

9/82

No. 21 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

LOKE HONG KEE (S) PTE. LIMITED

Appellants
(Claimants)

- and -

UNITED OVERSEAS LAND LIMITED

Respondents
(Respondents)

RECORD OF PROCEEDINGS

PARKER GARRETT & CO.
St. Michael's Rectory,
Cornhill,
London, EC3V 9DU

Solicitors for the
Appellants

COWARD CHANCE,
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Solicitors for the
Respondents

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E X H I B I T S

<u>Exhibit Mark</u>	<u>Description of Document</u>	<u>Date</u>	<u>Page No.</u>
"A"	Articles of Agreement (Building Contract)	8th March 1974	82
"B"	Supplemental Agreement	23rd March 1976	133
"C"	Liquidated Damages Agreement	1st April 1976	146
"D"	Letter from Palmer & Turner to Respondents	1st March 1977	149
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DOCUMENT TRANSMITTED TO THE JUDICIAL COMMITTEE BUT NOT REPRODUCED

<u>Description of Document</u>	<u>Date</u>
Certificate for Security for costs	2nd November 1979

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

LOKE HONG KEE (S) PTE LIMITED Appellants
(Claimants)

- and -

10 UNITED OVERSEAS LAND LIMITED Respondents
(Respondents)

RECORD OF PROCEEDINGS

This document did not form part of the Case Stated and was not before either of the Courts below.

No. 1

MEMORANDUM OF AGREEMENT

In
Arbitration
No.1
Memorandum
of Agreement
26th July
1977

20 A Memorandum of Agreement made this 26th day of July One thousand nine hundred and seventy-seven (1977) between LOKE HONG KEE (S) PTE. LTD. of 189 Clemenceau Avenue, Singapore 9 and UNITED OVERSEAS LAND LIMITED of Mezzanine floor, Hotel Merlin, Beach Road, Singapore 7.

30 WHEREAS disputes and differences have arisen, and are still subsisting, between the abovementioned parties in respect of a Building Contract entered into between these parties for the construction of a high rise residential building project at Lot 325 Cairnhill Road, Singapore 9 known as Cairnhill Plaza, which Contract was supplemented by a Supplemental Agreement dated 23rd day of March 1976

IT IS HEREBY AGREED by and between these parties to refer all disputes and matters in difference between them in relation to the aforementioned construction project, Building

In
Arbitration
No.1
Memorandum
of Agreement
26th July
1977
(continued)

Contract and Supplemental Agreement to the
award, order and final determination of
Mr. Hiew Siew Nam of 12 Siglap Avenue,
Singapore 15 as sole arbitrator.

IN WITNESS whereof the said parties have
hereunto set their hands the day and year
first above written

Signed by Francis Loke)
on behalf of Loke Hong) Sd.
Kee (S) Pte. Ltd. in)
the presence of :-) 10

Sd. C.S. Wu
C.S.WU
Solicitor Singapore

Signed by Michael I.H.)
Lie on behalf of United) For UNITED OVERSEAS
Overseas Land Limited) LAND LIMITED
in the presence of :-) Sd. M.I.H.Lie
Assistant General
Manager 20

Sd.
(Development Manager)

No.2
Amended
Points of
Claim
15th December
1977

No. 2

AMENDED POINTS OF CLAIM

1. The Claimants are and were at all material
times Building Contractors, and the Respondents
are and were at all material times Property
Owners and Developers.

2. By an Agreement in writing dated 8th
March 1974 entered into between the Claimants
and Respondents (under the Respondents' former
name of Faber Union Limited), the Claimants
agreed to erect and complete for the Respondents
a thirty-five storey apartment complex known
as Cairnhill Plaza on Lot 325 Cairnhill Road,
Singapore 9 for the contract sum of
\$26,903,379.00. The terms of this Agreement
were subsequently modified by a Supplemental
Agreement entered into between the Claimants
and the Respondents dated 23rd March 1976. The
Claimants will refer to the full terms and
effect of these Agreements at the hearing of
this arbitration. 30 40

3. In pursuance of the terms agreed, the Claimants proceeded with their construction work until their employment was wrongfully terminated by the Respondents on 1st March 1977 by a letter to Claimants dated the same day.

10

4. At the date of termination of the Claimants' employment by the Respondents, the Claimants had performed work and supplied materials as undertaken by them under the said Agreements amounting to a total value of \$17,678,478.25, for which the Respondents had paid to the Claimants a sum of \$14,021,698.89, leaving a balance of \$3,656,779.36 still due and owing. Particulars of this head of claim are set out in Schedule I hereto annexed.

4. A In addition to the amount claimed in the preceding paragraph, the Claimants claim from the Respondents a further sum of \$255,644.67 representing the balance due for the tiling works carried out by the nominated tiling contractors Meika Contractors & Co. (Pte) Ltd. particulars of which are as follows :-

1.	For works done up to 28/2/77 based on contractual rates. As per Meika's bill of 19/5/77	\$365,453.77
2.	Extra rates above contract rates for work done from 17/3/76 to 28/2/77. As per Meika's bill of 6/4/77	\$119,708.00
	Total:	<u>\$485,161.77</u>
	Less: amount received:	<u>\$229,517.10</u>
	Balance due:	<u>\$255,644.67</u>

5. By virtue of the Respondents' wrongful termination of the Claimants' employment as aforesaid, the Claimants have suffered loss and damage arising therefrom, and particulars of this head of claim are set out in Schedule II hereto annexed, amounting to \$1,667,987.23, which includes a claim for \$711,786.25 for loss of profit for the wrongful deletion of the tiling works from the original contract works by the Respondents (item 4 in Schedule II).

6. In the premises, the Claimants claim from the Respondents -

In
Arbitration
No.2
Amended
Points of
Claim
15th December
1977
(continued)

- (i) Under paragraph 4 hereof, the sum of \$3,656,779.36, and under paragraph 4(A) hereof, a further sum of \$255,644.67
- (ii) Under paragraph 5 hereof, the sum of \$1,667,987.23 or alternatively, General Damages for breach of contract
- (iii) Interest in respect of the sums claimed and
- (iv) Costs.

10

~~Dated this 21st day of June, 1977~~

Re-dated this 15th day of December, 1977

Sgd. Donaldson & Burkinshaw
Solicitors for the Claimants

No.3
Request for
Particulars of
Amended Points
of Claim
6th February
1978

No. 3

REQUEST FOR PARTICULARS
OF AMENDED POINTS OF CLAIM

UNDER PARAGRAPH 4 THEREOF AND ITEM 14
OF SCHEDULE I THERETO:

20

1. Of the materials alleged to have been supplied in respect of which there was a variation of prices:

- (a) identify the material;
- (b) the date or dates on which the materials were supplied and
- (c) the amount or amounts thereof.

2. Of the labour alleged to have been supplied in respect of which there was a variation of prices:

- (a) identify the kind of labour;
- (b) the date or dates on which the labour was supplied and
- (c) the rates charged in arriving at the sum of \$4,912.80.

30

Dated this 6th day of February 1978.

Signed Shook Lin & Bok
Solicitors for the Respondents

To The Arbitrator Mr. Hiew Siew Nam, Singapore
And to the abovementioned Claimants and their
Solicitors, Messrs. Donaldson & Burkinshaw,
Singapore.

No. 4

FURTHER AND BETTER PARTI-
CULARS OF THE AMENDED
POINTS OF CLAIM

In
Arbitration

No.4
Further and
Better Parti-
culars of
the Amended
Points of
Claim

Served pursuant to a Request made by the Respondents' Solicitors dated 6th February, 1978.

15th February
1978

10

The following are the particulars of the Amended Points of Claim -

The variation of prices as to materials and labour referred to under paragraph 4 thereof and item 14 of Schedule I thereto is based on CKP's Valuation Certificate No. 37 dated 11.2.77 as adopted by Pakatan in their measurements.

Served this 15th day of February, 1978

Sgd. Donaldson & Burkinshaw
Solicitors for the Claimants

20

To The Arbitrator Mr. Hiew Siew Nam, Singapore.
And to the abovementioned Respondents and their Solicitors, M/S Shook Lin & Bok, Singapore.

No. 5

FURTHER RE-AMENDED POINTS
OF DEFENCE AND COUNTERCLAIM
(WITHOUT ANNEXURES)

No.5
Further Re-
Amended
Points of
Defence and
Counterclaim
(without
annexures)

Amended in red dated 25.11.77

Re-amended in green dated 28.12.77

23rd May 1978

30

Further Re-amended in violet dated
23.5.77

1. The Respondents admit paragraph 1 of the amended Points of Claim

2. The Respondents admit that :-

(a) By an Agreement in writing (hereinafter called "the Principal Agreement") dated the 8th March 1974 but made between the Claimants and Respondents (under the Respondents former name of Faber Union Limited) in October 1973 (the full terms and conditions

40

In
Arbitration

No.5
Further Re-
Amended
Points of
Defence and
Counterclaim
(without
annexures)

23rd May
1978

(continued)

of which the Respondents will at the hearing of the Arbitration refer) the Claimants agreed (subject to the conditions annexed thereto) to carry out and complete for the Respondents the Works specified therein (hereinafter called "the Works") for the sum of \$26,903,379.00.

(b) The Claimants and the Respondents on or about the 23rd day of March 1976 entered into a Supplemental Agreement dated the same date (the full terms and effect of which the Respondents will at the hearing of the Arbitration refer). 10

3. Save that the employment of the Claimants was terminated by the Respondents on the 1st day of March 1977 by letter of the Respondents to the Claimants dated the same day, paragraph 3 of the amended Points of Claim is denied. In particular the Respondents on the grounds appearing in paragraphs 4 to 10 hereinafter appearing deny that the termination of the employment of the Claimants was wrongful. 20

4. By Clause 21(1) of the Principal Agreement it was expressly provided that the Claimants shall regularly and diligently proceed with the Works and complete the same on or before the Date of Completion specified in the Appendix to the Principal Agreement (namely the 16th day of March, 1976) subject nevertheless to inter alia the provision for extension of time contained in Clause 23 of the Principal Agreement. 30

5. On or about the 13th day of January, 1975 the architect for the Works (hereinafter called "the Architect") in accordance with Clause 23 of the Principal Agreement, extended the date of completion from the 16th day of March, 1976 to the 4th day of May, 1976.

5A. By Article III of the Supplemental Agreement dated the 23rd day of March, 1976 it was provided that :- 40

(1) Immediately upon the execution of the Supplemental Agreement the Claimants should submit to the Respondents a list containing particulars relating to the total quantities of materials (as hereinafter defined) required for the completion of the

Works the prices thereof, the name of the suppliers thereof and the terms of payment as well as such necessary particulars as may be reasonably required by the Respondents.

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Arbitration

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(without
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23rd May 1978

(continued)

10 (2) For the purpose of ensuring the regular, continuous and expeditious progress of the Works, the Claimants should submit to the Quantity Surveyor (Denis J. Crisp of CKP Chartered Quantity Surveyors) for the approval of the Quantity Surveyor each week a list, stating the quantity and specification of the materials required for the Works three weeks before such materials are to be used in the Works.

20 (3) Upon receiving the approval of the Quantity Surveyor, the Respondents should purchase the materials as contained in the list from the Suppliers and make payment to the Suppliers accordingly.

6. By Article V of the Supplemental Agreement dated the 23rd day of March, 1976 it was expressly agreed as follows :-

(a) Under Clause 1 that the Claimants shall adhere to the progress of Works specified in the Third Schedule of the Supplemental Agreement to ensure that completion of the Works shall take place -

30 (i) in respect of Block 1 of the Works on or before 30th April, 1977;

(ii) in respect of Block 2 of the Works on or before 30th October, 1977.

(b) Under Clause 2 - that the Claimants shall carry out the Works expeditiously and with every diligence.

40 (c) Under Clause 3 - that in the event of progress of the Works being in the opinion of the Architect unsatisfactory and/or in the event of the Claimants failing to adhere or maintain the progress of the Works as specified in the said Third Schedule and/or upon any breach of the Supplemental Agreement by the Claimants then upon the recommendation of the Architect in writing and in addition to the Respondents' rights under the Principal Agreement the Respondents shall be at liberty to determine the employment of the Claimants under the Principal Agreement forthwith by notice in writing.

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(without
annexures)
23rd May 1978
(continued)

(d) Under Clause 4 - that upon the determination of the employment of the Claimants as aforesaid or any other determination of the employment of the Claimants the provisions of Clause 25(3) of the Principal Agreement shall apply.

(e) Under Clause 5 - that upon the said determination or any determination of the employment of the Claimants under the Principal Agreement, the Claimants shall forthwith remove all workmen from site and shall forthwith surrender the site to the Respondents and not retain possession thereof and not do anything or carry out any act of whatever kind to prevent the Respondents from taking possession of the Site or from carrying out any works therein.

10

(f) Under Clause 6 - that upon the regaining possession of the site the firm of Pakatan International Suckling McDonald & Ishak (hereinafter called "the said firm") shall within 2 weeks measure the Works as completed by the claimants and the valuation of the said firm shall be binding on both parties and shall be final and that the costs and fees of the said firm shall be borne by the parties equally.

20

7. By Article VIII of the Supplemental Agreement it was inter alia provided that:

(i) notwithstanding the provisions contained in the Supplemental Agreement the time for completion of the Works unless extended by the Architect under the Agreement shall remain as the 4th day of May, 1976 and

30

(ii) the terms and conditions of the Principal Agreement shall remain valid and binding on the parties to the Supplemental Agreement, subject to the provisions of the Supplemental Agreement particularly the additional rights and benefits of the Respondents provided in the Supplemental Agreement.

40

8. In breach of Clause 1 Article V of the Supplemental Agreement the Claimants failed to adhere to the progress of Works specified in the Third Schedule thereof and in breach of Clause 2 Article V of the Supplemental Agreement the Claimants failed to carry out the works expeditiously and with every diligence.

50

9. In addition the progress of the Works was in the opinion of the Architect, unsatisfactory.

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9A. The Claimants were in breach of the provisions of Article III of the Supplemental Agreement in that they persistently failed or neglected to comply with Clauses 1 and 2 thereof.

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Counterclaim
(without
annexures).
23rd May 1978
(continued)

10. On the 1st day of March, 1977 the Architect in writing gave the recommendation required by Clause 3 Article V of the Supplemental Agreement and the Respondents thereafter in exercise of its rights under Clause 3 Article V aforesaid on the same date terminated the employment of the Claimants under the Principal Agreement.

11. Further and in any event :

20 (a) the termination of the employment of the Claimants was justified in that on the 9th day of March 1976 the Architect had given a written notice to the Claimants under Clause 25(1) of the Principal Agreement and the Claimants had continued to default in proceeding regularly and diligently with the Works. The Respondents will further or in the alternative rely on their Notice of Termination dated the 1st day of March, 1977 (referred to in paragraph 10 hereof) as determining the employment of the Claimants pursuant to Clause 25(3) of the Principal Agreement.

40 (b) Time was of the essence and The breaches on the part of the Claimants hereinbefore specified and the failure of the Claimants to complete the Works by the 4th May 1976 coupled with the continuation of such failure till the 28th February 1977 amounted to a repudiation of the Principal Agreement by the Claimants which was accepted by the Respondents.

50 12. Save that the Respondents have paid to the Claimants the sum of \$14,021,698.89 being the total amount certified by the Architect, paragraph 4 of the amended Points of Claim is denied. The Respondents repeat paragraph 6(f) of the re-amended Points of Defence above and state that the Claimants' claim under paragraph 4 of the Points

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23rd May 1978

(continued)

of Claim is misconceived and premature in that the valuation of the Works as completed by the Claimants has yet to be finalised by the said firm. In any event the Respondents without prejudice to the generality of the foregoing denial :

(a) will contend that they are under no liability at all to the Claimants in respect of items (d), (e) and (f) of Schedule I of the amended Points of Claim and

10

(b) there has been accord and satisfaction in any case in respect of item (f) of the said Schedule I and

(c) will further seek to set off so much of its counterclaim herein as will be sufficient to satisfy the Claimants' claim for the sum of \$3,656,779.35 (which is denied).

12A. Save that the Respondents have paid to the Claimants the sum of \$229,517.10 for the works carried out by the nominated tiling subcontractor Meika Contractor & Co. (Pte.) Ltd. under the Architect's certificates and that a further sum of \$25,301.90 has been withheld as retention paragraph 4A of the amended Points of Claim is denied. In particular the Respondents deny :

20

(1) That the value of the works done by the said nominated tiling subcontractor up to the 28th day of February, 1977 based on contractual rates is \$365,453.77.

30

(2) That any extra rates above contractual rates are applicable for work done from the 17th day of March, 1976 to the 28th day of February, 1977 or otherwise.

(3) That the claim made for the bill of 6th April, 1977 amounting to \$119,708.00 is a claim for extra rates only.

40

The Respondents further contend that in any event :

(a) under the provisions of the Principal Agreement particularly the Preliminaries it is a condition precedent for the Claimants' right of payment under interim certificates

23rd May 1978

(continued)

that the Claimants should first lodge a detailed signed statement with their application to the Quantity Surveyor showing the value of work done and the Claimants have not lodged such statement with regard to the value of work done of the said nominated tiling subcontractor at the extra rates now claimed.

- 10 (b) By virtue of Clause 6 of Article V of the Supplemental Agreement the valuation of the Works including the works of the said nominated tiling subcontractor is to be carried out by the said firm which is to be final and binding on the Claimants and the Respondents and that under the preliminary valuation of the said firm the Respondents have in fact over
- 20 paid to the Claimants the sum of \$41,176.89.

13. (1) Paragraph 5 of the amended Points of Claim is denied. In particular and without prejudice to the generality of the denial, the Respondents deny :

- 30 (a) that the Claimants had suffered any loss or damage by reason of the termination as alleged in paragraph 1 of Schedule II of the amended Points of Claim in that the Claimants would not have made any profit at all if the Claimants had completed the Works.
- 40 (b) that the Respondents have wrongfully deleted from the Works the tiling works thereof in that under the terms of the Principal Agreement particularly the Contract Bills containing the provisional Bills of Quantities the Respondents were entitled to delete the tiling works without the consent of the Claimants and that the Claimants have waived their rights (which are denied) to claim any sum or damages in respect thereof by tendering for the tiling works and by, after its tender (which was unsuccessful) executing the nominated subcontract with Meika Contractors and that in any event under
- 50 the terms of the Principal Agreement the Claimants are only entitled to a profit and attendances of 3%.

(2) In further answer to paragraph 5 of the amended Points of Claim the Respondent contend that :

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(continued)

- (a) there is duplicity in the claims under item (f) of paragraph 2 of Schedule II and paragraph 4 of Schedule II and
- (b) items (k) and (l) of paragraph 2 of Schedule II have in any event been lawfully deleted from the Works by the Architect in accordance with the Principal Agreement particularly the Contract Bills containing the provisional Bills of Quantities. 10

14. The Respondents will at the hearing of the Arbitration also contend that ~~both~~ the Claimants claims in paragraphs 4, 4A and 5 of the amended Points of Claim are premature in that :

- (a) Article V Clause 4 of the Supplemental Agreement specifically provides that Clause 25(3) of the Principal Agreement shall apply (whether the termination be under the provisions of Clause 3 Article V of the Supplemental Agreement or otherwise) and 20
- (b) Clause 25(3)(d) of the Principal Agreement specifically provides that the Respondents are not bound by any provision of the Principal Agreement to make any payment to the Claimants until after completion of the Works and 30
- (c) In any event the Certificate of the Architect is a condition precedent to be fulfilled before any liability (which liability is denied) for any payment as claimed by the Claimants can arise in respect thereof.

15. Save as hereinbefore expressly admitted or which consists of admissions on the part of the Claimants the Respondents deny each and every of the Claimants' amended Points of Claim as if the same were herein set forth seriatim and specifically traversed. 40

RE-AMENDED COUNTERCLAIM

16. The Respondents repeat paragraphs 4 to 14 of the Points of Defence.

16A. The Respondents claim by virtue of the matters in paragraph 12A above the sum of \$41,176,89 as over payment.

10 17. Clause 22 of the Principal Agreement provides if the Claimants shall fail to complete the Works by the Date of Completion stated in the Appendix thereof or within any extended time fixed under Clause 23 thereof and the Architect certifies in writing that in his opinion the same ought reasonably so to have been completed, then the Claimants shall pay or allow to the Respondents a sum calculated at the rate stated in the said Appendix as liquidated and ascertained damages for the period during which the works, shall so remain or have remained incomplete, and the Respondents may deduct such sum from any monies due or to become due to the Claimants under the Principal Agreement.

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20 18. By a letter dated the 1st day of April, 1976 the full terms and effects of which the Respondents will at the hearing of the Arbitration refer, the Respondents agreed to waive their claim for liquidated damages against the Claimants under Clause 22 of the Principal Agreement provided the Claimants complete inter alia -

- (a) The Works relating to Block 1 of the Works on or before the 28th day of February 1977
- 30 (b) Block 2 of the Works on or before the 31st day of October, 1977.

40 19. It was further provided in the said letter that the Respondents shall be under no obligation at all to waive their claim against the Claimants for liquidated damages and that the Respondents' rights and the Claimants' obligation in respect thereof will be governed by the Principal Agreement and the Supplemental Agreement in the event of the Claimants failing to complete the said Block 1 and/or the said Block 2 by respectively the 28th day of February, 1977 and the 31st day of October, 1977 and/or in the event of the Claimants committing a breach of any of the terms and conditions of the said Agreements.

20. The Claimants failed to complete the Works relating to Block 1 on and/or before the 28th February, 1977.

50 21. Further and/or in the alternative in breach of Clause 21(1) of the Principal Agreement, the Claimants failed to regularly

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(continued)

and diligently proceed with the Works.

21A. Further and/or in the alternative in breach of Article V Clause 2 of the Supplemental Agreement the Claimants failed to regularly and diligently proceed with the Works. Further and/or in the alternative, in breach of Article V Clause 1 of the Supplemental Agreement the Claimants failed to adhere to the progress of Works specified in the Third Schedule.

21B. Further and/or in the alternative in breach of Article III Clause 2 the Claimants failed to submit to the Quantity Surveyor each week a list stating the quantity and specification of the materials required for the works three weeks before such materials are required for the Works. 10

22. The Respondents contend that by virtue of the provisions of the Supplemental Agreement particularly Clause 1 Article VIII and of the said letter dated the 1st day of April, 1976 the parties have agreed to dispense with or waive the necessity of the Architects' certification under Clause 22 of the Principal Agreement. In any case on the 18th day of July 1977 the Architect certified in writing that in his opinion the Works ought reasonably to have been completed on the 4th day of May, 1976. 20

23. On the basis of Clause 22 of the Principal Agreement the Claimants are liable to pay to the Respondents the following : 30

(a) in respect of the period from the 4th May 1976 to 1st March 1977 the sum of \$1,806,000.00 (being \$6,000.00 x 301 days)

(b) in respect of the period from the 2nd March 1977 to the 9th May 1977 the date of commencement of the balance of Works by the Respondents new main contractor \$408,000.00 (being \$6,000.00 x 68 days) or alternatively damages 40

(c) in respect of the period from the 10th day of May 1977 the sum of \$6,000.00 per day until completion of the Works or alternatively damages

24. It was a term of the Principal Agreement that the Claimants would carry out the Works

10 in a good and workmanlike manner. In breach of the said term the Claimants failed to carry out the Works in a good and workmanlike manner and the Respondents have suffered loss and damage by having to make good or cause to make good the defects. Particulars of the defects appear in the annexure A hereof and particulars of the costs of rectification thereof will be supplied separately in due course.

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20 25. It was further a term of the Principal Agreement that the Claimants would provide all equipment for use during construction of the Works until completion thereof and where the equipment belonged to third parties the Claimants would provide in its contract with the third parties that the equipment would be available for use by the Respondents in the event that the Claimants' employment be terminated before completion of the Works. In breach of the said term the Claimants on the 22nd September 1976 sold to Tru Mix Concrete Pte. Ltd. 2 Pecco Passenger Hoists and 2 Walco materials Hoists which were then used for the construction of the works and failed to provide in its contract with Tru Mix Concrete Pte. Ltd. that the said Hoists or any of them would be available for use by the Respondents in the event that the Claimants employment is terminated before completion of the Works and the Respondents have suffered loss and damage thereby.

PARTICULARS

Cost of purchase of the said Hoists
from Tru Mix Concrete Pte. Ltd. \$22,000.00

The Respondents will give credit for any residual value or sum realised on resale.

40 Alternatively, the Respondents claim the aforesaid sum as part of the cost to them of completing the Works but in addition to the sum of \$2,951.837.14 referred to in paragraph 30 hereof.

50 25A. By Clause 14 of the Principal Agreement and pages 7, 18 and 19 of the preliminaries the Claimants are responsible for all materials delivered to site upon the termination of the employment of the Claimants ironmongery delivered by the Nominated Suppliers thereof have been found to be either damaged or missing and the cost of replacement thereof are as specified in Annexure B.

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(continued)

26. The Respondents repeat paragraph 6(f) of the amended Points of Defence. In breach of Article V clause 6 of the Supplemental Agreement the Claimants refused to pay to the said firm one half of the fees of the said firm and the Respondents have paid such portion on the Claimants' behalf.

PARTICULARS

1/2 x \$92,500.00 (being fees paid) \$46,250.00

27. As a result of the said repudiation on the part of the Claimants of the Principal Agreement and/or the termination thereof by the Respondents, the Respondents have suffered loss and damage. 10

28. The Respondents have engaged Lim Kay Ngam (S) Pte. Ltd. to complete the balance of the Works at the fixed lump sum contract price of \$10,840,661.00 which sum includes increase of labour and material costs by three former nominated subcontractors re-engaged by Lim Kah Ngam (S) Pte. Ltd. totalling \$265,000.00 20

29. It is estimated that but for the repudiation on the part of the Claimants of the Principal Agreement and the acceptance thereof by the Respondents and/or the termination by the Respondents the costs to the Respondents if the Claimants had completed the balance of Works would have amounted to \$8,088,346.65 approximately. 30

PARTICULARS

See Annexure "C"

30. The Additional costs to the Respondents is therefore \$2,752,314.35 (\$10,840,661.00 less \$8,088,346.65) which together with additional professional fees of 7 1/4% of \$2,752,314.35 amounting to \$199,542.79 totals \$2,951,857.14.

31. As a result of the repudiation by the Claimants and or termination by the Respondents the Respondents also incurred the following expenses for the duration before the possession of the site was given to Lim Kah Ngak (S) Pte. Ltd. 40

(a) Costs of security guards	\$62,662.18
(b) Temporary Fencing	10,800.00
(c) Fire Insurance premium	6,533.00
(d) PUB/TAS charges	807.00
	<u>\$ 80,802.18</u>

And the Respondents counterclaim :

In
Arbitration

- (a) (i) Under paragraph 16A the sum of
\$41,176.89.
- (ii) under paragraph 23(a) the sum of
\$1,806,000.00 as liquidated damages
- (b) Under paragraphs 23(b) and (c)
respectively as liquidated damages the
sum of \$408,000.00 and the sum of
\$6,000.00 per day from the 10th day of
May 1977 to the date of completion or
alternatively damages.
- (c) Under paragraph 24 the costs of rectifi-
cation.
- (d) (i) Under paragraph 25 the sum of
\$220,000.00
- (ii) under paragraph 25A the sum of
\$18,168.95 and damages.
- (e) Under paragraph 26 the sum of \$46,250.00
- (f) Under paragraphs 27, 28 and 29 the sum
\$2,951,857.14 and damages alternatively
under paragraphs 25, 27, 28 and 29 the
sum of \$3,171,857.14 and damages.
- (g) Under paragraph 31 the sum of \$80,802.18
- (h) as an alternative to (d), (f) and (g)
above a declaration that upon completion
of the Works and if the Architect should
so certify the total sum of \$3,252,659.32
(being \$220,000.00 plus \$2,951,857.14
plus \$80,802.18) shall be a debt payable
to the Respondents by the Claimants but
without prejudice to the Architects'
right to certify in respect of any other
expenses or direct loss or damage caused
to the Respondents by the termination of
the Principal Agreement.
- (i) interest
- (j) costs.

No.5
Further Re-
Amended
Points of
Defence and
Counterclaim
(without
annexures)
23rd May
1978
(continued)

~~Dated and delivered this 22nd day of July 1977.~~

~~Dated and redelivered this 25th day of February 1977~~

40 ~~Re-dated and re-delivered this 29th day of
December 1977~~

Further re-served as further re-amended this
23rd day of May, 1978.

Sgd. Shook Lin & Bok
Solicitors for the Respondents

To the Arbitrator Mr. Hiew Siew Nam, Singapore.
And to the abovementioned claimants and their
solicitors, Messrs. Donaldson & Burkinshaw, Singapore.

FURTHER RE-AMENDED POINTS OF REPLY
AND DEFENCE TO COUNTERCLAIM

No.6
Further Re-
Amended
Points of
Reply and
Defence to
Counterclaim

Amended in red
Re-amended in green
Further Re-amended in blue

9th June 1978

1. The Claimants join issue with the Respondents upon their Points of Defence and Counterclaim, save insofar as they consist of admissions and references to clear Contract provisions. 10
2. As to paragraphs 8, 9 and 10 of the Points of Defence, the Claimants deny that they had failed to carry out the Works expeditiously and with diligence and contend that the Architect's recommendation of termination of the Principal Agreement, issued on 1st March 1977, was wrong and without justification in the circumstances.
3. If the Claimants had failed to adhere to the progress of works specified in the Third Schedule of the Supplemental Agreement, which the Claimants deny, such failure was due to 20
 - (a) the Respondents' and their Consultants' own delay and/or failure to provide the Claimants with necessary instructions and Contract drawings in respect of the Works to be done to enable the works to progress expeditiously: 30
 - (b) the delay caused by the conduct and the works of the nominated tiling subcontractors and the Respondents' tiling suppliers, Meika Contractors & Co. (Pte) Ltd. which the Claimants had taken all practical steps to avoid or reduce;
 - (bb) delay caused by the internal wiring works and the laying of the main incoming cables on the part of the nominated electrical subcontractors R.F.Morris & Co. Pte. Ltd. which should have been completed by 15th September 1976 as scheduled in item 4 of the completion programme dated 23rd March 1976, but were not and which in turn delayed the overall progress of works; and 40

10 (c) the delay caused by additional works ordered by the Architect, the principal items being (1) compliance with I.S.D. requirements (2) construction of Substation No.2 (3) change of penthouse floors from penthouse to typical (4) additional slip form requirements (5) additional tiling works (vanity counters and lift walls) (6) re-positioning of partition walls at all lift lobbies (7) compliance with B.C.D. requirements and (8) construction of additional built-in cupboards; (9) additional R.C. works at the 35th Floor level (cantilivered extension to the 35th floor slab, tank and fascia walls and construction of pump room

In
Arbitration
No.6
Further Re-
Amended
Points of
Reply and
Defence to
Counterclaim
9th June 1978
(continued)

20 (d) delay resulting from Consultant's instructions issued on 7.1.76 (1) to slipform Sections A and B of Block 1 to different levels and (2) to dismantle slipform equipment only upon completion of 33rd floor slab for Section A and 32nd floor slab for Section B; this rendered the construction of the 33rd floor slab and the dismantling of the slipform equipment substantially more difficult and time consuming, and further necessitated a delay of one month for the dismantling of slipform equipment on the 32nd and 33rd floors.

30 for which the Claimants are entitled to claim extension of time under Condition 23(3) (f) (g) and (h) of the Principal Agreement.

40 4. As to paragraph II of the Points of Defence, the Respondents are precluded from relying upon the Architect's letter of 9th March 1976 to terminate the Principal Agreement, as they had themselves failed to comply with the full provisions of Condition 25(1) thereof. Further and alternatively, the Respondents are estopped from relying upon the said letter for the purpose of termination by virtue of the fresh terms that were negotiated and agreed upon in the Supplemental Agreement, as a result of which the Respondents have effectually
50 waived any rights they might have had under the said letter.

5. Further and alternatively, the Claimants deny that they had in any way repudiated the Principal Agreement or that the Respondent had

at any time accepted such repudiation.

DEFENCE TO COUNTERCLAIM

6. As to paragraphs 5A, 9A and 21B of the Respondents' Amended Points of Defence and Counterclaim, the Claimants contend that between 26th March 1976 and 10th August 1976 written lists were sent to the Respondents and/or their Quantity Surveyors. Thereafter, this arrangement (except for the orders for steel bars) ceased as a result of two telephone conversations between Claimants' Site Agent Philip Lee and the Respondents' Project Manager K.C.Kay in late August and/or early September 1976. During the first conversation, K.C.Kay agreed to accept from Philip Lee oral requests for orders for building materials (except for steel bars) in place of written lists, and during the second conversation K.C.Kay requested Philip Lee to contact the Suppliers direct for the building materials required, all orders for building materials (except for steel bars) were placed by Claimants with Suppliers direct, and charged to the Respondents, who continued to pay for them. In the premises, the Claimants say that the Respondents have waived any technical breach of the provisions of Article III. In any event, such technical breach did not in any way cause delay to the progress of the Works, nor loss to the Respondents.

10

20

30

6a. As to paragraphs 17 to 23 inclusive of the Counterclaim, the Claimants contend that the Respondents having themselves terminated the Claimants' employment prior to completion of the building works, their claim for liquidated damages pursuant to Condition 22 of the Principal Agreement is misconceived in law in the circumstances. Further and alternatively, the Claimants contend that as the Works relating to Block 1 were rendered incapable of completion on or before 28th February 1977 by virtue of the reasons stated in paragraph 3 above, the Claimants are estopped from claiming liquidated damages in view of their assurance of waiver given in their letter of 1st April 1976.

40

7. As to paragraph 24 of the Counterclaim, the alleged defects, which the Claimants do not admit, would have been corrected in the natural course of events had the Respondents not wrongfully terminated the Claimants' employment. In the circumstances, the Claimants deny any liability in respect of the cost of rectification claimed.

50

10 8. As to paragraph 25 of the Counterclaim, the Claimants deny that it was a term of the Principal Agreement that the Claimants would provide in their contracts with third parties that any equipment belonging to such third parties would be available for use by the Respondents in the event of termination of Claimants' employment before completion of the Works, and the Claimants put the Respondents to strict proof of this alleged term.

8(a). As to paragraph 25(a) of the Counterclaim, the Claimants made no admission of the alleged items of ironmongery found damaged or missing or the cost of replacement, and they put the Respondents to strict proof thereof.

20 9. As to paragraph 26 of the Counterclaim, Article V Clause 6 of the Supplemental Agreement had intended that the measurements to be made by Pakatan International Suckling MacDonald & Mohd. Isahak would be based on the joint instructions of the Claimants and the Respondents, to ensure a true and impartial measurement. In breach of this intention, the Respondents issued the instructions on their own, and the Quantity Surveyors measurements were based exclusively on their brief despite objections from the Claimants as a result, the measurements made were wholly unreliable and contained extensive omissions, errors and short measurements of the executed Works. In the circumstances, the Claimants contend that they are under no liability to bear any part of the Quantity Surveyors fees for the measurements that were made to serve the Respondents' own purposes.

40 10. As to paragraphs 23 to 31 inclusive of the Counterclaim, the Claimants contend that the items claimed therein has been occasioned by the Respondents' wrongful termination of Claimants' employment, and in the circumstances the Claimants deny that they are under any liability in respect of these claims.

50 11. Save as has hereinbefore been expressly admitted, the Claimants deny each and every allegation contained in the Respondents' Counterclaim as if the same were set forth herein seriatim and specifically traversed.

~~Dated and delivered this 26th day of July 1977~~

Re-dated and Re-delivered this 15th day of December 1977.

In
Arbitration

No.6
Further Re-
Amended
Points of
Reply and
Defence to
Counterclaim

9th June
1978

(continued)

In
Arbitration

~~Re-dated and Re-delivered this 23rd day of
May 1978~~

No.6
Further Re-
Amended
Points of
Reply and
Defence to
Counterclaim
9th June 1978
(continued)

Re-dated and Re-delivered this 9th day of
June 1978.

Signed Donaldson & Burkinshaw
Solicitors for the Claimants

No.7
Request for
Particulars
of Reply and
Defence to
Counterclaim
4th November
1977

No. 7

REQUEST FOR PARTICULARS
OF REPLY AND DEFENCE TO
COUNTERCLAIM

10

A. Under paragraph 3(a).

1. Of the alleged delay and/or failure on
the part of the Architect to provide the
Claimants with necessary instructions and
drawings:

(a) The date on which the instructions
and/or drawings ought to have been
issued and identify the instructions
and/or drawings.

(b) The date on which such instructions 20
and/or drawings were issued.

2. Of the allegation that the Claimants
had failed to adhere to the progress of Works
specified in the Third Schedule as a result
of such delay and/or failure, identify in
which particular aspect of the Works the
Claimants had failed to adhere as a result
of such delay and/or failure and the item in
the Third Schedule effected thereby.

3. The date or dates on which the Claimants 30
commenced works to carry out such instructions
or to comply with the drawings and the date or
dates of completion thereof.

B. Under paragraph 3(b).

1. Of the allegation of the delay caused by
the conduct and the works of the nominated
tiling sub-contractors and the Respondents'

tiling suppliers :

In
Arbitration

- (a) Identify each conduct complained of and the works in question.
- (b) Specify each date on which the conduct or the Works complained of ought to have been carried out and the date on which they were actually carried out

No.7
Request for
Particulars
of Reply and
Defence to
Counterclaim
4th November
1977

10 2. Of the allegation that the Claimants had taken all practical steps to avoid or reduce specify :

(continued)

- (a) Practical steps taken by the Claimants to avoid and the dates thereof
- (b) Specify the practical steps taken to reduce and the dates thereof

20 3. Of the allegation that the Claimants had failed to adhere to the progress of works specified in the Schedule as a result of the delay hereinbefore referred to, identify in which particular aspect the Claimants had failed to adhere and the items of the Third Schedule effected thereby.

C. Under paragraph 3(c).

1. of the allegation that additional works were ordered by the Architect :

- 30 (a) Specify each and every additional work ordered by the Architect which are not mentioned under the "principal items" and
- (b) Whether such orders were in writing or oral and particulars of the dates of such orders and
- (c) if in writing identify the document or documents and
- (d) the date or the dates on which such additional works were commenced and the date or dates on which they were completed.

40 2. Of the allegation of compliance with ISD requirements identify the requirements and specify :

- (a) Whether such requirements were in writing or oral and the date or dates thereof.

In
Arbitration

No.7
Request for
Particulars
of Reply and
Defence to
Counterclaim

4th November
1977

(continued)

- (b) If in writing identify the document or documents
- (c) The date or dates on which the Architect had ordered such compliance and whether such orders were in writing or oral and if in writing identifying the document or documents
- (d) The date or dates on which the Claimants commenced works to comply with such requirements and the date or dates of completion thereof. 10
3. Of the allegation of construction of sub-station No.2:
- (a) The date or dates on which the order was given by the Architect and whether the same was oral or in writing
- (b) If in writing identify the document or documents 20
- (c) The date on which the Claimants commenced works to comply with the order of the Architect and the date of completion of the sub-station
4. Of the allegations of additional slip form requirements :
- (a) Specify the exact nature of the requirement 30
- (b) The date or dates on which the additional slip form requirements were ordered by the Architect and whether such order was in writing or oral
- (c) If in writing identify the document or documents
- (d) The date or dates on which the Claimants commenced works for compliance with the order of the Architect and the date or dates of completion of such works 40
5. Of the additional tiling works (vanity counters and lift walls):
- (a) Specify the date or dates on which the additional tiling works were

ordered and whether such orders were oral or in writing

In
Arbitration

(b) If in writing identify the document or documents

No.7
Request for
Particulars
of Reply and
Defence to
Counterclaim

(c) The date or dates on which the Claimants commenced works for compliance with the order of the Architect and the date or dates of completion of such works

4th November
1977

10 6. Of the alleged repositioning of partition walls at all lift lobbies identify the partition walls in question and specify :

(continued)

(a) The date or dates on which the repositioning was ordered by the Architect and whether the same be oral or in writing and identifying each wall respectively

20 (b) If in writing identify the document or documents

(c) The date or dates on which the Claimants commenced works for compliance with the order of the Architect and the date or dates of completion of such works

7. Of the alleged compliance with BCD requirements :

30 (a) Specify the date or dates on which the requirements were made and the nature of such requirements

(b) Specify the date or dates on which the compliance was ordered by the Architect and whether such orders were in writing or oral

(c) If in writing identify the document or documents

40 (d) The date or dates on which the Claimants commenced works for compliance with the order of the Architect and the date or dates of completion of such works

8. Of the alleged construction of additional built in cupboards identify the cupboards and specify :

(a) The date or dates on which such construction was ordered by the

In
Arbitration

No.7
Request for
Particulars
of Reply and
Defence to
Counterclaim
4th November
1977

(continued)

Architect and whether such orders
were in writing or oral

- (b) If in writing identify the document
or documents
- (c) The date or dates on which the
Claimants commenced works for
compliance with the order of the
Architect and the date or dates of
completion of such works

9. Of the allegation that the Claimants had failed to adhere to the progress of Works specified in the Third Schedule as a result of the delay caused by the matters under paragraph 3(c) : 10

- (a) Specify in which aspect the
Claimants had failed to adhere to
the progress of the Works
- (b) Which item of the Works as specified
in the Third Schedule the Claimants
had failed to adhere 20

D. Under paragraph 4

1. Of the allegation that the Respondents had themselves failed to comply with the full provisions of condition 25(1) of the Principal Agreement specify in what aspect and/or under which provision of Condition 25(1) the Respondents has failed to comply

E. Under paragraph 9

1. Of the allegation that the Respondents has issued instructions on their own : 30

- (a) Specify whether such instructions
were in writing or oral and the
dates thereof
- (b) If in writing identify the document
or documents

2. Of the allegation that the Quantity Surveyor's measurements were based exclusively on their belief despite objections from the Claimants -

- (a) Specify the facts relied upon as a
result of which such basis were
arrived at 40
- (b) Whether the objections from the
Claimants were in writing or oral

and the dates thereof and if in writing identify the document or documents

In Arbitration

No.7

Request for Particulars of Reply and Defence to Counterclaim

4th November 1977

(continued)

3. Of the allegation that the measurements were made wholly unreliable and contained extensive omissions errors and short measurements -

10

- (a) Specify the manner in which the measurements were made wholly unreliable or in what aspect thereof
- (b) Specify the omissions complained of
- (c) Specify the errors complained of
- (d) Specify the short measurements complained of

Dated and Delivered this 4th day of November 1977

Sgd. Shook Lin & Bok
Solicitors for the Respondents

20

No. 8

FURTHER AND BETTER PARTICULARS OF REPLY TO DEFENCE AND COUNTERCLAIM

No.8
Further and Better Particulars of Reply and Defence to Counterclaim

15th December 1977

served pursuant to request made by Respondents' Solicitors dated 4th November 1977.

The following are the Particulars of the Reply and Defence to Counterclaim -

30

- A. Under Paragraph 3(a) -
 - 1. See the Particulars given in "Annex A" attached.
- B. Under Paragraph 3(b) -
 - 2. The Claimants permitted the tiling subcontractors Meika Contractors & Co. (Pte) Ltd. free use of dumpers and further agreed to supply them with sand and cement on credit in order that their tiling work could be expedited. The Claimants further wrote to the

In
Arbitration

No.8

Further and
Better
Particulars
of Reply and
Defence to
Counterclaim

15th December
1977

(continued)

Respondents to recruit their assistance
in expediting Meika's work, but to no
avail.

C. Under Paragraph 3 (c) -

See the Particulars given in "Annex B"
and "Annex C" attached.

D. Under Paragraph 4 -

1. The Claimants contention is based on
the construction of the provisions under
Condition 25(1) of the Principal Agreement.10

E. Under Paragraph 9 -

1. The instructions issued by the Respondents
are within their own knowledge, and the
Respondents have no access to information
concerning such instructions, aside
from letter received from Pakatan
International, and in particular, their
letters of 19th March, 1977, 24th
March and 30th May 1977. To the Claim-
ants' best awareness, all relevant letter 20
from Pakatan International have been
copied to the Respondents and/or their
Solicitors.

- 2+3 The Particulars requested are set out in
correspondence exchanged between Pakatan
and the Claimants and/or their solicitors.
The relevant letters are -

1. Claimants' Solicitors' letters to Pakatan
of 17th March 1977;
2. Pakatan's letter to Claimants' Solicitors 30
of 19th March 1977;
3. Claimants' letter to Pakatan of 30th
March 1977;
4. Pakatan's letter to Claimants' Solicitors
of 4th April 1977;
5. Claimants' letter to Pakatan of 14th
April 1977;
6. Claimants' letter to Pakatan of 18th
April 1977;
7. Pakatan's copy letter to Claimants and 40
their Solicitors of 10th May 1977
containing their remeasurement;
8. Pakatan's copy letter to Claimants and

- | | | |
|-----|---|---|
| | their Solicitors of 10th May 1977; | In
<u>Arbitration</u> |
| 9. | Claimants' letter to Pakatan of 16th
May 1977; | No.8 |
| 10. | Claimants solicitors' letter to Pakatan
of 17th May 1977; | Further and
Better |
| 11. | Pakatan's letter to Claimants'
Solicitors of 24th May 1977; | Particulars
of Reply and
Defence to
Counterclaim |
| 12. | Claimants Solicitors' letter to Pakatan
of 26th May 1977; | 15th December
1977 |
| | | (continued) |
| 10 | 13. Claimants solicitors' letter to Pakatan
of 27th May 1977 enclosing a list of
omissions, short measurement and
disputed rates | |
| | 14. Pakatan's letter to Claimants' Solicitors
of 30th May 1977; | |
| | 15. Claimants' Solicitors' letter to Pakatan
of 16th June 1977; | |
| | 16. Pakatan's letter to Claimants' Solicitors
of 20th June 1977; | |
| 20 | 17. Claimants' Solicitors' letter to Pakatan
of 22nd June 1977 enclosing a list of
discrepancies | |

Served this 15th day of December, 1977.

Signed Donaldson & Burkinshaw
Solicitors for the Claimants

No.9
Request for
Particulars of
Amended Points
of Reply and
Defence to
Counterclaim
6th February
1978

REQUEST FOR PARTICULARS
OF AMENDED POINTS OF REPLY
AND DEFENCE TO COUNTERCLAIM

UNDER PARAGRAPH 6

1. Of the allegation that initially written lists were given in compliance:
 - (a) The date or dates on which such lists were given
 - (b) Identify the relevant documents 10
2. Of the allegation that later oral notification was given instead, specify:
 - (a) The date or dates on which such notification was given
 - (b) The person or persons who gave such notification on the Claimants' behalf
 - (c) The place or places where each such notification was given
3. Of the allegation that the latter arrangement was accepted by Kay & Kwan specify : 20
 - (a) Specify the act or conduct relied upon
 - (b) The date or dates of each of such act or conduct
4. Of the allegation that the Claimants were informed by the Quantity Surveyors Site Representative S.C. Cheong that his firm did not wish to be bothered with the provisions of Article III, specify : 30
 - (a) Whether such information was oral or in writing. If in writing identify the document or documents
 - (b) If oral the date or dates on which the said Site Representative so informed the Claimants and the place or places at which the said Site Representative so informed and the name or names of the Claimants' representative to whom such information was given 40

(c) If oral, as particular as possible the words used by the said Site Representative.

In
Arbitration

Dated this 6th day of February, 1978

No.9
Request for
Particulars
of Amended
Points of
Reply and
Defence to
Counterclaim

Signed Shook Lin & Bok
Solicitors for the Respondents

To the Arbitrator Mr. Hiew Siew Nam, Singapore.
And to the abovenamed claimants and their
solicitors Messrs. Donaldson & Burkinshaw,
Singapore.

6th February
1978
(continued)

No. 10

FURTHER AND BETTER PARTICULARS
OF AMENDED POINTS OF REPLY
AND DEFENCE TO COUNTERCLAIM

10

served pursuant to a Request made by
Respondents' Solicitors dated 6th February,
1978

No.10
Further and
Better
Particulars
of Amended
Points of
Reply and
Defence to
Counterclaim
14th February
1978

The following are the particulars of
the Amended Points of Reply and Defence to
Counterclaim -

Under Paragraph 6

1. The dates of the lists and the identities
of the documents are as follows :-

20

(a) List contained in letter from
Claimants to Respondents dated
26.3.76;

(b) List contained in letter from
Claimants to Respondents dated
7.4.76;

(c) List contained in letter from
Claimants to Respondents dated
14.4.76;

30

(d) List contained in letter from
Claimants to CKP Surveyors dated
22.4.76;

(e) List contained in letter from
Claimants to CKP Surveyors dated
11.5.76;

In Arbitration
No.10
Further and
Better
Particulars
of Amended
Points of
Reply and
Defence to
Counterclaim
14th February
1978
(continued)

- (f) List contained in Claimants' letter to CKP Surveyors dated 28.5.76;
 - (g) List contained in cyclostyled letter from Claimants to Respondents dated 3.6.76;
 - (h) List contained in letter from Claimants to CKP Surveyors dated 18.6.76;
 - (i) List contained in letter from Claimants to CKP Surveyors dated 24.6.76; 10
 - (j) List contained in letter from Claimants to CKP Surveyors dated 3.7.76;
 - (k) List contained in letter from Claimants to CKP Surveyors dated 10.8.76;
2. (a) The oral notification was given periodically from the later part of August 1976 onwards until mid February 1977 or thereabouts. Claimants did not keep any records, nor can they recollect the exact dates of the oral notification. 20
- (b) The person who gave the oral notification on Claimants' behalf was their site agent Philip Lee
- (c) The notification was given by Philip Lee at the site office over the telephone 30
3. Kay and Kwan arranged for the Respondents' compliance of the oral notification, in that the Respondents continued to meet the supplies and pay for the building materials requested by the Claimants, as evidence by -
- (a) A written note of materials supplied to the Claimants from 17.8.76 to 15.9.76 dated 27.9.76 bearing the initials KCK/cf;
 - (b) A written note from the Resident Engineer to the Respondents dated 24.9.76 enclosing a list of materials supplied to the Claimants from 17.8.76 to 15.9.76 40
 - (c) A written note of materials supplied to the Claimants from 16.9.76 to

- | | | |
|----|--|---|
| | 12.10.76 (undated) bearing the initials KCF/cf | In
<u>Arbitration</u> |
| | (d) A written note of materials supplied to the Claimants from 13.10.76 to 15.11.76 (undated) bearing the initials KCF/cf | No.10
Further and
Better
Particulars
of Amended
Points of
Reply and
Defence to
Counterclaim |
| 10 | (e) A written note from the Resident Engineer to the Respondents dated 25.10.76 enclosing a list of materials supplied to the Claimants from 16.9.76 to 12.10.76 | 14th February
1978 |
| | (f) A written note from the Resident Engineer to the Respondents dated 22.11.76 enclosing a list of materials supplied to the Claimants from 13.10.76 to 15.11.76 | (continued) |
| 20 | (g) A written note of materials supplied to the Claimants from 15.12.76 to 11.1.77 (undated) bearing the initials CPK/cf | |
| | 4. (a) The information from S.C.Cheong was given orally | |
| | (b) The information was given in or about the later part of August 1976 at the worksite to Philip Lee | |
| 30 | (c) To Philip Lee's best recollection, Cheong said that (1) the ordering of materials should be an arrangement between the Claimants and the Respondents (2) his firm should not be bothered with the matter and (3) the Claimants should notify the Respondents direct as to their periodical requirements for building materials | |
| 40 | (These particulars are given under protest, as the Claimants contend that the information represents evidence, and does not form the proper subject for pleadings). | |

Served this 14th day of February, 1978

Signed Donaldson & Burkinshaw
Solicitors for the Claimants

To the Arbitrator Mr. Hiew Siew Nam, Singapore.
And to the abovenamed Respondents and to their solicitors M/S Shook Lin & Bok, Singapore.

No.11
Amended
Points of
Rejoinder and
Reply to the
Reply and
Defence to
Counterclaim
29th December
1977

**AMENDED POINTS OF REJOINDER
AND REPLY TO THE REPLY AND
DEFENCE TO COUNTERCLAIM**

**Amended as underlined in red on 29th day of
December 1977.**

1. The Respondents join issue with the Claimants upon paragraphs 2, 3, 4 and 5 of the **Amended Points of Reply**.
2. As to paragraph 3 of the **Amended Points of Reply** the Respondents further contend that if 10 there were any delays and/or failure (which are denied) which entitled the Claimants to claim extension of time (which entitlement is denied) then in so far as the Claimants have failed to claim for extension at the appropriate time or times the Claimants have by such failure waived their rights with regard thereto.
3. As to paragraph 4 of the **Amended Points of Reply** the Respondents will further refer 20 to Clause 1 of Article VIII of the Supplemental Agreement which expressly declared and provided that nothing contained in the Supplemental Agreement shall effect or modify or diminish any right of the Respondents and the Claimants of whatever kind against the other arising out of or any act of default of either party in the Principal Agreement the terms and conditions of which shall remain valid and binding on both the said parties.
4. In any event the Respondents contend that 30 the Claimants were in breach of the following clauses in the Principal Agreement and in the Supplemental Agreement and such breach of any of them entitled the Respondents to exercise the right of termination under Clause 3 Article V thereof:
 - (a) Clause 2 Article III of the Supplemental Agreement in that the Claimants failed to submit to the Quantity Surveyor each week a list 40 stating the quantity and specification of the materials required for the Works three weeks before such materials required for the Works three weeks before such materials are to be used in the Works.
 - (b) The Respondents repeat paragraph 21 of the Points of Counterclaim.

(c) The Respondents repeat paragraph 8 of the Points of Defence

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Arbitration

AMENDED REPLY TO DEFENCE TO COUNTERCLAIM

No.11
Amended
Points of
Rejoinder and
Reply to the
Reply and
Defence to
Counterclaim

5. The Respondents join issue with paragraphs 6 to 10 of the Amended Points of Defence to Counterclaim.

29th December
1977

10

5A. With regard to paragraph 6 of the Amended Points of Defence to Counterclaim the Respondents contend that if (which is denied) S.C.Cheong did inform the Claimants as alleged, the said S.C.Cheong did not have any authority to waive Article III of the Supplemental Agreement for or on behalf of the Respondents.

(continued)

6. With regard to paragraphs 6a of the Amended Points of Defence to Counterclaim the Respondents contend that -

20

(1) The agreement of the Respondents to waive Liquidated Damages was subject to the Claimants completing Blocks 1 and 2 of the Works by the times stipulated in the letter dated April 1, 1977 irrespective of any matter or thing which might delay such completion except the matters specified in Clause (2) thereof and that -

30

(2) In any event the Claimants were in breach of the Principal Agreement and the supplemental Agreement and the Respondents repeat:

(a) paragraph 21 of the Points of Counterclaim

(b) paragraph 8 of the Points of Defence;

40

(c) paragraph 4(a) of the Points of Rejoinder.

7. As to paragraph 9 of the Amended Points of Defence to Counterclaim the Respondents contend that even if Clause 6 of the Supplemental Agreement had intended that the measurements were to be based on joint instructions (which is denied) the Claimants have in any event waived their entitlement to have such intention adhered to by virtue of their conduct as follows or alternatively are now estopped by virtue of such conduct from contending that

50

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Arbitration

.they are so entitled.

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Points of
Rejoinder and
Reply to the
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(continued)

PARTICULARS

- (a) By agreeing on the 3rd day of March 1977 with Pakatan International Suckling McDonald & Mohd. Isahak (hereinafter called "Pakatan") to meet on site whenever necessary and particularly in connection with the measurement of variation works.
- (b) By attendances at site for the purpose of joint inspection with Pakatan. 10
- (c) By the letter of the Claimants dated the 30th day of March, 1977
- (d) By the submission of a list of alleged omissions short measurements and dispute rates to Pakatan on the 27th day of May, 1977.

~~Dated and Delivered this 22nd day of August 1977~~

Re-dated and Re-delivered this 29th day of December 1977.

20

Signed Shook Lin & Bok
Solicitors for the Respondents

To the Arbitrator Mr. Hiew Siew Nam, Singapore.

And to the abovenamed Claimants and their
Solicitors Messrs. Donaldson & Burkinshaw,
Singapore.

This is a Special Case stated for the decision of the Court pursuant to Section 28 of the Arbitration Act (Cap.16).

1. By an Agreement in writing dated the 8th day of April, 1974 a copy of the relevant parts of which are annexed hereto and marked "A" (hereinafter called "the Main Contract") and made between the said Loke Hong Kee (S) Pte. Ltd. (hereinafter called "the Claimants") and the said United Overseas Land Limited (hereinafter called "the Respondents") it was amongst other things provided that the Claimants would carry out and complete certain building works comprising the erection of two blocks of flats together with ancillary works at Cairnhill (hereinafter called "the Works") under the supervision and to the satisfaction of the Respondents' Architect (hereinafter called "the Architect") and that any dispute or difference arising between the Respondents or the Architect on its behalf and the Claimants during the progress or after the completion works the subject matter of the Main Contract as to the construction thereof or as to any matter or thing of whatever nature arising thereunder or in connection therewith should be referred to the arbitration and final decision of a person to be agreed between the parties or failing agreement within 14 days after either parties had given to the other a written request to concur in the appointment of an arbitrator, a person to be appointed on the request of either party by the President or a Vice President for the time being of the Singapore Institute of Architects.

2. By a Supplemental Agreement made between the said parties and dated the 23rd day of March, 1976 a copy of which is annexed hereto and marked "B" (hereinafter called "the Supplemental Agreement") it was, inter alia provided that :-

(a) By the recitals thereto and by Article I thereof that immediately upon the execution of the Supplemental Agreement the Respondents should pay to the Claimants the sum of \$284,000.00 as financial assistance on an ex gratia basis and without

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admission of liability in full and final settlement of the Claimants' claim of one block of slipform equipment and plant such payment being in full satisfaction of the claims which the Claimants had made or might thereafter make in respect of or in any way connected with such slipform equipment and plant

- (b) Under Article V Clause 1 that the Claimants should adhere to the progress of works specified in the Third Schedule annexed to the Supplemental Agreement to ensure the completion of the Works on or before the dates stated therein. 10
- (c) By Article V Clause 2 that the Claimants should carry out the Works expeditiously and with every diligence and complete the same. 20
- (d) By Article V Clause 3 that in the event of the progress of the Works being in the opinion of the Architect unsatisfactory and/or in the event of the Contractor failing to adhere or maintain the progress of works as specified in the said Third Schedule and/or upon any breach of the Supplemental Agreement by the Claimants then upon the recommendation of the Architect in writing and in addition to the Respondents' rights under the Main Contract the Respondents should be at liberty to determine the employment of the Claimants under the Main Contract forthwith by notice in writing. 30
- (e) By Article V Clause 6 that upon the Respondents regaining possession of the site the firm of Pakatan Suckling McDonald (hereinafter called "Pakatan") should within two weeks measure the Works as completed by the Claimants and the valuation of the said Pakatan should be binding on both parties and should be final. 40
- (f) By Article VIII that notwithstanding the provisions contained in the Supplemental Agreement the time for the completion of the Works unless extended by the Architect under the Main Contract should remain as at the 4th day of May, 1976 and that nothing 50

in the Supplemental Agreement should affect or modify or diminish any right of the Respondents and the Claimants of whatever kind against each other "arising out of or any act of default of either party" (SIC) under the Main Contract the terms and conditions of which should remain valid and binding on the parties to the Supplemental Agreement subject to the provisions thereof particularly the additional rights and benefits of the Respondents provided therein.

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3. By a further agreement bearing the dates 1st and 2nd days of April, 1976 a copy of which is annexed hereto and marked "C" (hereinafter called "the Liquidated Damages Agreement") it was inter alia provided that if the Claimants completed the Works on dates specified in the Schedules annexed thereto the Respondents would waive all claims for liquidated damages against the Claimants to which the Respondents would otherwise be entitled under the provisions of the Main Contract. The parties will refer at the hearing to the contents of the Liquidated Damages Agreement for their full terms and effect.

40

4. On the 1st day of March, 1977 the Architect, pursuant to the provisions of Article V Clause 3 aforesaid by a letter addressed to the Respondents (a copy of which is annexed hereto and marked "D") stated that he was of the opinion that progress of the works was unsatisfactory and that it was obvious that the Claimants had failed to adhere or maintained the progress of work as specified in the Schedule to the Supplemental Agreement; that the Claimants were not making any serious attempts to adhere or maintain the progress of works; and that the Claimants were not carrying out the Works expeditiously and with every diligence; and accordingly recommended that the Respondents might determine the employment of the Claimants under the Main Contract.

50

5. By a letter also dated 1st of March, 1977 (a copy of which is annexed hereto and marked "E") the Respondents determined the Claimants' employment under the Main Contract forthwith.

6. Disputes or differences have arisen

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between the parties including, inter alia, whether the Respondents had lawfully determined the Claimants' employment as aforesaid. Such disputes or differences have been referred to me for determination as sole Arbitrator.

7. The following pleadings delivered by the parties are annexed hereto and marked as hereinafter appears :-

- (a) Amended Points of Claim - "F" 10
- (b) Further Re-amended Points of Defence and Counterclaim - "G"
- (c) Request for Particulars of Reply and Defence to Counterclaim - "H"
- (d) Claimants' Bundle of Supplemental Pleadings - "I"
- (e) Further Re-amended Points of Reply and Defence to Counterclaim - "J"
- (f) Amended Points of Rejoinder and Reply to Defence to Counterclaim - "K" 20
- (g) Annex A - "L"
- (h) Annex B2 - "M"
- (i) Summary contained in bundle titled "Correspondence Relating to Delay caused to Building Works by Meika" admitted and marked "CF" in Arbitration hearing - "N"

8. I further annex the following documents marked as hereinafter appears :-

- (a) Notes of hearing by the Arbitrator for meeting of 14/2/78 - "O" 30
- (b) Arguments recorded on 21/2/78 and with regard to arbitration on Cairnhill Plaza - "P"
- (c) Letter from Donaldson & Burkinshaw to Shook Lin & Bok dated 22/2/78 - "Q"
- (d) Activity Diagram Notes admitted and marked as "CK" in arbitration hearing - "R"
- (e) Respondents' Bundle for Special Case - "S" 40
- (f) Claimants' Bundle for Special Case - "T"
- (g) SELECTED extracts of Verbatim transcript of arbitration hearing which commenced on 23/5/78 - "U"

9. The hearing of the arbitration was opened by me on Tuesday the 23rd of May, 1978. The

10 Claimants' Counsel opened his case and then examined in chief Mr. Francis Loke the Managing Director of the Claimants. At the conclusion of the evidence-in-chief of Mr. Francis Loke Counsel for the Respondents requested an adjournment for the purpose, inter alia, of considering whether points of law had arisen during the reference. On Wednesday the 7th day of June, 1978 Counsel for the Respondents submitted that I should state a consultative case on points of law arising during the reference and I adjourned the hearing until Wednesday the 14th day of June, 1978 when Counsel for both parties indicated that they had agreed that I should state certain points of law for the opinion of the High Court.

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20 10. I set out below the respective contentions of the parties and the question arising for the decision of the Court.

A. RESPONDENTS' QUESTIONS.

30 1. The Claimants contend that I am entitled to open up review or revise any opinion of the Architect given for the purpose of Article V Clause 3 of the Supplemental Agreement by virtue of the powers conferred upon me by Clause 34 of the Main Contract. The Respondents contend that upon the construction of the Supplemental Agreement such an opinion is not subject to opening up review or revision.

THE QUESTION FOR THE COURT IS :- Whether I am entitled to open up review or revise an opinion of the Architect under Article V Clause 3 of the Supplemental Agreement pursuant to the powers conferred upon me by Clause 34 of the Main Contract.

40 2. The Claimants contend that if the opinion of the Architect referred to in 1 above is not subject to review by virtue of Clause 34 of the Main Contract, then such opinion must be reasonable, and not capricious and must be justifiable in the circumstances that prevailed at the time the opinion was formed. Further and/or alternatively, the unsatisfactory progress must be attributable to the Claimants' failure to carry out the works expeditiously and with every diligence and to complete the same as provided under
50 Article V Clause 2 of the Supplemental Agreement.

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THE QUESTION FOR THE COURT IS :- Whether for purposes of Article V Clause 3 of the Supplemental Agreement and the recommendation of the Architect given pursuant thereto it is sufficient that the Architect should have formed an opinion in good faith on the information available to him at the time.

3. The Claimants contend (amongst other arguments) that by virtue of the powers conferred upon me as Arbitrator under Clause 34 10 of the Main Contract, I am entitled to direct that their claims under paragraphs 4 and 4A of their Points of Claim be measured and/or valued as may in my opinion be desirable in order to determine the rights of the parties and/or open up review or revise the valuation of works executed and materials supplied by the Claimants and carried out by Pakatan purportedly pursuant to the provisions of Article V Clause 6 of the Supplemental Agreement. The Respondents contend that as a question of construction of the Main Contract and of the Supplemental Agreement Article V Clause 6 of the Supplemental Agreement is not subject to Clause 34 of the Main Contract. 20

THE QUESTION FOR THE COURT IS :- Whether or not by virtue of the powers conferred upon me as Arbitrator under Clause 34 of the Main Contract, I am entitled to direct that Claimants' claims under paragraphs 4 and 4A 30 of their Points of Claim be measured and/or valued as may in my opinion be desirable in order to determine the rights of the parties and/or open up review or revise the valuation of works executed and materials supplied by the Claimants and carried out by Pakatan purportedly pursuant to the provisions of Article V Clause 6 of the Supplemental Agreement.

4. The Claimants contend that in determining 40 (pursuant to Article V Clause 1, 2 and 3 of the Supplemental Agreement) whether they have failed :-

- (1) To adhere to the progress of works specified in the Schedules to the Supplemental Agreement, and/or
- (2) To carry out the works expeditiously and with every diligence, and/or
- (3) To make satisfactory progress,

I am entitled to take into consideration any delay on the part of nominated subcontractors

10 which had the effect of delaying or
disrupting the progress of works in a
manner that would entitle Claimants to
a claim for time extension under Clause
23(g) of the Main Contract. The Respondents
contend that on the true construction of
the Supplemental Agreement, although
delay on the part of the nominated sub-
contractors may be a ground for an
extension of time under the provisions of
the Main Contract, it is not relevant
when considering the Claimants' overall
performance of their obligations under the
Supplemental Agreement and that any lack
of diligence or expedition on the part of
the nominated subcontractors is a lack of
diligence or of expedition on the part of
the Claimants.

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20 THE QUESTION FOR THE COURT IS :- In deter-
mining whether or not the Claimants have
failed :-

- 30 (1) To adhere to the progress of works
specified in the Schedules to the
Supplemental Agreement, and/or
- (2) To carry out the works expeditiously
and with every diligence, and/or
- (3) To make satisfactory progress,
(pursuant to Article V Clauses 1,
2 and 3 of the Supplemental
Agreement)

I am entitled to take into consideration
any delay on the part of the nominated
subcontractors (other than any such delay
which may be shown to have been caused by
any breach of Contract on the part of the
Respondents).

40 5. The Claimants contend that in the event
the Respondents are entitled to recover
liquidated and ascertained damages or general
damages in Common Law, I will have to
adjudicate upon the Claimants contractual
entitlement to any extension of time for
the completion of the works in order to
ascertain the quantum of damages, and for
this purpose, evidence relating to causes of
delay to or disruption of the progress of the
Works which entitled the Claimants contractually
to claim for time extension (whether such
causes had arisen prior or subsequent to the
date of the Supplemental Agreement) is relevant
and admissible to enable me to arrive at a
fair adjudication of time extension. The
50 Respondents contend :-

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- (1) That by virtue of the Supplemental Agreement and in particular Article VIII thereof the parties expressly agreed that the Date for Completion should remain the 4th day of May, 1976. On the true construction of the Supplemental Agreement neither the Architect nor the Arbitrator would be entitled to open up review or revise the extension of time already granted to that date in respect of causes of delay arising and/or occurring and/or known to the Claimants and/or arising from instructions given before the date of the Supplemental Agreement (the 23rd day of March, 1976). 10
- (2) That in the true construction of the Supplemental Agreement and of the Main Contract it is open to the Arbitrator to allow an extension of time in respect of causes of delay affecting the works between the 23rd day of March 1976 and the 4th day of May 1976 or any further extended Date for Completion granted for causes arising as aforesaid there being excluded from such causes any cause of delay falling within (1) above. 20
- (3) That for the reasons set forth in the Respondents' contentions under B2(ii) and B3 hereof, and in any event as a matter of law, the Claimants are not entitled to any extension of time in respect of causes of delay arising after the 4th day of May 1976 or any Date for Completion extended in accordance with (2) above and further and in any event not in respect of causes of delay arising and/or occurring and/or known to the Claimants and/or arising from instructions given before the date of the Supplemental Agreement. 30
40

THE QUESTION FOR THE COURT IS :- Whether on the true construction of the Supplemental Agreement I am entitled to open up review or revise the extension of time already granted (to 4th May 1976) in respect of causes arising and/or occurring and/or known to the Claimants and/or arising from instructions given before the date of the Supplemental Agreement. 50

B. CLAIMANTS' QUESTIONS

1. The Claimants wish to call evidence to

10 support the allegation that the dates
for the issues of drawings as recorded in
the Schedules attached to the Respondents'
letter to the Claimants of 1st April 1976
had been agreed with the Project Architect
at a meeting held towards the end of
March 1976 in order to avoid the possibil-
ity of any further delay being caused to
the works on account of late issue of
drawings. Counsel for the Respondents
objects to the Claimants leading evidence
to establish this, on the ground that
this has not been pleaded. The Respondents
further contend that the Respondents'
obligations as to dates for the issue of
drawings and/or instructions are contained
in Clauses 3, 23 and 24 of the Main
Contract. The dates for the issue of
drawings and/or instruction set out in
20 Annexure A, (being Further and Better
Particulars of the Points of Reply and
Defence to Counterclaim) are the dates
contained in the Schedules to the Liquidated
Damages Agreement and which form part of
and are relevant to that Agreement alone.
Any other agreement would add to vary or
detract from the Main Contract and/or the
Supplemental Agreement and/or the Liquidated
Damages Agreement. The Claimants have,
30 by their particulars pleaded the dates in
the Schedules to the Liquidated Damages
Agreement and have led evidence on the
footing that the only concluded agreement
as to the dates for the issue of drawings
and/or instructions is contained in the
Schedules to the Liquidated Damages Agreement.
In the circumstances, if the Claimants wish
to call the evidence for which they contend,
they should amend their Points of Reply and
40 Defence to Counterclaim: further the Claim-
ants should not, at this stage of the hearing
and in all the circumstances be granted
leave to make such an amendment.

THE QUESTIONS FOR THE COURT ARE :-

- 50 (i) Whether the Claimants are entitled
to adduce evidence without amendment
of the pleadings to establish that
the dates for the issue of drawings
recorded in the Schedules attached
to the Respondents' letter to the
Claimants of 1st April 1976 had
been agreed as alleged by the
Claimants
- (ii) In the event of the preceding
question being answered in the
negative then whether in all the

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circumstances an amendment to
allege such foregoing agreement
should be allowed

2. On 18th July 1977, the Project Architect Mr. William Chen certified in writing in a letter to the Claimants that in his opinion the works as defined by the Building Contract ought reasonably to have been completed by the Claimants by 4th May 1976. The Claimants contend that: 10
(i) since Respondents had terminated the Building Contract on 1st March 1977, and arbitration proceedings were in progress by July 1977, the Architect had no further jurisdiction to issue his Certificate, as upon commencement of the arbitration proceedings, the power to determine when the works as defined by the Building Contract ought reasonably to have been completed by the Claimants vests properly and exclusively in me and (ii) in any event I am entitled to open up review or revise this Certificate pursuant to my powers under Clause 34 of the Main Contract. The Respondents contend :- 20

(i) That a reference to arbitration does not discharge the Architect from continuing to carry out his functions under the Main Contract unless either the exercise or failure to exercise that function is in dispute and, in addition the Arbitrator has jurisdiction to decide that issue 30

(ii) That by a Certificate issued under Clause 22 of the Main Contract the Architect cannot vary any previous extension or extensions of time

(iii) That by reason of the contentions set out under B3 below the Architect could not in the absence of an application for extension of time grant any extension 40

(iv) That the power to grant extensions of time is, on the true construction of the Supplemental Agreement and the Main Contract, limited as appears in A5 hereof.

THE QUESTION FOR THE COURT IS:- Whether William Chen's certification that in his opinion, the works as defined by the Building Contract ought reasonably to have been completed by the Claimants by 4th May 1976 50

contained in his letter to the Claimants by 18th July 1977 (i) has binding effect and (ii) subject to opening up review or revision by me pursuant to the powers conferred on me under Clause 34 of the Main Contract.

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10

3. The Respondents have pleaded under paragraph 2 of their Amended Points of Rejoinder and Reply to the Amended Reply and Defence to Counterclaim that the Claimants are precluded from relying on paragraph 3 of their Amended Points of Reply and Defence to Counterclaim by virtue of their alleged failure to claim for extension of time at the appropriate time or times, as by such failure, the Claimants have waived their rights with regard thereto. The Claimants contend that their failure to claim for time extension at the appropriate time or times does not amount per se to a waiver in law of their rights. The Respondents contend that the Claimants' failure to claim an extension of time at the appropriate time or times precludes the Claimants from now claiming any extension of time for the purpose of calculating Liquidated and Ascertained Damages on the grounds that failure to claim an extension of time :-

20

30

(i) constitutes a failure by the Contractor to exercise its rights and obligations under the Main Contract and the Contractor cannot by such failure relieve itself of liability for Liquidated and Ascertained Damages;

40

(ii) further or alternatively constitutes a waiver of whatever entitlement the Contractor may have had to make such a claim;

50

(iii) disables the Architect from either granting, refusing, or failing to grant or refuse an extension of time thereby depriving the Arbitrator of jurisdiction under Clause 34 of the Main Contract to adjudicate on an extension of time.

The Respondents do not contend that a failure to claim an extension of time at the appropriate time or times precludes the Claimants from asserting that they were in fact carrying

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out the works expeditiously and with every diligence.

THE QUESTION FOR THE COURT IS:- Whether Claimants are precluded from relying on paragraph 3 of their Points of Reply and Defence to Counterclaim by virtue of their failure to claim for extension of time at the appropriate time or times.

11. This case is stated as a consultative case on points of law arising during the course of reference. 10

Dated this 30th day of June, 1978

Signed Hiew Siew Nam
HIEW SIEW NAM

To:

1. M/S Donaldson & Burkinshaw, Clifford Centre, Singapore.
2. M/S Shook Lin & Bok, Malayan Bank Chambers, Singapore.

No.13
Grounds of
Judgment
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No. 13
GROUNDS OF JUDGMENT 20

By an Agreement in writing dated 8th April 1974 (hereinafter called "the Principal Agreement") made between Loke Hong Kee (S) Pte. Ltd. (hereinafter called "the Claimants") and United Overseas Land Limited (hereinafter called "the Respondents"), the Claimants undertook to complete the erection of two blocks of flats known as Cairnhill Plaza (hereinafter called "the works") under the supervision and to the satisfaction of the Respondents' Architects. 30

On the 23rd March, 1976, the same parties entered into another agreement (hereinafter called "the Supplemental Agreement") which provided, inter alia, for the extension of time for the completion of the said works as follows :-

- (a) in respect of Block 1 up to 30th April 1977
- (b) in respect of Block 2 up to 30th October 1977. 40

On the 1st March 1977, the Architect pursuant to the provisions of Article V Clause 3 of the Supplemental Agreement

10 informed the Respondents that the progress of the works was unsatisfactory and that they could determine the employment of the Claimants under the Principal Agreement. By a letter of the same date the Respondents determined the Claimants employment under the Principal Agreement. Disputes or differences have arisen between the parties and they have been referred to the Arbitrator. The Arbitrator, before proceeding with the arbitration, with the consent of the parties agreed to state a case to the High Court on points of law; the Respondents have requested the Arbitrator to submit five questions for the consideration of the Court and the Claimants three questions.

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20 The first question submitted by the Respondent is: "Whether the Arbitrator is entitled to open up, review or revise an opinion of the Architect under Article V Clause 3 of the Supplemental Agreement pursuant to the powers conferred upon the Architect by Clause 34 of the Principal Agreement. "

30 The point for consideration in connection with this question is whether the Supplemental Agreement is connected with the Principal Agreement.

40 Counsel for the Respondents contend that the Supplemental Agreement is distinct and separate from the Principal Agreement with independent provisions that "cut across", "replace" and "add to" to the provisions of the Principal Agreement, and hence the arbitration clause in the Principal Agreement has no application whatever to the provisions of the Supplemental Agreement. Counsel for the Claimants contend that the two Agreements are connected, the Claimants employment arises under the Principal Agreement and not under the Supplemental Agreement.

50 The parties to the Supplemental Agreement are the same parties to the Principal Agreement, and the subject matter is the same i.e. it is in respect of the erection of the two blocks of flats and known as Cairnhill Plaza and referred to in the Principal Agreement as "the said works". The various articles of the Supplemental Agreement provided for settlement of the dispute which had arisen between the parties under the Principal Agreement - they deal :-

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- (a) with payment of nominated sub-contractors in respect of the work performed under the Principal Agreement;
- (b) with the purchase of materials for the carrying out of the works under the Principal Agreement;
- (c) with the measurement and payment of reinforcement steel bars for use in the works under the Principal Agreement; 10
- (d) with the progress and completion of the works and Respondents' rights of termination in respect of Claimants' employment under the Principal Agreement;
- (e) with the provisions of security by Claimants in respect of their works under the Principal Agreement;
- (f) with the Respondents indemnity rights in respect of the works performed under the Principal Agreement and it clarifies the rights and liabilities of the parties as provided under the Principal Agreement 20

There is not a single matter dealt with in the Supplemental Agreement that is not directly connected with the Principal Agreement.

Article V Clause 3 of the Supplemental Agreement gives the Respondents the right to determine the Claimants employment on the occurrence of the following events :- 30

- (1) if the progress of the said works are in the opinion of the Architect unsatisfactory; the "said works" obviously refer to works in the Principal Agreement;
- (2) failure to adhere or maintain the progress of works as specified in the Third Schedule of the Supplemental Agreement; and 40
- (3) upon any breach of the Supplemental Agreement.

The Architect then recommends in writing and in addition to the Respondents rights under the Principal Agreement the Respondents shall

be at liberty to determine the employment of the Claimants. The Respondents exercised their rights of termination in Exhibit AB63.

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The meaning of the word "Supplement" in the Oxford Dictionary is as follows :- "thing added to supply deficiencies, amplify previous account"

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Grounds of Judgment

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10 It is quite obvious that a Supplemental Agreement is to provide for any omissions that exist in the Principal Agreement and in this particular case to make provisions for exigencies which had arisen since the making of the Principal Agreement and the manner in which these exigencies should be met or dealt with.

20 The provisions of the Supplemental Agreement would be incomprehensible unless read in conjunction with the Principal Agreement. In my view the Supplemental Agreement is connected with the Principal Agreement and it must be read conjunctively with the Principal Agreement. Since the Developers had determined the Claimants' employment under the Principal Agreement, it must follow that the dispute over the determination must necessarily be a dispute under the Principal Agreement and such being the case Clause 34 of the Principal Agreement provides for disputes or differences between the parties to be dealt with by arbitration. Under Clause 34(1) the Arbitrator has jurisdiction to deal with
30 "any dispute or difference" between the parties "as to the construction of this contract or as to any matter or thing of whatever nature arising thereunder or in connection therewith" including inter alia
40 "the rights and liabilities of the parties under Clause 25 of the Principal Agreement."

The abovementioned underlined words must be given a wide interpretation. Dealing with the construction of such a Clause, Sellers J. in Government of Gibraltar v Kenney and another, 1956 3 A.E.R. page 26 said :-

50 "The distinction between matters "arising out of" and "under" the agreement is referred to in most of the speeches in Heyman v Darwine Ltd. (4) (1942) 1 A.E.R. 337, and it is quite clear that "arising out of" is very much wider than "under" the

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agreement. This clause incorporates a difference or dispute in relation to any thing or matter "arising out of" as well as "under" the agreement, and, in my view, everything which is claimed here in this arbitration can be said to be a dispute or difference in relation to something "arising out of" the agreement."

In *Astro Vencedor Companies Naviera S.A. of Panama v Mabanft (CA) 1971 2 Q.B.588*, Denning M.R. in the Court of Appeal affirming the words of Mocatta J. in the Court below said :- 10

"If the claim or the issue has a sufficiently close connection with the claim under the contract, then it comes within the arbitration clause".

Hudson's on Building and Engineering Contracts 9th Edition pp.328-354 has this to say of Clause 35 of the Rules of the Institute of British Architects which is in *pari materia* with our Clause 34 of the Principal Agreement and I quote :- 20

"This arbitration clause enables the merits of virtually any matter of dispute (other than the extremely rare case of an allegation of mistake or perhaps misrepresentation affecting the formation of the contract, and the rather more common case of an application for rectification of the contract) to be dealt with by the arbitrator." 30

Clause 34(3) of the Principal Agreement gives the Arbitrator the power "to open up, review or revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no certificate, opinion, decision, requirement or notice had been given". 40

In view of the above, the answer to this first question posed by the Arbitrator must surely be in the affirmative. Consequent upon my judgment as regards the answer to Question 1, it must follow that the answers to Questions 3 and 5 of the Respondents questions that is - 50

"Q3. Whether or not by virtue of the powers conferred upon me as Arbitrator

10 under Clause 34 of the Main Contract, I am entitled to direct that the Claimants' claims under paragraphs 4 and 4A in their Points of Claim be measured and/or valued as may in my opinion be desirable in order to determine the rights of the parties and/or to open up, review or revise the valuation of the Works executed and materials supplied by the Claimants and carried out by Pakatan purportedly pursuant to the provisions of Article V Clause 6 of the Supplemental Agreement.

In the High Court of The Republic of Singapore

No.13
Grounds of Judgment
8th September 1978

(continued)

20 Q5. Whether on the true construction of the Supplemental Agreement I am entitled to open up review or revise the extension of time already granted (to 4th May 1976) in respect of causes arising and/or occurring and/or known to the Claimants and/or arising from instructions given before the date of the Supplemental Agreement."

30 must also be answered in the affirmative. This definitely comes within the scope of the Arbitrator's jurisdiction provided for by Clause 34(3). Although Article 5 Clause 6 of the Supplemental Agreement states that the valuation of the quantity surveyor shall be binding on both parties and final, in my view Clause 34(3) of the Principal Agreement is sufficiently wide to embrace Clause 6 of the Supplemental Agreement - see Halsbury's 4th Edition, para.1215 and Robins v Goddard 1905 1 K.B. where Collins M.R. in his judgment at page 301 had this to say :-

40 "If something which purports to be conclusive is made subject to revision it loses its quality of finality".

Having disposed of questions 1, 3 and 5, we now turn to question 2 and 4.

Question 2 of the Respondents question is as follows :-

50 "Q2. Whether for the purposes of Article V Clause 3 of the Supplemental Agreement and the recommendation of the Architect given in pursuant thereto it is sufficient that the Architect should have formed an opinion in good faith on the information available to him at the time."

In the High
Court of The
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Grounds of
Judgment
8th September
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(continued)

This question only arises if Question A1
is answered in the negative. Needless to
add it was not.

"Q4. In determining whether or not
the Claimants have failed -

- (i) to adhere to the progress of works
specified in the schedules to the
Supplemental Agreement, and/or
- (ii) to carry out the works expeditiously
and with every diligence, and/or 10
- (iii) to make satisfactory progress
(pursuant to Article V Clauses 1,
2 and 3 of the Supplemental
Agreement),

I am entitled to take into consideration
any delay on the part of nominated
subcontractors (other than any such
delay which may be shown to have been
caused by any breach of contract on the
part of the Respondents)". 20

Clause 23 of the Principal Agreement sets
out the conditions under which the contractor
would be entitled to an extension of time -
paragraph (g) in particular. The effect of
this provision is to exclude the contractor
from all liability in respect of unavoidable
delay caused by the nominated sub-contractors'
work. Evidence relating to excuses of delay
or to description of the progress of the
works resulting in the contractors claiming 30
for extension of time is relevant and
admissible to enable the Arbitrator to
compute the question of time extension.
In *Westminster Corporation v J. Jarvis & Sons
Ltd.*, 1970 1 W.L.R. page 637, Lord Hodson has
this to say :-

"I agree with the contention that delay
relates to the time when performance
is due. From the contractors point of
view it matters not why the work has not 40
been done on time. Dilatoriness is not
in itself relevant."

In my view, the Arbitrator is entitled to
take into consideration any delay on the part
of the nominated sub-contractors.

We now come to the Claimants question.

"QB1 - (a) Whether the Claimants are
entitled to adduce evidence
without amendment of the

pleadings to establish that the dates for the issue of drawings recorded in the schedules attached to the Respondents' letter to the Claimants of the 1st April 1976 had been agreed as alleged by the Claimants.

In the High
Court of The
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Grounds of
Judgment

8th September
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(continued)

10

(b) In the event of the preceding question being answered in the negative then whether in all circumstances an amendment to allege such foregoing agreement should be allowed."

20

The general principles followed by the courts when dealing with application to amend pleadings are set out in the Supreme Court Practice Vol.1 page 340. Generally speaking leave is given though with caution, to determine the real question in controversy between the parties. Jenkins L.J. in G.L. Baker Ltd. v Medway Building & Supplies Ltd. 1958 1 W.L.R. page 1216 had this to say :-

"It is a guiding principle of cardinal importance on the question of amendments that generally speaking all such amendments ought to be made for the purpose of determining the real question in controversy between the parties to any proceedings."

30

Bowen L.J. in Cropper v Smith, 1884 26 Ch. D page 710 said :-

"It is a well established principle that the object of the Court is to decide the rights of the parties and not to punish them for mistakes they make in the conduct of their cases by deciding otherwise than in accordance with their rights."

40

Bramwell L.J. in Tildesley v Harper 10 Ch. D page 396 said :-

"My practice has always been to give leave to amend unless I have been satisfied that the party applying was acting mala fide or that, by his blunder, he had done some injury to his opponent which could not be compensated for by costs or otherwise."

The answer to both parts of this question is in the affirmative.

The Claimants' 2nd question is as follows:-

In the High
Court of The
Republic of
Singapore

No.13
Grounds of
Judgment

8th September
1978

(continued)

"B2. Whether William Chen's certification that in his opinion the works as defined by the Building Contract ought reasonably to have been completed by the Claimants on the 4th May 1976 contained in his letter to the Claimants of the 18th of July 1977 -

(a) has binding effect; and

(b) subject to opening up, review or revision by me pursuant to the powers conferred on me under Clause 34 of the Main Contract." 10

Mr. Chen's certificate was issued under Clause 22 of the Principal Agreement on 18th July 1977. Arbitration proceedings commenced on the 2nd March 1977. In *Lloyd Brothers v Milward* unreported but illustrated in Hudson's 4th Edition, Vol.2 page 262, the Court of Appeal held that once a dispute had arisen it was not open to the architect to give certificates. The merits of this Certificate are being disputed by the Claimants: hence the Arbitrator by virtue of the powers conferred on him by Clause 34(3) of the Principal Agreement has the power to open, review or revise. It follows that the answer to (a) supra must be in the negative (b) in the affirmative. 20

"QB3. Whether the Claimants are precluded from relying on paragraph 3 of their Points of Reply and Defence to Counterclaim by virtue of their failure to claim for an extension of time at the appropriate time or times." 30

Failure on the part of the Claimants to claim extension of time at the appropriate time does not prevent the Arbitrator from granting such reasonable extension under the provisions of Clause 23 - Halsbury's 4th Edition p.606. 40

Wallace on Building and Civil Engineering Standard Forms at page 106 describes this failure to be nothing more than a technical breach of contract by the contractor.

Slessor L.J. in *Prestige v Brettell*, 1938 4 A.E.R. page 346 had this to say :-

"I read the case of *Brodie v Cardiff Corporation* where this matter was fully considered, in substance to mean this. Where an arbitrator having 50

jurisdiction has to decide that something ought to have been done by the architect or engineer which was not done, if the terms of reference are wide enough to enable him to deal with the matter he may by that decision himself supply the deficiency, and do that which ought to have been done."

In the High Court of The Republic of Singapore

No.13
Grounds of Judgment

8th September 1978

(continued)

10 see also in this connection Hudson's Building and Engineering contracts, 10th Edition, 437.

Finally in view of the aforementioned authorities in my view the Claimants' failure to serve notice under Clause 23 does not in law amount to a waiver of their rights under that Clause.

The answer to this question is in the negative.

20 In answering the aforementioned question I have confined myself only to the points of law on which guidance was sought and I have refrained from taking into consideration certain facts pertaining to these questions in arriving at my conclusions although the submissions did where necessary refer to such facts as these matters are for determination by the Arbitrator.

D.C. D'Cotta
J U D G E

30 8th September, 1978

Certified true copy

Signed Illegible
Private Secretary to
Judge Court No.5
Supreme Court,
Singapore.

The 25th day of July, 1978

8th September
1978

UPON READING the Special Case Stated
herein dated the 30th day of June, 1978.

AND UPON HEARING Chang Sheng Wu of
Counsel for the Claimants Loke Hong Kee (S)
Pte. Ltd. and Mr. Patrick Neville Garland Q.C.
of Counsel for the Respondents United
Overseas Land Limited. 10

IT WAS ORDERED that the Special Case
Stated herein do stand adjourned for Judgment
AND UPON the same coming on for Judgment this
day THIS COURT DOTH ANSWER THE QUESTIONS
submitted by the said special Case Stated as
follows :-

1. QUESTION A1 - Affirmative.
2. QUESTION A2 - Not answered.
3. QUESTION A3 - Affirmative.
4. QUESTION A4 - Affirmative. 20
5. QUESTION A5 - Affirmative.
6. QUESTION B1 -
(a) Affirmative
(b) Affirmative
7. QUESTION B2 -
(a) Negative
(b) Affirmative
8. QUESTION B3 - Negative.

AND IT IS ORDERED that the costs of this
hearing be costs in the Arbitration. 30

AND IT IS FURTHER ORDERED that leave to
appeal to the Court of Appeal be and is hereby
granted to the said Respondents.

Dated this 8th day of September, 1978

Sd. Alfonso Ang
ASSISTANT REGISTRAR

Entered the 20th day of September 1978 at
2.50 p.m. in Volume 197 at page 33.

No. 15

In the Court
of Appeal

NOTICE OF APPEAL

No.15
Notice of
Appeal

9th September
1978

10

Take Notice that United Overseas Land Limited being dissatisfied with the decision of the Honourable Mr. Justice Denis D'Cotta given at the High Court of the Republic of Singapore on the 8th day of September, 1978 appeals to the Court of Appeal against the whole of the said decision except that part only of the said decision as decides that costs is to be costs in the Arbitration.

Dated the 9th day of September 1978.

Signed Shook Lin & Bok
Solicitors for the Appellants

To the Registrar, Supreme Court, Singapore and to The Respondents and their Solicitors Messrs. Donaldson & Burkinshaw, Clifford Centre, Raffles Place, Singapore.

No. 16

No.16
Petition
of Appeal

20

PETITION OF APPEAL

21st
September
1978

TO: THE HONOURABLE THE JUDGES OF THE COURT
OF APPEAL

The Petition of the abovenamed Appellants showeth as follows :-

30

1. The Appeal arises from a Special Case Stated for the decision of the Court pursuant to Section 28 of the Arbitration Act by the Arbitrator of an Arbitration between Loke Hong Kee (S) Pte. Ltd. (the Claimants in the Arbitration Proceedings and hereinafter called "the Claimants") and your Petitioner (the Respondents in the Arbitration Proceedings and hereinafter called "the Respondents" or "your Petitioner") in which Special Case Stated the Arbitrator sought the decision of the Court on the following QUESTIONS:

40

1.1 QUESTION A1 - Whether the Arbitrator is entitled to open up review or revise an opinion of the Architect under Article V Clause 3 of the Supplemental Agreement pursuant to the powers conferred upon the Arbitrator by Clause 34 of the Main Contract.

In the Court
of Appeal

No.16
Petition
of Appeal

21st September
1978

(continued)

- 1.2 QUESTION A2 - Whether for purposes of Article V Clause 3 of the Supplemental Agreement and the recommendation of the Architect given pursuant thereto it is sufficient that the Architect should have formed an opinion in good faith on the information available to him at the time.
- 1.3 QUESTION A3 - Whether or not by virtue of the powers conferred upon him as Arbitrator under Clause 34 of the Main Contract the Arbitrator is entitled to direct that the Claimants' claims under paragraphs 4 and 4A in their Points of Claim be measured and/or valued as may in the Arbitrator's opinion be desirable in order to determine the rights of the parties and/or to open up review or revise the valuation of works executed and materials supplied by the Claimants and carried out by Pakatan purportedly pursuant to the provisions of Article V Clause 6 of the Supplemental Agreement. 10 20
- 1.4 QUESTION A4 - In determining whether or not the Claimants have failed -
- (i) to adhere to the progress of works specified in the Schedules to the Supplemental Agreement and/or
 - (ii) to carry out the works expeditiously and with every diligence and/or 30
 - (iii) to make satisfactory progress (pursuant to Article V Clauses 1, 2 and 3 of the Supplemental Agreement)
- the Arbitrator is entitled to take into consideration any delay on the part of the nominated subcontractors (other than any such delay which may be shown to have been caused by any breach of contract on the part of the Respondents). 40
- 1.5 QUESTION A5 - Whether on the true construction of the Supplemental Agreement the Arbitrator is entitled to open up review or revise the extension of time already granted (to 4th May, 1976) in respect of causes arising and/or occurring and/or known to the Claimants and/or arising from instructions given before the date of the Supplemental Agreement. 50

1.6 QUESTION B1 -

In the Court
of Appeal

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Petition
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21st September
1978

(continued)

10

(a) Whether the Claimants are entitled to adduce evidence without amendment of the pleadings to establish that the date for issue of drawings recorded in the Schedules attached to the Respondents' letter to the Claimants of the 1st of April, 1976 has been agreed as alleged by the Claimants.

(b) In the event of the preceding question being answered in the negative then whether in all circumstances an amendment to allege such foregoing agreement should be allowed.

1.7 QUESTION B2 - Whether William Chen's certification that in his opinion, the works as defined by the Building Contract ought reasonably to have been completed by the Claimants by the 4th May 1976 contained in his letter to the Claimants of the 18th day of July, 1977 -

20

(a) Has binding effect and

(b) Subject to opening up, review or revision by the Arbitration pursuant to the powers conferred on him under Clause 34 of the Main Contract.

1.8 QUESTION B3 - Whether the Claimants are precluded from relying on paragraph 3 of their Points of Reply and Defence to Counterclaim by virtue of their failure to claim for an extension of time at the appropriate time or times.

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2. By a Judgment of Mr. Justice D.C.D'Cotta dated the 8th day of September, 1978 in Case Stated No.1 of 1978 the said QUESTIONS were answered as follows with costs to be costs in the arbitration :

40

2.1 QUESTION A1 - Affirmative.

2.2 QUESTION A2 - Not answered as counsels for both parties have agreed that this QUESTION would only arise if QUESTION A1 was answered in the negative.

2.3 QUESTION A3 - Affirmative.

2.4 QUESTION A4 - Affirmative.

2.5 QUESTION A5 - Affirmative.

In the Court
of Appeal

No.16
Petition
of Appeal
21st September
1978
(continued)

2.6 QUESTION B1 -

- (a) Affirmative.
- (b) Affirmative.

2.7 QUESTION B2 -

- (a) Negative.
- (b) Affirmative.

2.8 QUESTION B3 - Negative.

3. Your Petitioner is dissatisfied with the said Judgment on the following grounds:

3.1 The Learned Judge misdirected himself in holding that the Supplemental Agreement provided for extensions of time for the completion of the works, and failed, in considering that Agreement, to give any, or any sufficient weight to the circumstances in which it was made, as set out in the recitals, or to its provisions and in particular to Article VIII which stated that the Supplemental Agreement provided "additional rights and benefits" to the Respondents. 10 20

3.2 QUESTIONS A1 and A2 -

(a) The Learned Judge erred in law in deciding that the Arbitrator is entitled to open up review or revise an opinion of the Architect under Article V Clause 3 of the Supplemental Agreement pursuant to the powers conferred upon him by Clause 34 of the Main Contract. 30

(b) The Learned Judge erred in deciding that the point for consideration is whether the Supplemental Agreement is connected with the Main Contract and that if it is then question A1 is to be answered in the affirmative.

(c) The Learned Judge erred in law by having regard to the authorities as to the scope of the jurisdiction of an Arbitrator under an arbitration clause and in regarding such authorities as decisive of these questions. It was and is, not disputed that the Arbitrator had jurisdiction to determine whether or not there existed grounds entitling the Respondents to determine the employment of the Claimants. 40

(d) The Learned Judge should have directed himself that the real issue before him was whether, on a true construction of the Agreements, the Respondents were entitled so to determine the employment of the Claimants:

In the Court
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21st September
1978

(continued)

10

(i) if the Arbitrator found that the Architect was bona fide of the opinion that the progress of the works was unsatisfactory or

(ii) only if the Arbitrator found that the progress of the works was in fact unsatisfactory.

20

(e) By answering question A1 in the affirmative, the learned Judge deprived of all meaning, and rendered nugatory, the words "in the opinion of the Architect" in Article V Clause 3 of the Supplemental Agreement, and failed to draw any distinction between that ground of termination which arose upon "the opinion of the Architect" and the other grounds which arose upon the existence of an objective state of facts.

30

(f) The Learned Judge erred in law in adopting a construction which had such effect words used in Article V Clause 3 and Article VIII Clause 1.

(g) The Supplemental Agreement and the Main Contract are two separate contracts dealing with the same subject-matter which must be construed so as to give effect to all the terms of both of them

40

(h) The Learned Judge gave no, or no sufficient weight to the fact that the "opinion" referred to in Article V Clause 3 of the Supplemental Agreement is different in kind and effect from the opinions referred to in the Main Contract.

(i) Had the Learned Judge answered Question A1 in the negative he would or should have answered Question A2 in the Affirmative.

3.3 QUESTION A3

In the Court
of Appeal

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21st September
1978

(continued)

- (a) The Learned Judge erred in law in deciding that by virtue of the powers conferred upon him as Arbitrator under Clause 34 of the Main Contract the Arbitrator is entitled to direct that the Claimants' claims under paragraphs 4 and 4A in their points of claim be measured and/or valued as may in his opinion be desirable in order to determine the rights of the parties and/or to open up, review or revise the valuation of the works executed and materials supplied by the Claimants and carried out by Pakatan purportedly pursuant to the provisions of Article V Clause 6 of the Supplemental Agreement. 10
- (b) Your Petitioner repeats the grounds set out above for Questions A1 and A2 20
- (c) The Learned Judge erred in holding that consequent upon his having answered Question A1 in the affirmative, it necessarily followed that Question A3 must also be answered in the affirmative.
- (d) The Learned Judge erred in law in giving no, or no sufficient weight to the fact that Pakatan was not an entity contemplated by the Main Contract and that therefore a valuation by them could not be within the scope of Clause 34(3) of the Main Contract. 30
- (e) The Learned Judge failed to direct himself that since the parties had agreed that the measurement and valuation by Pakatan of the works should be binding on both parties and should be final it could not, without more, be desirable or necessary to have any other measurement or valuation of such works, or to open up, review or revise that valuation. 40

3.4 QUESTION A4

- (a) The Learned Judge erred in law in deciding that in determining whether or not the Claimants have failed : 50
- (i) to adhere to the progress of works

specified in the Schedules
to the Supplemental Agreement,
and/or

In the Court
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- (ii) to carry out the works
expeditiously and with every
diligence, and/or
- (iii) to make satisfactory progress
(pursuant to Article V Clauses
1, 2 and 3 of the Supplemental
Agreement)

(continued)

10

The Arbitrator is entitled to take
into consideration any delays to
completion caused by unavoidable
delays on the part of nominated
subcontractors (other than any such
delay which may be shown to have
been caused by any breach of
contract on the part of the Respon-
dents).

20

- (b) The Learned Judge having (rightly)
held that evidence of delays to
completion caused by unavoidable
delays on the part of nominated
sub-contractors could be relevant to
enable the Arbitrator to compute any
proper application for an extension
of time under Clause 23(g) either -

30

- (i) wrongly concluded that the
Arbitrator was therefore
entitled to take such delays
into account for the separate
purposes of Article V of the
Supplemental Agreement or

- (ii) failed to consider whether the
Arbitrator was entitled to take
such delays into account for
such separate purposes.

40

- (c) The Learned Judge misdirected himself
in holding that the effect of Clause
23(g) is "to exclude the contractor
from all liability" in respect of
delay caused by nominated sub-
contractors.

50

- (d) The Learned Judge failed to give
any, or any sufficient, weight or
effect to the fact that obligation
to adhere to the scheduled progress
of works is an unqualified obligation
and the right to determine upon
failure so to adhere is an absolute right.

In the Court
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(continued)

- (e) The Learned Judge failed to give any, or any sufficient weight or effect to Clause 17(2) of that Main Contract.
- (f) The Learned Judge erred in not having due regard to your Petitioner's submission that under the Main Contract there were two contractual obligations assumed by the Claimants namely (i) the obligation to proceed with the works regularly and diligently and (ii) to complete the works by the date for completion. 10

3.5 QUESTION A5

- (a) The Learned Judge erred in law in deciding that the Arbitrator is entitled to open up review or revise the extension of time already granted (to 4th of May, 1976) in respect of causes arising and/or occurring and/or known to the Claimants and/or arising from instructions given before the date of the Supplemental Agreement. 20
- (b) Your Petitioner repeats the grounds set out in 3.1 and 3.2 above
- (c) The Learned Judge erred in holding that consequent upon his having answered Question A1 in the affirmative, it followed that Question A5 must also be answered in the affirmative. 30
- (d) The Learned Judge erred in not having due regard to your Petitioner's submission that upon the true construction of the Supplemental Agreement and upon the fact that at 23rd March, 1976 there were outstanding no applications for extension of time for completion the parties must be taken to have agreed to be bound by the extended completion dated of the 4th of May, 1976 as on the 23rd of March, 1976 and that any extensions of time contemplated by Article VIII of the Supplemental Agreement would be only in respect of causes of delay arising after the 23rd day of March, 1976. 40
- (e) The Learned Judge misdirected himself in holding that the issue was whether or not the Arbitrator had jurisdiction 50

to consider extensions of time, when the true issue was whether or not the parties had agreed what the extensions of time should be.

In the Court
of Appeal

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of Appeal

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1978

(continued)

3.6 QUESTION B1

10

(a) The Learned Judge erred in not deciding, or in deciding without considering, whether the Claimants were entitled to adduce evidence without amendment to the pleadings to establish that the dates for the issue of drawings recorded in the Schedules attached to the Respondents' letter to the Claimants of the 1st of April, 1976 had been agreed as alleged by the Claimants.

20

(b) The Learned Judge should have held that they were not so entitled, since otherwise the Claimants would have been adducing evidence to establish an Agreement which had not been pleaded.

(c) The Learned Judge should first have decided whether an amendment was necessary.

30

(d) Having decided that such an amendment was necessary, the Learned Judge should then have considered whether such an amendment should be allowed, and should have decided that in all the circumstances no such amendment should be allowed.

3.7 QUESTION B2

40

(a) The Learned Judge erred in law in deciding that Mr. William Chen's certification that in his opinion the works as defined by the Building Contract ought reasonably to have been completed by the Claimants by the 4th of May, 1976 contained in his letter to the Claimants of the 18th July, 1977:

(i) has no binding effect, and "is"

(ii) subject to opening up review or revision by the Arbitrator pursuant to the powers conferred upon him under Clause 34 of the Main Contract.

In the Court
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1978

(continued)

(b) The Learned Judge failed to give any, or any sufficient weight to your Petitioner's contentions, which were that -

(i) notwithstanding the commencement of the Arbitration, William Chen's certification was still a valid certification for the purposes of Clause 22 of the Main Contract, unless and until the same was opened up, reviewed or revised by the Arbitrator, and

10

(ii) whereas in principle the Arbitrator could have jurisdiction to open up, review or revise that certificate, there is in the circumstances of this case no ground for the Arbitrator to do so.

20

(c) The Learned Judge erred in applying the decision in Lloyd Brothers v Milward Hudsons BC 4th Ed. Vol.2 P.262 when the said decision was based on a different contract, and where the effect of the alleged certificate purported to be to determine the question referred to arbitration.

3.8 QUESTION B3

30

(a) The Learned Judge erred in law in deciding that the Claimants are not precluded from relying on paragraph 3 of their points of Reply and Defence to Counterclaim by virtue of their failure to claim for an extension of time at the appropriate time or times.

(b) The Learned Judge erred in law in not holding :

40

(i) that it is a condition precedent of any grant of an extension of time by the Architect that the Claimants should have given written notice of the cause of the delay forthwith upon it becoming reasonably apparent that the progress of the works is delayed;

50

(ii) the Architect has no power to

grant, or to refuse or fail to grant, any extension of time when no such notice has been given;

In the Court
of Appeal

No.16
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of Appeal

21st September
1978

(continued)

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(iii) the Arbitrator cannot have jurisdiction or power to grant any extension where the Architect had no such jurisdiction or power and where there has been no decision of the Architect giving rise to any dispute or difference for the Arbitrator to adjudicate upon.

3.9 Your Petitioner will further rely on the grounds and submissions contained in their Summary of Submissions and written Submissions to the Learned Judge.

20

4. Your Petitioner prays that such Judgment may be reversed by the said QUESTIONS being answered as follows :-

30

- (a) QUESTION A1 - Negative
- (b) QUESTION A2 - Affirmative
- (c) QUESTION A3 - Negative
- (d) QUESTION A4 - Negative
- (e) QUESTION A5 - Negative
- (f) QUESTION B1 - Negative for both subparagraphs (a) and (b)
- (g) QUESTION B2- Affirmative for subparagraph (a) and negative for (b)
- (h) QUESTION B3 - Affirmative

and that the costs of this Appeal be costs in the Arbitration.

Dated the 21st day of September, 1978.

Signed Shook Lin & Bok
Solicitors for the Appellants

To: The Respondent and to their Solicitors
Messrs. Donaldson & Burkinshaw,
Singapore.

In the Court
of Appeal

No. 17
Grounds of
Judgment

25th July
1979

Coram Wee C.J.
Kulasekaram J
Chua J

No. 17

GROUND OF JUDGMENT

This is an appeal from the decision of D'Cotta J. on a Special Case Stated for the decision of the High Court pursuant to Section 28 of the Arbitration Act (Cap.16) in relation to a dispute between the parties which has arisen in connection with a building contract for the erection of two blocks of flats by the Respondents.

10

By an agreement in writing dated 8th April, 1974 between the Respondents, Loke Hong Kee (S) Pte. Ltd. and the Appellants, United Overseas Land Limited, the Respondents agreed to carry out and complete certain building works comprising the erection of two blocks of flats together with ancillary works at Cairnhill under the supervision and to the satisfaction of the Appellants' Architect.

20

By a Supplemental Agreement made between the same parties and dated 23rd March 1976 it was, inter alia, provided :-

- (a) Under Article V Clause 1 that the Respondents should adhere to the progress of works specified in the Third Schedule annexed to the Supplemental Agreement to ensure the completion of the works on or before the dates specified therein.
- (b) Under Article V Clause 2 that the Respondents should carry out the works expeditiously and with every diligence and complete the same.
- (c) Under Article V Clause 3 that in the event of the progress of the works being in the opinion of the Architect unsatisfactory and/or in the event of Respondents failing to adhere or maintain the progress of works as specified in the said Third Schedule and/or upon any breach of the Supplemental Agreement by the Respondents then upon the recommendation of the Architect in writing and in addition to the Appellants' rights under the Main Contract the Appellants should be at liberty to determine the employment of the Respondents under the Main Contract forthwith by notice in writing.

30

40

(d) Under Article V Clause 6 that upon the Appellants regaining possession of the site the firm of Pakatan International Suckling McDonald should within two weeks measure the works as completed by the Respondents and the valuation of the said Pakatan should be binding on both parties and should be final.

In the Court
of Appeal
No.17
Grounds of
Judgment
25th July 1979
(continued)

10 (e) Under Article VIII that notwithstanding the provisions contained in the Supplemental Agreement the time for completion of the works unless extended by the Architect under the Main Contract should remain as at the 4th May 1976, and that nothing in the Supplemental Agreement should effect or modify or diminish any right of the Appellants and the Respondents of whatever kind
20 against each other arising out of the act or default of either party under the Main Contract the terms and conditions of which should remain valid and binding on the parties to the Supplemental Agreement subject to the provisions thereof particularly the additional rights and benefits of the Appellants provided therein.

30 On 1st March 1977 the Architect, pursuant to the provisions of Article V Clause 3 of the Supplemental Agreement, by a letter to the Appellants stated that he was of the opinion that progress of the works was unsatisfactory; that it was obvious that the Respondents had failed to adhere or maintain the progress of work as specified in the Schedule to the Supplemental Agreement, that the Respondents were not making serious attempts to adhere or maintain the progress of
40 works; and that the Respondents were not carrying out the works expeditiously and with every diligence; and accordingly recommended that the Appellants ought to determine the employment of the Respondents under the Main Contract.

By a letter also dated 1st March 1977 the Appellants determined the Respondents' employment under the Main Contract forthwith:

50 Disputes and differences having arisen between the parties, such disputes and differences were referred to arbitration before a sole arbitrator. One main dispute or difference was whether the Appellants had lawfully determined the

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25th July 1979
(continued)

Respondents' employment as aforesaid.

After pleadings were delivered the arbitrator commenced the hearing of the arbitration. After hearing the evidence in chief of the first witness, the managing director of the Respondents, the hearing was adjourned for the purpose, inter alia, of considering whether points of law had arisen during the reference. Subsequently the parties agreed that the arbitrator should state certain points of law for the opinion of the High Court. Accordingly, the arbitrator stated the following questions in the form of a Special Case Stated for the decision of the High Court :-

10

A1. Whether I am entitled to open up review or revise an opinion of the Architect under Article V Clause 3 of the Supplemental Agreement pursuant to the powers conferred upon me by Clause 34 of the Main Contract.

20

A2. Whether for the purposes of Article V Clause 3 of the Supplemental Agreement and the recommendation of the Architect given in pursuant thereto it is sufficient that the Architect should have formed an opinion in good faith on the information available to him at the time.

30

A3. Whether or not by virtue of the powers conferred upon me as Arbitrator under Clause 34 of the Main Contract I am entitled to direct that the Claimant's claims under paragraphs 4 and 4A in their Points of Claim be measured and/or valued as may in my opinion be desirable in order to determine the rights of the parties and/or to open up, review or revise the valuation of the Works executed and materials supplied by the Claimants and carried out by Pakatan purportedly pursuant to the provisions of Article V Clause 6 of the Supplemental Agreement.

40

A4. In determining whether or not the Claimants have failed :-

50

(i) To adhere to the progress of Works specified in the schedules to the Supplemental Agreement,

and/or

In the Court
of Appeal

(ii) to carry out the Works
expeditiously and with every
diligence, and/or

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(iii) to make satisfactory progress
(pursuant to Article V Clauses
1, 2 and 3 of the Supplemental
Agreement,

25th July 1979
(continued)

10 I am entitled to take into consideration
any delay on the part of nominated
subcontractors (other than any such
delay which may be shown to have been
caused by any breach of contract on
the part of the Respondents)

20 A5. Whether on the true construction of
the Supplemental Agreement I am
entitled to open up review or revise
the extension of time already granted
(to 4th of May 1976) in respect of causes
arising and/or occurring and/or known
to the Claimants and/or arising from
instructions given before the date of
the Supplemental Agreement.

30 B1. (a) Whether the Claimants are entitled
to adduce evidence without amendment of
the pleadings to establish that the
dates for the issue of drawings recorded
in the Schedules attached to the Respon-
dents' letter to the Claimants of the
1st of April 1976 had been agreed as
alleged by the Claimants.

(b) In the event of the preceding question
being answered in the negative then
whether in all circumstances an amendment
to allege such foregoing agreement should
be allowed.

40 B2. Whether William Chen's certification
that in his opinion the Works as defined
by the Building Contract or reasonably
to have been completed by the Claimants
by the 4th of May 1976 contained in his
letter to the Claimants of the 18th of
July 1977;

(a) has binding effect; and

(b) subject to opening up review or
revision by me pursuant to the
powers conferred on me under Clause
34 of the Main Contract.

B3. Whether the Claimants are precluded from

In the Court
of Appeal

No.17
Grounds of
Judgment

25th July 1979
(continued)

relying on paragraph 3 of their
Points of Reply and Defence to
Counterclaim by virtue of their
failure to claim for an extension of
time at the appropriate time or times.

D'Cotta J. answered the said questions
as follows :-

- A1. - Affirmative
- A2. - Not answered as counsel for both parties had agreed that this question would only arise if question A1 was answered in the negative. 10
- A3. - Affirmative.
- A4. - Affirmative.
- A5. - Affirmative.
- B1.(a) - Affirmative.
- (b) - Affirmative.
- B2.(a) - Negative.
- (b) - Affirmative. 20
- B3. - Negative.

From this decision the Appellants appealed but before the hearing of the appeal, they have abandoned their appeal in respect of the answers to questions B1 and B2. During the hearing of the appeal the Appellants have intimated that as questions A4, A5 and B3 relate to claims made by them against the Respondents for liquidated damages, which claims they do not intend to further prosecute if they are successful in this appeal in Questions A1, A2 and A3, they are seeking the court's leave to adjourn the hearing of the appeal on Questions A4, A5 and B3 pending the decision of the court on Questions A1, A2 and A3 on their undertaking that if they ask the Court to restore the hearing on these remaining questions they would in any event pay all costs thrown away by reason of the hearing of these remaining questions being adjourned at the first hearing.40
We granted the application.

Question A1 and A2

These two questions relate to one of the issues which the arbitrator has to decide, namely, whether or not the termination on 1st March 1977 of the Respondents' engagement was lawful or was a breach of contract. The Appellants contend that on a true construction

of the Main Contract and the Supplemental Agreement, in particular Article V Clause 3, they are entitled to terminate the Respondents' engagement if the Architect was of the bona fide opinion that the progress of the works was unsatisfactory and that such an opinion is not subject to opening up, review or revision by the arbitrator. The respondents contend that the arbitrator is entitled to open up, review or revise the opinion of the Architect by virtue of the powers conferred on him by Clause 34 of the Main Contract which provides as follows :-

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of Appeal

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Grounds of
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25th July 1979
(continued)

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"Clause 34(1) Provided always that in case any dispute or difference shall arise between the Employer or the Architect on his behalf and the Contractor, either during the progress or after the completion or abandonment of the Works, as to the construction of this Contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or thing left by this Contract to the discretion of the Architect or the withholding by the Architect of any certificate to which the Contractor may claim to be entitled or the measurement and valuation mentioned in clause 30(5) (a) of these Conditions or the rights and liabilities of the parties under clauses 25, 26, 31 or 32 of these Conditions), then such dispute or difference shall be and is hereby referred to the arbitration and final decision of a person to be agreed between the parties, or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an Arbitrator, a person to be appointed on the request of either party by the President or a Vice-President for the time being

- (3) Subject to the provisions of clauses 2(2) and 30(7) of these conditions the Arbitrator shall, without prejudice to the generality of this power, have power to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given." 10 20

We accept the Appellants' contention. The plain, clear and indeed the only meaning of Article V Clause 3 is that the Appellants have a right to terminate the Respondents' engagement if the Architect was of the bona fide opinion that progress of the works was unsatisfactory. The construction for which the Respondents contend not only robs the words "in the opinion of the Architect" of any meaning and effect whatsoever and renders these words a nullity, but completely ignores the distinction in Article V Clause 3 between the first event, which is an opinion, and the second and third events which are an actual failure or breach. 30 40

It is a primary principle of construction that effect must be given to all the words in a contract unless by doing so damage is done to the rest of the contract. The jurisdiction or power conferred on the arbitrator by Clause 34 of the Main Contract is to decide all matters in dispute between the parties, and in doing so he is not bound by any prior certificate or opinion of the Architect upon the matter in dispute. The matter in dispute before the arbitrator is whether or not there existed a ground for determining the Respondents' engagement. Article V Clause 3 expressly provided one such ground namely, that the 50

architect was of the opinion that the progress of the works was unsatisfactory. The matter in dispute which the arbitrator has to decide is whether or not such an opinion existed and, if so, was it a bona fide opinion. Under Clause 34 of the Main Contract the arbitrator has the power and has to determine this issue and the Architect has given no certificate, opinion or decision upon the issue which required to be opened up or reviewed.

In the Court
of Appeal

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25th July
1979

(continued)

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In our judgment, on a careful consideration of the terms of the Supplemental Agreement, the intention of the parties to it was that the Appellants could determine the Respondents employment under the Main Contract if, inter alia, the Architect was of the bona fide opinion that the progress of the works specified in the Third Schedule annexed to the Supplemental Agreement was unsatisfactory and the Architect recommended in writing to the Appellants to determine the employment. It appears to us to be not unreasonable and indeed, in our opinion, it is plain that the parties put faith in the Architect to act responsibly in relation to Article V Clause 3 and have accepted and agreed on the Architect, as a sensible and independent person, to protect the interest of each, relying on his judgment, good sense and independence.

40

However stringent such a term may be, when it comes to be enforced the courts have always declared that their duty is in such cases to ascertain and give effect to the intention of the parties as evidenced by the agreement and if a term is clear and unambiguous the Court is bound to give effect to it without stopping to consider how far it may be oppressive or not.

50

In our judgment so long as the Architect's opinion was reached bona fide the Appellants were entitled to act on the written recommendation of the Architect and to determine the Respondents' employment under the Main Contract on that ground. Accordingly, the answer to Question A1 should be in the negative and the answer to Question A2 should be in the affirmative.

In the course of his argument, Counsel for the Respondents contends that even if the answers to these two Questions are not in the Respondents' favour, there is a principle of law known as the common law principle of

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25th July 1979
(continued)

prevention that (we quote) "if the Arbitrator is satisfied on the evidence that the owner's own actions (e.g. late issue of drawings and issue of Variation Orders) had prevented the Contractor from maintaining satisfactory progress of the works, then the owner is precluded from relying on the Architect's opinion and recommendation under Article V Clause 3 of the Supplemental Agreement as a ground for termination of the Building Contract".

10

In our judgment this common law principle does not arise on the Special Case and is not a question stated for the court's consideration in the Special Case Stated. This common law principle clearly had nothing to do with Questions A1 and A2 which are questions of construction of the contract between the parties and events subsequent to the contract cannot alter its true construction.

20

The Respondents relied on Roberts v. Bury Improvement Commissioners (1870) L.R. 5 C.P.310) in support of this contention. In our opinion that case is distinguishable. In that case the owners admitted on the record that the alleged failure by the contractor to use such diligence and to make such progress as to enable him to complete the works by the day specified was caused by the failure of the owners and their architect to supply plans and set out the land necessary to enable the contractor to commence the works. On that admission the common law principle was held applicable, the principle being that one of two contracting parties is exonerated from the performance of a contract when the performance of it is prevented and rendered impossible by the wrongful act of the other contracting party. The majority of the Court of Exchequer Chamber held that on its true construction a particular clause in the contract relied on by the owners did not confer upon the architect the power to determine whether the delay of the contractor to proceed with the works so as to complete them by the day specified had or had not caused by the failure of the owners to supply the necessary plans and set out the land.

30

40

Question A3

This question arises under Article V Clause 6 of the Supplemental Agreement which provides that in the event of a determination of the Respondents' employment the firm of

10 Pakatan International Suckling McDonald
"shall measure the Works as completed by
the Contractor and the valuation of the
said Quantity Surveyor shall be binding on
both parties and shall be final." The
Respondents are claiming that the said
Quantity Surveyor's valuation is too low
and they contend that the arbitrator has
power under Clause 34(3) of the Main
Contract to open up the valuation and then
to direct such measurements and/or valua-
tion as may in his opinion be desirable.

In the Court
of Appeal

No.17
Grounds of
Judgment

25th July
1979

(continued)

20 This question is likewise a question
of construction of the contract between
the parties and for the same reasons we
have given on Questions A1 and A2 we are of
the opinion that the answer to this question
must be in the negative. Furthermore, it
is clear that the powers of the arbitrator
under Clause 34(3) are limited to opening
up, reviewing or revising any opinion or
decision of the Architect and the arbitrator
is given no power under that clause to open
up a valuation given by a third party as a
result of a separate contract between the
parties in which they have expressly agreed
that the valuation shall be final and
binding on them.

30 Accordingly, the Appellants succeed in
their appeal on Questions A1, A2 and A3 and
we reserve the question of costs until the
hearing and determination of the appeal on
the remaining questions.

Sd. WEE CHONG JIN
CHIEF JUSTICE, SINGAPORE

Sd. T. KULASEKARAM
(T.KULASEKARAM) JUDGE

Sd. F.A. CHUA
(F.A.CHUA) JUDGE

40 Singapore,
25th July 1979

Certified true copy

Signed Illegible

Private Secretary to
the Hon. the Chief Justice,
Supreme Court,
Singapore, 6.

In the Court
of Appeal

No. 18
Formal
Judgment

25th July 1979

This 25th day of July 1979

In Open Court

Coram: The Honourable Chief Justice Mr.
Justice We Chong Lin.
The Honourable Mr. Justice Kulasekaram
The Honourable Mr. Justice F.A. Chua

No. 18

FORMAL JUDGMENT

THIS APPEAL from the Judgment of The Honourable Mr. Justice Denis D'Cotta dated the 8th day of September, 1978 coming on for hearing on the 19th, 20th, 21st, 22nd and 23rd day of March, 1979 in the presence of Mr. Christopher Hiley Ludlow Bathurst Q.C. of Counsel for the Appellants and Mr. C.S.Wu of Counsel for the Respondents.

10

AND UPON READING the Record of Appeal herein

AND UPON HEARING COUNSEL as aforesaid AND UPON HEARING COUNSEL for the Appellants abandoning the Appeal of the Appellants against the Judgment of the Honourable Mr. Justice Denis D'Cotta on Questions B1 and B2 and undertaking to pay in any event all costs thrown away by reason of the hearing of Questions A4, A5 and B3 being adjourned at the hearing on the 20th, 21st, 22nd and 23rd day of March, 1979

20

THIS COURT DOTH ORDER THAT

1. the hearing of the Appeal on Questions A4, A5 and B3 be adjourned
2. the Appeal on Questions A1, A2 and A3 do stand adjourned for Judgment.

AND UPON the Appeal coming on for Judgment this day THIS COURT DOTH ORDER THAT the Appeal on Question A1, A2 and A3 be allowed and the Judgment of the Honourable Mr. Justice Denis D'Cotta thereon be set aside and THIS COURT DOTH FURTHER ANSWER Questions A1, A2 and A3 as follows :-

30

1. QUESTION A1 - Negative
2. QUESTION A2 - Affirmative
3. QUESTION A3 - Negative

AND UPON HEARING COUNSEL for the Appellants and for the Respondents further THIS COURT DOTH LASTLY ORDER THAT by consent the costs of this Appeal to date be costs in the arbitration.

40

Dated the 25th day of July, 1979

Sgd: Tan Deck Sam
ASST. REGISTRAR

No. 19

In the Court
of Appeal

ORDER GRANTING LEAVE TO
APPEAL TO THE JUDICIAL
COMMITTEE OF THE PRIVY
COUNCIL

No.19
Order
Granting
Leave to
Appeal to
the Judicial
Committee
of the Privy
Council

15th October
1979

CORAM: THE HONOURABLE THE CHIEF JUSTICE
MR. JUSTICE WEE CHONG JIN
THE HONOURABLE MR. JUSTICE D'COTTA
THE HONOURABLE MR. JUSTICE A.P. RAJAH

10

IN OPEN COURT

The 15th day of October 1979

O R D E R

UPON MOTION preferred unto the Court
this day by Mr. Chang-Sheng Wu of Counsel for
the abovementioned Respondents AND UPON READING
the Affidavit of Francis Lok Wan Foo filed
herein on the 18th day of August 1979 AND
UPON HEARING Counsel aforesaid and Counsel for
the abovenamed Appellants AND IT IS ORDERED
that :-

20

1. The Respondents be at liberty to appeal
to the Judicial Committee of Her Britannic
Majesty's Privy Council from the whole of
the Judgment of the Court of Appeal dated
the 25th day of July, 1979.
2. Security for the costs of the Appeal be
fixed at \$3,000.00.

Given under my hand and the seal of the
Court this 15th day of October, 1979.

30

Signed Tan Seck Sam
ASSISTANT REGISTRAR,
SUPREME COURT,
SINGAPORE.

EXHIBITS

"A"
Articles of
Agreement
8th March
1974

EXHIBITS

"A"
ARTICLES OF AGREEMENT

PRIVATE EDITION
(WITH QUANTITIES)

ARTICLES OF AGREEMENT made the 8th day of March, 1974 BETWEEN FABER UNION LTD. of (or whose registered office is situate at) 10th Floor, Faber House, 230-K/236-K, Orchard Road, Singapore 9. (hereinafter called "the Employer" which expression shall include his or its heirs, personal representatives, successors and assigns) of the one part and LOKE HONG KEE (S) PTE.LTD. of (or whose registered office is situate at) 189, Clemenceau Avenue, Singapore 9. (hereinafter called "the Contractor" which expression shall include his or its heirs, personal representatives, successors and permitted assigns) of the other part WHEREAS the Employer is desirous of completing the erection of a 35-Storey Apartment Complex known as Cairnhill Plaza Lot 325 Cairnhill Road (hereinafter called "the Works") at Singapore and has caused Drawings and Bills of Quantities showing and describing the work to be done to be prepared by or under the direction of Mr. William Chen of PALMER & TURNER 1-A D'Almeida Street, Singapore his Architect AND WHEREAS the Contractor has supplied the Employer with a fully priced copy of the said Bills of Quantities (which copy is hereinafter referred to as "the Contract Bills") and the Contract Bills have been signed by or on behalf of the parties hereto:

NOW IT IS HEREBY AGREED AS FOLLOWS :

1. For the consideration hereinafter mentioned the Contractor will upon and subject to the Conditions annexed hereto carry out and complete the Works shown upon the Contract Drawings and described by or referred to in the Contract Bills and in the said Conditions.

2. The Employer will pay to the Contractor the sum of Twenty Six Million Nine Hundred and Three thousand Three Hundred and Seventy Nine Only (\$26,903,379.00) (hereinafter referred to as the "Contract Sum") or such other sum as shall become payable hereunder at the times and in the manner specified in the said Conditions.

NOTE: This agreement must be duly stamped in accordance with the laws applicable in the Republic of Singapore.

3. The term the "Architect" in the said Conditions shall mean the said Mr. William Chen of PALMER & TURNER or, in the event of his death or ceasing to be the Architect for the purpose of this Contract, such other person as the Employer shall nominate for that purpose, not being a person to whom the Contractor shall object for reasons considered to be sufficient by an arbitrator appointed in accordance with clause 34 of the said Conditions. Provided always that no person subsequently appointed to be the Architect under this Contract shall be entitled to disregard or overrule any certificate or opinion or decision or approval or instruction given or expressed by the Architect for the time being.

10

4. The term "the Quantity Surveyor" in the said Conditions shall mean Mr. Denis J. Crisp CKP CHARTERED QUANTITY SURVEYORS or, in the event of his death or ceasing to be the Quantity Surveyor for the purpose of this Contract, such other person as the Employer shall nominate for that purpose, not being a person to whom the Contractor shall object for reasons considered to be sufficient by an arbitrator appointed in accordance with clause 34 of the said Conditions.

20

IN WITNESS WHEREOF

30 the day and year first above written

(hand of the Employer has been hereunto set
the (Common Seal of the Employer has been
hereunto affixed

Signed by the said
in the presence of

FABER UNION LIMITED
Sd. Illegible
DIRECTOR

The Common Seal of)
Limited)
was hereunto affixed in)
the presence of)

FABER UNION LIMITED
Sd. Illegible
ACTING SECRETARY

40 Name.....

Address.....

Description.....

(hand of the Contractor has been hereunto
{ set
and the (Common Seal of the Contractor has been
{ hereunto affixed

EXHIBITS

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(continued)

EXHIBITS

"A"
Articles of
Agreement

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(continued)

Signed by the said FRANCIS }
W.F. LOKE in the presence } Sd. F.W.F.Loke
of }

The Common Seal of }
Limited } Sd. Illegible
was hereunto affixed in }
the presence of }

Name LEE YAT WENG

Address 189 CLEMENCEAU AVENUE (9)

Description ESTIMATOR

10

THE CONDITIONS HEREINBEFORE REFERRED TO

Contractor's
Obligations

1 (1) The Contractor shall upon and subject to these Conditions carry out and complete the Works shown upon the Contract Drawings and described by or referred to in the Contract Bills and in these Conditions in every respect to the reasonable satisfaction of the Architect.

(2) If the Contractor shall find any discrepancy in or divergence between the Contract Drawings and/or the Contract Bills he shall immediately give to the Architect a written notice specifying discrepancy or divergence, and the Architect shall issue instructions in regard thereto.

20

Architect's
Instructions

2 (1) The Contractor shall (subject to sub-clauses (2) and (3) of this Condition) forthwith comply with all instructions issued to him by the Architect in regard to any matter in respect of which the Architect is expressly empowered by these Conditions to issue instructions. If within seven days after receipt of a written notice from the Architect requiring compliance with an instruction the Contractor does not comply therewith, then the Employer may employ and pay other persons to execute any work whatsoever which may be necessary to give effect to such instruction and all costs incurred in connection with such employment shall be recoverable from the Contractor by the Employer as a debt or may be deducted by him from any monies due or to become due to the Contractor under this Contract.

30

40

10 (2) Upon receipt of what purports to be
an instruction issued to him by the
Architect the Contractor may request the
Architect to specify in writing the
provision of these Conditions which
empowers the issue of the said instruction.
The Architect shall forthwith comply with
any such request, and if the Contractor
shall thereafter comply with the said
instruction (neither party before such
compliance having given to the other a
written request to concur in the appoint-
ment of an arbitrator under clause 34 of
these Conditions in order that it may be
decided whether the provision specified
by the Architect empowers the issue of
the said instruction), then the issue of
the same shall be deemed for all the
purposes of this Contract to have been
20 empowered by the provision of these
Conditions specified by the Architect in
answer to the Contractor's request.

30 (3) All instructions issued by the
Architect shall be issued in writing.
Any instruction issued orally shall be
of no immediate effect, but shall be
confirmed in writing by the Contractor
to the Architect within seven days, and
if not dissented from in writing by the
Architect to the Contractor within seven
days from receipt of the Contractor's
confirmation shall take effect as from
the expiration of the latter said seven
days.

Provided always :

- 40 (a) That if the Architect within
seven days of giving such an oral
instruction shall himself confirm
the same in writing, then the
Contractor shall not be obliged
to confirm as aforesaid, and the
said instruction shall take
effect as from the date of the
Architect's confirmation, and
- 50 (b) That if neither the Contractor nor
the Architect shall confirm such
an oral instruction in the manner
and at the time aforesaid but the
Contractor shall nevertheless
comply with the same, then the
Architect may confirm the same in
writing at any time prior to the
issue of the Final Certificate, and
the said instruction shall thereupon
be deemed to have taken effect on

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1974
(continued)

the date on which it was issued

		(4) The Contractor shall upon signing this Contract notify the Architect in writing of an address whereat notices and Architect's instructions under this Contract may be served upon him. In the event of the Contractor failing to notify the Architect of such an address or failing to notify the Architect of any change in such address, notices and Architect's instructions shall be deemed served upon the Contractor if sent by registered post to his address stated in this Contract, or if left at his office on the site and a receipt is obtained from the Contractor's foreman-in-charge.	10
Contract documents	3	(1) The Contract Drawings and the Contract Bills shall remain in the custody of the Architect or of the Quantity Surveyor so as to be available at all reasonable times for the inspection of the Employer or of the Contractor	20
		(2) Immediately after the execution of this Contract the Architect without charge to the Contractor shall furnish him (unless he shall have been previously furnished) with -	
		(a) one copy certified on behalf of the Employer of the Articles of Agreement and of these Conditions	30
		(b) two copies of the Contract Drawings, and	
		(c) two copies of the unpriced Bills of Quantities, and (if requested by the Contractor) one copy of the Contract Bills	
		(3) So soon as is possible after the execution of this Contract the Architect without charge to the Contractor shall furnish him (unless he shall have been previously furnished) with two copies of the specification, descriptive schedules or other like document necessary for use in carrying out the Works Provided that nothing contained in the said specification, descriptive schedules or other documents shall impose any obligation beyond those imposed by the Contract documents, namely, by the Contract Drawings, the Contract Bills, the Articles of Agreement and these Conditions.	40
		(4) As and when from time to time may be	50

necessary the Architect without charge to the Contractor shall furnish him with two copies of such drawings or details as are reasonably necessary either to explain and amplify the Contract Drawings or to enable the Contractor to carry out and complete the Works in accordance with these Conditions.

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"A"

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8th March 1974

(continued)

10

(5) The Contractor shall keep one copy of the Contract Drawings, one copy of the unpriced Bills of Quantities, one copy of the specification, descriptive schedules or other like document referred to in sub-clause (3) of this Condition, and one copy of the drawings and details referred to in sub-clause (4) of this Condition upon the Works so as to be available to the Architect or his representative at all reasonable times.

20

(6) Upon final payment under clause 30(6) of these Conditions the Contractor shall if so requested by the Architect, forthwith return to the Architect all drawings details, specifications, descriptive schedules and other documents of a like nature which bear his name.

30

(7) None of the documents hereinbefore mentioned shall be used by the Contractor for any purpose other than this Contract and neither the Employer, the Architect nor the Quantity Surveyor shall divulge or use except for the purposes of this Contract any of the prices in the Contract Bills.

(8) Any certificate to be issued by the Architect under these Conditions shall be issued to the Contractor.

Statu- 4
tory
40 obliga-
tions,
notices
fees and
charges

(1) The Contractor shall comply with and give all notices required by the local authorities, any instrument rule or order made under any written law applicable or any regulation or byelaw of any local authority or of any statutory undertaker which has any jurisdiction with regard to the works or with whose systems the same are or will be connected. The Contractor before making any variation from the Contract Drawings or the Contract Bills necessitated by such compliance shall give to the Architect a written notice specifying and giving reason for such variation and the Architect may issue instructions in regard thereto. If within seven days of having given the said written notice the Contractor

50

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does not receive any instructions in regard to the matters therein specified he shall proceed with the work conforming to the written law, instrument, rule, order, regulation or byelaw in question and any variation thereby necessitated shall be deemed to be a variation required by the Architect.

(2) The Contractor shall pay and indemnify the Employer against liability in respect of any fees or charges excepting fees for permanent connections to all services and supervision fees due to public authority, (including any rates or taxes) legally demandable under any written law, any instrument, rule or order made under any written law applicable to the territory or territories in which the works are to be carried out, or any regulation or byelaw of any local authority or of any statutory undertaker in respect of the Works. Provided that the amount of any such fees or charges (including any rates or taxes) shall be added to the Contract Sum unless they

(a) arise in respect of works executed or materials or goods supplied by a local authority or statutory undertaker for which a prime cost sum is included in the Contract Bills or for which a prime cost sum has arisen as a result of Architect's instructions given under Clause 11(3) of these Conditions, or

(b) be priced or stated by way of a provisional sum in the Contract Bills.

Levels and setting out of the Works 5 The Architect shall determine any levels which may be required for the execution of the Works, and shall furnish to the Contractor by way of accurately dimensioned drawings such information as shall enable the Contractor to set out the Works at ground level. Unless the Architect shall otherwise instruct, in which case the contract sum shall be adjusted accordingly, the Contractor shall be responsible for and shall entirely at his own cost amend any errors arising from his own inaccurate setting out. 40 50

Materials goods and workmanship to conform to 6 (1) All materials, goods and workmanship shall so far as procurable be of the respective kinds and standards described

descrip-
tion,
testing
and inspec-
tion.

in the Contract Bills.

(2) The Contractor shall upon the request of the Architect furnish him with vouchers to prove that the materials and goods comply with sub-clause (1) of this Condition.

(3) The Architect may issue instructions requiring the Contractor to open up for inspection any work covered up or to arrange for or carry out any test of any materials or goods (whether or not already incorporated in the Works) or of any executed work, and the cost of such opening up or testing (together with the cost of making good in consequence thereof) shall be added to the Contract Sum unless provided for in the Contract Bills or unless the inspection or test shows that the work, materials or goods are not in accordance with this Contract.

(4) The Architect may issue instructions in regard to the removal from the site of any work, materials or goods which are not in accordance with this Contract.

(5) The Architect may (but not unreasonably or vexatiously) issue instructions requiring the dismissal from the Works of any person employed thereon.

Royal-
ties and
patent
rights

7 All royalties or other sums payable in respect of the supply and use in carrying out the Works as described by or referred to in the Contract Bills of any patented articles, processes or inventions shall be deemed to have been included in the Contract Sum and the Contractor shall indemnify the Employer from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Employer or to which he may be put by reason of the Contractor infringing or being held to have infringed any patent rights in relation to any such articles, processes and inventions. (line illegible), processors of inventions, the Contractor shall not be liable in respect of any infringement or alleged infringement of any patent rights in relation to any such articles, processes and inventions and all royalties damages or other monies which the Contractor may

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(continued)

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1974 man
(continued) in
charge

be liable to pay to the person entitled to such patent rights shall be added to the Contract Sum.

- 8 The Contractor shall constantly keep upon the Works a competent foreman-in-charge and any instructions given to him by the Architect shall be deemed to have been issued to the Contractor.
- 9 Access for Architect to the Works 10 The Architect and his representatives shall at all reasonable times have access to the Works and to the workshops or other places of the Contractor where work is being prepared for the Contract, and when work is to be so prepared in workshops or other places of a sub-contractor (whether or not a nominated sub-contractor as defined in clause 27 of these Conditions) the Contractor shall by a term in the sub-contract so far as possible secure a similar right to access to those workshops or places for the Architect and his representatives and shall do all things reasonably necessary to make such right effective. 20
- 10 Clerk of Works 30 The Employer shall be entitled to appoint a clerk of works whose duty shall be to act solely as inspector on behalf of the Employer under the directions of the Architect and the Contractor shall afford every reasonable facility for the performance of that duty. If any directions are given to the Contractor or to his foreman upon the Works by the clerk of works the same shall be of no effect unless given in regard to a matter in respect of which the Architect is expressly empowered by these Conditions to issue instructions and unless confirmed in writing by the Architect within two working days of their being given. If any such directions are so given and confirmed then as from the date of confirmation they shall be deemed to be Architect's instructions. 40
- 11 Variations provisional and prime cost sums 50 (1) The Architect may issue instructions requiring a variation and he may sanction in writing any variation made by the Contractor otherwise than pursuant to an instruction of the Architect. No variation required by the Architect or subsequently sanctioned by him shall vitiate this Contract.

(2) The term 'variation' as used in these

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10 Conditions means the alteration or modification of the design, quality or quantity of the Works as shown upon the Contract Drawings and described by or referred to in the Contract Bills, and includes the addition, omission or substitution of any work, the alteration of the kind or standard of any of the materials or goods to be used in the Works, and the removal from the site of any work materials or goods executed or brought thereon by the Contractor for the purposes of the Works other than work materials or goods which are not in accordance with this Contract.

20 (3) The Architect shall issue instructions in regard to the expenditure of prime costs and provisional sums included in the Contract Bills and of prime cost sums which arise as a result of instructions issued in regard to the expenditure of provisional sums.

30 (4) All variations required by the Architect or subsequently sanctioned by him in writing and all work executed by the Contractor for which provisional sums are included in the Contract Bills (other than work to which a tender made under clause 27(g) of these Conditions has been accepted) shall be measured and valued by the Quantity Surveyor who shall give to the Contractor an opportunity of being present at the time of such measurement and of taking such notes and measurements as the Contractor may require. The valuation of variations and of work executed by the Contractor for which a provisional sum is included in the Contract Bills (other than work for which a tender has been accepted as aforesaid) unless otherwise agreed shall be made in accordance with the following rules :-

40 (a) The prices in the Contract Bills shall determine the valuation of work of similar character executed under similar conditions as work priced therein;

50 Footnote. - The term 'prime cost' may be indicated by the abbreviation 'P.C.' in any document relating to the Contract (including the Contract Bills) and wherever the abbreviation is used it shall be observed to mean 'prime cost'

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- (b) The said prices, where work is not of a similar character or executed under similar conditions as afore-said, shall be the basis of prices for the same so far as may be reasonable, failing which a fair valuation thereof shall be made;
- (c) Where work cannot properly be measured and valued the Contractor shall be allowed day-work rates or the prices prevailing when such work is carried out (unless otherwise provided in the Contract Bills);
- (i) at the rates, if any, inserted by the Contractor in the Contract Bills or in the Form of Tender; or
- (ii) when no such rates have been inserted, at the actual prime cost to the Contractor of his material, transport and labour for the work concerned, plus fifteen per cent, which percentage shall include for the use of all ordinary plant, tools and scaffolding, and for supervision, overheads and profit;
- Provided that in either case vouchers specifying the time daily spent upon the work (and if required by the Architect the workmen's names) and the materials employed shall be delivered for verification to the Architect or his authorised representative not later than the end of the week following that in which the work has been executed;
- (d) The prices in the Contract Bills shall determine the valuation of items omitted provided that if omissions substantially vary the conditions under which any remaining items of work are carried out the prices for such remaining items shall be valued under rule (b) of this sub-clause.
- (5) Effect shall be given to the measurement and valuation of variations under sub-clause (4) of this Condition in Interim Certificates and by adjustment of the Contract Sum; and effect shall be given to

the measurement and valuation of work for which a provisional sum is included in the Contract Bills under the said sub-clause in Interim Certificates and by adjustment of the Contract Sum in accordance with clause 30(5)(c) of these Conditions.

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(6) If upon written application being made to him by the Contractor, the Architect is of the opinion that a variation or the execution by the Contractor of work for which a provisional sum is included in the Contract Bills (other than work for which a tender made under clause 27(g) of these Conditions has been accepted) has involved the Contractor in direct loss and/or expense for which he would not be reimbursed by payment in respect of a valuation made in accordance with the rules contained in sub-clause (4) of this Condition and if the said application is made within a reasonable time of the loss or expense having been incurred, then the Architect shall either himself ascertain or shall instruct the Quantity Surveyor to ascertain the amount of such loss or expense. Any amount from time to time so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated as due in such Certificate.

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Contract 12 Bills

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(1) The quality and quantity of the work included in the Contract Sum shall be deemed to be that which is set out in the Contract Bills which Bills unless otherwise expressly stated in respect of any specified item or items shall be deemed to have been prepared in accordance with the principles of the Standard Method of Measurement of Building Works last before issued by the Malaysia and Singapore Branches of the Royal Institution of Chartered Surveyors but save as aforesaid nothing contained in the Contract Bills shall override, modify, or affect in any way whatsoever the application or interpretation of that which is contained in these Conditions.

50

(2) Any error in description or in quantity or in omission of items from the Contract Bills shall not vitiate this Contract but shall be corrected and

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		deemed to be a variation required by the Architect.	
Contract Sum	13	The Contract Sum shall not be adjusted or altered in any way whatsoever otherwise than in accordance with the express provisions of these Conditions, and subject to clause 12(2) of these Conditions any error whether of arithmetic or not in the computation of the Contract Sum shall be deemed to have been accepted by the parties hereto.	10
Unfixed goods and materials	14	Unfixed materials and goods intended for, delivered to, and placed on or adjacent to the Works shall not be removed except for use upon the Works unless the Architect has consented in writing to such removal which consent shall not be unreasonably withheld. Where the value of any materials or goods has in accordance with clause 30(2) of these Conditions been included in any Interim Certificate under which the Contractor has received payment, such materials and goods shall become the property of the Employer, but subject to clause 20(B) or clause 20(C) of these Conditions (if applicable), the Contractor shall remain responsible for loss or damage to the same.	20
Practical Completion and defects liability	15	(1) When in the opinion of the Architect the Works are practically completed, he shall forthwith issue a certificate to that effect and Practical Completion of the Works shall be deemed for all the purposes of this Contract to have taken place on the day named in such certificate. (2) Any defects, shrinkages or other faults which shall appear within the Defects Liability Period stated in the appendix to these Conditions and which are due to materials or workmanship not in accordance with this Contract shall be specified by the Architect in a Schedule of Defects which he shall deliver to the Contractor not later than 14 days after the expiration of the said Defects Liability Period, and within a reasonable time after receipt of such Schedule the defects, shrinkages and other faults therein specified shall be made good by the Contractor and (unless the Architect shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly) entirely at his own cost. (3) Notwithstanding sub-clause (2) of this	30 40 50

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10 Condition the Architect may whenever he considers it necessary so to do, issue instructions requiring any defect, shrinkage or other fault which shall appear within the Defects Liability Period named in the appendix to these Conditions and which is due to materials or workmanship not in accordance with this Contract to be made good, and the Contractor shall within a reasonable time after receipt of such instructions comply with the same and (unless the Architect shall otherwise instruct, in which case the Contract Sum shall be adjusted accordingly) entirely at his own cost. Provided that no such instructions shall be issued after delivery of a Schedule of Defects or after 14 days from the expiration of the said Defects Liability Period.

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30 (4) When in the opinion of the Architect any defects, shrinkages or other faults which he may have required to be made good under sub-clauses (2) and (3) of this Condition shall have been made good he shall issue a certificate to that effect, and completion of making good defects shall be deemed for all the purposes of this Contract to have taken place on the day named in such certificate.

Sect- 16 If at any time or times before Practical
ional Completion of the Works the Employer
comple- shall take possession of any part or
tion parts of the same (any such part being
40 hereinafter in this clause referred to
as "the relevant part"), then notwithstanding anything expressed or implied elsewhere in this Contract:

50 (a) Within seven days from the date on which the Employer shall have taken possession of the relevant part the Architect shall issue a certificate stating his estimate of the approximate total value of the said part, and for all the purposes of this Condition (but for no other) the value so stated shall be deemed to be the total value of the said part

(b) For the purposes of sub-paragraph (ii) of paragraph (f) of this Condition and of sub-clause (2) and

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- (3) of clause 15 of these Conditions, Practical Completion of the relevant part shall be deemed to have occurred and the Defects Liability Period in respect of the relevant part shall be deemed to have commenced on the date on which the Employer shall have taken possession thereof.
- (c) When in the opinion of the Architect any defects, shrinkages or other faults in the relevant part which he may have required to be made good under sub-clause (2) or sub-clause (3) of clause 15 of these Conditions shall have been made good he shall issue a certificate to that effect. 10
- (d) The Contractor shall reduce the value insured under clause 20(A) of these Conditions (if applicable) by the full value of the relevant part, and the said relevant part shall as from the date on which the Employer shall have taken possession thereof be at the sole risk of the Employer as regards any of the contingencies referred to the said clause. 20
- (e) In lieu of any sum to be paid or allowed by the Contractor under clause 22 of these Conditions in respect of any period during which the Works may remain incomplete occurring after the date on which the Employer shall have taken possession of the relevant part there shall be paid or allowed such sum as bears the same ratio to the sum which would be paid or allowed apart from the provisions of this Condition as does the Contract Sum less the total value of the said relevant part to the Contract Sum. 30 40
- (f) (i) Within fourteen days of the date on which the Employer shall have taken possession of the relevant part there shall be paid to the Contractor from the sums then retained under clause 30(3) of these Conditions (if any) one moiety of such amount as bears the same ratio to the unreduced amount named in the appendix to these Conditions as Limit of Retention Fund as does the total value of the said relevant part 50

to the Contract Sum, and the amount named in the appendix to these Conditions as Limit of Retention Fund shall be reduced by the amount of such moiety

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(ii) On the expiration of the Defects Liability Period named in the appendix to these Conditions in respect of the relevant part or on the issue of the Certificate of Completion of Making Good Defects in respect of the relevant part, whichever is the later, there shall be paid to the Contractor from the sums then retained under clause 30(3) of these Conditions (if any) the other moiety of the amount referred to in the immediately preceding sub-paragraph, and the amount named in the appendix to these Conditions as Limit of Retention Fund shall be reduced by the amount of such moiety.

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Assign- 17
ment or
sub-
30 letting

(1) The Contractor shall not assign this contract or any part thereof or the obligation to carry out and the right to receive payment for any part of the Works to be carried out under this contract or the right to receive the whole or any part of the Contract Sum without the prior written consent of the Employer and/or the Architect.

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(2) The Contractor shall not sub-let the whole of the Works. Except where otherwise provided by the Contract, the Contractor shall not sub-let any part of the Works without the prior written consent of the Architect (which shall not be unreasonably withheld) and such consent if given shall not relieve the Contractor from any liability or obligation under the Contract and he shall be responsible for the acts, defaults and neglects of any sub-contractor, his agent, servants or workmen as fully as if they were the acts, defaults or neglects of the Contractor, his agents, servants or workmen.

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Injury 18
to
persons
and
property

(1) The Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings whatsoever arising under any

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and
Employer's
indemn-
ity

statute in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or caused by the carrying out of the Works, unless due to any act or neglect of the Employer or of any person for whom the Employer is responsible.

(2) Except for such loss or damage as is at the risk of the Employer under clause 20(B) or clause 20(C) of these Conditions (if applicable) the Contractor shall be liable for, and shall indemnify the Employer against, any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or damage arises out of or in the course of or by reason of the carrying out of the Works, and provided always that the same is due to any negligence, omission or default of the Contractor, his servants or agents or of any sub-contractor his servants or agents.

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Insur- 19
ance
against
injury
to
persons
and
property

(1) Without prejudice to his liability to indemnify the Employer under clause 18 of these Conditions, the Contractor shall maintain and shall cause any sub-contractor to maintain:

(a) Such insurances as are necessary to cover the liability of the Contractor or, as the case may be, of such sub-contractor, in respect of personal injuries or deaths arising out of or in the course of or caused by the carrying out of the Works; and

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(b) Such insurances as may be specifically required by the Contract Bills in respect of injury or damage to property real or personal arising out of or in the course of or by reason of the carrying out of the Works and caused by any negligence, omission or default of the Contractor, his servants or agents or, as the case may be, of such sub-contractor his servants or agents.

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The Contractor shall produce or cause any sub-contractor to produce for inspection the relevant policy or policies of

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10 insurance together with the receipts in respect of premiums paid under such policy or policies as and when required so to do by the Employer Provided always that as and when may be reasonably required by the Employer the production by either the Contractor or any sub-contractor of a current certificate of insurance from the company or firm which shall have issued the policy or policies aforesaid shall be a good discharge of the Contractor's obligation to produce or to cause the production of the policy or policies and the receipts in respect of premiums paid.

20 (2) (a) The Contractor shall maintain in the joint names of the Employer and Contractor such insurances as may be specifically stated by way of provisional sum items in the Contract Bills in respect of any expense, liability, loss claim or proceedings which the Employer may incur or sustain by reason of injury or damage to property real or personal arising out of or in the course of or by reason of the carrying out of the Works and caused otherwise than by the negligence, omission or default of the Contractor, his servants or agents or of
30 any sub-contractor, his servants or agents.

(b) Any such insurances as is referred to in the immediately preceding paragraph shall be placed with insurers to be approved by the Architect, and the Contractor shall deposit with him the policy or policies and the receipts in respect of premiums paid.

40 (3) Should the Contractor or any sub-contractor make default in insuring or in continuing to insure as provided in sub-clauses (1) and (2) of this Condition the Employer may himself insure against any risk with respect to which the default shall have occurred and may deduct a sum equivalent to the amount paid in respect of premiums from any monies due or to become due to the Contractor.

Insur- 20 [A]* (1) The Contractor shall in the joint
ance of names of the Employer and Contractor insure
the Works against loss and damage by fire, storm
against tempest, lightning, floods, earthquake,
Fire etc. aircraft or anything dropped therefrom,
aerial objects, riot and civil commotion

* See page 100 (Footnote).

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for the full value thereof (plus the percentage named in the appendix to these conditions to cover professional fees) all work executed and all unfixed materials and goods intended for, delivered to, and placed on or adjacent to the Works, but excluding temporary buildings, plant, tools and equipment owned or hired by the Contractor or any sub-contractor, and shall keep such work, materials and goods so insured until Practical Completion of the Works. Such insurance shall be with insurers approved by the Architect and the Contractor shall deposit with him the policy or policies and the receipts in respect of premiums paid; and should the Contractor make default in insuring or continuing to insure as aforesaid the Employer may himself insure against any risk with respect of which the default shall have occurred and deduct a sum equivalent to the amount paid by him in respect of premiums from any monies due or to become due to the Contractor.

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Provided always that if the Contractor shall independently of his obligations under this Contract maintain a policy of insurance which covers (inter alia) the said work, materials and goods against the aforesaid contingencies to the full value thereof (plus the aforesaid percentage, if any) then the maintenance by the Contractor of such policy shall, if the Employer's interest is endorsed thereon, be a discharge of the Contractor's obligation to insure in the joint names of the Employer and Contractor; and the production by the Contractor as and when may reasonably be required by the Architect of a current certificate of insurance from the company or firm which shall have issued the said policy shall be a discharge of the Contractor's obligation to deposit with the Employer a policy or policies and the receipts in respect of premiums paid.

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* Footnote. - Clause 20/A_7 is applicable to the erection of a new building if the Contractor is required to insure against loss or damage by fire etc: clause 20/B_7 is applicable to the erection of a new building if the Employer is to bear the risk in respect of loss or damage by fire etc.

(2) Upon settlement of any claim under the insurances aforesaid the Contractor with due diligence shall restore work damaged replace or repair any unfixed materials or goods which have been destroyed or injured remove and dispose of any debris and proceed with the carrying out and completion of the Works. All monies received from such insurances (less only the aforesaid percentage, if any) shall be paid to the Contractor by instalments under certificates of the Architect issued at the periods of Interim Certificates named in the appendix to these Conditions. The Contractor shall not be entitled to any payment in respect of the restoration of work damaged, the replacement and repair of any unfixed materials or goods, and the removal and disposal of debris other than the monies received under the said insurances.

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~~E-7- All works executed and all unfixed materials and goods intended for, delivered to and placed on or adjacent to the Works (except temporary buildings, plant, tools and equipment owned or hired by the Contractor or any sub-contractor) shall be at the sole risk of the Employer as regards loss or damage by fire, storm, tempest, lightning, flood, earthquake, aircraft or anything dropped therefrom, aerial objects, riot and civil commotion. The Employer shall maintain a proper policy of insurance against that risk, and such policy and the receipt for the last premium paid for its renewal shall upon request be produced for inspection by the Contractor. If the Employer shall at any time fail upon request to produce any receipt showing such a policy as aforesaid to be effective then the Contractor may in the name and on behalf of the Employer insure all work executed and all unfixed materials and goods as aforesaid against loss or damage occasioned by the said contingencies and shall upon production of the receipt for any premium paid by him be entitled to have its amount added to the Contract Sum. If any loss or damage affecting the Works or any part thereof or any such unfixed materials or goods is occasioned by any one or more of the said contingencies, then~~

Note

Clauses B & C struck through & marked cancelled.

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~~(a) The occurrence of such loss or damage shall be disregarded in computing any amounts payable to the Contractor under or by virtue of this Contract.~~

(b) The Contractor with due diligence shall restore work damaged, replace or repair any unfixed materials or goods which have been destroyed or injured, remove and dispose of any debris and proceed with the carrying out and completion of the works. This restoration of work damaged, the replacement and repair of unfixed materials and goods and the disposal of debris shall be deemed to be a variation required by the Architect

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C 7 The existing structures together with all the contents thereof and the works and all unfixed materials and goods intended for, delivered to and placed on or adjacent to the works (except temporary buildings, plant, tools and equipment owned or hired by the Contractor or any sub-contractor) shall be at the sole risk of the Employer as regards loss or damage by the following causes:

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- (a) fire
- (b) storm
- (c) lightning
- (d) tempest
- (e) earthquake
- (f) aircraft or anything dropped therefrom
- (g) aerial objects
- (h) flood
- (i) riot and civil commotion

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and the Employer shall maintain a proper policy of insurance against that risk, and such policy and the receipt for the last premium paid for its renewal shall upon request be produced for inspection by the Contractor. If it is so desired, where ~~specified in the appendix by mutual~~

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Footnote. - Clause 20/C 7 is applicable to addition of or extensions to an existing building, therefore strike out clauses B 7 and C 7 or clauses A 7 and C 7 or clauses A 7 and B 7 as the case may require.

~~agreement, a separate policy or~~
policies may be maintained against
risk by flood, earthquake and/or
riots and civil commotion and such
policy or policies and the receipt
for the last premium paid for its
renewal shall upon request be produced
for inspection by the Contractor.
If the Employer shall at any time fail
upon request to produce any receipt or
receipts showing such a policy or
policies as aforesaid to be effective
then the Contractor may in the name
and on behalf of the Employer insure
the existing structure together with
all the contents thereof the Works and
all unfixed materials and goods as
aforesaid against loss or damage
occasioned by the said contingencies,
and for that purpose shall have such
right of entry and inspection as may be
required to make a survey and inventory
of the existing structures and all their
contents and shall upon production of
the receipt for any premium paid by him
be entitled to have its amount added to
the Contract Sum. If any loss or damage
affecting the Works or any part thereof
or any such unfixed materials or goods
is occasioned by any one or more of the
said contingencies then

(a) The occurrence of such loss
or damage shall be disregarded
in computing any amounts payable
to the Contractor under or by
virtue of this Contract.

(b) (1) If it is just and equitable
to do so the employment of
the Contractor under this
Contract may within 28 days
of the occurrence of such
loss or damage be determined
at the option of either party
by notice by registered post
or recorded delivery from
either party to the other.
Within 7 days of receiving
such a notice (but not there-
after) either party may give
to the other a written request
to concur in the appointment
of an arbitrator under clause
34 of these Conditions in
order that it may be determined
whether such determination
~~will be just and equitable.~~

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~~--(ii) Upon the giving or receiving~~
by the Employer of such a
notice of determination or,
where a reference to arbitra-
tion is made as aforesaid, upon
the arbitrator upholding the
notice of determination, the
provisions of sub-clause (2)
(except sub-paragraph (vi) of
paragraph (b) of clause 26 of 10
these Conditions shall apply.

(c) If no notice of determination is
served as aforesaid, or, where
a reference to arbitration is
made as aforesaid, if the arbitra-
tor decides against the notice of
determination, then

(i) the Contractor with due
diligence shall reinstate or
make good such loss or damage, 20
and proceed with the carrying
out and completion of the
Works;

(ii) the Architect may issue
instructions requiring the
Contractor to remove and
dispose of any debris; and

(iii) the reinstatement and making
good of such loss or damage
and (when required) the 30
removal and disposal of debris
shall be deemed to be a
variation required by the
~~Architect.~~

Possess- 21
ion
completion
and post-
ponement

(1) On the Date of Possession stated in
the appendix to these Conditions possession
of the site shall be given to the Contrac-
tor who shall thereupon begin the Works
and regularly and diligently proceed with
the same, and who shall complete the same 40
on or before the Date for Completion stated
in the said appendix subject nevertheless
to the provisions for extension of time
contained in clauses 23 and 32(1)(c) of
these Conditions.

(2) The Architect may issue instructions
in regard to the postponement of any
work to be executed under the provisions
of this Contract.

Damages 22
for non-
completion

If the Contractor fails to complete the 50
Works by the Date of Completion stated in
the appendix to these Conditions or within

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- 10 any extended time fixed under clause 23 or clause 32(1)(c) of these Conditions and the Architect certifies in writing that in his opinion the same ought reasonably so to have been completed, then the Contractor shall pay or allow to the Employer a sum calculated at the rate stated in the said appendix as Liquidated and Ascertained Damages for the period during which the Works shall so remain or have remained incomplete, and the Employer may deduct such sum from any monies due or to become due to the Contractor under this Contract.
- 20 Extension of time 23 Upon it becoming reasonably apparent that the progress of the Works is delayed, the Contractor shall forthwith give written notice of the cause of the delay to the Architect, and if in the opinion of the Architect the completion of the Works is likely to be or has been delayed beyond the Date for Completion stated in the appendix to these Conditions or beyond any extended time previously fixed under either this clause or clause 32(1)(c) of these Conditions,
- 30 (a) by force majeure or
- (b) by reason of any exceptionally inclement weather, or
- (c) by reason of loss or damage occasioned by any one or more of the contingencies referred to in clause 20(A) (B) or (C) of these Conditions, or
- 40 (d) by reason of civil commotion, local combination of workmen, strike or lockout affecting any of the trades employed upon the Works or any of the trades engaged in the preparation, manufacture or transportation of any of the goods or materials required for the Works, or
- (e) by reason of Architect's instructions issued under clauses 1(2), 11(1) or 21(2) of these Conditions, or
- 50 (f) by reason of the Contractor not having received in due time

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- necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing on a date which having regard to the Date for Completion stated in the appendix to these Conditions or to any extension of time then fixed under this clause or clause 32(1)(c) of these Conditions was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or
- (g) by delay on the part of nominated sub-contractors or nominated suppliers which the Contractor has taken all practicable steps to avoid or reduce, or
- (h) by delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
- (i) by reason of the opening up for inspection of any work covered up or of the testing of any of the work materials or goods in accordance with clause 6(3) of these Conditions (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work materials or goods were not in accordance with this Contract, or
- (j) by the Contractor's inability for reasons beyond his control and which he could not reasonably have foreseen at the date of this Contract to secure labour goods or materials as are essential to the proper carrying out of the Works.

then the Architect shall so soon as he is able to estimate the length of the delay beyond the date or time aforesaid make in writing a fair and reasonable extension of time for completion of the Works Provided always that the Contractor shall use constantly his best endeavours to prevent delay and shall do all that may reasonably be required to the satisfaction of the Architect to proceed with the Works

Loss and expense caused by disturbance of regular progress of the Works 24 . (1) If upon written application being made to him by the Contractor the Architect is of the opinion that the Contractor has been involved in direct loss and/or expense for which he would not be reimbursed by a payment made under any other provision in this Contract by reason of the regular progress of the Works or of any part thereof having been materially affected by :

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20 (a) The Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing on a date which having regard to the Date for Completion stated in the appendix to these Conditions or to any extension of time then fixed under clause 23 or clause 32 (1)(c) of these Conditions was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same; or

30 (b) The opening up for inspection of any work covered up or the testing of any of the work materials or goods in accordance with clause 6(3) of these Conditions (including making good in consequence of such opening up or testing), unless the inspection or test showed that the work, materials or goods were not in accordance with this Contract; or

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(c) Any discrepancy in or divergence between the Contract Drawings and/or the Contract Bills; or

(d) Delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract; or

50 (e) Architect's instructions issued in regard to the postponement of any work to be executed under the provisions of this Contract;

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and if the written application is made within a reasonable time of it becoming apparent that the progress of the Works or of any part thereof has been affected as aforesaid, then the Architect shall either himself ascertain or shall instruct the Quantity Surveyor to ascertain the amount of such loss and/or expense. Any amount from time to time so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment any such amount shall be added to the amount which would otherwise be stated as due in such Certificate.

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(2) The provisions of this Condition are without prejudice to any other rights and remedies which the Contractor may possess

Deter-
mination
by
Employer

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(1) If the Contractor shall make default in any one or more of the following respects, that is to say :-

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(a) If he without reasonable cause wholly suspends the carrying out of the Works before completion thereof, or

(b) If he fails to proceed regularly and diligently with the Works, or

(c) If he refuses or persistently neglects to comply with a written notice from the Architect requiring him to remove defective work or improper materials or goods and by such refusal or neglect the Works are materially affected, or

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(d) If he fails to comply with the provisions of clause 17 of these Conditions

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then the Architect may give to him a notice by registered post or recorded delivery specifying the default, and if the Contractor either shall continue such default for fourteen days after receipt of such notice or shall at any time thereafter repeat such default (whether previously repeated or not), then the Employer without prejudice to any other rights or remedies, may within ten days after such continuance or repetition by

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notice by registered post or recorded delivery forthwith determine the Employment of the Contractor under this Contract provided that such notice shall not be given unreasonably or vexatiously

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(2) In the event of the Contractor becoming bankrupt or making a composition or arrangement with his creditors or having a winding up order made or (except for purposes of reconstruction) a resolution for voluntary winding up passed or a receiver or manager of his business or undertaking duly appointed, or possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge, the employment of the Contractor under this Contract shall be forthwith automatically determined but the said employment may be reinstated and continued if the Employer and the Contractor, his trustee in bankruptcy liquidator receiver or manager as the case may be shall so agree.

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(3) In the event of the employment of the Contractor being determined as aforesaid and so long as it has not been reinstated and continued, the following shall be the respective rights and duties of the Employer and Contractor :-

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(a) The Employer may employ and pay other persons to carry out and complete the Works and he or they may enter upon the Works and use all temporary buildings, plant, tools, equipment, goods and materials intended for, delivered to and placed on or adjacent to the Works, and may purchase all materials and goods necessary for the carrying out and completion of the Works

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(b) The Contractor shall, if so required by the Employer or Architect within fourteen days of the date of determination, assign to the Employer without payment the benefit of any agreement for the supply of materials or goods and/or for

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the execution of any work for the purposes of this Contract but on the terms that a supplier or sub-contractor shall be entitled to make any reasonable objection to any further assignment thereof by the Employer. In any case the Employer may pay any supplier or sub-contractor for any materials or goods delivered or works executed for the purposes of this Contract (whether before or after the date of determination) in so far as the price thereof has not already been paid by the Contractor. The Employer's rights under this paragraph are in addition to his rights to pay nominated sub-contractors as provided in clause 27(c) of these Conditions and payments made under this paragraph may be deducted from any sum due or to become due to the Contractor

- (c) The Contractor shall as and when required in writing by the Architect so to do (but not before) remove from the Works any temporary buildings, plant, tools, equipment, goods and materials belonging to or hired by him. If within a reasonable time after any such requirements has been made the Contractor has not complied therewith, then the Employer may (but without being responsible for any loss or damage) remove and sell any such property of the Contractor holding the proceeds less all costs incurred to the credit of the Contractor
- (d) The Contractor shall allow or pay to the Employer in the manner hereinafter appearing the amount of any direct loss and/or damage caused to the Employer by the determination. Until after completion of the Works under paragraph (a) of this sub-clause the Employer shall not be bound by any provision of this Contract to make any further payment to the Contractor, but upon such completion and the verification within a reasonable time of the

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accounts therefor the Architect shall certify the amount of expenses properly incurred by the Employer and the amount of any direct loss and/or damage caused to the Employer by the determination, and if such amounts when added to the monies paid to the Contractor before the date of determination exceed the total amount which would have been payable on due completion in accordance with this Contract, the difference shall be a debt payable to the Employer by the Contractor, and if the said amount when added to the said monies be less than the said total amount, the difference shall be a debt payable by the Employer to the Contractor.

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Determ-
ination
by Con-
tractor

26 (1) Without prejudice to any other rights and remedies which the Contractor may possess, if

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(a) The Employer does not pay to the Contractor the amount due on any certificate within the Period for Honouring Certificates named in the appendix to these Conditions and continues such default for seven days after receipt by registered post or recorded delivery of a notice from the Contractor stating that notice of determination under this Condition will be served if payment is not made within seven days from receipt thereof; or

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(b) The Employer interferes with or obstructs the issue of a certificate due under this Contract; or

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(c) The carrying out of the whole or substantially the whole of the uncompleted Works (other than the execution of work required under clause 15 of these Conditions) is suspended for a continuous period of the length named in the appendix to these Conditions by reason of:

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- (i) force majeure, or
- (ii) loss or damage occasioned by any one or more of the contingencies referred to in clause 20(A) or clause 20(B) of these Conditions (if applicable), or
- (iii) civil commotion, or
- (iv) Architect's instructions issued under clauses 1(2), 11(1) or 21(2) of these Conditions, or 10
- (v) the Contractor not having received in due time necessary instructions, drawings, details or levels from the Architect for which he specifically applied in writing on a date which having regard to the Date of Completion stated in the appendix to these Conditions or to any extension of time then fixed under clause 23 or clause 32(1)(c) of these Conditions was neither unreasonably distant from nor unreasonably close to the date on which it was necessary for him to receive the same, or 20 30
- (vi) delay on the part of artists, tradesmen or others engaged by the Employer in executing work not forming part of this Contract, or
- (vii) the opening up for inspection of any work covered up or of the testing of any of the work materials or goods in accordance with clause 6(3) of these Conditions (including making good in consequence of such opening up or testing) unless the inspection or test showed that the work materials or goods were not in accordance with this Contract 40
- (d) The Employer becomes bankrupt or makes a composition or arrangement with his creditors or has a 50

winding up order made or
(except for the purposes of
reconstruction) a resolution
for voluntary winding up
passed or a receiver or
manager of his business or
undertaking is duly appointed,
or possession is taken by or on
behalf of the holders of any
debentures secured by a floating
charge, or any property comprised
in or subject to the floating
charge,

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then the Contractor may thereupon by
notice by registered post or recorded
delivery to the Employer or Architect
forthwith determine the employment of
the Contractor under this Contract;
provided that such notice shall not be
given unreasonably or vexatiously.

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(2) Upon such determination, then
without prejudice to the accrued rights
or remedies of either party or to any
liability of the classes mentioned in
clause 18 of these Conditions which may
accrue either before the Contractor or
any sub-contractors shall have removed
his temporary building, plant, tools,
equipment, goods or materials or by
reason of his or their so removing the
same, the respective rights and liabil-
ities of the Contractor and the Employer
shall be as follows, that is to say :-

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(a) The Contractor shall with all
reasonable dispatch and in such
manner and with such precautions
as will prevent injury, death
or damage of the classes in
respect of which before the date
of determination he was liable
to indemnify the Employer under
clause 18 of these Conditions
remove from the site all his
temporary buildings, plant,
tools, equipment, goods and
materials and shall give facili-
ties for his sub-contractors to
do the same, but subject always
to the provisions of sub-paragraph
(iv) of paragraph (b) of this
sub-clause

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(b) After taking into account amounts
previously paid under this
Contract the Contractor shall be

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paid by the Employer :-

- (i) The total value of work completed at the date of determination
- (ii) The total value of work begun and executed but not completed at the date of determination, the value being ascertained in accordance with clause 11(4) of these Conditions as if such work were a variation required by the Architect 10
- (iii) Any sum ascertained in respect of direct loss and/or expense under clauses 11(6) 24 and 33(2) of these Conditions (whether ascertained before or after the date of determination) 20
- (iv) The cost of materials or goods properly ordered for the Works for which the Contractor shall have paid or for which the Contractor is legally bound to pay, and on such payment by the Employer any materials or goods so paid for shall become the property of the Employer 30
- (v) The reasonable cost of removal under paragraph (a) of this sub-clause
- (vi) Any direct loss and/or damage caused to the Contractor by the determination.

Provided that in addition to all other remedies the Contractor upon such determination may take possession of any shall have a lien upon all unfixed goods and materials, which may have become the property of the Employer under clause 14 of these Conditions until payment of all monies due to the Contractor from the Employer 40

Nominated 27 sub-contractors The following provisions of this Condition shall apply where prime cost sums are included in the Contract Bills or arise as a result of Architect's instructions 50

given in regard to the expenditure of provisional sums in respect of persons to be nominated by the Architect to supply and fix materials or goods or to execute work

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(a) Such sums shall be expended in favour of such persons as the Architect shall instruct and all specialists or others who are nominated by the Architect are hereby declared to be sub-contractors employed by the Contractor and are referred to in these Conditions as 'nominated sub-contractors' Provided that the Architect shall not nominate any person as sub-contractor against whom the Contractor shall make reasonable objection, or (save where the Architect and Contractor shall otherwise agree) who will not enter into a sub-contract which provides (inter alia) :-

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(i) That the nominated sub-contractor shall carry out and complete the sub-contract Works in every respect to the reasonable satisfaction of the Contractor and of the Architect and in conformity with all the reasonable directions and requirements of the Contractor

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(ii) That the nominated sub-contractor shall observe, perform and comply with all the provisions of this Contract on the part of the Contractor to be observed performed and complied with (other than clause 20(A) of these Conditions if applicable) so far as they relate and apply to the sub-contract Works or to any portion of the same

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(iii) That the nominated sub-contractor shall indemnify the Contractor against the same liabilities in respect of the sub-contract Works as those for which the Contractor is liable to indemnify the Employer under this Contract

(iv) That the nominated sub-contractor

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shall indemnify the Contrator
against claims in respect of
any negligence omission or
default of such sub-contractor
his servants or agents or any
misuse by him or them of any
scaffolding or other plant, and
shall insure himself against
any such claims and produce the
policy or policies and receipts
in respect of premiums paid as
and when required by either the
Architect or the Contractor 10

(v) That the sub-contract Works
shall be completed within the
period or (where they are to be
completed in sections) periods
therein specified, that the
Contractor shall not without
the written consent of the
Architect grant any extension
of time for the completion of
the sub-contract Works or any
section thereof, and that the
Contractor shall inform the
Architect of any representation
made by the nominated sub-
contractor as to the cause of
any delay in the progress or
completion of the sub-contract
Works or of any section thereof 20 30

(vi) That if the nominated sub-
contractor shall fail to complete
the sub-contract Works or (where
the sub-contract Works are to
be complete in sections) any
section thereof within the period
therein specified or within any
extended time granted by the
Contractor with the written
consent of the Architect, and
the Architect certifies in writing
to the Contractor that the same
ought reasonably so to have been
completed, the nominated sub-
contractor shall pay or allow to
the Contractor either a sum
calculated at the rate therein
agreed as liquidated and ascer-
tained damages for the period
during which the said Works or
any section thereof, as the case
may be, shall so remain or have
remained incomplete or (where no
such rate is therein agreed) a
sum equivalent to any loss or 40 50

damage suffered or incurred by the Contractor and caused by the failure of the nominated sub-contractor as aforesaid

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(vii) That payment in respect of any work, materials or goods comprised in the sub-contract shall be made within 14 days after receipt by the Contractor of the Architect's certificate under clause 30 of these Conditions which states as due an amount calculated by including the total value of such work, materials or goods, and shall when due be subject to the retention by the Contractor of the sums mentioned in sub-paragraph (viii) of paragraph (a) of this Condition

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(viii) That the Contractor shall retain from the sum directed by the Architect as having been included in the calculation of the amount stated as due in any certificate issued under clause 30 of these Conditions in respect of the total value of work, materials or goods executed or supplied by the nominated sub-contractor the percentage of such value named in the appendix to these Conditions as Percentage of Certified Value Retained up to a total amount not exceeding a sum which bears the same ratio to the sub-contract price as the unreduced sum named in the appendix to these Conditions as Limit of Retention Fund bears to the Contract Sum; and that the Contractor's interest in any sums so retained (by whomsoever held) shall be fiduciary as trustee for the nominated sub-contractor (but without obligation to invest); and that the nominated sub-contractor's beneficial interest in such sums shall be subject only to the right of the Contractor to have re-course thereto from time to time for payment of any amount which he is entitled under the sub-contract to deduct from

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- any sum due or to become due to the nominated sub-contractor; and that if and when such sums or any part thereof are released to the nominated sub-contractor they shall be paid in full
- (ix) That the Architect and his representatives shall have a right of access to the workshops and other places of the nominated sub-contractor as mentioned in clause 9 of these Conditions 10
- (b) The Architect shall direct the Contractor as to the total value of the work, materials or goods executed or supplied by a nominated sub-contractor included in the calculation of the amount stated as due in any certificate issued under clause 30 of these Conditions and shall forthwith inform the nominated sub-contractor in writing of the amount of the said total value. The sum representing such total value shall be paid by the Contractor to the nominated sub-contractor within 14 days of receiving from the Architect the certificate less only (i) any retention money which the Contractor may be entitled to deduct under the terms of the sub-contract and (ii) any sum to which the Contractor may be entitled in respect of delay in the completion of the sub-contract Works or any section thereof 20 30
- (c) Before issuing any certificate under clause 30 of these Conditions the Architect may request the Contractor to furnish to him reasonable proof that all amounts included in the calculation of the amount stated as due in previous certificates in respect of the total value of the work, materials or goods executed or supplied by any nominated sub-contractor have been duly discharged, and if the Contractor fails to comply with any such request the Architect shall issue a certificate to that effect and thereupon the Employer may himself pay such amounts to any nominated sub-contractor concerned and deduct the same from any sums due or to become due to the Contractor 40 50

- (d) (i) The Contractor shall not grant to any nominated sub-contractor any extension of the period within which the sub-contract Works or (where the sub-contract Works are to be completed in sections) any section thereof is to be completed without the written consent of the Architect, provided always that the Contractor shall inform the Architect of any representations made by the nominated sub-contractor as to the cause of any delay in the progress or completion of the sub-contract work or of any section thereof, and that the consent of the Architect shall not be unreasonably withheld
- (ii) If any nominated sub-contractor fails to complete the sub-contract Works or (where the sub-contract Works are to be completed in sections) any section thereof within the period specified in the sub-contract or within any extended time granted by the Contractor with the written consent of the Architect then if the same ought reasonably so to have been completed the Architect shall certify in writing accordingly; immediately upon issue the Architect shall send a duplicate of any such certificate to the nominated sub-contractor
- (e) If the Architect desires to secure final payment to any nominated sub-contractor before final payment is due to the Contractor, and if such sub-contractor has satisfactorily indemnified the Contractor against any latent defects, then the Architect may in an Interim Certificate include an amount to cover the said final payment, and thereupon the Contractor shall pay to such nominated sub-contractor the amount so certified. Upon such final payment, the amount named in the appendix to these Conditions as

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Limit of Retention Fund shall be reduced by the sum which bears the same ratio to the said amount as does such sub-contractor's sub-contract price to the Contract Sum, and save for latent defects the Contractor shall be discharged from all liability for the work materials or goods executed or supplied by such sub-contractor under the sub-contract to which the payment relates 10

(f) Neither the existence nor the exercise of the foregoing powers nor anything else contained in these Conditions shall render the Employer in any way liable to any nominated sub-contractor

(g) (i) Where the Contractor in the ordinary course of his business directly carries out works for which prime cost sums are included in the Contract Bills and where items of such works are set out in the appendix to these Conditions and the Architect is prepared to receive tenders from the Contractor for such items then the Contractor shall be permitted to tender for the same or any of them but without prejudice to the Employer's right to reject the lowest or any tender. If the Contractor's tender is accepted, he shall not sub-let the work or any part thereof without the consent of the Architect: Provided that where a prime cost sum arises under Architect's instructions issued under clause 11(3) of these Conditions it shall be deemed for the purposes of this paragraph to have been included in the Contract Bills and the item of work to which it relates shall likewise be deemed to have been set out in the appendix to these Conditions 20 30 40 50

(ii) It shall be a condition of any tender accepted under this paragraph that clause 11 of these Conditions shall apply in respect of the items of work

included in the tender as if for the reference therein to the Contract Drawings and the Contract Bills there were references to the equivalent documents included in or referred to in the tender

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- 10 Nomin- 28 The following provisions of this
ated Condition shall apply where prime cost
suppliers sums are included in the Contract Bills,
or arise as a result of Architect's
instructions given in regard to the
expenditure or provisional sums, in
respect of any materials or goods to
be fixed by the Contractor.
- 20 (a) The term prime cost included or
arising as aforesaid, shall be under-
stood to mean the net cost to be defrayed
as a prime cost after deducting any
trade or other discount and shall
include the cost of packing carriage
and delivery. Provided that, where in
the opinion of the Architect the
Contractor has incurred expense for
special packing or special carriage, such
special expense shall be allowed as part
of the sums, actually paid by the Contrac-
tor.
- 30 (b) Such sums shall be expended in
favour of such persons as the Architect
shall instruct, and all specialists,
merchants, tradesmen or others who
are nominated by the Architect to supply
materials or goods are hereby declared
to be suppliers to the Contractor and
are referred to in these Conditions as
'nominated suppliers'. Provided that
40 the Architect shall not (save where the
Architect and Contractor shall otherwise
agree) nominate as a supplier a person
who will not enter into a contract of
sale which provides (inter alia) :-
- (i) That the materials or goods,
to be supplied shall be to the
reasonable satisfaction of the
Architect
- (ii) That the nominated supplier
50 shall make good by replacement
or otherwise any defects in
the materials or goods supplied
which appear within such period
as is therein mentioned and shall

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bear any expenses reasonably incurred by the Contractor as a direct consequence of such defects, provided that :-

(1) where the materials or goods have been or fixed such defects are not such that examination by the Contractor ought to have revealed them before using or fixing; 10

(2) such defects are due solely to defective workmanship or material in the goods supplied and shall not have been caused by improper storage by the Contractor or by misuse or by any act or neglect of either the Contractor, the Architect or the Employer or by any person or persons for whom they may be responsible 20

(iii) That delivery of the materials or goods supplied shall be commenced and completed at such times as the Contractor may reasonably direct

(c) All payments by the Contractor for materials or goods supplied by a nominated supplier shall be in full and shall be paid within 30 days of the end of the month during which delivery is made 30

Artists and tradesmen 29 The Contractor shall permit the execution of work not forming part of this Contract by artists, tradesmen or others engaged by the Employer. Every such person shall for the purposes of clause 18 of these Conditions be deemed to be a person for whom the Employer is responsible and not be a sub-contractor. 40

Certificates and payments 30 (1) At the Period of Interim Certificates named in the appendix to these Conditions the Architect shall issue a certificate stating the amount due to the Contractor from the Employer, and the Contractor shall, on presenting any such certificate to the Employer, be entitled to payment therefor within the Period for honouring Certificates named in the appendix to these Conditions. Interim valuations 50

shall be made whenever the Architect considers them to be necessary for the purposes of ascertaining the amount to be stated as due in an Interim Certificate.

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(2) The amount stated as due in an Interim Certificate shall, subject to any agreement between the parties as to stage payments, be the total value of the work properly executed and 75% of the total value (unless otherwise agreed and stated in the appendix) of the materials and goods delivered to or adjacent to the Works for use thereon up to and including a date not more than seven days before the date of the said certificate less any amount which may be retained by the Employer (as provided in sub-clause (3) of this Condition) and less any instalments previously paid under this Condition. Provided that such certificate shall only include the value of the said materials and goods as and from such time as they are reasonably, properly and not prematurely brought to or placed adjacent to the Works and then only if adequately protected against weather or other casualties

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(3) The Employer may retain the percentage of the total value of the work, materials and goods referred to in sub-clause (2) of this Condition which is named in the appendix to these Conditions as Percentage of Certified Value Retained. Provided always that when the sum of the amounts so retained equals the amount named in the said appendix as Limit of Retention Fund or that amount as reduced in pursuance of clause 16(f) and/or clause 27(e) of these Conditions, as the case may be, no further amounts shall be retained by virtue of this sub-clause

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(4) The amounts retained by virtue of sub-clause (3) of this Condition shall be subject to the following rules :-

(a) The Employer's interest in any amount so retained shall be fiduciary as trustee for the Contractor (but without obligation to invest) and the Contractor's beneficial interest

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therein shall be subject only to the right of the Employer to have recourse thereto from time to time for payment of any amount which he is entitled under the provisions of this Contract to deduct from any sum due or to become due to the Contractor

- (b) On the issue of the Certificate of Practical Completion the Architect shall issue a certificate for one moiety of the total amounts then so retained and the Contractor shall, on presenting any such certificate to the Employer, be entitled to payment of the said moiety within the Period for Honouring Certificates named in the appendix to these Conditions 10 20
- (c) On the expiration of the Defects Liability Period named in the appendix to these Conditions, or on the issue of the Certificate of Completion of Making Good Defects, whichever is the later, the Architect shall issue a Certificate for the residue of the amounts then so retained and the Contractor shall, on presenting any such certificate to the Employer, be entitled to payment of the said residue within the Period for Honouring Certificates named in the appendix to these Conditions 30
- (5) (a) The measurement and valuation of the Works shall be completed within the Period of Final Measurement and Valuation stated in the appendix to these Conditions, and the Contractor shall be supplied with a copy of a Summary of the priced Bills of Valuation not later than the end of the said Period and before the issue of the Final Certificate under sub-clause (6) of this Condition. 40
- (b) Either before or within a reasonable time after Practical Completion of the Works the Contractor shall send to the Architect all documents necessary for the purposes of the computations required by these Conditions including all documents relating to the accounts 50

of nominated sub-contractors and
nominated suppliers

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(c) In the settlement of accounts the amounts paid or payable under the appropriate contracts by the Contractor to nominated sub-contractors or nominated suppliers, the amounts paid or payable by virtue of clause 4(2) of these Conditions in respect of fees or charges for which a provisional sum is included in the Contract Bills, the amount paid or payable in respect of any insurance maintained in compliance with clause 19(2) of these Conditions, the tender sum (or other sum as is appropriate in accordance with the terms of the tender) for any work for which a tender made under clause 27 (g) of these Conditions is accepted and the value of any work executed by the Contractor for which a provisional sum is included in the Contract Bills shall be set against the relevant prime cost or provisional sum mentioned in the Contract Bills or arising under Architect's instructions issued under clause 11(3) of these Conditions as the case may be, and the balance, after allowing in all cases pro rata for the Contractor's profit at the rates shown in the Contract Bills, shall be added to or deducted from the Contract Sum. Provided that no deduction shall be made in respect of any damages paid or allowed to the Contractor by any sub-contractor or supplier

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(6) So soon as is practicable but before the expiration of 3 months from the end of the Defects Liability Period stated in the appendix to these Conditions or from completion of making good defects under clause 15 of these Conditions or from receipt by the Architect of the documents referred to in paragraph (b) of sub-clause (5) of this Condition, whichever is the latest, the Architect shall issue the Final Certificate. The Final Certificate shall state :-

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(a) The sum of the amount paid to the Contractor under Interim Certificates and the amount named in the said appendix as Limit of Retention Fund, and

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(continued)

(b) The Contract Sum adjusted as necessary in accordance with the terms of these Conditions

and the difference (if any) between the two sums shall be expressed in the said certificate as a balance due to the Contractor from the Employer or to the Employer from the Contractor as the case may be. Subject to any deductions authorised by these Conditions, the said balance as from the fourteenth day after presentation of the Final Certificate by the Contractor to the Employer shall be a debt payable by the Employer to the Contractor or as the case may be as from the fourteenth day after issue of the Final Certificate shall be a debt payable by the Contractor to the Employer

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(7) Unless a written request to concur in the appointment of an arbitrator shall have been given under clause 34 of these Conditions by either party before the Final Certificate has been issued or by the Contractor within 14 days after such issue, the said certificate shall be conclusive evidence in any proceedings arising out of this Contract (whether by arbitration under clause 34 of these Conditions or otherwise) that the Works have been properly carried out and completed in accordance with the terms of this Contract and that any necessary effect has been given to all the terms of this Contract which require an adjustment to be made to the Contract Sum, except and in so far as any sum mentioned in the said certificate is erroneous by reason of :-

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(a) Fraud, dishonesty or fraudulent concealment relating to the Works, or any part thereof, or to any matter dealt with in the said certificate; or

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(b) Any defect (including any omission) in the Works, or any part thereof which reasonable inspection or examination at any reasonable time during the carrying out of the Works or before the issue of the said certificate would not have disclosed; or

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(c) Any accidental inclusion or exclusion of any work, materials goods or figure in any computation or any arithmetical error in any computation

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(8) Save as aforesaid no certificate of the Architect shall of itself be conclusive evidence that any works materials or goods to which it relates are in accordance with this Contract

Outbreak³¹
of host-
ilities

(1) If during the currency of this Contract there shall be an outbreak of hostilities (whether war is declared or not) in which Singapore shall be involved on a scale involving the general mobilisation of the armed forces of the government, in which the works are to be carried out then either the Employer or the Contractor may at any time by notice by registered post or recorded delivery to the other, forthwith determine the employment of the Contractor under this Contract

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Provided that such a notice shall be given

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(a) Before the expiration of 28 days from the date on which the order is given for general mobilisation as aforesaid, or

(b) After Practical Completion of the Works unless the Works or any part thereof shall have sustained war damage as defined in clause 32 (4) of these Conditions

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(2) The Architect may within 14 days after a notice under this Condition shall have been given or received by the Employer issue instructions to the Contractor requiring the execution of such protective work as shall be specified therein and/or the continuation of the Works up to points of stoppage to be specified therein, and the Contractor shall comply with such instructions as if the notice of determination had not been given. Provided that if the Contractor shall for reasons beyond his control be prevented from completing the work to which the said instructions relate within 3 months from the date on

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which the instructions were issued,
he may abandon such work

(3) Upon the expiration of 14 days from the date on which a notice of determination shall have been given or received by the Employer under this Condition or where works are required by the Architect under the preceding sub-clause upon completion or abandonment as the case may be of any such works, the provisions of sub-clause (2) (except sub-paragraph (vi) of paragraph (b)) of clause 26 of these Conditions shall apply, and the Contractor shall also be paid by the Employer the value of any work executed pursuant to instructions given under sub-clause (2) of this clause, the value being ascertained in accordance with clause 11(4) of these Conditions as if such work were a variation required by the Architect

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War 32
Damage

(1) In the event of the Works or any part thereof or any unfixed materials or goods intended for, delivered to and placed on or adjacent to the Works sustaining war damage then notwithstanding anything expressed or implied elsewhere in this Contract:

(a) The occurrence of such war damage shall be disregarded in computing any amounts payable to the Contractor under or by virtue of this Contract

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(b) The Architect may issue instruction requiring the Contractor to remove and/or dispose of any debris and/or damaged work and/or execute such protective work as shall be specified

(c) The Contractor shall reinstate or make good such war damage and shall proceed with the carrying out and completion of the Works, and the Architect shall grant to the Contractor a fair and reasonable extension of time for completion of the Works

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(d) The removal and disposal of debris or damaged work, the execution of protective works and the reinstatement and making

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good of such war damage shall be deemed to be a variation required by the Architect.

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(2) If at any time after the occurrence of war damage as aforesaid either party serves notice of determination under clause 31 of these Conditions, the expression 'protective work' as used in the said clause shall in such case be deemed to include any matters in respect of which the Architect can issue instructions under paragraph (b) of sub-clause (1) of this Condition and any instructions issued under the said paragraph prior to the date on which notice of determination is given or received by the Employer and which shall not then have been completely complied with shall be deemed to have been given under clause 31(2) of these Conditions

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30

(3) The Employer shall be entitled to any compensation which may at any time become payable out of monies provided by Parliament in respect of war damage sustained by the Works or any part thereof or any unfixed materials, or goods intended for the Works which shall at any time have become the property of the Employer

(4) In this Condition the expression "war damage" means :-

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(a) damage occurring (whether accidentally or not) as the direct result of action taken by the enemy, or action taken in combating the enemy or in repelling an imagined attack by the enemy;

(b) damage occurring (whether accidentally or not) as the direct result of measures taken under proper authority to avoid the spreading of, or otherwise to mitigate, the consequences of such damage as aforesaid;

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(c) accidental damage occurring as the direct result

(i) of any precautionary or

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preparatory measures taken
under proper authority
with a view to preventing
or hindering the carrying
out of any attack by the
enemy; or

- (ii) of precautionary or prepara-
tory measures involving the
doing of work on land and
taken under proper authority 10
in any way in anticipation
of enemy action,

being, in either case, measures involving
a substantial degree of risk to property;

Provided that the measures mentioned in
paragraph (c) of this sub-condition do
not include the imposing of ~~restrictions~~
on the display of lights or measures
taken for training purposes

For the purposes of this sub-condition, 20
such action against the enemy or by
the enemy as if referred to in paragraph
(a)

- (i) shall, in relation to any ship
or aircraft taking part in such
action, be deemed to continue
until the ship or aircraft has
returned to its base, or has
been declared as lost

- (ii) includes naval, military or air
reconnaisances and patrols 30

Antiqui- 33
ties

(1) All fossils, antiquities and other
object of interest or value which may
be found on the site or in excavating
the same during the progress of the
work shall become the property of the
Employer. The Contractor shall carefully
take out and preserve all such objects
and shall immediately or as soon as
conveniently may be after the discovery
of such articles deliver the same into 40
the possession of the Architect or of
the clerk of works uncleaned and as
excavated

(2) If in the opinion of the Architect
compliance with the provisions of the
preceding sub-clause has involved the
Contractor in direct loss and/or expense
for which he would not be reimbursed
by a payment made under any other
provision in this Contract then the 50
Architect shall either himself ascertain

or shall instruct the Quantity Surveyor to ascertain the amount of such loss and/or expense. Any amount from time to time so ascertained shall be added to the Contract Sum, and if an Interim Certificate is issued after the date of ascertainment of any such amount shall be added to the amount which would otherwise be stated as due in such Certificate

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Articles of Agreement

8th March 1974

(continued)

10

Arbitra-34
tion

(1) Provided always that in case any dispute or difference shall arise between the Employer or the Architect on his behalf and the Contractor, either during the progress or after the completion or abandonment of the Works, as to the construction of this Contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or thing left by this Contract to the discretion of the Architect or the withholding by the Architect of any certificate to which the Contractor may claim to be entitled or the measurement and valuation mentioned in clause 30(5)(a) of these Conditions or the rights and liabilities of the parties under clauses 25, 26, 31 or 32 of these Conditions), then such dispute or difference shall be and is hereby referred to the arbitration and final decision of a person to be agreed between the parties, or, failing agreement within 14 days after either party has given to the other a written request to concur in the appointment of an Arbitrator, a person to be appointed on the request of either party by the President or a Vice-President for the time being of the Singapore Institute of Architects

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(2) Such reference, except on article 3 or article 4 of the Articles of Agreement, or on the questions whether or not the issue of an instruction is empowered by these Conditions, whether or not a certificate has been improperly withheld or is not in accordance with these Conditions, or on any dispute or difference under clause 31 and 32 of these Conditions, shall not be opened until after Practical Completion or alleged Practical Completion of the Works or termination or alleged termination of the Contractor's employment under this Contract, or abandonment of

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(continued)

the Works, unless with the written consent of the Employer or the Architect on his behalf and the Contractor

(3) Subject to the provisions of clauses 2(2) and 30(7) of these conditions the Arbitrator shall, without prejudice to the generality of his powers, have power to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the parties and to ascertain and award any sum which ought to have been the subject of or included in any certificate and to open up, review and revise any certificate, opinion, decision, requirement or notice and to determine all matters in dispute which shall be submitted to him in the same manner as if no such certificate, opinion, decision, requirement or notice had been given. 10

(4) The award of such Arbitrator shall be final and binding on the parties. 20

A P P E N D I X I

<u>Particular Interpretations</u>	<u>Clause</u>		
Defects Liability	15, 16		
Period from Date of Practical Completion	and 30	Six months	
Percentage to Cover Professional Fees	20 (A)	10%	30
Date of Possession	21	2/11/73	
Date of Completion	21	16/3/76	
Liquidated and Ascertained Damages	22	₹6,000/- per calendar day	
Period of Interim Certificate	30(1)	Monthly	
Period of Honouring Certificate	30(1)	Fourteen (14) days from Certification	
Percentage of Total Value of Materials on Site to be Certified	30(2)	75% for Unfixed Materials or Goods on Site	40
Percentage of Certified Value Retained	30(3)	10%	

	<u>Particular Interpretations</u>	<u>Clause</u>	<u>EXHIBITS</u>
	Limit of Retention Fund	30(3) 5% of the Contract Sum	"A" Articles of Agreement
	Minimum Amount of Interim Certificates	30 \$300,000/-	8th March 1974
10	Period of Final Measurement and Valuation from Day named in Certification of Total Practical Completion	30(5) Six (6) months	(continued)
	Bond or Banker's Guarantee	- Nil	

Name of Tenderer: LOKE HONG KEE (S) PTE.LTD.
CIVIL ENGINEERS &
CONTRACTORS

Signature: (Illegible)
Managing Director

20 Date:

S-62 Cairnhill Plaza
Appendix 1

EXHIBITS
"B"
SUPPLEMENTAL AGREEMENT

"B"
Supplemental Agreement
23rd March 1976

30 THIS SUPPLEMENTAL AGREEMENT is made the 23rd day of March One thousand nine hundred and seventy-six (1976) Between UNITED OVERSEAS LAND LIMITED formerly known as Faber Union Limited whose registered office is situated at Mezzanine Floor, Hotel Merlin Singapore, Beach Road, Singapore 7 and formerly at 10th Floor, Faber House, 230K/236K Orchard Road, Singapore 9 (hereinafter called "the Employer" which expression shall include its successors and assigns) of the one part and LOKE HONG KEE (S) PTE. LTD. of No.189 Clemenceau Avenue, Singapore 9 (hereinafter called "the Contractor" which expression shall include its successors and permitted assigns) of the other part

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EXHIBITS

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(continued)

WHEREAS :

(1) By an Agreement in writing dated the 8th day of March, 1974 made between the Employer of the one part and the Contractor of the other part (hereinafter called "the Principal Agreement") the Contractor agreed for the consideration therein mentioned and subject to the conditions annexed thereto to carry out and complete the works specified therein (hereinafter called "the Works").

10

(2) The Works have yet to be completed and it is anticipated by both parties hereto that the time for completion which has been extended to the 4th day of May, 1976 by William Chen of Palmer & Turner of No.1A D'Almeida Street, Singapore (hereinafter called "the Architect") in his letter dated the 13th day of January, 1975 cannot be complied with by the Contractor.

(3) The Contractor has made the following claim against the Employer which claim has been rejected by the Employer namely the sum of \$284,000.00 in respect of one block of slip form equipment and plant. The Contractor has further made the following claims which claims the Contractor intends to refer to arbitration:

20

(a) The sum of \$225,119.40 representing bond blocks fixed in position on slip form walls.

30

(b) The sum of \$53,385.30 in respect of underpayment for steel jack rods for slip forming work.

(4) The Contractor has failed to pay to the nominated sub-contractors of the said Works the sum of \$505,772.00 made up as follows :-

<u>Subcontractor</u>	<u>Cert. No.</u>	<u>Date of certificate</u>	<u>Amount</u>	
(a) Harrisons	20	13. 9.75	\$ 2,000.00	40
Lister Engineering Ltd.	21	24.10.75	197,000.00	
(b) Yat Lye Pte. Ltd.	22	28.11.75	72,426.09	
	24	10. 1.76	64,975.00	
(c) General Electric Co.(S) Pte. Ltd.	22	23.11.75	46,118.00	
	23	22.12.75	66,553.00	
(d) R.E.Morris & Co. Pte. Ltd.	24	10. 1.76	45,000.00	

Subcontractor	Cert. No.	Date of certificate	Amount	EXHIBITS
(e) Meika Contractors & Co Pte Limited	24	10.1.76	\$ 11,700.00 \$505,772.00	"B" Supplemental Agreement 23rd March 1976

(continued)

10

(5) The Contractor is understood to be further indebted to the following in the approximate total sum of \$1,979,152.00 (hereinafter called "Suppliers") made up to follows in respect of materials sold and delivered to the Contractor :

(a) Tru-mix Concrete Pte.Ltd.	\$ 900,000.00
(b) Island Concrete Pte.Ltd.	126,039.00
(c) Fabquip (S) Pte.Ltd.	164,108.00
(d) Singapore Clay Products	26,000.00
(e) Jurong Brickworks	36,000.00
(d) Building Industries (Pte)Ltd.	6,000.00
(e) Various Kapalas & Sub-contractors	120,000.00
(f) United Overseas Insurance	6,387.00
(g) Employer	594,618.00

20

(6) The Contractor has now requested the Employer and the Employer has agreed to render financial assistance to the Contractor upon the terms and conditions hereinafter contained:

NOW THIS AGREEMENT WITNESSETH as follows:-

ARTICLE I

FINANCIAL ASSISTANCE

30

1. Immediately upon the execution of this Agreement the Employer shall pay to the Contractor the sum of \$284,000.00 as financial assistance on an ex gratia basis and without admission of liability in full and final settlement of the Contractor's claim in respect of Recital (3) above (not including Recital 3(a) and 3(b) in the manner hereinafter set out in Clause 3 of this Article.

40

2. The above payment shall be in full satisfaction of the claims which the Contractor has made or may hereafter make in respect of or in any way connected with slip form equipment and plant for the Works supplied up to the date hereof or hereafter to be supplied by the Contractor but shall not include the costs of dismantling and removal which is

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estimated by the Contractor at \$11,000.00.

3. (1) Out of the said sum of \$284,000.00 to be paid to the Contractor the Employer shall deduct therefrom and make payment to the following Suppliers in the amounts hereinafter specified in part payment of the indebtedness of the Contractor under Recital (5).

- | | | |
|--------------------------------------|-------------|----|
| (a) Tru-mix Concrete Private Limited | \$90,000.00 | 10 |
| (b) Fabquip (S) Private Limited | 50,000.00 | |
| (c) Island Concrete Private Limited | 45,000.00 | |

(2) The balance of \$99,000.00 shall be paid by the Employer to the Contractor who shall forthwith use the whole of the same to pay the following in part payment of the sums specified below :

- | | | |
|------------------------------------|-------------|----|
| (a) Persons stated in Recital 5(e) | \$40,000.00 | 20 |
| (b) Salary for staffs | 10,000.00 | |
| (c) P.U.B. | 12,000.00 | |
| (d) C.P.F. | 50,000.00 | |
| (e) O.C.B.C.Finance (S) Ltd. | 18,384.00 | |

ARTICLE II

PAYMENT TO NOMINATED SUB-CONTRACTORS

1. From the amount specified in the certificates which may be issued by the Architect from and including Certificate No.25 dated 10th day of March, 1976 there shall be deducted the following in order of priority:

- | | |
|--|----|
| (a) by way of reduction of contract price of the Works, the costs of materials purchased by the Employer under the provisions of Article III hereinafter contained and the costs of the balance Reinforcement Steel Bars purchased by the Employer or to be purchased by the Employer. | 40 |
| (b) Such sums, in payment in the whole or in part of the sum of \$505,772.00 now due from the Contractor to the nominated sub-contractors as stated in Recital (4), progressively | |

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and or in such proportion and/or amounts as may be decided by the Employer with payment to be made by the Employer direct to the nominated sub-contractors or any of them until the whole thereof shall have been paid in full.

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(d) Such sums in payment in the whole or in part of the sum of \$1,979,152.00 now due from the Contractor to the Suppliers (excepting the Employer) progressively and/or in such proportion and/or amounts as may be decided by the Employer with payment being made direct to the Suppliers or any of them by the Employer. ~~Until the whole thereof shall have been paid in full.~~

20

(c) (d) Such sums progressively and/or in such proportion or amounts as may be decided by the Employer in payment in whole or in part of the respective amounts which may be due from the Contractor to the nominated sub-contractors or any of them arising out of or in connection with any of the said certificates as contained in the Quantity Surveyor's Summary accompanying such certificate with payment being made direct by the Employer to the nominated sub-contractors.

30

2. The balance if any after the deductions and payments stated in Clause 1 Article II above shall be paid to the Contractor.

40

3. The Contractor agrees that upon all debts whether now or hereafter due and payable by the Contractor to the nominated sub-contractors being paid in full ~~and open the sum of \$1,979,152.00 in clause 1(e) Article 11 (with the same exception) being paid in full~~ all sums which may be thereafter be due from the Contractor to the nominated sub-contractors under or arising out of any of the said certificates issued by the Architects and in such amounts as shall be specified by the Quantity Surveyor's summary accompanying each certificate, (subsequent to such payment in full) may if the Employer so desire be paid direct by the Employer to the respective nominated sub-contractor concerned.

50

4. The Employer may if it should so desire and from time to time impose such terms and conditions as the Employer may require with the nominated sub-contractors Suppliers or any

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(continued)

of them before effecting any payment to the nominated sub-contractors or any of them pursuant to the provisions of this Article.

5. Nothing in this Agreement particularly Article II shall be construed as any undertaking agreement warranty promise or assurance of whatever kind on the part of the Employer that the monies which may be certified by the Architect shall be adequate or sufficient for any of the said deductions or payments.

10

ARTICLE III

MATERIALS

1. Immediately upon the execution of this Agreement the Contractor shall submit to the Employer a list containing particulars relating to the total quantities of materials (as hereinafter defined) required for the completion of the Works the prices thereof, the name of the Suppliers thereof and the terms of payment as well as such necessary particulars as may be reasonably required by the Employer.

20

2. For the purpose of ensuring the regular, continuous and expeditious progress of the Works, the Contractor shall submit to the Quantity Surveyor for the approval of the Quantity Surveyor each week a list, stating the quantity and specification of the materials required for the Works three weeks before such materials are to be used in the Works.

30

3. Upon receiving the approval of the quantity Surveyor, the Employer shall purchase the materials as contained in the list from the Suppliers and make payment to the Suppliers accordingly.

4. The contract price of the Works shall be reduced by the price of materials purchased by the Employer and received by the Contractor on site and the parties hereto agree that for the purpose of calculating the amount payable the Contractor for incorporating the materials in the Works:

40

(a) The Architect shall, for such purpose only, issue the said certificates (where applicable) as though the materials were purchased by the Contractor with materials on site being allowed in such certificate

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on a 100% basis (instead of 75%).

EXHIBITS

- (b) The price of materials purchased by the Employer received on site by the Contractor shall be deducted on a 100% basis from the relevant certificate.

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10

5. (1) For the purpose of Clause 4 the difference in the amount of materials received on site and the amount of materials remaining on site shall be deemed to be the amount of the materials which have been incorporated in the Works provided always that the relevant material remaining on site shall be deemed to be nil and shall thereafter continue to be deemed to be nil:

20

- (a) at the time when the Architect shall issue the first of the progress certificates relating to that part of Works which have been completed and in which such material is used or

- (b) at the time of the determination of the Principal Agreement howsoever occurring whichever is the earlier.

30

(2) Where any materials nevertheless should exist or remain on site after the application of the proviso in Clause 5(1)(a) above or upon the completion of the (entire) Works whichever is the earlier ownership of the materials shall be transferred to the Contractor by a letter in writing from the Employer prior to which the materials at all times remain the absolute property of the Employer.

40

(3) For the purpose of determining the price of materials purchased by the Employer and received by the Contractor the price to be taken shall be the basic material price as stated in the schedule of the Principal Agreement. As regards premix concrete the basic material price of which is not stated in the said Schedule the price thereof shall be the cost price to the Employer i.e. the price that the Employer shall have purchased the same from their suppliers less that sum which the Contractor would have been entitled to claim (as increase only) for fluctuation under the Principal Agreement.

50

6. The Contractors hereby agree as follows:

- (a) To accept at all times delivery of

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materials on site and upon any materials being delivered to site to acknowledge safe receipt of the same in writing and forward to the Employer a copy of the acknowledgment forthwith which acknowledgment shall be conclusive proof of receipt of the materials.

- (b) Not to use any materials except for the purpose of the Works and not to remove from the site any materials without the prior written consent of the Employer and not to hinder in any way whatever any delivery of materials on site 10
 - (c) The Employer if it should so desire shall be entitled at any or all times to engage a storekeeper or security guard on site for the safeguard and supervision of materials. 20
 - (d) The Contractor shall make no claim of whatever kind in respect of increased cost or decreased cost of materials against the Employer
 - (e) The Employer shall have the right to purchase the materials from any source or supplier whether named in this Agreement or otherwise.
7. For the purpose of this Agreement the expression "materials" shall mean only those materials referred to in the First Schedule of this Agreement. 30

ARTICLE IV

REINFORCEMENT STEEL BARS

1. The quantity of Reinforcement Steel Bars on site shall be measured forthwith by the Quantity Surveyors and valued in accordance with Clause 4(b) of this Article. The difference between the sum of \$594,618.00 and the amount as valued shall be deducted by the Employer from the retention fund as immediate payment by the Contractor in respect of its liability for Reinforcement Steel Bars wasted to-date. 40
2. The contract price of the Works shall be reduced by the price of the balance of Reinforcement Steel Bars on site after measurement as aforesaid and by the price of all

future Reinforcement Steel Bars purchased by the Employer and received on site and the Contractor agrees that in reduction of the contract price of the Works the Employer shall be entitled to deduct from any of the said certificates such prices in the manner hereinafter set out.

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3. The amount of deduction shall be based on the price of total quantity of Reinforcement Steel Bars received on site less the price of unused quantity on site.

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4. (a) For the purpose of determining the price of total quantity of Reinforcement Steel Bars received on site the price to be taken shall be the basic material price as stated in the schedule of the Principal Agreement. Where the basic materials price is not provided in the said schedule in respect of any particular item, the price of such item shall be the cost price to the Employer i.e. the price that the Employer shall have purchased the same.

30

(b) For the purpose of determining the price of unused quantities of Reinforcement Steel Bars on site the price shall irrespective of size and type be taken at \$600.00 per metric ton.

40

5. The quantity of unused Reinforcement Steel Bars on site shall be deemed to be nil and shall thereafter continue to be deemed to be nil:

(a) Upon completion of reinforced concrete works i.e. completion of the main structure of both buildings comprised in the Works and at the time of the issue of the first progress certificate of the Architect after such completion or

(b) At the time of the determination howsoever occurring of the Principal Agreement whichever is the earlier.

50

6. The obligation and liabilities of the Contractor with regard to materials as provided in Article III clause 6 shall apply mutatis mutandis to the Reinforcement Steel

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bars purchased or which may be purchased
by the Employer under Article IV.

7. In this Agreement the expression
"Reinforcement Steel Bars" shall exclude
the steel bars now remaining on site and
specified in the Second Schedule hereto
which belongs to the Employer and shall not
be used in the Works unless the parties
hereto expressly agree.

ARTICLE V

10

PROGRESS OF WORKS

1. The Contractor shall adhere to the
progress of Works specified in the Third
Schedule hereto to ensure that completion
of the Works shall take place on or before
the following :

(a) in respect of Block 1 - 30th April
1977

(b) in respect of Block 2 - 30th October
1977

20

2. The Contractor shall carry out the
Works expeditiously and with every diligence
and complete the same.

3. In the event of the progress of the
said Works being in the opinion of the
Architect unsatisfactory and/or in the event
of the Contractor failing to adhere or
maintain the progress or Works as specified
in the said Third Schedule and/or upon any
breach of this Agreement by the Contractor
then upon the recommendation of the Architect
in writing and in addition to the Employer's
rights under the principal Agreement the
Employer shall be at liberty to determine
the employment of the Contractor thereunder
forthwith by notice in writing.

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4. Upon any determination of the employment
of the Contractor as aforesaid or upon any
other determination of the said employment
the provisions of Clause 25(3) of the
Principal Agreement shall apply and the
Contractor hereby irrevocably appoints the
Employer its servants or agents its attorney
for the purpose of executing any assignment
or other documents or letters necessary to
carry out the Contractor's obligation under
Clause 25(3)(b) to assign to the Employer
the benefit of any agreement for the supply
of materials of goods and/or for the execution
of any works by the nominated sub-contractors.

40

10 5. Upon the said determination or upon any determination of the employment of the Contractor under the Principal Agreement the Contractor shall forthwith remove all works from site and shall forthwith surrender the site to the Employer and not retain possession thereof and not do any thing or carry out any act of whatever kind to prevent the Employer from taking possession of the site or from carrying out any works therein.

20 6. Upon the Employers regaining possession of the site the firm of Pakatan International Suckling McDonald of 37B Tanglin Road, Singapore 10 Tel: 648211/2358211 shall within 2 weeks from the date hereof measure the Works as completed by the Contractor and the valuation of the said quantity surveyor shall be binding on both parties and shall be final. The costs and fees of the said quantity surveyor shall be borne by the parties hereto equally.

ARTICLE VI

SECURITY

30 1. The Contractor shall at the time of executing this Agreement or within seven days thereafter execute in favour of the Employer a Debenture in such form as may be required by the Employer to charge the retention monies relating to the Works now or hereafter in the possession of the Employer to secure the indebtedness or other liabilities of the Contractor to the Employer under the Principal Agreement or this Agreement.

40 2. The Employer's cost of the said Debenture including their Solicitors cost and the cost of stamping shall be borne by and paid for by the Employer and Contractor equally.

3. The said debenture shall be discharged by the Employer upon completion of the Works provided there shall not be any indebtedness or liability contingent or otherwise existing at such time.

ARTICLE VII

INDEMNITY

The Contractor will indemnify and keep the Employer indemnified against all claims

EXHIBITS

"B"
Supplemental
Agreement

23rd March
1976

(continued)

demands actions proceedings of whatever kind made or to be made by any nominated sub-contractor, suppliers and or any other person or persons employed by the Contractor in connection with or in any way related to the works or any part thereof.

ARTICLE VIII

DECLARATION

1. Notwithstanding the provisions contained in this Agreement the time for completion of the Works unless extended by the Architect under the Principal Agreement shall remain as the 4th day of May 1976 and nothing herein shall effect or modify or diminish any right of the Employer and the Contractor of whatever kind against each other arising out of or any act or default of either party under the Principal Agreement the terms and conditions of which shall remain valid and binding on the parties hereto subject to the provisions of this Agreement particularly the additional rights and benefits of the Employer provided in this Agreement. 10 20

2. Notwithstanding the provisions hereinbefore contained this Agreement shall not in any event be construed as :

(a) creating any privity of contract between the Employer and the nominated sub-contractor and/or Suppliers and the Contractor shall at all times remain liable to the nominated sub-contractors and/or Suppliers in respect of all of its obligations; 30

(b) creating any obligation on the Employer to make any payment to any nominated sub-contractor or Supplier and the Employer in its absolute discretion may if it should so desire make payment to the Contractor instead; 40

(c) creating any obligation on the Employer to take any step or any action of whatever nature and kind to prevent or dissuade any nominated sub-contractor or Supplier or any other person whosoever from claiming or taking any proceedings or action against the Contractor in respect of any sums due or which may hereafter 50

be due from the Contractor to any nominated sub-contractor or Supplier or such person;

EXHIBITS

"B"
Supplemental
Agreement

23rd March
1976

(continued)

10

- (d) creating any liability on the Employer to the Contractor in the event of any materials or Reinforcement Steel Bars not being delivered or delivered on time or in the event of the Employer failing to purchase the same.

- (e) effecting any rights of the Employer under Clause 30(3) of the Principal Agreement.

20

3. Any disputes between the parties hereto arising out of the Principal Agreement or this Agreement or otherwise in relation to claims for payment by the Contractor or otherwise shall not in any event be a ground or be relied upon by the Contractor as a ground for refusing to proceed diligently and expeditiously with the Works or for the cessation thereof.

IN WITNESS WHEREOF the parties hereto have hereunto respectively set their hands the day and year first above written

FIRST SCHEDULE HEREINBEFORE
REFERRED TO

30

- (a) Cement
(b) Common Bricks
(c) Premix Concrete

SECOND SCHEDULE HEREINBEFORE
REFERRED TO

1. 7/8" H.T. Bars - 18 tons
2. 7/8" M.S. Bars - 3 tons
3. 5/8" M.S. Bars - 1 ton
4. 1/2" M.S. Bars - 5 tons

THIRD SCHEDULE HEREINBEFORE
REFERRED TO

40

See Annexure hereto attached

SIGNED by YEO YONG SHING)
for and on behalf of)
UNITED OVERSEAS LAND)
LIMITED in the presence)
of :-

Signed Illegible

Signed Illegible

EXHIBITS

"B"
Supplemental
Agreement

23rd March
1976

(continued)

SIGNED by FRANCIS W.F. LOKE)
for and on behalf of LOKE)
HONG KEE (S) PTE. LTD. in)
the presence of :-)

Signed Illegible

"C"
Liquidated
Damages
Agreement

1st April
1976

EXHIBITS

"C"

LIQUIDATED DAMAGES AGREEMENT

UNITED OVERSEAS LAND LIMITED

Loke Hong Kee (S) Pte. Ltd.
199 Clemenceau Avenue
Singapore 9

10

"WITHOUT PREJUDICE"

Our ref: YYS/ML/en/12 Date: 1.4.76

Subject: Agreement dated the 8th day of
March 1974 and Supplemental
Agreement dated the 23rd day of
March 1976 in connection with
Block 1 and 2 Cairnhill Plaza

Dear Sirs

We refer to the letter of the Architect,
Mr. William Chen, dated the 13th day of
January 1975 whereby the time for completion
of the abovementioned works under the
Agreement dated the 8th day of March 1974
has been extended to the 4th day of May
1976.

20

We confirm that notwithstanding the time
for completion specified as aforesaid we
agree that we will waive all claims for
liquidated damages against you which we
would otherwise be entitled against you
under Clause 22 of the said Agreement if:

30

A. The works relating to Block 1 are
completed by you on or before the 28th day
of February 1977 and if at such time the
external works for Block 2 have also been
completed by you so as to enable :

(a) The Architect to issue the Certificate of Practical Completion for Block 1 on the said date namely the 28th day of February 1977

EXHIBITS
"C"
Liquidated
Damages
Agreement

(b) Us to apply on the said date to the appropriate governmental authority for the temporary occupation licences in respect of Block 1 and obtain the same.

1st April
1976

(continued)

10

and

B. You will complete Block 2 of Cairn-hill Plaza on or before the 31st day of October 1977 so as to enable:

(a) The Architect to issue the Certificate of Practical Completion for Block 2 on the said date namely the 31st day of October 1977.

20

(b) Us to apply on the said date to the appropriate governmental authority for the temporary occupation licences in respect of Block 2 and obtain the same

The above agreement on our part is subject to the following terms and conditions :

30

(1) That in the event of your failing to complete Block 1 and/or Block 2 by respectively the 28th day of February 1977 and the 31st day of October 1977 and/or in the event of your committing a breach of any of the terms and conditions of the said caption Agreements, we shall be under no obligation at all to waive our claim against you for liquidated damages and our rights and your obligations in respect thereof will then be governed by the Principal Agreement and the Supplemental Agreement.

40

(2) That the dates for completion as stated above Block 1 and Block 2 will not be subject to any extension whatsoever by the Architect or by any other person save and except such extension or extensions which may be allowed by the Architect for the relevant Block in respect of :

(a) Any Architects instructions issued

EXHIBITS

"C"
Liquidated
Damages
Agreement
1st April
1976
(continued)

after this date in regard to
postponement of any works to
be executed for completion of
the works.

(b) Any delay on the part the
Architect in not furnishing you
with the necessary drawings in
accordance with the Schedule in
green in the Annexure hereto
marked "A".

(c) Any delay on the part of the
Architect in not furnishing you
with the necessary drawings in
accordance with the schedule
in green in the Annexure hereto
marked "B" 10

(3) That notwithstanding the provisions
of Clause (2) above you may still from
time to time apply for extension of
time from the Architect which
extension or extensions if granted by 20
the Architect will govern the rights
and liabilities of the parties with
regard to liquidated damages should
you fail to complete as required by
paragraphs A and B above.

Please confirm your acceptance of the terms
and conditions in this letter by signing
a carbon copy thereof and returning the
same to us forthwith.

Yours faithfully,
For UNITED OVERSEAS LAND LTD. 30

Signed Illegible

Yeo Yong Siang
General Manager

YYS/ML/en

TO: UNITED OVERSEAS LAND LTD.

We confirm our acceptance of the terms and
conditions as set out above.

Dated: 2/4/76. Signed Illegible
Signature

Signed Illegible 40
Witness

EXHIBITS

"D"

LETTER FROM PALMER &
TURNER TO RESPONDENTS

EXHIBITS

"D"

Letter from
Palmer &
Turner to
Respondents

Our ref: PF/77/0131

March 1, 1977

BY DESPATCH

1st March
1977

Messrs. United Overseas Land Limited,
Mezzanine Floor,
Hotel Merlin Singapore,
Beach Road,
Singapore 7.

10

Dear Sirs,

Cairnhill Plaza

I refer to previous correspondence from me in the name of my firm to the contractor Loke Hong Kee (S) Pte. Ltd. with regard to the progress of works at the above site particularly my letter to them dated the 12th day of February, 1977.

20

I am of the opinion that progress of the works is unsatisfactory and from my letters to Loke Hong Kee (S) Pte. Ltd. it is obvious that

- (a) The contractor has failed to adhere or maintain the progress of works as specified in the Third Schedule of the Supplemental Agreement dated the 23rd day of March, 1976 between you and the contractor
- (b) Making any serious attempt to adhere or maintain the progress of works as specified in the said Third Schedule.
- (c) The Contractor is not carrying out the works expeditiously and with every diligence.

30

I hereby give the recommendation specified in Clause 3 Article V of the said Supplemental Agreement. You may now determine the employment of the contractor under the Principal Agreement forthwith by notice in writing should you so desire.

A carbon copy of this letter is being sent by despatch, at the same time as this letter, to this contractor.

40

Yours faithfully,
Signed Illegible

William Chen of
PALMER & TURNER Architects.
c.c. M/s. Loke Hong Kee (S) Pte.Ltd.

EXHIBITS

"E"

Notice of Termination

1st March 1977

EXHIBITS

"E"

NOTICE OF TERMINATION

UNITED OVERSEAS LAND LIMITED

Loke Hong Kee (S) Pte. Ltd.
189 Clemenceau Avenue,
Singapore 9.

BY HAND

Your ref:

Our ref: P/CP/LHK/77/8

Date: 1.3.77

10

Subject: Notice of Termination

Dear Sirs,

We refer the Supplemental Agreement executed between us dated the 23rd day of March, 1976 particularly Clause 3 of Article V thereof.

We have received from the Architect this morning his recommendation from which we understand a copy has been sent to you.

The Architect is of the opinion the progress of the works is unsatisfactory. Further despite the numerous letters of the Architect you are in breach of the Supplemental Agreement in failing inter alia :- 20

(1) to adhere or maintain the progress of works as specified in the third schedule of the Supplemental Agreement.

(2) to carry out the works expeditiously and with every diligence.

in view of the circumstances we have no alternative but to exercise our rights under Clause 3 Article V aforesaid and we hereby terminate your employment under the Principal Agreement dated the 8th day of March, 1974 forthwith and with immediate effect. 30

We hereby inform and request you as follows:-

A. At the same time as your receiving this letter our representatives and security guards will be on site to take possession of the same and we

40

shall be obliged if you will surrender at once possession of the site to us by :-

EXHIBITS

"E"

Notice of Termination

1st March 1977

(continued)

- (1) removing the security guards engaged by you from the site;
- (2) removing all your documents and belongings from your site office;
- (3) delivering to our representatives on site the keys to your site office and all stores controlled by you containing our materials;
- (4) removing all workmen from site including inter alia your site representatives.

10

B. It is of the utmost importance that paragraph A(1) (2) (3) and (1) be attended at once by your telephoning immediately your site representatives at the site office and other appropriate persons giving the appropriate instructions in compliance with our request. Our Mr. Michael Lie is at your site office awaiting to hear from you within 1 hour in confirmation that the telephone calls have been made.

20

C. Provided at the expiry of the said hour -

- (1) paragraph B above is complied with, and
- (2) your security guards are removed, and
- (3) the keys to the said stores are given to our site representatives.

30

We will have no objection if the removal of :-

- (a) your documents and belongings and the handling over of the keys to your site office are accomplished within 24 hours and during ordinary working hours, and
- (b) workmen and site representatives are accomplished within 48 hours and during ordinary working hours.

40

Yours faithfully,
for UNITED OVERSEAS LAND LIMITED

EXHIBITS

"E"
Notice of
Termination
1st March
1977
(continued)

Yeo Yong Siang
GENERAL MANAGER

YYS/en

c.c. Loke Hong Kee (S) Pte. Ltd.
c/o Francis Loke
1-H Chatsworth Avenue, Singapore.

c.c. Palmer & Turner Architects

c.c. CKP Surveyors

c.c. Houkehua Consulting Engineers

c.c. TAP Consulting Engineers

10

c.c. Shook Lin & Bok

"S"
Draft
Special Case
Undated

EXHIBITS

"S"

DRAFT SPECIAL CASE

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

IN THE MATTER OF AN ARBITRATION

Between

LOKE HONG KEE (S) PTE. LTD.

And

UNITED OVERSEAS LAND LIMITED

20

And

IN THE MATTER OF THE ARBITRATION
ACT (CAP.16)

This is a Special Case stated for the
decision of the court pursuant to Section 28
of the Arbitration Act (Cap.16).

1. By an Agreement in writing dated the
8th day of April, 1974 a copy of the
relevant parts of which are annexed hereto
and marked "A" (hereinafter called "the Main 30
Contract") and made between the said Loke
Hong Kee (S) Pte. Ltd. (hereinafter called
"the Claimants") and the said United Overseas
Land Limited (hereinafter called "the
Respondents") it was amongst other things
provided that the Claimants would carry out

and complete certain building works comprising the erection of two blocks of flats together with ancillary works at Cairnhill (hereinafter called "the Works") under the supervision and to the satisfaction of the Respondents' Architect (hereinafter called "the Architect") and that any dispute or difference arising between the Respondents or the Architect on its behalf and the Claimants during the progress or after the completion works the subject matter of the Main Contract as to the construction thereof or as to any matter or thing of whatever nature arising thereunder or in connection therewith should be referred to the arbitration and final decision of a person to be agreed between the parties or failing agreement within 14 days after either party had given to the other a written request to concur in the appointment of an arbitrator, a person to be appointed on the request of either party by President or a Vice President for the time being of the Singapore Institute of Architects.

2. By a further Agreement made between the said parties and dated the 23rd day of March, 1976 a copy of which is annexed hereto and marked "B" (hereinafter called "the Supplemental Agreement") it was, inter alia, provided that :-

(a) By the recitals thereto and by Article I thereof that immediately upon the execution of the Supplemental Agreement and Respondents should pay to the Claimants the sum of \$284,000.00 as financial assistance on an ex gratia basis and without admission of liability in full and final settlement of the Claimants' claim of one block of slipform equipment and plant such payment being in full satisfaction of the claims which the Claimants had made or might thereafter make in respect of or in any way connected with such slipform equipment and plant.

(b) Under Article V Clause 1 that the Claimants should adhere to the progress or works specified in the Third Schedule annexed to the Supplemental Agreement to ensure the completion of the Works on or before the dates stated therein.

(c) By Article V Clause 2 that the

EXHIBITS

"S"
Draft
Special
Case
Undated
(continued)

EXHIBITS

"S"
Draft
Special
Case
Undated
(continued)

Claimants should carry out the Works expeditiously and with every diligence and complete the same.

- (d) By Article V clause 3 that in the event of the progress of the Works being in the opinion of the Architect unsatisfactory and/or in the event of the contractor failing to adhere or maintain the progress of works as specified in the said Third Schedule and/or upon any breach of the Supplemental Agreement by the Claimants then upon the recommendation of the Architect in writing and in addition to the Respondents' rights under the Main Contract the Respondents should be at liberty to determine the employment of the Claimants under the Main Contract forthwith by notice in writing. 10
- (e) By Article V Clause 6 that upon the Respondents regaining possession of the site the firm of Pakatan Suckling McDonald (hereinafter called "Pakatan") should within two weeks measure the Works as completed by the Claimants and the valuation of the said Pakatan should be binding on both parties and should be final. 30
- (f) By Article VIII that notwithstanding the provisions contained in the Supplemental Agreement the time for the completion of the Works unless extended by the Architect under the Main Contract should remain as at the 4th day of May, 1976 and that nothing in the Supplemental Agreement should effect or modify or diminish any right of the Respondents and the Claimants of whatever kind against each other arising out of or any act or default of either party under the Main Contract the terms and conditions of which should remain valid and binding on the parties to the Supplemental Agreement subject to the provisions thereof particularly the additional rights and benefits of the Respondents provided therein. 40 50

EXHIBITS

"S"

Draft
Special
Case

Undated

(continued)

10 3. By a further Agreement bearing the dates 1st and 2nd days of April, 1976 a copy of which is annexed hereto and marked "C" (hereinafter called "the Liquidated Damages Agreement") it was inter alia provided that if the Claimants completed the Works on dates specified in the Schedules annexed thereto the Respondents would waive all claims for liquidated damages against the Claimants to which the Respondents would otherwise be entitled under the provisions of the Main Contract. The said dates for completion stated in the Schedules to the Liquidated Damages Agreement were not to be subject to any extension by the Architect or any other person save (inter alia) in respect of any delay on the part of the Architect in not
20 furnishing the Claimants with necessary drawings in accordance with the provisions of the said Schedules which provided dates by which certain categories of drawings were to be issued to the Claimants.

30 4. On the 1st day of March, 1977 the Architect, pursuant to the provisions of Article V Clause 3 aforesaid by a letter addressed to the Respondents (a copy of which is annexed hereto and marked "D") stated that he was of the opinion that progress of the Works was unsatisfactory and that it was obvious that the Claimants had failed to adhere or maintained the progress of work as specified in the Schedule to the Supplemental Agreement; that the Claimants were not making any serious attempts to adhere or maintain the progress of works; and that the Claimants were not carrying out the Works expeditiously and with every
40 diligence; and accordingly recommended that the Respondents might determine the employment of the Claimants under the Main Contract.

5. By a letter also dated 1st day of March, 1977 (a copy of which is annexed hereto and marked "D") the Respondents determined the Claimants' employment under the Main Contract forthwith.

50 6. Disputes or differences having arisen between the parties including, inter alia, whether the Respondents had lawfully determined the Claimants' employment as aforesaid, such disputes or differences were referred to me for determination as sole Arbitrator.

7. The following pleadings delivered by the

EXHIBITS

"S"

Draft
Special Case
Undated
(continued)

parties are annexed hereto and marked as hereinafter appears :-

- F1 copy amended Points of Claim with Schedules I and II.
- F2 copy further re-amended Points of Defence and Counterclaim.
- F3 copy re-amended Points of Reply and Defence to Counterclaim.
- F4 copy further re-amended Points of Reply and Defence. 10
- F5 copy amended Points of Rejoinder and Reply to the Reply and the Defence to Counterclaim.
- F6 a copy document already marked "CK" (hereinafter referred to as "the Activity Diagram Notes") submitted to me as part of the Claimants' documents in the arbitration.
- F7 a bundle comprising extracts from the shorthand transcript of the proceedings and/or a typed transcript of my own notes. 20
8. I annex hereto marked "GI" two bundles of documents submitted to me as part of the Claimants' documents in the arbitration referring to a valuation by Pakatan.
9. The hearing of the arbitration was opened by me on Tuesday the 23rd day of May, 1978. The Claimants' Counsel opened his case and then examined in chief Mr. Francis Loke the Managing Director of the Claimants. During the Claimants' Counsel's opening, Counsel for the Respondents submitted that I should not admit certain evidence and at the conclusion of the evidence-in-chief of Mr. Francis Loke requested an adjournment for the purpose, inter alia, of considering whether points of law had arisen during the reference. On Wednesday the 7th day of June, 1978 Counsel for the Respondents submitted that I should state a consultative case on points of law arising during the reference and I set out below the respective contentions of the parties and the questions arising for the decision of the Court. 30 40
10. Question 1. The Claimants have led

evidence, the Respondents objecting, of the progress of the Works including alleged causes of delay and disruptions before the making of the Supplemental Agreement and of negotiations between the parties leading up to the making of the Supplemental Agreement. The Respondents submit that as a matter of law I am not entitled to have regard to such evidence for the purpose of construing or otherwise determining the true meaning and effect of the Supplemental Agreement. The question for the court therefore is :-
Whether I am entitled to admit, or having admitted it to have any regard to, evidence relating to :-

EXHIBITS

"S"

Draft
Special
Case

(Undated)

(continued)

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(i) any alleged causes of delay to or disruption of the Works occurring before the making of the Supplemental Agreement;

(ii) negotiations between the parties leading up to the making of the Supplemental Agreement;

in construing or otherwise determining the true meaning and effect of the Supplemental Agreement.

30

40

Question 2. The Claimants have presented their case on the footing that the dates for the issue of drawings contained in the Schedule to the Liquidated Damages Agreement are or should be regarded as agreed dates for the issue of the same drawings for the purpose of the Supplemental Agreement. The Respondents contend that these dates are relevant only to the Liquidated Damages Agreement and should be disregarded for the purposes of the Supplemental Agreement which contains no such dates. The question for the court therefore is:- Whether I am entitled to admit, or having admitted it to have any regard to, evidence tending to show that the dates for the issue of drawings stated in the Schedules to the Liquidated Damages Agreement were or should be regarded as agreed dates for the purposes of the Supplemental Agreement.

Question 3. The Claimants have contended that I am entitled to look at the entire history of the carrying out of the Works :-

50

(i) in order to evaluate the Claimants' performance after the making of the Supplemental Agreement; and

EXHIBITS

"S"
Draft
Special Case
Undated
(continued)

- (ii) in order to enable me to open up to review and revise the extended date for completion of the Works under the Main Contract notwithstanding the provisions of Article VIII of the Supplemental Agreement. The Respondents contend that on the true construction of the Supplemental Agreement and in particular of Article VIII thereof, I should have regard only to the Claimants' performance of their obligations after the making of the Supplemental Agreement and that I am not entitled to review or revise the extended date for completion referred to in Article VIII aforesaid.. The question for the court is therefore:-
Whether on the true construction of the Supplemental Agreement and in particular of Article VIII thereof I am entitled to admit, or having admitted it to have any regard to, evidence relating to alleged causes of delay to or disruption of the progress of works arising and/or occurring and/or known to the Claimants before the date of the Supplemental Agreement for the purpose of determining :-
(i) Whether the Respondents were entitled to determine the Claimants' employment pursuant to Article V of the Supplement Agreement;
(ii) Whether the Claimants are entitled to any extension of time for the completion of the Works pursuant to the provisions of the Main Contract.

Question 4. The Claimants have contended that any opinion of the Architect for the purposes of Article V Clause 3 must be objectively reasonably or justified in hindsight. The Respondents contend that it is sufficient that the Architect should have formed such an opinion in good faith on the information available to him at the time. The question for the Court therefore is:-
Whether for the purposes of Article V Clause 3 of the Supplemental Agreement and of the recommendation of the Architect given pursuant to thereto it is sufficient that the Architect should have formed an opinion

in good faith on the information available to him at the time.

EXHIBITS

"S"

Draft
Special Case

Undated

(continued)

10

Question 5. Arising from the foregoing question the Claimants contend that I am entitled to open up review or revise any opinion of the Architect given for the purposes of Article V Clause 3 of the Supplemental Agreement by virtue of the powers conferred upon me by Clause 34 of the Main Contract. The Respondents contend that upon the true construction of the Supplemental Agreement such an opinion is not subject to opening up review or revision. The question for the court is therefore :- Whether I am entitled to open up review or revise an opinion of the Architect under Article V Clause 3 of the Supplemental Agreement pursuant to the powers conferred upon me by Clause 34 of the Main Contract.

20

30

Question 6. The Claimants have contended that they are not barred from seeking to recover a sum in excess of \$284,000.00 in respect of additional slipform equipment notwithstanding the recitals and Article I Clauses 1 and 2 of the Supplemental Agreement and of the payment of the said sum by the Respondents to the Claimants' benefit. The Respondents contend that the foregoing provisions of the Supplemental Agreement constitute an accord and satisfaction and that the Claimants are not entitled to make any claims in these proceedings in respect of the same subject matter. The question for the Court is therefore :- Whether by virtue of Article I Clauses 1 and 2 of the Supplemental Agreement and of the recitals thereto together with the payment of the sum of \$284,000.00 by the Respondents to the Claimants there was an accord and satisfaction of the Claimants' claim in respect of slipform equipment pleaded as item 3(f) of Schedule I of the Points of Claim in the sum of \$625,000.00.

40

50

Question 7. The Claimants have contended that notwithstanding the provisions of Article V Clause 6 of the Supplemental Agreement they are not bound by a valuation carried out by Pakatan on the ground that such valuation contained sundry errors and omissions. Pakatan have considered the alleged errors and omissions in their Supplemental Report. The Respondents contend that both parties having agreed to accept such a valuation as final and binding are bound thereby notwithstanding

EXHIBITS

"S"
Draft
Special Case
Undated
(continued)

that the same may contain errors or omissions in favour of either party but subject always to the right of the aggrieved party to commence proceedings against Pakatan for breach of duty of care if such be the case. The question for the Court is therefore:- Whether the parties are bound by the valuation of the Works executed and materials supplied by the Claimants and carried out by Pakatan International pursuant to the provisions of Article V Clause 6 of the Supplemental Agreement. 10

Question 8. The Claimants have opened their case and led evidence on the basis that when I have to determine (pursuant to Article V Clause 1, 2 and 3 of the Supplemental Agreement) whether the Claimants failed :-

- (i) to adhere to the progress of works specified in the Schedules to the Supplemental Agreement, and/or 20
- (ii) to carry out the Works expeditiously and with every diligence, and/or
- (iii) to make satisfactory progress;

I am entitled to take into consideration any delay on the part of Nominated Sub-contractors which had the effect of delaying or disrupting the progress of the Works. The Respondents contend that on the true construction of the Supplemental Agreement although delay on the part of the Nominated Subcontractors may be a ground for an extension of time under the provisions of the Main Contract it is not relevant when considering the Claimants' overall performance of their obligations under the Supplemental Agreement and that any lack of diligence or expedition on the part of the Nominated Subcontractor is a lack of diligence or expedition on the part of the Claimants. The question for the Court is therefore:- In determining whether or not the Claimants have failed :- 30

- (i) to adhere to the progress of the Works specified in the Schedules to the Supplemental Agreement, and/or 40
- (ii) to carry out the Works expeditiously and with every diligence, and/or 50

(iii) to make satisfactory progress;

(pursuant to Article V Clauses 1, 2 and 3 of the Supplemental Agreement) I am entitled to take into consideration any delay on the part of the Nominated Sub-contractors (other than any such delay which may be shown to have been caused by any breach of contract on the part of the Respondents).

EXHIBITS

"S"
Draft
Special Case
Undated
(continued)

10 Question 9. The Claimants have led evidence alleging that the progress of the Works was delayed by shortages of materials other than of cement or steel. Clause 23(j) of the Main Contract is limited to the Contractor's inability to obtain supplies of cement and steel and the Respondents have contended that in any event shortages of materials other than cement and steel (as to which there is no pleaded allegation) are
20 irrelevant to the Claimants' performance of their obligations under the Supplemental Agreement and also to any question of extension of time under the Main Contract. The question for the Court is therefore:- Whether having regard to the provisions of the Main Contract at page 12 of the Bills of Quantities (Preliminaries) I should admit, or having admitted it have any regard to
30 causes of delay falling within Clause 23(j) of the Main Contract other than shortages of cement and steel.

11. This case is stated as a consultative case on points of law arising during the course of the reference.

EXHIBITS

"T"

Correspondence
etc.

various

EXHIBITS

"T"

CORRESPONDENCE ETC.

PAKATAN INTERNATIONAL
SUCKLING MCDONALD & MOHD ISAHAK

Quantity Surveyors and Building
Cost Consultants

37B Tanglin Road
Singapore 10
Tel: 2358211/2/3
Cables: SUMAK SINGAPORE

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Partners:
K.A.Suckling FRICS FIS(M) PPSIS
J.H.McDonald FRICS PPIS(M) FSIS
Mohd Isahak Yusuf Dip QS(Aust) FAIQS MIS(M)
MSIS
Chew Soon Sing AAIQS MSIS
Associate Tan Wee Soon BSC (BIDG) MSIS
Our ref: KAS/MC 3 March 1977

United Overseas Land
c/or Merlin Hotel
Mezzanine Floor
Beach Road
Singapore 7.

20

Attn: Mr. Michael Lie

Dear Sirs,

Cairnhill Plaza

We refer to our discussion with you on
Wednesday the 2nd March concerning the
measurement of completed work on the above
contract and have now examined the drawings
and documents provided.

30

You stated that you wished the work to be
completed within two weeks but in our
considered opinion this is virtually
impossible and, from our assessment of the
amount of the work to be measured, the time
required cannot be less than three and a
half (3½) weeks. There will be very
considerable "site" work checking the extent
of completion of brickwork and finishes and
this must necessarily be time-consuming.

40

On this basis and allowing for full partici-
pation of all our takers-off, together with
Partner participation, we suggest a lump
sum fee of \$80,000/-, (Dollars Eighty
Thousand Only) including all typing and
printing of the Bills of Quantities.

This fee allows for the maximum amount of overtime and weekend working which will be necessary in order to complete within the time which we have stated above.

EXHIBITS

"T"
Correspondence etc.

We trust that the above details meet with your approval and, if so, we will make immediate arrangements to commence measurement.

various
(continued)

Yours faithfully,

10 Signed. Illegible

PAKATAN INTERNATIONAL
SUCKLING McDONALD & MOHD ISAHAK

Quantity Surveyors and
Building Cost Consultants

37B Tanglin Road
Singapore 10
Tel: 2358211/2/3
Cables: SUMAK SINGAPORE

20 Partners:
K.A.Suckling FRICS FIS(M) PPSIS
J.H.McDonald FRICS PPIS(M) FSIS
Mohd Isahak Yusuf Dip QS(Aust) FAIQS MIS(M) MSIS
Chew Soon Sing AAIQS MSIS
Associate Tan Wee Soon BSC (BIDG) MSIS
Our ref: 577/578 KAD/MC 4 March 1977

United Overseas Land
c/o Merlin Hotel
Mezzanine floor
Beach Road
Singapore 7

Attn: Mr. Michael Lie

30 Dear Sirs

Cairnhill Plaza

Further to our letter dated 3rd March and to the meeting between Mr. Michael Lie and the writer we have re-examined the fee quoted in our letter and are prepared to reduce this to \$72,500/- (Dollars Seventy Two Thousand Five Hundred Only).

40 As discussed we are now to measure all work involved in this project including all Nominated Sub-Contractors (M & E) and all Nominated

EXHIBITS

"T"

Correspon-
dence etc.
various
(continued)

Suppliers together with wall and floor
tiling and supply of ironmonger.

This gives us a considerable amount of
work additional to the original brief and
we consider that the fee we now quote is
fair in the circumstances.

We have given further consideration to the
question of time required for this measure-
ment and, as discussed with you, we can
now state that we will endeavour to complete 10
in three (3) weeks but subject to any
unforeseen eventualities we should definitely
complete within three and a half (3½) weeks
as stated.

In the question of payment of our fee we
suggest that this be progressive as follows:

12 March 1977	\$20,000/-	
19 March 1977	20,000/-	
26 March 1977	20,000/-	
On final agreement of		20
all our measurements		
the balance of	<u>12,500/-</u>	
	<u>\$72,500/-</u>	

We trust that the contents of this letter
will meet with your agreement and on your
verbal confirmation by telephone this
morning we are now proceeding in full
speed with the measurement.

Yours faithfully,
Signed. Illegible 30

PAKATAN INTERNATIONAL
SUCKLING McDONALD & MOHD ISAHAK

EXHIBITS

"T"

Correspondence
etc.

various

(continued)

Quantity Surveyors and
Building Cost Consultants

37B Tanglin Road
Singapore 10
Tel: 2358211/2/3
Cables: SUMAK SINGAPORE

10 Partners:
K.A.Suckling FRICS FIS(M) PPSIS
J.H.McDonald FRICS PPIS(M) FSIS
Mohd Isahak Yusuf Dip QS(Aust) FAIQS MIS(M)MSIS
Chew Soon Sing AAIQS MSIS
Associate Tan Wee Soon BSC (BIDG) MSIS
Our ref: S77/578/KAS/MC 10 May 1977

United Overseas Land Ltd
c/o Merlin Hotel
Mezzanine floor
Beach Road
Singapore 7

20 Dear Sirs,

Cairnhill Plaza

We are pleased to forward to you two (2)
copies of the printed Bills of Quantities of
our re-measurement of completed work at the
above site.

30 The following points must be considered in
conjunction with our measured Bills and we
should be pleased to discuss these points
further with you after your perusal of both
the Bills and our comments

1.00 Preliminaries

40 We have given considerable thought to
the preparation of Preliminaries and as
to how this element should be presented
in this document, but you will appreciate
that we are not acquainted with all
details of the reasons for delay in
completion and extension of time in
connection with this project. Accordingly
we have listed in Bill No.1 the items
of Preliminaries (with the total amounts
included in the contract bills inserted
in brackets after the item), and we have
these inserted the total amount allowed
for Preliminaries in the last progress
payment prepared by Crisp Kavanagh &
Partners.

EXHIBITS

"T"
Correspondence
etc.
various
(continued)

2.00 Supply Only Items

We do not have any invoices for the above items, which include floor and wall tiles, sanitary fittings and ironmongery, but we have included in our evaluation the value of these items as given in the last progress payment prepared by M/s Crisp Kavanagh & Partners.

3.00 We have not allowed for profit & attendance for the main Contractor on the amounts of the sub-contract for joinery fittings, since this sub-contract was in fact awarded to the main Contractor. 10

4.00 You will note that reinforcement sizes in the original bills of quantities are imperial, whereas all construction drawings give reinforcement in Metric sizes. We have converted the Metric sizes to pounds and priced these at the rates included in the original bills. 20

5.00 In the last valuation prepared by Crisp Kavanagh & Partners a sum of \$294,500/- has been included for slip-form equipment. We have no knowledge of the extent to which slip-form was used on this project and accordingly we have included the amount as previously valued by Crisp Kavanagh & Partners. 30

6.00 In evaluating the amount due for wall and floor tiling we have used the rates entered in the original sub-contract. We have decided to ignore the increased rates claimed by the Contractor and have also ignored his various claims for idle time, day-work etc.

7.00 We would comment that during our inspection of the building work and our listing of materials on site a representative of the Contractor was present at all times. 40

8.00 Variation Orders

Included in the last progress payment prepared by Crisp Kavanagh & Partners under the heading of 'Variation of Works' a number of such items is listed. Most of these items of building work have now been measured by us from the construction drawings. For the remaining 50

items we have no details, and have assumed that values given by Crisp Kavanagh & Partners have been agreed. These remaining items are included in the "Additional Items" which we have prepared as a separate Bill.

EXHIBITS
"T"
Correspon-
dence etc.
various
(continued)

10

We have not dealt with the lists of variation items forwarded to us by Messrs. Loke Hong Kee as we have no formal variation orders from the Architect covering these items. We note that many of the rates used in these variation claims do not agree with the contract rates.

9.00 Elemental Bills

It will be noted that the measured Bills of Quantities are prepared in Elemental form whereas the Contract Bills are prepared as Trade Bills.

20

To facilitate comparison we will re-arrange our measured Bills into trade form and these will be forwarded as soon as possible.

10.00 Taking-off Check

We are at present completing our taking-off check and should this reveal any discrepancies we will notify you immediately.

11.00 Remedial Work

30

As stated in our letter of the 7th May we have completed our inspection of all the items of remedial work and valuation of all these items is now in progress. We expect to complete this work by the end of this week.

Yours faithfully,
Signed Illegible

40

PAKATAN INTERNATIONAL
SUCKLING, McDONALD & MOHD ISAHAK
QUANTITY SURVEYORS

c.c. M/s Loke Hong Kee (S) Pte Ltd.
M/s Donaldson & Burkinshaw
M/s Shook Lin & Bok

EXHIBITS

FL/JW/1032-331/74

"T"
Correspon-
dence etc.
various
(continued)

14th December, 1974

M/s Palmer & Turner,
1-A D'Almeida Street,
P.O.Box 771,
Singapore

Dear Sirs,

Cairnhill Plaza - Singapore

We thank you for your letter dated
10/12/74 and its contents noted.

10

As requested, we are pleased to
forward herewith details supporting our
claim for extension of time on the above
project.

Your early attention on the above
matter will be greatly appreciated.

Yours faithfully,

Sd. Illegible

c.c. M/s Faber Union Ltd.
c.c. M/s CKP Surveyors.

20

EXHIBITS

"T"

Correspondence etc. various
(continued)

<u>Subject</u>	<u>Comments</u>	<u>Reference/date</u>	<u>Time Delay</u>
1) Additional Piling	Foundation Piling is not included in this Contract and will be completed <u>before commencement of this work</u> i) No free movement of our excavators, due to piling work in progress ii) Additional excavation around piles and new pile caps to be installed iii) Driving of additional piles were completed on the following dates:- Block 1, lower level-21/1/74 Block 1, higher level-14/2/74 Block 2, - 4/2/74	L.H.K's letter dated 23/3/74 additional piles plan was issued on the (6)12/73. Piling frame brought to site on the 21/12/73. L.H.K's letter dated 27/12/73. Houkehua's letter dated 3/12/73 and 12/12/73.	3 months (90 days)
2) Exceptional Inclement weather	Records available up to September 1974, only. Wet days exceeding those tabulated on page 12 Clause 23 of the Main Contract as obtained from the Metreological Bureau at Botanical Gardens	Extracts from Metreo - logical Bureau at Botanical Garden's record. Official Record will follow as soon as received from Metreological Bureau.	25 days
3) Additional sub-soil pipes	present requirement - 2220 f.r. allowance in B.Q. - <u>1436 f.r.</u> <u>784 f.r.</u>	Page 158. item K.	14 days (14 days)

EXHIBITS

"T"

Correspondence etc. various
(continued)

<u>Subject</u>	<u>Comments</u>	<u>Reference/date</u>	<u>Time Delay</u>
3) (continued)	Sub-soil pipes have to be laid before back-filling around retaining wall, hence obstruction is encountered. Additional works involved. i) Excavation ii) Laying of sub-soil pipes iii) Back-filling with good weather		
4) Cement Shortage	Clause (23) item (j) From our records the delay due to cement shortage is 1 month	L.H.K's letter dated 19/2/74 enclose letters from suppliers stating they are unable to supply cement.	1 month (30 days)
5) Additional work on pile caps ground beams including additional excavation both in depth and size and additional concrete	1) Original allowance in excavation work in Contract is 1483 y.c. Present excavation work carried out in pile caps is 5133 y.c. an addition of 3650 y.c. 2) An increase of 150% on excavation of pile caps alone 3) Excavation of pile caps has to be carried out systematically and in order, i.e.		6 weeks (42 days)

EXHIBITS

"T"

Correspondence etc. various
(continued)

171.

<u>Subject</u>	<u>Comments</u>	<u>Reference/date</u>	<u>Time Delay</u>
5) (continued)	completion of one usually depends on the other		
	4) Additional excavation work means additional formwork, steel reinforcement and concrete		
1) Excavation of pile caps	B.Q.allowance 1483 y.c.	Actual Work done 5133 y.c.	Additional Quantities 3650 y.c.
2) 2" lean conc. u.p.c.	938 y.s.	1158 y.s.	220 y.s.
3) Sawn formwork to si. of p.c.	21,011 f.s.	28,638 f.s.	7627 f.s.
4) R.C. (1:2:4) in p.c.	1788 y.c.	3414 y.c.	1626 y.c.
5) Excavate for ground beam	329 y.c.	896 y.c.	567 y.c.
6) 2" lean conc. u. grd. beam	337 y.s.	543 y.s.	206 y.s.
7) Sawn formwork to side of ground beam	15,125 f.s.	32,132 f.s.	17,007 f.s.
8) R.C. in ground beam	209 y.c.	518 y.c.	309 y.c.

EXHIBITS

"T"

Correspondence etc. various
(continued)

<u>Subject</u>	<u>Comments</u>	<u>Reference/date</u>	<u>Time Delay</u>
6) Vertical openings in slabs	1) Without the known and correct positions of the vertical openings it becomes pointless to complete the formwork and steel placings as the steel bars have to be re-positioned and formwork cut. 2) Requests for positions of vertical openings were made constantly	L.H.K's letters dated (26)/5/74, 31/5/74, 4/6/74, 12/8/74	7 day (7 days)
7) Late supply of Formation Level Drawings for cut and fill	i) Due to the late supply of the formation level drawings, temporarily buildings were sited in the wrong positions resulting in huge earth pile-ups. ii) These earth pile-ups cause us inconvenience delay, and above all additional costs. iii) Instructed by Architects to hold work on Block "2"	L.H.K's letters dated 4/12/73, 6/12/73, 10/1/74, 6/2/74	3 weeks (21 days)
8) Late supply of R.C. drawing	1) Due to the late supply of R.C. Detail drawings, work is delayed	L.H.K's letter dated 26/1/74, 25/3/74. Meeting at Palmer & Turners office dated 21/1/74. Palmer & Turner's Transmittal letter dated 23/3/74.	4 weeks (28 days)

PALMER & TURNER ARCHITECTS - SINGAPORE
1-A D'ALMEIDA STREET P.O.BOX 771
Tel: 95084-5 Cable: PYROTEO-NY

EXHIBITS

"T"

Correspon-
dence etc.

various

(continued)

Our ref: PF/75/36

January 13, 1975

M/s Loke Hong Kee (S) Pte.Ltd.
189 Clemenceau Avenue
Singapore 9

Dear Sirs,

10 Cairnhill Plaza

We are in receipt of details in support of your claim dated 16th December 1974 for extension of time for the above project, and wish to advise you that, after due consideration, we hereby allow you 49½ days extension of time.

Yours faithfully,

Signed. Palmer & Turner

EJP/cl

20 c.c. M/s Faber Union Ltd.
M/s C.K.P. Surveyors
M/s Houkehua Consulting Engineers

PL/JW/3032-362/75
PF/75/36

22nd January, 1975

M/s Palmer & Turner,
P.O.Box 771,
Singapore.

Dear Sirs,

Re: Cairnhill Plaza - Singapore

30 We thank you for your letter dated 13/1/75 and its contents noted.

We shall be very grateful if you will be kind enough to supply us details of your computation in arriving at the 49½ days of extension of time so that we can give this matter further consideration.

Your early attention will be greatly appreciated.

Yours faithfully,

EXHIBITS

"T"
Correspondence
etc.
various
(continued)

c.c. M/s Faber Union Ltd.
c.c. M/s CKP Surveyors
c.c. M/s Houkehua Consulting Engineers

Cairnhill Plaza

Claim for Extension of Time from

M/s Loke Hong Kee (S) Pte. Ltd.

	<u>Time Allowed</u>	
1. Additional Piling	27 days	
2. Inclement Weather	15½ days	
3. Additional Sub-soil Pipes	NIL	10
4. Cement Shortage	NIL	
5. Pile Caps & Ground Beams	NIL	
6. Vertical Openings in slabs	7 days	
7. Formation Drawings	NIL	
8. R.C. Drawings	NIL	
	<hr/>	
Total	49½ days	
	<hr/> <hr/>	

FL/JW/J032-410/75

12th March, 1975

EXHIBITS

M/s Palmer & Turner,
1-A D'Almeida Street,
P.O.Box 771,
Singapore.

"T"
Correspon-
dence etc.
various
(continued)

Dear Sirs,

re: Cairnhill Plaza - Singapore

10 We thank you for the courtesy of
allowing us to see the details of your
granting us the 49½ days extension of time
on the above contract.

We regret that we are unable to agree
with your method of assessment of the
extension of time. We wish to reserve our
right to claim for extension of time on the
above at a future date.

Yours faithfully,

20 c.c. M/s CKP Surveyors
c.c. M/s Faber Union Ltd.
c.c. M/s Houkehua Consulting Eningers

EXHIBITS

EXHIBIT CB pg 45

"T"
Correspondence
etc.
various
(continued)

PALMER & TURNER ARCHITECTS - SINGAPORE

Our ref: PF/76/543

March 26, 1976

Messrs. Loke Hong Kee (S) Pte. Ltd.
189 Clemenceau Avenue
Singapore 9.

Dear Sirs,

Cairnhill Plaza - Completion Programme

We refer to the Completion Programme for both Blocks of the above project which you had prepared in conjunction with Messrs. United Overseas Land Ltd. Superimposed on this programme, you will find the following marked in different colours:- 10

(a) The section hatched in red shows the works for which drawings have already been issued.

(b) Sections boxed in green show works for which drawings still have to be issued. The dates underlined in green shown in the corresponding transverse lines are the dates on which drawings have been scheduled to be issued for the corresponding works. These dates have been set for the production of drawings to coincide with the completion dates of the corresponding sections of work to be done. 20 30

Will you kindly study this programme and advise us if any amendments to the dates for the production of the drawings are necessary so that your own programme for completion will be adhered to.

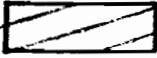

Yours faithfully,

Signed Illegible

WmC:ht

encl:

c.c. Messrs. United Overseas Land Ltd. 40
c.c. Messrs. Houkehua Consulting Engineers
c.c. Messrs. Tap Consulting Engineers
c.c. Messrs. Site Engineer

LEGEND:  DRAWINGS ALREADY ISSUED
 DRAWINGS TO BE ISSUED

NOTE: SECTION A DISMANTLING OF SLIPFORM CAN BE DONE ONLY AFTER 33RD FLOOR SLAB IS CAST

SECTION B DISMANTLING OF SLIPFORM CAN BE DONE ONLY AFTER 32ND FLOOR SLAB IS CAST



BLOCK 1 CAIRNHILL PLAZA - COMPLETION PROGRAMME

(FLOOR TO BE COMPLETED)

YEAR	1976												1977																					
	APR		MAY		JUN		JUL		AUG		SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY															
MONTH	15	30	15	31	15	30	15	31	15	31	15	30	15	31	15	30	15	31	15	31	15	30	15	31										
DAY																																		
1. R C WALL	35	DS	DS	DS	34	35	LMR		34	&	35	F18	10	/4	/76																			
2. BEAM & SLAB	31	32	32	33	34	34	35	35	LMR		34	th	F1	/10	/4/	76	LM	R	15/	5/	76													
3. BRICKWORK		24	25	26	27	28	29	30	31	32	33	LMR		10	/5	/76																		
4. ELEC WIRING, A/C DUCTING & PLUMBING		23	24	25	26	27	28	29	30	31	32	33		10	/5	/76																		
5. ALUM. WINDOW FRAME		17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33																
6. INTERNAL PLASTERING	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33																
7. FLOOR & WALL TILING	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31																
8. SUSPENDED CEILING	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35
9. DOOR & JOINERY WORK	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35
10. EXTERNAL FINISHES	S	S	16	14	12	10	8	6	4	2	36	34	32	30	28	26	24	22	20	18														
			15	13	11	9	7	5	3	1	35	33	31	29	27	25	23	21	19	17														
ROAD DRAIN & EXTERNAL WORK	TO BE COMPLETED ON 31.3.77																																	
ARCHITECT'S CERTIFICATE OF PRATICAL COMPLETION	TO BE ISSUED ON 30.4.77																																	

Door Frames & Doors only Other Joinery depend on Buyer.

NOTE: DS = Dismantling of Slipform S = Scaffolding LMR = Lift Motor Room. The numbers in the squares contained in the horizontal columns No. 1 to 10 refer to the floors in the Block.

LEGEND:  DRAWINGS ALREADY ISSUED
 DRAWINGS TO BE ISSUED

NOTE: SECTION A DISMANTLING OF SLIPFORM CAN BE DONE ONLY AFTER 33RD FLOOR SLAB IS CAST

SECTION B DISMANTLING OF SLIPFORM CAN BE DONE ONLY AFTER 32ND FLOOR SLAB IS CAST

BLOCK 1 CAIRNHILL PLAZA - COMPLETION PROGRAMME
 (FLOOR TO BE COMPLETED)

YEAR	1976																		1977																			
	APR		MAY		JUN		JUL		AUG		SEP		OCT		NOV		DEC		JAN		FEB		MAR		APR		MAY											
	15	30	15	31	15	30	15	31	15	31	15	30	15	31	15	30	15	31	15	31	15	28	15	31	15	30	15	31										
1. R C WALL	35	DS	DS	DS	34	35	LMR		34	&	35	F18	10	/4	/76																							
2. BEAM & SLAB	31	32	32	33	34	34	35	35	LMR		34	th	F1	/10	/4	/76	76	LM	R	15/	5/	76																
3. BRICKWORK		24	25	26	27	28	29	30	31	32	LMR		10	/5	/76																							
4. ELEC WIRING, A/C DUCTING & PLUMBING		23	24	26	27	28	29	30	31	32		10	/5	/76																								
5. ALUM. WINDOW FRAME		17	19	21	23	24	25	26	28	29	31	32	33	34	35		29	/4	/76																			
6. INTERNAL PLASTERING	16	17	18	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35		10	/5	/76															
7. FLOOR & WALL TILING	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35			DE	PEND	ON	BUYER										
8. SUSPENDED CEILING	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	4/	10	/76	
9. DOOR & JOINERY WORK	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	4/	10	/76	Door Frames & Doors only Other Joinery depend on Buyer.
10. EXTERNAL FINISHES	S	S	16	14	12	10	8	6	4	2	36	34	32	30	28	26	24	22	20	18																		
ROAD DRAIN & EXTERNAL WORK	TO BE COMPLETED ON 31.3.77																																					
ARCHITECT'S CERTIFICATE OF PRATICAL COMPLETION	TO BE ISSUED ON 30.4.77																																					

NOTE: DS = Dismantling of Slipform S = Scaffolding LMR = Lift Motor Room. The numbers in the squares contained in the horizontal columns No. 1 to 10 refer to the floors in the Block.

No. 21 of 1980

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

LOKE HONG KEE (S) PTE. LIMITED

Appellants
(Claimants)

- and -

UNITED OVERSEAS LAND LIMITED

Respondents
(Respondents)

RECORD OF PROCEEDINGS

PARKER GARRETT & CO.
St. Michael's Rectory,
Cornhill,
London, EC3V 9DU

Solicitors for the
Appellants

COWARD CHANCE,
Royex House,
Aldermanbury Square,
London, EC2V 7LD

Solicitors for the
Respondents