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

[2024] SGHC 183

Originating Application No 438 of 2024
Summons No 1388 of 2024

Between

CGS Construction Pte Ltd

… *Claimant*

And

Quek & Quek Civil Engineering Pte Ltd

… *Respondent*

JUDGMENT

[Building and Construction Law – Dispute resolution – Setting aside adjudication determination on ground of contract not being in writing – Sections 4(1) and 4(5) Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed)]

[Building and Construction Law – Dispute resolution – Setting aside adjudication determination on ground of invalid payment claim – Section 10(4) Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed)]

[Building and Construction Law – Dispute resolution – Setting aside adjudication determination on ground of work falling outside definition of

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v
Quek & Quek Civil Engineering Pte Ltd

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16 July 2024 Judgment reserved.

Kwek Mean Luck J:

Introduction

1 The Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) ("SOPA") facilitates cash flow for contractors through an expeditious summary adjudication procedure. One of the requirements for SOPA to apply, is that where the contract is only partly in writing, the matter in dispute must be in writing. This is pursuant to s 4(5) of SOPA. What does this involve? Is it sufficient that there is a record of the dispute, setting out the parties' position? Or must the contractual term or agreement that is relevant to the dispute also be in writing? This is one of the key issues in this application to set aside an adjudication determination made pursuant to SOPA.

Background

2 In OA 438/2024 ("OA 438") SUM 1388/2024 ("SUM 1388"), Quek & Quek Civil Engineering Pte Ltd ("Q&Q") seek to set aside the Adjudication Determination dated 23 April 2024 ("AD") rendered in Adjudication Application No. SOP/AA 068 of 2024 ("AA 68") and the Order of Court (HC/ORC 2230/2024) made in OA 438 ("ORC 2230").

3 Q&Q is the main contractor for the Operation and Maintenance of Landfill Equipment, Vehicles and Floating Platform at Semakau Landfill ("Project"). The National Environment Agency ("NEA") is the owner of the Project. After Q&Q was awarded the works for the Project, Q&Q subcontracted the entire works to CGS Construction Pte Ltd ("CGS") ("SMK3 Works"). The SMK3 Works were completed by CGS around 28 February 2023.

4 Parties disagree over the payment amount for the SMK3 Works. CGS initiated the process for adjudication pursuant to SOPA in AA 68. The main determination made in the AD is that Q&Q shall pay to CGS the sum of $1,633,173.93 (including GST) as the adjudicated amount.

Application to set aside AD

5 In SUM 1388, Q&Q seek to set aside the AD on the following three grounds, pursuant to s 27(6) of SOPA:

(a) there is no contract in writing between the parties for the purposes of SOPA;

(b) CGS did not serve a payment claim ("PC") within the ambit of SOPA and the adjudicator failed to give reasons for his determination on this issue; and

(c) the SMK3 Works are not "construction work" within the meaning of SOPA.

6 Consequently, the adjudicator in AA 68 did not have threshold jurisdiction to make an adjudication determination; *Hiap Seng Building Construction Pte Ltd v Hock Heng Seng Contractor Pte Ltd* [2024] SGHC 50.

Whether there is a contract in writing for the purposes of SOPA

Q&Q's submissions

7 First, Q&Q submit that the SMK3 Works are not the subject of a contract made in writing as required by s 4(1) of SOPA. As the contract for the SMK3 Works are purely oral, it does not satisfy s 4(5) of SOPA, which requires that the contract be partly in writing.

8 Q&Q add that the lack of a written contract results in dispute over the price of the works, and also creates uncertainty over matters such as the timelines relating to the payment claim and payment response, and whether the contract is a lump sum.

CGS' submissions

9 CGS submit that the contract is partly in writing since the work scope for the SMK3 Works is set out in the NEA Tender Documents[1]. Section 4(5) of SOPA provides that where the contract is "not wholly made in writing" it shall be treated as being in writing for the purposes of section 4 of SOPA, if "the

[1] Mr Quek Hong Peng ("Mr Quek") affidavit Tab 14.

matter in dispute between the partes … is in writing". This is satisfied for the purposes of AA 68, as there are documents evidencing the matter in dispute:

(a) The NEA Tender Documents set out the Project and details of the work scope;

(b) Q&Q's letter dated 13 December 2023[2] ("Q&Q 13 Dec 23") enclosed its final accounts ("Final Account");

(c) CGS made a payment claim in their letter dated 29 February 2024[3] ("CGS 29 Feb 24"), which sets out their claim and records the dispute over the 3 deductions in the Final Account;

(d) Q&Q's payment response dated 20 March 2024[4] ("Q&Q 20 Mar 24"); and

(e) Correspondence between parties in Q&Q 13 December 23, and correspondence dated 31 January 2024[5] ("CGS 31 Jan 24") and 8 February 2024[6] ("Q&Q 8 Feb 24").

10 Q&Q 13 Dec 23 informed CGS that the Final Account is as set out in the enclosure to that correspondence. The Final Account was calculated on the basis that CGS would receive 92% of CGS's quote price of $12,488,000. CGS disagree with this. It is of the view that it was entitled to 92% of the NEA tender price, which is a higher amount.

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2 Mr Quek affidavit Tab 3.

3 Mr Quek affidavit Tab 7.

4 Mr Quek affidavit Tab 8.

5 Mr Quek affidavit Tab 5.

6 Mr Quek affidavit Tab 6.

11 Nevertheless, by way of CGS 29 Feb 24, CGS stated that for interim purposes and reserving its rights, it was prepared to claim on the basis of the Final Account prepared by Q&Q in Q&Q 13 Dec 23, that is at $12,488,000, but it was not prepared to accept the three deductions stated therein. The three deductions are: (a) variation omissions amounting to $295,372.03 ("Variation Deduction"); (b) alleged expenses amounting to $48,978.44 ("Expense Deduction"); and (c) retention sum amounting to $556,145.24 ("Retention Deduction") (collectively the "Three Deductions"). This formed the basis of CGS' claim in AA 68. Hence, CGS submit that the matter in dispute is clearly set out in writing, and s 4(5) of SOPA is satisfied.

12 CGS submit that there is sufficient certainty of terms for the dispute. There is no dispute over the price for the purposes of AA 68, namely, CGS is prepared in the interim to accept the figure set out in Q&A's Final Account of $12,488,000 and is claiming on it. The other terms that Q&Q states as being uncertain are not in dispute.

Decision

13 Section 4(1) of SOPA states that the Act applies to "any contract that is made in writing on or after 1st April 2005". Section 4(5) of SOPA further provides:

> Where a contract is not wholly made in writing, the contract is treated as being made in writing for the purpose of this section if, subject to the provisions of this Act, the matter in dispute between the parties thereto is in writing.

14 In *Parliamentary Debates Singapore, Parliament No. 10, Session No, 1, Vol. 78, Sitting No. 7, 16 November 2004* at col 1132, the Minister of State for National Development, Mr Cedric Foo (as he then was) explained:

> The New South Wales Act does allow orally agreed to contracts, but we have found that very difficult to enforce because the adjudicator will have no basis to decide what was actually agreed to and not agreed to since it was done orally. So we have decided, in our case, not to accept oral contracts.

15 The Court of Appeal in *Lee Wee Lick Terence v Chua Say Eng* [2013] 1 SLR 401 ("*Lee Terence*"), had observed at [5] that the New South Wales Building and Construction Security of Payment Act 1999 has a similar structure and purpose to SOPA and seems to have informed the work of the Act's drafters, although there are important differences between them. The New South Wales Building and Construction Security of Payment Act 1999 which was mentioned by Mr Cedric Foo, provides at s 7(1):

> Subject to this section, this Act applies to any construction contract, whether written or oral, or partly written and partly oral, and so applies even if the contract is expressed to be governed by the law of a jurisdiction other than New South Wales.

16 It would appear that the equivalent statutory regime in the United Kingdom ("UK") cited by Q&Q sits on the other end of the spectrum. Whereas the New South Wales regime allows oral contracts to be considered, and the Singapore regime allows for contracts that are "not wholly made in writing" to be considered where the matter in dispute is in writing, the UK regime cited limits application to only contracts in writing. Section 107(1) of the original UK Housing Grants, Construction and Regeneration Act 1996 ("HGCR Act"), which was cited by Q&Q, provides:

> The provisions of this Part apply only where the construction contract is in writing, and any other agreement between the parties as to any matter is effective for the purposes of this Part only if in writing.

17 The UK court in *RJT Consulting Engineers v. DM Engineering* [2002] Adj.L.R. 03/8 ("*RJT*") explained at [12] that in interpreting s 107(1) of the HGCR Act, "[t]he written record of the agreement is the foundation from which a dispute may spring but the least the adjudicator has to be certain about is the terms of the agreement which is giving rise to the dispute." In *Grovedeck Ltd v Capital Demolition Ltd* [2000] Adj.L.R. 02/24 ("*Grovedeck*"), the UK court stated at [30] that oral agreements "are not readily susceptible of resolution by a summary procedure such as adjudication". It appears that s 107(1) of the HGCR Act has since been repealed and the equivalent statutory regime in the UK is now more similar to that of the New South Wales regime in allowing oral contracts to be considered, with some prescriptions of matters that must nevertheless be in writing; Explanatory Notes to the Local Democracy, Economic Development and Construction Act 2009 at [314], *RCS Contractors Ltd v Conway* [2018] 1 All ER (Comm) 807 at [22] and *M Hart Construction Ltd and another v Ideal Response Group Ltd* [2018] EWHC 314 (TCC) at [35]. The reasoning in *RJT* and *Grovedeck* nevertheless remain relevant in articulating the concerns of the UK courts with adjudicating on oral agreements.

18 With the above legislative background and considerations in mind, I set out the two sub-issues arising here. In relation to s 4(5) of SOPA, they are:

(a) whether the contract for SMK3 is partly in writing such that it can be said to be "not wholly made in writing", or if it is purely oral;

(b) if it is partly in writing, whether the "matter in dispute between the parties thereto is in writing".

19 The first sub-issue, is whether it can be said that the SMK3 contract "is not wholly made in writing", as required by s 4(5) of SOPA, when the only

written document that CGS refers to as forming part of the SMK3 contract is the NEA Tender Documents setting out the scope of work for SMK3. While Q&Q initially submitted that CGS admits that the contract was purely oral, it accepted at the hearing that the parts of Mr Choo Zhi Ming's ("Mr Choo") (the Project Manager of CGS) second affidavit that Q&Q relies on, do not go so far[7]. Mr Choo's 2nd affidavit only conceded that the "entire subcontract" is not in writing, and that the contract is "mostly verbal"[8].

20 It is not disputed that Q&Q subcontracted the entire SMK3 Works to CGS, and that the work scope of the SMK3 Works is set out in the NEA Tender Documents. Plainly, for the purposes of the first sub-issue, part of the contractual terms of SMK3 Works are in writing. Q&Q accepted at the hearing that since the NEA Tender Documents contains the work scope for SMK3 Works and it is in writing, it cannot be said that the contract is purely oral and the contract is instead "not wholly made in writing"[9].

21 In addition, I am unable to agree with Q&Q that the NEA Tender Document is insufficient, on the basis that there is no written quotation for the works, for the following reasons:

(a) First, s 4(5) of SOPA only requires that the "contract is not wholly made in writing". It does not contain any requirement that the quotation for the works must be in writing.

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7 Notes of Evidence ("NE") at pg 1.

8 Mr Choo Zhi Ming ("Choo") 2nd affidavit at [14] and [17].

9 NE at pg 2.

(b) Second, Q&Q relies on *Qingjian International (South Pacific) Group Development Co Pte Ltd v Capstone Engineering Pte Ltd* [2014] SGHCR 5 where the learned Assistant Registrar ("AR") noted at [45] that the communications in writing there include written quotations. However, the AR was referencing written quotations in the context of whether "the matter in dispute" between the parties was in writing for the purposes of s 4(4) [now s 4(5)] of SOPA. The statement was not made in consideration of whether the contract is "not wholly made in writing". Q&Q accepted this at the hearing[10].

22 It should be remembered that as set out above in the legislative background, the key concern with the adjudication of purely oral contracts under the SOPA framework, is the lack of certainty over the contractual terms giving rise to the dispute, rendering it less susceptible for expeditious resolution by summary procedure under SOPA.

23 Within the framework of s 4 of SOPA, this is addressed by two requirements.

(a) First, that the contract be partly in writing.

(b) Second, and more critically, the requirement in s 4(5) that where a contract is "not wholly made in writing", the contract would be treated as being made in writing, *if* the "matter in dispute between the parties thereto is in writing". This second requirement is important as where it is satisfied, an adjudicator would be able to proceed to adjudicate that dispute with greater clarity, on the basis of such written documents. As

10 NE at pg 2.

set out above, the question of what satisfies this second requirement, forms the nub of the second sub-issue.

24 CGS submit that the second requirement in s 4(5) of SOPA is satisfied as long as the matters in dispute are recorded in correspondence. Q&Q submit that this is insufficient, and that the contractual terms in relation to the dispute must also be in writing.

25 Both parties cited *Chow Kok Fong, Security of Payments and Construction Adjudication* (LexisNexis, 3rd Edition) ("*Chow Kok Fong*"), in support of their position, relying on certain extracts. I have found the observations of the learned author on this issue to be useful, and set them out more fully below:

> [3.32] Section 4(4) [now section 4(5)] further provides that where a contract is not wholly made in writing, it shall be treated as being made in writing for the purposes of the Singapore SOP Act, if, subject to the provisions of the Act, 'the matter in dispute between the parties thereto is in writing'. **A conceivable situation is where a chain of written exchanges between the parties sets out various assertions and facts of the dispute and it is evident from the exchanges that these are made in the context of an existing contractual relationship**…
>
> [3.33] …**The chain of documents should show or indicate that certain terms governing the underlying relationship have been relied on by one party or the other notwithstanding that the evidence or construction of particular terms may be disputed**.
>
> [3.37] The case for confining the operation of statutory regime to contracts made in writing as defined under the Singapore SOP Act was thought to be premised on two practical considerations. These are the short time frames within which the dispute has to be determined and the fact that adjudication is not designed to consider intricate issues of construction and law. **In *RJT Consulting Engineers Ltd v DM Engineering (Northern Ireland) Ltd* … It was considered that there must be certainty of the existence and terms of an agreement because the inevitable doubts over an agreement made**

> **orally would not allow disputes relating to such an agreement to be expeditiously determined by adjudication within the timeframe normally allowed for these proceedings: 'Clarity of agreement is a necessary adjunct of a statutory scheme for speed interim adjudication'.**
>
> [3.38] Similarly, in *Grovedeck Ltd v Capital Demolition Ltd*, **the importance of requiring a sufficient sense of certainty as to the relevant terms of a contract** was summed up by Judge Bowsher, QC …
>
> [3.39] Nevertheless, **there is a risk of overstating the need for certainty and hence the requirement for the underlying contract to be in writing** … **If the focus of the analysis by the adjudicator should be whether the facts disclose the existence of a contract or of specific terms, the issue must ultimately turn on the evidence**.
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> [emphasis added]

26 While the above extracts of *Chow Kok Fong* cites decisions from the UK, where the equivalent statutory regime has since been amended to allow purely oral contracts to be considered, the principle espoused in the two UK decision cited in *Chow* pre-date these amendments, and are consonant with the reason stated in Parliament by Mr Cedric Foo for not applying SOPA to purely oral contracts.

27 As set out above, Mr Cedric Foo had in Parliament, explained that the difficulty of enforcing claims for purely oral contracts is "because the adjudicator will have no basis to decide what was actually agreed to and not agreed to since it was done orally". Such difficulty will also be present in situations where the "matter in dispute between the parties" does not contain any written basis from which the adjudicator can decide what is actually agreed to or not.

28 In light of the legislative concern with applying SOPA to purely oral contracts, it necessarily follows that the phrase "matter in dispute between the

parties thereto is in writing" in s 4(5) of SOPA, must mean that there is sufficient clarity of terms or agreement in writing, for the adjudicator to decide expeditiously in the summary procedure envisioned under SOPA. In my view, the following principles should apply in determining if the matter in dispute is in writing.

(a) It would not suffice if there is only written correspondence setting out the positions of dispute between the parties, where contractual terms or agreement may be relevant to the dispute. In such a situation, the contractual term or agreement relied on by a party, that is relevant to the dispute before the adjudicator, should be in writing, notwithstanding that the evidence or construction of a particular term or agreement may be disputed.

(b) Where a party does not rely on a contractual term or agreement for its claim, but on an alleged fact, the alleged fact that a party relies on should be in writing, notwithstanding that the evidence of that particular fact may be disputed. This may occur, for example, where a party seeks to exercise the right to a non-contractual set-off.

(c) Bearing in mind the policy rationale for SOPA, set out in *Lee Terence* at [2]-[5], a broad approach should be taken in making this assessment, taking into account the commercial context.

29 In this case, the dispute in AA 68 is over CGS' claim for the contract price of $12,488,000 set out in Q&Q's Final Account, and the Three Deductions. I find that the requirement in s 4(5) of SOPA that the "matter in dispute between the parties thereto is in writing" is satisfied for AA 68. I elaborate.

30 Price of the Project: The claim for the Project price of $12,488,000 is based on the Final Account issued by Q&Q. The terms of agreement for this are captured in writing in Q&Q 13 Dec 23 which set out the Final Account proposing the Project price of $12,488,000 and CGS 29 Feb 24, where CGS stated that for interim purposes and reserving its rights, it was prepared to claim on the basis of $12,488,000 as set out in the Final Account (rather than the NEA Tender price). While parties still disagree over whether the price of the SMK3 works is 92% of the NEA Tender price, that is not the subject of the dispute in AA 68. Contrary to Q&Q's submission, there is no uncertainty over the price of the SMK3 works for the purposes of AA 68.

31 Variation Deduction: Q&Q submitted at the AD that the Variation Deduction is supported by the Requirement Specifications in the NEA Tender Document at para 20.1 and 20.3 and Part 4 of the Price Schedule.[11] Q&Q also contended in its correspondence that "the variation omission is due to the variable component which is re measurable … these components [were] already allowed for in [CGS'] price, hence it should also be deducted as per NEA's measurement."[12] The contractual terms that are relevant to this dispute, are hence in writing. I am unable to accept Q&Q's submission that because the adjudicator pro-rated the variation deduction when there is no specific written contractual provision for pro-ration, the terms in dispute are not in writing. There was clearly, a contractual term in writing, that was relied on by Q&Q for this dispute. The adjudicator also referenced it in his AD. Section 4(5) of SOPA is hence satisfied. In so far as Q&Q disagrees with the adjudicator's pro-rata

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11 Mr Quek affidavit Tab 10 at pg 177, Respondent's Adjudication Response Submissions ("RARS") [107]-[109].

12 Mr Quek affidavit Tab 3 at pg 81.

approach, that in my view, goes towards the merit of the adjudicator's construction of the contractual terms cited by Q&Q, rather than over whether the relevant contractual term is in writing.

32 Expenses Deduction: At the AD, Q&Q relied on an email dated 9 October 2023 where CGS admitted to and accepted a large part of this set of deductions[13].

33 Retention Deduction: In Q&Q's Final Account set out in Q&Q 13 Dec 23, Q&Q included a deduction in the amount of $556,145.24, being "Retention 5% (Including Outstanding Works)". In CGS 31 Jan 24, CGS disagreed that Q&Q had a right to withhold this sum. In Q&Q 8 Feb 24, Q&Q informed CGS that the $556,145.24 is withheld for outstanding works. It did not rely on any contractual term or agreement, but stated:

> As you are probably aware, the NEA's excavator caught fire due to your negligence and repair works for other machines was not carried out properly before handing over to us. We are currently repairing the equipment and will tally up the total cost of repair once the work is completed. Any balance, after deduction, will be paid back to CGS.

34 In CGS 29 Feb 24, CGS again maintained that there is no basis for Q&Q to retain this sum. CGS stated:

> We did not agree to any arrangement or term for retention. In any case, all the equipment was repaired and handed over in good condition. The alleged damage or repairs that Q&Q is claiming now are not due to us.

35 In Q&Q's Respondent's Adjudication Response Submissions ("RARS") filed on 8 April 2024, Q&Q did not assert that it was relying on any

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13 Mr Quek affidavit Tab 10 at pg 178, RARS [115].

particular contractual term or arrangement for the retention of this sum. It premised its retention of the sum, on repairs that had to be made to an excavator and dump truck. Its response submissions on this deduction stated:

> The Respondent is entitled to withhold the retention sum of $556,145.24 for outstanding works in relation to the repair of an excavator and articulated dump truck, which had been used by the Claimant in the SMK3 Works. Contrary to the Claimant's submission, the excavator and articulated dump truck were not in working condition when handed over to the Respondent in or around March 2023.

36 In the correspondence, CGS asserted that there was no agreement or term for Q&Q's retention of the $556,145.24. It is clear from Q&Q's response in its correspondence and Adjudication Response, that it did not refute this. Q&Q was not asserting any such term or agreement. Instead, its basis for retention was that there was repair work that Q&Q would need to carry out on an excavator and a dump truck which has been used by CGS in the SMK3 Works. CGS' response was that in any event, all the equipment was repaired and handed over to Q&Q in good condition.

37 This dispute in AA 68, is hence one which involves alleged facts. There is no contractual term or agreement that is relied on by Q&Q for the deduction. Following the principles set out above, it would suffice for the purposes of s 4(5) of SOPA, that the alleged facts that are relevant to the dispute are in writing. I find that they are, being captured in CGS 31 Jan 24, Q&Q 8 Feb 24 and CGS 29 Feb 24.

38 This was also how the adjudicator assessed this dispute. He began by noting in his AD at [63] that he "can only be guided by the conditions of contract but alas this was not provided as there was none; because of the nature of the

transaction and contractual agreement"[14]. I agree with CGS that the adjudicator was not saying here that there was an oral term for retention. He was simply saying that there was no term for retention. This is consistent with the position put forward by Q&Q in their correspondence and Adjudication Response.

39 Bearing in mind the policy considerations and concerns with oral contracts, this particular dispute does not present the difficulty highlighted in Parliament with oral contracts. Essentially, Q&Q seek to retain monies to compensate for repair costs that it may incur for allegedly damaged equipment handed over by CGS to Q&Q. CGS deny that it handed over damaged equipment. An adjudicator can examine the state of equipment on handover, the extent of damage and estimated costs of repair. These are factual and evidential matters.

40 In this case, the adjudicator found that other than a bare statement of fire damage and inadequate repair of equipment, Q&Q provided no supporting documents to verify this statement. At the hearing, Q&Q submitted that this was because it did not consider that CGS 29 Feb 24 was a PC. Hence, it did not provide the supporting documents in its response in Q&Q 20 Mar 24, as it did not consider that this correspondence would be treated as its payment response. It was thus constrained by SOPA from adducing any further document before the adjudicator to support its case.

41 Leaving aside the validity of CGS 29 Feb 24 as a PC, which I deal with below, s 15(2)(d) of SOPA states that the adjudication response "may contain or be accompanied by such other information or documents (including expert

[14] Adjudicator's Determination ("AD") at [63].

reports, photographs, correspondences and submissions) as the respondent may consider to be relevant to the adjudication response". While s 15(3) of SOPA states that the respondent must not include in the adjudication response, an objection of any nature unless that objection was in the payment response, Q&Q had in its payment response in Q&Q 20 Mar 24, stated that explanations had been given in its previous letters, and Q&Q 8 Feb 24 contained its more detailed explanation for retaining the sum. In any event, it is not necessary to assess if Q&Q was constrained by SOPA from putting in documents at the AD to support its factual allegation that the equipment was damaged. It was not Q&Q's position at the adjudication that it was seeking to adduce documents in support but was otherwise constrained by the ambit of its payment response. Neither was this expressed to be a constraint for Q&Q in Mr Quek's affidavit filed in support of Q&Q's application to set aside the AD.

42 The dispute over the Retention Deduction was therefore, in essence a dispute in which the party seeking to retain the monies did not rely on any contractual term or agreement, but on an alleged fact, that was completely bare and unsupported by any document. It is worth bearing mind, that the policy rationale of SOPA, as stated in *Lee Terence* at [2], to establish a fast and low cost adjudication system for payment disputes, so as to help facilitate the cash flow of contractors. It would be contrary to such policy intent, if the ability of SOPA to facilitate the cash flow of contractors, could be circumscribed by contractors making bare assertions, not founded on any contractual term or agreement, based on alleged facts that are unsupported by any document, by simply asserting that the matter in dispute is not in writing and hence the adjudicator has no threshold jurisdiction pursuant to s 4(5) of SOPA.

43 I would add that this was not a case where the adjudicator is hampered by the complete absence of any written documents in assessing the dispute. The contractual context is set out in the NEA Tender Documents which contains the work scope and the contractual relationship between the main contractor and the Project Owner. The Final Account provided in Q&Q 13 Dec 23 contains the Project price and a detailed breakdown of how the final figures are derived. The correspondence between the parties identifies the factual positions of parties for this dispute, from which the adjudicator can then make an assessment based on the evidence.

44 Finally, for completeness, I would add that Q&Q also submitted that there was uncertainty of contractual terms for AA 68, because there was no certainty over matters such as the timelines relating to the payment claim and payment response, and whether the contract is a lump sum. However, the uncertainty of such terms do not detract from there being sufficient clarity of agreement in respect of the dispute in AA 68, as set out above. They therefore do not affect the satisfaction of s 4(5) of SOPA.

45 I therefore find that the requirement for a contract in writing under s 4 of SOPA is satisfied.

Whether CSC served a PC within the ambit of SOPA

Q&Q's submissions

46 Q&Q's second ground for setting aside the AD, is that the purported PC referred to by CGS, that is CGS 29 Feb 24, is not a PC under s 10 of SOPA. In the cover email enclosing CGS 29 Feb 24, CGS expressly stated that the attached letter was "in response to [Q&Q's] letter dated 8th Feb 2024". There

was no indication in the cover email that CGS 29 Feb 24 was a PC. While the concluding statement of the letter stated that CGS "look forward to [Q&Q's] earlier payment of [CGS's] claim in the sum of $1,949,475.90 without any delay", such a demand for payment was not in the nature of a PC. At most, it incorporated a general letter of demand of certain sums sought by CGS in dispute of Q&Q's Final Account. CGS 29 Feb 24 was nothing more than a continuation of the correspondence on the issues in the final accounts for the SMK2 and SMK3 works.

47 CGS 29 Feb 24 is similar to the impugned document in *Sungdo Engineering & Construction (S) Pte Ltd v Italcor Pte Ltd* [2010] 3 SLR 459 ("*Sungdo*"). There is no express declaration that it is a PC under SOPA, the document appears to be of a nature different from a payment claim under SOPA and there is earlier correspondence that creates confusion over whether CGS 29 Feb 24 is a PC. In contrast, CGS had previously issued an email dated 24 February 2023, which stated that "our progress claim is sent to you for work done up to 31st January 2023 only". This left no doubt that it was a PC.

48 Q&Q further submit that CGS 29 Feb 24 did not contain various elements that would be expected of a payment claim as provided under s 10(4) of SOPA read with the Building and Constructions Security of Payments Regulations ("SOPR") regulation 5(2).

49 Q&Q also submit that the AD should be set aside as the adjudicator failed to comply with the requirement under s 17(2) of SOPA to provide reasons for his finding that there was a PC within the meaning of SOPA.

CGS' submissions

50 CGS submit that CGS 29 Feb 24 is a PC within the ambit of the SOPA. There is no prescribed form for a PC. The relevant test, as stated in *Lee Terence,* is whether the payment claim satisfies the formal requirements of SOPA. There is also no requirement that the PC must state that it is a "payment claim"; *Lee Terence* at [76]. In any event, CGS 29 Feb 24 states "…[CGS] look forward to your earlier payment of [CGS's] claim in the sum of $1,949,475.90 to [CGS] without any delay".

51 CGS 29 Feb 24 complies with s 10(4) of SOPA read with SOPR regulation 5(2). The learned author of *Chow Kok Fong* stated at [5.244(4)]:

> **… the question of particularity [of a PC] should not be approached in an unduly technical manner.** Given the backgrounds of the parties normally encountered in a construction contract and the fact that a payment claim (as well as a payment response) has to be produced quickly, the level of particularity required should not be required to be as precise and particularised as a pleading in court. **The particulars suffice if they can apprise the parties of the real issues in the dispute.**
>
> [emphasis added]

52 Since it was Q&Q who prepared the Final Account, they would be well apprised of the claimed sum. Significantly, Q&Q do not allege that they were not able to properly respond to CGS's PC because they were unclear as to the claims in the PC. They have failed to show any prejudice suffered at all.

53 It is self-evident from the adjudicator's reproduction of CGS's submissions that address Q&Q's objections on the validity of the PC, that the adjudicator was relying on and accepting CGS' submissions on the issue. There is hence no merit in the argument that he had not included reasons in the AD.

As highlighted in *Chow Kok Fong* at [14.99]-[14.100], given the time pressures on an adjudicator, a broad reading of the reasoning should be adopted, in recognition of the fact that the determination was made by an experienced industry practitioner who may not be accustomed to legal expression.

Decision

54 In *Lee Terence*, the Court of Appeal set out the test for determining a valid PC, holding at [78] that:

> the correct test for determining the validity of a payment claim is whether a purported payment claim satisfies all the formal requirements in Section 10(3)(a) [now Section 10(4)(a)] of the Act and reg 5(2) of the SOPR. If it does, it is a valid payment claim.

55 Section 10(4) of SOPA provides that:

> A payment claim —
>
> (a) must state the claimed amount, calculated by reference to the period to which the payment claim relates; and
>
> (b) must be made in such form and manner, and contain such other information or be accompanied by such documents, as may be prescribed.

56 In *Progressive Builders Pte Ltd v. Long Rise Pte Ltd* [2015] 5 SLR 689 ("*Progressive*"), the High Court held at [50] that case law has shown that the standard of compliance required by s 10(3)(*a*) of the Act [now s 10(4)] is not an onerous one. At [58], the court observed that "an excessive technical approach should not be countenanced under the Act which is characterised by speed and informality." The plaintiff there did not seek to argue that it unable to understand the basis of the payment claim or that it was somehow prejudiced by the non-compliance with s 10(3)(a) of SOPA. On the contrary, the plaintiff knew exactly what the defendant was claiming for. Under these circumstances,

the court did not think it was the legislative purpose to invalidate the payment claim for a failure to state precisely its reference period.

57 I agree with the observations made in *Progressive*. An excessive technical approach should not be adopted in assessing compliance with the requirements of s 10(4) of SOPA.

58 In so far as Q&Q relies on analogy with the impugned document in *Sungdo*, I note that the propositions made in *Sungdo* were considered and rejected by the Court of Appeal in *Terence Lee* (at [73]–[75]):

> 73. …We reiterate that we do not agree with Lee J's analysis that a payment claim which satisfies all the statutory requirements is not a payment claim if it is expressly stated not to be a payment claim, and that it would be absurd for the court to accept it as a payment claim (see [33] above).
>
> 74. In addition, we do not agree with the decision in *Sungdo* ([11] *supra*) if it means that, in the absence of express words to the contrary, the claimant's subjective intention is relevant to determining whether the claim he has served on the respondent is a payment claim. It seems to us that the legislated formal requirements for payment claims are designed to ensure that specified items of information are made available to the respondent before the claimant's rights under the Act are engaged. The emphasis is therefore not on the claimant's intention but on the respondent being given notice of certain information about the claim (such as the amount claimed, the contract under which the claim is made and a breakdown of the items constituting the claim) …
>
> 75. We accept the possibility that some documents meeting the formal validity requirements may be extremely voluminous or may contain confusing elements such as an informal or un-businesslike tone (as was the case in *Sungdo*). We recognise that these factors may impose a certain amount of inconvenience and even hardship on potential respondents who are considering what action to take to protect their interests in the context of the Act. For better or worse, Parliament has set the balance between the rights of claimants and respondents such that these situations may arise…

59 Q&Q submits that in addition to the test set out by the Court of Appeal in *Lee Terence* at [78], the test of a valid PC also includes whether it can be objectively said that the claimant intended to serve a PC. Q&Q was however unable to point to any part of *Lee Terence* which incorporates this additional element. While Counsel for Q&Q initially relied on *Lee Terence* at [74], he accepted that this only stated that the Court of Appeal did not agree with *Sungdo* that in the absence of express words to the contrary, the claimant's subjective intention is relevant, and the court did not expressly endorse the test of objective intention in [74]. Counsel also accepted that this additional element is not found in the Court of Appeal's articulation of the test of a valid PC, as set out in [78][15]. I would add that the Court of Appeal also stated at [74] that the emphasis is not on the claimant's intention but on the respondent being given notice of certain information about the claim. Moreover, the Court of Appeal had made it clear in [78] that if all the formal requirements in s 10(4)(a) of SOPA and regulation 5(2) of SOPR are satisfied, "it is a valid payment claim".

60 I hence reiterate that the test of whether there is a valid PC for the purposes of SOPA, is that set out by the Court of Appeal in *Lee Terence* at [78], namely, whether the requirements of s 10(4)(a) of SOPA and regulation 5(2) of the SOPR are satisfied.

61 In this case, I find that CGS 29 Feb 24 satisfies the requirements of s 10(4)(a) SOPA for a valid PC. It states the claimed amount of $1,949,475.90 and states that this sum is claimed in reference to the sums in Q&Q's Final Account. It enclosed the Final Account produced by Q&Q. It also states that the claim is "base[d] on the subcontract lump sum of $12,488,000 certified in

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15 NE at pg 3.

Q&Q's own final account enclosed in Q&Q's letter dated 13 December 2023". The reference to Q&Q's Final Account indicates the reference period of the claim as for the entire period of the works up till the Final Account in December 2023 prepared by Q&Q.

62 SOPR regulation 5(2) provides that:

> Every payment claim shall —
>
> (a) be in writing;
>
> (b) identify the contract to which the progress payment that is the subject of the payment claim relates; and
>
> (c) contain details of the claimed amount, including — (i) a breakdown of the items constituting the claimed amount; (ii) a description of these items; (iii) the quantity or quantum of each item; and (iv) the calculations which show how the claimed amount is derived.

63 I find that CGS 29 Feb 24 also satisfies regulation 5(2) of the SOPR.

(a) Regulation 5(2)(b) of the SOPR is complied with as the contract that is the subject of the payment is identified. Paragraph 3 of CGS 29 Feb 24 states that "we want to focus on SMK3 for now as there are sums which the Respondent itself acknowledges are payable to us". It then refers to the Final Account prepared by Q&Q for the SMK3 contract.

(b) Regulation 5(2)(c) of the SOPR is complied with as the details of the claimed amount are set out. CGS 29 Feb 24 contains a table setting out how the claim for $1,949,475.90 is derived, including 5 pages of annexures with the full breakdown of the Final Account. The description and quantum of each component is set out in the annexures. They were prepared by Q&Q themself.

64 I also find no merit to Q&Q's submission that the AD should be set aside on the ground that the adjudicator did not provide his reasons for finding that there was a valid PC for the purposes of SOPA. Undoubtedly, an adjudicator is required by s 17(2) of SOPA to include the reasons for the determination and such reasons should adequately show that the adjudicator addressed the issues before him and that he had a basis for his decision. In assessing the adequacy of reasoning, the observations made in *Metropole Pte Ltd v Designshop Pte Ltd* [2017] 4 SLR 277 ("*Metropole*") at [76]-[77], *SEF Construction Pte Ltd v Skoy Connected Pte Ltd* [2010] 1 SLR 733 at [60] and by the New South Wales Supreme Court in *Futurepower Development Pty Ltd v TJ & RF Fordham Pty Ltd* [2017] NSWSC 232 are worth bearing in mind. The purpose of SOPA is to allow for quick determination. Decisions are not made by experts accustomed to legal expression. The reasoning should demonstrate that the adjudicator had regard to the submissions of the parties and materials before him and that he addressed his mind to the issues raised. The adjudicator would not be in breach of natural justice where he did not explicitly address every single one of a party's submission. The failure to give elaborate or detailed reasons is also not indicative of a denial of natural justice.

65 In this case, the adjudicator had a section on the issue of whether there is a valid PC, where he stated the issue in dispute and cited the requirements of regulation 5(2) SOPR. He then produced at [44]-[45] of the AD, extracts of CGS's submissions that explained why there was a valid PC. It is clear from the AD that the adjudicator was adopting CGS' submissions as the reasons for his finding. I am satisfied that the adjudicator addressed his mind to the issue and provide his reasons for his decision. While the adjudicator could have added his views, beyond citing the extracts of CGS' submission this issue, that did not

mean that Q&Q was denied natural justice, or that s 17(2) of SOPA was breached.

66 In summary, I find that CGS 29 Feb 24 is a valid PC for the purposes of SOPA.

Whether the SMK3 Works are "construction work" within the meaning of SOPA

Q&Q's submissions

67 Q&Q's third ground for setting aside the AD, is that the SMK3 Works are not works that fall under the definition of "construction work" under SOPA. The main scope of the SMK3 Works is the provision of labour and equipment services for the transportation of waste from the Tuas Marine Transfer Station ("TMTS") to the Semakau Landfill ("SL") for disposal by way of landfill[16]. This is not a construction activity. No new buildings or structures are to be erected. While the scope of the SMK3 Works extend to some minor maintenance works, these are *de minimis* and ancillary to the main works, being the provision of labour and equipment for waste disposal by way of landfilling.

68 Both Q&Q's applications for Man-year Entitlement ("MYE") for the SMK1 Works and the SMK2 Works were earlier rejected by MOM. Q&Q appealed MOM's decision. However, the MYE appeals were rejected on the ground that the SMK1 Works and the SMK2 Works were not regarded as construction projects. Q&Q did not apply for MYE for the SMK3 Works as it assumed that MOM would again reject its application, since SMK3 Works are

16 NEA Tender Documents at part 2, para 3.3.

similar in nature to the SMK1 Works and the SMK2 Works. MOM has conclusively determined that the SMK works are not construction work.

69 NEA's requirement that tenderers for the SMK3 Works are registered under the CW02 Civil Engineering Work Head ("BCA Workhead") does not indicate that the SMK3 Works are "construction work" under SOPA. The SMK3 Works involve the use of massive plant and heavy equipment. NEA only included the BCA Workhead as a pre-qualification standard for assessing contractors who are tendering.

70 Section 3(1)(d)(i) of SOPA includes "land reclamation" as "construction work". This section refers to operations which forms an integral part of, is preparatory to, or is for rendering complete, involving construction or installation as set out under s 3(1)(a)-(c) of SOPA. SMK3 Works, which pertain to waste disposal by way of landfilling, would not be regarded as "land reclamation". The toxicity of the waste used for landfilling would cause SL to be unsuitable for human use. Then Minister of State for the Environment, Mr Abdullah Tarmugi pointed out in *Parliamentary Debates Singapore, Parliament No. 8, Session No, 1, Vol. 61, Sitting No. 11, 11 November 1993* that even if people were allowed to live on the island, "the environment will not be that good, simply because the landfill site will be too near the people on the island". The type of waste used for landfill in SL consists of incineration ash and non-incinerable waste[17]. The building of solar farms, tours and dormitories take place on another part of SL, not where the landfill sites for SMK3 Works took place. The SMK3 Works are not a precursor to future building works. They are intended only to be a depository for waste.

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17 NEA Tender Documents at part 2, para 3.3.

CGS' submissions

71 CGS submit that the SMK3 Works are "construction work" within the meaning of SOPA. CGS was required, under the scope of works: (a) to carry out the construction, repair and maintenance of drains; (b) construction of earth bunds; (c) construction of bunds and embankments: (d) maintenance of monitoring wells, drainage system; (e) maintenance and repair of storage tanks; (f) maintenance and repair of access slabs; (g) construction of drainage and access roads for vehicular access.

72 As stated in the NEA website[18], as well as the NEA press release and Straits Times article[19], the backfilling of Semakau with ash is to allow a green landscape to grow. Semakau land is being used for renewable energy and the reclamation fill is not "toxic" as Q&Q incorrectly exaggerates. There are guided tours being conducted by NEA itself. The high cleanliness standards of the water around Semakau allow for fish rearing. There are workers carrying out works at Semakau the entire time and the government has even allowed dormitories on Semakau for the workers to stay.

73 Q&Q did not raise MOM's rejection of Q&Q's MYE application for SMK1 and SMK2 works before the adjudicator in the AD. Section 27(7) of SOPA bars a party from raising a new ground for objection if not raised in the adjudication below. In any event, MOM's rejection does not definitively mean that SMK3 Works do not constitute "construction works" within the meaning of the SOPA. MOM have their own policy and criteria for what they consider

18 Mr Choo 2nd affidavit Tab 5.

19 Mr Choo 2nd affidavit Tab 6.

to be construction works for the purposes of facilitating employment of new workers. MOM also did not give any reasons for their rejection, apart from a bare statement that it is not a "construction project".

74 In Q&Q's own appeal letter to MOM dated 12 August 2015, they claimed the works at SMK1 and SMK2 to be construction works: "Our works are required to constantly construct temporary earth drain (approximately 200 metres) to ensure the water from the rainfall will be properly channelled to prevent flooding." For that appeal, Q&Q also procured NEA's confirmation that "[this] landfill operation at [Semakau Landfill] is not much different from reclamation work, except that the material used is waste material instead of soil or sand. Therefore, we have been using the BCA Work Head CW02 – Civil Engineering whenever we call for a renewal of landfill operation tender."[20]

Decision

75 When queried, counsel for Q&Q did not have a response to CGS' submission that Q&Q is barred from raising the MYE argument under s 27(7) of SOPA, since this was not raised at the AD. Counsel accepted that this is hence not something that Q&Q can raise now at the appeal[21]. In any event, it could not be said that MOM's determination was conclusive of the question of whether there were "construction work" for the purposes of SOPA. MOM's assessment is for qualification of MYE, and not an assessment of what falls under SOPA as "construction work". There is no information on what factors MOM took into account in coming to their view and if they would be relevant to the question of whether the SMK3 Works are "construction work" for the purposes of SOPA.

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20 Mr Choo 2nd affidavit Tab 11.

21 NE at pg 4.

Counsel for Q&Q accepted at the hearing that MOM's classification is a neutral point[22].

76 Q&Q also submitted that NEA used the BCA Work Head for Civil Engineering in calling for the tender, only because NEA wanted this as a pre-qualification standard for tenderers. However, there is no document that states that this was indeed NEA's intent.

77 In any event, I find that neither NEA nor MOM's classification for their purposes alone is dispositive of the issue of whether SMK3 Works are "construction work" under SOPA.

78 On the facts, I find that SMK3 Works are "construction work" within the meaning of s 3(1)(b) of SOPA. The work scope in the NEA Tender Documents includes what are clearly construction work. Q&Q acknowledges this but submits that they are ancillary and *de minimis*. However, there is nothing in the language of s 3(1)(b) of SOPA which states that the construction work must not be ancillary and *de minimis*. Even if there is such a requirement, Q&Q provides no objective yardstick to support its claim that the construction work involved in SMK3 are *de minimis* such that it cannot be considered to be construction work.

79 Ultimately, whether there is "construction work" under s 3 of SOPA is a matter of the evidence relating to the nature of the works in question. In this case, counsel for Q&Q explained at the hearing that the bunds required under the SMK3 Works are to prevent spill over of the landfill into adjacent cells and that if the bunds are not built, the ability to sequence the filling of cells would

[22] NE at pg 4.

be affected. The sequencing of cells helps to ensure that the landfill is level[23]. Based on this description by counsel, it would appear that the construction work relating to the bunds in the SMK3 Works are integral to the landfill operation, and not merely ancillary.

80 In addition, in Q&Q's own appeal to MOM, Q&Q claim that the works for SMK1 and SMK2 are construction work and that works are required to constantly construct temporary earth drain to prevent flooding. While MOM may have disagreed that SMK1 and SMK2 involve construction work for the purposes of MYE, there is no suggestion that what Q&Q stated here as the nature of works being undertaken was inaccurate. Counsel for Q&Q informed that this description is equally applicable to the SMK3 Works[24]. From Q&Q's description of the works in its appeal to MOM, it does not appear that the construction work involved for SMK3 Works is *de minimis*.

81 Q&Q also submit that the adjudicator did not provide the reasons for his finding that there was "construction work" under s 3(1)(b) of SOPA, as required by s 17(2) of SOPA. I have set out above the principles on assessing the adequacy of reasoning at [64]. In the AD, the adjudicator had analysed at [50]-[52] of his AD that the works are part of land reclamation and that such land can be put to use, before citing at [53] that "construction work" is defined at s 3(1)(b) of SOPA as "construction of any works … that form part of the land". The adjudicator's reasoning might be said to be elliptical, but similar to the assessment in *Metropole* at [76], I do not find that the expression of reasons here is done in a manner which invites inference that the adjudicator did not engage

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23 NE at pg 3.

24 NE at pg 4.

with the issue before him, bearing in mind that the purpose of SOPA is for quick determination.

82 I also find that there is evidence that the SMK3 Works fall under s 3(1)(d) of SOPA as "land reclamation" works.

83 The adjudicator stated at [50] of the AD that land reclamation requires land filling, and that where sand is used, this is naturally considered land reclamation. If waste was used as fill, it would not detract from the fact that the fill was part of the process of land reclamation. This statement is supported by NEA's statements. The NEA, which called for the tender for the SMK3 Works, included records or competencies in "reclamation works" as part of its tender evaluation criteria[25]. The NEA also stated in its support of Q&Q's appeal to MOM for MYE, that the landfill operation is not much different from reclamation work except that the material used is waste material instead of soil or sand.

84 Q&Q's main contention is that the SMK3 Works are not equivalent to "land reclamation" works because the toxic waste used for the landfill renders the land unsuitable for human use. I note that there is nothing in SOPA that states that there will only be "land reclamation" if such land is for human use, although this may not be material, since even if the land reclaimed is used as a costal buffer or for green lungs, there is some level of human usage. I have in any event, analysed Q&Q's submission by taking its case at its highest.

85 Q&Q refer to the NEA Tender Document, which states that the waste used for the landfill in the SMK3 Works includes "treated ash and sludge from

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[25] Mr Quek affidavit at p 383.

industries, non-recyclable construction and demolition waste, asbestos waste and other miscellaneous non-incinerable waste"[26]. Q&Q submit that such materials are toxic and renders the landfill unsuitable for human use. Q&Q also rely on a statement made in Parliament in 1993 by then Minister of State for the Environment, Mr Abdullah Tarmugi, that the environment will not be that good for living and that converting the island into a tourist asset was not considered useful or beneficial.

86 I note that Mr Tarmugi's statement was made in Parliament over 30 years ago. There are more recent documents cited by CGS showing that there are now inter-tidal walks to explore marine life at SL[27], fish farming at SL[28], and plans to explore developing a solar farm on part of SL[29]. Q&Q do not dispute the authenticity of such documents. Instead, Q&Q submit that these activities do not take place on where the SMK3 Works are taking place but on other parts of SL.

87 However, the presence of such activities on SL, in proximity to the landfill sites on SL, suggests that the landfill sites on SL are not as toxic as Q&Q make it out to be.

88 Furthermore, given that time is needed after landfilling before the land can be converted to human use, it is not surprising that there are no activities on the landfill site yet. The adjudicator, Mr Low Tien Sio, who is the former

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26 NEA Tender Documents at part 2, para 3.3.

27 Mr Choo 2nd affidavit Tab 9.

28 Mr Choo 2nd affidavit Tab 9.

29 Mr Choo 2nd affidavit Tab 6 and 7.

Deputy CEO of Sentosa Development Corporation and Deputy Chief Executive of the Land Transport Authority Singapore, had observed at [51] of the AD:

> Even when the land reclamation is completed there will be an extensive period of time before any load bearing structure is constructed on the site of the reclaimed land. This is to allow for natural consolidation of the material that was used for landfill and reclamation and the process does take a long time.

89 It was not contended by Q&Q that the adjudicator was wrong in making this observation.

90 More importantly, the joint news release by NEA, JTC, Shell and EMA states that they are exploring "developing a solar farm on part of Semakau Landfill", and not the un-reclaimed part of SL. The news release further states that the "solar farm will also be the first large-scale solar project in Singapore where a sanitary landfill is also used for clean energy generation"[30]. This indicates that there are plans for human activities on the sanitary landfill sites on Semakau. Q&Q suggest that the toxic materials mentioned in the NEA Tender Document for use as landfill renders the SMK3 Works landfill unsuitable for human activities. However, it is NEA, jointly with other government agencies, that states that there are plans for a solar farm on the sanitary landfill on SL.

91 I therefore find that Q&Q has not shown that the landfill at the SMK3 Works site is so toxic that it is unsuitable for human activities. On the evidence before the court, I am satisfied that the SMK3 Works fall under the definition of "construction works" under s 3(1)(d) of SOPA, as being "land reclamation" works.

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30 Mr Choo 2nd affidavit Tab 6.

Conclusion

92 For the reasons above, I find that Q&Q has not succeeded in setting aside the AD. SUM 1388 is dismissed. Parties are to file their written submissions on costs within 7 working days of this Judgment, if they are unable to agree on costs.

Kwek Mean Luck
Judge of the High Court

Edwin Lee, Amanda Koh and Smrithi Sadasivam (Eldan Law LLP) for the claimant;
Christopher Chuah, Michael Leong and Terrence Ng (Christopher Chuah Law Chambers LLC) for the respondent.