acting as a consultant for Mr Ng.

283. In cross-examination, Mr Ho said that ceiling boards were opened up and he could see water dripping from the pipe. However he did not know that Vegold had been engaged to do the piping for the hotel rooms (NE 250 line 7 to 13).

284. In AB 26 which is one of Vegolds quotations dated 10 June 1999 for the Second Renovation Package, Vegold was to alter or redo the existing piping to PUB requirements and to comply with a PUB letter dated September 1997 for all necessary alterations for all piping systems (although the September 1997 letter was not produced in evidence).

285. Mr Ng also admitted that Vegold was responsible for carrying out the piping works (NE 216 line 1 and 2). However, he tried to explain away this responsibility by alleging that he had done his best and the water leakage problems surfaced only when guests took baths. He did not explain why he failed to take any further step thereafter (NE 216 line 4 to 15).

286. As Mr Ng controls both Brendma and Vegold, I am of the view that as at 15 June 2000, Brendma cannot complain about defective piping which was not rectified by Vegold even though Brendmas tenancy agreement, i.e the Third Tenancy Agreement is with GEH. A party cannot take advantage of his own wrong and this applies to corporate entities which are controlled by the same person.

287. I also note that although Brendma was complaining about the leaking pipes, it did not cause substantive rectification work to be done but simply painted the stained walls (NE 249 line 22 to 24). If the leaking pipes were really causing as much of a problem as Brendma would have me believe, then, Brendma would not have stopped at painting the stained walls.

288. In the circumstances, I reject Brendmas claim for loss of profits up to 15 June 2000 under the Third Tenancy Agreement.

289. It is therefore not necessary for me to deal with the evidence of Brendmas expert witness Mr Chong Hon Hiong about the loss of profits in the form of loss of various streams of revenue. Furthermore, Mr Chong did not attempt to link any alleged breach by GEH to the alleged loss as what he did was a general exercise to determine loss of profits.

290. Likewise it is not necessary for me to deal with claims in paras 186, 187 and 188 of Mr Ngs AEIC for alleged increase in advertisement charges, alleged engagement of additional workers and alleged increase in maintenance and repair from faulty electrical wiring system respectively. Furthermore, these claims were not particularised in the pleadings.

THE SECOND AND THIRD RENOVATION PACKAGES - continued
The Second Renovation Package - continued

291. The five quotations for the Second Renovation Package amounted to $454,000 excluding GST (see para 100 above).

292. However, in Mr Ngs AEIC and according to his expert, Mr Casimir, Vegold should be entitled to $148,450, excluding GST, for work done under the Second Renovation Package.

293. Mr Cheong recommended $119,000.

294. In addition, Mr Ng claimed that Vegold was prevented from completing the works under the Second and Third Renovation Packages and claimed various sums which I will elaborate on later.

295. The alleged completed works under the Second Renovation Package were items 11 to 19 of Mr Cheongs and Mr Casimirs reports. I will deal with the items individually.

Item 11 - (a) To engage TKS (Tan Khee Seng) as building architect to obtain TOP and CSC and also to obtain

approvals or licences from FSB and URA

(b) To engage M&E engineer to obtain PUB approval or licence

(c) To submit documents to regulatory authorities

296. Mr Casimir recommended $42,750 for this item instead of the quoted sum of $57,000 because CSC had not been obtained.

297. Mr Casimir referred to Mr Cheongs Table 1 in p 37A of Mr Cheongs AEIC.

298. In the light of Mr Cheongs comment that CSC has not been obtained, Mr Casimir concluded that TOP had been obtained. Also Mr Cheong had referred to the approval of certain building plans which Mr Casimir had assumed was the result of work done by Vegold or on Vegolds instructions.

299. However Mr Casimir had not seen any drawings or checked with the architect or the M&E engineer that work had been done on Vegolds instructions.

300. Mr Casimir also referred to a letter dated 23 August 1999 from Prodecon Architects to the Commissioner of Building Control (AB 43). This letter stated that TOP had been obtained but had expired and these architects were assisting GEH to renew TOP and obtain CSC.

301. Mr Casimir had assumed that Vegold had done all the work necessary to obtain the TOP which had expired but Vegold only came into the picture in June 1999. The TOP which had expired, had lapsed even before May 1999, see para 116 above.

302. Also, the dates of the building plans referred to in Mr Cheongs Table 1 were before the date Vegold had been engaged.

303. It seems to me that Mr Casimir had assumed that Vegold had submitted plans or drawings to obtain the expired TOP when this was not necessarily the case.

304. Neither did he see any plan or drawing done on Vegolds instructions to obtain the fresh TOP (NE 131 line 19/20, NE 135 line 8 to 10).

305. Mr Casimir agreed that if in fact Vegold did not do any work under item 11, it should not be paid anything. If they did some work but did not make the submission for TOP, then his valuation would be less (NE 136 line 1 to 4).

306. On the other hand, Mr Cheong said that he valued the item at $28,000 as CSC had not been obtained (see his AEIC p 37A for item 11). This comment gives the impression that TOP had been obtained but not CSC.

307. However, in cross-examination, Mr Cheong said that he understood from Mr Ang that both TOP and CSC had not been obtained at the time he inspected the premises on 24 June 2000 and on 18 July 2000. He had not seen any TOP for that period. He was prepared to amend his valuation of $28,000 if there was such a TOP but did not say what he would amend it to (NE 91 line 5 to 7).

308. Item 11 was covered under Vegolds quotation at AB 25 dated 10 June 1999. Vegold had quoted $57,000 but in my view this was not on a success basis.

309. Vegold had given the impression in its quotation that an architect and an M&E engineer had to be engaged to submit documents to the relevant authorities.

310. The main evidence in favour of Vegold was based on an inference that it must have done

something to obtain TOP on or before 1 January 2000 as Mr Ng managed to get a hotel licence issued on 1 January 2000.

311. However there was no evidence of the submission of substantive documents to the relevant authorities by the architect or the M&E engineer supposedly engaged by Vegold.

312. The Defendants produced some documents in Exhibit D2 but they did not show much. In Exhibit D2, there is a copy of an invoice dated 28 December 1999 to M/s Vago Pte Ltd from TKS Building Services for $3,000 for submission of amendment plans to various authorities.

313. In Exhibit D2 p 5, there is a copy of a cheque for $3,000 in favour of TKS Building Services.

314. There were also some other documents which were supposed to show claims or payments of amounts regarding architectural services (see Exhibit D2 p 3, 4, 7).

315. However the figures in these documents, even if accepted at face value, did not add up to $28,000 which Mr Cheong had recommended for payment on behalf of GEH.

316. Neither TKS Building Services nor the architect nor the M&E engineer was called to give evidence for Vegold.

317. In the circumstances, even though TOP had been obtained, I am of the view that Vegold should be allowed only $28,000 for item 11.

Item 12 - To supply and install water tanks and re-do existing pipings

318. Mr Casimir had recommended $20,000 for item 12, instead of the quoted sum of $40,000, on the basis that the work for this item was not completed.

319. He was of the view that one water tank on the roof was old and the other was relatively new.

320. Some pipes had been changed, but not all, as indicated in the different colours of the pipes, the ones in darker blue being relatively new.

321. However he had no personal knowledge that the work had been done by Vegold.

322. Mr Ng produced a copy of a letter from Leo & Leo Plumbing Service for $4,500 in Exhibit D2 p 12 but the job was not in relation to item 12.

323. Mr Cheong did not recommend any payment for item 12. However, in his Table 1, he did not say that the work was not done by Vegold but that it was not executed because the tank installed did not meet PUB requirements.

324. Then, in cross-examination, he said he was referring to two water heaters instead (NE 92 line 7 to 10).

325. The two water heaters are the subject of a different quotation (AB 22) from that for the water tanks (AB 26). It seems to me that Mr Cheong had mixed up the two.

326. I am of the view that Vegold should be granted $20,000 for item 12.

Item 13 - Air-condition system

327. The parties agreed that no quantum should be allowed for item 13.

Item 14 - Television antennae

328. Mr Casimir recommended payment of the full $18,000 on the basis that the work had been completed.

329. In Closing Submission, GEHs Counsel argued that there was no direct evidence, such as invoices or receipts, that indicate that the works had been completed by the Defendants.

330. It was also argued that Brendma, not Vegold, had changed the TV aerial cables and TV wall point.

331. In my view, it is of no concern to GEH whether the work was done by Brendma or Vegold itself.

332. Secondly, if Vegold was not to be paid for this item, Mr Cheong would have stated so in his Table 1.

333. Instead, Mr Cheongs Table 1 commented that the work for this item was completed as reported by Mr Ang K T. He recommended payment of $18,000 also.

334. I allow Vegold $18,000 for item 14.

Item 15 - Room power cut-off point

335. Mr Casimir recommended payment of the full $15,000 for this item on the basis that the work had been completed.

336. Mr Cheongs Table 1 stated that the work had been completed but was not approved by Mr Ang as reported by Mr Ang on 2 August 2000. Yet Mr Cheongs Table 1 also noted that Vegolds quotation (at AB 23) had been approved by Mr Ang.

337. In the circumstances, I allow Vegold $15,000 for item 15.

Item 16 - To re-patch up the wall paper for the hotel

338. The quantum for this item was agreed at $4,000. However liability was not admitted.

339. Since this item is found in Vegolds quotation (AB 23) which Mr Ang had approved and as quantum is not disputed, I allow Vegold $4,000 for item 16.

Item 17 - Remove existing cooling tower, water heater, piping

340. Mr Casimir valued the works at the entire sum claimed of $24,000.

341. Mr Cheongs Table 1 commented that work was completed and he valued the works at $24,000 also.

342. I allow Vegold $24,000 for item 17.

Item 18 - Install two water heaters and piping system

343. Mr Casimir valued this item at $22,500. The quoted sum was $45,000.

344. He said two water heaters had been installed and about 20% of the piping work had been completed (NE 141 line 13 to NE 142 line 8). He attributed $10,000 for each of the two water heaters and $5,000 for the 20% of the piping work (NE 142 line 19 to NE 143 line 3).

345. On the other hand, Mr Cheong said he had obtained a quotation of the same model of the water heaters from Rheem (Far East) Pte Ltd dated 25 April 2000. This was Exhibit P1 and quoted the heater at a unit price of $2,360.

346. However, the quotation was not addressed to Mr Cheong but to GEH.

347. Secondly, in Mr Cheongs Table 1, he made the following contradictory comments for this item. First, he commented that the two Rheem heaters had been installed but were not suitable for use. Then, in the next column, he valued the works at the full sum of $45,000.

348. When this was pointed out to him, he had to ask for some time to review his comments. Thereafter, he said that Vegold should be entitled to the full $45,000 (NE 80 line 22 to NE 83 line 20) even though Mr Casimir had valued item 18 at $22,500 only.

349. In his comments, Mr Cheong also mentioned 34 instant water heaters costing $8,500 for item 18 which confused the matter further.

350. It is clear that Mr Casimirs evidence on this item is to be preferred. I allow Vegold $22,500 for item 18.

Item 19 - Re-wiring for generator and lift

351. Mr Casimir valued this item at $2,200 instead of the quoted amount of $11,000.

352. Mr Casimir saw some new orange cabling in Mr Cheongs AEIC p 49, photo No B3.

353. In Mr Cheongs Table 1, he was of the view that the work had not been done at all.

354. In cross-examination at NE 93 line 15 to 19, he accepted that some wiring was done, although it was not clear to him whether this was for the generator and lift. He said that some work was done but not satisfactorily.

355. I allow Vegold $2,200 for item 19.

The Third Renovation Package - continued

356. As for the Third Renovation Package, the quotation at AB 49 and 50 is for $363,430 excluding GST. In the Mutual Agreement, it was changed inexplicably to $363,930 also excluding GST. Paragraph 57 of the Defence and Counterclaim claimed $363,000. There was no explanation for these three different sums.

357. In para 86 of Mr Ngs AEIC and according to Mr Casimir, Vegold should be entitled to $217,380, excluding GST, for work done under the Third Renovation Package.

358. The alleged completed works under the Third Renovation Package were items 20 to 24 of Mr Cheongs and Mr Casimirs reports. I will also deal with them individually.

359. Before I do so, I would mention that, unlike the quotations for the works under the Second Renovation Package, the quotation for the works under the Third Renovation Package at AB 49 and 50 were not accepted by Mr Ang as such.

360. While the total sum of the Third Renovation Package was added to the total sum of the Second Renovation Package under the Mutual Agreement, it was an estimated sum. Secondly, it was subject to the qualification that Both party agreed (sic) the final settle (sic) figure of the construction cost of $831,790 will be determine (sic) upon physically checking of the items as stated in the invoice.

361. I read this to mean that as far as the works under the Third Renovation Package was concerned, GEH was not bound by the amount stated in the quotation even if the works were completed but would be liable for a fair amount.

362. I come now to items 20 to 24.

Item 20 (a) - M&E appointment

363. Mr Casimir valued this item at $8,000 instead of the quoted amount of $10,000 on the basis that the work was partially completed.

364. In cross-examination, he said that although CSC had not been obtained yet, related installations had been installed and these would have required the services of an engineer. He did not know how much Vegold paid to the M&E engineer for his appointment.

365. Mr Ng said Gilbert Choo, from M.E.E Consulting Engineers Pte Ltd (M.E.E.) was the M&E engineer but the works were not completed because of Mr Choo and Mr Ang.

366. In his Counsels affidavit to join M.E.E. as a Third Party in the action, it was alleged that Vegolds failure to complete all rectification works was caused and/or contributed to by the failure of Gilbert Choo to submit amended working plans to the relevant authorities for their approval.

367. In cross-examination, Mr Ng blamed both Gilbert Choo and Mr Ang for this as he claimed that Gilbert Choo had informed him of Mr Angs refusal to sign documents (NE 224 line 3 to NE 225 line 12).

368. Mr Ng gave various reasons for not calling Gilbert Choo as a witness. First, he said he was under the impression that GEH would call the professionals as witnesses. He then said it was because Gilbert Choo had been engaged by Mr Ang in August 2000 and agreed that that was the only reason

why he did not call Gilbert Choo as a witness (NE 225 line 14 to NE 26 line 6).

369. Mr Cheong gave no value for this item. He was not aware that Mr Gilbert Choo had been appointed.

370. It seems to me that this item is an overlap with item 11 which includes the appointment of an M&E engineer.

371. There was no elaboration on item 20(a) and it was unclear to me how much work Gilbert Choo had done or how much he had charged Vegold. The so-called evidence in Exhibit D2 has already been taken into account for item 11.

372. In the circumstances, I disallow the claim for item 20(a).

Item 20(b) - RI appointment

373. RI means registered inspectors.

374. The parties agreed the quantum for this item at $2,000 but not on liability. This item was in the quotation for the Third Renovation Package and the total cost for that package was stated in the Mutual Agreement. However, there was no evidence to support the allegation that RIs had in fact been appointed.

375. I disallow the claim for item 20(b).

Item 20(c)(i) - Pressurised fan for staircase

376. As Mr Casimir acknowledged that this was not done, this claim is disallowed.

Item 20(c)(ii) - Pressurised fan for corridor

377. Mr Casimir valued this item at $8,000 instead of the original quoted sum of $12,000 on the basis that the work was partially completed.

378. Strangely enough, Mr Cheong valued this item at $12,000 on the basis that the work was completed.

379. I allow Vegold $8,000 for item 20(c)(ii).

Item 20(c)(iii) - Pressurised fan for Smoke Free Lobby

380. Mr Casimir valued this item at $10,000 instead of the original quoted sum of $16,500 for work partially completed.

381. Again, strangely, Mr Cheong valued this item at the full quoted cost on the basis that the work was completed.

382. I allow Vegold $10,000 for item 20(c)(iii).

Item 20(d) - Construction of Smoke Free Lobbies

383. Mr Casimir valued this item at $20,000 instead of the original quoted sum of $30,000 on the basis that the works were partially completed.

384. Mr Cheong valued this item at $16,5000 also on the basis of partial completion.

385. I find that, as compared with Mr Cheong, Mr Casimir was more reliable.

386. I allow Vegold $20,000 for item 20(d).

Item 20(e) - Construction of half an hour fire rated doors for corridors from fourth to seventh floors

387. Mr Casimir valued this item at $12,000 instead of the original quoted sum of $16,000 on the basis of partial completion.

388. Mr Cheong valued this item at $4,000. His comment in his report was, Doors were poorly installed and does not comply with authorities regulations. There were no provision of vision panels and door closers. At the junction of the door frame (i.e jamb) and window frame (i.e mullion) there were gaps that will allow smoke/fire to spread from one compartment to another.

389. However in cross-examination, he accepted that the requirement of door vision panels was based on his own opinion and was not a requirement of building regulations.

390. He also did not produce any regulation requiring door closers.

391. If the doors did not comply with the relevant requirements and had to be replaced, then, Vegold should not be allowed any sum for them. Yet, Mr Cheong was prepared to give a valuation of $4,000.

392. GEHs other witness for this item was Ko Peng Chon (PW5). He is the sole-proprietor of Guan Wei Contractor who had been engaged by GEH to, inter alia, install fire-resistant doors in or about December 2000. His invoice is dated 29 March 2001. The work was done by his sub-contractor.

393. He pointed out a few doors shown in photos of Mr Casimir which were not up to full ceiling height. Better photos on this item are found in the report of Mr Cheong. However it was not suggested that the gap could not be closed or filled up.

394. As for gaps between the junction of the door frame and window frame, Mr Ko did not say there was any and my attention was not drawn to any photo to illustrate such gaps.

395. Mr Ko said he had to replace doors according to drawings of an architect but he did not specify the locations of the doors replaced. Neither were the drawings produced nor did the architect give evidence.

396. Item 1 of Guan Wei Contractors invoice showed installation of four sets of fire- resistant doors at fourth to seventh floors but no dismantling of existing fire-resistant doors on those floors.

397. Item 2 of the invoice refers to the dismantling of four sets of swing doors and installation of four sets of fire-resistant doors but it was not clear whether this pertained to fire-resistant doors installed by Vegold on the fourth to seventh floors or not.

398. I was of the view that GEH had not established that the doors replaced by Mr Kos sub-contractor were those installed by Vegold.

399. However, I note from the invoice that Guan Wei Contractors charges were $1,650 per set of fire-resistant door whereas Vegolds was $4,000 per set (see AB 49). In my view, Vegold was trying to over-charge GEH. I will allow Vegold $6,000 for item 20(e).

Item 20(f) - Changing tempered glass door at 3rd floor to half an hour fire rated door

400. Mr Casimir valued this item at $4,000 instead of the original quoted sum of $5,000 as the materials were on site.

401. Mr Kos evidence was not specifically on this item.

402. Mr Cheong gave no value for this item although his comment in Table 1 was that the door was supplied but not installed, and Ms Kee had valued it at $500.

403. In cross-examination, Mr Cheong admitted that he should himself have attributed a value and he suggested $500. He said he based this on Ms Kees assessment (NE 94 line 8 to line 22) but Ms Kee did not give any evidence.

404. Vegolds Counsel suggested that the value should be $3,333 on the basis that the material costs would be two-third of $5,000 but Mr Cheong disagreed.

405. I note that the $3,333 suggested by Vegolds Counsel was even lower than Mr Casimirs valuation of $4,000. Secondly, I do not see why the half hour rated fire door for the third floor should cost more than the unit cost of $4,000 for the same item for the other floors. The removal of the glass door should not cost $1,000. Thirdly, even the unit cost of $4,000 is excessive as I have already said in respect of item 20(e).

406. Bearing in mind that the work was not completed, I allow Vegold $1,300 for item 20(f).

Item 20(g) - Construction of pressurised air-duct from rooftop to 2nd floor, 4th to 7th floor corridor

407. Mr Casimir valued this item at $80,000 instead of the original quoted sum of $120,000 on the basis that the work was partly completed.

408. Mr Cheong valued this item at $40,000 also on the basis of partly completed work.

409. However PW7 Mr Lee Nang Hoe gave evidence for GEH. He was the owner of Air Duct Metal works. In para 7 of his AEIC, he said that the photos of ducting work, featured in Mr Casimirs report, were of work carried out by him. Mr Lee was not challenged on this aspect of his evidence.

410. Indeed, during cross-examination, Vegolds Counsel suggested that Vegold had done the coring

of the holes for the ducts, but not the ducting itself. He suggested that the coring work was more laborious. However, Mr Lee disagreed that coring work was laborious work.

411. I am of the view that Mr Casimir had wrongly assumed that the work he saw was all done by Vegold.

412. I allow Vegold $40,000 for item 20(g).

Items 20(h), (i) and (j)

413. The parties have agreed that the quantum for each of items 20(h), (i) and (j) is Nil.

Item 20(k) - To construct fire exit at 2nd floor as per drawings

414. The parties have agreed that the quantum for this item is $3,000 but did not agree on liability.

415. Mr Cheong had valued this item at nil but his comment in his Table 1 was that the work was not completed. This suggests it was partially done.

416. I allow Vegold $3,000 for item 20(k).

Item 21(a) - Construction of three mechanical car park barriers

417. Mr Casimir valued this item at $65,000 instead of the sum of $105,000 quoted by Vegold on the basis that materials were on site but the work was not completed.

418. Mr Cheongs report commented that the mechanisms had been supplied but not installed. He valued this item at $20,000 but he did not ask Ms Kee to value it.

419. I note that AB 174 and 175 was a revised quotation for three units for a mechanical car parking system from Norva (S.E.A.) Pte Ltd dated 6 June 2000. It was addressed to Eastern Park Hotel for the attention of Mr Ang. The quotation was for a total of $52,000 (excluding GST).

420. However, no one from Norva (S.E.A.) Pte Ltd gave evidence for GEH. Neither did any of the Counsel refer to it in cross-examination.

421. The burden is on Vegold to establish its claim and I am not satisfied that the sum quoted by Vegold for this item was fair.

422. Also it would have been a simple matter for Mr Ng to obtain a quotation from another supplier and get that supplier to give evidence. He did not.

423. Neither did GEH.

424. I allow Vegold $35,000 for item 21(a).

Item 21(b) - To paint three parking lots in front of the building

425. This item was agreed at $100 on quantum but there was no agreement on liability.

426. Mr Casimirs report was that this work was partly complete whereas Mr Cheongs report was that the works have not been executed.

427. I prefer Mr Casimirs evidence on this and I allow Vegold $100 for item 21(b).

Item 22

428. This was agreed to be valued at Nil.

Item 23 - To clean the CBPU for CSC

429. Mr Casimir valued this item at $2,500 out of the original quotation of $5,000 on the basis of partial completion.

430. In cross-examination, Mr Ng referred to a quotation from Leo & Leo Plumbing Service at Exhibit D2 p 12 as applying also to item 23.

431. The quotation was for $4,500 to do the following works:

(a) To obtain CSC from Sew (Dept) CBPU
(b) To turn on water supply
(c) To alter PUB water meter position.

432. Mr Ng claimed that he did engage Leo & Leo Plumbing Service and paid $2,000. However, he did not produce any other evidence of the engagement or the payment.

433. As for Mr Cheong, his report at his AEIC p 37C did not indicate what he thought of this item beyond a comment of (No approval from Mr Ang KT).

434. It seems to me that this item overlaps with one of Vegolds quotations at AB 25 under the Second Renovation Package whereby Vegold had quoted $57,000 to obtain TOP and CSC.

435. Even if item 23 is a separate item, there is insufficient evidence to persuade me that Leo & Leo Plumbing Service had been engaged by Vegold for the item.

436. I disallow the claim for item 23.

Item 24 - To do turfing for the car park

437. The parties agreed quantum for this item at $800 but did not agree on liability.

438. Mr Casimirs report stated that the work for this item had been completed.

439. Mr Cheongs Table 1 stated that the work had not been executed. However in the column for comments, he made adverse comments about the work. In yet another column, he then valued the work done at $1,280 although he attributed another $1,380 to reconstruct the work.

440. I prefer Mr Casimirs evidence on this and allow Vegold $800 for item 24.

Item 25 - To supply M&E for turn on of power supply for health centre

441. The basis for claiming item 25 is not pleaded although it is mentioned in Mr Ngs AEIC paras 25 and 28. This item should also have been claimed under the First Tenancy Agreement instead.

442. GEHs position is that under clause 4(4) of the First Tenancy Agreement, it is not responsible for turning on fees. Mr Ng disagreed because his position is that he is not bound by that agreement (NE 171 line 5 to 8).

443. I have found that he is bound by it.

444. The claim for item 25 is disallowed.

Item 26 - Still plate for car park and drawing of six parking lots

445. The basis for claiming item 26 is not pleaded nor is it mentioned in Mr Ngs AEIC. It is mentioned only in an invoice from Vegold at AB 20.

446. I disallow the claim for this item.

Item 27 - Supply of full equipment for hotel rooms

447. Likewise, the basis for claiming item 27 is not pleaded nor is it mentioned in Mr Ngs AEIC. It was mentioned only in an invoice (without letterhead) at AB 50.

448. I disallow the claim for this item.

Item 28 - Supply of manpower for removing furniture and fittings from rooms in a hotel at MacPherson Road

449. The basis for claiming item 28 is not pleaded.

450. In para 92 of his AEIC, Mr Ng claimed that Mr Ang had told him that his hotel at MacPherson Road (Great Eastern Hotel) had been sold to Ho Bee Development Limited. Mr Ang had proposed that Mr Ng salvage whatever furniture and fittings he wanted from that hotel and orally assured him that the labour and transportation costs would be borne by GEH.

451. Mr Ng also exhibited correspondence from the Receivers & Managers of GEH (at that time such Receivers & Managers had been appointed). However one of the letters dated 12 October 1999 stated clearly:

> We also understand from the directors that all costs incurred for the removal of items from GEHPL to 165 Kitchener Road is at your own expense.

452. I disallow the claim for this item.

Item 29 - Supply and re-installation of tel-cable for all hotel rooms

453. The quantum for this item was agreed at $2,000 but liability was not agreed.

454. The basis for claiming item 29 is not pleaded. Neither is it mentioned in Mr Ngs AEIC. It was mentioned only in an invoice (without letterhead) at AB 150.

455. I disallow the claim for this item.

Items 30 to 47

456. I have dealt with items 30 to 47 in paras 151 to 196 above.

Summary

457. The total of the sums allowed under the Second and the Third Renovation Packages for work done is $257,900 excluding GST. With GST it is $265,637.

Counterclaim by Vegold for being denied the opportunity to complete the Second and Third Renovation Packages (para 34(a) and part of para 58(a) of the Defence and Counterclaim)

458. . Vegold is claiming for loss of profits under the Second and Third Renovation Packages for being denied the opportunity to complete the works under these packages.

459. For this, Vegold is claiming 20% of $831,730, which was supposed to be the total of the Second and Third Renovation Packages if Vegold had completed all the works. This works out to $166,346.

460. This approach assumes that all the work was not done which is not true.

461. Vegold has already claimed for various items supposedly done and the profit element is already included in the claim for those items.

462. The fact that Vegold claimed 20% of the total without taking into account its claim for work done is illustrative of the way in which Mr Ng and his Counsel had presented the many claims on behalf of the Defendants.

463. It was also submitted for Vegold that Mr Ang had frustrated the performance of the Second and Third Renovation Packages.

464. First, Mr Ang was alleged to have refused to sign plans for submission (para 77 of Defendants Closing Submission) but there was insufficient evidence to establish this.

465. Secondly, it was also submitted for Vegold that Mr Ang had deprived it of the services of Gilbert Choo by instigating Mr Choo to stop rendering professional service to Vegold and engaging Mr Choo directly (see para 78 of Defendants Closing Submission). In my view, there was insufficient evidence to establish this.

466. It was also submitted for Vegold that GEH had wrongfully repudiated the contract for the Second and Third Renovation Packages by its failure to give Vegold prior notice and reasons for terminating the same (see paras 80 to 86 of Defendants Closing Submission). However, the evidence does not support this submission.

467. For example, at one point in time, Vegold had sent a letter dated 27 April 2000 to GEHs Mr Ang (see Mr Ngs AEIC p 233). In the letter, Vegold complained that because Vegold had not received any deposits or payment for invoices allegedly handed personally to Mr Ang, Vegold would stop work till payment was received. However, this letter ignored the Mutual Agreement under which the parties had agreed to set-off $720,000 of the cost of the Second and Third Renovation Packages against the rent payable by Brendma.

468. Also, as at 27 April 2000, the works done by Vegold had not cost $720,000.

469. In another letter dated 5 May 2000 from Vegold to GEH (see AB 131), Vegold gave a different excuse. It said that since March 2000, the project had come to a standstill because of constant interruption caused by Mr Angs disruption in bringing in third-party contractors. This letter ignored the fact that Brendma had been writing several letters to GEH to complain about defects.

470. I also note from correspondence that, at times, when such third-party contractors wanted to gain access, Brendma claimed that the hotel guests safety and comfort were being compromised.

471. At one point of time, Brendma also wanted to claim compensation for loss of use of hotel rooms, thus obstructing GEH in carrying out works.

472. The correspondence from Brendmas solicitors (see AB 226 and 227, 236 and 237) also demonstrated that at one time Brendma was seeking an indemnity from GEH in case Vegold should make a claim against Brendma in respect of the renovation works even though Vegolds contract was with GEH and not with Brendma. Furthermore, Vegold and Brendma were controlled by Mr Ng.

473. After considering all the evidence, I do not accept that Vegold was denied the opportunity to complete the works. It had been dragging its feet while at the same time Brendma, which was also controlled by Mr Ng, was complaining about various defects in the hotel at the Property.

474. There was also no evidence to substantiate that 20% was Vegolds profit element.

475. I disallow this claim.

Claim by Vegold for submission of relevant amended drawings (para 34(b) and part of para 58(a) of Defence and Counterclaim)

476. Vegold is claiming $200,000 for loss suffered in respect of submission of one set of amended drawings.

477. In his AEIC at para 88, Mr Ng did not elaborate on this particular claim except to refer to a letter from Vegold dated 14 January 2000 to GEH.

478. The letter states:

> RE: CONFIRMATION FOR APPLICATION OF CSC FOR 165 KITCHENER ROAD SINGAPORE 208532

Dear Sir,

With reference to the above, you have agreed and spend for the above project at the amount of Singapore Dollars Eight Hundred Thirty One Thousand Only (S$831,000.00). This amount does not include any plan application/submission/amendment of requirements from BCA, FSB, LTA, MOE, which is estimated at Singapore Dollars Two Hundred Fifty Thousand (S$250,000.00).

479. However, Mr Ngs AEIC at para 88 was still claiming $200,000 without any explanation for the difference in the sums.

480. Then, para 131 of the Defendants Closing Submission argues that GEH and/or Mr Ang was liable to pay the $250,000 mentioned in the said letter and because Mr Ang had frustrated the contract in respect of the Second and Third Renovation Packages, Vegold was entitled to claim $50,000 being 20% of loss of profit on the $250,000.

481. As is evident, this $50,000 is a different sum from the $200,000 originally claimed.

482. Secondly, I did not agree that there should be an additional $250,000 quotation.

483. This is because Vegold had previously given a quotation for $57,000 (see AB 25 dated 10 June 1999) for the engagement of an architect and an M&E engineer to submit documents to obtain TOP and CSC. Mr Ang had accepted that quotation.

484. The letter dated 14 January 2000 was, in my view, an attempt to double-charge GEH and to inflate Vegolds charges.

485. In any event, there is no other evidence to substantiate that the sum of $250,000 was a fair sum for submission of documents or that 20% was the correct or fair percentage for Vegolds profit for this work.

486. Accordingly, I disallow this claim.

OVERALL SUMMARY

487. Although Vegold is entitled to $265,637 under the Second and Third Renovation Packages (see para 457 above), Vegold is not entitled to judgment for any sum in view of the agreement to set-off $20,000 a month against rent payable by Brendma under the Third Tenancy Agreement and the Mutual Agreement, both of which have still not been terminated.

488. On the other hand, GEH is entitled to payment of the balance of the rent from 15 January 2000 to 14 June 2000 i.e $141,000 (see para 243 above).

489. However, GEHs Counsel sought to persuade me that the corporate veil should be lifted and judgment be entered against Mr Ng personally as well.

490. On the one hand, it is true that the arrangements to set-off various rent payable by Mr Ng initially and later by Brendma, under the Third Tenancy Agreement and Mutual Agreement, against

Vegolds works arose only because Mr Ng controls Vegold as well.

491. However, I do not agree that Mr Ng was using Brendma to avoid Vegolds obligations to carry out the works under the various Renovation Packages.

492. I also do not agree that Vegold and Brendma are a sham and faade for Mr Ngs businesses.

493. GEHs Counsel also referred to the following evidence from Mr Ng at NE 236 line 11 to 13:

> Q The reason for that is because in Mr Angs dealings with you, you are the true contracting party for Brendma and Vegold?
>
> A Yes. He knew that these 2 companies belong to me.

494. However I am of the view that Mr Ng understood the question to mean that he was contracting for Brendma and Vegold and not that he was personally liable for their contracts. Indeed, in the next question, he emphatically denied that he was the actual contracting party, see NE 236 line 15 to 19:

> Q Put: When the 3rd Defendants entered into the 3rd tenancy agreement, the actual contracting party was you.
>
> A Disagree. Government should not allow a private limited company to be registered if someone signs under such a name can be still construed as the true contracting party.

495. I am of the view that Mr Ng is entitled to use corporate vehicles to carry out different businesses just like Mr Ang or anyone else. If, by using such corporate vehicles, he enjoys limited liability, that is what the law allows. Should Mr Ng be personally liable for Brendmas liabilities then Mr Ang should likewise be personally liable for GEHs liabilities, if any. Yet, Counsel for Mr Ang, who also act for GEH, was denying that Mr Ang had any personal liability.

496. It was clear to Mr Ang that Mr Ng was using his corporate vehicle Brendma for the tenancy of the hotel and the health centre. Mr Ang accepted this and hence the parties to the Third Tenancy Agreement were GEH and Brendma. Although the Mutual Agreement is between Mr Ng and Mr Ang, it was entered into on behalf of their respective corporate vehicles.

497. Secondly, the liability to pay rent is found primarily in the Third Tenancy Agreement.

498. Thirdly, under the Mutual Agreement, the monthly rent is referred to as being for Brendma and Brendma will be paying $37,000 as monthly rental to Great Eastern Hotel Pte Ltd .

499. I have lifted the corporate veil to the limited extent mentioned above eg see paras 220, 221 and 286 but I do not think it should be lifted any further.

500. Accordingly, I grant judgment in favour of GEH against only Brendma for $141,000 with interest at 10% per annum from 14 June 2000 to the date of full payment.

501. GEHs claim for an account and inquiry and, alternatively, for damages is dismissed.

502. All counterclaims by the Defendants are dismissed.

503. All claims by any of the Defendants against Mr Ang personally are also dismissed.

504. I will hear the parties on costs.

Sgd:

WOO BIH LI
JUDICIAL COMMISSIONER