

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

[2023] SGHC 102

Suit No 913 of 2021

Between

Calpeda Asia Pacific Pte Ltd

... *Plaintiff*

And

Chew Construction &
Plumbing Pte Ltd

... *Defendant*

Counterclaim

Between

Chew Construction &
Plumbing Pte Ltd

... *Plaintiff in Counterclaim*

And

Calpeda Asia Pacific Pte Ltd

... *Defendant in Counterclaim*

JUDGMENT

[Building and Construction Law — Subcontracts — Claims by subcontractor]
[Building and Construction Law — Damages — Damages for defects]
[Building and Construction Law — Damages — Delay in completion]
[Building and Construction Law — Contractors' duties — Maintenance]
[Building and Construction Law — Contractors' duties — Defect liability provisions]

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Calpeda Asia Pacific Pte Ltd
v
Chew Construction & Plumbing Pte Ltd

[2023] SGHC 102

General Division of the High Court — Suit No 913 of 2021
Kwek Mean Luck J
25–27, 30, 31 January, 31 March 2023

18 April 2023

Judgment reserved.

Kwek Mean Luck J:

Introduction

1 The plaintiff in Suit 913 of 2021 (“Suit 913”), Calpeda Asia Pacific Pte Ltd (“Calpeda”) claims against the defendant, Chew Construction & Plumbing Pte Ltd (“Chew Construction”), for a total sum of \$683,147.92, for the work it has done in supplying and installing pumps in five building construction projects (the “Five Projects”, or singularly, the “Project”).¹ Chew Construction counterclaims for a total sum of \$683,664.73.² Issues that arise in this Suit generally revolve around whether the outstanding sums for each respective

¹ Plaintiff’s Statement of Claim dated 8 November 2021 (“Statement of Claim”) at para 3.

² Defence & Counterclaim (Amendment No 3) dated 6 December 2022 (“Defence & Counterclaim”) at p 23.

Project were due and payable, and whether Calpeda satisfied its work obligations under the relevant quotation for each Project.

Facts

2 Both Calpeda and Chew Construction are Singapore-incorporated companies operating within or in relation to the business of, amongst other things, building construction.

3 Chew Construction engaged Calpeda for the supply and installation of pumps in the following Five Projects:³

- (a) Punggol NorthShore C1 & C2 (“C1&C2”), including Variations 1 and 2 of this Project;
- (b) How Sun Road (“How Sun”);
- (c) Housing Development Board (“HDB”) C39 (“C39”);
- (d) Sembawang; and
- (e) The Terrace@Punggol (“Terrace”).

Background to the dispute

4 After completing the supply and installation of the pumps for the Five Projects, Calpeda sought payment from Chew Construction of all sums payable under the relevant contractual agreements. Calpeda claimed that an outstanding sum of \$683,147.92 remained payable to it and commenced Suit 913 to claim

³ Statement of Claim at para 3.

these moneys from Chew Construction. The breakdown of this sum is as follows:⁴

Project	Liability For	Payable Sum
C1&C2	Invoices	\$504,826.00
How Sun	Invoices	\$37,557.00
C39	Invoice	\$25,359.00
Sembawang	Retention Sum	\$64,200.00
Terrace	Retention Sum	\$51,205.92
<u>Total Outstanding Sum Payable</u>		<u>\$683,147.92</u>

5 In response, Chew Construction asserted that Calpeda had breached the terms under the relevant agreements for C1&C2, How Sun, C39, and Terrace, by failing/refusing to carry out certain works and rectify such breaches. Consequently, Chew Construction incurred additional costs which it counterclaims against Calpeda:⁵

Project	Liability For	Payable Sum
C1&C2	Back charges imposed by China Construction	\$169,400.00 ⁶
	Plastering of floors	\$442,146.98 ⁷
How Sun	Cost of engaging third-party to complete works	\$3,500.00 ⁸
C39	Cost of engaging third-party to complete works	\$43,125.00 ⁹

⁴ Statement of Claim at para 3.

⁵ Defence & Counterclaim at para 5 and pp 23-24.

⁶ Defence & Counterclaim at para 13.A(5).

⁷ Defence & Counterclaim at para 13.A(7).

⁸ Defence & Counterclaim at para 13.B(1).

⁹ Defence & Counterclaim at para 13.C(1).

Terrace	Damages incurred by Chew Construction for damage from water leakages	\$25,492.75 ¹⁰
<u>Total Outstanding Sum Payable</u>		<u>\$683,664.73</u>

The parties' cases

6 In support of their submissions, Calpeda called as witnesses, Mr Quek Yew Chye ("Ken"), its Managing Director; Ms Tan Lee Lee ("Tan"), its Admin and Finance Director; and Mr Khoa Weilong, Geoffrey ("Geoffrey"), Director of Promptech (M&E) Pte Ltd ("Promptech"), Calpeda's sub-contractor that installed the pumps for the projects ("Calpeda's Sub-Contractor"). Chew Construction called as witnesses, Mr Chew Chee Chiang ("Chew"), its Managing Director; and Ms Lee Bee Fen ("Lee"), an accountant in Chew Construction.

7 The issues which arise in this Suit are specific to each of the Five Projects and are therefore identified and addressed with respect to each Project.

C1&C2

Calpeda's claim for \$504,826

8 It was undisputed that the quoted sum payable for the C1&C2 Project was \$1,780,000 (\$1,904,600, inclusive of Goods and Services Tax ("GST")) pursuant to the quotation dated 20 February 2017.¹¹ Calpeda's position is that

¹⁰ Defence & Counterclaim at para 13.E(2).

¹¹ Plaintiff's Core Bundle of Documents dated 17 January 2023 ("PCB") at p 15; Defendant's Opening Statement dated 19 January 2023 ("Defendant's Opening Statement") at para 2, Defendant's Closing Submissions dated 14 March 2023 ("Defendant's Closing Submissions") at para 6 and Chew Chee Chiang's Affidavit of Evidence-in-Chief dated 3 January 2023 ("Chew's AEIC") at para 10.

Chew Construction made full payment on the first 17 invoices it sent from 21 February 2019 to 16 April 2020, and partial payment on the invoice sent on 23 October 2020, for a total of \$1,502,708.¹² Calpeda submits that, however, the amount of \$401,892, which it had invoiced Chew Construction over nine invoices from 23 October 2020 to 27 July 2021, remains outstanding.¹³

9 The C1&C2 Project also involved two variation orders (“VOs”) – Variation Order 1 (“VO1”) and Variation Order 2 (“VO2”). Calpeda has executed these VOs and Chew Construction paid \$29,425 for part of VO1. However, \$102,934 remains outstanding – \$28,783 for VO1 and \$74,151 for VO2. Calpeda claims for this amount.¹⁴

10 Calpeda’s position is that Chew Construction has paid \$1,532,133 (inclusive of GST) in total to Calpeda for the C1&C2 project, with \$504,826 outstanding. Calpeda adduced emails and a statement of accounts from Calpeda to Chew Construction asking for payment.¹⁵

11 Chew Construction’s accountant, Lee, testified that Chew Construction had paid \$1,535,985 towards the main quotation.¹⁶ Chew Construction submitted that the amount owed should hence be \$244,015 (\$1,780,000 less \$1,535,985).

¹² PCB at p 5.

¹³ Tan Lee Lee’s Affidavit of Evidence-In-Chief dated 3 January 2023 at para 6.

¹⁴ PCB at p 5.

¹⁵ PCB at pp 1-5.

¹⁶ Lee Bee Fen’s Affidavit of Evidence-In-Chief dated 3 January 2023 at para 4.

12 Calpeda and Chew Construction thus differed initially on the total amount paid by Chew Construction, in the amount of \$3,852.¹⁷ However, this was resolved at the hearing on 31 March 2023. Calpeda explained that the difference arose because it had attributed payment of the \$3,852 to the Terrace Project rather than the C1&C2 Project.¹⁸ On the other hand, Chew Construction sought to attribute this sum from the C1&C2 Project.¹⁹ However, this would increase the outstanding sum it owes to Calpeda for the Terrace Project by \$3,852. I also note that the other reason for the difference between the parties' calculations was that Chew Construction's overall calculation failed to account for the GST payable on the main quotation amount of \$1,780,000. At the hearing on 31 March 2023, Chew Construction accepted that there was no dispute over the total amount it had paid in relation to C1&C2 (*ie.* \$1,532,133) and that payment of the \$3,852 would be attributed to the Terrace Project, as Calpeda had done in its calculations.²⁰

13 In its defence to Calpeda's claim, Chew Construction did not plead, or testify through its witnesses, that Calpeda had failed to supply or install the pumps or to carry out the VOs. Instead, Chew Construction contended that: (a) Calpeda installed and refused to "repair or maintain pump systems that are unfit for purpose ... as some of the pump systems alarms periodically sound causing much annoyance and disturbance of the quiet enjoyment of the residence";²¹ and (b) Calpeda "abandoned and aborted the project in that they failed to carry out

¹⁷ Plaintiff's 2nd Additional Submissions dated 28 March 2023 ("Plaintiff's 2nd Additional Submissions") at para 2.

¹⁸ Plaintiff's 2nd Additional Submissions at para 3.

¹⁹ Defendant's Further Submissions dated 28 March 2023 at para 2.

²⁰ Minute Sheet dated 31 March 2023 at p 2.

²¹ Chew's AEIC at para 13.e; Defence & Counterclaim at para 13.A(9).

outstanding works during the [defect liabilities period (“DLP”)] including but not limited to providing [four] quarterly maintenance reports with warranty”.²²

14 Based on these contentions, two issues arise:

- (a) whether the pumps installed by Calpeda were unfit for purpose; and
- (b) whether Calpeda failed to maintain the pumps as it had abandoned the C1&C2 Project.

Issue 1: Whether the installed pumps were unfit for purpose

15 Chew Construction’s contention that Calpeda installed pumps which were “unfit for purpose” was primarily reliant on Chew’s testimony. However, Chew testified during the trial that he did not say “that [Calpeda’s pump systems were] unfit for purpose”.²³ Instead, his evidence was that the pumps were correctly installed but that there were many incidents of alarms going off due to the pumps.²⁴ Chew Construction informed Calpeda of these incidents.²⁵

16 In response, Calpeda provided the following explanations:²⁶

- (a) Geoffrey, Director of Calpeda’s Sub-Contractor, testified that he went down to check on the pump systems and found that there was an

²² Defence & Counterclaim at para 13.A(8).

²³ Certified Transcript for the hearing dated 30 January 2023 (“Transcript (30 January 2023)”) at p 98, line 27, to p 99, line 4, and p 101, lines 28-30,.

²⁴ Transcript (30 January 2023) at p 99, lines 2-13.

²⁵ Chew Chee Chiang’s Affidavit-in-Reply dated 9 Feb 2022 (“Chew’s 1st Affidavit”) at paras 19-20.

²⁶ Plaintiff’s Closing Submissions dated 14 March 2023 (“Plaintiff’s Closing Submissions”) at para 10.

overflow at a particular pump. This overflow was due to a stone getting caught inside the pilot valve, damaging the pump. This incident was then resolved. Geoffrey also referred to an earlier WhatsApp (“WA”) message he sent to Chew Construction stating the same.²⁷

(b) Ken, Calpeda’s Managing Director, explained that Calpeda responded to an incident raised and found soil coming out from the water chamber. He referred to an email report on this incident which contained photos of Calpeda’s findings from Calpeda to Chew Construction.²⁸

(c) In another incident where the alarm went off, Ken explained that Calpeda found that an unauthorised person used the hosereel hose, which triggered the alarm. This information was relayed by Ken to Chew Construction in an email update.²⁹

17 These explanations, along with Calpeda’s evidence showed, first, that Calpeda had been willing to respond to incidents and rectify any issues arising from the pumps they installed. Second, they showed that the incidents did not involve defects in the pump systems that they installed. Ken also testified that, where the incidents were due to manufacturing defects, Calpeda could have submitted a claim under the warranty for the pump.³⁰ In other words, if the incidents were caused by defects in the pump system, there is no reason why Calpeda would have chosen to ignore them instead of rectifying the defect. Calpeda’s evidence was not rebutted by Chew Construction.

²⁷ Chew’s 1st Affidavit at pp 52 and 57.

²⁸ Quek Yew Chye’s Affidavit of Evidence-In-Chief dated 3 January 2023 (“Ken’s AEIC”) at pp 210-212.

²⁹ Ken’s AEIC at p 294.

³⁰ Certified Transcript for the hearing dated 27 January 2023 at p 50, lines 16-20.

18 Ken and Geoffrey also testified that fully tested and duly commissioned pump systems for all 15 blocks of HDB flats of this project were handed over by Calpeda and its Sub-Contractor to either Chew Construction or the main contractor for C1&C2, China Construction, during the period between June 2020 to July 2021.³¹ This was also evidenced by documents adduced by Calpeda setting out the handover, testing, and checking dates for the pump systems installed for C1&C2.³² Chew, himself, testified that the HDB blocks were completed between June 2020 to July 2021 and that residents had moved in from June 2021.³³ In order for residents to move into the HDB blocks, the Temporary Occupancy Permit ("TOP") must have been issued. As it is common ground between the parties that passing the HDB's inspections of the pump systems was part of the requirements for the issuance of the TOP for these blocks, Chew's testimony contradicts Chew Construction's submission that there was "no actual handover".³⁴

19 During cross-examination, Chew Construction's accountant, Lee, insisted that, despite residents moving into the HDB blocks, there were many outstanding defects in Calpeda's work.³⁵ She suggested that there was a list of defects compiled by Chew Construction which recorded all the defects of the pumps installed by Calpeda.³⁶ However, when Lee was asked where this list of

³¹ Ken's AEIC at para 82; Transcript (30 January 2023) at p 5, lines 17-31. Khoa Weilong, Geoffrey's Affidavit of Evidence-in-Chief dated 3 January 2023 ("Geoffrey's AEIC") at para 19(a).

³² PCB at pp 32-48.

³³ Chew Chee Chiang's Affidavit dated 24 November 2022 ("Chew's 2nd Affidavit") at para 8.

³⁴ Defendant's Closing Submissions at paras 26-29.

³⁵ Transcript (30 January 2023) at p 35, lines 11-13.

³⁶ Transcript (30 January 2023) at p 35, lines 13-21.

defects could be found in Chew Construction's bundle of documents, she was unable to identify any part of the bundle which actually contained it.³⁷ Counsel for Calpeda invited counsel for Chew Construction to assist Lee. However, counsel for Chew Construction conceded that no such list of defects existed.³⁸

20 Chew Construction's failure to show that there were any defects in the installed pumps, coupled with Chew's testimony that the pumps were not "unfit for purpose", means that there was no evidential foundation for its submission that the pumps were "unfit for purpose". I hence find that Chew Construction has not proven that the pump systems installed by Calpeda were unfit for purpose.

Issue 2: Whether Calpeda failed to carry out maintenance because it abandoned the project

21 Chew Construction also contended, in its defence, that Calpeda failed to carry out "outstanding works" on the pumps during the DLP and thereby abandoned the C1&C2 Project. These "outstanding works" included the provision of quarterly maintenance reports on the installed pumps.³⁹

22 Chew Construction referred to an email exchange in an attempt to show Calpeda's intention not to rectify defects in the pumps it installed.⁴⁰ However, that exchange shows Calpeda responding to Chew Construction and asking Geoffrey, Managing Director of its Sub-Contractor, to rectify the defect. Geoffrey replied on the actions taken in relation to work that was within the

³⁷ Transcript (30 January 2023) at p 35, lines 18-20.

³⁸ Transcript (30 January 2023) at p 35, lines 18-32.

³⁹ Defence & Counterclaim at p 11.

⁴⁰ Ken's AEIC at pp 215-218.

scope of Calpeda's obligations and also specified what was not in this scope. There is no evidence that shows that Chew Construction disagreed with Geoffrey's reply on the specifications of the scope of Calpeda's obligations or that Calpeda would rectify defects within the scope of its obligations.

23 Calpeda does not dispute that it did not actually maintain the pumps it had installed. In its defence, Ken testified that Calpeda was *prevented* from maintaining the pumps. Ken explained that, after a project is completed, Calpeda must be put in touch with the person-in-charge of the development, which could be the relevant Town Council or Management Corporation Strata Title ("MCST"), to discuss and commence the maintenance period.⁴¹ This is because the main contractor may no longer be involved in the project during the maintenance period.⁴² However, despite Calpeda writing to Chew Construction on three separate occasions – on 8 June 2021,⁴³ 14 May 2022,⁴⁴ and 3 June 2022⁴⁵ – Chew Construction did not arrange to put Calpeda in touch with the Town Council so that Calpeda could follow up and carry out the maintenance of the pumps.⁴⁶ Chew Construction did not rebut this evidence or explain why they did not put Calpeda in touch with the Town Council to begin the maintenance. Further, Chew Construction did not submit or adduce any evidence to the effect that maintenance could have been started without putting Calpeda in touch with the Town Council. Calpeda submitted that the reason for Chew Construction's inaction was because they wanted to avoid paying the

⁴¹ Certified Transcript for the hearing dated 26 January 2023 ("Transcript (26 January 2023)") at p 81, lines 1-3 and 25-27.

⁴² Transcript (26 January 2023) at p 103, lines 4-14.

⁴³ Ken's AEIC at p 201.

⁴⁴ Ken's AEIC at p 568.

⁴⁵ Ken's AEIC at p 637.

⁴⁶ Ken's AEIC at paras 75-81.

large outstanding sum due for the C1&C2 Project, which Chew Construction would have had to pay if they accepted the handover. In such circumstances, Calpeda should not be penalised for Chew Construction's inaction.

24 I find that on the evidence, Calpeda was willing to carry out the maintenance and sought to do so, only to be inhibited by Chew Construction. Moreover, as set out above, where there were incidents involving the pumps and Calpeda was asked to respond, they did so. Consequently, I find that Chew Construction has not proven its contention that Calpeda abandoned the project and refused to carry out maintenance. While Calpeda was in breach of its obligations, this breach may be wholly attributed to Chew Construction, who is thus not entitled to seek a reduction in the amount due to Calpeda on this basis.

25 In summary, I find that Calpeda has proven its claims for the C1&C2 Project for the outstanding invoiced amount of \$401,892 and the VOs of \$102,934. Chew Construction has not proven its claims that the pumps installed by Calpeda were unfit for purpose or that Calpeda failed to carry out maintenance because it abandoned the project.

Chew Construction's Counterclaim

26 I next turn to consider Chew Construction's counterclaim against Calpeda in relation to C1&C2 for:⁴⁷ (a) back charges imposed by the main contractor of C1&C2, China Construction, amounting to \$169,400;⁴⁸ (b) the cost of reinstating and replastering the excess rooms of 244 floors, amounting to \$442,146.98;⁴⁹ and (c) exemplary or aggravated damages for perpetrating fraud

⁴⁷ Defence & Counterclaim at p 23.

⁴⁸ Defence & Counterclaim at para 13.A(5).

⁴⁹ Defence & Counterclaim at para 13.A(7).

against HDB inspectors.⁵⁰ As Chew Construction's counterclaim for (a) and (b) are based on the same two contentions, I will deal with these two prayers together.

27 This section deals with the following issues:

- (a) whether Calpeda is liable for the back charges and rectification costs incurred by Chew Construction; and
- (b) whether Calpeda perpetrated fraud against the HDB inspectors.

Issue 1: Whether Calpeda is liable for the back charges and rectification costs incurred by Chew Construction

28 Chew Construction contended that in the process of performing its obligations in relation to C1&C2, Calpeda caused damage which had to be rectified. Chew Construction submitted that, first, Calpeda failed to provide pipe sleeves at the conduit passage of each floor. This would have provided allowance for Calpeda to run the conduit through even if China Construction were to cover up the conduit passages with concrete.⁵¹ Second, the running of the conduits was delayed. Chew Construction submits that the conduits should have been run before the floors of the risers were covered up. If it had done so, Calpeda would not have needed to hack through the concrete cover for the conduit passages of each floor corridor in order to lay the conduit.⁵² This

⁵⁰ Defence & Counterclaim at para 13.A(12).

⁵¹ Defence & Counterclaim at para 13.A(5).

⁵² Defence & Counterclaim at para 13.A(4).

hacking resulted in damage that required re-sealing with concrete to make good.⁵³ However, Calpeda refused to carry out such re-sealing.⁵⁴

29 Based on Chew Construction’s submissions, two sub-issues arise:

- (a) whether Calpeda was required to provide the pipe sleeves; and
- (b) whether the delay on Calpeda’s part, if any, resulted in its need to hack the riser floors to install the conduits.

(1) Whether Calpeda was required to provide pipe sleeves

30 Chew Construction’s position was that the damage caused by the hacking and the consequent rectification costs it incurred would have been avoided but for Calpeda’s failure to provide conduit pipe sleeves. However, I find that Calpeda was not required to do so for the following reasons.

31 First, Calpeda was engaged only to supply and install pumps for Chew Construction. Contrary to Chew Construction’s submissions, the provision and installation of pipe sleeves constitutes piping and/or cement works, which was not part of the works for which Calpeda was engaged to do. This is supported by Calpeda’s quotations addressed to Chew Construction for C1&C2 which clearly set out all the works that Calpeda was engaged to carry out. According to the quotation dated 20 February 2017, these works mainly related to the supply and installation of pumps, valves, the control panel, cabling between the pump and control panel, and the supply of a telemonitoring system.⁵⁵ This quotation also specifically excluded, amongst other things, “[c]ivil works of any

⁵³ Chew’s AEIC at para 22 and Defence & Counterclaim at para 13.A(5).

⁵⁴ Defence & Counterclaim at para 13.A(5).

⁵⁵ PCB at pp 15-27.

description including cast-in items, etc.” and “[a]ny description which is not mentioned in this quote”.⁵⁶ These same caveats are found in Calpeda’s quotation dated 31 May 2018,⁵⁷ which related to the supply and installation of an ejector system.⁵⁸ The effect of these caveats is that, as the provision of pipe sleeves was not included in the quotations, Calpeda was not required to provide pipe sleeves.

32 Second, Chew Construction did not provide any documentary evidence that showed that it was Calpeda’s responsibility to provide the pipe sleeves. Neither is there any mention in the affidavits of Chew Construction’s witnesses, of an agreement on the part of Calpeda to do so.

33 Third, Calpeda appears to have been operating under the presumption that pipe sleeves would be provided at the site. This was evident from Calpeda’s email to Chew Construction on 17 September 2019 stating, amongst other things, that pipe sleeves had not been provided for.⁵⁹ Chew Construction did not respond to correct this presumption or to insist that it was Calpeda’s responsibility to provide pipe sleeves.

(2) Whether the delay on Calpeda’s part resulted in the need to hack the riser floors

34 Chew Construction’s position was that Calpeda’s installation of the conduits was delayed, which resulted in Calpeda’s need to hack the riser floors. However, I find that Chew Construction has not shown that Calpeda was aware of when the riser floors would be covered.

⁵⁶ PCB at p 27.

⁵⁷ PCB at p 29.

⁵⁸ PCB at pp 28-30.

⁵⁹ Defendant’s Core Bundle dated 18 January 2023 (“DCB”) at p 112.

35 On the contrary, Geoffrey’s un rebutted testimony was that no notice had been served on them of deadlines as to when they should install the conduit by and when the riser floors were be covered. Hence, they could not be said to have missed deadlines.⁶⁰ Additionally, Chew Construction has not provided any evidence to show that Calpeda was informed to lay the conduit by a certain date, after which the riser floors would be covered. Moreover, Calpeda also sent an email on 17 September 2019 to Chew Construction stating, amongst other things, that the installation could not commence because the site was not ready.⁶¹ I therefore find that Chew Construction has not shown that these damages were incurred due to a delay on Calpeda’s part. As Calpeda had no knowledge as to when the riser floors would be covered, it also had no knowledge as to when it would need to install the conduit by to avoid any hacking.

36 Further, Chew Construction was aware that Calpeda’s Sub-Contractor, Promptech, were going to hack the riser floors. This is evident from the email exchange adduced by Geoffrey. In an email to Calpeda, copied to Chew Construction, Geoffrey set out a list of 15 HDB blocks for which, “as agreed”, Promptech “[would] drill the risers”.⁶² Chew’s response to Geoffrey’s email dated 29 May 2019 was to ask another person in Chew Construction, one Bryan, to check.⁶³ Chew Construction did not reply that they disagreed with Promptech carrying out the drilling.

37 There is also no correspondence or agreement as to which party is responsible for the rectification after the drilling. It should be reiterated that the

⁶⁰ Certified Transcript for the hearing dated 25 January 2023 at p 84, lines 6-26.

⁶¹ DCB at p 112.

⁶² Geoffrey’s AEIC at paras 15-17 and p 12.

⁶³ Geoffrey’s AEIC at p 12.

hacking performed by Calpeda was not contractually provided for in the quotation. Given that both hacking and rectifying were outside the scope of Calpeda's responsibilities, I find that Calpeda should not be responsible for the back charges and rectification costs.

38 Following from the above, I find that Chew Construction has not proven that the hacking of the riser floors was due to a delay on Calpeda's part or that Calpeda should be liable for back charges and rectification costs arising from the hacking. My finding is further bolstered by the fact that the cost of the additional rectification works was only *allegedly* incurred. Chew Construction has not adduced any evidence that it has *actually* incurred the back charges and rectification costs which it alleges was due to damage caused by Calpeda.

Issue 2: Whether Calpeda is liable for exemplary damages for the alleged fraud committed

39 Chew Construction also claimed that Calpeda was liable to Chew Construction for exemplary damages for an alleged fraud committed against HDB inspectors.⁶⁴ In its pleadings, Chew Construction sought aggravated damages in the alternative. However, this alternative remedy was not canvassed in Chew Construction's submissions and thus this section will only consider its claim for exemplary damages.

40 Chew claimed that Calpeda removed properly installed domestic transfer pump(s) from one Blk 413A and installed it in one Blk 413B pending the HDB's inspection of the latter. Once the inspection of Blk 413B was completed, Calpeda then removed the pump from Blk 413B and reinstalled the

⁶⁴ Defendant's Opening Statement at para 25.

same at Blk 413A.⁶⁵ In other words, Chew Construction alleges that Calpeda defrauded the HDB inspectors by conjuring the illusion that the pump had been properly installed at Blk 413B when in reality it was not.

41 I find this to be a completely baseless claim, both legally and evidentially.

(1) No legal basis for exemplary damages

42 First and foremost, there is no legal basis for Chew Construction’s claim that it was entitled to exemplary damages. In its Opening Statement, Chew Construction cited *Kuddud v Chief Constable of Leicestershire* [2002] 1 AC 122 (“*Kuddud*”) as its authority that fraud attracts exemplary damages (referenced in Harvey McGregor, Martin Spencer & Julian Picton, *McGregor on Damages* (Sweet & Maxwell, 18th Ed, 2009) (“*McGregor*”) at para 11-001).⁶⁶ However, *McGregor* at para 11-007 notes that the House of Lords in *Kuddud* was not in agreement on whether fraud attracts exemplary damages. In other words, *Kuddud* does not stand for the proposition that Chew Construction submits. This legal submission was subsequently abandoned by Chew Construction after the trial, and no other legal authority was cited in its place.⁶⁷

43 More pertinently, even if there was legal authority that the perpetration of fraud attracted exemplary damages, Chew Construction did not provide legal basis that it was entitled to such damages, despite not being the subject of fraud. If any purported fraud had been committed, it would have been HDB who was defrauded, not Chew Construction. Yet, Chew Construction maintains the

⁶⁵ Chew’s AEIC at para 30.

⁶⁶ Defendant’s Opening Statement at para 29.

⁶⁷ Defendant’s Closing Submission at paras 59-60.

position that it is entitled to exemplary damages on the basis that it is a “victim” who is imposed with common law and contractual duties to ensure the safety of its constructions and to rectify any defects.⁶⁸ Even if Chew Construction was saddled with such duties, there remains no legal basis that it is a “victim” and entitled to exemplary damages.

(2) No evidential basis for exemplary damages

44 Even if there was legal basis for Chew Construction’s claim of exemplary damages, there is no evidential basis for it. First, there is no documentary evidence that Chew Construction considered itself a victim of fraud, or that it was aggrieved on finding out about the transfer of pumps. On the contrary, there is no evidence that Chew Construction reported this alleged fraud to the authorities or confronted Calpeda on its discovery. Similarly, there is no evidence that China Construction made any such report. There is thus no evidential basis for Chew Construction’s submission that it was a victim by virtue of its contractual responsibility to China Construction to ensure the safety of the construction.

45 At the hearing on 31 March 2023, Chew Construction conceded that the evidence at trial did not meet the threshold for proving fraud, since Chew’s evidence was based on hearsay.

46 In view of the above, I dismiss Chew Construction’s counterclaims in relation to C1&C2.

⁶⁸ Defendant’s Closing Submissions at para 60.

How Sun

47 Chew Construction engaged Calpeda to do works for the How Sun Project set out in quotations dated 26 March 2021⁶⁹ and 23 June 2021.⁷⁰ These quotations were duly signed by Chew Construction.⁷¹ Calpeda completed the works pursuant to these quotations, adducing documents showing the testing and commissioning dates as evidence of such completion.⁷² Chew Construction has made partial payment to Calpeda in relation to the How Sun Project. However, Calpeda claims an invoiced amount of \$37,557 that it submits remains outstanding. Chew Construction does not dispute this claim. What is in dispute is whether Calpeda had failed to satisfy its obligations in relation to Item 5 of the 26 March 2021 quotation, which relates to a “Sump Pump System for Irrigation Tank” (“Item 5”).⁷³

48 Calpeda submits that there was an oral agreement between the parties that Calpeda would no longer be obligated to perform Item 5. This agreement was evidenced by the following WA messages that were exchanged between Ken and Chew on 9 August 2021:⁷⁴

[9/8/21, 4:59:59 PM] Ken: Irrigation pump u need us to send and install?

[9/8/21, 5:19:48 PM] Chew Plumbing [*sic*] Boss Mr Chew: I take come ready ?? [*sic*]

...

[9/8/21, 6:11:37 PM] Ken: Alex told me 3 Wilo pump is there.

⁶⁹ PCB at pp 577-583.

⁷⁰ PCB at p 576.

⁷¹ PCB at pp 576 and 583.

⁷² PCB at pp 592 and 601-614.

⁷³ PCB at p 581.

⁷⁴ Ken’s AEIC at p 811.

Chew Construction had, on 5 August 2021, engaged Wilo (Singapore) Pte Ltd (“Wilo”) to supply the same pump as that in Item 5.⁷⁵ However, it provided no prior notice to Calpeda that it would be engaging a third party to do so. In Ken’s email on 4 October 2021 to Chew Construction, he said:⁷⁶

[Calpeda] need fund to arrange for the irrigation pump installation but you tell us to take out irrigation but proceed with some electrical work for the irrigation system, you will find pumps and install. We should not invoice the irrigation pump installation as we did not install and you will not back charge us. In fact in my Whatsapp message to you, I asked if we can proceed to install the irrigation but you reply you already got the pumps.

49 In response, Chew Construction claims that it engaged Wilo to complete Item 5 at \$16,300, which was \$3,500 more than what Calpeda had quoted, being \$12,800 (exclusive of GST). Chew Construction thus counterclaims against Calpeda for \$3,500 on the basis that there was no variation of Calpeda’s obligation in relation to Item 5.⁷⁷

50 The nub of Chew Construction’s case is that it engaged Wilo to complete Item 5 because Calpeda was late in so doing. On 26 March 2021, Chew had sent Ken a WA text saying “I direct order sewer pump c39 ,because u also no pump right.? Your subcon also dont care , we cant wait , u know ?? Tomorrow i want meet u afternoon after 4pm” [errors in original].⁷⁸ However, there is no evidence of what was discussed during the meeting which Chew requested in this WA message. The 26 March 2021 WA message is therefore merely evidence of the possibility of Chew Construction directly ordering a sewer pump rather than of

⁷⁵ Chew’s 1st Affidavit at pp 93-94.

⁷⁶ Ken’s AEIC at p 804.

⁷⁷ Defence & Counterclaim at p 23.

⁷⁸ Chew’s 1st Affidavit at p 106.

Chew Construction informing Calpeda that it would not be relying on Calpeda any further.

51 Chew Construction also refers to a WA message sent on 26 July 2021 whereby it informed Calpeda that the works for the How Sun Project, including Item 5, had to be completed by 28 July 2021.⁷⁹ However, the 26 July 2021 WA message did not specify what aspect of the works had to be completed by 28 July 2021. In particular, there was no mention of Item 5. Instead, this WA message demonstrates Chew Construction’s continued expectation and reliance on Calpeda to complete the works as of 26 July 2021. There was no indication that Chew Construction would be engaging another party to complete the works if Calpeda failed to complete it by this date.

52 Ken’s unchallenged testimony is that Calpeda had proceeded to complete the works that were necessary for inspection by the authorities.⁸⁰ Further, a WA message on 9 August 2021 shows that Calpeda remained willing to install the irrigation pump as of that date.⁸¹ Chew Construction did not have any emails or messages where it informed Calpeda that item 5 was to be installed by a certain date, that it was going to hire someone else if Calpeda was late, or that it had already appointed Wilo to install the pumps.

53 Chew Construction accepts that there is “no written evidence” that it was chasing Calpeda to install Item 5.⁸² Chew Construction also did not rebut

⁷⁹ Chew’s 1st Affidavit at p 88.

⁸⁰ Ken’s AEIC at para 115.

⁸¹ Ken’s AEIC at p 811.

⁸² Defendant’s Closing Submissions at para 67.

Calpeda's position in its email dated 4 October 2021 that Chew Construction had asked Calpeda to take out the irrigation system.⁸³

54 I find that on the evidence, Chew Construction proceeded to purchase Item 5 from Wilo without informing Calpeda, which remained willing and able to complete Item 5. There is no evidence that Chew Construction had to go to Wilo because Calpeda was late for that item, that Calpeda was informed of deadlines or that Chew Construction would be going to another vendor in default of the deadlines. In the circumstances, there is no basis for Chew Construction to counterclaim against Calpeda for the additional cost incurred by engaging Wilo for Item 5.

55 I hence allow Calpeda's claim for \$37,557 for the How Sun Project and dismiss Chew Construction's counterclaim for \$3,500 in relation to this project.

C39 Project

56 In relation to C39, Calpeda claims from Chew Construction \$25,359, being the outstanding sum under an invoice based on a quotation dated 15 July 2021 ("July 2021 Quotation") that remains unpaid.⁸⁴ The parties had previously agreed on the scope of Calpeda's works for C39 in a quotation dated 7 November 2019 ("November 2019 Quotation") for \$183,012.80.⁸⁵ However, Calpeda's case is that the parties verbally agreed to vary Calpeda's obligations such that Calpeda would only supply the pumps.⁸⁶ Thus, the November 2019 Quotation was replaced by the July 2021 Quotation.

⁸³ Ken's AEIC at para 118 and p 804.

⁸⁴ PCB at pp 625-626 and 632-633.

⁸⁵ PCB at pp 615-624.

⁸⁶ Plaintiff's Closing Submissions at para 45 and 47.

57 In support of this submission, Ken referred to his email to Chew Construction dated 13 March 2021 where he set out that it had been agreed that:⁸⁷

1. Chew Plumbing will talk to Safeway and Calpeda buy the fire pump from Safeway
2. Calpeda will purchase the control panel from Syntech and engage Syntech for the testing
3. Chew plumbing will assist in the mechanical installation of fire pump
4. Calpeda will complete the electrical, testing and commissioning of fire pump system.

58 The verbal agreement is also recorded in the email dated 1 June 2021 from Ken to Chew, where Ken said:⁸⁸

You have requested to cancel C39 contract amount of \$171,040 to Calpeda, which you have enter contract with other supplier. You have acknowledge we had attended to BLK 228A, 229A and BLK 228 MCSP and agreed we will charge you the hosereel pumps, submersible pump, pressure tank and manpower attending testing, inspection and co-ordination work.

59 This was then followed up by the July 2021 Quotation that Chew Construction signed with Calpeda, thereby reducing the cost of the works for the C39 project to \$25,359.⁸⁹

60 Chew Construction does not dispute that Calpeda supplied the pumps as set out in the July 2021 Quotation. However, it maintains that the July 2021 Quotation was not intended to replace the November 2019 Quotation and that Calpeda failed to complete the remaining works as set out in the latter.⁹⁰ Due to

⁸⁷ Ken's AEIC at p 186.

⁸⁸ PCB at p 1.

⁸⁹ PCB at pp 625-626.

⁹⁰ Defendant's Closing Submissions at paras 71-72.

such failure, Chew Construction claims that it had to engage a third party contractor, Safeway, on 12 March 2021 to complete the works at the cost of \$214,165.⁹¹ This cost was \$43,125 more than Calpeda's quote in the November 2019 Quotation and therefore, Chew Construction counterclaims this sum, being the additional cost incurred due to Calpeda's alleged failure.

61 Chew Construction was unable to offer any documentary evidence to refute Calpeda's evidence that the agreement pursuant to the November 2019 Quotation for works of the amount of \$171,040 was cancelled and replaced with an agreement pursuant to the July 2021 Quotation for the reduced sum of \$25,359. I hence find that Chew Construction has not proven that Calpeda was liable to carry out the works set out in the November 2019 Quotation and had failed to do so. Accordingly, Calpeda is not liable for the sums Chew Construction paid to Safeway in relation to C39.

62 In view of the above, I allow Calpeda's claim for the amount of \$25,359 and dismiss Chew Construction's counterclaim in relation to the C39 Project.

Sembawang

63 It is undisputed that Chew Construction would retain a sum amounting to 10% of the sum payable to Calpeda until the completion of the DLP and the rectification of all defects arising during this period. In relation to the Sembawang Project, this 10% sum amounted to \$64,200 (the "Sembawang retention sum").⁹² Calpeda seeks the return of the Sembawang retention sum on the basis that the DLP had expired. However, Chew Construction's defence was

⁹¹ Chew's 1st Affidavit at pp 107-115.

⁹² Statement of Claim at para 3.

that this sum was not due and payable as at the date Calpeda commenced Suit 913 on 8 November 2021 because the DLP period had not expired.

64 Relying on *Saga Foodstuffs Manufacturing (Pte) Ltd v Best Food Pte Ltd* [1994] 1 SLR(R) 505 at [9(b)], Chew Construction submits that a cause of action cannot include a claim that does not exist when the originating process is filed.⁹³ Chew Construction asserted that, even if the cause of action has become fully constituted at the time of the hearing, the claim is void *ab initio* and fresh proceedings would be needed to advance that claim. It cited *Singapore Court Practice 2017* (Jeffrey Pinsler gen ed) (LexisNexis, 2017) at para 5/1/3.1 in support of this assertion.⁹⁴ Chew Construction submitted that the DLP was to expire between December 2021 to January 2022 and thus Calpeda's claim for the retention sum in Suit 913 is invalid.⁹⁵

65 Accordingly, to determine whether the Sembawang retention sum was due at the time this Suit was commenced, I first assess whether the DLP had expired at the said time. As the quotation for the Sembawang Project did not state the length of the DLP, or when the DLP would commence/expire, I considered the parties' evidence.

66 Ken testified that Calpeda would commence its quarterly maintenance schedules immediately following the testing and due commissioning of the pumps system. Upon the conclusion of these schedules, or one year from the date of issue of their tax invoice(s), the DLP will expire.⁹⁶ In other words,

⁹³ Defendant's Opening Statement at para 33.

⁹⁴ Defendant's Opening Statement at para 33.

⁹⁵ Defendant's Opening Statement at para 32.

⁹⁶ Ken's AEIC at para 20.

Calpeda's evidence was that the DLP was 12 months' long. On the other hand, Chew Construction's evidence was that the DLP was 14 months' long. Chew testified that the Sembawang retention sum was due and payable upon the completion of 14 months of maintenance.⁹⁷

67 During trial, Chew Construction submitted that the DLP period was from 15 December 2020 to 14 December 2021. In support of its submission, Chew Construction referred to a letter which it claimed stated the DLP to be as it submitted.⁹⁸ However, this letter did not relate to Calpeda's claim as it was addressed to one "Nanjing Dadi Construction (Group) Co., Ltd" and there was no mention of Calpeda or its sub-contractors. Further, although Calpeda had done an additional maintenance of the pumps at Sembawang on 14 December 2021, this was done at Chew Construction's request.⁹⁹ There was no evidence of a contractual obligation between the parties that the DLP was until 14 December 2021. Nor was the fact that Calpeda agreed to do this additional maintenance, evidence that the DLP period was until this date.

68 Calpeda adduced several "3 monthly maintenance checklists".¹⁰⁰ Each checklist verified that three months of monthly maintenance had been performed by Calpeda. It is undisputed that these three checklists were also signed off by a representative of the main contractor of the Sembawang Project, Jeffrey.¹⁰¹ The first of these checklists were signed off on 5 February 2020 and consequently, Calpeda's maintenance of the Sembawang Project would have

⁹⁷ Certified Transcript for the hearing dated 31 January 2023 ("Transcript (31 January 2023)") at p 83, lines 15-30.

⁹⁸ Defendant's Closing Submissions at para 73 referencing Chew's 1st Affidavit at p 116.

⁹⁹ Ken's AEIC at para 145.

¹⁰⁰ PCB at pp 634-825.

¹⁰¹ Transcript (31 January 2023) at p 83, line 32, to p 84, line 25.

started three months prior, *ie*, sometime on or around 5 November 2019. This is consistent with Ken’s testimony that Calpeda completed its work obligations in relation to Sembawang in 2019, after the relevant HDB blocks were constructed and built,¹⁰² and the DLP period would have commenced soon after. The last of the checklists was signed off on 2 November 2021.¹⁰³ While there is no evidence on why Calpeda continued with maintenance till 2 November 2021 when it started around 5 November 2019 (given that Ken testified that the DLP period is one year long), on the basis of the “3 monthly maintenance checklists”, Calpeda would have completed the maintenance by November 2021.

69 I note that even if the maintenance only commenced on 5 February 2020 (instead of 5 November 2019) and the DLP was to be 14 months’ long, as Chew had testified, the DLP would have concluded by April 2021 at the latest. Accordingly, even on Chew’s evidence, the Sembawang retention sum would have been due and payable by April 2021, several months prior to Calpeda’s commencement of this Suit. Chew also agreed during cross-examination that he did not have any documents to refute that the retention sum for the Sembawang project was due and payable.¹⁰⁴

70 As the evidence is that the Sembawang retention sum was due and payable as at the commencement of this Suit, I allow Calpeda’s claim for the amount of \$64,200.

¹⁰² Ken’s AEIC at para 144.

¹⁰³ PCB at pp 817-825.

¹⁰⁴ Transcript (30 January 2023) at p 135, lines 8-23.

Terrace

71 Similar to the Sembawang Project, 10% was retained by Chew Construction in relation to Terrace, amounting to \$51,205.92 (the “Terrace retention sum”).¹⁰⁵ Calpeda demands the return of this sum. Chew Construction does not dispute that the Terrace retention sum is due and payable. Chew agreed when it was put to him that the retention amount of \$51,205.92 for the Terrace Project is due and payable.¹⁰⁶ However, Chew Construction counterclaims against Calpeda for \$25,492.75 for damage allegedly incurred from water leakages from the pumps installed by Calpeda at Terrace.¹⁰⁷

72 Chew Construction submits that Calpeda’s poor workmanship and negligence in the installation of pumps caused constant water leakages at Terrace. Due to these leakages, coupled with Calpeda’s alleged delay in rectifying said leakages, Chew Construction claims that it incurred \$25,492.75 (inclusive of GST) in damages.¹⁰⁸

73 I find that Chew Construction failed to prove its counterclaim.

74 First, Chew Construction has not adduced any documentary evidence that shows that there were water leakages caused by poor workmanship and negligence on Calpeda’s part in installing the pumps. There was no satisfactory explanation from any of Chew Construction’s witnesses as to how any damages incurred by Chew Construction, or water leakages, were causally related to Calpeda’s installation of the pumps.

¹⁰⁵ Statement of Claim at para 3.

¹⁰⁶ Transcript (30 January 2023) at p 133 lines 14-22.

¹⁰⁷ Defence & Counterclaim at para 13.E and p 24.

¹⁰⁸ Defence & Counterclaim at para 13.E(2).

75 Chew Construction relies primarily on a debit note it generated to bill Calpeda (“Debit Note”).¹⁰⁹ The main description in the Debit Note states “Backcharge due to Transfer Pump timing no adjust properly” (the “main description”).¹¹⁰ This Debit Note contains a list of eight items following the main description (the “Item(s)”) for which it claims sums from Calpeda. However, Chew Construction has not provided any evidence that the transfer pump timing was not adjusted properly, that such lack of adjustment was due to Calpeda’s poor workmanship or negligence, or that as a result of such lack of adjustment there were water leakages.

76 Second, Chew Construction has not shown that the Items, or the documents it relies on to support the Items, are related to the main description in the Debit Note. The Debit Note contains the following descriptions and list of Items:

The Terrace

Backcharge due to Transfer Pump timing no adjust properly

- 1) ZT claim due to cutting of ceiling for leaking pipes
- 2) STL-A1 claim due to re-plaster works
- 3) To check existng [sic] wiring, cable insultation [sic] resistance and light fitting
- 4) To replace damaged intercom system
- 5) To reinstate damaged sprinkler head
- 6) To repalce [sic] damaged traffic bollard
- 7) To supply and install Blk D signage
- 8) Water loss claim due to several pipes burst incidents happened at Blk 88 and Blk 102

¹⁰⁹ Defendant’s Closing Submissions at para 75; Chew’s 1st Affidavit at p 9.

¹¹⁰ Chew’s 1st Affidavit at p 9.

77 The Items, on their face, do not relate to the main description in the Debit Note. The supporting documents for the Items are equally unrelated on the face. For example, Chew Construction attributed Items 3 to 5 of the Debit Note to an invoice from one Zacd Posh Pte Ltd, on behalf of Terrace’s MCST (the “Posh Invoice”), which stated:¹¹¹

Reimbursement for Blk 98 job

1. To check existing wiring, cable insulation [*sic*] resistance and light fitting
2. To replace damaged intercom system
3. To reinstate damaged sprinkler head (GST charge)
4. To replace damaged traffic bollard (GST charge)
5. To supply and install blk ID signage

The link between the above descriptions for the “Blk 98 job” and the main description in the Debit Note is unclear. Chew Construction provided no further information as to what the “Blk 98 job” entailed and how it related to the works performed by Calpeda at Terrace.

78 As for Item 8 of the Debit Note, Chew Construction attributed it to an invoice issued to them by Terrace’s MCST (the “MCST Invoice”).¹¹² The MCST Invoice describes the damages claimed for as “Water loss claim due to several pipes burst incidents happened at Blk 88 and Blk 102 since April 2019”.¹¹³ However, Chew Construction did not provide any evidence to show that the water loss, and the damages incurred for such loss, was caused by or related to the alleged water leakage caused by Calpeda.

¹¹¹ Defendant’s Closing Submissions at para 76 referencing Chew’s 1st Affidavit at p 11.

¹¹² Chew’s 1st Affidavit at p 10.

¹¹³ Chew’s 1st Affidavit at p 10.

79 I consequently allow Calpeda's claim for Terrace project, in the amount of \$51,205.92 and dismiss Chew Construction's counterclaim in relation to this project.

Conclusion

80 In conclusion, I allow Calpeda's claim for \$683,147.92 and dismiss Chew Construction's counterclaim. There will be interest at the rate of 5.33% per annum on this sum from the date of the Writ service to the date of Judgment issuance, pursuant to s 12 of the Civil Law Act 1909 (2020 Rev Ed). The sum of \$200,000 that has been lodged into court by Chew Construction is to be released to Calpeda in part satisfaction of Calpeda's claim.

81 Parties are to agree on costs, or failing agreement, to file their submissions on costs within seven days of this Judgment.

Kwek Mean Luck
Judge of the High Court

Oh Kim Heoh Mimi and Debbie Lee (Ethos Law Corporation) for the
plaintiff;
Rajwin Singh Sandhu (Rajwin & Yong LLP) for the defendant.
