Singapore Salvage Engineers Pte Ltd
v
North Sea Drilling Singapore Pte Ltd

[2016] SGHC 05

High Court — Suit No 1071 of 2013
Edmund Leow JC
21-24, 28 April; 5 October 2015

Agency — Construction of agent's authority

Agency — Evidence of agency

12 January 2016

Edmund Leow JC:

Introduction

1 The question to be answered in this case is whether the defendant has to pay the plaintiff for thruster lashing services that were carried out on an oil rig known as "Troll Solution" in Singapore. The answer to the question depends on the role played by two individuals, namely, Jason Choo ("Mr Choo") and John McMullen ("Mr McMullen"), and whether they had the requisite authority, actual or apparent, to contract with the plaintiff on behalf of the defendant.

2 Upon consideration of the evidence at trial and the parties' submissions, I gave judgment in favour of the plaintiff for the principal sum of S$414,600 against the defendant and awarded interest at 5.33% from the date of the writ.

The defendant has since filed a notice of appeal against my decision. I now give the grounds for my decision.

The facts

The parties

3 The plaintiff, Singapore Salvage Engineers Pte Ltd, is a company incorporated in Singapore. Its business is to carry out marine services including, *inter alia*, the salvaging of vessels, underwater welding and fabrication, and the repair of ships, tankers and other ocean-going vessels. Ignatius Francis Danakody ("Mr Ignatius") and Ivan Francis Danakody ("Mr Ivan") are the directors of the plaintiff.

4 The defendant, North Sea Drilling Singapore Pte Ltd, is a company incorporated in Singapore. Its business is to provide support services for operations to be carried out on an oil rig known as "Troll Solution" ("TS") whilst it was in Singapore between January and May 2012, which included the procurement of upgrading and repair works. It is undisputed that the defendant's operations were divided principally into two teams, namely, Team A (which dealt with upgrading works to be performed on TS) and Team B (which dealt with repair and operational works). Mr Choo was the only employee of the defendant and by his appointment as its procurement logistics manager, he had the authority to issue purchase orders on behalf of the defendant directly to third party vendors. Roger Simmenes ("Mr Simmenes") was the director of the defendant at the material time.

5 The defendant is part of a group of companies incorporated to manage and support the requirements of TS. Given that TS' requirements were

dependent on where TS was located at the relevant period of time, specific entities would be incorporated at each location to provide the necessary support services to TS. The defendant was one such entity. TS was principally managed by North Sea Drilling Group AS ("NSDG"), a corporation incorporated in Norway, and NSDG and the defendant are "sister corporations" wholly owned by TrollDrilling & Services Ltd ("TDS"), a company incorporated in Cyprus. 99.36% of the shares in TDS are owned by Blue Capital Pte Ltd ("BCPL"), a company incorporated in Singapore. Brian Chang Holdings, a company incorporated in Singapore, also provides management services to BCPL. Brian Chang ("Mr Chang") is the main shareholder of BCPL and the father-in-law of Mr Choo. Even though each of these entities within the group performed narrow and specific functions in support of TS and belonged to the group, they were completely separate and distinct entities.

6 For the period of time in which TS was located in Singapore, NSDG had also engaged Maritime Projects AS ("Maritime") to manage the yard stay and execution of works on TS in respect of "Team A" works. Rune Tvedt ("Mr Tvedt") was the managing director of Maritime, who in turn engaged Pascaline Pte Ltd ("Pascaline") to assist in the management of Maritime's responsibilities in Singapore. Mr McMullen is the director of Pascaline and took on the role of site manager to monitor the works performed on TS in Singapore. As Mr Tvedt was not based in Singapore, and Mr Choo lacked the experience in the offshore industry to be able to give advice on the technical aspects of works performed on TS, Mr McMullen was the only person involved in the day-to-day operations of TS in Singapore with the requisite technical knowledge and expertise.

The claim

7 The plaintiff's claim has been quantified at S$414,600 (the "Principal Sum"), being the costs of services rendered by the plaintiff to the defendant including the postponement of services, or alternatively, reasonable compensation on a *quantum meruit* basis fixed at the Principal Sum. The breakdown of the Principal Sum is as follows:

(a) S$59,000 per day for work performed on 5 and 6 May 2012;

(b) S$59,000 for additional works performed on 7 May 2012;

(c) S$59,000 per day for "cancellations" on 30 April and 2-4 May 2012; and

(d) S$1,600 in total for fabrication of eight pad-eyes.

8 The plaintiff relies on the quotation sent from Mr Ivan to Mr McMullen by way of an email dated 3 April 2012 (the "Quotation") as its basis for the abovementioned breakdown of the Principal Sum. The relevant portion of the Quotation is reproduced here:

> With regards to the below [email], we are pleased to quote for the below marine services.
>
> 1) Fabrication of pad-eye
>
> Rate: S$200 per pad-eye
>
> 2) Provide chain, shackles and turnbuckles
>
> 3) Provide 01 unit barge, 02 unit tugboats, crew, riggers, cutters, fitter, welders, welding and cutting equipment, scaffolding equipment, scaffolding team and 01 unit scissor lift to lash 03 unit thruster for vessel at West Jurong Anchorage.
>
> Rate: S$59,000

Remarks:

- Client to arrange all necessary permits and approvals
- Client to arrange hot work permit for operation
- Subject to vessel availability upon confirmation
- Any cancellation within 24 hrs will be charged at full rate.

9 Upon receiving the Quotation, Mr McMullen forwarded it to Mr Choo requesting that Mr Choo issue a purchase order to the plaintiff. On 4 April 2012 at 6.20pm, Mr Choo issued Purchase Order No. 0136-2012 dated the same (the "PO") directly to Ivan by way of an email attachment. The PO made reference to the Quotation as it stated "as per attached email quotation dated 03/04/12" under the list of items which were the subject of the purchase order. The text of the email accompanying the PO stated "[d]ear Ivan, [a]ttached PO for your kind attention. All technical issues to be addressed to John." The signature block at the end of the email indicated that Mr Choo was employed by the defendant. The plaintiff subsequently carried out the thruster lashing services on TS on 5 May 2012 and completed demobilisation the following day. The plaintiff issued Tax Invoice No. SSE.IN.20120141 dated 30 July 2012 to the defendant for the cost of services rendered by the plaintiff to the defendant at the Principal Sum.

10 The defendant's preliminary objection is that the PO could not constitute a valid and binding agreement given that there was no intention to contract at that stage. It submits that Mr Choo and Captain Geow (from Brian Chang Holdings) had sought to make preliminary enquiries about the PO from the plaintiff but these queries were not responded to. It was in light of the "inherent vagueness as to the terms of the Quotation" that Mr Choo prepared an unsigned purchase order to be issued to the plaintiff. To this end, Mr Choo states that by sending the PO, he was merely seeking to "facilitate" the process because he

did not wish to cause undue delay, and had copied the email to the relevant personnel for them to seek proper authorisation for the PO concurrently. Mr Choo claimed that he "operated on the basis that Rune and/or Mr McMullen would do the necessary follow up procedures with NSDG" and that given that the PO was of nil value, "this would have initiated further correspondence from the plaintiff and/or Pascaline on this issue".

11 But if Mr Choo was merely seeking to facilitate the process (and by "facilitate" I assume he meant that the email did not constitute a valid and binding agreement and he did not intend for the plaintiff to act on the PO issued), it would not have been unreasonable to expect Mr Choo to indicate such an intention (or lack thereof) in his email to the plaintiff. Mr Choo could have easily stated that the PO was merely sent to "facilitate" the process and the PO would only be confirmed when the appropriate approvals were obtained. The fact that Mr Choo sent the PO to the plaintiff directly in this case without any such qualifier or condition attached, albeit unsigned, must have some significance. Mr Choo himself said that he did not wish to cause the project undue delay, and it was clear that these services had to be performed in time for the dry-tow of TS from Singapore to Rotterdam. If he was not intending to contract with the plaintiff at the point in time of sending the PO, there would be no purpose at all in sending the PO to the plaintiff. Further, by Mr Choo's own admission, he did not follow up with Mr Tvedt or Mr McMullen on the status of the approvals for this particular contract with the plaintiff and merely waited for them to take action to obtain the necessary approvals, assuming, if he did not hear from them, that NSDG was happy with services contracted for. Clearly, Mr Choo's explanations are merely bare assertions unsupported by evidence. The logical inference from Mr Choo's actions in the circumstances of the case

is that by sending the PO to the plaintiff, he intended for the plaintiff to commence work in preparing to provide the services and even to carry them out, and thus intended to contract with the plaintiff at the time the PO was issued.

The issues

12 The issues that arise from the pleadings and submissions are:

(a) whether Mr Choo and Mr McMullen had actual authority to enter into a contract with the plaintiff on behalf of the defendant;

(b) whether the agreement fails for want of certainty; and

(c) whether the terms of such agreement entitles the plaintiff to be paid the Principal Sum.

Issue 1 – whether Mr Choo and Mr McMullen had actual authority to enter into a contract with the plaintiff on behalf of the defendant

The law on actual authority

13 The essential element underpinning actual authority is a consensual agreement between principal and agent. The consent can be given either expressly or by implication from their words and conduct. The principal and agent will be held to have consented if they have agreed to what amounts in law to such a relationship, even if they do not recognise it themselves and even if they have professed to disclaim it: *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 ("*Tjong Very Sumito"*) at [148] (citing *Garnac Grain Company Incorporated v H M F Faure & Fairclough Ltd and Others* [1968] AC 1130 ("*Garnac*") at 1137). Courts should have regard to the substance of the matter rather than the form: a contract describing the parties

as principal and agent is not conclusive that they are such, and conversely there may be an agency relationship though the agreement creating it purports to exclude the possibility: *Garnac* at 1137 and *South Sydney District Rugby League Football Club v News Ltd and others* (2000) 177 ALR 611 at 645. It is of primary importance what the principal and agent said and did at the time of the alleged creation of the agency, though earlier words and conduct may be taken into account as historical background. Later words and conduct may have some bearing, though they are likely to be less important: *Tjong Very Sumito* at [148].

14 The authority implied is usually necessary to enable the agent to effectively perform the task for which the agent had been appointed. As noted by Professor Tan Cheng Han, *SC* in Tan Cheng Han, *The Law of Agency* (Academy Publishing, 2010) at para 03.025, where no express words conferring authority have been used, "this does not mean that the appointee is completely without authority. It is often the case that by making the appointment, both the appointer and the appointee impliedly agree that the appointee shall have such authority that is within the usual scope of that office." In addition, Professor Tan states at para 03.027 of *The Law of Agency* that "the surrounding circumstances may show that even where the type of authority in question would not usually attach to an office, the conduct of the parties and the surrounding circumstances demonstrate that the appointee was to have such implied authority."

Application to the facts – Mr Choo's authority

15 The defendant submits that Mr Choo does not have express authority to enter into transactions above S$5,000. To this end, the defendant relies on email correspondence from Mr Choo in which he states that approval from NSDG

personnel is required for the issuance of purchase orders above the sum of S$5,000 on behalf of the defendant. In the subsequent email correspondence however, it appears that Mr Choo's S$5,000 limit only applies to the operations side of the project ("Team B" works) as Bjarte replied to Mr Choo's aforementioned email with "I assume this is for operations side…" The main thrust of the plaintiff's argument on Mr Choo's purported authority to issue the PO is thus that the limitation to Mr Choo's authority merely extended to "Team B" works and not "Team A". Since the contract with the plaintiff was "Team A" work, Mr Choo had the requisite authority to issue the PO to the plaintiff on behalf of the defendant.

16 In response, the defendant asserts that Mr Choo's authorisation limits applied homogeneously to both teams, and relies on Mr McMullen's admission on the stand that after a meeting with Mr Simmenes, he understood Mr Choo's limitation to authority to cover the "project side" of the work ("Team A" work) as well. But it is unclear whether Mr McMullen's understanding of Mr Choo's S$5,000 limit applying to the projects side was based on an express statement, or whether it was based on an absence of differentiation between the two categories. There are no minutes of the meeting to document what had transpired. In my view, the evidence of Mr McMullen as to whether the limitation to Mr Choo's authority applied homogenously or only to works on the repair and operations side should be accorded little weight.

17 In any event, even if I accept that on paper, Mr Choo had a S$5,000 limit to his authority to issue purchase orders on behalf of the defendant, in my view, the circumstances of the case reveal that the actual authority which Mr Choo had, and can be implied from the circumstances, was not limited to S$5,000.

18 The defendant has outlined its protocol instituted for the procurement, verification and payment of services as follows:

(a) Stage One (Procurement): The defendant would issue purchase orders for the procurement of services and/or items for TS. The issuance of purchase orders was facilitated by Mr Choo and would have to be endorsed or approved. Purchases above S$5,000 and up to US$50,000 would have to be approved by Inge and Bjarte, NSDG's operations manager and chief technical officer respectively. Purchases up to US$100,000 would have to be approved by Mr Simmenes. Purchases above US$100,000 would have to be authorised by Mr Simmenes in consultation with Mr Chang.

(b) Stage Two (Verification): The defendant would review the vendor's invoices and other relevant accompanying documentation. If the invoices were not accompanied by vouching documentation ordinarily bearing the vessel stamp of TS, they would be rejected and payment would not be expected to be made on the same.

(c) Stage Three (Payment): The defendant would obtain final approval from NSDG before making final payment for such services/items.

19 The defendant has claimed that the "above procedures were consistently and pragmatically observed … at all material periods of time". This would mean that at Stage One, depending on the amount stated in the quotation received from the third party vendor, Mr Choo would obtain the necessary approval or endorsement prior to issuing the relevant purchase order to the third party

vendor. In theory, the defendant's procurement, verification and payment protocol sounds logical and convincing. But the practical implementation of this protocol appears to me to be quite a different story. The most telling indication of this can be found in Mr Choo's admission at trial that he may not necessarily know whether the requisite approval has been given *prior* to issuing the relevant purchase order to third party vendors. Even though Mr Choo asserted that he could rely on others like Mr Tvedt or Mr McMullen to make the necessary requests to obtain approval (at times when he did not seek approval directly), the reality is that neither he nor those persons found it necessary to *ensure* that approval has been obtained prior to issuing the purchase orders to third party vendors. In fact, his evidence suggests that *it did not matter* if approval had been obtained. A closer look at the implementation of the defendant's internal protocol thus reveals that contrary to its assertions, the implementation of its internal authorisation procedure was often haphazard in nature and not adhered to.

20 The defendant has also emphasised in its evidence that as part of the procurement procedure which has been established in the company and in NSDG, the third stage was a "fail-safe mechanism" in which the approvals and invoices are verified to determine whether or not the third party vendor has to be paid. Based on this argument, since Mr Choo had not obtained the requisite approval for this contract with the plaintiff, it would follow that the defendant is not bound to pay the plaintiff for the services rendered. But the contract between the defendant and the third party vendor is formed at the first stage; the issuance of a purchase order directly to a third party in response to a quotation received, in the absence of any express indication that this does not amount to a contract, would be reasonably construed as acceptance of an offer to contract.

In the event that approval has not been received at the first stage, and yet the principal acquiesces to the agent continuing to contract with third party vendors, the principal has in effect given the agent implied actual authority to bind the principal to those purchase orders issued. By the time this third stage is reached, third party vendors would have already acted on the understanding that their quotations had been accepted, and moreover, would have provided the services which had been contracted for. Dividing the procurement procedure in this manner allows the defendant, in effect, to seek to repudiate contracts which they may subsequently decide are not beneficial to them, and suggests a reason for the defendant's flippancy towards Stage One. It is disingenuous on the part of the defendant to attempt to repudiate a contract even after it has been formed. This is inherently unfair to third party vendors who have entered into contracts with them and performed services with the legitimate expectation that they would be paid, and should not be allowed.

21 There is also a strong inference that the alleged approval procedure cannot be the true state of affairs because it is inherently unworkable. The defects in the structure which had purportedly been implemented in the defendant must have been known to Mr Simmenes and others in NSDG. If approvals were to be sought for every project which had a value above S$5,000, regardless of the urgency of the work involved, Bjarte and Inge would have expected to be contacted very frequently. But this did not happen with the plaintiff, nor with other vendors, and no alarm bells were raised. One must therefore infer that the defendant had acquiesced to Mr Choo executing contracts with third parties without first ensuring that approvals had been given. Further, the fact that there was a lack of sufficient oversight or supervision over Mr Choo's role in Singapore (neither Mr Simmenes, the director of the

defendant at the material time, nor those in Norway who were allegedly in charge of giving approvals for issuance of purchase orders were fully aware of Mr Choo's actions in Singapore) demonstrates that the defendant had given Mr Choo actual authority to continue to execute agreements on their behalf, even if the amount exceeded S$5,000.

22 This is also supported by the fact that as far as we know, Mr Choo has never been disciplined for his actions, not even for breaching internal procedures, nor have his actions been repudiated. Assuming that the limits to Mr Choo's authority on paper were a reflection of the true state of affairs, Mr Choo would have clearly breached internal protocols in his manner of dealing with the plaintiff. He had issued the PO to the plaintiff without ensuring that the necessary approval was given, and had not even bothered to follow-up with Mr Tvedt or Mr McMullen to find out whether NSDG had endorsed the issuance of the PO. But it does not appear that the defendant has ever informed Mr Choo, whether in writing or orally, that he had overstepped his authority in this matter and what he did was wrong, or merely to inform him that they may have a claim against him.

23 The logical inference to be drawn from the events which transpired at the material time and the events leading up to the current proceedings is that in the eyes of the defendant, Mr Choo had not done anything wrong, and leads me to question the legitimacy and veracity of the procurement, verification and payment procedure put forth by the defendant. Mr Choo, by his own admission, has no knowledge of the offshore industry. He was appointed because he is related to Mr Chang, who is his father-in-law, initially to the Brian Chang group to assist Mr Chang on various projects such as investments and a hydroelectric

barge project, and eventually to the position of rig-coordinator and procurement logistics manager in the defendant. His initial involvement appeared to be limited and he has described his experience as one akin to an "intern" and in which he was "just thrown stuff" to "read, read, read". It was apparent to all that even though his formal position was that of rig-coordinator and procurement logistics manager, he would have been unable to make any substantive decisions on such matters, and that was presumably the reason for the alleged limitations on his authority. Nevertheless, there is some evidence that he had previously contracted for amounts above S$5,000 without first obtaining approval. The plaintiff has provided the court with purchase orders which had previously been issued for amounts above S$5,000 by the defendant to third party vendors. It is undisputed that Mr Choo was the person responsible for issuing purchase orders to third party vendors. The defendant, in response, has provided email correspondence to evince that approval had been obtained for a few of the purchase orders which had been issued with a value above S$5,000, but not all. Had these purchase orders been authorised, the defendant presumably would have furnished evidence of such approvals, which in all likelihood would have been approved in a similar manner to those for which evidence of approvals were readily given to the court. At the end of the day, however, I make no finding as to the admissibility of the supplementary bundle of documents given to the court by the plaintiff. Mr Choo's superiors must have known that he was issuing purchase orders above his alleged limit to authority in such a manner, but allowed him to continue. As Mr Choo explained, the various projects were urgent, and would not have proceeded if he had scrupulously followed the alleged protocols. That may explain why his superiors allowed him to continue contracting, but they must clearly have accepted the risks of allowing him to do so. Unlike other cases where agents act fraudulently and exceed their authority

for personal gain, Mr Choo acted entirely honestly and did his job to the best of his ability. Unfortunately, it was a job he was totally unqualified to perform. But he did not exceed his authority, as his superiors knew what he was doing and allowed him to continue.

24 In summary, I find that the defendant's alleged protocol for procurement, verification and payment was a belated assertion on its part and was being relied on in an attempt to escape from what was effectively a bad deal, to argue that this contract exceeded Mr Choo's authority. In actual fact, I found that they are merely internal rules which the defendant and Mr Choo knew to be never followed or enforced, and thus do not affect this agent's authority to contract with the plaintiff in the present case. This is buttressed by the fact that prior to engaging counsel (who sought to argue that Mr Choo had no actual authority to contract), the defendant did not, at any point in time after receiving the invoice from the plaintiff, query or convey *to the plaintiff* that Mr Choo did not have the requisite authority to issue the PO. It is surprising, to say the least, that the defendant did not convey this to the plaintiff at the first instance, assuming that this was the true state of affairs. I thus found that Mr Choo had the actual authority implied from the conduct of the parties and the surrounding circumstances to issue the PO from the defendant to the plaintiff and thus enter into a contract with the plaintiff on the defendant's behalf.

Application to the facts – Mr McMullen's authority

25 Mr McMullen has stated at trial that he does not have the authority to "enter into any contract on behalf of the defendant". The defendant relies on this to submit that Mr McMullen had no authority to execute contracts for services on the defendant's behalf or authorise any person to execute such contracts. The

scope of Mr McMullen's work was merely to provide supervision and general consultancy work. But it is likely that what Mr McMullen had in mind when giving his evidence on the stand was whether he had express actual authority to enter into contracts on behalf of the defendant. Further, the phrase "enter into any contract" would likely conjure up in his mind the issuance of purchase orders on behalf of the defendant, which clearly fell within the purview of Mr Choo's authority and not his. In contrast, what we are concerned about in the present case relating to Mr McMullen's authority is not the issuance of purchase orders, but the authority to bind the defendant to certain representations made on its behalf which related to the postponement of the plaintiff's services and the cancellation charges incurred consequently. This, to Mr McMullen's mind, was likely to be a different sort of question than that which was asked of him to respond to. I will thus turn to consider whether he has implied actual authority to do so in the context of this case.

26 On this point, the defendant submits that it was not incidental to the effective execution and performance of Mr McMullen's responsibilities as a site manager to contract with third party vendors like the plaintiff on behalf of the defendant. It is undisputed that Mr Choo did not have much knowledge or experience in the maritime industry. Mr Choo was relatively new to the industry and unfamiliar with the technical requirements of thruster lashing and the like. In contrast, Mr McMullen was the one with the necessary experience in the maritime industry to be able to work out technical details of the contracts entered into with third parties. Though Mr Choo held the title of "procurement logistics manager", it was Mr McMullen who had the requisite experience and contacts in the industry to source for suitable third party vendors to provide the necessary engineering works and services on TS. There was in actual fact no

other person in Singapore appointed by the defendant to work in the shipyard with the requisite experience in this industry to be able to liaise with third party vendors on the details of contracts entered into between them and the defendant.

27 Mr McMullen would thus effectively take over supervision of the contract once Mr Choo had issued the relevant purchase order, as demonstrated in the case at present. Mr Choo's email to the plaintiff in which he issued the PO and referred all technical issues to Mr McMullen was Mr Choo's only contact with the plaintiff. In actual fact, it was not merely technical issues which were addressed to Mr McMullen, but issues relating to cost-negotiation and payment of services as well. This is demonstrated most clearly throughout the period in which the plaintiff was seeking payment from the defendant. Mr McMullen was the one tasked to liaise with NSDG to convey information about the services which had been provided by the plaintiff, and at the same time, liaise with the plaintiff in an attempt to negotiate, on behalf of the defendant, the amount of costs that had to be paid to the plaintiff. In my view, though Mr McMullen's role was merely that of a site manager in form, in reality and in substance, his role went well beyond that. Mr McMullen was the point of contact with third party vendors like the plaintiff throughout the duration of the project from the beginning to the end. Given that members of the defendant and NSDG were in Singapore on a rotational basis and were aware of the respective roles which Mr Choo and Mr McMullen played in respect of TS, I found that the defendant had similarly acquiesced to the course of dealing that Mr McMullen had with Singaporean third party vendors wherein he could determine, *inter alia*, which cancellation dates would bind the defendant, and whether demobilisation and additional works would be charged at the same rate as the Principal Sum. Like Mr Choo, there was similarly no evidence of Mr

McMullen acting in bad faith. He had no reason to exceed his authority because he had no personal gain to derive from doing that. In light of the circumstances of the case, I found that Mr McMullen's role was that of an agent of the defendant involved in the procurement of services for TS in sourcing for third party vendors and making representations to third party vendors on behalf of the defendant. The ambit of his actual authority was not confined to fine-tuning merely the technical details related to a contract, as stated in Mr Choo's email, but included the actual authority to make representations on behalf of the defendant as to terms of the contracts entered into, and hence bind the defendant to such decisions made.

Issue 2 – whether the contract fails for want of certainty

28 The defendant submits that no valid or binding agreement exists in the present case due to uncertainty in the terms of the agreement in three aspects: (a) the Quotation is not clear as to the applicable rate to be applied for the provision of the plaintiff's alleged services; (b) the scope of the works to be provided is uncertain; and (c) the number and specifications of the pad-eyes are uncertain. It is trite that the court should endeavour to give effect to an agreement rather than to strike it down. At the same time, I note that in the absence of any consensus on the essential or material terms of a contract, there can objectively be no *consensus ad idem* that could form the basis of a contract.

29 But I was not satisfied that the scope of the works to be provided and the materials to be used are so uncertain as to warrant a striking down of the agreement entered into between the plaintiff and the defendant. There were some details provided as to the equipment that would be used, and it is unnecessary for a quotation from a vendor to provide the exact quantity or

specification of equipment to be used. Even the quotations which have been provided by the defendant in support of its case do not specify the exact quantity to be used for each type of equipment (*ie*, how many turn buckles, wires, or securing sockets are to be used) or how much manpower is required to carry out the operation. In any event, the quotation and the PO were not issued *in vacuo* in light of Mr McMullen's ongoing discussions with the plaintiff which had covered the nature of the equipment to be used in the provision of services to the defendant. I thus do not find the defendant's objections on (b) and (c) persuasive and will focus on the first objection raised by the defendant, *ie*, that the pricing of the services has not been agreed upon, which is clearly a material term of the contract.

30 It is not clearly indicated on the face of the written contract alone whether "$59,000" refers to a lump sum rate or a daily rate. A related consideration, to my mind, is whether the term "any cancellation within 24 hrs will be charged at full rate" includes services which have been cancelled for that particular day and postponed. What the court must ascertain, based on all the relevant objective evidence, is the intention of the parties at the time they entered into the contract. The meaning which the expressions in a document would convey to a reasonable person is to be considered having all the background knowledge which would reasonably have been available to the parties at the time of the contract. The plaintiff's expert, Mr Nandprasad Shiwsaakar ("Mr Shiwsaakar"), a director of Universal Marine Surveying & Consultancy (S) Pte Ltd, has given evidence to state that it is customary for all equipment in the maritime industry to be charged based on time and that the quantum of the charges in this case was reasonable. Further, I had not been given sufficient reason to disbelieve the evidence of Mr Shiwsaakar. By way of

an email dated 2 May 2012, the plaintiff had informed Mr McMullen that the two scissors lift, two units of fenders and welding equipment had been loaded onto the barge and the plaintiff would be required to charge the necessary cost for the charter of the barge, tugboat, and scissors lift from that day, notwithstanding the postponement of services. Mr McMullen replied the following day in acknowledgment of the plaintiff's email on the chartering charges.

31 In light of the circumstances of the case, I was of the view that the charging of maritime equipment based on timing would have been part of the background knowledge of the parties at the material time. The email correspondence between Mr McMullen and the plaintiff demonstrated, to my mind, that the parties understood that the charges for maritime equipment would be affected by the number of days required to perform the contract and consequently, the price of the contract between the parties would be determined on that basis. Mr McMullen's acknowledgment of the plaintiff's email also indicates that it was the common understanding between the parties at the time of the contract that the rate specified in the Quotation would be a per day rate, dependent on the number of days required to conduct the operation. If I were to accept the defendant's submission that "cancellation" has to refer to a permanent termination of the business relationship, this would lead to the highly improbable result that as long as the defendant cancels the contract at least 24 hours in advance, they would be under no obligation to pay the plaintiff *any* sum of money, even in the event that marine equipment has been procured by the plaintiff for the provision of services to the defendant. In my view, such a situation was highly unlikely, and I found that the parties understood the contract between the plaintiff and the defendant as one which was time-sensitive

and determined based on the amount of time which was required for the thruster lashing services to be completed. At times when services were postponed at short notice, or when the demobilisation of the equipment required another day of work, or an additional day of work was required, these were charges which the parties understood at the time of contracting to be chargeable under the contract and at the rate specified as a per day rate. Hence, I found that the contract which the parties agreed upon was for thruster lashing services to be charged at S$59,000 per day. Given that no material term of the contract is uncertain, in my view, there was sufficient certainty in the terms of the contract so as to prevent the contract from being set aside.

Issue 3 – is the plaintiff entitled to its claim based on the contract?

32 The plaintiff has produced Work Orders which were each signed by Mr McMullen on behalf of the defendant indicating acceptance or acknowledgement of the plaintiff's provision of services, and the dates on which services were cancelled. The defendant has raised various objections relating to the Work Orders: first, that the plaintiff had backdated the Work Orders, second, that the Work Orders do not bear the master's stamp of TS and fails the second stage of the defendant's internal procedures, and third, that the information in the Work Orders are inconsistent with the alleged events.

33 Turning to the first issue raised by the defendant, the defendant alleges that the fact that the Work Orders were "conveniently issued in running order" and that the endorsement of the Work Orders by Mr McMullen "in an almost consistent manner" give rise to a reasonable suspicion that the Work Orders were prepared after commencement of proceedings and were backdated. The defendant further relies on the vagaries of the witnesses' ability to remember

and recall certain details to allege that the inconsistencies between the testimonies point to the fact that the Work Orders were prepared subsequent to the commencement of proceedings. But the witness's ability to recollect dates accurately is inversely proportional to the length of time that has elapsed from the material event, and in this case would be almost three years later. It was thus not surprising that the witnesses in this case may have difficulty remembering details of when the Work Orders were signed. Further, it is important to distill Mr McMullen's evidence on the Work Orders. His evidence is that he had managed to negotiate with the plaintiff to agree to charge the defendant for fewer cancellations than what the plaintiff had been intending to charge. Based on his evidence, it would not have been surprising that there were fewer Work Orders prepared subsequently in comparison to the number of days of cancellations, and that the Work Orders may have been prepared after the negotiations had been finalised between the parties. Merely because the Work Orders may not have been prepared prior to the negotiations and were not disclosed at an early stage in proceedings does not necessarily lead to the reasonable inference that the Work Orders were prepared after proceedings have commenced "with the sole purpose of embellishing the plaintiff's case". For the reasons mentioned above, I was unable to accept the defendant's arguments on the Work Orders being backdated.

34 Given that I had also found that the internal procedures of the defendant are inherently unworkable and not legitimate, I did not find it necessary to consider the defendant's objections relating to the Work Orders failing to bear the master's stamp of TS. In any event, the evidence of industry practice on the necessity of a master's stamp of TS for the payment of services is not uncontradicted, and the evidence on this issue is hence inconclusive. This

requirement was also neither communicated to third party vendors in general, nor to the plaintiff in this case. Even though there are some inconsistencies on the Work Orders relating to the location in which TS was at at the material time, I did not find such inconsistencies to be sufficient cause to set aside the Work Orders on that basis or that little weight should be placed on them.

35 In my view, none of the matters raised by the defendant persuaded me that the Work Orders, which were valid on their face, did not represent the cancellation charges that should be levied on. I thus found that the defendant is bound by the contractual terms as negotiated between Mr Choo, Mr McMullen and the plaintiff, which included charging the cancellation, mobilisation and additional works costs at the rate of S$59,000 per day, and that work has been duly carried out by the plaintiff. As I found for the plaintiff on the contractual claim, I did not find it necessary to consider the claim for unjust enrichment.

36 In conclusion, I found that the plaintiff succeeds on its claim for the Principal Sum of S$414,600 against the defendant and I awarded interest at 5.33% from the date of the writ. In relation to costs, while the plaintiff had generally succeeded, its costs order was subject to two caveats. First, there had been no decision on the additional documents that the plaintiff adduced during the trial, which would be excluded from the costs order. Second, the plaintiff originally claimed interest and abandoned that claim on the first day of trial. This resulted in unnecessary costs being incurred on both sides. I therefore discounted the costs order by 5%. This meant that the plaintiff would receive 95% of its costs, to be agreed or taxed. The plaintiff would also receive disbursements separately, with no discount to be applied.

Edmund Leow
Judicial Commissioner

Charmaine Fu and Wong Shi Yi (Ang & Partners) for the plaintiff;
Chong Yee Leong and Azmin Jailani (Allen & Gledhill LLP) for the defendant.
