

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 194

Suits No 532 and 736 of 2016

Between

GPE Pte Ltd

... Plaintiff

And

Siemens Pte Ltd

... Defendant

JUDGMENT

[Building and Construction Law] — [Damages] — [Damages for defects]
[Building and Construction Law] — [Damages] — [Delay in completion]

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GPE Pte Ltd
v
Siemens Pte Ltd

[2018] SGHC 194

High Court — Suits No 532 and 736 of 2016

Chan Seng Onn J

10–13 October 2017, 14–16, 20, 21 March 2018; 23 July, 2, 24 August 2018

6 September 2018

Judgment reserved.

Chan Seng Onn J:

Introduction

1 The defendant, Siemens Pte Ltd, engaged the plaintiff, GPE Pte Ltd, to undertake works in relation to the construction of customised, pre-assembled modular power substations, also known as “E-Houses”. The plaintiff was to fabricate, assemble and erect the structure and casing of three E-Houses.¹ Each E-House would be the subject of a different project. The three projects are: (a) the Jangkrik Project; (b) the 030 Project; and (c) the 103 Project.

Summary of claims and counterclaims

2 In relation to the Jangkrik Project, the plaintiff claims for losses arising out of delays allegedly caused by the defendant with damages to be assessed, as well as variation works that it had allegedly undertaken amounting to

¹ Plaintiff’s closing submissions, paras 3 – 6.

\$248,253.17.² The defendant in turn counterclaims for liquidated damages arising from delays in the project that it alleges were caused by the plaintiff amounting to \$448,768.98, as well as back charges for costs that it had to incur to rectify the defects allegedly caused by the plaintiff amounting to \$29,992.³

3 In relation to the 030 Project, the plaintiff claims \$432,573.48, which is equivalent to 60% of the original contract price, for fabrication works that it had purportedly completed. Additionally, it claims for variations works allegedly undertaken amounting to \$32,796.22, as well as wasted costs due to the defendant's wrongful removal of the erection portion of the contract after works had already commenced, the quantum of which is to be assessed.⁴ The defendant in turn counterclaims for \$290,204.05 that had allegedly been overpaid to the plaintiff, on the basis that the fabrication works had not actually been completed. It also counterclaims back charges of \$16,787.20 and \$39,989.03 respectively for costs that it had to incur to rectify the defects allegedly caused by the plaintiff and to carry out additional testing works.⁵ The defendant also counterclaims for damages to be assessed arising from delays to the 030 Project.

4 In relation to the 103 Project, the plaintiff claims \$109,206 for completed works that had been invoiced but yet to be paid by the defendant. It also claims for variation works allegedly undertaken amounting to \$162,939.04, and losses incurred as a result of delays allegedly caused by the defendant, the quantum of which is to be assessed.⁶ The defendant counterclaims liquidated damages of \$20,763.76 for delays to the project which it alleges were caused by

² Plaintiff's closing submissions, para 14.

³ Defendant's defence and counterclaim for S 532/2016, pp 13–15.

⁴ Plaintiff's closing submissions, para 27.

⁵ Defendant's defence and counterclaim for S 532/2016, pp 13–15.

⁶ Plaintiff's closing submissions, para 49.

the plaintiff, overpayment of \$226,200 for acceleration of works which were ultimately not done, as well as back charges of \$28,197.03 for costs that it had to incur to rectify the defects allegedly caused by the plaintiff.⁷

My decision

Plaintiff's claims for losses arising out of idle time due to alleged delays caused by the defendant in the Jangkrik and 103 Project

5 Before I determine whether the defendant is liable for the plaintiff's losses occasioned by the alleged delays caused by the defendant, there are three threshold issues that must first be resolved.

6 First, the defendant argues that the plaintiff's claims for losses arising out of idle time due to the defendant's alleged delays have not been pleaded. Therefore, this precludes the plaintiff from belatedly making such claims. The plaintiff's statements of claim for both S 532/2016 and S 736/2016 merely indicate the planned completion dates of the various projects pursuant to the contracts between the parties, and state that due to the fault of the defendant the projects were not completed in time and damages are to be assessed due to the delays in the completion of the projects.⁸ Indeed, there is no explicit mention of any claim for idle or prolongation costs arising out of the delays in both the statements of claim.

7 However, in my view, the pleadings can be read broadly to encompass the plaintiff's claim for losses arising out of idle time as a result of the defendant's alleged delays. In this regard, I found some merit in the plaintiff's argument that the only logical way that its pleadings could have been interpreted

⁷ Defence and counterclaim for S 736/2016, pp 10–11.

⁸ Statement of claim for S 532/2016, paras 5–6; statement of claim for S 736/2016, paras 4–5.

is that it is claiming for prolongation costs or costs for idle machinery and manpower due to the delays caused by the defendant in the completion of the projects. This is because the plaintiff in the present case is the contractor whilst the defendant is the employer and owner of the projects. Therefore, the late completion of the projects *per se* would be inconsequential to the plaintiff, except where the plaintiff has incurred prolongation costs or costs for idle machinery and manpower due to the delays caused by the defendant. Further, given that the pleadings are for “damages to be assessed” in favour of the plaintiff due to these alleged delays caused by the defendant, I find that it is of sufficient generality for me to adopt such a broad reading. Accordingly, I dismiss the defendant’s objection on the basis that the claim was not pleaded.

8 The second preliminary issue to be addressed is the plaintiff’s allegation that the defendant has admitted to causing the delays. For this, the plaintiff relies on a letter from Ms Janice Khaw, the head of procurement for the defendant, sent to Mr Stephen Morris (“Morris”) of the plaintiff. The material part of this letter which the plaintiff alleges amounts to an admission states:⁹

Please also do note that we are ready and willing to enter into further negotiations to verify the claims that you have made. In the interest of both parties, we would like to propose a meeting with your directors to resolve these claims amicably. Please do let us know if you are agreeable with this approach.

9 In my view, this letter only goes as far as to indicate that the defendant is willing to enter into amicable negotiations with the plaintiff to resolve any disputes that they had. It does not by any means amount to an unequivocal admission of liability on the part of the defendant for causing delays to the projects. Accordingly, I reject the plaintiff’s assertion that the defendant has admitted to the delays.

⁹ Stephen Morris’ affidavit of evidence-in-chief (“AEIC”) for S 532/2016, pp 209–210.

10 The third and final preliminary issue relates to the plaintiff's assertion that the drawings have to be issued at least two months before the scheduled commencement dates for each part of the projects. The plaintiff relies on the fact that the defendant's witness, Mr Prakash Krishnamoorthy ("Prakash"), had agreed with a statement that I suggested to him during trial, where I stated that as a matter of logic, the drawings would have to be issued two months in advance in order for the works to be completed in time.¹⁰

11 I do not find this to be conclusive evidence that the drawings must be issued at least two months in advance. First, if the plaintiff wanted to establish the fact that drawings must be issued at least two in months in advance, then it is incumbent upon counsel for the plaintiff to put that specific fact in his question to the witness. Further, I had suggested that statement to the witness as a question of logic, to which his agreement meant that he agrees with my logic and not with the exact time period of two months. The two-month figure which I had used was an arbitrary figure which is simply meant to illustrate the logic behind the proposition I was making: that fabrication drawings must be issued by the defendant to the plaintiff well in advance of the agreed completion date for the fabrication of the item so that the plaintiff has sufficient time to plan for the work, order the materials from the defendant, fabricate the item and then deliver the fabricated item to the defendant in time to meet the agreed completion deadline.

12 Having dealt with the preliminary issues for this category of claims, I turn now to consider whether liability has been established for each claim. A tabulated summary of my decision for each of the plaintiff's claims relating to the alleged delays caused by the defendant can be found in Table A1 below.

¹⁰ Notes of evidence, 20 March 2018, p 58 line 19 – p 59 line 4.

Table A1: *Losses arising from delays allegedly caused by the defendant in the Jangkrik and 103 Project*

S/N	Description of alleged delay	Plaintiff's case	Defendant's case	Decision
Jangkrik Project				
1.	Delay in issuance of Weld Procedure Specifications ("WPS")	There was an email from the Indonesian authorities ("MIGAS") where the plaintiff was instructed to stop work (the "6 May Email") because they did not have the correct WPS. ¹¹	The 6 May Email actually states that MIGAS did not want the work to be held up and therefore the plaintiff could go ahead with conducting the Welder Qualification Testing ("WQT") notwithstanding the erroneous reference numbers on the WPS.	<p>It is not disputed that the first WPS issued by the defendant had erroneous WPS numbers.</p> <p>However, the 6 May Email states that notwithstanding this error, the plaintiff could go ahead with carrying out the WQT for its 25 welders.¹²</p> <p>The plaintiff's complaint therefore is that the defendant had delayed in re-issuing corrected WPS, which in turn prevented the plaintiff from qualifying new welders in the interim from 28 April 2015¹³ to 25 June 2015.</p> <p>I accept the plaintiff's evidence that MIGAS was only willing to relax the WPS requirements for the first 25 welders who were qualified, but for subsequent welders the defendant would have to obtain a new set of WPS with corrected numbers.</p> <p>Indeed, the defendant did not issue a corrected set</p>

¹¹ Stephen Morris' AEIC for S 532/2016, p 639.

¹² Stephen Morris' AEIC for S 532/2016, p 639.

¹³ Sze Thiam Siong's AEIC for S 532/2016, Annex 2, p 2.

				<p>of WPS until 25 June 2015.¹⁴</p> <p>Given that there is <i>prima facie</i> evidence of idle manpower and machinery from Morris' oral testimony, I therefore send this claim down for assessment to determine the loss (if any) resulting from idle manpower and machinery from 28 April 2015 to 25 June 2015 because the new welders were prevented from being qualified.</p>
2.	Delay in issuance of drawings	<p>The inference should be that the drawings are to be pushed to the plaintiff by the defendant. The defendant has signed off on the schedule.</p> <p>The schedule shows the scheduled start dates and when the drawings should be received.¹⁵ Serial nos. 7, 8 and 9 all indicate that the drawings were received after the scheduled start date. Therefore, there is <i>prima facie</i> evidence of delay in the issuance of</p>	<p>The Jangkrik contract states that "all the relevant drawings will be issued progressively in line with the project schedule". This indicates that the plaintiff would have to request for the drawings before they are issued by the defendant.</p>	<p>In the absence of evidence to the contrary from either party, I infer that the burden would ordinarily be on the defendant to automatically forward the relevant drawings to the plaintiff having to request for them from the defendant each time. The defendant is fully aware of the scheduled dates by which the various drawings should be made available to the plaintiff.</p> <p>Given that the plaintiff is able to adduce evidence of at least one instance where there was a delay in the issuance of drawings, I agree that liability is <i>prima facie</i> made out and I therefore send this claim down for</p>

¹⁴ Notes of evidence, 15 March 2018, p 51 line 7 – line 10; Stephen Morris' AEIC for S 532/2016, p 2792.

¹⁵ Stephen Morris' AEIC for S 532/2016, p 230.

		drawings by the defendant.		assessment of the losses (if any) due to the idle time whilst waiting for the drawings to be issued.
3.	Delay in delivery of materials	<p>The plaintiff is confining its claims to those as stated in Exhibit D11, where the defendant has admitted to a delay but alleges that it is not a critical delay.</p> <p>During trial, there were assertions made by Morris that there were workers and machinery sitting around idle.¹⁶ This was not challenged.</p>	<p>In order to establish its claim for losses arising out of idle time, the plaintiff has to adduce evidence that it actually had idle workers and machinery. Given that it has failed to do so, the claim must be dismissed.</p>	<p>I send this claim down for assessment since the plaintiff is confining its claims only to those items where liability for the delay in the delivery of the materials has been accepted by the defendant.</p> <p>Further, Morris made certain unchallenged assertions during trial that he had observed idle workers and machinery as a result of these delays. Accordingly, there is sufficient evidence to establish a <i>prima facie</i> case of liability.</p> <p>I note however that it is incumbent on the plaintiff to adduce evidence at the assessment stage to prove exactly how much losses it had incurred due to idle time whilst waiting for the materials to be delivered by the defendant.</p>
103 Project				
4.	Losses incurred by the plaintiff as a result of the defendant's delay in its issuance of	The plaintiff relies mainly on the expert report of Mr Koh Beng Soon ("Koh") who found that	The tables that the plaintiff relies on to allege delay were meaningless –	The findings of the defendant's own expert witness, Koh, are naturally not challenged by the defendant. Therefore, there is

¹⁶ Notes of evidence, 11 October 2017, p 71 line 3 – line 29; p 89 line 8 – line 26, p 111 line 18 – line 31.

	drawings and materials.	the defendant was indeed late in the issuance of drawings ¹⁷ and materials. ¹⁸	there is no analysis of whether the date of issuance of any of the first version drawings and/or materials has resulted in any delay at all, or the extent of such a delay. ¹⁹	sufficient evidence to establish a <i>prima facie</i> case that the defendant is liable for delays in the issuance of drawings and materials. Accordingly, I send this claim down for assessment of the losses (if any) due to the idle time whilst waiting for the drawings to be issued or the materials to be delivered by the defendant.
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¹⁷ Koh Beng Soon's AEIC for S 736/2016, p 19, para 3.4.8.

¹⁸ Koh Beng Soon's AEIC for s 736/2016, p 19, para 3.4.10.

¹⁹ Defendant's closing submissions, para 309.

Plaintiff's other claims

13 A tabulated summary of my decision for each of the plaintiff's other claims in relation to the 030 Project and 103 Project, which do not relate to the alleged delays caused by the defendant, can be found in Table A2 below.

Table A2: *Plaintiff's other claims*

S/N	Description of claim	Plaintiff's case	Defendant's case	Decision
030 Project				
1.	Wasted costs incurred by the plaintiff due to the defendant taking away the erection part of the contract.	<p>The plaintiff alleges that the fabrication of the PG beam was surreptitiously included in the main purchase order (“PO”).²⁰ The plaintiff had initially clarified with the defendant whether the fabrication of the PG beam was indeed necessary and the defendant stated that it was not. Thereafter, the defendant changed its position and said that the plaintiff would have to fabricate the PG beam. However, because of this sudden need to fabricate the PG beam, the plaintiff was not able to complete by the original stipulated date.</p> <p>On account of the plaintiff's</p>	<p>Documentary evidence shows that the fabrication of the PG beams had been included in the PO since as early as 14 July 2015. The plaintiff had signed the main PO for the 030 Project which expressly included the PG beam.²¹</p> <p>It was agreed between parties during a meeting on 3 November 2015 (the “3 November Meeting”) that the erection part of the contract would be taken away.²²</p>	<p>The parties had clearly agreed that the erection works would be removed and that the plaintiff would be paid 60% of the original contract sum for the fabrication works. The issue concerning the PG beam had already been raised before the 3 November Meeting. Given that there is no evidence to show otherwise, the logical inference is that the PG beam issue or dispute would be covered by the settlement agreement reached on the 3 November Meeting.</p> <p>Further, I do not accept the plaintiff's argument that it had reserved its right during the 3 November Meeting to subsequently claim for wasted costs arising out of the removal of the erection part of the contract.</p> <p>Therefore, I dismiss the plaintiff's claim for wasted costs.</p>

²⁰ Plaintiff's closing submissions, paras 38–48.

²¹ Stephen Morris' AEIC for S 532/2016, pp 2016 and 2019.

²² Paliyath Prasad Kumar's AEIC, pp 12–14.

		inability to finish the works in time, the defendant took away the erection part of the contract and awarded it to someone else.		
2.	Plaintiff's claim for 60% of contract price amounting to \$432,573.48, for the fabrication works allegedly completed.	There is no dispute that the parties had agreed for 60% of the original contract sum to be paid for the fabrication works. The plaintiff has completed the fabrication works but has not yet been paid.	There is documentary evidence to prove that certain fabrication works had not yet been completed by the plaintiff. For example, an assembly drawing specified for the beams to be delivered as one item but it was delivered as two separate items. ²³ Additionally, the plaintiff has admitted that it did not complete all the fabrication works ²⁴ and hence the plaintiff should not be entitled to the entire sum claimed.	Taking the plaintiff's case at its highest, assuming that it has completed all the fabrication works, I enter judgment for \$432,573.48. However, this judgment is to be stayed pending the outcome of the assessment stage where the costs incurred by the defendant to complete any uncompleted portion of the fabrication works will have to be set off against this judgment sum. I note that the defendant's witness had adduced cogent and convincing evidence that <i>some</i> of the fabrication works was not fully completed. Therefore, this judgment sum is subject to any set offs for uncompleted works or defects counterclaimed by the defendant, to be determined at the assessment stage.
103 Project				
3.	\$109,206 for completed	The plaintiff has completed the	The defendant is not disputing	I enter judgment for the sum of \$109,206 to be

²³ Defendant's reply submissions, para 113.

²⁴ Plaintiff's closing submissions, paras 30–31.

	works that have been invoiced but yet to be paid.	required works in the 103 Project and has invoiced the defendant for \$109,206 but the defendant has yet to make payment.	that this sum is owed but that it can be set off from the final amount due to the defendant.	paid by the defendant to the plaintiff. Judgment is to be stayed pending the outcome of the assessment stage. The defendant's counterclaims for this project as assessed at the assessment stage are to be consolidated and set off from this amount.
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Plaintiff's claims for variation works

14 With regard to the plaintiff's claims for variations works that it had purportedly done, there is a preliminary question that first has to be answered. The defendant points out that cl 4 of its General Conditions of Purchase of Goods and Services, which forms part of the terms of the Jangkrik contract, states that the plaintiff is not to undertake any variation works unless there is prior written confirmation or agreement.²⁵ Therefore, the defendant argues that since there is no evidence of such "prior written confirmation or agreement", the plaintiff should not have undertaken any of the variation works which it now claims for, much less be paid for it.

15 In my view, cl 4 does not go so far as to deprive the plaintiff of payment for variation works that it had completed. The issuance of a revised drawing by the defendant to the plaintiff suffices as a confirmation in writing which satisfies cll 4.3 and 4.5. The only breach that is apparent to me is of cl 4.4, which states that the plaintiff, upon receiving a notification for a variation to be done, must provide a written statement within 14 days stating the changes to the dates, timescales, milestones and charges following such variation. There is no dispute that such a written statement was never issued by the plaintiff. That said, cl 4.4 is silent as to the consequences of a breach. The defendant argues that as a consequence of the plaintiff's non-compliance with cl 4.4, it had been deprived of the opportunity to withdraw its revised drawings, for example if it had found that the cost of the variation works was too high. I accept that as a matter of principle the plaintiff had breached cl 4.4 of the Jangkrik contract, and damages for this breach could be assessed at the assessment stage. However, given that the defendant had not during the entire period of the construction of the E-

²⁵ Defendant's closing submissions, para 104; Stephen Morris' AEIC for S 532/2016, p 14.

Houses rejected any of the variations works on account of the plaintiff's non-compliance with cl 4.4 and given that the defendant had in fact agreed to some of the plaintiff's claims for variation works despite there not being any written statements issued to the defendant, I find that the defendant is estopped from relying on this clause to entirely disclaim liability now for the other variation works that are in dispute.

16 Having dealt with this preliminary issue, I turn then to consider the plaintiff's claims for variation works in the Jangkrik, 030 and 103 projects. A tabulated summary of my decision for each of the disputed claims can be found in Table A3 below. A list of the claims that parties have agreed to as to liability can be found in Table A4 below.

Table A3: *Liability on the variation claims in the Table below are disputed by defendant*

S/N	Variation claim	Plaintiff's case	Defendant's case	Decision
Jangkrik Project				
1.	LGT-MPW-SP-005			This claim was withdrawn by the plaintiff during the further hearing on 24 August 2018.
2.	LGT-MPW-SP-007	Payment for this variation work should be based on labour costs as opposed to additional steel weight. This is because the additional steel parts installed are relatively lightweight. However, the costs involved in	The contract is a measurement contract. Therefore the final price inclusive of all variations should be calculated based on the final weight of steel and not based on the additional labour or time	I find merit in the plaintiff's argument that this variation work involves a lot of work but the final increase in weight is relatively small. The plaintiff has produced evidence showing that the incremental steel weight arising from this variation is small. I note that it leads to an unfair situation where the variation ordered to be done pursuant to a revised drawing issued by the defendant

		<p>having to re-mobilise the labour, to re-analyse the revised drawing and then to carry out the reworks are far greater than the payment based on the additional steel weight.</p>	<p>expended for the variation work.</p>	<p>requires a lot of labour but contributes to a relatively low increase in weight as is the case here. I accept that this is a measurement contract based on the steel weight as agreed between the parties. But the price per ton of steel to be fabricated has been worked out and agreed by the parties based on a certain complexity of the fabrication work as understood by the parties. Where revised drawings subsequently issued by the defendant give rise to variation works that increase the complexity of the steel work without much increase to the steel weight, then the plaintiff is unduly taken advantage of, unless the defendant can point to a specific clause in their measurement contract that clearly stipulates that any subsequent variation work is to be similarly priced based on the additional steel weight. This the defendant is not able to.</p> <p>Furthermore, if the variation involves work to cut out materials thereby leading to a reduction in the total steel weight, it could lead to the absurd situation where the plaintiff doing the extra work effectively has to pay the defendant for ordering such a variation work if I were to adopt the defendant's proposed method of pricing for the variation work based on the total steel weight. In the absence of a specific clause stating clearly that variations are to be priced based on the changes to the steel weight occasioned by the variation work, I conclude that the</p>
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				<p>variations are to be priced on a <i>quantum meruit</i> basis and not on the basis of any addition/reduction of the total steel weight occasioned by the variation.</p> <p>Accordingly, I send this claim down for assessment to determine on a <i>quantum meruit</i> basis the amount of labour cost expended for this variation.</p> <p>Before allowing the plaintiff's claim for labour cost for the variation work, the plaintiff is to refund to the defendant whatever it has been paid in relation to any increase in the weight of steel occasioned by the variation so as to avoid any double payment to the plaintiff.</p>
3.	LGT-MPW-SP-009: Purported addition of stiffeners allegedly resulting from the defendant's revised drawings			<p>For the same reasons given in s/n 2 above, I send this claim down for assessment to determine on a <i>quantum meruit</i> basis the amount of labour cost expended for this variation.</p> <p>Before allowing the plaintiff's claim for labour cost for the variation work, the plaintiff is to refund to the defendant whatever it has been paid in relation to any increase in the weight of steel occasioned by the variation so as to avoid any double payment to the plaintiff.</p>
4.	LGT-MPW-SP-013			Same as for s/n 3 above.
5.	LGT-MPW-SP-014			Same as for s/n 3 above.

6.	LGT-MPW-SP-015			Same as for s/n 3 above.
7.	LGT-MPW-SP-021: Alleged reworks for levels 2, 3 and 4 of the E-House module.			Same as for s/n 3 above.
7.	LGT-MPW-SP-029		This is a duplicate claim and should not be allowed. ²⁶	I send this claim down for assessment. The burden is on the defendant to adduce evidence to show that this is indeed a duplicate claim.
8.	LGT-MPW-SP-035: re-orientation of pillars			This claim was withdrawn by the plaintiff during the further hearing on 24 August 2018.
9.	LGT-MPW-SP-038: Claim for cutting plan	The contract specifically states that “cutting list/plan” is to be prepared by the defendant for the beams. Without a cutting plan, the plaintiff could not carry out the cutting of the beams from the raw materials in a manner which would minimise wastage. ²⁷	The defendant did not request the plaintiff to prepare a cutting plan, nor was one required to carry out the works for the Jangkrik Project. The Jangkrik contract merely states that the defendant would “check” the cutting plan if the plaintiff so decides to prepare one. ²⁸	The scope matrix states that it is the defendant’s responsibility to prepare a “cutting list/plan”. There are two possible interpretations that can arise from this: first, that the defendant is to prepare a cutting list “or” a cutting plan; second, that the defendant is to prepare a cutting list “and” a cutting plan. I note that the other projects which had beams and plates required both cutting lists and cutting plans. Therefore, given that the Jangkrik Project also had both beams and plates, I infer that it

²⁶ Defendant’s closing submissions, paras 153–156.

²⁷ Plaintiff’s closing submissions, para 23.

				would also require both cutting lists and cutting plans. Therefore, I find that the cutting plans are works that the defendant would have required. I therefore send this variation claim down for assessment to determine what is the reasonable cost for such works.
030 Project				
11.	LGT-STR-VO-0014			All the variation claims relating to the 030 Project were withdrawn by the plaintiff during the further hearing on 24 August 2018 on the basis that it did not have evidence before the court to support these claims.
12.	LGT-STR-VO-0015			
13.	LGT-STR-VO-0016			
14.	LGT-STR-VO-0017			
15.	LGT-STR-VO-0018			
16.	LGT-STR-VO-0019			
17.	LGT-STR-VO-0020			
18.	LGT-STR-VO-0021			
19.	LGT-STR-VO-0022			
20.	LGT-STR-VO-0023			
21.	LGT-STR-VO-0024			

²⁸ Defendant's closing submissions, paras 150–151.

22.	LGT-STR-VO-0025			
23.	LGT-STR-VO-0026			
24.	LGT-STR-VO-0027			
25.	LGT-STR-VO-0028			
26.	LGT-STR-VO-0029			
27.	LGT-STR-VO-0030			
28.	LGT-STR-VO-0031			
29.	LGT-STR-VO-0032			
30.	LGT-STR-VO-0033			
31.	LGT-STR-VO-0034			
32.	LGT-STR-VO-0035			
33.	LGT-STR-VO-0036			
34.	LGT-STR-VO-0037			
35.	LGT-STR-VO-0038			
36.	LGT-STR-VO-0039			
37.	LGT-STR-VO-0040			

38.	LGT-STR-VO-0041			
39.	LGT-STR-VO-0042			
40.	LGT-STR-VO-0043			
41.	LGT-STR-VO-0044			
42.	LGT-STR-VO-0045			
103 Project				
43.	LGTWP-STR-VO-008: Costs incurred for having to transport excess material back to the defendant.	The defendant by mistake delivered about double the required quantities of materials to the plaintiff. ²⁹ Therefore, the plaintiff had to incur additional costs to transport these excess materials back to the defendant.	The defendant rejected the claims because “[i]n accordance with [the Plaintiff’s] responsibility scope matrix item B.25 ‘Any offcut or unused materials shall be returned through MRN (material return note) to [the Defendant’s] Store...’” ³⁰ This is therefore the plaintiff’s responsibility.	From the outset, I informed parties that I will only allow these claims if the amount of excess material delivered by the defendant is unreasonable when compared to the total weight of the project. The total weight of the excess material for claims LGTWP-STR-VO-008 and LGTWP-STR-VO-009 is 128 tonnes. The total weight of the project is 637 tonnes. This means that the excess material amounted to only about 20% of the total weight of the project. I note that this does not include the weight of the excess material from the LGTWP-STR-VO-010 claim because such evidence is not before the court. Nevertheless, I do not think that the weight of the excess material is so unreasonable as to require the defendant to compensate the plaintiff for the transport costs. Therefore I dismiss these claims.
44.	LGTWP-STR-VO-009			
45.	LGTWP-STR-VO-010			

²⁹ Plaintiff’s closing submissions, para 54.

46.	LGTWP-STR-VO-012			This claim was withdrawn by the plaintiff during the further hearing on 2 August 2018.
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Table A4: *Liability on the variation claims in the Table below are accepted by defendant*

S/N	Variation Claim	Decision
Jangkrik Project		
1.	LGT-MPW-SP-001	Variation claim is to be sent for assessment on a <i>quantum meruit</i> basis.
2.	LGT-MPW-SP-002	As in s/no 1 above.
3.	LGT-MPW-SP-003	As in s/no 1 above.
4.	LGT-MPW-SP-004	As in s/no 1 above.
5.	LGT-MPW-SP-008	As in s/no 1 above.
6.	LGT-MPW-SP-010	As in s/no 1 above.
7.	LGT-MPW-SP-012	As in s/no 1 above.
8.	LGT-MPW-SP-019	As in s/no 1 above.
9.	LGT-MPW-SP-011	As in s/no 1 above.
10.	LGT-MPW-SP-017	As in s/no 1 above.
11.	LGT-MPW-SP-020	As in s/no 1 above.
12.	LGT-MPW-SP-021	The defendant has accepted liability only for the variation works done to level 1 and disputed its liability with respect to those at other levels. ³¹ Therefore, this variation claim is to be sent for assessment on a <i>quantum meruit</i> basis only for the variation works done to level 1.
13.	LGT-MPW-SP-028	As in s/no 1 above.

³⁰ Defendant's closing submissions, para 286.

³¹ Defendant's closing submissions, para 139.

14.	LGT-MPW-SP-025	As in s/no 1 above.
15.	LGT-MPW-SP-030	As in s/no 1 above.
16.	LGT-MPW-SP-031	As in s/no 1 above.
17.	LGT-MPW-SP-032	As in s/no 1 above.
18.	LGT-MPW-SP-033	As in s/no 1 above.
19.	LGT-MPW-SP-034	As in s/no 1 above.
20.	LGT-MPW-SP-036	As in s/no 1 above.
21.	LGT-MPW-SP-037	As in s/no 1 above.
22.	LGT-MPW-SP-038	The defendant has accepted liability only for the weld maps but does not accept liability for the cutting plans. ³² Accordingly, this variation claim is to be sent for assessment on a <i>quantum meruit</i> basis only for the weld maps.
103 Project		
23.	LGTWP-STR-VO-001	As in s/no 1 above.
24.	LGTWP-STR-VO-002	As in s/no 1 above.
25.	LGTWP-STR-VO-003	As in s/no 1 above.
26.	LGTWP-STR-VO-004	As in s/no 1 above.
27.	LGTWP-STR-VO-005	As in s/no 1 above.
28.	LGTWP-STR-VO-006	As in s/no 1 above.
29.	LGTWP-STR-VO-007	As in s/no 1 above.
30.	LGTWP-STR-VO-011	As in s/no 1 above.

³² Defendant's closing submissions, paras 148–151.

31.	LGTWP-STR-VO-013	As in s/no 1 above.
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17 I had instructed counsel that in order for the plaintiff to successfully establish its variation claims for *reworks*, it would have to provide evidence of: (a) the date the original drawing was issued; (b) the date that the work based on the original drawing was finished; (c) the date that the revised drawing was issued; and (d) the completion of rework based on the revised drawing. The cost of undoing the original work (if any) plus the cost of the revised work under the revised drawing will constitute the total cost of the variation work for *reworks*. However, if the revised drawing was issued *prior* to the commencement of any work on the specific parts in the original drawings to be revised as indicated, for example, by “balloons” in the revised drawings, then the plaintiff cannot claim that there is a variation on account of *rework* because there would have been no *rework* required since work based on the original drawing has not even begun. But if the revised drawing shows any *net additional* work when compared with the original drawings, then this *per se* qualifies as variation work capable of giving rise to a claim. This involves a situation where the revised drawing may simplify certain parts of the work based on the original drawing and at the same time increase the complexity or extent of the work in other areas in the original drawing. In such a case, there is a need to determine the *net additional* work occasioned by the revised drawing for which the defendant would be liable. This is to be done at the assessment stage.

Defendant’s counterclaims

18 A tabulated summary of my decision for each of the defendant’s counterclaims can be found in Table A4 below.

Table A4: *Defendant's counterclaims*

S/N	Description of claim	Plaintiff's case	Defendant's case	Decision
Jangkrik Project				
1.	Liquidated damages for delay to the Jangkrik Project.	The plaintiff submits that it should not be liable for liquidated damages given that the delay is caused by the defendant itself.	It is not disputed that the actual completion of the Jangkrik Project is delayed. Given that there is no merit in the delay claims made by the plaintiff, the delay should be wholly attributable to the plaintiff.	I adopt fully Koh's expert report with regard to Koh's assessment of the delays based on his critical path analysis and his assessment of the number of days of delay qualifying for the imposition of liquidated damages. I enter judgment for \$37,178.43 to be paid by the plaintiff to the defendant. Judgment is to be stayed pending the outcome of the assessment stage for other claims and counterclaims (if any).
2.	Back charges for providing the plaintiff with two welders from 8 to 30 April 2015.	The defendant did not adduce any supporting evidence to substantiate the amount of this counterclaim ³³	Counsel for the plaintiff has admitted that the defendant had provided two welders to assist the plaintiff to carry out the works. ³⁴	Given that counsel for the plaintiff has admitted as a matter of fact that the defendant did indeed provide two welders to the plaintiff for carrying out the works, I see no good reason to deprive the defendant of this claim. I also note that it was always open to the plaintiff at that time to reject the two welders if it did not need them to assist. However, given that it had not rejected the welders, the plaintiff is under an obligation to pay for the costs of these two welders supplied by the defendant to assist in the plaintiff's welding works.
3.	Back charges for additional inspection costs (non-destructive testing) necessitated by the purported defects.	This counterclaim is not pleaded. Further, there is no evidence adduced to support it. ³⁵	There is evidence in the form of a purchase order for costs incurred in hiring PT Jasscan Indonesia to carry out non-destructive testing. ³⁶	

				<p>As for the additional or repeat tests that the defendant had to conduct because of the defective welds, I am satisfied by the documentary evidence that such tests were done and paid for by the defendant.</p> <p>Accordingly, I enter judgment for a total of \$29,992.00 for both these counterclaims, to be paid by the plaintiff to the defendant. Judgment is to be stayed pending the outcome of the assessment stage for other claims and counterclaims (if any).</p>
030 Project				
4	Overpayment to the plaintiff due to the plaintiff's failure to complete the fabrication works which have already been paid for.			<p>I make no order with respect to this claim.</p> <p>I reiterate that the defendant is to pay the entire contract sum to the plaintiff, subject to any sums that are to be subtracted for uncompleted or defective works which are to be assessed at the assessment stage.</p>
5.	Rectification costs for defective works that the plaintiff had failed or			<p>I consider the defective work here to include not only repair work to remedy defects in the plaintiff's work but also</p>

³³ Plaintiff's closing submissions, para 25.

³⁴ Defendant's reply submissions, para 103.

³⁵ Plaintiff's closing submissions, paras 25–26.

³⁶ Defendant's reply submissions, paras 105–106; 1st AEIC of Sanjay Dudhat, p 392–396.

	refused to rectify.			work that the plaintiff has left uncompleted, where the defendant had to engage manpower resources to finish the uncompleted work. I send this claim down for assessment. The quantum of damages assessed shall be set off against the judgment sums obtained by the plaintiff for the 030 Project.
6.	Damages arising from the delay to the 030 Project which is attributable to the plaintiff.	The delay is attributable to the defendant. The plaintiff completed the fabrication works on 30 November instead of 15 November 2015 because it was waiting for the necessary materials from the defendant. ³⁷	There is no dispute that the 030 Project was delayed. Prakash testified that the delay was caused by the plaintiff's slow progress. ³⁸	I find that there is <i>prima facie</i> evidence of a delay by the plaintiff in the completion of the 030 Project even after the delivery schedule was revised pursuant to the settlement agreement entered into during the 3 November Meeting. Therefore, I send this claim down for assessment. If the plaintiff wishes to show that this delay (or a part thereof) is caused by the defendant, then the burden is on the plaintiff to do so. The damages (if any) eventually awarded to the defendant are to be set off against the judgment sums obtained by the plaintiff for the 030 Project.
103 Project				
7.	Refund of \$226,200 paid by defendant for acceleration of	The defendant has not shown any evidence that the plaintiff did	The plaintiff had failed to meet all but one of the new milestone	The purchase order for the acceleration of the works was issued on 4 November 2015, one day

³⁷ Plaintiff's closing submissions, para 29.

³⁸ Defendant's closing submissions, paras 270–272.

	works, which was not eventually done.	not accelerate the works. The defendant would not have paid if indeed the plaintiff had not accelerated the works. Koh's expert report stated that the plaintiff had provided more manpower than required under the purchase order issued by the defendant for the plaintiff to provide more manpower to accelerate the works. ³⁹	dates as agreed pursuant to the purchase order for the acceleration of the works. ⁴⁰	after the 3 November Meeting where parties had agreed to settle all commercial issues. Therefore, I find that the sum paid for the acceleration is part of the settlement agreement. Accordingly, I dismiss this claim for a refund of the amount paid for acceleration works. If there is a failure on the plaintiff's part to meet any subsequent milestones after the acceleration payment was made, it is open to the defendant to claim liquidated damages for these subsequent delays.
8.	Liquidated damages arising from delays in the project caused by the plaintiff.	The plaintiff submits that it should not be made liable for liquidated damages given that the delay is caused by the defendant itself.	There is no dispute that the actual completion for the 103 Project was delayed. Prakash testified that the plaintiff's slow progress caused the delays. The defendant's expert witness Koh's assessment of the period of delay was unchallenged by the plaintiff. ⁴¹	I adopt fully Koh's expert report with regard to Koh's assessment of the delays based on his critical path analysis and his assessment of the number of days of delay qualifying for the imposition of liquidated damages. I enter judgment for \$19,671.69 to be paid by the plaintiff to the defendant. Judgment is to be stayed pending the outcome of the assessment stage for other claims and counterclaims (if any) for the 103 Project.
9.	Rectification	There was no	The punch list	I accept the evidence

³⁹ Plaintiff's closing submissions, paras 60–62.

⁴⁰ Defendant's closing submissions, paras 322–326.

⁴¹ Defendant's closing submissions, paras 328–332.

	costs for defective works that the plaintiff had failed to rectify.	documentary evidence from the defendant showing that the plaintiff was notified of these defects. The third party contractors engaged to rectify these defects were not called as witnesses. ⁴²	lists defects in the plaintiff's works that required grinding in the area "Canopy Roof and Top Crimped Wall PAB-103 at EL 114.950 and below". Invoices from one of the third party contractors show that the defendant had to carry out "grinding underneath secondary below roof grid 3-4-5 row A-B". ⁴³	provided by the punch list and the third party invoices showing that the defendant had to rectify the defective works of the plaintiff. I send this down for assessment. The amount that is allowed is similarly to be set off against the judgment sums awarded to the plaintiff for the 103 Project.
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Conclusion

19 A tabulated summary of my decision for each of the claims, organised according to projects, can be found in the Table A5 below.

⁴² Plaintiff's closing submissions, paras 56–57.

⁴³ Defendant's closing submissions, paras 318–319.

Table A5: *Final summary of the judgment sums allowed and the interlocutory judgments granted for claims where damages are to be assessed by the Registrar*

Jangkrik Project	
Claims	
Variation works	To be assessed
Losses from idle time due to delays caused by the defendant	To be assessed
Counterclaims	
Liquidated damages for delay	\$37,178.43
Back charges for costs of additional welders and inspections	\$29,992.00
030 Project	
Claims	
Work done for the 030 Project amounting to 60% of the original contract price	\$432,573.48
Variation works	Entirely withdrawn by the plaintiff
Wasted costs due to removal of erection works	Claim dismissed
Counterclaims	
Overpayment	No order
Back charges for rectification costs	To be assessed
Damages for delay in completion	To be assessed
103 Project	
Claims	
Work done for the 103 Project	\$109,206

Variation works	To be assessed
Losses from idle time due to delays caused by the defendant	To be assessed
Counterclaims	
Liquidated damages for delay	\$19,671.69
Refund of monies paid to accelerate works	Claim dismissed
Back charges for rectification costs	To be assessed

20 I note that there are certain claims for which I have entered judgment of the final sum for which no assessment is needed. However, these judgments are to be stayed pending the outcome of the assessment hearing and the determination of the final sums to be allowed for the other claims and counterclaims for which I have granted interlocutory judgment with damages to be assessed. Ultimately, all judgments on the claims and counterclaims (including those where damages have to be assessed) for each project are to be consolidated and set off accordingly.

21 All costs and interest on the final sums to be allowed after set offs are to be reserved to the Registrar hearing the assessment.

Chan Seng Onn
Judge

Lim Chee San (TanLim Partnership) for the plaintiff;
Nandakumar Ponnaya Servai, Jeunhsien Daniel Ho, Wong Tjen Wee
and Nicolette Onn (Wong & Leow LLC) for the defendant.