

**IN THE GENERAL DIVISION OF THE HIGH COURT OF THE REPUBLIC
OF SINGAPORE**

[2021] SGHC 208

Suit No 604 of 2018

Between

Taishi-Tech (S) Pte Ltd

... Plaintiff

And

Hyundai Engineering &
Construction Co Ltd

... Defendant

JUDGMENT

[Contract] — [Contractual terms]
[Contract] — [Breach]

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Taishi-Tech (S) Pte Ltd
v
Hyundai Engineering & Construction Co Ltd

[2021] SGHC 208

General Division of the High Court — Suit No 604 of 2018
Lee Siu Kin J
18–21 May, 27 May, 14 July 2021

7 September 2021

Judgment reserved.

Lee Siu Kin J:

Introduction

1 This is an action by the plaintiff, Taishi-Tech (S) Pte Ltd (“Taishi”), against the defendant, Hyundai Engineering & Construction Co Ltd (“Hyundai”) for breach of an oral contract.

2 The defendant is the main contractor of a residential and commercial development located in Punggol, collectively referred to as the “Watertown Project”.¹ It subcontracted certain parts of the works for the Watertown Project to a now defunct company, J-Plan Associates Pte Ltd (“J-Plan”), which in turn subcontracted a further part of the works to the plaintiff.

¹ Chua Siow Lee’s AEIC dated 22 January 2020 (“CSL”) at para 4.

3 During the course of the Watertown Project’s development, the plaintiff encountered problems with receiving payment from J-Plan. This slowed down, and ultimately halted the progress of its work.²

4 The plaintiff alleges that the defendant agreed to pay it directly for *all* works done in respect of the Watertown Project so as to ensure that it would continue to complete its works on schedule (the “Alleged Direct Deal Agreement”).³

5 The defendant does not dispute the existence of an agreement for it to pay the plaintiff directly. It contends, however, firstly, that this agreement was entered into with J-Plan, *not* the plaintiff directly. Secondly, that the terms of this agreement stipulate that such direct payments to the plaintiff would be made *only* out of sums due to J-Plan, specifically for the work to be carried out by the plaintiff pursuant to its subcontract with J-Plan. Such work forming a part of the work J-Plan was to complete for the defendant pursuant to *their* subcontract. Thus, the defendant claims it was not assuming any general, direct responsibility for J-Plan’s obligations to the plaintiff. Rather, that it was simply undertaking to make payments it would otherwise have had to make to J-Plan, directly to the plaintiff.⁴

² CSL at paras 15 to 20.

³ CSL at para 29.

⁴ Lee Seung Han’s AEIC dated 23 January 2020 (“LSH”) at para 24.

Facts

6 The plaintiff is in the business of manufacturing and installing solid surfaces and quartz products.⁵ The defendant is a construction company.

7 In August 2012, the defendant was engaged as the main contractor for the Watertown Project.⁶

8 By a letter of award dated 25 September 2013, the defendant engaged J-Plan as its subcontractor for the design, supply, fabrication, and installation of various cabinets for the Watertown Project, *eg*, kitchen and vanity cabinets.⁷ Separately, by an agreement dated 1 November 2014, the defendant also engaged J-Plan as its subcontractor for the interior design works for the same project. These two agreements are collectively referred to as “the Subcontracts”.

9 The plaintiff and J-Plan have a pre-existing business relationship.⁸ By two letters of award dated 6 May 2015 and 1 September 2015 (collectively, “the Sub-subcontracts”), J-Plan engaged the plaintiff as its subcontractor to supply and install solid surfaces for, *inter alia*, various counters and cabinets in the Watertown Project.⁹

10 The plaintiff claims that throughout the course of their engagement, J-Plan was often unable to make timely payment, claiming financial difficulty.¹⁰

⁵ CSL at para 3.

⁶ LSH at para 4.

⁷ LSH at para 6.

⁸ CSL at para 8.

⁹ CSL at paras 9 and 12 to 13.

¹⁰ CSL at para 16.

In view of this, the plaintiff ceased work and stopped delivering surface tops for the Watertown Project on 24 November 2016.¹¹

The Alleged Direct Deal Agreement

11 In November 2016, Lee Seung Han (known to parties as “Boris”), a representative of the defendant, was informed by J-Plan’s managing director, Jeffrey Jalleh (“Mr Jalleh”), that J-Plan was facing cash-flow issues and was thus facing difficulty in paying its sub-subcontractors on time.¹²

12 The plaintiff claims that sometime in December 2016, one John Park (“Mr Park”), a representative of the defendant, visited its office to view their stock of surface tops for the Watertown Project.¹³ During this meeting, the plaintiff’s director, Chua Siow Lee (“Mr Chua”), explained to Mr Park that the plaintiff has its stocks ready for delivery and installation, but because he was worried that J-Plan would not be able to effect timely payment, the plaintiff had to cease work. Upon hearing this, Mr Park allegedly said that he would arrange for the defendant to make direct payments to the plaintiff.¹⁴

13 The plaintiff adduced evidence that, sometime between 23 and 27 January 2017,¹⁵ J-Plan arranged a meeting at the plaintiff’s office. The persons who attended this meeting were: Mr Park; J-Plan’s representatives, Mr Jalleh and one “Ragu”; the plaintiff’s directors, Mr Chua and Chua Seow May

¹¹ CSL at para 20.

¹² LSH at para 23.

¹³ CSL at paras 21 to 22.

¹⁴ CSL at para 24.

¹⁵ Transcript dated 18 May 2021 at p 12, line 26 to p 13, line 19.

(known to parties as “Chris”); and the plaintiff’s project manager, Janet Khoo (“Ms Khoo”). The plaintiff claims that the Alleged Direct Deal Agreement was concluded at this meeting. Its position is that, in consideration of continuing to deliver surfaces and carry out works under the Sub-subcontracts, the defendant would pay – on behalf of J-Plan – all monies due to it in accordance with the payment schedule in the Sub-subcontracts with J-Plan.¹⁶ The plaintiff further claims that this agreement was recorded in a letter dated 24 January 2017 sent by J-Plan to it.¹⁷

14 The defendant agrees that there was an agreement for it to make direct payment to the plaintiff in respect of the plaintiff’s work done under its Sub-subcontractors with J-Plan. However, it rejects: (a) having contracted with the plaintiff; and (b) the terms of this Alleged Direct Deal Agreement. Instead, the defendant contends that it agreed *with J-Plan*, on its behalf, to make direct payment to the sub-subcontractors (including the plaintiff), upon J-Plan’s certification of its sub-subcontractors’ works and notifying the defendant.¹⁸ Indeed, this arrangement was requested by *J-Plan*, not the plaintiff.¹⁹ The defendant was not assuming any direct responsibility for J-Plan’s obligations to its sub-subcontractors by this agreement.²⁰ The defendant further claims that this agreement was recorded in a letter from J-Plan to the defendant dated 24 November 2016.²¹

¹⁶ CSL at para 29; Plaintiff’s Closing Submissions dated 5 July 2021 (“PCS”) at para 19.

¹⁷ CSL at para 31.

¹⁸ LSH at para 24.

¹⁹ LSH at para 40.

²⁰ LSH at para 24.

²¹ LSH at para 25.

Subsequent events

15 On 11 January 2017, the defendant issued a cheque for the sum of S\$118,784.92 to the plaintiff as payment for the plaintiff's works.²² The defendant claims that this payment was made pursuant to the plaintiff's Payment Claim Number 7 dated 29 November 2016.²³

16 The plaintiff claims that on 3 February 2017, J-Plan informed the plaintiff's representatives at a meeting at the defendant's site office that the defendant would stop making direct payment to the plaintiff. This was because such direct payments were causing J-Plan issues in connection with its declaration and payment of the goods and service tax (GST).²⁴ To resolve this problem, J-Plan suggested to the plaintiff that when the defendant pays J-Plan, it would then pay the plaintiff, *ie*, on a back-to-back basis.²⁵ The plaintiff claims that it rejected the proposed arrangement. The plaintiff also claims that Mr Park then assured the plaintiff's representatives that the defendant would continue to make direct payment to the plaintiff.²⁶

17 The defendant agrees that such a meeting took place at its site office. However, according to the defendant, Mr Jalleh requested for the defendant to stop making further direct payments to J-Plan's sub-subcontractors on its behalf. J-Plan instead proposed to make payment to the plaintiff on a back-to-back basis (see [16] above) based on the plaintiff's work done as certified by J-Plan.

²² CSL at para 26; LSH at para 29.

²³ LSH at para 28.

²⁴ CSL at para 32.

²⁵ CSL at para 33.

²⁶ CSL at para 37.

Further, J-Plan agreed that the plaintiff could check with the defendant as to whether the defendant had made payment to J-Plan.²⁷ The defendant claims that the plaintiff did not object to this arrangement and Mr Park did not represent that the defendant would continue to make direct payment to the plaintiff.²⁸

18 Subsequently, on 1 March 2017, the defendant issued a cheque for the sum of S\$123,352.72 to the plaintiff.²⁹ The defendant claims that this payment was made pursuant to the plaintiff's Payment Claim Number 8 dated 15 December 2016.³⁰

19 The plaintiff claims that it “kept chasing the [d]efendant and J-Plan” for payment from April to June 2017.³¹ Sometime during this period, in May 2017, the plaintiff alleges that, because neither the defendant nor J-Plan made payment to the plaintiff, the plaintiff informed them that they would cease works unless payment was made.³² The plaintiff claims that the defendant agreed to pay: (a) S\$100,000 on 24 May 2017; and (b) S\$200,000 on the first and third week of June 2017, but ultimately did not do so.³³ The defendant claims that it did not agree to such an arrangement.³⁴

²⁷ LSH at para 38.

²⁸ LSH at paras 38 to 39.

²⁹ CSL at para 39; LSH at para 33.

³⁰ LSH at para 32.

³¹ CSL at para 40.

³² CSL at para 41.

³³ CSL at paras 42 and 44.

³⁴ LSH at paras 47 to 48.

20 The plaintiff also claims that because it did not receive payment for its works, it initiated a meeting on 12 June 2017 at the site office of the Watertown Project. Mr Chua, Chris, Ms Khoo, Mr Park, Boris, Mr Jalleh, and Ragu attended this meeting.³⁵ Parties agree that at this meeting, while approximately S\$1,034,098.90 (excluding GST) was due to the plaintiff, the defendant informed the plaintiff that the balance sum payable from the defendant to J-Plan for work under the Subcontracts was only approximately S\$400,000.³⁶ The plaintiff alleges that in order to ensure that the plaintiff continues to deliver surfaces and carry out its works, the defendant and the plaintiff agreed that “the [d]efendant would see that the [p]laintiff receive a further S\$300,000.00” by the end of June 2017.³⁷ By contrast, the defendant claims that it only agreed to make a further direct payment of S\$100,000 to the plaintiff on behalf of J-Plan, to be taken from the balance sum payable from the defendant to J-Plan for work done under the Subcontracts.³⁸

21 On 14 June 2017, the defendant made a payment of S\$107,000 (inclusive of GST) to the plaintiff, on behalf of J-Plan.³⁹

22 The defendant claims that in July 2017, as the Watertown Project was nearing completion, the defendant was concerned that J-Plan would not be able to complete its works and to rectify any defects in its works. It then decided to transfer a sum of S\$321,000 (inclusive of GST) to the plaintiff on behalf of J-

³⁵ CSL at para 43.

³⁶ CSL at para 45; LSH at para 51.

³⁷ CSL at para 46.

³⁸ LSH at para 52.

³⁹ LSH at para 53.

Plan so that the plaintiff could continue its works under the Sub-subcontracts.⁴⁰ This was intended as an advance payment by the Defendant to J-Plan.⁴¹ This transfer was effected on 1 August 2017.⁴²

23 Ultimately, the defendant has transferred a total sum of S\$670,137.64 to the plaintiff, with the following breakdown⁴³:

Date	Amount (inclusive of GST)
11 January 2017	S\$118,784.92
1 March 2017	S\$123,352.72
14 June 2017	S\$107,000
1 August 2017	S\$321,000

24 The plaintiff claims that the defendant still owes it the sum of S\$554,579.75 for its completed works for the Watertown Project in August 2017.⁴⁴

25 J-Plan was wound up on 6 October 2017.⁴⁵

⁴⁰ LSH at paras 56 and 59.

⁴¹ LSH at paras 56 to 58.

⁴² LSH at para 59; CSL at paras 48.

⁴³ CSL at para 49

⁴⁴ CSL at paras 50 and 51.

⁴⁵ CSL at para 5.

The parties' cases

26 The plaintiff commenced the present action against the defendant for breach of the Alleged Direct Deal Agreement.⁴⁶ It alleges that the defendant is liable under the terms of this agreement to pay for all of its works done for the Watertown Project from the date of contracting.

27 For completeness, I note that the plaintiff withdrew its claim in conversion at the start of the trial.⁴⁷

28 As stated at [14] above, the defendant agrees that there was an agreement for it to pay monies directly to the plaintiff. However, it argues that under the terms of this agreement, it was only obliged to pay the amount due to J-Plan for J-Plan's work done under the Subcontracts with the defendant and did not assume any direct responsibility for J-Plan's obligations to its sub-contractors.⁴⁸

My decision

29 At the outset, it should be noted that since both parties agree that there was some agreement for the plaintiff to receive direct payment for its work done under Sub-subcontracts (see [26]–[28] above), the present inquiry relates to the *terms* of the agreement. Hence, even though the parties' submissions were framed as concerning the *existence* of the Alleged Direct Deal Agreement, the

⁴⁶ CSL at para 52.

⁴⁷ Transcript dated 18 May 2021 at p 3, lines 6 to 12.

⁴⁸ LSH at para 24.

present inquiry properly concerns whether the plaintiff can prove that the Alleged Direct Deal Agreement was formed with its concomitant *terms*.⁴⁹

30 In this regard, I note that the Court of Appeal in *OCBC Capital Investment Asia Ltd v Wong Hua Choon* [2012] 4 SLR 1206 at [41] has emphasised the importance of documentary evidence:⁵⁰

... the first port of call for any court in determining the *existence* of an *alleged contract and/or its terms* would be the relevant *documentary* evidence. Where (as in the present case) the issue is whether or not a binding contract *exists* between the parties, a contemporaneous written record of the evidence is obviously more reliable than a witness's oral testimony given well after the fact, recollecting what has transpired. Such evidence may be coloured by the onset of subsequent events and the very factual dispute between the parties. ... Much would depend on the precise factual matrix before the court. However, it bears reiterating that the court would always look first to the most reliable and objective evidence as to whether or not a binding contract was entered into between the parties and such evidence would tend to be *documentary* in nature.

[emphasis in original]

31 The plaintiff submits that the existence of the Alleged Direct Deal Agreement can be inferred from four main points regarding the defendant's conduct:⁵¹

(a) The defendant visited the plaintiff in December 2016 and January 2017 despite having no reason to do so.

⁴⁹ PCS at para 40; Defendant's Closing Submissions dated 28 June 2021 ("DCS") at para 73.

⁵⁰ DCS at para 97.

⁵¹ PCS at para 40.

(b) The defendant assured and represented to the plaintiff that the plaintiff would continue to receive payment from the defendant; and pursuant to that assurance and representation, the defendant did continue to make payment to the plaintiff despite J-Plan telling the defendant that no further direct payments will be made.

(c) During the meeting on 12 June 2017, Mr Park assured the plaintiff that it will continue to receive payment.

(d) The defendant continued to pay the plaintiff, doing so on 1 August 2017, despite this being a point which the plaintiff suggests the defendant no longer owed any money to J-Plan.

32 In the alternative, the plaintiff submits that the defendant cannot prove “its defence” that there was no Alleged Direct Deal Agreement.⁵² In this regard, the plaintiff submits that the only witness that could prove that there was no such agreement concluded between the parties is Mr Park, as he was purportedly the only representative of the defendant who was present at the meetings in December 2017 or January 2017. Since the defendant was unable to call Mr Park to testify at trial, his affidavit of evidence-in-chief is inadmissible (“AEIC”), and the defendant is therefore unable to prove its defence.

33 In my judgment, the above submissions are unmeritorious.

34 I pause to first state that the plaintiff’s alternative submission is patently unmeritorious. While I agree that Mr Park’s AEIC is inadmissible, the plaintiff clearly bears the burden of proving its case that there *is* an Alleged Direct Deal

⁵² PCS at paras 63 to 77.

Agreement. He who asserts must prove. It is therefore not for the defendant to prove a negative, *ie*, that there was no Alleged Direct Deal Agreement on the facts.

35 As for the plaintiff's primary submissions, I will consider the documentary evidence chronologically and address them in turn.

Early correspondence

36 I begin with the letter dated 24 November 2016 from J-Plan to the defendant ("J-Plan's 24 November 2016 letter") (see [14] above), which is the earliest documentation of an arrangement for some form of direct payment. That letter was addressed to Mr Park by Mr Jalleh, and states as follows:⁵³

Dear Mr Park,

...

Further to our discussion of the above date [*ie*, 24 November 2016]. We have no objection to *Hyundai paying our sub-contractor their progress claim for work done in the Watertown Project.*

As discussed, [*J-Plan*] will submit the progress claim for all works done bi-weekly and authorise Hyundai to deduct from our claim to pay directly to our sub-contractors with our certification of their respective works. The following are our sub-contractors:

- 1) *Taishi-Tech (S) Pte Ltd*
- 2) Trend Glass Design Pte Ltd
- 3) Glass Coatings & Services Pte Ltd
- 4) DTR Asia Pte Ltd
- 5) Moi Siong Industries Pte Ltd

We trust the above is acceptable.

Yours Sincerely,

⁵³ Agreed Bundle of Documents ("AB") at p 768.

J-Plan Associates Pte Ltd

Jeffrey Jalleh

Managing Director

[emphasis added]

This letter shows that, at that time, the arrangement was for the defendant to make direct payments to J-Plan's subcontractors, of which the plaintiff was one.

37 Next, there is a letter dated 24 January 2017 sent by J-Plan to the plaintiff ("J-Plan's 24 January 2017 letter"), which states:⁵⁴

... J-Plan Associates Pte Ltd undertakes to make payment to Taishi-Tech (S) Pte Ltd for works undertaken and completed for the above project upon [J-Plan's] certification for payment.

Also note that *we have requested Hyundai to make direct payment to [Taishi] for claims starting from November 2016 onwards. All claims before November 2016 will remain under [J-Plan's] payment to [Taishi].*

...

[emphasis added]

This letter only states that the defendant would make direct payment to the plaintiff in lieu of the defendant paying these sums to J-Plan. J-Plan did not state in this letter that the defendant undertook to pay all sums due and owing by J-Plan to the plaintiff. This letter thus shows that in late January 2017, the plaintiff was aware of the arrangement stated in J-Plan's 24 November 2016 letter.

38 The plaintiff then claims that: (a) the defendant met with the plaintiff twice, once in December 2016 and once in January 2017 (see [12]–[13] above); (b) the defendant paid the plaintiff the sum of S\$118,784.92 on 11 January 2017

⁵⁴ AB at p 986.

following the earlier meeting in December 2016; and (c) the Alleged Direct Deal Agreement was concluded in a *later* meeting in late January 2017.⁵⁵

39 These claims do not aid the plaintiff. On the plaintiff's own case, the sum of S\$118,784.92 paid on 11 January 2017 would not be relevant as the plaintiff claims that the Alleged Direct Deal Agreement was concluded in a meeting in late January 2017. This point was also conceded by Mr Chua at trial.⁵⁶ Moreover, the defendant has shown that it paid this sum of S\$118,784.92 pursuant to the arrangement in J-Plan's 24 November 2016 Letter. In this regard, the plaintiff has adduced documentary evidence to show that this sum was paid pursuant to Payment Claim Number 7 dated 29 November 2016, which was submitted by J-Plan to the defendant for certification.⁵⁷ Mr Chua also accepted at trial that this was the case.⁵⁸

Payment on a back-to-back basis

40 Subsequently, Mr Park met with J-Plan's and the plaintiff's representatives sometime in February 2017.⁵⁹ The plaintiff contends that at this meeting, Mr Park orally represented to the plaintiff's representatives, Mr Chua and Ms Khoo, that the defendant would continue to make direct payment to the plaintiff so long as the plaintiff continues to deliver the works under the Sub-subcontracts.⁶⁰

⁵⁵ PCS at paras 27 to 30.

⁵⁶ PCS at para 30; Transcript dated 18 May 2021 at p 31, lines 9 to 17.

⁵⁷ AB at p 779; DCS at paras 132 to 133.

⁵⁸ Transcript dated 18 July 2021 at p 37, lines 4 to 13.

⁵⁹ PCS at para 55; DCS at paras 24 to 25.

⁶⁰ Statement of Claim Amendment No 2 ("SOC") at para 14F; PCS at para 55; DCS at para 24.

41 I am not persuaded by the plaintiff's contention. On 7 March 2017, J-Plan sent a letter to the plaintiff, which refers to the meeting on 3 February 2017 ("J-Plan's 7 March 2017 letter"). This letter states as follows:⁶¹

Further to our letter dated 24th January 2017 with reference JPA/LT/16-3822 and *our meeting on the 3rd February 2017 at Hyundai site office in the presence of Mr John Park (Hyundai) and your Mr S. L. Chua ([Taishi])* whereby we have instructed Hyundai to stop direct payment to all of J-Plan sub-contractor for the above project as of February 2017.

We have assured you at this meeting that on receipt of payment from Hyundai, we will do a *back to back payment to [Taishi] base [sic] on our certification for works executed to date*. Please note all claims before November 2016 remain as per our letter dated 24th January 2017.

We are agreeable to your request to verify with Hyundai whether payment is made to J-Plan.

...

[emphasis added]

This letter essentially states that what transpired at the meeting on 3 February 2017 was that Mr Jalleh sought to reverse the arrangement set out in J-Plan's 24 November 2016 letter and J-Plan's 24 January 2017 letter (see [36]–[37] above). Mr Jalleh assured the plaintiff that once it received payment from the defendant, J-Plan would then make payment to the plaintiff on a "back-to-back" basis, after J-Plan has certified the plaintiff's work done. Because J-Plan could only make such payment after receiving monies from the defendant, J-Plan agreed that the plaintiff could confirm with the defendant whether the defendant had made payment to J-Plan. Also, while the plaintiff claims that it objected to J-Plan's proposals, J-Plan's 7 March 2017 letter does not record any objection by the plaintiff to this new arrangement, and also does not record any

⁶¹ AB at p 989.

assurance given by the defendant to the plaintiff. The plaintiff also did not adduce evidence to respond to this letter to dispute its contents.⁶²

42 During this period, *ie*, February to March 2017, the plaintiff also claims that the defendant paid it the sum of S\$123,352.72 on 1 March 2017 pursuant to the Alleged Direct Deal Agreement.⁶³ However, as with the sum of S\$118,784.92 (see [39] above), the sum of S\$123,352.72 was also paid pursuant to the arrangement set out in J-Plan's 24 November 2016 letter. From the documentary evidence adduced by the defendant, I am satisfied that this direct payment was made pursuant to J-Plan's prior request to the defendant in January 2017 in respect of the plaintiff's Payment Claim Number 8 dated 15 December 2016.⁶⁴ While the defendant submits that the plaintiff concedes this point at trial, I note that the question was put to Mr Chua wrongly in part:⁶⁵

Q: And in---the payment response at page 843, J-Plan has certified Taishi's works at 123,352.72, correct?

A: Yes.

Q: And this same amount was paid by Hyundai to Taishi on 1st March 2017, correct?

A: Yes.

Q: Right. So again, like the first payment [*ie*, the payment of S\$118,784.92 on 11 January 2017], it seems that this payment was being made by Hyundai pursuant to the arrangement that they had with J-Plan set out in the letter dated 24th November 2017, correct?

A: Yes.

[emphasis added]

⁶² DCS at paras 27 to 28.

⁶³ CSL at para 49; PCS at para 22(b).

⁶⁴ AB at p 843; LSH at para 42; DCS at para 29.

⁶⁵ Transcript dated 18 May 2021 at p 38, lines 1 to 10.

There is an error in the last question as the letter is dated 24 November 2016 and not 2017. However, it is clear from the sum referenced that Mr Chua conceded that the payment was made pursuant to the plaintiff's Payment Claim Number 8 dated 15 December 2016. Accordingly, the irresistible inference must be that it was made pursuant to the arrangement that was found in J-Plan's 24 November 2016 letter. I therefore find that this payment was not made pursuant to the Alleged Direct Deal Agreement.

43 The evidence pertaining to subsequent events provide further support that the defendant's payments to the plaintiff were not made pursuant to the terms of the Alleged Direct Deal Agreement, and I detail my reasoning below.

44 On 11 April 2017, Mr Jalleh sent an email to Ms Khoo, setting out the payment schedule that the plaintiff had requested from J-Plan. J-Plan stated in this email that "[p]lease note all payment is base [sic] on receipt of Hyundai['s] payment to J-Plan".⁶⁶ Ms Khoo's email response on 13 April 2017 also showed that, while she disagreed with J-Plan's proposed payment schedule, she did not dispute the statement that payment would only be made by J-Plan on J-Plan's receipt of payment from the defendant. Hence, this suggests that the plaintiff accepted that payment by J-Plan to the plaintiff was to be on a "back-to-back" basis, *ie*, following payment from the defendant to J-Plan.⁶⁷

⁶⁶ AB at p 1001.

⁶⁷ DCS at paras 115 to 116.

Meeting on 12 June 2017

45 I turn to a central point of contention between the parties, which is a meeting on 12 June 2017 between the plaintiff’s and the defendant’s representatives at the defendant’s site office (“the 12 June 2017 meeting”).⁶⁸

46 The plaintiff contends that at this meeting, parties discussed and agreed on the following:⁶⁹

(a) A sum of S\$100,000 (excluding GST) which was “agreed to be released to the plaintiff by J-Plan and the defendant” on 24 May 2017 was not received, and the defendant agreed to pay the plaintiff this sum paid by 14 June 2017 instead.

(b) The defendant was to pay the plaintiff a sum of S\$200,000 (excluding GST) on the first and third week of June 2017, but it was now agreed that this sum was to be paid upon the handover of works sometime in the end of June 2017.

(c) After the payment of S\$300,000, the defendant still owed J-Plan the sum of approximately S\$400,000.

The plaintiff claims that at this meeting on 12 June 2017, Mr Park reassured its representatives, Mr Chua, Chris, and Ms Khoo, that the plaintiff would continue to receive payment from the defendant pursuant to the Alleged Direct Deal Agreement.⁷⁰ The plaintiff submits in support, the fact of the defendant’s

⁶⁸ SOC at para 14K.

⁶⁹ SOC at paras 14K to 14L.

⁷⁰ PCS at paras 40 and 55.

subsequent payments of S\$107,000 (including GST) on 14 June 2017 and S\$321,000 (including GST) on 1 August 2017. Its position is that these payments were made in accordance with the Alleged Direct Deal Agreement.⁷¹

47 However, as the defendant correctly submits, the minutes of the 12 June 2017 meeting (“the 12 June 2017 minutes”) do not support the plaintiff’s case. The 12 June 2017 minutes states as follows:⁷²

Meeting called by: Main Con- Hyundai

Note taker: Ms Janet Khoo

Attendees: Mr John Park (Hyundai); Mr Jeffrey Jalleh ([J-Plan]); Mr SL Chua ([Taishi]), Ms Janet Khoo ([Taishi]) & Ms Chris Chua ([Taishi])

DISCUSSION **Status of collection**

- Non-receipt payment of \$100 K as agreed release on 24 May 2017
- Release of Payment from Hyundai (*on-behalf of [J-Plan]*) which was agreed on 1st week and 3rd week of June 2017 for the amount of \$200k (before GST)
- The balance of outstanding for whole project. **(up-to-date outstanding : \$1,034,098.90)** which is \$1,401,177.81-\$367,078.91 (total work done plus VO – total payment received) ; the amount mentioned above is before GST.
- The outstanding amount to [J-Plan] from Hyundai for watertown Project is only left \$400K plus (include retention).*which is insufficient to pay to [Taishi] for the outstanding payment.*

CONCLUSIONS

No -concrete solution/ proposal given by Mr Jeffrey ([J-Plan]) yet ,*meanwhile waiting for fund to come in by [J-Plan] (\$100K) and Hyundai (\$200K or more) . The fund to be transfer [sic] to [Taishi’s] current account by [J-Plan] should be this week, Hyundai’s fund (\$100K , which agreed pay [sic] on 1st week of*

⁷¹ PCS at para 40.

⁷² AB at p 1045.

June) will be transfer [sic] to [Taishi's] account latest by 14 June 2017. And the balance of agreed amount will be release [sic] upon handover by end of June 2017 .

ACTION ITEMS

...

Hyundai (Mr John Park) request *[J-Plan] must pay [Taishi's] outstanding payment due to Mr John Park has given assurance that they will be on a back-to-back basis on payment to [Taishi] during the meeting at [Taishi's] office . (See attached)*

...

[emphasis added in italics; emphasis in original in bold]

48 Firstly, with regard to the agreement that the defendant will pay the plaintiff S\$100,000 (excluding GST) by 14 June 2017, the defendant accepts that it did make direct payment of S\$107,000 (*ie*, \$100,000 + GST) on that date pursuant to the discussion at the 12 June 2017 meeting.⁷³ However, the defendant claims that this payment was not pursuant to the Alleged Direct Deal Agreement, but was on made on behalf of J-Plan, on a back-to-back basis.⁷⁴

49 The documentary evidence weighs heavily in favour of the defendant's version of events. To begin with, the "CONCLUSIONS" in the 12 June 2017 minutes state in clear terms that this obligation is owed by J-Plan to the plaintiff, and Chris accepted this point at trial.⁷⁵ Moreover, under the "ACTION ITEMS", Mr Park's assurance was in respect of payment to the plaintiff on a "back-to-back basis". The plaintiff submits that this merely showed "a variation of the

⁷³ DCS at para 150.

⁷⁴ DCS at paras 144 and 151.

⁷⁵ Transcript dated 20 May 2021 at p 38, lines 5 to 13.

method in which the [d]efendant will pay [the] [p]laintiff as agreed under the [Alleged] Direct Deal Agreement”,⁷⁶ which is an unconvincing, *ad hoc* explanation. Hence, I find that the payment of S\$107,000 from the defendant to the plaintiff on 14 June 2017 was not made pursuant to the Alleged Direct Deal Agreement.

50 Secondly, with regard to the defendant’s payment of S\$300,000 (excluding GST) to the plaintiff on 1 August 2017, the defendant accepts that it did transfer a sum of S\$321,000 (*ie*, S\$300,000 + GST) to the plaintiff,⁷⁷ and the invoice and correspondence adduced by the defendant indicate that this sum was received by the plaintiff on that date.⁷⁸ However, the defendant submits that this sum was an advance payment from the defendant to J-Plan, and was paid directly to the plaintiff on behalf of J-Plan.⁷⁹ The defendant did so because as the Watertown Project was nearing completion, the defendant was concerned that J-Plan would not be able to complete its works. In particular, the defendant was aware that the plaintiff was not prepared to continue with their works in the Watertown Project unless it was paid, so a direct payment to the plaintiff on behalf of J-Plan would allow the plaintiff to continue its Sub-subcontract works.

51 I am persuaded by the defendant’s submission as it is supported by clear documentary evidence. On 28 July 2017, Boris of the defendant sent an email to Mr Jalleh of J-Plan, which states⁸⁰:

⁷⁶ PCS at para 56.

⁷⁷ DCS at para 152.

⁷⁸ See AB pp 1081-1083

⁷⁹ DCS at para 153.

⁸⁰ LSH at p 420

We refer to the discussion between your Mr Jeffrey Jalleh and our Mr JH Park on 26 May 2017 at Watertown site office.

As discussed, there is a sum of about [**\$840,640.96**] due from [**J-Plan**] to its own sub-contractor, [**Taishi**], under [Taishi's] sub-contract with J-Plan (“[Taishi] Sub-contract”). We understand from you that [Taishi] are not prepared to continue their works in the above project unless they are paid.

At J-Plan's request, we are prepared to extend an advance payment in the sum of \$300,000 to J-Plan, by making a direct payment to [Taishi] on behalf of J-Plan, in order for [Taishi] to continue its works under [Taishi's] Sub-contract in the above project.

For the avoidance of doubt, this payment to [Taishi] on behalf of J-Plan is *an advance from Hyundai to J-Plan, and may be recovered from J-Plan*, including deducting from any sums due from Hyundai to J-Plan, whether for work done under this project or otherwise.

Please confirm **by Tomorrow (29th July 2017), 11am** that we may proceed to make *direct payment of \$300,000 to [Taishi] on behalf of J-Plan*.

Further to this email on 28 July 2017, Boris had a telephone call with Mr Jalleh on 31 July 2017 during which the latter confirmed to the former that the defendant could proceed to make direct payment pursuant to the arrangement in that email.⁸¹ This conversation was recorded in an email from Boris to Mr Jalleh on 31 July 2017, which states as follows⁸²:

We refer to our email on Friday, 28 July 2017. We also refer to the telephone discussion between your Mr Jeffrey Jalleh and our Mr Boris Lee earlier this morning.

As discussed, you have confirmed that we can proceed to make direct payment of *the sum of \$300,000 to [Taishi] on your behalf*.

For completeness, this payment to [Taishi] on behalf of J-Plan is an *advance from Hyundai to J-Plan*, and may be recovered from J-Plan.

⁸¹ LSH at para 58.

⁸² LSH at p 420

...

[emphasis added]

These emails therefore show that the offer by the defendant for direct payment of S\$300,000 (excluding GST) to the plaintiff was simply an *advance* payment by the defendant to J-Plan, made directly to the plaintiff because J-Plan owed the plaintiff monies under the Sub-subcontracts. Accordingly, the plaintiff's submission that this sum was paid to the plaintiff even though the defendant did not owe J-Plan any money at that time is unmeritorious (see [31(d)] above). Hence, I find that the payment of S\$300,000 was not made pursuant to the Alleged Direct Deal Agreement.

52 Lastly, I note that there is nothing in the 12 June 2017 minutes which supports the plaintiff's assertion that Mr Park had reassured the plaintiff's representatives that the plaintiff will receive payment in accordance with the Alleged Direct Deal Agreement. Instead, the content of these minutes show that payment on a back-to-back basis, *ie*, from the defendant to J-Plan and then to the plaintiff, was still operative.

53 Overall, there is insufficient evidence to show that the Alleged Direct Deal Agreement existed. Instead, I am satisfied by the extensive documentary evidence adduced that it was *only* agreed that the defendant would *directly* pay the plaintiff the sums *it owed J-Plan*, for J-Plan's work in the Watertown Project. Accordingly, the defendant did not contract to pay all monies due to the plaintiff for the plaintiff's work done for the Watertown Project. The terms of this agreement are different to those under the Alleged Direct Deal Agreement. Hence, I find that the Alleged Direct Deal Agreement, with its concomitant terms, did not exist.

Conclusion

54 For the above reasons, I dismiss the plaintiff’s claim.

55 As for costs, I note that the plaintiff has asked the court to “exercise its inherent jurisdiction to not award the [d]efendant with costs”.⁸³ While the plaintiff’s plight may be unfortunate, I do not find that there is sufficient reason to depart from the usual rule of costs in the cause. The defendant made submissions on additional costs on account of various matters, but I am of the view that I can take those into account in awarding costs in the round. The parties agree that under the Costs Guidelines in Appendix G of the Supreme Court Practice Directions, the daily tariff for the present trial should be S\$15,000.⁸⁴ Given that the trial was completed in 3.5 days, the plaintiff is to pay the defendant costs of S\$52,500.

Lee Seiu Kin
Judge of the High Court

Choh Thian Chee Irving, Lim Bee Li and Wong Zhen Yang
(Optimus Chambers LLC) for the plaintiff;
Chan Kah Keen Melvin (TSMP Law Corporation) for the defendant.

⁸³ Plaintiff’s Closing Submissions on Costs (“PCS on Costs”) dated 14 July 2021 at para 3.

⁸⁴ PCS on Costs at para 17; DCS at para 171.