IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 222

Originating Summons No 312 of 2015 (Summons No 2030 of 2015)

Between

Hauslab Design & Build Pte Ltd

… *Plaintiff*

And

Vinod Kumar Ramgopal Didwania

… *Defendant*

GROUNDS OF DECISION

[Building and construction law] — [Dispute resolution] — [Alternative dispute resolution procedures]

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v
Vinod Kumar Ramgopal Didwania

[2016] SGHC 222

High Court — Originating Summons No 312 of 2015 (Summons No 2030 of 2015)
Vinodh Coomaraswamy J
20 November 2015; 11 February 2016

11 October 2016

Vinodh Coomaraswamy J

Introduction

1 The plaintiff served a payment claim under the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) ("the Act") on the defendant. The defendant failed to satisfy the claim. The plaintiff proceeded to have its claim adjudicated. The defendant resisted the adjudication on the ground that one of the Act's fundamental requirements was not fulfilled. His position was that he had no contract at all with the plaintiff. He accepted that he had entered into a contract which did fulfil the requirements of the Act, but argued that the counterparty to that contract was not the plaintiff but another entity entirely. He argued, further, that he had never agreed to that other entity novating his contract to the plaintiff.

2 The adjudicator rejected the defendant's argument and found that the defendant had indeed agreed to his contract being novated to the plaintiff. He therefore determined the adjudication in the plaintiff's favour. The plaintiff then applied for and secured leave *ex parte* to enforce the adjudication determination as a judgment or order of the court.

3 The defendant now applies to set aside that leave.

4 The defendant rests his setting-aside application on two submissions. First, he submits that the adjudicator had no jurisdiction to issue the determination against him because the defendant has never had a contract with the plaintiff within the meaning of s 4 of the Act. Second, he submits that the adjudicator breached his duty under s 16(3) of the Act to comply with the principles of natural justice.

5 Having heard the parties and considered their submissions, I have dismissed the defendant's application with costs. The defendant has appealed against my decision. I therefore set out my grounds.

Background

The contract

6 The defendant is the owner of a substantial property in District 11. In April 2013, he entered into a construction contract with a company known as Hauslab D&B Pte Ltd ("D&B"). The contract names the defendant as the "Employer" and D&B as the "Builder"[1] and the "Contractor".[2] It obliges D&B to design and build for the defendant on his property a two-storey detached

[1] Affidavit of Ang Siew Choo filed on 8 April 2015, page 10 and 12.

[2] Affidavit of Ang Siew Choo filed on 8 April 2015, page 13.

house with an attic and an open roof terrace. The contract's value is a little under $5.1m.[3] I shall refer to this contract as "the construction contract".

7 Both D&B and the plaintiff are wholly-owned subsidiaries of a company known as Hauslab Holdings Pte Ltd ("Holdings"). Mr Tan Sinn Aeng Ben ("Mr Tan") is a director of both D&B and of Holdings[4] but is not a director of the plaintiff.[5] Mr Tan describes himself as the "CEO" and "Principal Designer" of "the Hauslab Group".[6]

8 It will be immediately apparent that the names of the plaintiff and of D&B are confusingly similar. *D&B's* full name (Hauslab D&B Pte Ltd) would ordinarily be intended and would ordinarily be read as being nothing more than an abbreviation of the *plaintiff's* full name (Hauslab Design & Build Pte Ltd). But D&B is in fact and in law an entity entirely separate from the plaintiff.

9 Also in April 2013, soon after he signed the construction contract, the defendant formally authorised his wife, Ms Nidhi Vinod Didwania ("Ms Nidhi"), to issue instructions and to act on payment matters under the contract on his behalf. He did this by a letter on his personal notepaper addressed and sent to D&B in the following terms:[7]

> I, Vinod Kumar Ramgopal Didwania, the Employer and also the Employer's Representative set out in the contract, hereby

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3 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at pages 41 to 46.

4 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 358 and 362.

5 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 366.

6 Affidavit of Ang Siew Choo filed on 8 April 2015, page 142.

7 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at para 9 and

> authorize my wife, Nidhi Vinod Didwania, to issue direct instructions relating to the works to you, the Contractor, on my behalf and also act on my behalf with respect to all payment matters moving forward.

10 The evidence shows that Ms Nidhi did in fact personally give substantially all of the instructions under the contract to Mr Tan or his team. She also personally received and paid all of the progress claims issued under the contract.[8] The plaintiff curiously denies having received this letter of authorisation. Be that as it may, the fact remains that the defendant accepts – and indeed asserts – before me that Ms Nidhi gave instructions and dealt with payment under the construction contract as his agent. All of her acts in this regard are therefore attributable to him.

The draft novation agreement

11 It was the plaintiff's case in the adjudication and before me that the defendant agreed to novate the construction contract to the plaintiff on or about 1 December 2013. The parties are on common ground on only two points connected to this alleged novation. They agree that Mr Tan produced a draft novation agreement in December 2013 and handed it either to the defendant or to Ms Nidhi. They agree also that the defendant never signed the draft. All of the other facts underlying the alleged novation are disputed.

12 According to Mr Tan, between August and October 2013, he raised with the defendant the possibility of novating the defendant's construction contract from D&B to the plaintiff.[9] Mr Tan followed up on this proposal by personally handing a draft novation agreement either to the defendant or to Ms

page 344; Affidavit of Nidhi Vinod Didwania filed on 26 May 2016, para 12.

8 Defendant's Skeletal Submissions dated 17 November 2015 at paras 32 to 39.

9 Affidavit of Tan Sinn Aeng Ben filed on 15 June 2015 at para 17.

Nidhi in December 2013.[10] Mr Tan later visited the defendant at his office to explain the rationale for the novation.[11] He told the defendant that a sister company of D&B was pursuing a number of disputed claims under an unrelated contract in relation to an unrelated project. As D&B was the builder in that project, Mr Tan was concerned that the owner there might bring cross-claims against D&B and that that might lead the Building & Construction Authority ("BCA") to order D&B to suspend work on all its ongoing projects, including the defendant's. Mr Tan therefore proposed the novation in order to protect the defendant by insulating his project from the possible consequences of those unrelated disputes.[12]

13 Mr Tan's evidence is that the defendant agreed orally to a novation and to the plaintiff taking over from D&B as the builder on the defendant's project. The defendant assured Mr Tan that he would sign the draft novation agreement and return it to the plaintiff after the defendant's daughter, a lawyer in private practice, had reviewed it. Relying on the defendant's assurance, and anticipating the return of the novation agreement duly signed, Mr Tan left it with the defendant.[13]

14 The defendant's and Ms Nidhi's evidence is, not surprisingly, contrary to Mr Tan's and consistent with each other's. They say that Mr Tan personally handed a draft novation agreement to Ms Nidhi sometime in December 2013.[14] The defendant and Ms Nidhi rejected any possibility of novation at all because

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10 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at para 18.

11 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at para 19.

12 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at para 19; affidavit of Tan Sinn Aeng Ben filed on 15 June 2015 at paras 13 to 14.

13 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at para 20.

14 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at para 10.

they were not willing to hand over the construction of their new home to a company other than D&B "on a whim". They were especially concerned that Mr Tan, who had been personally recommended to them by their property agent, was a director of D&B but was not even a director of the plaintiff and therefore had no management control over it.[15] Accordingly, Ms Nidhi returned the draft to Mr Tan the very next day, unsigned.[16]

15 Mr Tan does not accept that Ms Nidhi ever returned the unsigned draft.[17]

The application for permission to carry out structural works

16 It appears that from the date of the construction contract until at least November 2013, D&B performed its obligations under the contract without any incident, or at the very least, without any incident which is material to the application before me.

17 In November 2013, the defendant signed a one-page form addressed to the BCA re-applying for permission to carry out structural works on his property under s 6 of the Building Control Act.[18] The form named the new builder for his project as the plaintiff (Hauslab Design & Build Pte Ltd) and specified the plaintiff's unique entity number (201327267G). I analyse this form in greater detail at [114] below.

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15 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at para 31; Affidavit of Nidhi Vinod Didwania filed on 26 May 2015 at para 15.

16 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at para 29; Affidavit of Nidhi Vinod Didwania filed on 26 May 2015 at para 13.

17 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at para 27.

18 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at pages 34 to 37.

18 Under cover of a letter dated 4 November 2013 from the project engineer to the BCA, the engineer submitted to the BCA electronically the defendant's re-application form accompanied by the engineer's own application.[19] The subject heading of the engineer's cover letter read "Joint Application for Permit to Carry out Demolition Works (Change of Builder)". Like the defendant's application, the engineer's application was also framed as a re-application for permission to carry out structural works arising from a change of builder.[20] The seventh page of this form also named the plaintiff as the new builder and gave the plaintiff's unique entity number.[21]

19 The project engineer included two other enclosures with his cover letter. One was a copy of the *plaintiff's* builder's licence issued on 29 October 2013 by the BCA.[22] The second was a certificate issued by *D&B* under s 11(1)*(f)* of the Building Control Act certifying that it had completed, as at 1 November 2013, 65% of the structural work, 15% of the air-conditioning work, 18% of the electrical work and 15% of the plumbing work for the project in accordance with the plans supplied by the qualified person and in accordance with the Building Control Act and Regulations, leaving outstanding only the brickworks, doors, windows, swimming pool structure and ceilings.[23]

20 Apart from this certificate, D&B did not feature in this joint application by the defendant and the project engineer to the BCA.

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19 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at page 25.

20 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at page 26.

21 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at page 32.

22 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at page 43.

23 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at page 44.

21 The next day, the defendant received a system-generated email from the BCA acknowledging receipt of his application.[24] He immediately forwarded the acknowledgment by email to Mr Tan and his team.

22 Just over a week later, on 14 November 2013, the BCA issued a permit to carry out structural works in response to this application which named *the plaintiff* as the builder of the project.[25] D&B was not referred to at all in the permit.

The progress payment claims

23 Over the 17-month period from July 2013 to November 2014, the defendant received 17 progress claims, issued at monthly intervals. Ms Nidhi, paid these 17 progress claims on the defendant's behalf without demur.

24 On 2 February 2015, the plaintiff forwarded progress claim 18 dated 31 January 2015 to the defendant. It is this progress claim which has given rise to the dispute between the parties.

25 By progress claim 18, the plaintiff claimed from the defendant the sum of $396,875 "for work done from April 2013 to 31 January 2015" under the construction contract "as subsequently novated from Hauslab D&B PL to Hauslab Design & Build PL".[26]

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[24] Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015at page 46.

[25] Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at pages 47 to 50.

[26] Affidavit of Ang Siew Choo dated 7 April 2015 at para 8 and pages 308 to 380.

26 Progress claim 18 complied with s 10 of the Act. It therefore constituted a payment claim within the meaning of that section.[27] It also stated on its face that it was served under the Act.

27 The defendant did not, however, provide a payment response to the plaintiff within the time stipulated by s 11 of the Act. Neither did the defendant take the further opportunity to provide a payment response within the seven-day dispute settlement period under s 12(4) of the Act.[28]

The adjudication

28 On 5 March 2015, the plaintiff gave the defendant notice as required by s 13(2) of the Act that it intended to make an adjudication application on its payment claim.[29] Later that day, the plaintiff lodged an adjudication application under s 13(1) of the Act with the Act's authorised nominating body, the Singapore Mediation Centre ("the SMC"). On the next day, the SMC served the adjudication application on the defendant under s 13(4) of the Act. On 9 March 2015, the SMC appointed the adjudicator and served notice of the appointment on the parties under s 14 of the Act.[30] On 13 March 2015, the defendant lodged his adjudication response with the SMC under s 15 of the Act.[31] Under s 17 of the Act, this meant that the adjudicator was obliged to determine the adjudication application on or before 27 March 2015.[32]

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27 Adjudication Determination dated 20 March 2015 at para 6, found in Affidavit of Ang Siew Choo dated 7 April 2015 at page 386.

28 Adjudication Determination dated 20 March 2015 at para 7, found in Affidavit of Ang Siew Choo dated 7 April 2015 at page 387.

29 Affidavit of Ang Siew Choo dated 7 April 2015 at pages 381 to 383.

30 Affidavit of Ang Siew Choo dated 7 April 2015 at page 387 at para 10.

31 Affidavit of Vinod Kumar Ramgopal Didwania filed on 26 May 2015 at page 162.

32 Affidavit of Ang Siew Choo dated 7 April 2015 at page 388 at para 11.

29 On 15 March 2015 at 8.38 pm, the adjudicator sent an email directly to the parties, *ie* not through solicitors, in the following terms:[33]

> With regards to both the Adjudication Application dated 5 March 2015 and the Adjudication Response dated 13 March 2015, please submit your replies, rebuttals or additional information to me, latest by 17 March 2015, 5pm (by email).
>
> Thereafter, I will finalise my determination after due consideration of all your submissions.
>
> Please acknowledge receipt of this email.
>
> Thank you.
>
> [emphasis original]

30 The defendant replied to the adjudicator on 16 March 2015 duly acknowledging this communication.[34]

31 Neither party made any submissions to the adjudicator before his deadline of 5.00 pm on 17 March 2015. But between 5.40 pm and 6.05 pm that day, the plaintiff's solicitors lodged with the adjudicator by email a set of written submissions, a bundle of documents and a bundle of authorities.[35]

32 On 18 March 2015 at 9.50 am, the defendant's solicitors at that time took the objection that the plaintiff's submissions had been lodged out of time.[36] They also took the objection that, under the Act, a claimant had no right of reply to the respondent's adjudication response. However, the plaintiff had now taken the opportunity in its submissions to put in a full reply to the

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33 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 355.

34 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 355.

35 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at pages 533 to 1141.

36 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at pages 353 to 354.

defendant's adjudication response. As a result, the defendant's solicitors invited the adjudicator either: (i) to reject the plaintiff's submissions outright for being late; or (ii) to extend to the defendant a right of reply. The defendant's solicitors asked for a right of reply on the grounds that the plaintiff's submissions were lengthy and contained factual inaccuracies and erroneous statements of legal principle which, if left unaddressed, would cause the defendant "severe prejudice". The defendant's solicitors further stated that they intended to make only brief submissions for clarification in order to assist the adjudicator. They asked the adjudicator to permit them to do so by 5.00 pm on 23 March 2015.

33 The adjudicator responded to both parties just over an hour later, at 10.58 am.[37] He informed them that he had decided to extend the deadline for the parties' "final submissions" until 5.00 pm that day, 18 March 2015. His email concluded by instructing the parties, in boldface, as follows: "**Please focus on the key points of dispute, keep it brief and adhere strictly to my deadline of 5.00pm today**".

34 At 2.12 pm on the same day,[38] the defendant himself informed the adjudicator by email that: (i) his lawyers were in court until 5.00 pm that day; (ii) they were engaged in trial until Friday, 20 March 2015; (iii) they could not be expected to make their submissions that same day, *ie* 18 March 2015, upon such short notice; and (iv) he would suffer severe prejudice if he were not allowed to address and clarify the various issues raised by the plaintiff in its submissions. He reiterated his solicitors' request that the adjudicator permit the defendant until 5.00 pm on Monday, 23 March 2015 to respond.

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37 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 352.

38 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 351.

35 The adjudicator responded to the parties seven minutes later, at 2.19 pm. He informed them that his deadline of 5.00 pm that day remained unchanged.[39] He said further:

> The points of dispute are quite clear and requires (sic) only brief rebuttals. It is not necessary to prolong this adjudication.
>
> No response by the deadline is also acceptable.

36 The defendant responded to the adjudicator 20 minutes later, at 2.39 pm. He asked the adjudicator to extend the deadline until at least 5.00 pm the next day, 19 March 2015. The adjudicator did not respond to this request.[40]

37 On 19 March 2015, by two emails sent at 7.49 pm and 8.03 pm, the defendant's then solicitors submitted written submissions, a bundle of documents and a bundle of authorities to the adjudicator.

38 On 20 March 2015 at 11.14 am, the adjudicator rejected the defendant's submissions and bundles because they were late and because they were lengthy. He said:[41]

> Unfortunately, both your submissions dated 19 March 2015, 7.49 pm and 8.03 pm did not comply with my direction and are therefore rejected on two counts:
>
> 1. Submissions were received after the extended deadline of 18 March 2015, 5.00 pm.
>
> 2. Submissions were not brief as directed but were lengthy which contained a total of 164 pages.
>
> Hence, I have proceeded with my adjudication determination as I do not wish to prolong the adjudication process as the points of arguments from both parties are clear and adequate for my determination.

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39 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 351.

40 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at para 59.

41 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 350.

The determination

39 On 20 March 2015, the adjudicator issued his adjudication determination.[42] He found in favour of the plaintiff in full. He therefore ordered the defendant to pay to the plaintiff by 1 April 2015 the sum of $396,875 comprised in its payment claim, *ie* progress claim 18, interest on that sum at the rate of 5% per annum compounded annually and the costs of the adjudication.

40 The adjudicator's determination rested on three findings which are relevant to the present application.

41 First, the adjudicator held that there was indeed a contract between the plaintiff and the defendant within the meaning of s 4 of the Act. He accepted the plaintiff's submissions and found that the defendant had agreed to novate his construction contract to the plaintiff. In particular, he accepted that the defendant's agreement to the novation was evidenced by the defendant's conduct in drawing cheques in payment of certain progress claims between progress claim 10 (dated 23 May 2014) and progress claim 17 (dated 15 December 2014) in the name of the plaintiff, not of D&B.[43]

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42 Affidavit of Ang Siew Choo dated 7 April 2015 at pages 384 to 393.

43 Affidavit of Ang Siew Choo dated 7 April 2015 at page 389 at para 15(a).

42 Second, he held that he was obliged to reject all of the defendant's reasons for withholding payment which were set out in the defendant's adjudication response. The adjudicator held that this was the clear consequence under s 15(3)*(a)* of the Act of the defendant's failure to provide a payment response under s 11 of the Act.[44]

43 Third, the adjudicator repeated his reason for rejecting the defendant's request on 18 March 2015 for an extension of time:[45]

> Although there was no request for calling a[n] [adjudication] conference, I requested for (sic) both parties to submit their final submissions to me by 17 March 2015 which was extended to 18 March 2015. *I rejected the [defendant's] request for further extension as I do not wish to prolong the adjudication process as the points of arguments from both parties are clear and adequate for my determination. …*
>
> [emphasis added]

44 I make an observation at this juncture. It is common ground before me[46] that the question of jurisdiction is not for an adjudicator to decide. It is a question for the court hearing a setting-aside application to decide. In light of that, a respondent should not raise the issue of jurisdiction before an adjudicator – save perhaps only to preserve the point for a future setting-aside application to the court – and an adjudicator before whom his own jurisdiction is raised should not decide it. As the Court of Appeal said in *Lee Wee Lick Terence (alias Li Weili Terence) v Chua Say Eng (formerly trading as Weng Fatt Construction Engineering) and another appeal* [2013] 1 SLR 401 ("*Chua Say Eng*") at [36]:

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44 Affidavit of Ang Siew Choo dated 7 April 2015 at page 390 at para 19.

45 Affidavit of Ang Siew Choo dated 7 April 2015 at page 388 at para 13.

46 Plaintiff's Additional Skeletal Submissions dated 25 January 2016 at paras 22 to 28; Defendant's Further Submissions dated 26 January 2016 at para 16.

> In our view, if the respondent's objection to the jurisdiction or power of the adjudicator to conduct the adjudication is based on an invalid appointment, such a jurisdictional issue should be raised immediately with the court and not before the adjudicator. *The reason is that since the objection is against the adjudicator's jurisdiction as an adjudicator, he has no power to decide if he has jurisdiction or not. He cannot decide his own competency to act as an adjudicator when such competency is being challenged by the respondent.* An adjudicator who decides the issue may face one or other of the following consequences. If he accepts the respondent's objection and dismisses the payment claim, the claimant may commence court proceedings against him to compel him to adjudicate the payment claim. If he dismisses the respondent's objection and makes an award, the respondent could still raise the same objection in enforcement proceedings with respect to his award. Accordingly, *the adjudicator should proceed with the adjudication and leave the issue to the court to decide.*
>
> [emphasis added]

45 So too, it is not for the adjudicator to decide whether or not he has complied with the rules of natural justice. Again, as the Court of Appeal said in *Chua Say Eng* at [65]:

> *If the respondent wishes to argue* that the adjudicator was not validly appointed or *that the adjudicator has not exercised his power to determine the adjudication application properly (for example, because the adjudicator has not complied with s 16(3) of the Act), such argument should be made to the court.* The respondent may apply to court to set aside the adjudication determination on this basis.
>
> [emphasis added]

46 To the extent that the adjudicator has expressed a view on these issues, therefore, I consider that I am not only entitled but obliged to come to my own view on each of them. One is a jurisdictional issue said to warrant setting aside and the other is a breach of duty said to warrant setting aside. Setting aside is the ultimate issue which I am obliged by the defendant's application to determine.

The setting-aside application

47 With the adjudication determination in hand, the plaintiff secured on 8 April 2015 the leave of court under s 27 of the Act to enforce the adjudication determination in the same manner as a judgment or order of the court to the same effect. On 28 April 2015, the defendant filed his setting-aside application. At the same time, he paid the sum of $396,875 into court as required by s 27(5) of the Act.

48 The defendant makes his setting-aside application by way of an interlocutory summons in the plaintiff's enforcement proceedings. The substantive relief which he seeks in his summons is an order setting aside the adjudication determination and an order setting aside the leave granted to the plaintiff to enforce the adjudication determination. These two claims for relief stand or fall together. Neither party suggests that the defendant's application to set aside the leave granted to the plaintiff to enforce the adjudication determination ought, in the circumstances of this case, to be analysed separately or to be determined by principles separate from those which determine whether the adjudication determination itself ought to be set aside.

49 It is therefore to these principles which I now turn.

Setting aside

Power and grounds

50 In *Citiwall Safety Glass Pte Ltd v Mansource Interior Pte Ltd* [2015] 1 SLR 797 ("*Citiwall*"), the Court of Appeal held (at [42]) that the power to set aside an adjudication determination arises at common law, as an instance of the High Court's supervisory jurisdiction, *ie* "the inherent power of superior

courts to review the proceedings and decisions of inferior courts and tribunals or other public bodies discharging public functions".

51 The court's role in exercising this supervisory jurisdiction is restricted. It inquires only into fundamental procedural grounds arising from the adjudication. It cannot review the adjudication determination on the merits. That restriction, in addition to being inherent in the nature of the supervisory jurisdiction, is consistent with the underlying purpose of the Act. As the Court of Appeal put it in *Citiwall* at [48]:

> Put simply, **in hearing an application to set aside an [adjudication determination] ..., the court does not review the merits of the adjudicator's decision, and any setting aside must be premised on issues relating to the jurisdiction of the adjudicator, a breach of natural justice or non-compliance with the [Act]**. Applications to set aside [adjudication determinations] … are thus *akin* to judicial review proceedings, and are not appeals on the merits of the adjudicator's decision. In our judgment, it is consistent with the purpose of the [Act], which is to facilitate cash flow in the building and construction industry, that the court, in hearing such applications, does not review the merits of the [adjudication determination] in question. It may be noted that in keeping with its statutory purpose, the [Act] establishes that parties who have done work or supplied goods are entitled to payment as of right; it also sets out an intervening process of adjudication which, although provisional in nature, is final and binding on the parties to the adjudication until their differences are ultimately and conclusively determined. In other words, the adjudication determination under the [Act] seeks to achieve temporary finality: see *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 at [18].
>
> [emphasis in italics in the original; emphasis in bold added]

52 Because the power to set aside an adjudication determination arises at common law, the Act nowhere expressly gives the court the power to do so. Instead, the Act assumes that such a power exists outside the Act and does no more than require the dissatisfied party, by s 27(5), to pay the unpaid portion of the adjudicated amount into court before invoking that power.

53 The Act likewise nowhere expressly spells out the grounds on which an applicant can succeed in either type of setting-aside application, whether to set aside an adjudication determination itself or to set aside the leave granted under s 27 of the Act to enforce an adjudication determination. There is thus no equivalent in the Act of s 48 of the Arbitration Act (Cap 10, 2002 Rev Ed) or of Article 34(1) of the Model Law on Arbitration read with s 24 of the International Arbitration Act (Cap 143A, 2002 Rev Ed) ("IAA"). The grounds for setting aside – just like the power to set aside itself – are therefore to be found outside the Act and in the common law.

54 In *Chua Say Eng*, the Court of Appeal held (at [66] – [67]) that the court's role on a setting-aside application is restricted to considering whether the respondent has established either of the two fundamental grounds on which the setting-aside power may be exercised:

> (a) Whether the adjudicator was validly appointed, *eg* whether there is a payment claim and whether it has been validly served; and
>
> (b) Whether the claimant, in making the adjudication application, failed to comply with a provision of the Act which is so important that the legislative purpose of the Act is that a breach of that provision should render the application invalid.

55 The second of these two grounds says nothing about the *adjudicator's* conduct in making his *determination*. It focuses only on the *claimant's* conduct in making its *application*. But that focus is simply the result of the nature of the actual challenge before the Court of Appeal in *Chua Say Eng* itself. That challenge related only to the *claimant's* conduct. It will, of course, also suffice to set aside an adjudication determination if the respondent can show that the *adjudicator*, in making his *determination*, failed to comply with

a provision of the Act which is so important that the legislative purpose of the Act is that a breach of that provision should render the *determination* invalid.

56 In *SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2010] 1 SLR 733 ("*SEF Construction*") at [45] Prakash J (as Prakash JA then was) set out seven grounds for setting aside an adjudication award. Although *SEF Construction* pre-dated *Chua Say Eng*, the following seven grounds from Prakash J's decision are a convenient expansion on *Chua Say Eng's* two fundamental grounds:

(a) Whether a contract exists between the claimant and the respondent within the meaning of s 4 of the Act;

(b) Whether, in accordance with s 10 of the Act, the claimant has served on the respondent a payment claim;

(c) Whether, in accordance with s 13 of the Act, the claimant has made an adjudication application to an authorised nominating body;

(d) Whether, in accordance with s 14 of the Act, the application has been referred to an eligible adjudicator who agrees to determine the adjudication application;

(e) Whether, in accordance with ss 17(1) and (2) of the Act, the adjudicator has determined the application within the specified period; and has determined: (i) the adjudicated amount (if any) to be paid by the respondent to the claimant; (ii) the date on which the adjudicated amount is payable; (iii) the interest payable on the adjudicated amount; and (iv) the proportion of the costs payable by each party to the adjudication;

(f) Whether, in accordance with s 16(3) of the Act, the adjudicator has: (i) acted independently and impartially and in a timely manner; and (ii) has complied with the principles of natural justice; and

(g) Whether, in a case where a review adjudicator or panel of adjudicators has been appointed under s 18 of the Act, conditions (a) to (f) are satisfied, *mutatis mutandis*.

57 The defendant mounts his setting-aside application squarely under sub-paragraph (a) and under the second limb of sub-paragraph (f) at [56] above. Thus, the defendant submits that the adjudicator lacked jurisdiction in the adjudication because there was no contract between the defendant and the plaintiff to which the Act applied, given that the defendant never agreed to novate the construction contract to the plaintiff. The defendant submits in the alternative that the adjudicator breached his duty to comply with the principles of natural justice in arriving at his determination because of, amongst other things, his procedural decisions between 18 March 2015 and 20 March 2015 which I have summarised at [32] to [38] above.

The issues

58 The two issues which the defendant's setting-aside application raises are therefore:[47]

(a) Whether there is a contract between the plaintiff and the defendant within the meaning of s 4 of the Act; and

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47 Defendant's Skeletal Submissions dated 17 November 2015 at para 31.

(b) Whether the adjudicator failed to comply with the principles of natural justice in arriving at his determination, contrary to his duty under s 16(3)*(c)* of the Act.

59 These two issues raise a logically anterior issue: on whom does the burden of proof lie on these issues and to what standard must that burden be discharged. The answer to this question must be the same, regardless of whether it arises on an application to set aside an adjudication determination itself or on an application to set aside leave to enforce an adjudication determination.

60 It is to this preliminary issue which I first turn.

Burden and standard of proof

61 The parties are on common ground[48] that the burden of proof in either type of setting-aside application rests on the respondent in the adjudication. That is so simply because it is the respondent who must move the court in both types of application. It is therefore always incumbent on the respondent to advance a positive case in order to satisfy the court that he ought to succeed in his setting-aside application.

62 It does not, however, suffice merely to note that the burden of proof rests on the respondent. It is also important to be clear about the standard of proof which a respondent must meet in order to discharge this burden on questions of fact. The defendant's jurisdictional challenge turns, at least in part, on the following question of fact: did he agree to novate the construction

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[48] Minute sheet for OS 312/2015 (SUM 2030/2015) dated 20 November 2015 at page 2.

contract to the plaintiff? I asked both counsel to address me on the standard which the defendant must meet to succeed on this question.[49]

63 Plaintiff's counsel argued that a respondent has to discharge his burden on a setting-aside application on the balance of probabilities. Defendant's counsel, on the other hand, argued that the applicable standard is equivalent to that which applies on a summary judgment application.[50] He submits, therefore, that all that a respondent has to do to succeed in his setting-aside application is to establish a reasonable or fair probability that the adjudication determination ought to be set aside. If a respondent is able to do that, the setting-aside application must succeed and the parties' underlying disputes must go forward to be determined finally and on the merits in arbitration or at trial.[51]

64 On the jurisdictional issue, therefore, defendant's counsel's submission is that all he has to show is that there is a reasonable or fair probability that the defendant never agreed to novate the construction contract to the plaintiff.[52]

65 To support this submission, defendant's counsel relies heavily on cases from England and from New South Wales. In my view, these cases are of no assistance to him. The cases he cites from England are distinguishable because the English regime for adjudication is founded on contract rather than statute. The cases he cites from New South Wales are distinguishable because they each applied a well-known standard established in an aspect of the general law

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49 Minute sheet for OS 312/2015 (SUM 2030/2015) dated 20 November 2015 at page 11.

50 Defendant's Further Submissions dated 26 January 2016 at para 42.

51 Defendant's Further Submissions dated 26 January 2016 at para 53.

52 Minute sheet for OS 312/2015 (SUM 2030/2015) dated 11 February 2016, page 2.

of civil procedure rather than a specific standard held to apply under New South Wales' statutory adjudication regime.

66 As a result, I have rejected the defendant's submission. In my view, the plaintiff is correct: for a respondent to succeed in discharging his burden on a disputed question of fact which he advances on a setting-aside application, the respondent must establish that fact on the balance of probabilities.

67 In the circumstances of this case, therefore, the defendant cannot succeed on the issue of jurisdiction unless he can establish on the balance of probabilities that he never agreed to novate his construction contract to the plaintiff.

68 I now explain my reasons for rejecting the defendant's submissions. I shall analyse first the English case cited by defendant's counsel before turning to the New South Wales cases.

England

69 Although adjudication in England is regulated by statute, it is ultimately founded in contract. Access to adjudication in England arises either from terms which the parties have expressly agreed in their contract or from terms which statute implies into their contract.

70 The statute which regulates adjudication in England is the Housing Grants, Construction and Regeneration Act 1996 ("the English Act"). Section 108 of the English Act provides that adjudication is governed by the parties' contract provided that the contract contains express provisions for adjudication which meet certain minimum requirements prescribed by ss 108(2) to 108(4) of the English Act. These minimum requirements extend to aspects of the

adjudication procedure and to the duties and powers of the adjudicator. If the parties' contract contains no express provisions for adjudication or contains express provisions for adjudication which fall short of the minimum requirements prescribed by statute, ss 108(5) and 114(4) of the English Act read together provide that the adjudication provisions set out in subsidiary legislation enacted under the English Act take effect as implied terms of the parties' contract. The subsidiary legislation in question is the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998. That legislation is known commonly and simply as the "Scheme for Construction Contracts".

71 One of those minimum requirements, imposed by s 108(3) of the English Act, is that the parties' contract must expressly provide that the decision of the adjudicator carries temporary finality, *ie* that it bind the parties contractually until their underlying dispute is determined with full finality. If the contract contains no express provision to that effect, paragraph 23(2) of the Scheme for Construction Contracts read with s 114(4) of the English Act operates to imply a term into the parties' contract conferring temporary finality on an adjudicator's decision in the same terms as are set out in s 108(3) of the English Act.

72 As a result, the failure to comply with an adjudication decision under the English regime is simply a breach of contract. It constitutes a breach of either an express term or of a statutorily implied term of the parties' contract. The consequence of that failure is the same as the consequence of any other breach of contract: the contract-breaker is liable to be compelled by the court to pay damages to the innocent party for breach of contract. Thus, in *Macob Civil Engineering Ltd v Morrison Construction Ltd* [1999] All ER (D) 143 ("*Macob*"), Dyson J (as Lord Dyson then was) held (at [37]) that "the usual

remedy for failure to pay in accordance with an adjudicator's decision will be to issue proceedings claiming the sum due, followed by an application for summary judgment".

73 This is an important point. The typical civil action in England, as in Singapore, offers a claimant two avenues to put the merits of his claim before the court for determination. The first avenue is through an application for summary judgment. The second avenue is at a full trial on the merits.

74 A claimant in England who seeks summary judgment will secure it if he can establish that "the defendant has no real prospect of successfully defending the claim…" and that "there is no other compelling reason why the case…should be disposed of at a trial". These tests are found in Part 24.2(a) of the English Civil Procedure Rules, the analogue of our Order 14. A claimant who relies on the temporary finality of an adjudication decision for his claim will ordinarily expect to satisfy this test. That is the result of the fundamental importance which the English courts attach to upholding temporary finality and of the limited defences available against a claim which relies on that concept.

75 Under the English regime, therefore, a claimant who is unable to secure summary judgment on an adjudication decision in his favour will nevertheless have another opportunity at a full trial to put the merits of his claim arising from the adjudication decision before the court. That situation will undoubtedly be rare: the objectives of any adjudication regime militate against requiring a claimant to go through a full trial simply to secure the benefit of an adjudication decision. But the important point is that a respondent who secures any sort of leave to defend at the summary judgment stage under the English regime does not thereby bring the claimant's attempt

to secure the benefit of an adjudication decision to an end. The claimant's attempt simply proceeds to trial.

76 Our adjudication regime is significantly different from the English regime, as I explain at [82] – [84] below. That is why the English case law is not at all helpful when considering the standard of proof which rests on a respondent who brings a setting-aside application under our regime.

77 Defendant's counsel also relies on the English case of *Project Consultancy Group v Trustees of the Gray Trust* (1999) 65 ConLR 146 ("*Project Consultancy*"). The defendants in that case failed to comply with an adjudication decision. The claimant issued a writ against the defendants followed by an application for summary judgment. The defendants resisted summary judgment on the grounds that the adjudicator did not have jurisdiction over them. The argued that either: (i) they had no contract with the claimant; or (ii) if they did, it had been entered into before 1 May 1998, the date on which the English Act had come into force.

78 What Dyson J had to decide in *Project Consultancy* was not whether the claimant's attempt to enforce the adjudication decision should succeed or fail. What Dyson J had to decide was whether the claimant was entitled to summary judgment on its claim. Therefore, echoing the language of Part 24.2(a) (see [74] above), he framed the question before him as being "whether the defendants [had] a real prospect of showing that the adjudicator was wrong in holding that a contract was concluded after 1 May 1998".

79 After reviewing the evidence, Dyson J held that the claimant had failed to satisfy this test. It was therefore not entitled to summary judgment:

> 32 In my view, the question whether, and if so when, a contract was ever concluded in this case is by no means straightforward. I have heard prolonged argument, and been taken through many documents as well as a number of witness statements. I find it quite impossible to resolve these issues with any degree of confidence. I am by no means certain that I have seen all the relevant documents, or that I know the full story. Quite apart from the facts, the issues of law that have not been argued as fully as they would be at a trial are not easy to resolve. I have come to the conclusion that it is at least arguable that no contract was concluded on 10 July, and that no contract was ever concluded between the parties… I am quite satisfied that it is not possible to resolve these issues by summary process, and without full evidence and argument.

80 Dyson J's decision is completely unremarkable in the light of the English adjudication regime. He had an action before him which sought contractual relief arising from the defendant's failure to comply with an adjudication decision. The issue which arose was whether the parties had a contract at all, and if so whether the English Act applied to it. The plaintiff applied to Dyson J for summary judgment on its claim. The question which then arose, as it does on every application for summary judgment, was whether the plaintiff ought to be permitted to have its claim determined summarily or should be required to proceed to trial. Despite the claimant's evidence and submissions, Dyson J found the defence to be at least arguable. He therefore concluded that the claimant's claim should not be determined summarily and ought instead to proceed to trial, *ie* with the additional benefit of discovery of documents, cross-examination on the facts and fuller arguments on the law.

81 In *Project Consultancy*, Dyson J did not deny the claimant the benefit of an adjudication decision simply because the defendants' grounds of challenge were "at least arguable". Dyson J simply required the plaintiff to prove at trial that it was entitled to the benefit of the adjudication decision.

82 The adjudication regime in Singapore is significantly different from the adjudication regime in England. Our regime is a bespoke statutory process. It is not one which has been engrafted onto contract and therefore onto the ordinary procedure for enforcing contractual obligations. Instead, our regime is set out in primary and subsidiary legislation and in the case law interpreting and applying that legislation. This difference has two consequences which make the English case law of no assistance in deducing the standard of proof that a defendant in Singapore must meet on a setting-aside application.

83 First, the burden in an ordinary civil action, and therefore also in an application for summary judgment within that action, remains on the plaintiff. That is true in Singapore as it is in England. Under the English adjudication regime, therefore, a claimant who seeks the benefit of an adjudication decision bears the burden of establishing his contractual entitlement to do so. That is so whether the claimant is seeking relief summarily or at trial. Our Act, on the other hand, relieves a claimant of the burden of proof which would otherwise rest on him in enforcement proceedings by permitting him to enforce an adjudication determination simply by a process of registration. The onus is thereafter placed firmly on the respondent to bring a setting-aside application – of either type – and to satisfy the court that it should succeed.

84 Second, in the English regime, whether the claimant is able to show that the respondent has no real prospect of a defence determines only whether the enforceability of the adjudication decision should be determined summarily or at trial. In our regime, a respondent must bring an application to set aside an adjudication determination by originating summons, and must bring an application to set aside leave to enforce an adjudication determination by interlocutory summons in the claimant's enforcement application. In either case, the challenge to the adjudication determination is resolved once and for

all – at least at first instance – when the High Court considers and decides whether to exercise its supervisory jurisdiction in the defendant's favour. A setting-aside application in our regime will not go to trial. There is therefore no warrant for applying on a setting-aside application under our regime the converse of the standard which suffices for a plaintiff to secure summary judgment.

New South Wales

85 The defendant also refers me to a number of decisions from New South Wales.[53] I have reviewed them. None of them support his submission that the courts of New South Wales set aside an adjudication determination merely upon finding that the respondent has made out an arguable case of a lack of jurisdiction.

86 The adjudication regime in New South Wales is set out in the Building and Construction Industry Security of Payment Act 1999 ("the NSW Act"). Under s 24 of the NSW Act, if the respondent fails to pay an adjudicated amount, the claimant may obtain a certificate from the authorised nominating body setting out the names of the parties, the amount adjudicated and the date on which payment of the amount adjudicated was due. The claimant can then file that adjudication certificate as a judgment for a debt in any court of competent jurisdiction, upon which the certificate will be enforceable accordingly as provided in s 25(1).

87 The NSW Act contemplates in s 25(4) that the respondent is entitled to commence proceedings to have the resulting judgment set aside. The respondent is prohibited, in those setting-aside proceedings, from bringing a

[53] Defendant's Further Submissions dated 26 January 2016 at paras 58 to 81.

cross-claim, raising any defence to the underlying dispute or challenging the merits of the adjudicator's decision.

88 The NSW Act does not specify the procedural nature of the setting-aside proceedings. But it has been established at common law in New South Wales that those proceedings are brought as judicial review proceedings invoking the supervisory jurisdiction of the court: per Spigelman CJ in *Chase Oyster Bar Pty Ltd v Hamo Industries Pty Ltd* [2010] NSWCA 190 at [5]. Where a respondent in New South Wales seeks a declaration that an adjudication determination is void, the appropriate form of relief is an order in the nature of *certiorari* quashing or setting aside the adjudication: *St Hilliers Contracting Pty Ltd v Dualcorp Civil Pty Ltd* [2010] NSWSC 1468 at [1]; *Construction Law* Vol 3 (Informa Law, 2011) by Julian Bailey at §24.183, footnote 681.

Fifty Property Investments

89 Counsel for the defendant cites the case of *Fifty Property Investments Pty Ltd v Barry J O'Mara & Anor* [2006] NSWSC 428 ("*Fifty Property Investments*").[54] The respondent in that case brought judicial review proceedings seeking a declaration that an adjudicator's determination was void. One of the respondent's arguments was that the adjudicator had erred in finding that there was a construction contract between the respondent and the claimant. Brereton J held (at [21]) that it was open to the reviewing court to decide that question of fact for itself because it went to jurisdiction:

> [w]here the existence of an essential preliminary precondition to jurisdiction is a question of objective fact (as distinct from where it depends on the tribunal having a state of satisfaction

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54 Defendant's Further Submissions dated 26 January 2016 at paras 58 to 60.

> or opinion), it is for the reviewing court to determine, on the evidence before it, whether or not the fact exists, and evidence of the existence or non-existence of the fact is admissible in the reviewing court…

Brereton J went on to consider the evidence in detail and concluded (at [42]) that the adjudicator had erred when he had found a contract to exist:

> …on the material before the adjudicator, so analysed, the matters on which the adjudicator relied did not in fact support his conclusion that there was a construction contract between [the plaintiff] and [the second defendant], and the matters to which he did not refer pointed against it.

90 Nothing in this part of Brereton J's judgment indicates that he was prepared to quash the adjudicator's decision on the basis merely that there was an arguable case that there was no construction contract between the parties. On the contrary: Brereton J held that it was his duty to inquire into objective questions of fact which were relevant to the question of the adjudicator's jurisdiction and to make those findings of fact, one way or the other, for himself on the available evidence.

91 Brereton J next considered the respondent's alternative ground of challenge to the adjudicator's decision, *ie* that the adjudicator had denied the respondent natural justice by communicating privately with one of the claimants. Brereton J accepted that there had been a denial of natural justice and turned to the question whether he should nevertheless exercise his residual discretion to allow the adjudication determination to stand notwithstanding that denial (at [53]). He declined to exercise that discretion because the defendants had failed to satisfy him that the breach of natural justice could not possibly have made a difference to the outcome (at [54]):

> [53] The result of a denial of natural justice is that the decision is void, even if the decision would not have been affected by any submissions which might have been made had

> an opportunity to make them been afforded. While, as a matter of discretion, relief might be declined if it can be shown that the denial of natural justice could not possibly have made a difference to the outcome, all that a plaintiff need establish is that the denial of natural justice deprived it of the possibility of a better outcome, and in order to negate that possibility it is necessary to conclude that a properly conducted adjudication could not possibly have produced a different result…
>
> [54] As the *evidence and argument on the construction contract issue was at best [finely] balanced*, and as the adjudicator was sufficiently concerned by the point to seek further information from Impero, *I cannot be satisfied that, had FPI been given an opportunity to respond, which they say they would have taken, their response could not possibly have made a difference*. Mr Bechara says that he would have referred to the subsequent variations in answer to Impero's reference to the detailed estimate of November 2003, and pointed out that the contract had been varied since that time. Given the adjudicator's failure to advert at all to the variation claims in his reasons, *I cannot begin to be satisfied that there was no possibility that a properly conducted adjudication would have resulted in a different outcome. Indeed, if the adjudicator relied on the circumstance that neither the contract nor the detailed estimate covered natural stone, then whether or not there was a subsequent variation was a matter of great significance upon which a further submission, had the opportunity been permitted, might well have been very influential.*
>
> [emphasis in the defendant's submissions]

92 Defendant's counsel cites in his submissions [54] of Brereton J's judgment[55] without citing [53]. Neither does counsel explain that at [54], Brereton J was considering a challenge based on a denial of natural justice rather than one based on a lack of jurisdiction. What Brereton J sets out in [53] and [54] is simply the analogue of the test which we apply to determine whether a denial of natural justice has caused prejudice to a party to an arbitration within the meaning of s 24(b) of the IAA. That test is set out in *Soh Beng Tee & Co Pte Ltd v Fairmount Development Pte Ltd* [2007] 3 SLR(R) 86

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55 Defendant's Further Submissions dated 26 January 2016 at para 59.

at [86] – [92] read in the light of *L W Infrastructure Pte Ltd v Lim Chin San Contractors Pte Ltd and another appeal* [2013] 1 SLR 125 at [54].

93 When paragraphs [53] and [54] of *Fifty Property Investments* are read together, it becomes clear that that case is no authority for the general submission which the defendant's counsel makes that the standard of proof which a respondent must meet in a setting-aside application is to show merely a "possibility" that the adjudicator could have arrived at a different outcome.

Grave v Blazevic

94 The second decision from New South Wales on which defendant's counsel relies is *Grave v Blazevic Holdings Pty Limited* [2010] NSWCA 324 ("*Grave v Blazevic*").[56] In that case, the claimant served two payment claims on the respondent. The respondent failed to provide a payment schedule (the analogue under the NSW Act of our payment response). Section 14(4) of the NSW Act therefore placed him under an immediate civil liability to pay the unpaid balance to the claimant. Section 15(2) of the NSW Act gave the claimant a choice between commencing action to recover the unpaid balance from the respondent as a debt and proceeding to have his claim adjudicated. However, s 15(4) of the NSW Act provided that if a claimant commenced an action in debt under s 15(2), a respondent who had failed to serve a payment schedule was not entitled in the civil proceedings to "raise any defence in relation to matters arising under the construction contract".

95 The claimant elected to commence action and secured a default judgment against the respondent. The respondent applied to set aside the default judgment on the grounds that he was not a party to a construction

[56] Defendant's Further Submissions dated 26 January 2016 at paras 63 to 69.

contract with the claimant. The question which arose was whether that defence was a "defence in relation to matters arising under the construction contract" within the meaning of s 15(4) of the NSW Act. The judge at first instance held that it was. He dismissed the respondent's application, holding that the respondent was therefore precluded by s 15(4) of the NSW Act from advancing that defence. The defendant appealed against that decision to the New South Wales Court of Appeal.

96 McDougall J observed (at [21]) that the first instance judge did not find that the respondent's defence had no prospects of success. The question then was whether s 15(4) of the NSW Act precluded the respondent from advancing that defence in the proceedings. McDougall J concluded (at [36]) that it did not. Accordingly, he found (at [37]) that the respondent had succeeded in showing that he had an arguable defence to the claim and was therefore entitled to be let in to defend it.

97 It is unclear to me why defendant's counsel submits that *Grave v Blazevic* supports his position. I reproduce [65] – [68] of his submissions:

> 65. An important point to note in this case is the fact that the Appeal Court noted that:
>
> > "…[10] *The primary judge did not find, as a matter of fact, that the proposed defence was untenable.*
> >
> > …
> >
> > [21] *I start by repeating that the primary judge did not conclude, as a matter of fact, that the proposed defence had no prospect of success. This Court has not had the opportunity of hearing the witnesses and is in no position to make such a finding. Mr Lozina did not submit otherwise. …*"
> >
> > (emphasis added)

> 66. This would mean that there was an *arguable case* as to whether or not a "construction contract" existed between the parties.
>
> 67. Importantly, the *Honorable McDougall J* then noted that:
>
> > "[37] In my view, *the applicant succeeds on the substantive point – that there is an arguable defence*. As I have noted, it was not suggested that there was any relevant delay in making the application to set aside the default judgment. It follows, *in my view that the applicant was entitled to be let in to defend*."
> >
> > (emphasis added)
>
> 68. It is humbly submitted that the words "*…that there is an arguable defence…*" (stated by *Honorable McDougall J*) as adopted in New South Wales (which is similar to the positions taken by the English Courts and Singapore Courts in dealing with an ordinary summary judgment application), is indicative of the approach that should be taken in a setting aside application under *Order 95 Rule 2 and 3* of our *Rules of Court*, i.e. whether or not there is an arguable case / defence that the adjudicator lacks jurisdiction, and if so, the Defendant should then be allowed to have the matter heard by way of a full hearing.
>
> [emphasis in the defendant's submissions]

98 *Grave v Blazevic* in my view offers no guidance on the approach I should take to a setting-aside application under our adjudication regime. First, the test of an "arguable defence" which featured in that case is simply the test which applies in New South Wales to ascertain whether a judgment entered against a defendant in ordinary civil proceedings by default ought to be set aside. It is not the formulation of a test which applies to a setting-aside application. Second, the outcome in that case turned entirely on the construction of the specific wording of the specific limb of s 15(4) of the NSW Act which was in play in that case. But I am not applying a statutory test at all in order to determine whether the defendant's setting-aside application should succeed, let alone a test taken from the New South Wales statute. I am exercising the court's common law supervisory jurisdiction.

Filadelfia Projects

99 The final New South Wales decision that defendant's counsel relies on is *Filadelfia Projects Pty Ltd v EntirITy Business Services Pty Ltd* [2010] NSWSC 473 ("*Filadelfia Projects*")[57]. In that case, a developer sought an injunction to restrain a sub-contractor from enforcing an adjudication determination. The adjudicator had found, contrary to the developer's case, that there was a contract directly between the developer and the sub-contractor. The developer sought the injunction on the grounds that the sub-contractor had failed to place before the adjudicator two critical documents in which the sub-contractor had, contrary to its case in the adjudication, asserted that its contract was not with the developer but with the main contractor.

100 McDougall J found (at [5]) that it was "at least arguable that if [the two documents] had been put before [the adjudicator], he might have taken a different view as to whether or not the relevant construction contract was one between [the sub-contractor] and [the developer] or one between [the sub-contractor] and [the main contractor]". McDougall J also found that the applicant's understanding had been that these documents had in fact been placed before the adjudicator. He then held (at [7]) that "[i]n those circumstances, I think, there is a serious question to be tried as to whether there was in existence a construction contract, to which the Act applies, between [the developer] and [the defendant]." Further, he held (at [8]), that "it may be arguable that there was a substantial denial of procedural fairness if, as is [the developer's] case, [it] was given to understand that the relevant documents were before the adjudicator whereas in fact they were not."

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[57] Defendant's Further Submissions dated 26 January 2016 at paras 63 to 78.

101 McDougall J concluded as follows (at [10]):

> In my view, there is a strong case for arguing that there is "*Brodyn*" error, and, if it matters, there is also an arguable case, although the strength of the case depends on a disputed question of fact, that there has been some denial of procedural fairness. In those circumstances it is appropriate that enforcement of the adjudicator's determination be restrained for the moment.

102 It suffices to say that *Filadelfia Projects* did not consider the test to be applied on an application to set aside an adjudicator's determination. It was an application for an injunction. The test applied by McDougall J was accordingly the ordinary threshold test which applies whenever the court is asked to issue an interlocutory injunction: is there a serious question to be tried?

103 But this is not the impression given by defendant's counsel's summary of *Filadelfia Projects*:

> 75. The relevance of *Filadelfia Projects v EntirITy Business Services* (to the present case before this Honuorable [*sic*] Court) is the *approach and the standard of proof* (on whether or not there was a "construction contract" between the parties) that was adopted by the Court (in granting the injunctive relief).
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> 76. It would seem that the relevant issue is whether:
>
> > "…there is a *serious question to be tried* as to whether there was in existence a construction contract to which the act applies, between Filadelfia and Entirity…"
> >
> > (emphasis added)

> 77. What is immediately apparent from the case is that the *standard of proof* adopted by the Court in deciding this issue (which consequently affects whether or not to grant the injunctive relief sought) is whether or not "…*there is also an arguable case*…" on the matter, which would result in the enforcement of the adjudicator's determination being restrained for the moment.
>
> 78. In essence, in determining issues, the Court adopted a *standard of proof akin to that required under a summary judgment application*, i.e. whether there is "…*an arguable case*…", and if so enforcement would then be restrained.
>
> [emphasis in the defendant's submissions]

104 I reject the defendant's attempt to assimilate the well-established standard for granting an interlocutory injunction to the standard to be applied to a defendant on a setting-aside application under the Act.

105 Accordingly I reject the defendant's reliance on the New South Wales authorities in its entirety.

Conclusion

106 For the reasons I have given, I do not consider that the defendant can succeed in having the leave to enforce the adjudication determination set aside on his jurisdictional point if all that he is able to show is that there exists a real prospect of success that there was no novation, an arguable case that there was no novation, a possibility that the adjudicator could have reached a different outcome on novation, a triable issue on novation or a serious question to be tried on novation.

107 In my view, the burden which rests on the defendant is the ordinary civil burden to establish his case on the balance of probabilities. To succeed on his jurisdictional challenge, therefore, the defendant must show that it is more

probable than not that the defendant never agreed to novate his construction contract from D&B to the plaintiff.

108 This must be the correct position, and for two reasons. First, after I dispose of the defendant's setting-aside applications, there will be no future opportunity to consider at first instance whether the defendant's jurisdictional challenge was validly brought. I must therefore decide that question – and, for that purpose, decide all underlying questions of law and fact – now, once and for all and with full finality, subject only to appeal. That is so even though whether the defendant agreed to novate his construction contract to the plaintiff is also a question which a court or arbitrator will have to determine when it inquires into the merits of the parties' claims and defences.

109 Second, requiring the defendant to prove a disputed question of fact to this high standard is entirely consistent with the underlying purpose of the Act. The purpose of the Act, and indeed of any adjudication regime, is to yield a determination which carries temporary finality so long as certain prerequisites are satisfied. That goal would be completely undermined if all that a respondent had to do to succeed in displacing temporary finality was anything other than to establish on the balance of probabilities each factual question underlying its case for setting aside. To the extent that this high burden on the defendant carries with it the risk of error, it is the considered policy of the Act to place that risk of error on the respondent, as the party making payment, rather than on the claimant, as the party receiving payment.

Jurisdiction

110 I now turn to consider the issue of jurisdiction and the disputed question of fact underlying it.

111 I emphasise the limited nature of the task which I am now about to undertake. I consider the question of novation for the limited purpose of deciding only whether the adjudicator's determination should carry temporary finality as provided for by s 21 of the Act. Further, I consider the question of novation on the basis of affidavit evidence alone. In keeping with the spirit of s 21(3) of the Act, nothing which I decide on this issue will prevent the parties from arguing the question of novation afresh if it arises in the entirely separate context of the plaintiff seeking a determination on the merits of the parties' actual underlying dispute with full finality, *ie* as to whether the defendant is, in fact and in law, contractually liable to pay the plaintiff.

112 The defendant's case is that he never agreed to novate the construction contract to the plaintiff, whether orally or in writing. He relies on the undisputed fact that he never signed the draft novation agreement. The plaintiff concedes this last point, as it must. But it submits that the defendant orally agreed to a novation when Mr Tan proposed this between August and October 2013 (see [12] above)[58] and when Mr Tan visited the defendant at his office and handed him the draft in December 2013 (see [13] above).[59] Alternatively, the plaintiff submits that the defendant's conduct indicates that he agreed to the novation.[60]

113 I am unable to find on the balance of probabilities that the defendant never agreed to novate his construction contract to the plaintiff for two reasons: (i) the defendant named the plaintiff as the builder in his application for permission to carry out structural works; and (ii) Ms Nidhi on the

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58 Plaintiff's Skeletal Submissions dated 17 November 2015 at para 78.

59 Plaintiff's Skeletal Submissions dated 17 November 2015 at paras 80 and 81.

60 Plaintiff's Skeletal Submissions dated 17 November 2015 at para 47.

defendant's behalf paid several progress claims between May 2014 and January 2015 by way of cheques drawn in favour of the plaintiff rather than in favour of D&B.

The application for permit to carry out structural works

114 As described at [16] – [21] above, in November 2013, the defendant re-applied to the BCA for a permit to carry out structural works. The very first box at the top of the first page of the re-application form characterised it as arising from "Change of Builder". Part B at the foot of this form consisted of the defendant's express declaration that he wished to appoint the plaintiff as the builder for the project under the Building Control Act. The defendant signed this form immediately below this declaration as the owner. The project engineer submitted the defendant's re-application to the BCA together with his own re-application for BCA's approval of the change of builder.

115 I accept that the defendant's signature on this re-application form is evidence: (i) that he was aware that the plaintiff was to replace D&B as the builder for his project; (ii) that he agreed that that should happen, subject to BCA approval; and therefore (iii) that he also agreed to novate his construction contract with D&B to the plaintiff.

116 The defendant claims that he signed this declaration before he became aware of D&B's proposal to novate the contract to the plaintiff.[61] He also claims that the relevant sections in the application form were blank when he signed it.[62] Mr Tan denies that the application form was blank and submits that

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61 Defendant's Skeletal Submissions dated 17 November 2015 at para 87.

62 Defendant's Skeletal Submissions dated 17 November 2015 at para 84.

it is his usual practice, before making applications like these, to send an email to the defendant enclosing the form with all relevant fields filled in.[63]

117 The defendant's evidence is unconvincing. The form dealt with the safety of the structural works comprised in his project and conveyed important information to the government regulator overseeing his project. I do not accept that he would have signed an important form such as this in blank. I find also that his decision to forward the BCA's acknowledgement email to Mr Tan (see [21] above) demonstrates his desire to keep Mr Tan informed of the progress of the application. That, in turn, demonstrates his understanding of the significance of the application to Mr Tan and the Hauslab group.

118 Even if the defendant's evidence that he signed a blank form is true, however, that would still tell against his case. His readiness to sign a blank form would be evidence of his indifference to the identity of the builder. That too undermines his case that he positively refused to novate the contract away from D&B.

119 The defendant points out that the engineer sent the application to the BCA on 4 November 2013, before the date on which the plaintiff alleges the novation took place, *ie* 1 December 2013. The defendant argues that this indicates that Mr Tan "had simply unilaterally assumed that [the defendant] would agree to the proposed novation, without actually getting his consent or approval to do so".[64] I reject this argument. I accept Mr Tan's evidence that the defendant indicated to Mr Tan between August 2013 and November 2013 that he would agree to novating the construction contract to the plaintiff. In that

63 Plaintiff's Skeletal Submissions dated 17 November 2015 at paras 57 and 58; Affidavit of Tan Sinn Aeng Ben dated 27 July 2015 at paras 15 to 17.

64 Defendant's Skeletal Submissions dated 17 November 2015 at para 71.

light, I accept also Mr Tan's explanation that the application form for the plaintiff to replace D&B as the builder was submitted to the BCA before the novation because there would be no point in novating the construction contract from D&B to the plaintiff unless the BCA had already approved the change of builder from D&B to the plaintiff.[65]

Progress claims: issuance and treatment

120 The second reason I am unable to find on the balance of probabilities that the defendant never agreed to novate the construction contract to the plaintiff is the evidence relating to the issuance of progress claims and how they were treated. For these purposes, I attribute Ms Nidhi's conduct to the defendant. That is because the defendant expressly authorised her to represent him in payment matters arising under his construction contract (see [9] above).

121 Each progress claim issued under the contract was typically accompanied by a covering letter, an invoice and breakdowns of costs for the preliminaries, for the prime cost items and for the building works covered by the claim. Of these documents, the progress claim was the most important document as it carried contractual force under the terms of the construction contract.

122 All progress claims issued from commencement of work until 1 December 2013, *ie* progress claims 1 to 5, consistently named D&B as the contractor. All progress claims issued after 1 December 2013, *ie* progress claims 6 to 18, consistently named "Hauslab Design & Build Pte Ltd", *ie* the

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65 Plaintiff's Skeletal Submissions dated 17 November 2015 at para 53; Affidavit of Tan Sinn Aeng Ben dated 15 June 2015 at para 17.

plaintiff, as the contractor (see Table 1 at the end of this judgment).[66] The defendant's own tabulation also accepts this to be correct.[67]

123 The covering letters and breakdown of costs accompanying the progress claims do not carry contractual force. And progress claims were not always accompanied by covering letters. But where covering letters accompanied progress claims, they consistently named the plaintiff as the entity claiming payment on and after 1 December 2013. So too, the breakdowns of costs on and from 1 December 2013 consistently named the plaintiff as the party providing the breakdowns. Neither the defendant nor Ms Nidhi on his behalf raised any objection to the change in the contractor's name on and after 1 December 2013 until more than a year later. Even then, that objection arose in the context of a dispute over progress claim 18. This militates strongly against the defendant's case that he never agreed to novate his construction contract to the plaintiff.

124 After May 2014, Ms Nidhi paid no progress claims to D&B.[68] Between May 2014 and December 2014, the defendant received progress claims 10 to 17. She paid five of these eight progress claims by cheques naming "Hauslab Design & Build Pte Ltd", *ie* the plaintiff, as the payee (see Table 2 at the end of this judgment). Of the remaining three progress claims, she paid progress claim 11 in cash[69] and progress claims 12 and 16 by cheques drawn in favour of "Cash".[70]

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66 Plaintiff's Skeletal Submissions dated 17 November 2015 at paras 95 to 105.

67 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at para 38 and pages 528 to 529.

68 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at pages 51 to 57; Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at pages 528 to 529.

69 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 528.

125 Ms Nidhi's conduct suggests to me that she, and the defendant as her principal, accepted that it was the plaintiff who was contractually entitled to payment under, at the very least, progress claim 10 onwards. That in turn suggest that she accepted that the defendant was obliged to make those payments to the plaintiff. That amounts to accepting that the plaintiff had become the defendant's contractual counterparty under the construction contract. These payments to the plaintiff are quite inconsistent with the defendant's case that he never agreed to novate the contract.

126 The defendant tries to explain away these cheques by saying that it was Mr Tan who prepared them for Ms Nidhi to sign and that it was therefore Mr Tan who wrote the words "Hauslab Design & Build Pte Ltd" as the payee of each of these five cheques. He also notes that the entries in Ms Nidhi's cheque register reflect the payee simply as "Hauslab", without any additional words to indicate whether she intended to pay the plaintiff or D&B.[71]

127 Neither point assists the defendant in discharging his burden. Even if he is correct that it was Mr Tan rather than Ms Nidhi who wrote the plaintiff's name as the payee on each cheque, the fact remains that Ms Nidhi signed these cheques with the plaintiff named as the payee. I do not find it credible that she signed the cheques without noting the name of the payee. These cheques were for large amounts ranging from about $170,000 to $360,000 and totalling nearly $1.5m. That is just under 30% of the total value of the construction contract. I do not accept, on the balance of probabilities, that Ms Nidhi signed these cheques without intending the cheque to benefit the plaintiff rather than

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70 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 529.

71 Defendant's Skeletal Submissions dated 17 November 2015 at para 111.

D&B. That indicates very strongly her agreement, on behalf of the defendant, to a novation of the construction contract to the plaintiff.

128 Even if I were to take the defendant's evidence at its highest, it demonstrates merely that Ms Nidhi was entirely indifferent to the identity of the counterparty to the construction contract. But that does not assist the defendant to discharge his burden. If anything, this evidence undermines his case that the identity of his contractual counterparty was of critical importance to him.

129 Further, the word "Hauslab" in Ms Nidhi's cheque register is, by itself, ambiguous. The manner in which Ms Nidhi recorded the payee of these cheques does not advance the defendant's case.

Inconsistencies in the invoicing

130 Against the weight of this evidence, the defendant relies on three points to argue against any novation on and from 1 December 2013:

(a) Even after December 2013 and until May 2014, invoices continued to be issued on D&B's letterhead and to direct payment to be made to D&B.[72]

(b) Mr Tan directed that payment for progress claims 6 to 9, for the period from December 2013 to March 2014, be made to D&B rather than the plaintiff.[73]

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72 Defendant's Skeletal Submissions dated 17 November 2015 at para 108.

73 Defendant's Skeletal Submissions dated 17 November 2015 at para 52.

(c) The unique entity number of the contractor in all progress claims before 31 January 2015 was D&B's unique entity number.

131 I do not consider that these points outweigh the evidence I have summarised above at [114] – [129]. The balance of probabilities remains tilted firmly against the defendant.

132 Table 3 at the end of this judgment shows that the invoices did indeed instruct payment to be made to D&B rather than to the plaintiff right up to 12 May 2014. I accept that this is inconsistent with the plaintiff's case that the defendant agreed to novate his construction contract to the plaintiff on or about 1 December 2013. But from 23 May 2014 onwards, all the documentation relating to claims for payment – the cover letters, the invoices, the progress claims and the breakdown of costs – consistently named the plaintiff as the contractor, as the entity providing the breakdowns of costs, as the entity invoicing the defendant and as the entity to whom the defendant should make payment. Further, as I have mentioned, starting from May 2014, Ms Nidhi signed all cheques in payment of progress claims drawn either in favour of the plaintiff or "Cash", *ie* not in favour of D&B.

133 Further, the most that can be said on this evidence is that it is *possible* that the novation took place in May 2014 rather than December 2013. The important point, however, is that it is the defendant who bears the burden of proving on the balance of probabilities his case in order to succeed in his setting-aside application. His case is that he *never* agreed to novate his contract with D&B to the plaintiff. The defendant cannot discharge this burden merely by pointing out that the plaintiff's case is inconsistent with the pattern of invoicing and payment between December 2013 and May 2014. If the evidence suggests that a novation did take place, but that it took place in April

or May 2014 rather than in December 2013, the consequence remains that the defendant has failed to discharge his burden of proof. Even taking into account this evidence, therefore, I am wholly unable to conclude on the balance of probabilities that there was *never* a novation.

134 It is also true that the unique entity number of the contractor stated in all the documentation before progress claim 18 dated 31 January 2015 is consistently that of D&B. Thus, the cover letter, the progress claim, the breakdowns of costs and the invoices all specified D&B's unique entity number even when the contractor named in that document was the plaintiff. To my mind, this is a small and insignificant point. The unique entity number has no contractual or factual significance. This fact is, in itself, far too slight to bear the entire weight of the defendant's burden of proof on the novation issue.

Further objections by the defendant

135 I will now deal with the three final points on the issue of novation which the defendant raised. In my judgment, none of these have any merit.

136 The defendant argues that he refused to sign the draft novation agreement because he was not willing to hand over the redevelopment of his home to a company in which Mr Tan, who was recommended to the defendant by his estate agent, was not even a director.[74] But as Mr Tan points out, he is both a director and shareholder of Hauslab Holdings, which wholly owns both the plaintiff and D&B.[75] Mr Tan was therefore in a position to exercise

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74 Defendant's Skeletal Submissions dated 17 November 2015 at para 45.

75 Plaintiff's Skeletal Submissions dated 17 November 2015 at para 107; Affidavit of Vinod Kumar Ramgopal Didwania at pages 357 to 360.

management and control over the plaintiff even though he was not one of its directors. Further, it is also clear from the evidence that Mr Tan continued to be personally involved in the project even after 1 December 2013. This is consistent with the defendant's own evidence.[76] In these circumstances, I reject the defendant's stated reason for refusing to novate the construction contract. There is no rational connection between Mr Tan not being a director of the plaintiff and the defendant's stated reason for not agreeing to a novation of the construction contract to the plaintiff.

137 The defendant also suggests that the subcontractors involved in the project believed D&B to have been the contractor rather than the plaintiff.[77] In my view this does not assist the defendant. There are any number of reasons why a subcontractor may be mistaken about the true contractual position between an owner and a contractor. The subcontractors' beliefs about the contractual relationship between the defendant and the plaintiff are of little relevance in ascertaining the actual nature of that relationship.

138 Finally, the defendant advances the curious submission that the application of the Contract (Rights of Third Parties) Act (Cap 53B, 2002 Rev Ed) ("the Third Parties Act") is excluded by virtue of cl 35 of the REDAS Design & Build Conditions. Accordingly, the defendant submits, the plaintiff is a non-party to the Contract and "cannot rely on the rights contained in the Contract to claim against the Defendant".[78] The fact is that the plaintiff's claim does not rely on third-party rights at all. The plaintiff's claim relies on rights found in a contract arising directly between the defendant and the plaintiff by

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[76] Affidavit of Vinod Kumar Ramgopal Didwania at paras 47 to 48.

[77] Defendant's Skeletal Submissions dated 17 November 2015 at para 127.

[78] Defendant's Skeletal Submissions dated 17 November 2015 at paras 124 to 126.

novation. As the Court of Appeal explained in *Fairview Developments Pte Ltd v Ong & Ong Pte Ltd and another appeal* [2014] 2 SLR 318 at [46]:

> The term 'novation' refers to the process by which the contract between the original contracting parties is *discharged through mutual consent* and *substituted with a new contract* between the new parties… In a novation, *both the benefits and the burdens* of the original contract are transferred to the *new contracting parties*, essentially because, as just mentioned, the original contract is extinguished and a new contract is formed
>
> [emphasis in the original].

I therefore reject this submission in its entirety.

139 Having considered all the evidence, therefore, I find that the defendant has failed to prove on the balance of probabilities that he never agreed to novate his construction contract with D&B to the plaintiff. I therefore cannot find that the adjudicator lacked jurisdiction.

140 I cannot allow the defendant's setting-aside application on the jurisdictional ground advanced.

Natural justice

141 I now turn to consider the defendant's alternative submission that I should allow his setting-aside application because the adjudicator breached the principles of natural justice.

142 An adjudicator has an express statutory duty under s 16(3)*(c)* of the Act to comply with the principles of natural justice:

> **Commencement of adjudication and adjudication procedures**
>
> **16.**—(3) An adjudicator shall—
>
> *(a)* act independently, impartially and in a timely manner;

(b) avoid incurring unnecessary expense; and

(c) comply with the principles of natural justice.

The defendant's case

143 The defendant's case is that the adjudicator breached this express statutory duty in three ways:

(a) First, the adjudicator was biased. On 18 March 2015, he granted the plaintiff a unilateral and retrospective extension of time for its submissions which its solicitors had filed after his deadline of 5.00 pm on 17 March 2015. But when the defendant requested an extension of time on 18 March 2015, the adjudicator rejected the defendant's request and thereafter rejected the defendant's submissions on the basis that they had been filed out of time.[79]

(b) Second, the adjudicator did not allow the defendant an adequate opportunity to respond to the plaintiff's submissions of 17 March 2015. After receiving the plaintiff's submissions between 5.40 pm and 6.05 pm on 17 March 2015, the defendant had only "a few hours" to respond with his own submissions and comply with the adjudicator's extended deadline of 5.00 pm on 18 March 2015, even though the plaintiff's submissions contained "several factual inaccuracies" which in the defendant's view required clarification.[80]

(c) Finally, the adjudicator did not adequately apply his mind to the parties' dispute. The adjudicator's remarks in his emails of 18 March 2015 and 20 March 2015 indicate that he had "more or less

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79 Defendant's Skeletal Submissions dated 17 November 2015 at paras 144 to 146.

80 Defendant's Skeletal Submissions dated 17 November 2015 at paras 148 to 153.

> decided on the outcome of the adjudication before even hearing what [the defendant] had to say". The adjudicator also issued his adjudication determination on 20 March 2015, seven days before the deadline of 27 March 2015 imposed upon him by the Act. This, the defendant submits, is evidence of the "rushed manner in which he dealt with the matter".[81]

Natural justice in adjudications

144 In *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 ("*W Y Steel*"), the Court of Appeal (at [22]) identified the objective of our adjudication regime as achieving a quick decision on a payment claim and conferring on that decision the benefit of temporary finality:

> Statutory adjudication of building and construction disputes takes the concept one step further. Interim payment claims *per se* are not granted temporary finality under the adjudication scheme. Instead, the parties enter into an expedited and, indeed, an abbreviated process of dispute resolution in which payment claims and payment responses must be made within the stipulated deadlines to an adjudicator, who is himself constrained to render a quick decision. *As a species of justice, it is admittedly somewhat roughshod, but it is fast; and any shortcomings in the process are offset by the fact that the resultant decision only has temporary finality.* The party found to be in default has to pay the amount which the adjudicator holds to be due (referred to in the Act as the "adjudicated amount"), but *the dispute can be reopened at a later time and ventilated in another more thorough and deliberate forum.*
>
> [emphasis added]

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[81] Defendant's Skeletal Submissions dated 17 November 2015 at paras 155 to 161.

145 The content of an adjudicator's statutory obligation to comply with the principles of natural justice under s 16(3)*(c)* of the Act is tempered by this objective. The Court of Appeal in *W Y Steel* cited with approval (at [23]) the following passage from *Macob* (at [14]):

> The timetable for adjudications is very tight … Many would say unreasonably tight and likely to result in injustice. Parliament must be taken to have been aware of this … It is clear that Parliament intended that the adjudication should be conducted in a manner which those familiar with the grinding detail of the traditional approach to the resolution of construction disputes apparently find difficult to accept. *But Parliament has not abolished arbitration and litigation of construction disputes. It has merely introduced an intervening provisional stage in the dispute resolution process…*
>
> [emphasis added in the decision of *W Y Steel*]

146 Adjudication is an "expedited and … abbreviated" process *by design*. This expedited process and the finality attached to its outcome is designed to address the risk of injustice to a claimant arising from delayed payment. By design, therefore, there is not the luxury of time in adjudication to indulge in the "grinding detail of the traditional approach to the resolution of construction disputes". This aspect of the adjudication process tempers the content of the duty to comply with the principles of natural justice. This aspect of the process also carries with it the inevitable risk of achieving only "somewhat roughshod" justice (*W Y Steel* at [22]). Making the finality attached to the outcome of this process only temporary is designed to address the risk of injustice to the respondent.

147 An application to set aside an adjudication determination for breach of the duty to comply with the principles of natural justice is not a species of appeal and must not be used as though it were. In *AM Associates (Singapore) Pte Ltd v Laguna National Golf and Country Club Ltd* [2009] SGHC 260, Prakash J refused to set aside an adjudication determination for failure to

comply with the principles of natural justice. She remarked (at [26]) that the Act:

> … has provided a means for dissatisfied respondents to be reheard and that is the review adjudication; it is not the application to court for setting aside under s 27(5). The court cannot be asked under cover of an allegation of breach of natural justice to review the merits of the adjudicator's decision.

148 With these observations in mind, I turn to analyse the defendant's case on natural justice.

The adjudicator's timeline

149 An adjudicator has a broad discretion in relation to procedural matters. Section 16(4) of the Act provides as follows:

> (4) Subject to subsection (3), an adjudicator may do all or any of the following in relation to an adjudication:
>
> (a) conduct the adjudication in such manner as he thinks fit;
>
> (b) require submissions or documents from any party to the adjudication;
>
> (c) set deadlines for the submissions or documents to be provided by any party and for the submissions or responses thereto by any other party;
>
> …
>
> (g) issue such directions as may be necessary or expedient for the conduct of the adjudication.

Section 16(6) of the Act obliges the parties to an adjudication to comply with the adjudicator's requirements and directions.

150 In my view, the adjudicator exercised his procedural powers properly and entirely in accordance with the principles of natural justice. I say that for the following reasons.

151 First, the defendant does not challenge the adjudicator's initial direction given on 15 March 2015 requiring the parties to submit their "replies, rebuttals or additional information" with regard to "both the Adjudication Application dated 5 March 2015 and the adjudication response dated 13 March 2015" by 5.00 pm on 17 March 2015. The significant point to note is that this initial direction was for both parties to put in their primary submissions together, *ie* not sequentially. What this direction extended to the parties, therefore, was an opportunity for each party to set out in these primary submissions its own case and to respond to the other party's case, but only to the extent that the other party's case was then known. This direction did not extend to the parties an opportunity to make *reply* submissions, responding to the other party's *primary* submissions.

152 One of the defendant's complaints to the adjudicator was that the plaintiff took the opportunity in its submissions to respond to the defendant's adjudication response. But that is precisely what the adjudicator's email of 15 March 2015 invited the plaintiff to do (see [29] above). That the plaintiff would do so was therefore clearly foreseeable on 15 March 2015 itself. If the defendant objected to the plaintiff being given an opportunity to respond to the defendant's adjudication response, or wanted an opportunity to make reply submissions or otherwise to have the last word, it was for the defendant's solicitors to raise that with the adjudicator as soon as he issued his directions on 15 March 2015. At the very least, the defendant's solicitors should have foreshadowed then to the adjudicator that the defendant reserved his right to seek an opportunity to respond to the plaintiff's submissions after having seen them. They did none of these things.

153 Second, the defendant allowed the adjudicators' deadline of 5.00 pm on 17 March 2015 to expire without putting in any primary submissions at all.

The defendant was therefore content to let the adjudicator arrive at a determination with no primary submissions from the defendant. The defendant thus implicitly invited the adjudicator to proceed on the basis of the material before him as at 5.00 pm on 17 March 2015, including any primary submissions which the plaintiff chose to put in. The defendant extended that implicit invitation knowing that the plaintiff could well use its primary submissions to rebut the defendant's case as set out in the adjudication response.

154 Third, it is true that the plaintiff put in its primary submissions an hour after the adjudicator's deadline. But, apart from suggesting it is evidence of bias, the defendant does not allege that the adjudicator breached his duty to comply with the principles of natural justice merely by accepting these submissions from the plaintiff out of time. In any event, the adjudicator did not accept these submissions out of time without more. Of his own initiative, he extended the time for both parties to put in their primary submissions until 5.00 pm on 18 March 2015.

155 One effect of this extension of time was to cure, unilaterally and retrospectively, the plaintiff's non-compliance with the adjudicator's directions of 15 March 2015. But another effect was to give the defendant a second opportunity to put in his primary submissions, even though he had been content to let the previous opportunity pass him by the previous day and even though he now had the plaintiff's submissions in hand.

156 The defendant's real complaint is not that the deadline so extended was insufficient time for the defendant to put in *primary* submissions. The defendant's complaint is that the extended deadline was insufficient time for him to file *reply* submissions.[82] This is apparent from his solicitors' letter to

the adjudicator asking expressly for a chance to *reply*. But the fact remains that the defendant did not seek and had never sought an opportunity to reply at any point before the morning of 18 March 2015. That is so even though it is always in theory foreseeable, when submissions are not exchanged sequentially, that an opposing party's primary submissions may raise issues calling for a reply. And in this case, as I have mentioned, it was in fact foreseeable that the plaintiff would use its primary submissions to attempt to rebut defendant's adjudication response.

157 To the extent that the defendant sought an opportunity on 18 March 2015 to file *reply* submissions, therefore, he was seeking an indulgence from the adjudicator. The defendant was seeking the adjudicator's permission to do something new and which he had never foreshadowed. Once again, it was well within the adjudicator's discretion to decline to extend to the defendant that indulgence without breaching his duty to comply with the principles of natural justice.

158 To put it another way, the principles of natural justice impose a *prima facie* obligation on an adjudicator to give both parties a reasonable opportunity to be heard before determining the adjudication. The content of this obligation is, of course, tempered by the fundamental objective of adjudication, by its expedited and abbreviated nature and by the circumstances of any particular case. Assuming in favour of the defendant that the content of the adjudicator's duty to comply with the principles of natural justice on the facts of this case required him to give the defendant an opportunity to be heard before issuing a determination, the adjudicator gave the defendant that opportunity by his direction given on 15 March 2015 and again on 18 March 2015. I find that that

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[82] Defendant's Skeletal Submissions dated 17 November 2015 at paras 151 and 152.

opportunity was entirely reasonable. Making every assumption in the defendant's favour, the adjudicator's duty to comply with the principles of natural justice went no further than that. But the defendant did not take up either of those opportunities. Instead, having eschewed those opportunities, he tried to insist on a right of reply. The principles of natural justice, at least as they operated in the circumstances of this case, did not oblige the adjudicator to give the defendant a right of reply.

159 It was unfortunate that the defendant's lawyers were engaged in a trial until 5.00 pm on 18 March 2015. But the defendant had voluntarily given up his right to make primary submissions on 17 March 2015 and had no right of reply. The unavailability of the defendant's solicitors is not a ground on which I can find the adjudicator's directions to be in breach of natural justice.

Acting in a timely manner and avoiding unnecessary expense

160 Even if the defendant's request of 18 March 2015 is not characterised as seeking an indulgence, I still cannot find the adjudicator to have breached his duty to comply with the principles of natural justice.

161 Pursuant to ss 16(3)*(a)* and *(b)* of the Act, the adjudicator is required to act in a timely manner and to avoid incurring unnecessary expense. These are both legitimate considerations for an adjudicator to take into account when considering the content of his duty to comply with the principles of natural justice. The plaintiff submits that these considerations of procedural efficiency and economy were within the contemplation of the adjudicator in his conduct of the proceedings.[83] I agree.

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[83] Plaintiff's Skeletal Submissions dated 17 November 2015 at para 147.

162 The adjudicator consistently took the view, not unreasonably in my view, that the adjudication before him was not complex and did not warrant lengthy and detailed primary submissions. In his email of 18 March 2015 at 10.58 am extending time until 5.00 pm that day, he expressly directed the parties to "focus on the key points of dispute, keep it brief and adhere strictly to [the] deadline". In his email of 18 March 2015 at 2.19 pm rejecting the defendant's request for a further extension to 23 March 2015, he again explained that "[t]he points of dispute are quite clear and requires (sic) only brief rebuttals. It is not necessary to prolong this adjudication. No response by the deadline is also acceptable." At [13] of his determination, the adjudicator reiterated that he had rejected the defendant's request for a longer extension to avoid "prolong[ing] the adjudication process as the points of arguments from both parties [were] clear and adequate for [his] determination."

163 Having applied his mind to the degree of complexity of the adjudication before him, and bearing in mind the Act's objective of speedy resolution of claims in adjudication, the adjudicator was not minded to grant a longer extension of time to permit the defendant to put in his submissions. I can see no basis on which to say that the adjudicator thereby breached his duty to comply with the principles of natural justice.

Rejecting the defendant's submissions

164 In his email of 20 March 2015, the adjudicator gave two reasons for rejecting the submissions tendered by the defendant in the evening of 19 March 2015. First, the defendant's solicitors had tendered the submissions after the extended deadline of 5.00 pm on 18 March 2015. Second, the submissions were "not as brief as directed but lengthy which contained a total

of 164 pages". The adjudicator proceeded with his determination as the disputed points were clear and he did not wish to prolong the process.

165 As I have mentioned, parties have a statutory obligation under s 16(6) of the Act to comply with procedural directions given by an adjudicator. The adjudicator found that the defendant was in breach of his directions. I find that the adjudicator's grounds for rejecting the defendant's submissions were reasonable. The defendant only has himself to blame for failing to comply with the clearly articulated instructions on the timeliness and length of the submissions.

166 The defendant submits that his "new set of submissions was important because they highlighted the factual inaccuracies in [the plaintiff's] further submissions and dealt with other important issues which impacted the adjudicator's decision".[84] I reject this submission. In *RN & Associates Pte Ltd v TPX Builders Pte Ltd* [2013] 1 SLR 848, the plaintiff submitted that the adjudicator had breached the principles of natural justice when he rejected certain supplementary bundles tendered by the plaintiff after the deadline for filing an adjudication response. The plaintiff argued that the rule of *audi alteram partem* was infringed as the supplementary bundles were an essential part of its case and their exclusion meant that the plaintiff was denied the opportunity to be fully heard. Andrew Ang J dismissed the plaintiff's application to set aside the determination. I agree entirely with Ang J's observations (at [64]):

> … The right to have one's case heard is not a right to have an adjudicator consider all material which the parties think are relevant. The adjudicator may make a decision on what considerations are relevant. The concept of *audi alteram*

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[84] Defendant's Skeletal Submissions dated 17 November 2015 at para 153.

> *partem* is an open-textured one which "depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates": *per* Lord Bridge of Harwich in *Lloyd v McMahon* [1987] AC 625 at 702.

167 As pointed out by Andrew Ang J, it is open to an adjudicator to decide what material or considerations are relevant and important for his decision. The adjudicator was entitled to and evidently did take the view that the material already before him was sufficient for his determination.

168 For the foregoing reasons, I reject the defendant's allegation that the adjudicator breached the rules of natural justice.

Bias

169 I also reject the submission that the adjudicator's determination is tainted by actual or apparent bias. The only support for this submission appears to be the adjudicator's allegedly unequal treatment of the parties. But the adjudicator did not treat the parties unequally.

170 The adjudicator initially gave both parties until 5.00 pm on 17 March 2015 to put in their primary submissions. The plaintiff put in its submissions, albeit late. The adjudicator accepted those submissions, even though they were late, by retrospectively extending the deadline for *both parties'* primary submissions to 5.00 pm on 18 March 2015. If the defendant had filed concise primary submissions, had had done so within the extended deadline, the adjudicator would have been obliged to accept them. But the defendant instead chose to file lengthy submissions, by way of reply, and did so out of time. The adjudicator was under no obligation to accept them.

171 An allegation of bias is a serious one and should not be made lightly. This allegation of bias should not have been made.

Haste in making the determination

172 The defendant's final allegation is that the adjudicator was in an unnecessary and unseemly haste to issue his determination.[85] It is true that he issued his adjudication seven days before the statutory deadline. The suggestion, however, that issuing a determination early is a fact from which alone it can be inferred that the adjudicator has breached his duty to comply with the principles of natural justice is meritless.

173 The adjudicator was fully entitled – and indeed obliged by statute – to act expeditiously and economically. While the Act fixed a deadline for his determination, he cannot be criticised merely for completing his work before the deadline. He can similarly not be criticised merely for setting a timeline which sets the stage for him to complete his work before the deadline. It would undermine the objectives of the Act to criticise an adjudicator merely for taking either approach. What is important is that the adjudicator complies with the principles of natural justice and applies his mind to the parties' dispute. I am satisfied from a reading of the adjudication determination that the adjudicator understood the dispute and came to a reasoned conclusion on it.

174 In making this finding, I make no finding on the merits of the parties' underlying dispute as they placed it before the adjudicator or as they may in the future place it before a court or an arbitrator. I simply observe that there is

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[85] Defendant's Skeletal Submissions dated 17 November 2015 at para 160.

nothing to support the defendant's suggestion that the adjudicator "did not adequately apply his mind to the case".[86]

175 There is therefore no basis in this aspect of the defendant's case.

No prejudice

176 In any event, the defendant cannot succeed in his setting-aside application merely by showing that the adjudicator breached his duty under s 16(3)(*c*) of the Act to comply with the principles of natural justice. For the reasons set out above at [54] – [55], it is my view that the defendant must show in addition that it is the legislative purpose of the Act that a breach of s 16(3)(*c*) should render the determination invalid. I cannot find in the Act any hint of a legislative purpose to invalidate every adjudication determination in which there has been a breach of the principles of natural justice, no matter how trivial or serious and regardless of whether that breach has caused the respondent prejudice. I therefore consider that for the defendant to succeed in his setting-aside application, it is necessary for him to establish that he suffered prejudice by reason of the breach of the principles of natural justice on which he relies.

177 I am satisfied that even if the adjudicator did breach his duty to comply with the principles of natural justice in his procedural decisions between 18 March 2015 and 20 March 2015, that breach caused the defendant no prejudice.

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[86] Defendant's Skeletal Submissions dated 17 November 2015 at para 155.

178 Section 15(3)*(a)* of the Act precludes a respondent from putting before an adjudicator any reason for withholding payment which was not included in his payment response:

> (3) The respondent shall not include in the adjudication response, and the adjudicator shall not consider, any reason for withholding any amount, including but not limited to any cross-claim, counterclaim and set-off, unless—
>
> (a) where the adjudication relates to a construction contract, the reason was included in the relevant payment response provided by the respondent to the claimant…

179 The defendant failed to provide a payment response to the plaintiff after being served with the payment claim.[87] The adjudicator concluded, therefore, that the defendant could not raise in his adjudication response, or indeed in the adjudication itself, any reason *at all* for withholding payment of the amount claimed in progress claim 18. On this ground, the adjudicator rejected outright the defendant's reasons for not satisfying progress claim 18 which he set out in his adjudication response.[88]

180 The plaintiff submits that given this finding, even if the adjudicator had accepted the submissions which the defendant tendered late on 19 March 2015, those submissions could not have had any material impact on the outcome of the adjudication.[89]

181 I agree. Section 15(3)*(a)* is a jurisdictional provision. It curtails not only the power of an adjudicator to *allow* a respondent to raise reasons for

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87 Adjudication Determination at para 7, found at page 387 of Affidavit of Ang Siew Choo dated 7 April 2015.

88 Adjudication Determination at paras 16 to 20, found at pages 389 to 390 of Affidavit of Ang Siew Choo dated 7 April 2015.

89 Plaintiff's Skeletal Submissions dated 17 November 2015 at para 200.

withholding payment which were not included in his payment response, it also curtails the adjudicator's power even to *consider* those reasons at all: *W Y Steel* at [33]. To the extent that the adjudicator is alleged to have breached the principles of natural justice by rejecting the defendant's submissions on 19 March 2015, he would have been obliged to disregard those submissions even if they had been submitted on time. Since the defendant provided no payment response, the adjudicator had no power to consider any reasons which the defendant might have given in those submissions for withholding payment. And to the extent that the adjudicator is alleged to have breached the principles of natural justice by extending time retrospectively on 19 March 2015 to validate the plaintiff's submissions tendered out of time on 18 March 2015, the adjudicator in fact made no reference to those submissions in arriving at his adjudication determination.

182 Finally, I note in passing that the defendant does not seek to set aside the adjudication determination on the grounds that the adjudicator breached his duty, in a case where a respondent fails to file a payment response, to apply his mind to the plaintiff's payment claim rather than simply accepting the claim in full by default as a result of the operation of s 15(3) of the Act (*W Y Steel* at [48] and [52]).

183 Accordingly, I find that the defendant suffered no prejudice by the adjudicator's procedural decisions between 18 March 2015 and 20 March 2015, even if I were to assume – against my findings – that those decisions breached the adjudicator's duty to comply with the principles of natural justice.

Conclusion

184 For the reasons I have given, I have dismissed the defendant's setting-aside application. I have ordered the sum of $396,875 which the defendant paid into court pursuant to s 27(5) of the Act together with any interest accrued on that sum to be released to the plaintiff.

185 I have also ordered the defendant to pay the plaintiff the costs of and incidental to the setting-aside application, such costs fixed at $12,000 including disbursements.

Vinodh Coomaraswamy
Judge

Lam Wei Yaw and Koh En Da, Matthew (Rajah & Tann Singapore LLP), Foo Jong Han Rey (KSCGP Juris LLP) for the plaintiff;
Lam Kuet Keng Steven John (Templars Law LLC) for the defendant.

Table 1

Party named in progress claims 1 to 18[90]

Progress claim	Progress claim date	Contractor named in progress claim	Contractor's unique entity number	Contractor's name on cover letter
1[91]	31 Jul 2013	D&B	200921170G	No cover letter
2[92]	31 Aug 2013	D&B	200921170G	No cover letter
3[93]	30 Sep 2013	D&B	200921170G	No cover letter
4[94]	31 Oct 2013	D&B	200921170G	D&B[95]
5[96]	30 Nov 2013	D&B	200921170G	D&B[97]
6[98]	31 Dec 2013	Plaintiff	200921170G	Plaintiff[99]
7[100]	15 Jan 2013 [should be 15	Plaintiff	200921170G	No cover letter

90 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at pages 374 to 526.

91 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 374.

92 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 380.

93 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 388.

94 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 398.

95 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 397.

96 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 408.

97 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 407.

98 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 418.

99 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 417.

100 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 426.

Progress claim	**Progress claim date**	**Contractor named in progress claim**	**Contractor's unique entity number**	**Contractor's name on cover letter**
	Jan 2014]			
8[101]	28 Feb 2013 [should be 28 Feb 2014]	Plaintiff	200921170G	Plaintiff[102]
9[103]	31 Mar 2013 [should be 31 Mar 2014]	Plaintiff	200921170G	Plaintiff[104]
10[105]	31 Mar 2013 [should be 30 Apr 2014]	Plaintiff	200921170G	Plaintiff[106]
11[107]	29 May 2013 [should be 31 May 2014]	Plaintiff	200921170G	Plaintiff[108]
12[109]	30 Jun 2013 [should be 30 Jun 2014]	Plaintiff	200921170G	Plaintiff[110]

101 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 436.

102 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 435.

103 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 438.

104 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 437.

105 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 448.

106 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 447.

107 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 458.

108 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 457.

109 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 468.

110 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 467.

Progress claim	**Progress claim date**	**Contractor named in progress claim**	**Contractor's unique entity number**	**Contractor's name on cover letter**
13[111]	31 Jul 2013 [should be 31 Jul 2014]	Plaintiff	200921170G	Plaintiff[112]
14[113]	31 Aug 2013 [should be 31 Aug 2014]	Plaintiff	200921170G	Plaintiff[114]
15[115]	30 Sep 2014	Plaintiff	200921170G	Plaintiff[116]
16[117]	31 Oct 2014	Plaintiff	200921170G	Plaintiff[118]
17[119]	30 Nov 2014	Plaintiff	200921170G	Plaintiff[120]
18[121]	31 Jan 2015	Plaintiff	201327267G	Plaintiff[122]

Table 2

111 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 478.

112 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 477.

113 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 488.

114 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 487.

115 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 498.

116 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 497.

117 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 508.

118 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 507.

119 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 518.

120 Affidavit of Vinod Kumar Ramgopal Didwania filed on 28 April 2015 at page 517.

121 Affidavit of Ang Siew Choo filed on 8 April 2015, page 310.

122 Affidavit of Ang Siew Choo filed on 8 April 2015, page 309.

123 Affidavit of Tan Sinn Aeng Ben filed on 12 May 2015 at pages 51 to 57.

Cheques issued to pay the plaintiff between 5 May 2014 and 4 Dec 2014

Progress claim	Date of progress claim cover letter to the defendant	Amount claimed	Date cheque issued[123]	Value of cheque
10	5 May 2014	$263,395.85	23 May 2014	$263,395.85
13	25 Jul 2014	$342,082.00	12 Aug 2014	$340,000.00
14	26 Aug 2014	$174,539.67	18 Sep 2014	$170,000.00
15	2 Oct 2014	$368,348.46	27 Oct 2014	$360,000.00
17	4 Dec 2014	$352,563.52	15 Dec 2014	$350,000.00

Table 3

Party named in invoices supporting progress claim 1 to 18

Invoice for progress claim	**For work done up to**	**Date of invoice**	**Payment to be made to**	**Company named on invoice letterhead**
1	No invoice	No invoice	No invoice	No invoice
2[124]	Not stated	16 Sep 2013	D&B	D&B
3[125]	1 Sep 2013 to 30 Sep 2013	23 Oct 2013	D&B	D&B
4	No invoice	No invoice	No invoice	No invoice
5[126]	30 Nov 2013	20 Dec 2013	D&B	D&B
6[127]	31 Dec 2013	13 Jan 2014	D&B	D&B
7[128]	31 Jan 2014	23 Jan 2014	D&B	D&B
8[129]	28 Feb 2014	25 Feb 2014	D&B	D&B
	28 Feb 2014	26 Mar 2014	D&B	D&B
9[130]	31 Mar 2014	22 Apr 2014	D&B	D&B
	31 Mar 2014	12 May 2014	D&B	D&B

124 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 92.

125 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 93.

126 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 56.

127 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 57.

128 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 58.

129 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at pages 59 and 60.

130 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at pages 61 and 62.

Invoice for progress claim	For work done up to	Date of invoice	Payment to be made to	Company named on invoice letterhead
10[131]	30 Apr 2014	23 May 2014	Plaintiff	Plaintiff
11[132]	30 Jun 2014	7 Jul 2014	Plaintiff	Plaintiff
12[133]	30 Jun 2014	7 Jul 2014	Plaintiff	Plaintiff
13[134]	31 Jul 2014	14 Aug 2014	Plaintiff	Plaintiff
14[135]	31 Aug 2014	18 Sep 2014	Plaintiff	Plaintiff
15[136]	30 Sep 2014	29 Oct 2014	Plaintiff	Plaintiff
16[137]	31 Oct 2014	12 Nov 2014	Plaintiff	Plaintiff
	31 Oct 2014	1 Dec 2014	Plaintiff	Plaintiff
17[138]	30 Nov 2014	15 Dec 2014	Plaintiff	Plaintiff
18	No invoice	No invoice	No invoice	No invoice

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131 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 63.

132 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 64.

133 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 64.

134 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 65.

135 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 66.

136 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 67.

137 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at pages 68 and 69.

138 Affidavit of Nidhi Vinod Didwania dated 26 May 2015 at page 70.