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

[2024] SGHC 187

Originating Application No 381 of 2024

Between

Tid Plus Design Pte Ltd

… *Applicant*

And

Kwek Seng Wee John

… *Respondent*

JUDGMENT

[Building and Construction Law — Building and construction contracts — Renovation contracts and contracts for minor works]

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Tid Plus Design Pte Ltd
v
Kwek Seng Wee John

[2024] SGHC 187

General Division of the High Court — Originating Application No 381 of 2024
Mohamed Faizal JC
11 June 2024

23 July 2024 Judgment reserved.

Mohamed Faizal JC:

1 Singapore boasts one of the highest rates of home ownership internationally, with some 90% of resident households living in owner-occupied homes. These high rates have resulted in the home renovation process becoming a somewhat ubiquitous experience in the domestic context, a rite of passage for an overwhelming proportion of homeowners. Unfortunately, though perhaps unsurprisingly, the frequency of home renovation disputes reflects the prevalence of this activity, with renovation work consistently eliciting the highest number of complaints from consumers. In response, Singapore's consumer watchdog, the Consumers Association of Singapore ("CASE"), has advised consumers that they should avoid large upfront prepayments in renovation contracts, and "should instead be making payments progressively as

each stage of the work is completed."[1] That, however, potentially creates yet another problem: *who* defines when each stage of work is completed such that the next progress payment becomes due? These issues, and more, come to the fore in this case.

Facts

2 The applicant is Tid Plus Design Pte Ltd ("the Applicant"), an interior design firm hired by the respondent ("the Respondent"). In this application, the Applicant seeks leave to appeal against a decision of the Magistrate Court. The facts of this case have been set out in some detail in the District Judge's decision (*Tid Plus Design Pte Ltd v Kwek Seng Wee John* [2024] SGMC 22) (the "GD"), and for present purposes, I will do no more than summarise the more salient points.

3 The dispute in this case arises from a renovation contract signed between the parties sometime in or around August 2021 ("the renovation contract") for the Applicant to renovate the Respondent's house ("the property"). The renovation contract was a product of several rounds of discussions between the parties based on an initial contract prepared about four months prior, *ie* in or around April 2021.

4 Under the renovation contract, the finalised scope of works cost $82,051.80 ("the Contract Price"). As is typical in such contracts, the payments for work done were staggered across multiple stages. The Respondent was to make 10% payment at the signing of the renovation contract, 40% at the commencement of actual works, and then another 45% upon the completion of

[1] https://www.todayonline.com/singapore/complaints-against-renovation-contractors-first-half-2022-28-last-year-consumer-watchdog-1955306.

wet works ("the third instalment"). Thus, under the renovation contract, 95% of the Contract Price would have been due and owing once the wet works were completed. Subsequently, it is not in dispute that the parties agreed to vary the terms such that the sums owing at the completion of wet works would only be payable upon the completion of carpentry works (although the parties have quite different narratives for why such a variation was undertaken, these are ultimately inconsequential). As the District Judge noted, this worked to the benefit of the Respondent in so far as it meant that the payment could be delayed, since carpentry works were only slated to commence (and by extension, be completed) once the Applicant was done with the wet works.

5 The renovations commenced shortly after the signing of the initial contract. The Respondent began to observe what he considered to be substandard workmanship on the part of the Applicant, including the fact that a significant portion of the floor and carpentry works had to be either redone, rectified, or refined. As a result, the renovation was considerably delayed, causing substantial inconvenience to the Respondent, who had intended to move in with his family as soon as possible. After staying in a room at a friend's home for a period of time and storing their belongings in a storage facility in the lead-up to the move, the Respondent and his family elected to move into the property on 18 September 2021. By that time, the Respondent had already paid around $61,400, or approximately 74.8% of the Contract Price.

6 It is undisputed that upon their move-in, there remained outstanding defects. Consequently, the Respondent, through his wife, continued to seek updates on when the necessary rectification works would be carried out. These included replacing cracked tiles in the living room, installing a door stopper, and significantly (for reasons that will soon become apparent), rectifying water leakage from the level two common toilet to the level one toilet in the property.

7 The Applicant, however, refused to perform any further work, including rectification work, and instead, instructed solicitors to issue a letter demanding payment of the unpaid balance of the Contract Price of $20,651.80. When the Respondent refused to comply, the Applicant purported to terminate the renovation contract and initiated this action in the Magistrate's Court, seeking the said remaining sums. In response, the Respondent counterclaimed for the costs of rectifying the property. To demonstrate the defective nature of the works carried out by the Applicant, the Respondent engaged an independent party to conduct water ponding tests, and all three bathrooms in the property failed such tests.

The trial below

8 The District Judge correctly noted that the present case turned primarily on the matter of whether the Applicant had completed the wet works. If so, then as a matter of course, the third instalment would have been triggered (see [4] above), and the Respondent would be in breach of contract for not paying the same. Conversely, if the Applicant had not completed such wet works, it would be in breach for terminating the contract.

9 The District Judge opined (GD at [43]) that it was appropriate to use the definition of "completion" as found in Chow Kok Fong, *Construction Contracts Dictionary* (Sweet & Maxwell, 2nd Ed, 2006) at p 84, which is that the "works are ready for use or occupation with the exception of minor defects or outstanding work" that "do not detract from the enjoyment or utility of the facility". This, he noted, comports with the doctrine of substantial performance allowing for a party to sue for payment, in that the word "completion" connotes the need for the works to have been "substantially performed" (GD at [44]).

10 Applying this definition, there were undisputed serious defects in the form of waterproofing works (GD at [47]), which were undeniably part of the wet works (GD at [46]). These defects necessitated re-hacking the floor, reapplying the water membrane and cement, allowing the cement to dry, and re-tiling the floor (GD at [47]). The Applicant thus failed to substantially complete the wet works, and the Respondent was entitled to withhold the (remainder of the) third instalment as he did. It also followed that the Applicant was not entitled to the moneys it sought and was in breach of the renovation contract, therefore being liable to pay the costs of rectification. The District Judge awarded a sum of $11,957.58 for the counterclaim, though the specifics of such damages will not be discussed further as nothing turns on those findings in the proceedings before me.

11 The Applicant filed for leave to appeal against the District Judge's decision, but this was refused by the District Judge on 16 April 2024. It is in this context that the Applicant applied to this court for leave to appeal against the District Judge's decision.

Arguments on appeal

12 The Applicant argues that the District Judge erred in the following:

(a) concluding that the wet works were not completed by:

(i) using an incorrect definition of "completion" in interpreting "completion of wet works";

(ii) interpreting the scope of "wet works" inaccurately and/or asking the wrong legal questions and/or utilising faulty legal reasoning by overly focusing on the bathrooms only;

(iii) going against the single joint expert's opinion that the wet works were completed, which was accepted by both parties;

(b) failing to make a finding on whether the payment term was varied such that the third instalment was only to be paid upon completion of carpentry works instead of wet works;

(c) considering the estimated rectification costs of $16,000; and

(d) making findings in the complete absence of evidence, as well as making contradictory findings.

13 The Applicant also argues that the District Judge's decision raised a question of principle to be decided for the first time and/or raised a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. The Applicant further contends that there is inadequate case law dealing with (a) how the term "wet works" are to be understood or conceptualised when considering whether the same are "completed"; and (b) whether the definition of "completion" should be the same in the context of making of staged payments like the present case as compared to when a property is handed over to the owner for occupation.

The law on granting leave to appeal

14 To obtain leave to appeal, the Applicant would have to satisfy the court that s 21 of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") is satisfied. Section 21 of the SCJA reads as follows:

> **Appeals from District and Magistrates' Courts**
>
> 21.—(1) Subject to the provisions of this Act and any other written law, an appeal lies to the General Division from a decision of a District Court or Magistrate's Court only with the

> permission of that District Court or Magistrate's Court or the General Division in the following cases:
>
> > (a) any case where the amount in dispute, or the value of the subject matter, at the hearing before that District Court or Magistrate's Court (excluding interest and costs) does not exceed $60,000 or such other amount as may be specified by an order made under subsection (3);
> >
> > (b) any case specified in the Third Schedule.
>
> …

15 As set out in *Lee Kuan Yew v Tang Liang Hong and another* [1997] 2 SLR(R) 862 at [16], in seeking leave to appeal under this provision, the court should consider whether (a) there is a *prima facie* case of error; (b) there is a question of general principle decided for the first time (a "question of principle"); or (c) a question of importance upon which further argument and a decision of a higher tribunal would be to the public advantage ("a question of importance").

16 On whether there is a *prima facie* case of error, I adopt the key principles as set out in *Hon G v Tan Pei Li* [2023] SGHC 193 at [17]:

> 17 In addition, the DJ helpfully summarised the key principles relating to a *prima facie* case of error based on a survey of the case law as follows (see DJ's 18 April 2023 Judgment at [8]):
>
> > (a) A *prima facie* case of error must be one of law and not of fact, though permission to appeal may be granted in *exceptional circumstances* where the error is one of fact which is obvious from the record (see *Rodeo Power Pte Ltd and others v Tong Seak Kan and another* [2022] SGHC(A) 16 at [10]).
> >
> > (b) Where the error in question is an error of law, there are two conjunctive issues to consider: (i) whether the appeal is likely to succeed, which is a standard that goes beyond merely an arguable case; and (ii) whether there is a likelihood of substantial injustice if permission is not granted (see *Zhou Wenjing v Shun Heng Credit Pte Ltd* [2022] SGHC 313 at [37]).

> (c) Where it is an error of fact, the test is whether the error is obvious from the record and clear beyond reasonable argument.
>
> (d) Whether it is an error of law or an error of fact, the applicant must show something more than just his disagreement with the court's decision (see *Bellingham, Alex v Reed, Michael* [2022] 4 SLR 513 at [100]–[101]).
>
> [emphasis in original]

17 On whether the court should grant leave for matters involving a question of general principle or a question of importance, the parties before me indicated that there were no authorities that explicated in detail what this limb means, save that it is clear based on *Anthony s/o Savarimiuthu v Soh Chuan Tin* [1989] 1 SLR(R) 588 ("*Anthony s/o Savarimiuthu*") at [2] that leave should be granted where the denial "may conceivably result in a miscarriage of justice".[2]

18 While it is not correct, strictly speaking, to say that there have not been any cases that deal with this issue, it does certainly seem that there have not been many cases that have done so. It also appears that most of the cases have dealt with a "question of general principle" as distinct from a "question of importance". In my view, although these questions are technically discrete, they overlap significantly and raise similar issues that effectively call for the court to engage in a commonsensical query of whether the issue(s) in question engages a matter of some public importance. In assessing whether leave should be granted, the court should really engage in *one combined inquiry* in deciding whether a question of general principle and/or a question of importance arises in the matter before it. Some key considerations in making this determination would include:

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[2] Respondent's written submissions dated 4 June 2024 ("Respondent's written submissions") at para 12.

(a) Whether the nature of the question is such that the law is unsettled, and/or whether an authoritative decision of a superior court allows for consistency in the application of the law in the lower courts. This may, for example, arise in situations where there is a spectre of conflicting decisions in the lower courts or where the question of proper judicial interpretation of a particular phrase or provision is in some dispute (see, in this connection, the comments of this court in *Portcullis Escrow Pte Ltd v Astrata (Singapore) Pte Ltd and another* [2010] SGHC 302 ("*Portcullis*") at [5]–[6]).

(b) Whether the point in question is one of considerable difficulty or complexity. If, at the end of the day, there is an important question of law, but it can nonetheless be answered by way of recourse to the prevailing legal authorities or principles of the day, then it may not be an efficient use of judicial resources to provide leave for the purposes of answering a question that realistically lends itself to a singular, obvious, answer.

(c) Whether the question is one of sufficient generality that it is more than just descriptive but contains the necessary normative force for it to be a question of law (see *Public Prosecutor v Teo Chu Ha* [2014] 4 SLR 600 at [31]). If a question is theoretically interesting and complex, but the answer possesses limited value above and beyond the resolution of the specific dispute before the court, then leave ought not to be granted.

(d) Whether the determination of the question has broader implications than merely on the parties before the court (see *Soh Hoo Khoon Peng v Management Corporation Strata Title Plan No 2906* [2023] SGHC 355 at [41]). Put another way, one should ask whether the

answer provided, whatever that might be, can be meaningfully applied in other cases – see *Essar Steel Ltd v Bayerische Landesbank and others* [2004] 3 SLR(R) 25 at [27(b)]. As an example, this may be the case where the issue is one of interpretation of terms and phrases of a standard form contract, especially whether there exists an apparent disjunct between the lower court's approach to the question raised and what the established practice or understanding of the commercial community might be. In such a case, the assertion of such established practice or understanding must be supported by cogent evidence. To avoid doubt, I stress that the mere fact that a phrase is used in a standard contract, *per se*, would not generally suffice: *Portcullis* at [6]. This is only to be expected because there should be no general principle for any category of questions to automatically be given a right of appeal: see, in a related vein, the comments of the Court of Appeal in *Mah Kiat Seng v Public Prosecutor* [2011] 3 SLR 859 at [20].

19 Some considerations that would not be relevant in such assessments as to whether to grant leave to appeal on grounds of there being a question of general principle or a question of importance are as follows:

(a) The mere fact that a party suffered an adverse outcome in the lower court will not be relevant on its own. Parties seeking permission for leave to appeal to be granted would invariably have been impacted adversely by the outcome in the lower court, and that precisely serves as the motivation for seeking relief before an appellate court. If all that is needed is an adverse outcome, then s 21 of the SCJA becomes an automatic right of appeal, rendering the leave process entirely otiose. In those circumstances, there needs to be something more than just an adverse outcome, but one which, if not remedied, may potentially result

in substantial injustice – what that would be is necessarily fact-specific.

(b) The parties' subjective assertion, without more, that the question posed is a question of principle or question of importance will likely not be relevant. As this court once observed, albeit in the context of an application under s 60 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("the old SCJA"), which concerned a reference to the Court of Appeal regarding a criminal matter determined by the High Court in exercise of its appellate or revisionary jurisdiction, "[i]t takes only a little ingenuity to re-cast what is a straightforward, commonsensical application of principles of law to the relevant facts into an apparent legal conundrum which seemingly calls for determination by the highest court of the land" (*Ong Boon Kheng v Public Prosecutor* [2008] SGHC 199 at [14]). In the same vein, this court in *Portcullis* at [6] noted that the question of importance "is to be determined not merely by the importance one party may place on the question but rather upon whether objectively the question has such importance that a higher tribunal's decision on this question would be to the public advantage". Simply put, whether a question is one of principle or one of importance is to be determined objectively, not subjectively.

(c) The mere fact that a particular phrase or contractual term has not been interpreted judicially before, and in that sense, is novel, is, without more, not likely to be of much relevance. Indeed, almost every question of fact, or every application of law to fact would be novel on some level. Just as no two snowflakes are the same, so too no question of fact, or application of the law to a particular set of facts, or even how a question of law is cast, will be exactly the same. It is precisely for that reason that our courts have taken pains to emphasise, albeit once more in the context

> of applications under s 60 of the old SCJA, that the absence of a judicial interpretation of any particular provision *per se* would not be a reason to allow an application for the matter to be heard by a higher tribunal (see *Abdul Salam bin Mohamed Salleh v Public Prosecutor* [1990] 1 SLR(R) 198 at [30]).

20 I stress that none of the factors I have set out in the preceding two paragraphs are determinative. What suffices such that a court should grant leave to appeal would ultimately turn on where the equities would lie on the specific facts and circumstances before it, such that substantial injustice is not occasioned by the deprivation of leave: see *Anthony s/o Savarimiuthu* at [8] and *Pandian Marimuthu v Guan Leong Construction Pte Ltd* [2001] 2 SLR(R) 18 at [11].

My decision

21 Broadly speaking, the Applicant contends that in reaching the conclusion that the wet works were not "completed", the District Judge made numerous errors of fact and law. In particular, the Applicant raises what it claimed to be four broad areas of *prima facie* errors, and an argument for why the decision of the District Judge raised a question of principle and/or a question of importance. I address the Applicant's contentions on appeal in turn.

Whether the District Judge erred in concluding that the wet works were not completed

22 The Applicant's main argument, and the one that the parties largely focused on during the hearing before me, is that the District Judge had used an incorrect definition of "completion". This encompasses three discrete but related planks.

23 The first plank of the argument is that the District Judge purportedly erred by defining "completion" as encompassing an element of fitness for occupation.[3] This, the Applicant contends, is the upshot of the District Judge's view that "completion" encompasses that the property be "ready for use or occupation". The Applicant asserts that such a standard would be impossible to meet and impracticable in the context of staged or progress payments. This is because upon the completion of wet works, the property would be in an uninhabitable state. There would still be other renovation works to be done (*eg*, carpentry works), and before these works are completed, the property would not be ready for use or occupation.

24 With respect, this argument against the definition adopted by the District Judge is untenable, simply because the definition already addresses the ostensible problem raised by the Applicant. The definition of completion is that "*the works* are ready for use or occupation *with the exception of* minor defects or *outstanding work*" that "do not detract from the enjoyment or utility of the facility" [emphasis added]. Two points are immediately apparent:

(a) The definition does not contemplate that the property is ready for use or occupation. Instead, the focus is on the *works*.

(b) The definition also creates an exception for outstanding work, *ie*, work that is not yet completed.

Hence, pursuant to this definition, it is irrelevant that the property would still be uninhabitable right after the completion of wet works due to other outstanding renovation works. The question is whether the parts of the property completed

[3] Applicant's written submissions dated 4 June 2024 ("Applicant's written submissions") at para 36.

by the *wet works* are ready for use, not whether *the entire property* is ready for use.

25 I acknowledge that the District Judge's GD alluded to whether the *entire property* was ready for use. Even so, contrary to the Applicant's submission, the District Judge did *not* suggest that "completion" in the context of staged payments means that after completion of *each* stage, the property *as a whole* must be in a habitable state. Instead, his point was that the waterproofing works were so shoddy that it "substantially deprived the [Respondent] and his family of access to proper sanitation in their house" (GD at [47]). Thus, *even after all other works* (*eg*, carpentry) have been completed, the property without proper sanitation would *still* be "not objectively suitable for occupation" (GD at [47]).

26 Consistent with my understanding of the definition at [24] above, the District Judge's simple point was that "completion" of any stage of the renovation, for staged payments, must essentially connote *substantial* completion of such a stage, such that the work for *that stage* is largely complete, less minor defects (see GD at [65]). Such a view is, with respect, perfectly legitimate and entirely appropriate. As I had noted to the parties during the hearing before me, any other position – *eg*, that the wet works are deemed "complete" just because a contractor says so, such that the contractor is at liberty to demand the progress payment and move on to the next stage of the renovation just because he can – would reward shoddy contractors who incompetently discharge their duties at each stage with a view to just claiming the progress payments. This is neither sensible nor could it have been intended by the parties. To be fair to the Applicant's counsel, after I raised this point to him, he conceded that there must be some objective element in the form of substantial performance inherent in the analysis of whether works are complete. However, since it is undisputed that the waterproofing matter amounted to a "major

defect", the District Judge was entitled to conclude that the wet works were not "complete" for lack of substantial performance. In this connection, the District Judge's allusion to the property's fitness for occupation was only being used by him to illustrate the point that the wet works were so shoddy that even after the outstanding works are completed, the property would still not be objectively habitable.

27 I turn now to the second plank, under which the Applicant contends that the District Judge incorrectly understood the term "wet works", in that the term actually encompasses wet works done for the entire property and not just the bathrooms.[4] Based on this allegedly correct understanding of "wet works", the incomplete or defective work constituted just a minor proportion of the wet works, so the wet works were in fact "substantially completed" despite the defects in the bathrooms. The Applicant further argues that, pursuant to the test in *Bolton v Mahadeva* [1972] 1 WLR 1009 which considers, in determining whether there was substantial performance, the nature of the defect and the proportion of the rectification costs out of the contract price, the defects in the *bathrooms* did not mean that the wet works for the *entire property* were generally ineffective for its primary purpose.[5]

28 I reject this argument. I agree that "wet works" refer to such works for the entire property and not just the bathrooms. However, if one part of the wet works is incomplete to the extent that such non-completion alone constitutes a *major defect*, then it would be absurd to suggest that the works have been completed notwithstanding that defect. Despite both parties agreeing that the failed waterproofing was a major defect, the Applicant still asserts that "there is

4 Applicant's written submissions at para 34.

5 Applicant's written submissions at para 21.

absolutely no evidence whatsoever that the Respondent was unable to use any of the bathrooms for the purpose it was intended for", nor did "members of his household suffered any inconvenience or discomfort in the usage of the bathrooms".[6]

29 With respect, this bare assertion flies in the face of the evidence showing that all three bathrooms suffered from considerable water leakage. The Respondent and his family would be unable to use the bathrooms without the fear of damaging the surrounding structures of the property and beyond: see GD at [47]. As the District Judge noted, even if the Respondent and his family *had* used the bathrooms, they would essentially have been forced to unfairly run the risk of damaging the surrounding structures of the property and beyond due to the lack of practical alternatives: see GD at [55]. In these circumstances, it does not lie in the Applicant's mouth to say that the bathrooms could be used as intended.

30 The third plank pertains to the District Judge purportedly not accepting the undisputed evidence of the single joint expert. On this front, the Applicant argues that the single joint expert had concluded that the wet works were completed.[7] He also testified that carpentry works could only possibly proceed after wet works were completed.[8] The Applicant claims "[t]his is a more important point than it first appears to persons not within the industry" as it is "technical knowledge solely within the purview of the [single joint expert]".[9]

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6 Applicant's written submissions at para 21.

7 Applicant's written submissions at para 27; Certified Transcript dated 4 September 2023 at p 22, lines 7–9.

8 Applicant's written submissions at para 28; Certified Transcript dated 4 September 2023 at p 20, lines 16–27.

9 Applicant's written submissions at para 28.

Consequently, the Applicant claims that there was no basis for the District Judge to reject the expert opinion.

31 I disagree. In my view, when closely analysed, the opinions of the District Judge and the single joint expert do not contradict each other. When the question was posed to the expert in this case about whether the wet works were completed,[10] a question he answered in the affirmative, he was doing nothing more than opining on the matter of whether the works were factually undertaken. Indeed, during the hearing before the District Judge, the single joint expert explained that works could be considered completed even though they were badly done: GD at [59]. The District Judge rightly noted that the single joint expert was not asked to answer the question of "completion" by reference to its objective meaning of completion as established by the authorities and the parties' discussions: GD at [59]. In fact, the single joint expert took pains at various junctures to stress that he was not qualified to comment on the issues of legal liability and on when payments would be due, noting that these matters were ultimately to be assessed by the court.[11] This being the case, the single joint expert's finding that the works were completed (albeit badly) was not inconsistent with the District Judge's finding that on the *contractual meaning* of "completion" in this case, the works were not completed.

32 For completeness, even if the appointed expert had opined on the matter of whether payment ought to be due as a matter of law, I fully agree with the District Judge that the word "completion" entails considerations of both fact and law. While an expert would be technically competent to advise on technical issues (*eg*, the nature of the defect, how serious it was), the court is the ultimate

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10 Certified Transcript dated 4 September 2023 at pp 20–21.

11 Certified Transcript dated 4 September 2023 at p 54, lines 5–14.

arbiter of whether the works were, legally and contractually speaking, completed. Expert evidence is useful to shed light on areas within the specific domains of expertise, but the specific area in dispute here ultimately requires not just technical expertise and know-how, but legal and human judgment.

33 The above reasoning effectively disposes of the primary argument advanced by the Applicant. The arguments above, the Applicant conceded in the hearing before me, were the primary arguments in support of its application for leave. Nonetheless, as the Applicant raised a variety of secondary issues before me and in its written submissions, I will deal with them briefly, before turning to the broader question raised by the Applicant about the importance of some of the issues raised in this case.

Whether the District Judge erred in not making a specific finding on whether the third instalment was varied to be paid upon completion of carpentry works

34 The Applicant contends that the District Judge failed to make a finding on whether the renovation contract was varied for the third instalment (45% of the Contract Price) to be paid upon completion of carpentry works instead of wet works, even though the Applicant had pleaded and argued in its closing submissions that there was such a variation.[12] This would have made a material difference to the result, claims the Applicant, because if there were no major defects in the carpentry work, it would follow that the third instalment was due upon the completion of carpentry works.

35 With respect, this argument is unsustainable. As the District Judge rightly noted, the effect of the varied payment terms is that the third instalment

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12 Applicant's submissions at para 23.

becomes due only after the completion of *both* the wet works *and* the carpentry works (GD at [8]). In my view, this must be what the parties had contemplated, because the carpentry works were slated to begin only *after* the factual completion of the wet works. Since the wet works remained incomplete for the reasons I have stated earlier, the Respondent is under no obligation to pay the (remainder of the) third instalment.

Whether the District Judge erred in considering the estimated rectification cost of $16,000

36 The Applicant further takes issue with the fact that the District Judge appeared to place weight on the totality of the rectification cost, and in particular, his observation that the total cost of rectification would be in the range of $16,000 to $18,000 (GD at [48]). The Applicant's point is that the cost of rectification that ought to be considered for the purposes of determining whether the wet works were completed is the cost of rectification of the waterproofing works, rather than the entire cost of all defects including minor ones. It is not in dispute that the cost of rectification of the waterproofing would be around $6,000.

37 While I agree with the Applicant's argument that the only number of relevance (if at all) is $6,000 and not $16,000 to $18,000, it is clear the District Judge was using the quantum in question purely to make a tangential point that the defects were not trivial from a compensatory perspective. As far as I can tell, the District Judge did not place much weight on this quantum in determining whether the wet works had been completed. Even if he did place some weight on it, this was clearly, at its highest, a subsidiary consideration on the District Judge's part and would therefore be nothing more than a minor error. I would therefore be slow to grant leave on that basis.

38 As an aside, I should caution on a broader level that one should be slow to place too much weight on the quantum of rectification costs in considering whether the works were complete. To be sure, the potential cost of repairs can, at times, be a useful proxy (or at least one indicator) of whether the defects were significant. However, numbers may not always provide the full picture, and the mere fact that the rectification cost is significant is *not per se* a reflection of whether there were any major defects or lack of substantial performance, such that progress payments would not be due. After all, in a situation where there are many minor defects, the fact that the cost of rectifications for these defects may potentially add up to a considerable sum may not, on the very same facts, change the reality that the defects are, when seen in context, minor and thus do not detract from substantial performance.

Whether the District Judge erred in making findings in the absence of evidence and in making contradictory findings

39 The Applicant also contends that the District Judge made findings on how the property had improper sanitation and was thus objectively unsuitable for occupation due to the defects, despite no evidence having been led on this point.[13] The Applicant further avers that the District Judge did not consider whether and how it could be that the Respondent was able to stay in the property from the date they had moved in to the date at trial if this was in fact the case.[14] This, the Applicant contends, is contradictory to the idea of the property not having proper sanitation or being unfit for occupation.

40 With respect, I am unable to agree that there is anything contradictory or problematic about the findings in question. There was no dispute that the

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13 Applicant's written submissions at para 41.

14 Applicant's written submissions at para 43.

evidence before the District Judge showed that the defects meant that the water used in the bathroom would leak into the supporting structures. In short, the evidence clearly paints a picture of the Respondent and the other occupiers facing a painful Hobson's choice – either use the bathroom to address one's basic human needs and run the high risk of causing damage to the property, or not use the bathroom and be deprived of access to sanitation facilities. It is hard to see how anyone can describe either situation as allowing for "proper sanitation". That the Respondent and family decided to move in despite the defects is neither here nor there – as the Respondent testified, given the realities of the rental market, and the unviability of having his entire family live with a friend for an extended period of time, there was simply no other practical choice. The District Judge was thus entitled to find that the property lacked proper sanitation and was objectively not suitable for occupation.

41 For the above reasons, I accept the Respondent's submission that there is "no error of any kind" in the District Judge's decision,[15] be it in fact or in law. As such, the Applicant cannot seek leave to appeal on the basis that there is a *prima facie* case of error.

Whether the District Judge's decision raises a question of principle or a question of importance

42 Finally, I turn to the Applicant's contention that there is a question of principle or a question of importance.

43 The Applicant contends that there is inadequate case law on how the term "wet works" is to be understood when considering whether the same are

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15 Respondent's written submissions at para 15.

"completed".[16] The Applicant also suggests that, due to the District Judge's decision below, there is a lack of clarity on whether the definition of "completion" in the context of staged payments is different from the situation where a property is handed to the owner for occupation.[17] The Applicant further asserts that there is a disjunct between how persons in the industry and the District Judge understand the phrase "completion of wet works", and that:[18]

> [t]his disjunct in understanding potentially causes confusion throughout the entire construction industry, particularly in situations such as the present case where a private home owner engages an interior design firm to execute construction work. In such situations, unlike larger developer projects, there is no independent third party professional such as an architect who issues certificates of completion at different stages of the construction project. "Completion of wet works" remains a common term used among such smaller-scale construction engagements.

44 In the affidavit seeking leave to appeal, the director of the Applicant also noted that the following question raised in this case has never been considered by the courts before: "what is the correct interpretation of the phrase 'completion of wet works' in a contract such as that between the [parties] where the renovation works are small in scale and does [*sic*] not involve third party professionals as surveyors or architects certifying completion of each stage of the construction project?"[19]

45 As noted earlier, where a decision is being challenged and leave to appeal is required, the parties may have a penchant to overstate the legal implications of discrete decisions or to characterise factual issues as

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16 Applicant's written submissions at para 46.

17 Applicant's written submissions at para 46.

18 Applicant's written submissions at para 47.

19 1st Affidavit of Yim Kai Wei dated 22 April 2024 at para 14.

encompassing broader questions of law and principle (see also *Xu Yuanchen v Public Prosecutor* [2024] SGCA 17 at [2]). In this regard, as explained earlier, a party's subjective assertion that there is a question of importance, or the mere fact that a particular phrase has not been judicially interpreted, is not relevant in itself (see [19(b)]–[19(c)] above). On the present facts, it is important to note that the Applicant, in presenting these questions, does *not* contest that substantial performance is an element in defining "completion". Instead, the Applicant argues that "completion" does not involve an element of "fitness for occupation".

46 With this in mind, I find that there is no question of principle or question of importance arising on the present facts:

(a) I have already found that the District Judge did not intend to add an element of "fitness for occupation" into the definition of "completion". Rather, the District Judge alluded to this element simply to emphasise that the major defects meant that the wet works would remain incomplete even after other outstanding works (*eg*, carpentry works) were completed (see [26] above). The question of whether completion involves an element of "fitness for occupation" is thus moot.

(b) The District Judge answered the question on the definition of "completion of wet works" using the prevailing legal authorities and interpretive principles of the day. His definition of "completion" was consistent with the established doctrine of substantial performance. As such, this is, in my judgment, not a case where the law is unsettled (see [18(a)] above) or where the question is of considerable difficulty or complexity (see [18(b)] above). Moreover, I see no issue with applying that definition to staged payments. As I earlier stated at [24]–[26] above,

> that definition contemplates substantial completion of the works at *each stage*, and not necessarily the entire property. I have also found that this is what the District Judge meant. As such, the Applicant's argument that the definition is impossible or impracticable to meet for staged payments does not hold water.

47 I also do not agree that the purported disjunct between the District Judge's and the single joint expert's view regarding "completion of wet works" raises a question of principle or a question of importance. I have already stated (at [31] above) that these views, when understood in their proper context, do not contradict each other – the single joint expert was merely looking at whether the works had been factually undertaken. He did *not* opine that the contractual or legal meaning of "completion of wet works" meant merely the factual undertaking of such works, without regard for substantial performance of the wet works. The single joint expert's evidence thus cannot be taken to establish any practice or rule of interpretation. Besides, the definition of completion under the law or the renovation contract is, as I elucidated above, for the court and not for the expert to decide, and it was hence well within the District Judge's purview to decide that the contractual meaning of "completion" involves an element of substantial performance (see [32] above). Even if there is a legal question that arises, in so far as the Applicant suggests that a renovation contractor or interior designer should be afforded *carte blanche* authority to define when each stage is completed, however incompetent such renovation might be, I would disagree with the Applicant. There is little evidence before me suggestive of any industry standard within the renovation community that supports such an assertion. I note that the director of the Applicant has, in his affidavit, contended that "the decision of the [District Judge] comes as a surprise to the [Applicant] as well [as] to many of the [Applicant's] contacts within the

industry" as it is contrary to industry practice,[20] but this is an unsupported and bare assertion which appears to be founded largely on self-interest.

48 In any event, *even if such practice exists* (which is highly doubtful), I am not inclined to elevate such practice to a legal rule, principle or definition. Indeed, as I noted earlier, counsel for the Applicant accepted during the hearing before me that some objective standard other than that of the renovation contractor's own subjective opinion should be the determinant of whether specified works were completed.[21] He argued that the expert was the objective standard in this case, but, as I explained above, it is for the court, not the expert, to set the objective standard of what constitutes completion of renovation works, and determine whether that standard is met on the facts. The court may derive assistance from experts in reaching such determination, but the court (and not the experts) remains the ultimate decision-maker on this front.

49 To avoid doubt, nothing I have said thus far should detract from the position that minor defects should not bar a contractor from seeking such progress payment. This is because in any renovation, there would inevitably be niggling issues that are most sensibly addressed once the renovation is complete or near complete. This also comports with the doctrine of substantial performance. I thus agree with the Applicant that a perfect standard cannot be expected at each stage of the construction process, and where the issues are not major in nature, a contractor remains at liberty to obtain payment. That, however, is simply not the case here.

50 I would add that what is sauce for the goose is sauce for the gander and

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[20] 1st Affidavit of Yim Kai Wei dated 22 April 2024 at para 12.

[21] Minute Sheet dated 11 June 2024 at p 2.

the customer must also play by the same rules – if, indeed, a property owner were being truly unreasonable and withholding progress payments for even minor cosmetic or aesthetic flaws (which are to be expected in most renovations before the necessary touch-ups are done prior to handing over, or immediately after), then he would of course be liable to face damages and a suit in the manner taken out by the Applicant here. To understand what that means on the present facts, if, for example, the waterproofing issue did not exist, it would appear that the wet works and carpentry works would have been substantially performed. The Respondent would accordingly have no basis for withholding the (remainder of the) third instalment just because there were other minor defects in the property, including cracked tiles, repainting works and filing the edges of the tile skirting. Just as an unreasonable contractor cannot demand payment for incomplete works (*ie*, works that are not substantially performed), an unreasonable customer likewise cannot hold the contractor hostage on minor issues that are more sensibly resolved after the renovation is substantially performed or completed. Such a middle-ground approach ensures that both parties take a reasonable and balanced approach to these matters.

51 I would finally note that there are other less central issues raised by the Applicant in their submissions on matters such as wrongful reliance on case law. These issues are at best tangential and fall far short of the standard for leave to be granted. In my judgment, even if I accepted those arguments in their totality, it would not move the needle on whether leave to appeal should be granted. In line with this, as I noted earlier, the Applicant's counsel in the hearing before me accepted that his main argument concerns the issue of whether the District Judge erred in concluding that the wet works were not completed, and the manner in which he arrived at that conclusion.

Conclusion

52 For the reasons above, I agree with the decision of the District Judge on the matters relevant to this application. To my mind, in view of the analysis above, it is clear that no substantial injustice would be occasioned by the deprivation of leave (see [20] above). I therefore dismiss this application.

53 I will consider the issue of costs separately.

Mohamed Faizal
Judicial Commissioner

Leow Zhi Wei Nicholas (Netto & Magin LLC) for the applicant;
Sim Jin Simm Alina (Axis Law Corporation) for the respondent;