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

[2022] SGHC 129

Suit No 701 of 2019

Between

RMD Kwikform Singapore Pte Ltd

… Plaintiff

And

Ehub Pte Ltd

… Defendant

JUDGMENT

[Contract — Breach]
[Contract — Contractual terms — Express terms]
[Contract — Remedies — Damages]
[Evidence — Principles — Necessity for best evidence — Authenticity of documentary evidence]
[Limitation Of Actions — Equity and limitation of actions — Laches]
[Limitation Of Actions — Particular causes of action — Contract — Limitation Act]

TABLE OF CONTENTS

RMD Kwikform Singapore Pte Ltd
v
Ehub Pte Ltd

[2022] SGHC 129

General Division of the High Court — Suit No 701 of 2019
S Mohan J
4, 6, 11–12, 25 May, 13 September, 29 November 2021

27 May 2022 Judgment reserved.

S Mohan J:

Introduction

1 The present dispute centres on the plaintiff's claims for unpaid sums allegedly owed by the defendant in relation to equipment that the plaintiff hired out to the defendant for use in five construction projects. The defendant denies the plaintiff's claims and advances various counterclaims against the plaintiff which arise out of these same five projects.

Facts

2 The plaintiff is a company incorporated in Singapore and is in the business of the hire and sale of equipment for formwork, falsework, access and safety. It is fully owned by RMD Kwikform Holdings Ltd, a company registered in the United Kingdom. The plaintiff is also part of the "RMD Kwikform" global group of companies. The RMD Kwikform group of companies conducts

its business principally in the United Kingdom, the Philippines, the Asia-Pacific region, the Middle East, India, and North and South America.[1]

3 The defendant is a company incorporated in Singapore and has been in the business of erecting scaffolding systems for construction projects since its incorporation in 2002. The managing director of the defendant is Mr Choo Wei Fern, also known as Mr Edward Choo ("Mr Choo").[2]

4 Between 2011 and 2014, the defendant engaged the plaintiff to supply scaffolding systems and equipment on hire for use in the following residential housing construction projects (collectively, the "Projects"):[3]

(a) One Canberra at 9 Canberra Drive, Singapore 768070 ("One Canberra");

(b) Forestville Executive Condominium at 36 Woodlands Drive 16, Singapore 737772 ("Forestville");

(c) Sea Horizon at Pasir Ris Rise, Singapore 518080 ("Sea Horizon");

(d) Twin Fountains Executive Condominium at 17A Woodlands Avenue 6, Singapore 738998 ("Twin Fountains"); and

(e) The Nassim at 18 Nassim Hill, Singapore 258465 ("Nassim Hill").

---

1 Affidavit of Evidence in Chief of Wilfred Cuperus ("Mr Cuperus's AEIC"), paras 3–4 (1BA 4).

2 Affidavit of Evidence in Chief of Choo Wei Fern ("Mr Choo's AEIC"), paras 1 and 3 (2BA 557–558).

3 Mr Choo's AEIC, para 4 (2BA 558).

The parties' cases

The plaintiff's case

5 According to the plaintiff, the parties had entered into written agreements for each of the Projects, pursuant to which the plaintiff supplied, among others, scaffolding and equipment to the defendant. Details of the written agreements (collectively, the "Agreements") are as follows:[4]

(a) For the One Canberra project, quotation PRS0036-Q002-B dated 12 March 2013 (the "One Canberra Agreement");

(b) For the Forestville project, quotation PRS000166-FV-Q020F-Rev 2 dated 2 May 2014 (the "Forestville Agreement");

(c) For the Sea Horizon project, quotation PRS00183-SH-REV2-Q039-E dated 8 May 2014 and quotation PRS000189-SH-Rev-Q039-G dated 2 June 2014 (collectively, the "Sea Horizon Agreement");

(d) For the Twin Fountains project, quotation PRS00137-Q038-C dated 22 April 2014 (the "First Twin Fountains Agreement") and quotation PRS00137-TF-Q038-D1 dated 9 December 2014 (the "Second Twin Fountains Agreement") (collectively, the "Twin Fountains Agreement");

(e) For the Nassim Hill project:

(i) Quotation 11306-Q4185-A dated 5 August 2011;

(ii) Quotation 11306-Q4161-C dated 5 December 2011;

---

[4] Plaintiff's Closing Submissions ("PCS"), paras 10–11.

(iii) Quotation PS0005-Q4359-A dated 18 January 2012; and

(iv) Quotation PS0005-Q4401-C dated 12 March 2012.

(collectively, the "Nassim Hill Agreement").

6 The plaintiff's case is that for each of the Projects, the plaintiff issued a quotation to the defendant setting out the agreed terms between the parties, after the parties had negotiated the terms of their business engagement. These quotations make up the Agreements detailed above at [5]. For the One Canberra, Forestville, Sea Horizon and Twin Fountains Agreements, the express terms contained therein were accepted by the defendant when its representatives countersigned on the respective quotations.[5] While the defendant's representatives did not countersign on the quotations which formed the Nassim Hill Agreement, the plaintiff contends that those quotations were nonetheless issued in accordance with the terms and conditions agreed between the parties.[6]

7 Broadly speaking, each of the Agreements contained, among other things:

(a) a quotation for a weekly rate that the plaintiff would charge the defendant for equipment on hire, which "may vary slightly depending on actual quantities required and actual site conditions";[7]

(b) quotations for various "proprietary sale items" and "special sale items";[8]

---

5 PCS, paras 12–13.

6 PCS, para 14.

7 See *eg,* 1BA 61 and 63.

8 See *eg,* 1BA 63–64.

(c) the rates the defendant would be charged for equipment that it lost or failed to return;[9] and

(d) the respective rates the defendant would be charged for equipment returned to the plaintiff in a "damaged but repairable" condition ("DR") or "damaged beyond repair" condition ("DBR").[10]

8 Based on the terms contained in the Agreements and the plaintiff's internal records of equipment hired or sold to the defendant, the plaintiff claims that the defendant owes it outstanding sums in relation to each of the Projects. The plaintiff's claims can be categorised into the following four categories:[11]

(a) outstanding fees for equipment hired out by the plaintiff to the defendant ("hiring fees");

(b) outstanding fees for equipment purchased by the defendant from the plaintiff ("purchase fees");

(c) outstanding fees for equipment lost by the defendant or which the defendant failed to return, calculated using the rates referred to at [7(c)] above ("shortage fees"); and

(d) outstanding fees for equipment returned by the defendant in DR or DBR condition, as the case may be, calculated using the rates referred to at [7(d)] above ("damage fees").

---

9 See *eg*, Statement of Claim (Amendment No. 2) dated 21 July 2021 ("SOC"), para 13.

10 See *eg*, SOC para 6.

11 PCS, para 52.

9 A breakdown of the plaintiff's pleaded claims is set out below:[12]

Project	**Hiring Fees**	**Purchase Fees**	**Shortage Fees**	**Damage Fees**
One Canberra	S$16,832.48	S$1,878.68	S$80,055.91	S$89,280.23
Forestville	S$91,270.20	S$15,366.98	S$9,116.37	S$103,032.24
Sea Horizon	S$13,651.81	-	S$88,417.80	S$119,719.29
Twin Fountains	S$70,189.51	S$857.64	-	S$40,793.86
Nassim Hill	S$13,924.46	-	S$198,625.50	S$112,175.72
Sub-total	S$205,868.46	S$18,103.30	S$376,215.58	S$465,001.34
Total	S$1,065,188.68			

10 As noted at [8] above, the plaintiff relies on its own internal records to quantify its claims. These are documentary records extracted from "Axapta", a computer software that the plaintiff uses to help keep track of equipment on hire and fees payable. These documents or records consist of hire return notes, delivery notes, hire tax invoices, tax invoices, credit notes, damage documents, and project movement and balances.[13] I will refer to these documents collectively as the "Axapta Records". In addition, the plaintiff relies on the expert report of Mr Colin A Williamson ("Mr Williamson") to argue that the quantification of its claims has been verified as accurate and should therefore be accepted by the court.[14]

---

12 PCS, para 53.

13 Affidavit of Evidence in Chief of Adrian De Los Santos ("Mr De Los Santos's AEIC"), paras 4–5 (2BA 547–548).

14 PCS, para 69.

The defence

11 The defendant denies that it owes the plaintiff any outstanding fees. Its defence can broadly be divided into five prongs. First, the defendant challenges the authenticity of the Axapta Records. The defendant had, pursuant to O 27 r 4(2) of the Rules of Court (2014 Rev Ed) filed a notice of non-admission with regard to the authenticity of almost all of the Axapta Records that had been disclosed in the plaintiff's List of Documents filed on 2 January 2020. More than 6,500 documents that form the bulk of the Axapta Records were objected to by the defendant on the grounds of authenticity. The defendant argues that the plaintiff failed to discharge its burden of proving the authenticity of the Axapta Records, and accordingly that the Axapta Records are inadmissible.[15] Given that the plaintiff relies heavily on the Axapta Records to quantify and prove its claims, the defendant argues that there is no basis for the plaintiff's claims to be allowed if the Axapta Records are not admitted into evidence.

12 Second, the defendant argues that in any case, the Axapta Records do not support the plaintiff's quantification of its claims. In this regard, the defendant disputes the expert report produced by Mr Williamson, and instead urges the court to rely on the report of its expert, Mr Chin Pay Fah @ Chin Bay Fah ("Mr Chin"). Based on a review of the Axapta Records, Mr Chin concluded that the defendant had in fact paid more than what the plaintiff was owed.[16] The defendant contends that therefore, it is not liable to pay any further sums to the plaintiff.

13 Third, and alternatively, the defendant argues that it is not bound by the terms contained in the Agreements. While the defendant does not dispute that

---

15 Defendant's Closing Submissions ("DCS"), para 41.

16 DCS, para 155.

its representatives signed four of the Agreements (namely the One Canberra, Forestville, Sea Horizon and Twin Fountains Agreements), the defendant argues that it only agreed to some but not all of the terms set out in the Agreements.[17] Instead, the defendant's case is that the plaintiff's general manager, Mr Christopher Tan ("Mr Tan"), and the defendant's Mr Choo had reached a separate agreement concerning the terms on which the plaintiff would supply equipment to the defendant. Contrary to the plaintiff's position that hiring fees would be charged based on the equipment actually delivered, the defendant alleges that the parties agreed that hiring fees would be charged based on "the block price quoted"[18] or on a "per block basis".[19] In cross-examination, Mr Choo clarified that this meant that the plaintiff would charge the weekly hire rate stated in the quotations (see [7(a)] above) as a *fixed* weekly rate, regardless of what equipment was actually delivered.[20] In addition, contrary to the plaintiff's position that the defendant would be charged for lost or damaged equipment based on the rates set out in the quotations (see [7(c)] and [7(d)] above), the defendant claims that Mr Tan and Mr Choo agreed that the defendant would be charged based on the actual loss or damage caused, or the actual cost of repairs.[21]

14 The fourth prong of the defendant's case consists of miscellaneous defences that the defendant raises in response to specific categories of the plaintiff's claims, or specific Projects. These miscellaneous defences comprise

---

17 DCS, para 47.

18 Defence and Counterclaim (Amendment No. 2) dated 3 August 2021 ("Defence"), paras 6, 19, 37 and 47.

19 Defence, para 60.

20 Notes of Evidence ("NEs"), 12 May 2021, p 13 lines 23–30, p 14 lines 15–16, p 17 lines 14–21.

21 Defence, paras 6, 19, 37, 47 and 60.

contentions that: (a) the plaintiff has double-counted certain items in the invoices it issued to the defendant; (b) the plaintiff reached settlement agreements with the defendant in respect of some claims; or (c) that the plaintiff is time-barred from pursuing some claims. Given that these defences pertain to specific parts of the plaintiff's claims, I do not intend to set out these defences in detail at this juncture. Instead, I will address these defences in greater detail when I consider the merits of the plaintiff's claims at [74]–[172] below.

15 The fifth and final prong of the defendant's case is that there are implied terms in the One Canberra, Forestville, Sea Horizon and Twin Fountains Agreements that: (a) the equipment supplied would be fit for purpose and free from damage or defects; and (b) the equipment would be supplied within a reasonable time of between six and eight weeks from the date of the Agreement concerned.[22] However, this defence was not canvassed or developed in the defendant's closing submissions or reply submissions.

The defendant's counterclaims

16 The defendant's counterclaims are as follows:

(a) In respect of the One Canberra and Twin Fountains projects, the defendant claims that it carried out an assessment of lost or damaged equipment and prepared a final account summary at the plaintiff's request. This allegedly resulted in the defendant incurring an administrative and management cost of S$15,000 per project, which it now claims from the plaintiff.[23]

---

22 Defence, paras 7, 20, 38 and 48.

23 Defence, paras 17, 57 and 77(i).

(b) In respect of the Forestville project, the defendant claims that it overpaid the plaintiff by S$41,708.13, and that it is entitled to the return of this sum.[24]

(c) In respect of the Nassim Hill project, the defendant claims that as a result of the plaintiff's delayed delivery of equipment, the defendant incurred a back charge of S$41,400, which the plaintiff (through its representative in Singapore at the time, Mr Noel Kennedy ("Mr Kennedy")) agreed to indemnify the defendant for.[25] In addition, the defendant claims that due to the plaintiff's late delivery of minima plywood for this project, the defendant incurred a back charge from the main contractor Shimizu Corporation ("Shimizu"), amounting to S$71,300. The defendant also alleges that it had no choice but to use the existing plywood on site, which subsequently resulted in a further cost of S$10,000 to change the plywood.[26]

Issues to be determined

17 Based on the background facts summarised above, I consider that the following issues arise to be determined:

(a) Has the plaintiff proven the authenticity of the Axapta Records ("Issue 1")?

(b) Are the parties bound by the terms contained in the five Agreements ("Issue 2")?

---

24 Defence, paras 28 and 77(ii).

25 Defence paras 70 and 77(iii)(a).

26 Defence, paras 71, 77(iii)(b) and 77(iii)(c).

(c) Do the Agreements contain the implied terms contended for by the defendant ("Issue 3")?

(d) If Issues 1 and 2 are answered in the affirmative, do the Axapta Records and the other available evidence support the plaintiff's claims ("Issue 4")? In determining this issue, I will first address the expert reports produced by both sides, and then consider the evidence marshalled by the plaintiff in support of its claims together with the miscellaneous defences raised by the defendant (see [14] above).

(e) Finally, is the defendant entitled to its counterclaims ("Issue 5")?

Issue 1: Has the plaintiff proven the authenticity of the Axapta Records?

18 As noted above at [11], the defendant argues that the plaintiff has not proven the authenticity of the Axapta Records. Where the authenticity of a document is disputed, the steps that a party needs to take to prove the authenticity of the disputed document were summarised by the Court of Appeal in *CIMB Bank Bhd v World Fuel Services (Singapore) Pte Ltd and another appeal* [2021] 1 SLR 1217 ("*CIMB*") at [54] as follows:

> … A party who has the burden of proving the authenticity of a document first has to produce primary or secondary evidence thereof, *ie*, the alleged original or a copy, within the provisions of the [Evidence Act]. Thereafter, it also has to prove that the document is what it purports to be. …

19 In other words, the test for proving the authenticity of a document is twofold. The first step to proving authenticity is to adduce the original document for the inspection of the court, *or* if one of the exceptions under the Evidence Act (Cap 97, 1997 Rev Ed) ("EA") applies, secondary evidence of the disputed document (*eg*, a copy of the document). The second step is to adduce evidence

that the document is what it "purports to be". With this framework in mind, I turn to the facts of the present case.

Step 1: Has the plaintiff produced primary or secondary evidence of the Axapta Records?

20 The defendant complains that the plaintiff has not produced the "original" Axapta Records and has only produced copies thereof.[27] Yet as suggested at [19] above, there is no strict requirement that a party *must* produce the original of a disputed document in order to prove its authenticity. For this reason, I find that the defendant's objection is not a stumbling block to the plaintiff's case. Rather, in my view, the more pertinent question to ask is whether the present case falls within any of the exceptions in the EA, such that the plaintiff is entitled to rely on secondary evidence of the Axapta Records.

21 In this regard, while the plaintiff has not expressly referred to s 67A of the EA, I note that this section provides as follows:

> **Proof of documents in certain cases**
>
> **67A.** Where in any proceedings a statement in a document is admissible in evidence by virtue of section 32(1), it may be proved by the production of that document or (whether or not that document is still in existence) by the production of ***a copy of that document, or of the material part of it, authenticated in a manner approved by the court***.
>
> [emphasis added in bold italics]

22 While it was not expressly submitted on by either side, it is clear to me that the Axapta Records (assuming their authenticity is proven) would be admissible by virtue of s 32(1)(*b*)(iv) of the EA, commonly known as the "business records exception" to the rule against hearsay. As noted above at [10],

---

[27] DCS, para 19.

the Axapta Records comprise documents such as hire return notes, delivery notes and invoices pertaining to the five Projects. In my view, these are documents that clearly form part of the records of "a trade, business, profession or other occupation that are recorded, owned or kept by any person, body or organisation carrying out the trade, business, profession or other occupation", within the meaning of s 32(1)(*b*)(iv) of the EA.

23 Where a statement in a document is admissible by virtue of one of the exceptions to the hearsay rule under s 32(1) of the EA, the net effect of s 67A of the EA is that *the document* may also be proven by way of *secondary evidence*, rather than primary evidence. Indeed, this is clear from the plain wording of s 67A itself, which states that in such situations, the relevant statement may be proven by "the production ***of a copy of that document*** … authenticated in a manner approved by the court" [emphasis added in bold italics]. The net effect of s 67A of the EA is also illustrated by the case of *Columbia Asia Healthcare Sdn Bhd and another v Hong Hin Kit Edward and another* [2016] 5 SLR 735 ("*Columbia Asia*"). In *Columbia Asia*, the defendants ("the Hongs") argued that six invoices adduced by the plaintiffs were not admissible in evidence, as the plaintiffs had produced copies but not the originals. Woo Bih Li J (as he then was) held at [21]–[25]:

> 21 The Hongs, however, submitted that Columbia must first satisfy that the invoices are admissible under s 66 of the EA before Columbia can rely on s 32(1)(*b*)(iv). This is because s 66 of the EA requires primary evidence of documents. Secondly, under s 32(3) of the EA, the court may still conclude that evidence which is relevant (or admissible) under s 32(1)(*b*) shall not be relevant if it would not be in the interests of justice to treat it as relevant.
>
> 22 I am of the view that the Hongs' reliance on s 66 is misplaced. It is true that s 66 states that documents must be proved by primary evidence except in the cases mentioned in s 67. Under s 64 of the EA, primary evidence means that the document itself must be produced for the inspection of the court. It can be seen that s 66 read with s 64 means that the

> original must be produced. That is a different question from whether hearsay evidence may be admitted. The Hongs had conflated the two arguments. An original document may be produced but the maker of the document may not have given evidence on the making of the document. Section 66 deals with the former point and not the latter point.
>
> 23 Section 32(1)(*b*) deals with the exceptions to the hearsay rule. ***Moreover, s 66 must be read subject to s 67A of the EA which states that where a statement in a document is admissible in evidence by virtue of s 32(1) it may be proved by the production of that document (ie, the original) or a copy.***
>
> 24 In summary, in so far as the Hongs submitted that the maker of the document must be called to give evidence, s 32(1)(*b*)(iv) states that this is not necessary under certain circumstances.
>
> 25 ***In so far as the Hongs submitted that the original must be produced, s 66 must be read subject to s 67A which provides that where s 32(1) applies, a copy may be produced.***
>
> [emphasis added in bold italics]

24 Separately, I note that there appears to be no discussion in local jurisprudence of what it means for a copy of a document admitted under s 67A of the EA to be "authenticated in a manner approved by the court". Nonetheless, I am of the view that this phrase is not inconsistent with the test for proving authenticity set out in *CIMB* at [54], nor should it be read as an additional hurdle to proving authenticity. In my judgment, the phrase "authenticated in a manner approved by the court" simply confers a discretion upon the court to determine the appropriate level of rigour to which authenticity must be proved, based on the facts of the particular case before it. Accordingly, where a party seeks to admit a copy of a document under s 67A of the EA and there is *no* challenge to authenticity, the court may correspondingly require little or no proof of the authenticity of the copy. Conversely, where there *is* an objection to the authenticity of the copy, the court may require authenticity to be proven in accordance with the test laid down in *CIMB*.

25 In my view, such a reading would be consistent with the legislative history behind s 67A of the EA. Section 67A was introduced as part of amendments to the EA in 2012, under which more flexible exceptions to the hearsay rule were introduced: *Singapore Parliamentary Debates, Official Report* (14 February 2012) vol 88 at p 1128 (K Shanmugam, Minister for Law). It could therefore be argued that the enactment of s 67A was meant to complement the widening of the hearsay exceptions, by permitting documents containing hearsay statements to be proven by both primary and secondary evidence. Accordingly, the reference to a need for a copy of a document to be "authenticated in a manner approved by the court" should not, in my view, be read as imposing additional requirements, over and above the requirements in relation to proof of authenticity where no hearsay evidence is involved.

26 The long and short of the analysis above is that under s 67A of the EA, where a statement in a document is otherwise admissible under s 32(1) of the EA, the document in which the statement is contained may, if necessary, also be proved by secondary evidence thereof, for purposes of satisfying the first stage of the *CIMB* test. Turning back to the present case, given my finding above at [22] that the Axapta Records would otherwise be admissible under s 32(1)(*b*)(iv) of the EA, the plaintiff is also entitled to prove the Axapta Records by adducing copies thereof, which it did by way of the Affidavits of Evidence in Chief ("AEICs") of two of its witnesses, Mr Wilfred Cuperus ("Mr Cuperus") and Mr Adrian De Los Santos ("Mr De Los Santos"). As such, I find that the plaintiff has satisfied the first step of the *CIMB* test.

27 For completeness, I note that the plaintiff makes two arguments in support of why it has satisfied the first step of the test laid down in *CIMB*. First, the plaintiff argues that the defendant is wrong to complain that no "original" documents have been produced, because the Axapta Records are themselves

primary evidence of their contents *per* Explanation 3 to s 64 of the EA.[28] This provision states that:

> **64**. Primary evidence means the document itself produced for the inspection of the court.
>
> …
>
> *Explanation 3*.—Despite *Explanation 2*, if a copy of a document in the form of an electronic record is shown to reflect that document accurately, then the copy is primary evidence.
>
> *Illustrations*
>
> (*a*) An electronic record, which has been manifestly or consistently acted on, relied upon, or used as the information recorded or stored on the computer system (the document), is primary evidence of that document.
>
> (*b*) If the electronic record has not been manifestly or consistently acted on, relied upon, or used as a record of the information in the document, the electronic record may be a copy of the document and treated as secondary evidence of that document.

28 Second, the plaintiff argues that even if the Axapta Records are secondary evidence, the plaintiff should be allowed to rely on the exception in s 67(1)(*g*) of the EA.[29] This provision provides that:

> **67.**—(1) Secondary evidence may be given of the existence, condition or contents of a document admissible in evidence in the following cases:
>
> …
>
> (*g*) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in court, and the fact to be proved is the general result of the whole collection.
>
> …
>
> (5) In case (*g*) in subsection (1), evidence may be given as to the general result of the documents by any person who has

---

[28] Plaintiff's Reply Submissions ("PRS"), paras 16–17.

[29] PRS, para 13.

> examined them and who is skilled in the examination of such documents.

29 Following from my conclusion above at [26] that the plaintiff has satisfied the first step of the *CIMB* test, it is not strictly necessary for me to consider the plaintiff's arguments. Nonetheless, if necessary as an alternative basis for my decision, I am prepared to find that the plaintiff is also entitled to rely on s 67(1)(*g*) of the EA to prove the Axapta Records by way of secondary evidence.

30 The Axapta Records span 45 volumes in the Agreed Bundle of Documents and are well in excess of 6,000 documents. In my judgment, this is a case where the original documents would consist of "numerous accounts or other documents which cannot conveniently be examined in court". Moreover, the facts to be proved (namely, the amounts of outstanding fees that the defendant owes the plaintiff) are essentially a general result of the Axapta Records. The plaintiff has also adduced evidence of the Axapta Records through Mr Cuperus and Mr De Los Santos (as noted at [26] above), who are both representatives of the plaintiff and are therefore acquainted with the Axapta software. I find that they are therefore persons skilled in the examination of the Axapta Records, within the meaning of s 67(5) of the EA.

31 In reaching this conclusion, I also bear in mind the observations of the Court of Appeal in *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another and other appeals* [2006] 3 SLR(R) 769 ("*Jet Holdings*"), that there should not be an "overly punctilious insistence" on compliance with the EA such that "a party has to rely upon thousands of documents to establish his or her case in complex litigation" (at [49]–[50]). In my view, given the sheer volume of the Axapta Records, the present case is one such case where requiring the plaintiff to produce primary evidence of the Axapta Records would simply

be putting the plaintiff through an "unnecessary procedural treadmill" (*Jet Holdings* at [49]).

32 Therefore, if necessary for my decision, I would conclude that the plaintiff is also entitled to rely on s 67(1)(*g*) of the EA, such that the Axapta Records can be proven by secondary evidence.

Step 2: Has the plaintiff proven that the Axapta Records are what they purport to be?

33 At the second stage of the *CIMB* test, the party tasked with proving authenticity must adduce proof relating to the "genuineness and execution" of the document, such as proof of the handwriting, signature and execution of the document (*CIMB* at [50]). As the defendant observes, this may be done by way of direct evidence, *eg*, calling the maker of the document as a witness.[30] However, there is no rule that a party can *only* prove that a document is what it purports to be by adducing direct evidence. As the Court of Appeal held in *CIMB* at [57], the omission to adduce direct evidence where it is available is not necessarily fatal to proving a document's authenticity. The impact of not adducing direct evidence depends on the facts of each case. Relevant but non-exhaustive factors will include the strength of the indirect or circumstantial evidence adduced, the reasons given by the relevant party for not adducing direct evidence, and the probative value of the direct evidence if it had been adduced.

34 This is illustrated by the facts of *CIMB* itself, which concerned a challenge to the authenticity of a debenture that the plaintiff ("CIMB") sought to admit into evidence. CIMB did not call as witnesses any signatories or

[30] DCS, para 30.

witnesses to the debenture, to attest that the debenture was what it purported to be. Nonetheless, the Court of Appeal found that there was sufficient *circumstantial* evidence to prove the authenticity of the debenture. In this regard, the Court of Appeal noted that: (a) the parties to the debenture had not disowned the debenture; (b) CIMB had, since the purported date of the debenture, operated on the belief that the debenture was validly executed; (c) it could be inferred that the debenture was registered with the Accounting and Corporate Regulatory Authority on the instructions of the defendant; and (d) the common seal of the defendant was affixed to the debenture (at [62]–[66]).

35 Before turning to apply the law to the present facts, I begin by setting out the plaintiff's evidence of how the Axapta Records were produced. As noted above at [10], Axapta is a computer software that the plaintiff uses to, *inter alia*, keep track of equipment on hire. Mr De Los Santos, a business analyst from RMD Kwikform Philippines Inc, was responsible for compiling the Axapta Records. In his AEIC, Mr De Los Santos explained that whenever the plaintiff receives a purchase order for equipment from a customer, a staff member of the plaintiff will manually input all information relating to that order in a "picking list". This would include the price and quantity of each piece of equipment ordered. Thereafter, the staff member will create a delivery note, and a tax invoice for that delivery note can then be generated. Staff members can also upload documentation relating to a particular project or order, provided they are granted the requisite permission on the Axapta system to do so. Each time a person enters information or uploads documents to the Axapta system, this action will be accompanied by a date and time stamp that cannot be altered or changed.[31]

[31] Mr De Los Santos's AEIC, paras 8–9 and 11 (2BA 548–549).

36 At trial, Mr De Los Santos described the process he undertook to compile the Axapta Records. He had first collected some original hard copy documents in Singapore.[32] Mr De Los Santos then brought these hard copy documents to the Philippines, where he made a list of them. He then ran a search on the Axapta system, by looking at all documents relating to the defendant. He then cross-checked the list of hard copy documents against his search results and downloaded any records that he did not have a hard copy of.[33] These downloaded files, combined with the hard copy documents, make up the Axapta Records.[34]

37 It is undisputed that the plaintiff has not adduced any *direct* evidence that the Axapta Records are what they purport to be. For instance, the plaintiff did not call as witnesses the makers of the individual hire return notes, delivery notes, invoices and similar documents that make up the Axapta Records. Nonetheless, in my judgment, I find that the plaintiff has adduced sufficient circumstantial evidence to prove that the Axapta Records are what they purport to be.

38 In reaching this conclusion, I find it significant that the overall contents of the Axapta Records give the impression that they are genuine business records. For instance, some documents that form part of the Axapta Records have the *defendant's* company stamp,[35] and the defendant has not disputed that it is its company stamp on those records. There are also hire return notes accompanied by photographs, and some of the photographs have their own

---

32 NEs, 4 May 2021, p 15 lines 16–26.

33 NEs, 4 May 2021, p 20 lines 11–17.

34 NEs, 4 May 2021, p 16 line 29 to p 17 line 3.

35 See *eg*, 11AB 3012.

individual timestamps.[36] There is also a consistent template used for certain types of documents (*eg*, hire return notes) and overall, a high level of detail in accounting for the equipment ordered and returned. In the circumstances, I find it difficult to believe that the entries are fabricated or in some other way inauthentic.

39 Moreover, as noted above at [33], the impact of not adducing direct evidence will depend in part on the reasons given for not adducing direct evidence. Given the sheer volume of the Axapta Records, I accept the plaintiff's submission that it would be extremely impractical, if not impossible, to call the maker of every document that forms part of the Axapta Records.[37] In my view, while direct evidence will usually be the strongest evidence available of a document's authenticity, the plaintiff's failure to adduce direct evidence in the present circumstances cannot be the hamartia of its claim.

40 While the defendant contends that some of the delivery notes or hire return notes are unsigned or signed by third parties, and that there appear to be photos that are duplicates,[38] I find that this does not take anything away from the overall complexion of the Axapta Records as genuine documents. I note that when Mr Williamson was cross-examined on these alleged irregularities, he explained that certain manual notes may be unsigned, as "the signature goes on the system-generated [note] instead".[39] In any case, I note that the defendant only identified and put *five* instances of such alleged irregularities to Mr

---

36 See *eg*, 11AB 3028.

37 PRS, para 27(b).

38 Defendant's Reply Submissions ("DRS"), paras 32–33.

39 NEs, 4 May 2021, p 57 lines 30–31.

Williamson in cross-examination.[40] In my judgment, these must be considered as isolated instances when viewed against the entirety of the Axapta Records. For completeness, while the defendant also contends that there are irregularities in the amounts charged in invoices INS001442 and INS001466[41], I will address this argument in detail at [76]–[78] below when I consider the plaintiff's claim for hiring fees for the One Canberra project. For now, it suffices to say that I disagree with the defendant that there are errors in these invoices.

41 Finally, while the plaintiff makes much about the fact that the defendant has not produced its own records, this clearly does not relieve the plaintiff from its burden of proving the authenticity of the Axapta Records.[42] Nonetheless, in my view, the absence of any alternative set of documentation that contradicts the contents of the Axapta Records bolsters the conclusion that the Axapta Records are authentic.

42 Accordingly, I find that the plaintiff has adduced sufficient circumstantial evidence to prove the authenticity of the Axapta Records. I therefore find that the Axapta Records are admissible and reject the first prong of the defendant's defence.

Issue 2: Are the parties bound by the terms contained in the five Agreements?

43 As noted above at [6], the plaintiff's position is that the five Agreements reflect all the terms of the parties' contractual relationship.[43] Under the terms of

---

40 NEs, 4 May 2021, p 46 lines 19–31; p 57 lines 1–13 and lines 14–31; p 62 lines 1–25.

41 DRS, para 36.

42 PRS, para 21.

43 PCS, paras 9, 13 and 16.

the Agreements, the plaintiff would charge the defendant hiring fees based on the actual equipment delivered, and would charge for lost or damaged equipment based on specific rates stated in the Agreements (see [7] above). On the other hand, as noted at [13] above, the defendant argues that it is not bound by all the terms contained in the Agreements. Instead, the defendant contends that Mr Tan and Mr Choo had reached a separate agreement that the defendant would pay a fixed weekly rate for all equipment hired from the plaintiff (*ie*, a "block price"). Further, the defendant would be charged for lost or damaged equipment based on the actual loss or damage caused, or the cost of repairs. I will refer to the defendant's arguments on this issue collectively as the "block price defence".

44 As a preliminary observation, I note that while the block price defence essentially challenges the rates that the plaintiff has charged the defendant, the defendant has not put forth any alternative calculations of the correct sums that it should allegedly have been charged by the plaintiff. As such, even if I were to accept the defendant's block price defence, it is unclear exactly how much the defendant should have been charged by the plaintiff, and consequently whether or not there are any remaining sums owing by the defendant to the plaintiff. In other words, even if I were to accept the defendant's case, it is unclear if the block price defence would constitute a full or partial defence to the plaintiff's claims.

45 In any case, I find that on the available evidence, the defendant has not proven the block price defence on a balance of probabilities. As the defendant's representatives signed the Agreements for the One Canberra, Forestville, Sea Horizon and Twin Fountains projects, but not the Nassim Hill project, I will address the former four projects first before turning to the Nassim Hill project.

46 In relation to the One Canberra, Forestville, Sea Horizon and Twin Fountains projects, it is a well-established principle that in the absence of fraud or misrepresentation, a party is bound by all the terms of a contract that it signs, even if that party did not read or understand those terms: *Bintai Kindenko Pte Ltd v Samsung C&T Corp and another* [2019] 2 SLR 295 at [58].

47 In the present case, the defendant does not dispute that Mr Choo signed the One Canberra, Forestville, Sea Horizon and First Twin Fountains Agreements, while the defendant's sales manager, Mr Raymond Ng ("Mr Ng"), signed the Second Twin Fountains Agreement.[44] In respect of the Agreements signed by Mr Choo, Mr Choo alleged that he did not agree to the terms contained in the Agreements (despite signing them), because he did not read through the respective Agreements before signing them.[45] However, this clearly does not amount to fraud or misrepresentation. Nor has the defendant made any other allegation that it or its representatives were induced to sign the Agreements by any fraud or misrepresentation. Accordingly, it follows that the defendant is bound by the terms contained in the One Canberra, Forestville, Sea Horizon and Twin Fountains Agreements.

48 Moreover, it is an equally well-established principle of law that if a court is satisfied that the parties intended to embody their entire agreement in a written contract, then no extrinsic evidence is admissible to contradict, vary, add to, or subtract from the terms of the written contract: *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [132(b)].

---

44 2AB 358, 387, 461, 497 and 574.

45 NEs, 12 May 2021, p 19 lines 12–16.

49 In my judgment, I am satisfied that the parties in the present case did intend for the One Canberra, Forestville, Sea Horizon and Twin Fountains Agreements to embody all the terms of their contractual agreements for the respective Projects. First, I find that these four Agreements appear on their face to be complete contracts, such that it may be rebuttably presumed that the parties intended the contracts to contain all the terms of their agreement: *Zurich Insurance* at [132(b)]. In this regard, I note that each of the Agreements comprehensively sets out all the material terms on which the plaintiff would supply equipment to the defendant, such as the types and quantities of equipment to be hired, the quoted price (subject to actual quantities required), the terms of payment, and the rates to be charged for lost or damaged equipment. Crucially, there is nothing in any of the Agreements to suggest that the parties would need to enter into a separate agreement to supplement or vary the terms of the written Agreements. In my view, these four Agreements therefore constitute complete contracts on their face.

50 Second, while a court may look at extrinsic evidence to determine if the parties intended a written contract to embody their entire agreement (*Zurich Insurance* at [132(b)]), I am not persuaded that any of the available extrinsic evidence proves that the parties intended to supplement the Agreements with a separate contract. As Mr Choo conceded, there was nothing sent by way of correspondence from the defendant to the plaintiff to suggest that the defendant disagreed with the express terms of the Agreements.[46] While the defendant contends in its closing submissions that the Agreements could not have been final contracts as the defendant's requirements were still subject to discussions,[47] this argument was not part of the defendant's pleaded defence.

---

46 NEs, 12 May 2021, p 15 lines 13–15.

47 DCS, paras 49–51.

Nor was anything to this effect put to the plaintiff's witnesses during the trial. In any case, I disagree that the Agreements were incomplete or not final, simply because the Agreements state that the price of equipment on hire would depend on the actual quantities delivered. I do not see any basis for the defendant's contention that the parties must have agreed on a fixed or specific price, in order for the Agreements to be sufficiently certain or final.

51 In short, none of the available evidence rebuts the presumption that the One Canberra, Forestville, Sea Horizon and Twin Fountains Agreements are complete contracts. Following from my observations at [48] above, the defendant is therefore not entitled to rely on extrinsic evidence to argue that Mr Tan and Mr Choo had reached a separate agreement, which would vary or contradict the terms of the Agreements.

52 In any event, even if the defendant was entitled to rely extrinsic evidence to vary the terms of the Agreements, the defendant has raised little objective or contemporaneous evidence to corroborate its claim that the parties entered into any such separate agreement. In support of its case, the defendant refers to an e-mail sent by Mr Tan to Mr Choo on 27 June 2013 in respect of the One Canberra project (the "27 June 2013 e-mail").[48] In my judgment, the 27 June 2013 e-mail does not support the block price defence. For ease of reference, the 27 June 2013 e-mail states:[49]

> Hi Edward
>
> This difference from what we have discussed yesterday afternoon, *the lump sum of S$504,874.15 quoted* is without infill accessories. To fixed at S$504,874.15 with infill accessories,

---

48 Further and Better Particulars of the Defence and Counterclaim dated 11 October 2019, para 1.3.

49 3AB 606.

> you are asking for more discount not as per our agreed price with list less 50% discount. [*sic*]…
>
> [emphasis added]

53 In cross-examination, Mr Choo claimed that the figure of S$504,874.15 referred to in the 27 June 2013 e-mail was derived by multiplying the fixed weekly rate (*ie*, the "block price") that the parties had allegedly agreed upon, by the period of time that the defendant required equipment for.[50] I find this claim to be improbable, given that the text of the e-mail itself shows that the plaintiff was informing the defendant that the "lump sum" price of S$504,874.15 did *not* include the supply of additional equipment in the form of "infill accessories". This itself is inconsistent with the defendant's claim that the parties had agreed on a fixed weekly hire rate, *no matter* what equipment was hired from the plaintiff. In addition, I agree with the plaintiff that "the lump sum of S$504,874.15 quoted" is a reference to the overall price the plaintiff had quoted in the One Canberra Agreement.[51] It is expressly stated in the One Canberra Agreement that the quotation of S$504,874.15 is "subject to actual delivered quantities and unit rates".[52] Accordingly, it is clear that the figure of S$504,874.15 was *not* derived from an alleged "block price", and that the parties had instead agreed that the defendant would be charged based on actual quantities delivered to it. In the round, the 27 June 2013 e-mail in fact undermines the defendant's block price defence.

54 Separately, I note that Mr Choo claimed in cross-examination that the invoices issued by the plaintiff were consistent with a "block price" being used, as the weekly rate in the plaintiff's invoices matches the weekly rate contained

---

50 NEs, 12 May 2021, p 64 lines 10–12.

51 PCS, para 27.

52 1BA 87.

in the Agreements.[53] In my view, this is at best a neutral factor, rather than a factor in the defendant's favour. As Mr Choo subsequently conceded, there is nothing in the Agreements to suggest that the quoted weekly rate would be a fixed rate.[54] On the contrary, the Agreements expressly state that the quoted weekly hire rate "may vary slightly depending on actual quantities required and actual site conditions".[55] As such, even if the plaintiff ultimately charged the defendant the same weekly rates as those quoted in the Agreements, this alone does not prove that the parties had agreed that the quoted weekly hire rate would be a *fixed* rate.

55 Moreover, although Mr Choo claimed in his AEIC that both the plaintiff's Mr Tan and RMD Kwikform's Regional Director, Mr Hamish Bowden ("Mr Bowden") were aware of the agreement to use a "block price",[56] the defendant did not seek to call either Mr Tan or Mr Bowden as its witness. Mr Choo's claim that the parties had agreed to use a "block price" was therefore an uncorroborated assertion.

56 Finally, the defendant relies on the fact that in a letter of demand from the plaintiff's solicitors dated 3 May 2017, as well as in an earlier version of the Statement of Claim (Amendment No. 2) (the "Statement of Claim"), the plaintiff had claimed shortage and damage fees on the basis of the actual loss or damage caused.[57] However, I do not agree that this necessarily proves that the parties had expressly agreed that the defendant would be charged on this basis.

---

53 NEs, 12 May 2021, p 23 lines 4–5, p 53 lines 12–23, p 67 lines 7–11.

54 NEs, 12 May 2021, p 54 lines 1–3.

55 See *eg,* 1BA 61.

56 Mr Choo's AEIC, para 69 (2BA 574).

57 DCS, para 58.

In cross-examination, the plaintiff's company representative, Mr Cuperus, explained that this error arose because some of the invoice summaries were prepared on the basis of actual loss or damage caused, "in [an] endeavour to appease the customer to try and reach a settlement".[58] In my view, this explanation is reasonable and plausible. Accordingly, while the plaintiff initially advanced its claim on the basis of actual loss or damage caused, I do not think this fact alone is sufficient to prove the block price defence.

57 I now turn to consider the Nassim Hill project. While the defendant's representatives did not sign the quotations issued for the Nassim Hill project, I find that on a balance of probabilities, the parties did intend for the Nassim Hill Agreement to reflect the terms of their agreement. In reaching this conclusion, I consider it relevant that both the plaintiff and defendant are commercial parties. As noted at [2]–[3] above, the plaintiff is part of a group of companies with an international presence, while the defendant has been in the business of erecting scaffolding systems since 2002. Mr Choo, the managing director of the defendant, also came across as reasonably articulate in his testimony, and is an experienced businessman in the construction industry. Against this backdrop, I accept the plaintiff's submission that it is improbable that the parties were content to enter a contractual relationship solely based on an oral agreement reached between Mr Tan and Mr Choo.[59] This is especially so when: (a) the Nassim Hill project was the first collaboration between the parties; and (b) the alleged oral agreement contradicted the terms of the written quotation issued by the plaintiff.

---

58 NEs, 6 May 2012, p 59 lines 8–11.

59 PCS, paras 18 and 31(a).

58 Moreover, given my conclusion at [47] above that the other four Agreements reflected the terms of the contracts for those Projects, I find that on a balance of probabilities, the parties similarly intended for the Nassim Hill Agreement to reflect the terms of their contractual relationship. In any case, the defendant has not, in my view, adduced sufficient evidence to prove that a separate agreement was reached between Mr Tan and Mr Choo, for the reasons that I have detailed at [52]–[56] above. In my judgment, the Nassim Hill Agreement does reflect all the terms of the parties' contractual relationship for the Nassim Hill project, and the parties are accordingly bound by the terms contained therein.

59 To summarise the foregoing, I find that the parties are bound by the terms contained in the five Agreements, and that the defendant has not established the block price defence. In other words, the parties did not agree that equipment on hire would be charged at a fixed rate, or that lost or damaged equipment would be charged based on actual loss or damage caused, or based on the cost of repairs. For completeness, I note that in response to the defendant's block price defence, the plaintiff argues that Mr Tan did not in any event have the authority to enter into a separate agreement with Mr Choo.[60] Following from my conclusion that the defendant has not established the block price defence, I do not find it necessary to address the plaintiff's alternative argument.

---

60 PCS, para 32.

Issue 3: Do the Agreements contain the implied terms asserted by the defendant?

60 As noted above at [15], part of the defendant's pleaded case is that the One Canberra, Forestville, Sea Horizon and Twin Fountains Agreements contain implied terms that:

(a) the equipment supplied would be fit for purpose and free from damage or defects, and

(b) the equipment would be supplied within a reasonable time of between six to eight weeks from the date of the Agreement concerned;

(collectively, the "Proposed Terms").

While this argument was not pursued in the defendant's closing submissions, I will address it for completeness.

61 In my judgment, there is no basis on which the Proposed Terms can be implied into the four Agreements. It is well established that in determining whether to imply a term into a contract, the court will apply the three-step test in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp Marine*"), as follows:

(a) First, the court will ascertain if there is a gap in the contract and if so, how the gap arose. Implication will only be considered if the court finds that the gap arose because the parties did not contemplate the gap in the contract (at [94]–[95] and [101(a)]).

(b) Second, the court will consider if it is necessary in the business or commercial sense to imply a term to give the contract efficacy. The

threshold for implying a term is therefore necessarily a high one (at [100] and [101(b)]).

(c) Third, the court considers the specific term to be implied. This must be a term which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at the time of the contract. If it is not possible to find such a clear response, then, the gap persists and the consequences of that gap ensue (at [101(c)]).

62 In the present case, cl 21(f) of the Conditions of Trading annexed to each of the Agreements provides as follows:[61]

> (f) [The plaintiff] shall have no liability if the Equipment is not fit for purpose and all other conditions, warranties, stipulations and undertakings, whether express or implied by statute or common law [*sic*]

63 Further, cl 9 of the Conditions of Trading provides as follows:[62]

> 9. [The plaintiff] will endeavour to have the Equipment ready for delivery by the date agreed for delivery or collection in accordance with Clause7 [*sic*] but shall not incur any liability whatsoever nor shall the Customer be entitled to terminate the Contract, by reason of [the plaintiff's] failure to deliver or have available for collection by the agreed date.

64 While it appears that cl 21(f) of the Conditions of Trading (as reproduced above) is incomplete, it is nonetheless clear that the substance of both cll 21(f) and 9 is that the plaintiff will *not* incur liability if any equipment delivered is not fit for purpose, or delivery is delayed. In other words, cll 21(f) and 9 stand in direct contradiction to the Proposed Terms. Accordingly, it

---

61 See *eg,* 1BA 89.

62 *Ibid.*

cannot be said that there is even a gap in the contract to begin with. As the plaintiff contends, the defendant's argument therefore fails at the first step of the *Sembcorp Marine* test.[63]

65 I therefore decline to imply the Proposed Terms into the four Agreements, as the defendant urges me to. In any case, I also note that the defendant has not explained or particularised *how* the Proposed Terms, if implied into the four Agreements, would help its case or how the plaintiff has breached these terms.

Issue 4: Is the plaintiff entitled to its claims?

66 I now turn to consider the merits of the plaintiff's claims, based on the available evidence. As noted at [10] and [12] above, the plaintiff relies on the expert report of Mr Williamson, while the defendant relies on the report of Mr Chin. Each party claims that their respective expert report represents an objective and reliable assessment of the plaintiff's claims.[64] I will therefore first address the expert reports.

The expert reports

67 In my judgment, I do not find either of the expert reports to be particularly helpful in determining the merits of the plaintiff's claims. I shall first comment on Mr Chin's report.

68 Firstly, the calculations in Mr Chin's report appear to contain errors. As Mr Chin himself conceded in cross-examination, he failed to exclude certain hire return notes, which were in fact summaries of items that had already been

63 PCS, para 45.

64 PCS, para 69; DCS, para 155.

returned by the defendant to the plaintiff.[65] This resulted in Mr Chin double-counting certain items that the defendant returned to the plaintiff. While Mr Chin, as a third party, may naturally have been unfamiliar with the plaintiff's internal documents, it appears that his failure to seek any clarification from the plaintiff regarding the Axapta Records led to him misunderstanding the plaintiff's internal documents.[66] Indeed, Mr Chin candidly admitted in cross-examination that he did not fully understand some of the plaintiff's internal documents.[67]

69 I also find Mr Chin's overall conclusion improbable, given that he ultimately concluded that it was *the plaintiff* who owed the defendant at least S$1,759.19 (or a far higher sum of approximately *S$2.38m* if allegedly excess equipment returned to the plaintiff was taken into consideration), in circumstances where it was the plaintiff who had hired out equipment to the defendant to begin with.[68] I accept the plaintiff's submission that the improbability of Mr Chin's overall conclusion is likely symptomatic of errors that Mr Chin made in his calculations.[69] This calls into question the reliability of Mr Chin's assessment and conclusions.

70 Moreover, I note that Mr Chin's assessment also appears to be based on certain assumptions which may not reflect what the parties had agreed. For instance, in assessing the value of the plaintiff's claim for damage fees, Mr Chin excluded damaged plywood altogether from his assessment, on the basis that

---

65 NEs, 11 May 2021, p 29 lines 20–23.

66 NEs, 11 May 2021, p 7 lines 3–6.

67 NEs, 11 May 2021, p 34 lines 10–13.

68 3BA 834.

69 PCS, para 73.

plywood is a "perishable material" and should be deemed as "fair wear and tear".[70] However, as Mr Chin conceded in cross-examination, this was purely his own opinion; there was no correspondence between the parties to suggest that they had agreed that the defendant would not be charged for damaged plywood.[71]

71 In the circumstances, I disagree with the defendant that Mr Chin's report can be considered to be a reliable assessment of the plaintiff's claims.

72 On the other hand, I also find Mr Williamson's report to be of limited assistance in assessing the plaintiff's claims. The key conclusion of Mr Williamson's report is that based on his review of various documents provided to him by the plaintiff, he is of the opinion that the plaintiff's claims are "fully supported" by the relevant documentation.[72] However, I agree with the defendant that it is not entirely clear what documents were provided to Mr Williamson for the purposes of his report.[73] In this regard, Mr Williamson's report does not contain an itemised list of documents that he referred to, nor has the plaintiff provided any such list. Likewise, when Mr Williamson was shown the list of hire return notes for the One Canberra project that was annexed to his report, his evidence in cross-examination was that he had also viewed "additional documents" that were not included in the list.[74] It was not subsequently clarified what these "additional documents" were.

---

70 3BA 816.

71 NEs, 11 May 2021, p 50 lines 21–23.

72 See *eg*, 2BA 451, para 11.2.1.

73 DCS, para 143.

74 NEs, 4 May 2021, p 36 lines 5–30.

73 In the circumstances, the reliability of Mr Williamson's report is also doubtful, and his report offers, at best, limited support for the plaintiff's claim. In my judgment, the merits of the plaintiff's claim ultimately turn on the quality of the factual evidence adduced (both oral and documentary), and not on the opinions of either expert witness, upon which I place little weight. I therefore turn to consider whether the plaintiff is entitled to its claims, based on the available factual evidence.

The One Canberra project

Hiring fees

74 The plaintiff claims that the defendant incurred S$656,425.85 of invoiced hiring fees,[75] plus S$14,441.22 of hiring fees that were not invoiced.[76] The plaintiff does not dispute that the defendant has made payment of S$654,034.59.[77] Accordingly, the plaintiff claims that it is entitled to an outstanding sum of S$16,832.48.[78]

75 In my judgment, I find that the plaintiff has established its claim in respect of the invoiced hiring fees. In the absence of any alternative records or documents from the defendant, I find that the Axapta Records are sufficient to prove the plaintiff's claim for invoiced hiring fees.

76 In this regard, I disagree with the defendant's contention that the amounts claimed by the plaintiff in respect of invoices INS001442 and

---

75 SOC, para 8.1.

76 SOC, para 8.2.

77 SOC, para 10.1.

78 SOC, para 11.1.

INS001466 are incorrect.[79] In support of its contention, the defendant refers to two invoices also numbered INS001442 and INS001466, which reflect amounts different than what is claimed in the Statement of Claim. For ease of reference, the amounts relied on by either party are as follows:

Invoice number	**Amount claimed by the plaintiff (excluding GST)**	**Amount relied on by the defendant (excluding GST)**
INS001442	S$6,049.02[80]	S$4,951.08[81]
INS001466	S$5,229.86[82]	S$4,550.09[83]

77 However, I note that the plaintiff's summary of invoices in the Statement of Claim also contains two subsequent credit note adjustments, namely CRS000348 and CRS000350, for the sums of S$1,097.94 and S$679.77 respectively.[84] If these sums are subtracted from the sums claimed by the plaintiff for INS001442 and INS001466, the net figures arrived at are the same amounts relied upon by the defendant:

(a) INS001442: S$6,049.02 – S$1,097.94 = S$4,951.08.

(b) INS001466: S$5,229.86 – S$679.77 = S$4,550.09.

78 Accordingly, I am satisfied that the sums claimed by the plaintiff in respect of INS001442 and INS001466 do not give rise to an overall error in the sum of hiring fees claimed.

---

79 SOC, para 8.1 S/N 35 and 36; DCS, para 72.

80 SOC, para 8.1 S/N 35, 33AB 9729.

81 Defendant's Bundle of Documents ("DBOD") 52.

82 SOC, para 8.1 S/N 36, 33AB 9730.

83 DBOD 55.

84 SOC, para 8.1 S/N 37 and 39.

79 Separately, the defendant also alleges that the plaintiff has claimed an erroneous amount in respect of invoices INS000883 and INS000920.[85] To begin with, I note that this alleged error was not put to any of the plaintiff's witnesses in cross-examination, and was only raised for the first time in the defendant's closing submissions. In any case, I note that the amounts claimed by the plaintiff for INS000883 and INS000920 were likewise adjusted by subsequent credit notes. Accordingly, I am of the view that there is no error in the amount claimed by the plaintiff:

Invoice number	**Amount claimed by the plaintiff (excluding GST)**	**Amount relied on by the defendant (excluding GST)**
INS000883	S$39,290.75[86] minus S$1,892.71 (*per* credit note CRS000168[87]) = S$37,398.04	S$37,398.04[88]
INS000920	S$39,290.75[89] minus S$1,892.71 (*per* credit note CRS000169[90]) = S$37,398.04	S$37,398.04[91]

80 As for the plaintiff's claim for hiring fees that were not invoiced, I find that the plaintiff has *not* established its claim on a balance of probabilities. While Mr Cuperus claims that these additional fees were the result of a negotiation between Mr Bowden and Mr Choo,[92] the plaintiff has not adduced

85 DCS, para 73.

86 SOC, para 8.1 S/N 22.

87 SOC, para 8.1 S/N 26.

88 DBOD 15.

89 SOC, para 8.1 S/N 23.

90 SOC, para 8.1 S/N 27.

91 DBOD 17.

92 NEs, 6 May 2021, p 64 line 31 to p 65 line 4 and p 65 lines 12–19.

any correspondence or documentary evidence to corroborate this claim. Indeed, Mr Cuperus ultimately conceded in cross-examination that there is no basis for the plaintiff's claim for the hiring fees that were not invoiced.[93] I therefore dismiss the plaintiff's claim in this respect.

81 In sum, I allow the plaintiff's claim for hiring fees for the One Canberra project in part, in the sum of **S$2,391.26** (S$16,832.48 – S$14,441.22).

Purchase fees

82 The plaintiff claims that the defendant purchased equipment in the sum of S$1,878.68, for which the defendant has not made any payment.[94]

83 In my judgment, I find that based on the available evidence, the plaintiff has not proven its claim on a balance of probabilities. While Mr Cuperus stated in his AEIC that the tax invoices evidencing the defendant's purchases are annexed to Mr De Los Santos's AEIC, it is unclear exactly which invoices Mr Cuperus was referring to.[95] In this regard, I note that the Further and Better Particulars to the Statement of Claim contains a list of items that the defendant allegedly purchased from the plaintiff, and the corresponding delivery note number for each item.[96] However, this list contains far more items than the list of purchases that the plaintiff claims in the Statement of Claim.[97] Neither does the Statement of Claim make reference to any specific invoices. In the

---

93 NEs, 6 May 2021, p 67 lines 20–24.

94 SOC, paras 10.2 and 11.2.

95 Mr Cuperus's AEIC, para 40 (1BA 16).

96 Further and Better Particulars of the Statement of Claim dated 22 November 2019 ("F&BP to SOC"), para 2(ii) and Annex 2.

97 SOC, para 9.

circumstances, it is unclear which invoices (or delivery notes) the plaintiff relies on to support its claim.

84 Further, while Mr Cuperus asserted in his AEIC that the defendant's purchases are also evidenced by an e-mail sent by Mr Tan to the defendant's staff in July 2014,[98] the quantities of equipment reflected in this e-mail are far less than what the plaintiff claims it sold to the defendant.[99] In any case, the text of the e-mail does not show that equipment was indeed sold or delivered to the defendant, as the e-mail relates to a *planned* delivery of equipment to the defendant.

85 Indeed, I note that in a letter dated 20 April 2016 from Mr Bowden to Mr Choo ("the 20 April 2016 letter"), Mr Bowden admitted that there was a "lack of available substantiation from either [the defendant] or [the plaintiff]" in relation to the items allegedly sold by the plaintiff to the defendant for the One Canberra project.[100] That said, this letter was not referred to by either party in the course of these proceedings, and no evidence has been adduced as to its provenance. In particular, Mr Bowden was not called as a witness. As such, notwithstanding the apparent concession from Mr Bowden in the 20 April 2016 letter, I do not place much weight on this letter in my overall analysis.

86 Nonetheless, weighing the totality of the evidence detailed above at [83]–[84], I find that the plaintiff has not established its claim for S$1,878.68 of purchase fees for the One Canberra project on a balance of probabilities. I therefore dismiss this claim.

---

98 Mr Cuperus's AEIC, para 43 (1BA 17).

99 1BA 97; SOC, para 9.

100 3AB 617.

Shortage and damage fees

87 In respect of the plaintiff's claim for shortage fees, the plaintiff claims that it is entitled to S$129,266.29 for equipment lost by the defendant. The plaintiff does not dispute that the defendant has made payment of S$49,210.38, and therefore claims the outstanding sum of S$80,055.91.[101]

88 In respect of the plaintiff's claim for damage fees, the plaintiff claims it is entitled to S$74,850.09 for equipment returned DR and S$68,392.66 for equipment returned DBR. The plaintiff does not dispute that the defendant has made payment of S$53,962.52, and therefore claims the outstanding sum of S$89,280.23.[102]

89 The defendant's case is that the parties had reached a settlement agreement on several of the plaintiff's claims, including the claims for shortage and damage fees for the One Canberra project.[103] The defendant claims that this settlement agreement is reflected in an e-mail sent by Mr Choo to the plaintiff's Country Manager, Mr Graham Hartland ("Mr Hartland"), on 13 December 2015 (the "13 December 2015 e-mail"). For ease of reference, the 13 December 2015 e-mail states:[104]

> Hi Graham,
>
> We discussed on Thursday and agreed the amount for the following Losses/DR/DBR amount as follows:-
>
> 1. Twin Fountains Loss & Damages/DBR - $40,000.00 – Account Closed as lumpsum.

---

101 SOC, paras 13–14.

102 SOC, paras 16–17.

103 DCS, para 118.

104 3AB 614.

> 2. One Canberra – Losses - $46,011.04. Based on ehub attached worksheet assessment.
>
> 3. One Canberra – Damages/DBR - $50,568.67. Based on ehub attached worksheet assessment.
>
> 4. Forestville – Losses - $51,701.91. Losses Account Closed. Based on ehub attached worksheet assessment.
>
> I have also stated that ehub has agreed to pay what we have assessed at our end deemed reasonable and fair but if RMD disputes our assessments, RMD is free to make additional justifiable claims for reassessment.
>
> …

90 In response, the plaintiff claims that the 13 December 2015 e-mail shows that the parties were still in the midst of negotiations, instead of having concluded precise figures for a settlement.[105]

91 In my judgment, I accept the defendant's contention that the parties had reached a settlement agreement, as reflected in the 13 December 2015 e-mail. First, I disagree with the plaintiff that the language of the 13 December 2015 e-mail suggests that negotiations were still ongoing; it is clear from the wording of the e-mail that the parties had "agreed" on specific sums to be paid by the defendant to the plaintiff. In any case, I note that following the 13 December 2015 e-mail, Mr Bowden sent another e-mail to Mr Choo on 21 December 2015, stating as follows:[106]

> Hi Edward,
>
> As discussed this afternoon, we will provide you with 3 further invoices for partial/progress payment, totalling 4 invoice for total of $188k.
>
> Please send details as soon as possible, to target collection of check tomorrow.
>
> …

---

105 PCS, para 79.

106 3AB 670.

92 The figure of S$188,000 referenced by Mr Bowden closely matches the total sum of payments agreed upon by the parties in the 13 December 2015 e-mail (S$40,000 + S$46,011.04 + S$50,568.67 + S$51,701.91 = S$188,281.62). In my view, this is further proof that the parties had agreed that the defendant would pay the sums stated in the 13 December 2015 e-mail to the plaintiff. Given that the parties were discussing the issuance of invoices and collection of a cheque, it is clear that the parties had agreed on the sums to be paid and were not simply in the midst of negotiations.

93 While Mr Bowden refers to these payments as "partial/progress payment[s]", I do not think that this undermines the defendant's case that a settlement agreement was reached. As I detail below, the weight of the remaining evidence shows that the parties had reached a final settlement of the plaintiff's claims. In any case, I note that it was not part of the case advanced by the plaintiff that the agreement reflected in the 13 December 2015 e-mail was only a *partial* settlement of the plaintiff's claims. Neither did the plaintiff call Mr Bowden or Mr Hartland as its witnesses, to rebut Mr Choo's testimony that a final settlement had been reached *per* the 13 December 2015 e-mail. In the circumstances, I do not read Mr Bowden's e-mail of 21 December 2015 to mean that the parties had only reached a partial settlement of the plaintiff's claims.

94 Following Mr Bowden's e-mail on 21 December 2015, the plaintiff issued an invoice to the defendant on 23 December 2015, for the shortage and damage fees for the One Canberra project ("the 23 December 2015 invoice"). This invoice reflected the amounts stated in the 13 December 2015 e-mail.[107] Based on the available documentary evidence, the 23 December 2015 invoice

[107] DBOD 60.

appears to have been the *last* invoice issued by the plaintiff in respect of the One Canberra project. In my view, this is consistent with the defendant's contention that the parties had reached a final settlement on the plaintiff's claims for shortage and damage fees.

95 Crucially, the plaintiff has also not pointed to any other correspondence between the parties to suggest that the 23 December 2015 invoice was anything other than a final settlement of the plaintiff's claims. While Mr Cuperus alleged in cross-examination that the amounts stated by Mr Choo in the 13 December 2015 e-mail were contested in a subsequent e-mail from the plaintiff, he was not able to identify this e-mail.[108]

96 That being said, I note that, in fairness to the plaintiff, in the 20 April 2016 letter, Mr Bowden purports to claim S$61,000 in outstanding shortage fees and S$82,000 in outstanding damage fees, in respect of the One Canberra project.[109] However, as noted at [85] above, this letter was not referred to by either party at trial or in their respective closing submissions, nor was any evidence adduced as to the provenance of the letter or the context in which it was sent. In the circumstances, I decline to place any significant weight on the 20 April 2016 letter.

97 For completeness, I also note that the plaintiff argues that Mr Hartland had no authority to enter into a settlement agreement with the defendant.[110] Instead, the plaintiff contends that based on the authority matrix of RMD Kwikform at the material time, the requisite authority lay with Mr Bowden and

---

108 NEs, 6 May 2021, p 48 lines 1–9.

109 3AB 617.

110 PCS, para 80.

RMD Kwikform's Divisional Operations Director, Mr Ian Hayes.[111] However, as Mr Cuperus conceded in cross-examination, the fact that invoices were issued by the plaintiff pursuant to the 13 December 2015 e-mail indicates that Mr Hartland had gone through the requisite internal processes of the plaintiff.[112] In any case, as noted at [91] above, Mr Bowden followed up on the settlement agreement entered into by Mr Hartland and Mr Choo. This meant that irrespective of any purported lack of authority on the part of Mr Hartland, his acts were likely to have been ratified in any event by Mr Bowden.

98 I therefore find that the parties had reached a final settlement in respect of the plaintiff's claims for shortage and damages fees, as reflected in the 13 December 2015 e-mail. Pursuant to this settlement agreement, the defendant duly made payment of S$103,340.29 (being S$50,568.67 + S$46,011.04 plus GST of 7%).[113] Accordingly, there is no basis on which the plaintiff is entitled to further sums from the defendant and I dismiss these claims.

99 In any case, and if I am wrong that a settlement agreement was reached between the parties in respect of the One Canberra project, I note that the plaintiff has put forth various sets of figures that it is allegedly entitled to in respect of its claims for shortage and damage fees. While the Statement of Claim states that the plaintiff is entitled to an outstanding sum of S$80,055.91 in shortage fees and an outstanding sum of S$89,280.23 in damage fees for the One Canberra project, the 20 April 2016 letter states that the plaintiff is entitled to a balance sum of S$61,000 (after applying a 5% discount) in shortage fees

111 Mr Cuperus's AEIC, para 52 (1BA 19).

112 NEs, 6 May 2021, p 51 lines 9–21.

113 3AB 615.

and S$82,000 in damage fees.[114] These figures are also inconsistent with a letter of demand from the plaintiff's solicitors dated 3 May 2017, wherein the plaintiff claims S$18,000 in shortage fees and S$55,000 in damage fees.[115] The plaintiff has not provided any explanation for these significantly different sets of figures, or for the disparity between the amounts claimed in the Statement of Claim and in the contemporaneous evidence. As such, if necessary as an alternative basis for my decision, I find that even if no settlement agreement was reached in respect of the shortage and damage fees, the plaintiff has not proven its claim on a balance of probabilities. I would therefore also dismiss the plaintiff's claims for shortage and damage fees on this basis.

The Forestville project

Hiring fees

100 The plaintiff claims that the defendant incurred hiring fees of S$787,415.68. The plaintiff does not dispute that the defendant made payment of S$696,145.48 and claims the outstanding sum of S$91,270.20.[116]

101 The defendant contends that it has been overcharged by the plaintiff, as the plaintiff erroneously double-counted Airodek equipment supplied to the defendant. The defendant alleges that in October 2014, Airodek equipment was moved from the car park area to the main block area of Blocks 40, 42, 46 and 48 of the Forestville project. However, the plaintiff continued to charge the defendant for Airodek equipment in the car park area, in addition to charging

114 3AB 617.

115 3BA 737.

116 SOC, paras 22 and 24.

the defendant for Airodek equipment in the main block area. The defendant claims that it has therefore overpaid the plaintiff by S$71,742.06 as a result.[117]

102 Further, the defendant alleges that certain equipment supplied to it, referred to as the "Wallform double-sided" and the "Wallform staircase" (collectively, the "Wallform equipment"), was defective in design. Accordingly, in July 2014, Mr Tan had agreed to waive charges for the Wallform equipment and to return the defendant the sum of S$81,704.70 that it had paid for the Wallform equipment. However, it was subsequently agreed that the Wallform equipment would be modified for use at a total cost of S$20,468.43, to be paid by the defendant.[118]

103 The defendant contends that after setting off the amounts it has paid to the plaintiff against the amounts owed to it by the plaintiff, the defendant has in fact overpaid the plaintiff by S$41,708.13:

Hiring fees incurred	S$787,415.68
Less hiring fees paid by defendant	-S$696,145.48
Less overpayments for alleged double-counting of Airodek equipment	-S$71,742.06
Less waived charges for Wallform equipment	-S$81,704.70
Add cost of modifying Wallform equipment	S$20,468.43
TOTAL	-S$41,708.13

117 Defence, paras 22–23.

118 Defence, paras 26–28.

The above also forms the basis of the defendant's counterclaim for S$41,708.13 (see [16(b)] above).

104 In my judgment, I find that the plaintiff has established its claim on a balance of probabilities. First, in the absence of any alternative records or documents from the defendant, the Axapta Records are sufficient to prove the plaintiff's claim for hiring fees.

105 Second, I do not accept the defendant's contention that it has been double-charged for the supply of Airodek equipment. As Mr Cuperus explained in re-examination, the plaintiff's Axapta system tracks equipment based on whether it is on hire, and not based on where it is deployed (*eg*, the car park area versus the main block area).[119] Accordingly, even if the defendant had shifted some Airodek equipment from the car park area to the main block area, this would not result in the defendant being double-charged for the same equipment. Moreover, Mr Cuperus further explained that there may sometimes be errors in the way that charges are separated across blocks in invoices issued by the plaintiff, as the system relies on the plaintiff's staff manually separating the hire charges into the various blocks.[120] In my view, this is a possible explanation for why it appears that the defendant continued to be charged for equipment in the car park area, despite its claim that it had moved the Airodek equipment to the main blocks. Crucially however, this does not mean that the *overall* hiring fees that the defendant was charged were erroneous.

106 Likewise, I reject the defendant's argument that the parties had agreed to omit charges for the Wallform equipment. In my view, the e-mail

---

119 NEs, 6 May 2021, p 96 lines 3–9.

120 NEs, 6 May 2021, p 96 lines 3–9 and p 98 lines 6–12.

correspondence between the parties shows that the plaintiff had at most offered to waive charges for the Wallform equipment for *certain months*, but that ultimately the parties were still in negotiations over how much the defendant should be charged for the Wallform equipment.

107 On 5 December 2014, the plaintiff's commercial manager, Ms Lynna Young ("Ms Young"), e-mailed the defendant's Mr Ng stating as follows:[121]

> Hi Raymond,
>
> Following to our discussion on Forestville, we do understood [*sic*] that there is reduction of scope for staircase wall material. After our discussion with Edward on 31th October 2014, that we are agreed to issue credit note for the landing wall omission for June, July and August invoice.
>
> …
>
> Regards to that, in the meantime, we have done some reduction on your monthly hire charges as follows;
>
> - September 2014 – reduction in landing wall hire charges;
> - October 2014 – cut off of the whole hire charges for staircase wall and double sided wall [Zero charges];
> - November 2014 – cut off the whole hire charges for staircase wall and double sided wall [Zero charges].
>
> …
>
> [*sic*]

108 Contrary to the defendant's pleaded case that an agreement had been reached in *July* 2014 to waive *all* charges for the Wallform equipment, it is clear from Ms Young's e-mail above that the plaintiff was only offering to waive charges for the Wallform equipment in relation to specific months. In addition, when Ms Young e-mailed the defendant on 30 December 2014 attaching the invoice for the month of December 2014, I note that the invoice included

121 DBOD 235.

charges for the Wallform equipment for the month of December.[122] In my view, this goes to show that the parties did *not* agree that *all* charges for the Wallform equipment would be waived.

109 In any case, even if the plaintiff had offered to waive some of the charges for the Wallform equipment, the plaintiff subsequently rescinded this offer through Ms Young's e-mail of 9 January 2015. In her e-mail, Ms Young informed the defendant that the plaintiff had "under billed" for the Wallform equipment, as the minimum hire period under the Forestville Agreement was 6.5 months. Accordingly, Ms Young informed the defendant that the plaintiff would be issuing an additional hire invoice.[123] On 13 January 2015, Mr Ng replied to disagree that the defendant should be liable for 6.5 months of hiring fees.[124]

110 In my view, it is clear that the parties were in disagreement over whether the defendant should be charged for the Wallform equipment. This, taken with my finding at [105] above, leads me to conclude that the defendant has not established its defence to the plaintiff's claim for hiring fees. I therefore allow the plaintiff's claim for S$91,270.20 in outstanding hiring fees.

Purchase fees

111 The plaintiff claims that the defendant has incurred purchase fees of S$15,366.98, for which it has not made any payment.[125]

---

122 DBOD 242–243.

123 DBOD 255.

124 DBOD 256.

125 SOC, para 24.2.

112 In my judgment, the plaintiff has not proven its claim on a balance of probabilities, for reasons similar to those at [83] above. Similar to the plaintiff's claim for purchase fees for the One Canberra project, the plaintiff has not identified *which* documents in the Axapta Records support its claim for purchase fees for the Forestville project. While the Further and Better Particulars to the Statement of Claim lists out items allegedly purchased by the defendant from the plaintiff,[126] the items in this list exceed what is stated in the Statement of Claim. There is also no reference to any specific invoices or documents that may support the plaintiff's claim for purchase fees, in the Statement of Claim or the plaintiff's closing submissions.

113 Accordingly, I find that the plaintiff has not proven its claim on a balance of probabilities and dismiss the plaintiff's claim for purchase fees in respect of the Forestville project.

Shortage fees

114 The plaintiff claims that the defendant has incurred S$60,818.29 in shortage fees. The plaintiff does not dispute that the defendant has made payment of S$51,701.92, and accordingly claims the outstanding sum of S$9,116.37.[127]

115 The defendant's case is that the parties had reached a settlement agreement as reflected in the 13 December 2015 e-mail, under which the defendant would pay the plaintiff S$51,701.92 in settlement of the plaintiff's claim for shortage fees.[128]

---

126 F&BP to SOC, Annex 5.

127 SOC, paras 26 and 27.

128 DCS, para 118(c).

116 For reasons similar to those detailed at [91]–[93] and [95] above, I find that the parties did reach a settlement agreement in respect of the plaintiff's claim for shortage fees. Based on the available evidence, it appears that the plaintiff did not issue an invoice to the defendant in respect of the Forestville project following the 13 December 2015 e-mail. Nonetheless, I note that the defendant made payment of S$51,701.92 to the plaintiff on 23 December 2015.[129] On the other hand, the plaintiff has not pointed to any contemporaneous evidence to suggest that the parties did not reach a compromise agreement. For completeness, while the settlement sum stated in the 13 December 2015 e-mail is slightly different from the sum that the defendant paid to the plaintiff (a one cent difference of S$51,701.91 versus S$51,701.92), this difference is *de minimis* and immaterial to my decision.

117 I therefore find that on a balance of probabilities, the parties did reach a binding settlement agreement in respect of the plaintiff's claim for shortage fees as evidenced by the 13 December 2015 e-mail. Given that it is not disputed that the defendant paid an amount equivalent to the settlement sum, there is no basis for the plaintiff's claim, and I dismiss this claim accordingly.

Damage fees

118 The plaintiff claims that it is entitled to S$87,918.60 for equipment returned DR and S$15,113.64 for equipment returned DBR. The plaintiff claims that the defendant has not made any payment to date, and therefore claims the outstanding sum of S$103,032.24.[130]

---

129 3BA 724.

130 SOC, para 30.

119 In my judgment, the plaintiff has proven its claim on the basis of the Axapta Records. I have already rejected the defendant's argument that there was a separate agreement that the defendant would be charged for damaged equipment based on actual damage caused (at [59] above). The only remaining defence that the defendant raises consists of allegations that the plaintiff's assessment of damaged equipment was incorrect, and that the plaintiff did not carry out any repair of the damaged equipment.[131] However, the defendant has not adduced any evidence to support these allegations. Insofar as Mr Chin put forth an alternate assessment of damage fees by excluding damaged plywood from the plaintiff's claims, I have found that Mr Chin's assessment is unreliable for the reasons detailed at [70] above. I find that the defendant has not established any defence to the plaintiff's claim. I therefore allow the plaintiff's claim for damage fees in the sum of S$103,032.24.

The Sea Horizon project

Hiring fees

120 The plaintiff claims that the defendant has incurred S$545,993.06 in hiring fees. The plaintiff does not dispute that the defendant has paid S$532,341.25 and claims the outstanding sum of S$13,651.81.[132]

121 In my judgment, I find that the plaintiff has proven its claim on the basis of the Axapta Records. The defendant contends that it has been double-charged for Airodek equipment, *ie*, that after certain Airodek equipment was moved from Block 9 to Block 11 of the Sea Horizon project, the plaintiff charged the

131 Defence, para 33.

132 SOC, para 38.

defendant for Airodek equipment in both Block 9 and 11.[133] For reasons similar to those detailed above at [105], I am not persuaded that the moving of equipment from one block to another would result in the defendant being double-charged. In any case, I note that the defendant's allegation that it was double-charged is not corroborated by any of the contemporaneous evidence. While the defendant refers to an invoice summary issued by the plaintiff for the month of January 2015,[134] all that this invoice summary shows is that the defendant was not charged hiring fees for Airodek equipment in Block 11 from 30 November 2014 to 31 January 2015, while the defendant was charged hiring fees for Airodek equipment in Block 9 during the same period. In my view, this in fact perhaps goes to show that the defendant was *not* double-charged for Airodek equipment, if equipment was indeed moved from Block 9 to Block 11.

122 Likewise, I reject the defendant's contention that the parties had agreed to omit any charges for the "Klik Klak" platform.[135] Again, I find this allegation to be uncorroborated by the factual evidence. The defendant relies again on the invoice summary issued by the plaintiff for the month of January 2015,[136] but this only shows that the defendant appears to not have incurred charges for the "Klik Klak" platform for some blocks. This does not in any way show that there was an agreement to waive or omit charges for the "Klik Klak" platform altogether.

123 I therefore allow the plaintiff's claim for hiring fees in the sum of S$13,651.81.

---

133 DCS, para 94.

134 DCS, para 94; DBOD 347.

135 DCS, para 95.

136 DBOD 347.

Shortage fees

124 The plaintiff claims that the defendants have incurred S$126,660.09 in shortage fees. The plaintiff does not dispute that the defendant has made payment of S$38,242.29 and claims the outstanding sum of S$88,417.80.[137]

125 The defendant's case is that the plaintiff's Country Manager, Mr Andrew Box ("Mr Box") and Mr Choo reached an agreement to settle the plaintiff's shortage claims for S$42,753.81.[138] The defendant contends that the settlement agreement is contained in an e-mail sent by Mr Box to Mr Choo on 29 December 2016 ("the 29 December 2016 e-mail"), which states as follows:[139]

> Subject: FW: Sea Horizon – Shortage Material Charges
>
> Hi Edward,
>
> As discussed, we agree with the $36,566.83 plus GST plus a negotiated figure to make the total payable $39,956.83 plus GST.
>
> How do you want this presented so we can finalise?
>
> …

126 The plaintiff subsequently issued an invoice to the defendant on 27 March 2017 (INS003947) for the amount of S$39,126.51 (including GST) in respect of the loss charges for the Sea Horizon project.[140] In my view, this is consistent with the defendant's contention that the 29 December 2016 e-mail constituted a settlement agreement. While the amount the defendant was invoiced for differs slightly from the amount reflected in the 29 December 2016

---

137 SOC, para 41.

138 Defence, para 44.

139 3AB 722.

140 DBOD 447.

e-mail (S$39,956.83 versus S$39,126.51), I find the difference in figures to be immaterial.

127 I do not accept the plaintiff's argument that Mr Box had no authority to enter into any settlement agreement with the defendant. For reasons similar to those at [97] above, I find that Mr Box must have had the requisite authority to reach an agreement with Mr Choo and in any case, it is likely that the plaintiff subsequently ratified the agreement, given that an invoice for S$39,126.51 was issued by the plaintiff subsequent to the agreement reached with Mr Choo.

128 Separately, while the defendant's pleaded case is that the parties agreed on a settlement sum of S$42,753.81 (comprising S$39,126.51 plus a separate sum of S$3,627.30), I note that the invoice issued in respect of the sum of S$3,627.30 was for miscellaneous hire charges, and not for shortage fees.[141] As such, on the available evidence, I find that the parties agreed to settle the plaintiff's shortage claims for the Sea Horizon project for S$39,126.51. This sum was duly paid by the defendant.[142] Accordingly, there are no outstanding sums due to the plaintiff. I therefore dismiss the plaintiff's claim.

Damage Fees

129 The plaintiff claims that it is entitled to S$101,890.28 for equipment returned DR and S$17,829.01 for equipment returned DBR. The plaintiff claims that the defendant has not made any payment to date, and therefore claims the outstanding sum of S$119,719.29.[143]

---

141 DBOD 448.

142 DBOD 449.

143 SOC, paras 43–44.

130 In my judgment, the plaintiff has established its claims on the basis of the Axapta Records. I have already rejected the defendant's argument that there was a separate agreement that the defendant would be charged for damaged equipment based on actual damage caused (at [59] above). The only other defence raised by the defendant is that the plaintiff's assessment of damaged equipment was incorrect, and that the plaintiff did not carry out any repair of the damaged equipment.[144] For the reasons detailed at [119] above, I find that the defendant has not established a defence to the plaintiff's claim. I therefore allow the plaintiff's claim in the sum of S$119,719.29.

The Twin Fountains project

Hiring fees

131 The plaintiff claims that the defendant has incurred hiring fees of S$454,592.23. The plaintiff does not dispute that the defendant has made payment of S$384,402.72 and claims the outstanding sum of S$70,189.51.[145]

132 The defendant's case is that the plaintiff's Mr Tan had agreed to lower the "original lump sum block price", as a result of the plaintiff delivering equipment three months late and committing other breaches of the Twin Fountains Agreement. The defendant contends that it has paid the lowered sum of hiring fees (amounting to S$384,002.72) and that there are therefore no more outstanding sums.[146]

133 I have already rejected the defendant's contention that the parties agreed to a "block price" or a fixed weekly rate for equipment hired from the plaintiff

144 Defence, para 45.

145 SOC, para 56.1.

146 Defence, paras 50–51.

(see [59] above). Nonetheless, I find some force in the defendant's argument that the contemporaneous evidence shows that the parties had agreed that the defendant would be charged at a lower rate for equipment hired. For instance, in relation to the hire fees that the defendant incurred for Block 17 of the Twin Fountains project, the monthly invoices from the plaintiff show that the defendant was consistently charged at a lower monthly rate of S$5,983.83 from March 2014 to January 2015.[147] This is compared to the higher monthly rate of S$7,114.13 that appears in the Statement of Claim.[148]

134 The plaintiff has not offered any alternative explanation for why it appears to have charged the defendant lower rates in the monthly invoices, but is now relying on a higher monthly rate in the Statement of Claim. Instead, the only argument raised by the plaintiff is that Mr Tan had no authority to enter into an agreement with Mr Choo.[149] However, for reasons stated at [97] above, if Mr Tan had indeed agreed to charge the defendant lower rates for equipment hired for the Twin Fountains project, then the fact that invoices were subsequently issued by the plaintiff reflecting those lowered rates goes to show that Mr Tan had the requisite authority to do so or that, in any event, the requisite internal approvals were in place. Accordingly, the plaintiff's argument is somewhat of a red herring, and does not necessarily prove that no such agreement was entered into.

135 In the circumstances, I find that on a balance of probabilities, the parties *did* enter into an agreement that the defendant would be charged lower rates for equipment on hire, such that the defendant only incurred S$384,002.72 in hiring

147 DBOD 92, 98, 101, 104, 109, 114, 121, 125, 132, and 136.

148 SOC, Schedule H (Set Down Bundle Volume 1, p 75).

149 Reply to Defence and Counterclaim (Amendment No. 1) dated 21 April 2021 ("Reply to D&CC"), paras 29 and 32.

fees. Given that it is undisputed that the defendant has paid this sum, there is no outstanding sum owed to the plaintiff. I therefore dismiss the plaintiff's claim.

Purchase fees

136 The plaintiff claims that the defendant incurred S$857.64 in purchase fees, for which no payment has been made.[150] In my judgment, the plaintiff's claim is supported by the invoices it has adduced.[151]

137 I do not accept the defendant's argument that it is not liable to pay for purchase fees, simply because there was no purchase order or written order issued for all of the purchases.[152] Clause 6 of the Special Terms & Conditions annexed to the Twin Fountains Agreement only states that "written order confirmation" is required as a condition for "40% [d]own payment".[153] In my view, there is nothing in this clause to suggest that the defendant is not liable to pay for equipment purchased *unless* a separate purchase order or written order confirmation is given. In any case, even if the defendant is correct in its interpretation of cl 6 of the Special Terms & Conditions, I am prepared to find that the invoices issued by the plaintiff constitute sufficient written confirmation of the items purchased by the defendant.

138 I also do not accept the defendant's argument that the alleged purchases were in fact equipment hired out to the defendant, which the defendant has paid hiring fees for and which has been returned to the plaintiff.[154] As Mr Cuperus

150 SOC, para 56.2.

151 34AB 10045 and 10066.

152 DCS, paras 55–56.

153 1BA 279.

154 DCS, paras 105–107.

explained in cross-examination, certain equipment supplied by the plaintiff requires the hirer to also purchase consumables such as bar ties, accessories, bolts, nuts, pins and clips to "complete the kit required to finish [the] job".[155] The plaintiff would not hire out such consumable items, as they would be "lodged in the dirt" and not returned.[156] As such, each of the Agreements would provide one quote for "proprietary hire items", which was the estimated cost of hiring equipment, and a separate quote for "proprietary sale items", which was the estimated cost of consumable items that the hirer was required to purchase.[157]

139 I find Mr Cuperus's explanation to be logical and sensible. Put another way, it would make little commercial sense for the Agreements to contain a separate quote for "proprietary sale items", if the parties had simply intended for the defendant to hire all items (including consumables) from the plaintiff. Moreover, I note that the items allegedly purchased by the defendant consist of nuts, bolts and the like, which is consistent with Mr Cuperus's explanation that these are consumables that the defendant is required to purchase.

140 I therefore allow the plaintiff's claim in the sum of S$857.64.

Damage Fees

141 The plaintiff claims that it is entitled to a total of S$83,593.86 (including GST) for equipment returned DR and DBR. The plaintiff does not dispute that the defendant has made payment of S$42,800, and therefore claims the outstanding sum of S$40,793.86.[158]

---

155 NEs, 6 May 2021, p 27 lines 7–12.

156 NEs, 6 May 2021, p 27 lines 4–5.

157 NEs, 6 May 2021, p 90 lines 2–15.

158 SOC, paras 58–59.

142 The defendant's case is that Mr Hartland and Mr Choo had agreed that the defendant would pay S$42,800 in full and final settlement of the plaintiff's claims for shortage and damage fees for the Twin Fountains project (for completeness, I note the plaintiff has not claimed any shortage fees for the Twin Fountains project).[159]

143 For reasons similar to those at [91]–[93] and [95] above, I accept the defendant's contention that the parties reached a settlement agreement in respect of the plaintiff's claim for damage fees. In this regard, I note that the 13 December 2015 e-mail expressly refers to the plaintiff's claims for shortage and damage fees as "Account Closed".[160] Moreover, subsequent to the 13 December 2015 e-mail, the plaintiff issued an invoice to the defendant on 23 December 2015 for the sum of S$42,800 (*ie,* S$40,000 plus GST of 7%) for loss and damage fees arising out of the Twin Fountains project.[161] For the reasons detailed at [97] above, this evidences that Mr Tan had the requisite authority to enter into a settlement agreement with Mr Choo, or alternatively, that the agreement was subsequently ratified by the plaintiff.

144 I therefore find that a settlement was reached in respect of the plaintiff's claim for damage fees. Given that the defendant has paid the settlement sum of S$42,800,[162] there are no further sums owing to the plaintiff. I therefore dismiss the plaintiff's claim.

145 Given my conclusion that the parties entered into a binding settlement agreement in respect of the plaintiff's claim for damage fees, I do not find it

159 DCS, para 118(d).

160 3BA 703.

161 3BA 723.

162 3BA 721.

necessary to deal with the defendant's alternative defence that it is "extravagant and unconscionable" for the plaintiff to claim 25% or 60% of the list sale rate for damaged Airodek panels, or that there were errors in the plaintiff's calculation of its damage fees.[163]

The Nassim Hill project

Are the claims time-barred?

146 The defendant contends that most of the plaintiff's claims for the Nassim Hill project are time-barred under s 6(1)(*a*) of the Limitation Act (Cap 163, 1996 Rev Ed), which provides that an action founded on a contract shall not be brought after the expiration of six years from the date on which the cause of action accrued. The defendant highlights that most of the plaintiff's claims for hiring, shortage and damage fees for the Nassim Hill project accrued in early 2013. However, the present suit was commenced more than six years later, on 12 July 2019. Accordingly, the defendant contends that the plaintiff's claims should be time-barred.[164]

147 In response, the plaintiff alleges that correspondence between the parties indicates that there was "an agreement to hold any commencement of legal proceedings in abeyance, pending negotiations and a settlement of the issues relating to the Nassim Hill project". The plaintiff argues that any cause of action therefore only accrued upon the failure of such negotiations, around 24 May 2016.[165]

---

163 Defence, para 53A.

164 DCS, paras 134–135.

165 PRS, para 56.

148 I disagree with the plaintiff's contention that there was any agreement to hold the commencement of legal proceedings in abeyance. In the first place, it was not part of the plaintiff's pleaded case that there was any such agreement. In its Reply & Defence to Counterclaim (Amendment No. 1), all that the plaintiff said in response to the defendant's allegation that the claims were time-barred was that "[t]he parties had exchanged correspondences [*sic*] regarding the assessment of the damaged equipment".[166] Neither did the plaintiff adduce any evidence of this alleged agreement from its witnesses, or cross-examine the defendant's witnesses on the same. In other words, the first mention of such an agreement was in the plaintiff's closing submissions. On this basis alone, I would reject the plaintiff's argument that there was an agreement to hold the commencement of legal proceedings in abeyance until 24 May 2016.

149 In any case, the e-mail correspondence that the plaintiff relies on does not support its contention that there was an agreement to hold the commencement of legal proceedings in abeyance.[167] It is significant that none of the contemporaneous correspondence expressly refers to such an agreement. On the contrary, the correspondence suggests that the parties were considering commencing legal proceedings sometime in *April* 2016. On 21 April 2016, Mr Choo sent an e-mail to Mr Bowden stating:[168]

> Subject: RE: Nassim Hill & One Canberra - Final Outstanding Accounts - URGENT
>
> Dear Hamish,
>
> I have seen the contents of the DR/DBR and they are not much difference from the original which we have rejected but responded and made payment accordingly to our assessed value, ***so it is better send all these projects to arbitration***

166 Reply to D&CC, para 43.

167 3AB 811–840.

168 3AB 828.

> ***for the settlement of DR/DBR items***. *Each party will pay its share of the arbitration fee based on assessed value. The arbitrator can be a mutually agreed arbitrator.*
>
> …
>
> [emphasis added in italics and bold italics]

150 In response, Mr Bowden sent an e-mail to Mr Choo on 25 April 2016, stating as follows:[169]

> Hi Edward,
>
> …
>
> I trust we are able to quickly resolve. If we are not able to come to an acceptable agreement very quickly on these old accounts, ***we will of course have no choice but to seek alternative means (arbitration, SOP, etc.) to resolve***.
>
> …
>
> [emphasis added in bold italics]

151 In my view, the above e-mails contradict the plaintiff's assertion that there was an agreement *prior* to May 2016 to hold the commencement of legal proceedings in abeyance. Had there indeed been such an agreement, it does not make sense that the parties were discussing the commencement of legal proceedings in *April* 2016, especially without any reference to or mention of this alleged agreement. I therefore reject the plaintiff's contention that the parties had reached an agreement to hold the commencement of legal proceedings in abeyance, such that any cause of action only accrued on or around 24 May 2016.

152 In respect of the plaintiff's claim for hiring fees, I accept the defendant's argument that at least some of the plaintiff's claims are time-barred. The plaintiff's claim for hiring fees consists of various invoices that span a period

---

169 3AB 827–828.

starting from 31 May 2012 and ending on 31 July 2013.[170] Under cl 6 of the Special Terms and Conditions annexed to the Nassim Hill Agreement, the defendant was liable to pay for hiring fees within 30 days from presentation of an invoice.[171] In my view, and in the absence of any evidence showing when the invoices supporting the plaintiff's claim for hiring fees were actually presented to the defendant, I find that the plaintiff's cause of action accrued after the expiry of 30 days from the date of each of the respective invoices. Accordingly, I find that the plaintiff's claim for hiring fees is time-barred, save for its claims in respect of the following two invoices:

(a) invoice number INS000373 dated 30 June 2013 for the sum of S$263.22 (including GST);[172] and

(b) invoice number INS000439 dated 31 July 2013 for the sum of S$8.77 (including GST).[173]

153 As for the plaintiff's claims for shortage and damage fees, I note that there is no express clause in the Nassim Hill Agreement specifically addressing when payment became due for shortage or damage fees. The defendant contends that the plaintiff's cause of action accrued once the damaged equipment was returned to the plaintiff, or once the lost equipment ought to have been returned.[174] However, I note that cl 23 of the Conditions of Trading annexed to the Nassim Hill Agreement provides as follows:[175]

PAYMENT

---

170 SOC, para 73.

171 See *eg*, 2BA 347.

172 35AB 10285.

173 35AB 10297.

174 DCS, para 135.

175 See *eg*, 2BA 348.

> 23. In the case of Equipment for hire, the [plaintiff] will issue an invoice to the [defendant] for the Rental ***and any other amounts due in accordance with these Conditions*** on the last working day of the month on which the Equipment is delivered or collected ***or in which other amounts become due*** and on the last working day of every month thereafter until the date the Equipment is returned to the [plaintiff] in accordance with these Conditions. ***Payment is due 30 days from the date of the invoice***. Time shall be of the essence in respect of the payment of all sums due hereunder
>
> [emphasis added in bold italics]

154 In my view, based on the wording of cl 23, the phrase "any other amounts due" is broad enough to include any fees due to be paid by the defendant for lost or damaged equipment. As such, I find that any shortage or damage fees became due to the plaintiff, at the latest, 30 days from the date of the invoice issued for the said shortage or damage fees. Accordingly, the plaintiff's cause of action would have accrued on the day after the expiry of that 30-day period.

155 The next question is: when did the plaintiff issue invoices for the allegedly outstanding shortage and damage fees?

156 In respect of the plaintiff's claims for damage fees, I note that in Annex 12 of its Further and Better Particulars to the Statement of Claim, the plaintiff has particularised the dates on which damaged equipment was returned and the corresponding hire return notes.[176] Based on the hire tax invoices produced by the plaintiff, it appears that the plaintiff issued invoices for damage fees on the same day that it received the damaged equipment in question. For instance:

---

176 F&BP to SOC, Annex 12.

(a) For hire return note 60086 dated 28 June 2013,[177] the corresponding invoices for damage fees are INS000359[178] and INS000360,[179] which are both dated 28 June 2013.

(b) For hire return note 60088 dated 28 June 2013,[180] the corresponding invoices for damage fees are INS000364[181] and INS000363,[182] which are both dated 28 June 2013.

(c) For hire return note 60096 dated 5 July 2013,[183] the corresponding invoice for damage fees is INS000396,[184] which is dated 5 July 2013.

157 I am therefore prepared to treat the dates particularised at Annex 12 of the Further and Better Particulars to the Statement of Claim as the dates on which the plaintiff issued invoices for damage fees. Given my finding above at [154] that the plaintiff's cause of action accrued after the expiry of 30 days from the date on which it issued an invoice to the defendant, it follows that the plaintiff's claims in respect of invoices issued *before* 11 June 2013 are time-barred. For example, an invoice issued on 11 June 2013 would have to be paid by 11 July 2013 at the latest. Any cause of action on that invoice would start to accrue on 12 July 2013 and the last day of the limitation period would be 12 July

177 21AB 6119.

178 35AB 10280.

179 35AB 10281.

180 21AB 6121.

181 35AB 10279.

182 35AB 10284.

183 21AB 6138.

184 35AB 10286.

2019. Accordingly, based on the breakdown of the invoices at **Annex 1** of this judgment, I find that the plaintiff is allowed to pursue its claim for damage fees up to a sum of S$40,968.59 but that its remaining claims for damage fees are time-barred.

158 As for the plaintiff's claims for shortage fees, I note that based on the available evidence, it appears that the first invoices issued by the plaintiff to the defendant for shortage fees for the Nassim Hill project are dated 23 March 2015.[185] This would suggest that there was a considerable lag in time from when the Nassim Hill project allegedly ended in 2013, to when the plaintiff invoiced the defendant for shortage charges in March 2015. Nonetheless, I am of the view that this is consistent with Mr Cuperus's evidence that the plaintiff usually requires some time to determine the quantity of equipment that has been lost, after it receives returns of equipment. In cross-examination, Mr Cuperus explained that the plaintiff would rely on the Axapta system to generate a report reflecting the net amount of equipment returned by a customer. If there was a net shortage of equipment returned, the plaintiff would direct the customer to "look around the yard to find any other equipment that might be lying around … to try and pick up and return those last pieces". The plaintiff would therefore allow the customer "a few months" before it "[drew] a line" and issued the customer an invoice for lost equipment.[186]

159 Moreover, Mr Cuperus also explained that the plaintiff's business model is that it would charge customers for equipment on hire, *until* said equipment was returned to the plaintiff.[187] In other words, it appears that the plaintiff did

185 35AB 10322.

186 NEs, 6 May 2021, p 96 lines 12–23.

187 NEs, 6 May 2021, p 96 lines 3–9 and lines 20–22.

not require its customers to return equipment by a certain deadline. This suggests that the plaintiff would be unable to determine whether equipment was lost or simply still on hire to its customer, until the project had ended, and the customer purported to return all equipment hired from the plaintiff. Only then would the plaintiff be able to determine if it had received a net shortage of equipment. Indeed, I note that the "Project Movement and Balances" document for the Nassim Hill project, which tracks the amount of equipment hired out against the amount of equipment returned, was only generated by the plaintiff on 23 March 2015.[188] This is the same date on which the plaintiff issued invoices to the defendant for shortage charges, as noted at [158] above.

160 I therefore find that the plaintiff only invoiced the defendant for the shortage fees on 23 March 2015, and that the plaintiff's cause of action for shortage fees accrued after the expiry of 30 days from that date. The plaintiff's claim for shortage fees is therefore well within the limitation period and is not time-barred. I now turn to consider the merits of the plaintiff's non-time-barred claims for the Nassim Hill project against the factual evidence.

Hiring fees

161 As noted at [152] above, the plaintiff is entitled to pursue its claim up to a sum of S$271.99 (being S$263.22 + S$8.77), while the remainder of its claim for hiring fees is time-barred.

162 In my judgment, the plaintiff has established its claim for hiring fees in the sum of S$271.99 based on the invoices adduced.[189] The only remaining defence raised by the defendant is that the parties agreed to a "block price" or a

188 45AB 13267.

189 35AB 10285 and 10297.

fixed weekly rate for equipment hired,[190] which I have rejected at [59] above. I therefore allow the plaintiff's claim for S$271.99.

Shortage fees

163 The plaintiff claims that the defendant has incurred S$198,625.50 in shortage fees, for which the defendant has not made any payment.[191] In my judgment, the plaintiff has established its claim for shortage fees based on the Axapta Records.

164 In its closing submissions, the defendant contends that the plaintiff's claim for shortage fees is barred by the doctrine of laches, as the plaintiff only raised this claim in 2017 after the defendant had no means of verifying the plaintiff's claim.[192]

165 To begin with, I note that the defendant did not plead the doctrine of laches as a defence to the plaintiff's claim for shortage fees; in its Defence and Counterclaim (Amendment No. 2), the defendant only pleaded the doctrine of laches as a defence to the plaintiff's claim for *damage* fees.[193]

166 In any case, I disagree that the doctrine of laches has any application in the present case. The doctrine of laches is an equitable doctrine that may be raised as a defence to a claim in *equity*. As the Court of Appeal noted in *Esben Finance Ltd and others v Wong Hou-Lianq Neil* [2022] 1 SLR 136 ("*Esben Finance*") at [113]:

---

190 Defence, para 60.

191 SOC, para 75.

192 DCS, paras 136–137.

193 Defence, para 68.

> 113 We begin with the observation that the equitable doctrine of laches is generally invoked to bar a claim for *equitable* relief where a substantial lapse of time has occurred, coupled with the existence of circumstances that make it inequitable to enforce the claim. The doctrine has, as its conceptual foundation, the *equitable* maxim *vigilantibus, non dormientibus, jura subveniunt* (equity aids the vigilant and not the indolent). This maxim itself stems from the *flexible* nature of the equitable jurisdiction of the court, which can be invoked in certain situations to bar claims where the *conscience* is pricked and where no other innocent interest is affected … It can be seen, therefore, that the doctrine of laches has its origins in the notion of *unconscionability* that underpins the equitable jurisdiction of the court …
>
> [emphasis in original]

167 The courts will therefore generally be wary of the doctrine of laches finding its way into common law claims. In *Esben Finance*, the Court of Appeal rejected the notion that the doctrine of laches had any application to a restitutionary claim in unjust enrichment, noting at [122]:

> 122 These weighty considerations notwithstanding, we are of the view that they cannot displace the *weightier* considerations in favour of not lightly extending equitable doctrines into the realm of the common law, bearing in mind the historical fact that flexible equitable doctrines were developed in response to what was seen as the harsh rigidity of the common law and thus that the equitable jurisdiction and the common law jurisdiction should not be conflated … The notion of unconscionability which, as we observed above, underpins equitable doctrines, does not readily lend itself to cases where the equitable jurisdiction of the court is not invoked at all, such as common law claims for common law reliefs (for example, claims in unjust enrichment) which are based on the *vindication* of an identifiable legal right, and not whether it is fair and/or just in the circumstances to grant such relief … The introduction of equitable notions of unconscionability into common law actions by way of incremental case law development risks producing intrinsically fact-sensitive outcomes which may 'sow the seeds of confusion and harvest the returns of uncertainty' (see *Chwee Kin Keong* at [130]) with regard to what the applicable limitation period is in each case. This potential for uncertainty is further underscored by the fact that the local case law is divided over whether the doctrine of laches ought to apply in *pure* common law claims.

[emphasis in original]

168 In my view, the observations above apply squarely to the present case. The plaintiff's claim is contractual in nature and is therefore grounded firmly in the common law. I do not see any compelling need to import an equitable doctrine into a common law claim, nor has the defendant suggested any. I therefore reject the defendant's contention that the plaintiff's claim is barred by the doctrine of laches.

169 The defendant's remaining defences are that the defendant allegedly returned an excess of S$49,767.76 worth of equipment to the plaintiff, and that the plaintiff has repeatedly failed to provide the defendant with a list of equipment delivered to and returned from the project site.[194] In my judgment, the defendant has not adduced sufficient evidence to support either of these contentions. In any case, I accept Mr Cuperus's evidence that when the plaintiff receives an excess of equipment returned, it has to reject any equipment that does not have the plaintiff's brand on it, as it does not want its fleet to be "contaminated" by foreign equipment.[195] As such, even if the defendant did return an excess of equipment to the plaintiff, this would not have the effect of decreasing the amount of shortage fees payable, if the equipment returned was not RMD Kwikform-branded. I therefore find that the defendant has not established any defence to the plaintiff's claim for shortage fees and allow the plaintiff's claim in the sum of S$198,625.50.

---

194 Defence, paras 64–65.

195 NEs 6 May 2021, p 67 lines 15–19.

Damage Fees

170 As noted at [157] above, the plaintiff is entitled to pursue its claim for damage fees up to a sum of S$40,968.59, while the remainder of its claim for damage fees is time-barred.

171 The defendant contends that the plaintiff's claim for damage fees is barred by the doctrine of laches.[196] For the reasons stated at [166]–[168] above, I reject this argument. Separately, while the defendant alleges that the plaintiff has not provided evidence of the damaged equipment and did not carry out repairs to the equipment,[197] I find that the defendant has not adduced sufficient evidence to support this contention. Neither has the defendant adduced sufficient evidence for its allegation that the plaintiff refused to allow the defendant to assess the damaged equipment.[198] In the round, the defendant has not established a defence to the plaintiff's claim for damage fees.

172 I find that the plaintiff has proven its claim for damage fees based on the Axapta Records and therefore allow the plaintiff's claim for damage fees in the sum of S$40,968.59.

Issue 5: Is the defendant entitled to its counterclaims?

The One Canberra and Twin Fountains counterclaims

173 As noted at [16(a)] above, the defendant claims that it is entitled to recover an administrative and management cost of S$15,000 for *each* of the One Canberra and Twin Fountains projects (*ie*, S$30,000 in total), as it allegedly

196 Defence, para 68.

197 Defence, para 66.

198 Defence, para 67.

carried out an assessment of lost or damaged equipment and prepared a final account summary at the plaintiff's request.

174 In my judgment, the defendant has not adduced any evidence to support its counterclaims. For instance, there is no evidence of any request from the plaintiff to carry out the assessment of lost or damaged equipment that the defendant alleges it did, or any evidence that the defendant in fact carried out such an assessment. In my view, Mr Choo fairly and rightly conceded in cross-examination that there is no evidence on record that the defendant actually incurred the amount that it claims.[199] I therefore dismiss the defendant's counterclaims in respect of the One Canberra and Twin Fountains projects.

The Forestville counterclaim

175 As noted at [103] above, the defendant's counterclaim for the Forestville project of $41,708.13 (set out at [16(b)] above) rests on the same arguments that the defendant raises in defence to the plaintiff's claim for hiring fees in that project. Namely, that the defendant was double-charged for Airodek equipment and that the parties had agreed to waive charges for the Wallform equipment. I have rejected both of these arguments above at [105]–[110]. There is therefore no basis for the defendant's counterclaim, and accordingly I dismiss the defendant's counterclaim in respect of the Forestville project.

The Nassim Hill counterclaim

176 As noted at [16(c)] above, the defendant claims the following sums in respect of the Nassim Hill project: (a) a back charge of S$41,400 arising from the plaintiff's delayed delivery of equipment, which the plaintiff (through

199 NEs 12 May 2021, p 45 lines 18–20.

Mr Kennedy) allegedly agreed to indemnify the defendant for; (b) a back charge of S$71,300 arising from the plaintiff's late delivery of minima plywood; and (c) a further cost of S$10,000 arising from the defendant having to subsequently change the plywood on site.

177 In my judgment, the defendant has not adduced sufficient evidence to substantiate its counterclaims.

178 First, in relation to the back charge of S$41,000, the defendant has not produced any evidence to show that it actually incurred this cost. In cross-examination, Mr Choo conceded that there is no available evidence to support this back charge.[200] Likewise, Mr Kennedy denies that he entered into any agreement with Mr Choo to indemnify the defendant for a back charge of S$41,400.[201] I therefore dismiss the defendant's counterclaim in respect of the back charge of S$41,400.

179 Second, in relation to the defendant's claim for a back charge of S$71,300, I note that the defendant contends that its claim is supported by various invoices issued by the defendant to the plaintiff, as well as by invoices issued by the main contractor, Shimizu, to the defendant.[202] In my view, the documentary evidence relied upon by the defendant does not support its claim. To begin with, no evidence was adduced as to what the charges in the invoices pertain to. From the invoices, it appears that Shimizu had charged the defendant for "Supply of Labour for … wall hacking due to uneven system formwork" for the months of February to April 2013, which the defendant then in turn charged

200 NEs 12 May 2021, p 45 line 21 to p 46 line 1.

201 Affidavit of Evidence in Chief of Noel Joseph Kennedy, paras 25–26 (2BA 393).

202 NEs 12 May 2021, p 82 lines 14–15.

the plaintiff for.[203] From the face of the invoices, it is unclear how these charges even relate to the plaintiff's alleged late delivery of minima plywood. Nor has the defendant adduced any evidence that it has indeed paid the sums that Shimizu invoiced it for. To round off, I also note that the invoices issued by the defendant to the plaintiff[204] add up to the sum of S$36,192.86, rather than the claimed sum of S$71,300. In my judgment, the defendant has not proven its counterclaim in respect of the back charge for S$71,300 and I dismiss it accordingly.

180 Finally, in respect of the defendant's claim for S$10,000 for having to change the plywood on site, I similarly find that the defendant has not adduced evidence to prove its claim. In cross-examination, Mr Choo likewise conceded that there is no evidence on record that supports or corroborates this claim in any way.[205] I therefore dismiss the defendant's counterclaim for S$10,000 in respect of the Nassim Hill project.

Conclusion

181 To summarise, for the reasons given above, I allow the plaintiff's claims against the defendant in part, as detailed below:

Project	**Claim**	**Amount allowed**
One Canberra	Hiring fees	S$2,391.26
	Purchase fees	Claim dismissed
	Shortage fees	Claim dismissed
	Damage fees	Claim dismissed
Forestville	Hiring fees	S$91,270.20

203 2BA 425–437.

204 2BA 426 and 431.

205 NEs 12 May 2021, p 47 lines 29–31.

	Purchase fees	Claim dismissed
	Shortage fees	Claim dismissed
	Damage fees	S$103,032.24
Sea Horizon	Hiring fees	S$13,651.81
	Shortage fees	Claim dismissed
	Damage fees	S$119,719.29
Twin Fountains	Hiring fees	Claim dismissed
	Purchase fees	S$857.64
	Damage fees	Claim dismissed
Nassim Hill	Hiring fees	S$271.99
	Shortage fees	S$198,625.50
	Damage fees	S$40,968.59
TOTAL ALLOWED:		**$570,788.52**

182 Further, I dismiss all of the defendant's counterclaims.

183 Accordingly, I grant the plaintiff final judgment against the defendant for the sum of $570,788.52, together with interest thereon at the rate of 5.33% per annum from the date of the writ to the date of this judgment.

184 I shall hear the parties separately on the question of costs.

S Mohan
Judge of the High Court

Cheong Yon-Wen Jeremy, Roy'yani Binte Abdul Razak and Markus Kng Tian Sheng (I.R.B. Law LLP) for the plaintiff;
Gong Chin Nam and Mohamed Zikri bin Mohamed Muzammil (Hin Tat Augustine & Partners) for the defendant.

Annex 1: Invoices issued for damage fees for the Nassim Hill project on or after 12 June 2013

S/N	Date of return / invoice	Hire Return Note Number[206]	Invoice Number	Amount including GST (S$)
1	22 March 2013	47586	**Time-barred**	
2		47587		
3		47588		
4		47589		
5		47590		
6	5 April 2013	60009		
7		60011		
8	9 April 2013	60013		
9	10 April 2013	60015		
10		60018		
11	15 April 2013	60023		
12		60024		
13		60025		
14		60026		
15		60027		
16	24 April 2013	60032		
17		60033		
18	30 April 2013	60039		
19		60040		
20		60041		
21	9 May 2013	60044		
22		60045		
23	21 May 2013	60050		
24		60051		
25	27 May 2013	60057		
26		60058		
27	31 May 2013	60062		
28		60053		
29		60064		
30	28 June 2013	60086[207]	INS000359[208]	195.20

206 F&BP to SOC, Annex 12.

207 21AB 6119.

208 35AB 10280.

			INS000360[209]	61.79
31	28 June 2013	60088[210]	INS000364[211]	11.77
			INS000363[212]	25.49
32	5 July 2013	60096[213]	INS000396[214]	12,128.25
33	11 July 2013	60104[215]	INS000397[216]	11,841.59
34	12 July 2013	60105[217]	INS000398[218]	24.46
			INS000399[219]	92.56
35	12 July 2013	60106[220]	INS000653[221]	524.63
36	27 August 2013	60150[222]	INS000477[223]	6,964.27
37	10 September 2013	60159[224]	INS000657[225]	122.23
38	10 September 2013	60161	INS000659[226]	242.42
39	4 October 2013	60184[227]	INS000595[228]	2,244.49

209 35AB 10281.

210 21AB 6121.

211 35AB 10279.

212 35AB 10284.

213 21AB 6138.

214 35AB 10286.

215 21AB 6140.

216 35AB 10287.

217 21AB 6144–6145.

218 35AB 10288.

219 35AB 10289.

220 21AB 6148.

221 35AB 10307.

222 21AB 6178.

223 35AB 10300.

224 21AB 6190.

225 35AB 10311.

226 35AB 10313.

227 21AB 6213.

228 35AB 10314.

			INS000596[229]	568.30
40	11 October 2013	60197[230]	INS000610[231]	3,421.69
			INS000611[232]	590.06
			INS000612[233]	71.06
			INS000613[234]	1,527.65
41	10 December 2013	60339[235]	INS000832[236]	298.50
42	16 June 2014	60426[237]	INS001180[238]	12.18
	TOTAL			40,968.59

229 35AB 10315.

230 21AB 6220.

231 35AB 10316.

232 35AB 10317.

233 35AB 10318.

234 35AB 10319.

235 21AB 6244.

236 35AB 10320.

237 5AB 1202.

238 35AB 10321.