

A CONTRACTOR'S ENTITLEMENT TO ADJUDICATION

Judicial Interpretation of Amendments to the Building and Construction Industry Security of Payment Act 2004

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I. Introduction

1 While the Building and Construction Industry Security of Payment Act 2004¹ (the “SOP Act”) serves to facilitate cash flow in the construction industry, the expedited process to obtaining an enforceable adjudication determination is not always available to every downstream contractor.

2 Recently, the General Division of the High Court issued two decisions following applications made to set aside adjudication determinations. Both decisions discussed the interpretation of provisions under the SOP Act, which were introduced with a suite of other legislative amendments that came into effect on 15 December 2019 (the “Amendments”).

3 Before the court in *Asia Grand Pte Ltd v A I Associates Pte Ltd*² (“*Asia Grand*”), the central issue was whether the adjudication application was made prematurely. The decision focused on when a payment claim is deemed to be served if the contract does not stipulate the date for service of a payment claim. *Asia Grand* will be examined below.³

1 2020 Rev Ed.

2 [2023] SGHC 175.

3 See paras 5–21 below.

4 In a separate decision, *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd*⁴ (“*Builders Hub*”), the court dealt with the claimant’s entitlement to an adjudication of payment claim served prior to the termination of its employment. This decision is of significance given that the SOP Act applies to terminated contracts unless s 4(2)(c) of the SOP Act applies.⁵ The decision in *Builders Hub* and its practical implications on contract drafting will be discussed below.⁶

II. Deemed date of service under section 10(3)(b) of the Building and Construction Industry Security of Payment Act 2004

A. Background to the dispute in *Asia Grand Pte Ltd v A I Associates Pte Ltd*

5 In *Asia Grand*, the applicant, Asia Grand Pte Ltd (“AGPL”) engaged the defendant A I Associates Pte Ltd (“AIAPL”) to carry out works.⁷ The contract did not provide the time at which a payment claim must be served.⁸ AIAPL served on AGPL a payment claim on 16 November 2022 (the “PC”).⁹ AIAPL then filed an adjudication application (“AA”) on 13 December 2022.¹⁰ One day after the AA was filed, AGPL served a payment response.¹¹

6 Before the adjudicator, the dispute centred on when the PC was served – whether on 16 November 2022 (ie, the actual date of service) or 30 November 2022 which AGPL argued was the deemed date of service under s 10(3)(b) of the SOP Act.¹² If AGPL’s argument is accepted, this would mean that AGPL

4 [2023] SGHC 120.

5 Section 2 of the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) provides that “contract” means “a construction contract or a supply contract, and includes a construction contract or a supply contract that has been terminated”.

6 See paras 22–38 below.

7 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [2].

8 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [4].

9 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [5].

10 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [6].

11 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [7].

12 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [9].

had until 14 December 2022 to issue its payment response and AIAPL would be entitled to file its AA from 22 December 2022.¹³ Resultantly, AIAPL's AA filed on 13 December 2022 would be considered to have been filed prematurely.

7 Section 10(3)(b) was one of the Amendments introduced which provides that payment claims served before the "prescribed date" under s 10(2)(a)(ii) of the SOP Act is "deemed to have been served on that date". A similar provision, which deems service of a payment claim before the contractually agreed date, to have been made on the agreed date, was also enacted.¹⁴

8 In circumstances where the contract does not stipulate the date for service of payment claims, reg 5(1) of the Building and Construction Industry Security of Payment Regulations¹⁵ ("SOPR") provides that the payment claim shall be "served by the last day of (a) the month following the month in which the contract is made; or (b) any subsequent month".¹⁶ The SOPR now defines "month" as "a period of time beginning on the first day of each of the 12 calendar months into which a year is divided, and ending on the last day of each of these months".¹⁷

9 The issue thus turns on how s 10(3)(b) of the SOP Act is to be read together with reg 5 of the SOPR.

B. The learned adjudicator's determination

10 The learned adjudicator disagreed that the PC was deemed to have been served on 30 November 2022. It was determined

13 See table at [27] of *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175, summarising parties' positions.

14 Section 10(3)(a) of the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) stipulates that "[i]n subsection (2), a payment claim that is served before the date or last day mentioned in subsection (2)(a)(i) is deemed to have been served on that date or day, as the case may be".

15 2006 Rev Ed.

16 Regulation 5 of the Building and Construction Industry Security of Payment Regulations (2006 Rev Ed) sets out the "prescribed date" referred to in s 10(2)(a)(ii) of the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed).

17 Building and Construction Industry Security of Payment Regulations (2006 Rev Ed) reg 5(3).

that the PC was served on 16 November 2022 for the following reasons:¹⁸

(a) Regulation 5(1) of the SOPR does not prescribe a date on which a payment claim is to be served given that the operative phrase is “by the last day of the month” [emphasis added]. Hence, a payment claim could be served on any day in a month.¹⁹

(b) Section 10(3)(b) of the SOP Act has no application when the contract is silent on when a payment claim must be served. The learned adjudicator referred to parliamentary reports on the Amendments where it was said that s 10(3) was introduced to save payment claims served on the wrong date.²⁰ Consequently, since reg 5(1) provides that a payment claim can be served on any day of a month, s 10(3) of the SOP Act does not come into play.²¹

(c) The learned adjudicator also relied on the absence of the words “or last day mentioned in subsection 2(a)(i)”, which is present in s 10(3)(a) of the SOP Act, to support his reading that the prescribed date in s 10(3)(b) of the SOP Act cannot be the “last day of the month”.²²

11 Accordingly, the learned adjudicator concluded that the AA was taken out within time on 13 December 2022 since AIAPL would be entitled to lodge the AA from 8 to 14 December 2022.

C. The court’s interpretation of section 10(3)(b) of the Building and Construction Industry Security of Payment Act 2004

12 The court disagreed with the learned adjudicator that the PC was served on 16 November 2022 and that s 10(3)(b) of the SOP Act did not apply to contracts which do not stipulate the date

18 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [10].

19 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [10].

20 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [11].

21 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [11].

22 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [11].

for service of payment claims. AGPL successfully set aside the learned adjudicator's determination.²³

13 On reading the relevant provisions, the court held that:

(a) If a contract does not specify a date for the service of payment claims, a payment claim must be served by the last day of the calendar month. Section 10(2)(a)(ii) of the SOP Act is relevant to contracts which do not stipulate a date for service of payment claims. In interpreting the term "date prescribed" in s 10(2)(a)(ii) of the SOP Act, the court held that it referred to the last day of the calendar month as provided for in regs 5(1) and 5(3) of the SOPR.²⁴

(b) In such circumstances, if a payment claim is served before the last day of the month, s 10(3)(b) of the SOP Act applies and the payment claim will be deemed to have been served on the last day of the month.²⁵

(c) Since the PC is deemed to have been served on 30 November 2022, AIAPL's AA of 13 December 2022 was filed prematurely.²⁶

14 Before the court, AIAPL argued that that there is no "prescribed date" on which a payment claim must be deemed to have been served.²⁷ AIAPL relied on the decision of *Lee Wee Lick Terence v Chua Say Eng*²⁸ ("*Chua Say Eng*") issued prior to the Amendments to support its claims that a payment claim may be served on any day in the month under reg 5(1) of the SOPR.²⁹

23 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [59].

24 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [31].

25 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [35].

26 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [48].

27 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [34].

28 [2013] 1 SLR 401.

29 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [34]: AIAPL relied on the decision of *Lee Wee Lick Terence v Chua Say Eng* [2013] 1 SLR 401 where the payment claim was served on 2 June 2010. The relevant date which the contract was made was 3 December 2008. The court held that under reg 5(1) of the former Building and Construction Industry Security of Payment Regulations 2005 ("SOPR 2005") which provided that:

[w]here a contract does not contain any provision specifying the time at which a payment claim shall be served or by which such time may be determined, then a payment claim made under the contract shall be
(cont'd on the next page)

AIAPL further argued that reg 5(1) of the SOPR does not state that the last day of the month is the prescribed date under s 10(2)(a)(ii) of the SOP Act.³⁰

15 The court disagreed with AIAPL’s arguments and held that while reg 5(1) of the SOPR allows for a period in which a payment claim must be served, there is also a deemed service date under s 10(3)(b) of the SOP Act.³¹ On reading s 10(2)(a)(ii) (together with reg 5(1) of the SOPR) and s 10(3)(b) of the SOP Act, the “prescribed date” in s 10(3)(b) refers to the same date as the date prescribed under s 10(2)(a)(ii) of the SOP Act.³² Accordingly, the deemed date of service under s 10(3)(b) of the SOP Act is also the last day in the relevant calendar month.³³

16 The court further observed that AIAPL’s argument did not sit well with Parliament’s intention in introducing the deeming provision in s 10(3) of the SOP Act which was “to specify the deemed date of service for a payment claim that is served before the applicable due date in section 10(2)”,³⁴ suggesting that the

served by the last day of each month following the month in which the contract is made[,] the last day of the calendar month following the calendar month in which the contract was made would be the third day of each calendar month and hence, the payment claim was not served out of time (see *Lee Wee Lick Terence v Chua Say Eng* [2013] 1 SLR 401 at [94]). At this juncture, we pause to note that the court in *Chua Say Eng* observed that “month” was not defined in the SOPR 2005 and took reference to s 2 of the Interpretation Act (Cap 1, 2002 Rev Ed) where it was defined to mean a calendar month. The court further held that “calendar month” has been judicially interpreted to “mean a month which ended on the same day as it commenced on the previous month” (*Lee Wee Lick Terence v Chua Say Eng* [2013] 1 SLR 401 at [93]). It bears emphasis that reg 5(3) of the current SOPR stipulates that the reference to month is defined as “a period of time beginning on the first day of each of the 12 calendar months into which a year is divided, and ending on the last day of each of these months”. Hence, the Court of Appeal’s interpretation of the term “month” in *Lee Wee Lick Terence v Chua Say Eng* [2013] 1 SLR 401 is no longer relevant to reg 5 of the SOPR.

30 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [34].

31 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [35].

32 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [35].

33 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [35].

34 Explanatory Statement to the Building and Construction Industry Security of Payment (Amendment) Bill (Bill No 38 of 2018).

prescribed date in s 10(3)(b) is the same date mentioned in s 10(2)(a)(ii) of the SOP Act.³⁵

17 The court also disagreed with the learned adjudicator's reliance on the fact that the words "or last day mentioned in subsection 2(a)(i)" which are present in s 10(3)(a) and not s 10(3)(b) supports the finding that the prescribed date in s 10(3)(b) of the SOP Act cannot be the last day of the month.³⁶ The court found that there is no reference to the "last day" in s 10(3)(b) simply because s 10(2)(a)(ii) of the SOP Act makes no reference to the last day of a period.³⁷ The court found that both ss 10(2)(a)(ii) and 10(3)(b) refer to a single date (*ie*, the prescribed date) which is the last day of the month. Hence, it is immaterial that s 10(3)(b) does not include the phrase "or last day mentioned in subsection 2(a)(i)" which is present in s 10(3)(a) of the SOP Act.³⁸

18 For completeness, the court dismissed AGPL's arguments that the PC fell outside the ambit of the SOP Act because the contract provided for weekly and not monthly progress claims.³⁹ To this, the court held that a contract providing for weekly payment claims is not excluded by any express provisions in the SOP Act.⁴⁰ While reg 5(1) restricts the service of payment claims to one each month, it does not limit or exclude contracts from the ambit of the SOP Act.⁴¹ AGPL's arguments that claims based on instalments are not within the ambit of the SOP Act were also dismissed and it was found that the SOP Act does not preclude an arrangement for progress payments to be made based on instalments.⁴²

35 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [36].

36 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [37].

37 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [37].

38 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [37].

39 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [54].

40 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [51].

41 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [54].

42 *Asia Grand Pte Ltd v A I Associates Pte Ltd* [2023] SGHC 175 at [56].

D. Observations on the court's decision

19 While it may be desirable for contracts to stipulate a date for service of payment claims, the decision in *Asia Grand* makes clear when a payment claim is deemed to be served if the contract is silent.

20 The law as it stands now is that, if a contract does not stipulate a date for service, payment claims would be deemed to have been served on the last day of the month. Consequently, timelines applicable to (a) when the respondent must provide its payment response;⁴³ and (b) the period the claimant can commence an adjudication application,⁴⁴ will run from the last day of the month. An adjudication application filed outside the prescribed timelines would likely be dismissed or set aside by the court.

21 With the introduction of s 10(3)(b) and the statutory definition of “month” in reg 5(3) of the SOPR, *Asia Grand* also demonstrates that the Court of Appeal’s remarks in *Chua Say Eng* regarding whether a payment claim was served within time or not, in the context where the contract is silent, are unlikely to be applicable.⁴⁵

III. Adjudication of claims after termination

A. Brief facts in Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd

22 Builders Hub Pte Ltd (“BH”) was engaged as JP Nelson Equipment Pte Ltd (“JP”)’s contractor.⁴⁶ The terms of

43 Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) s 11.

44 Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) s 12.

45 The amendments to s 10 of the Building and Construction Industry Security of Payment Act 2004 (2020 Rev Ed) on service of a payment claim would apply only to contracts entered into on or after 15 December 2019: see s 25(2) of the Building and Construction Industry Security of Payment (Amendment) Act 2018 (Act 47 of 2018).

46 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [3].

their contract (the “Contract”) incorporated the Real Estate Developers’ Association of Singapore Design and Build Conditions of Contract⁴⁷ (the “REDAS Conditions”).⁴⁸

23 Prior to the service of its payment claim on 18 August 2022 (“PC 40”), the employer’s representative (the “Employer’s Representative”) issued a notice to BH stating, amongst other things, that BH was liable for liquidated damages for 226 days of delays and that BH was required to complete the works no later than 30 September 2022 (the “Notice”).⁴⁹

24 Thereafter, parties exchanged further correspondence. BH alleged that JP had failed to make payment for work done, obstructed its access, refused to recognise its entitlement to extensions of time and wrongfully imposed liquidated damages.⁵⁰ In response, JP denied BH’s allegations and alleged that BH had committed acts of repudiation.⁵¹

25 On 26 August 2022, BH wrote to JP stating that JP had indicated by its conduct that it would continue with its alleged repudiatory conduct and breaches of contract. BH stated that it accepted JP’s alleged repudiatory breach of contract.⁵² JP responded to BH’s letter on the same day stating that BH’s employment is terminated under cl 30.2.2 of the REDAS Conditions. JP also cited BH’s alleged failure to comply with the Notice and abandonment of works as grounds for termination.⁵³

26 JP then served Payment Response 40 (“PR 40”) on BH on 15 September 2022 claiming that BH owed JP \$416,503.⁵⁴

27 BH subsequently commenced adjudication proceedings seeking an adjudication of its claims in PC 40. Before the

47 3rd Ed, October 2010.

48 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [3].

49 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [4].

50 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [5].

51 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [6].

52 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [7].

53 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [7].

54 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [8].

adjudicator, JP challenged BH's entitlement to lodge and proceed with the adjudication application.

B. Findings by the learned adjudicator

28 The learned adjudicator found that he had no jurisdiction to adjudicate the proceedings based on PC 40 for the following reasons:

(a) It was not disputed that BH's employment had been terminated as of 26 August 2022.⁵⁵

(b) The "default position" is that where there is an express termination clause providing for termination of the contractor's employment and consequences of such employment, the contractor is not: (i) entitled to submit further payment claims post-termination; or (ii) to be paid post-termination, unless the contract expressly provides so.⁵⁶

(c) BH has no entitlement to be paid after termination since cl 30.3 of the REDAS Conditions⁵⁷ states that no further payments shall be paid pending determination of all costs incurred as a result of termination.⁵⁸

(d) It is immaterial who had terminated the contract and on what basis, since BH no longer had any contractual right to be paid progress payments upon termination.⁵⁹

29 While the learned adjudicator found that it was not necessary for him to decide whether the Employer's

55 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [12].

56 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [13].

57 Clause 30.3.1 of the Real Estate Developers' Association of Singapore Design and Build Conditions of Contract provides that:

In the event of the termination of the employment of the Contractor under clause 30.2, the Employer shall not be liable to make any further payments to the Contractor until such time when the costs of the design, execution and completion of the incomplete Works, rectification costs for remedying any defects, liquidated damages for delay and all other costs incurred by the Employer as a result of the termination has been ascertained.

58 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [14].

59 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [15].

Representative had become *functus officio* upon termination, he opined that it would appear that the payment certifier's duty to certify payments would end in the event of termination under cl 30.2, citing cl 30.3 of the REDAS Conditions in support of its observations.⁶⁰ Further, the Employer's Representative had become *functus officio* at the date of termination and would not be empowered to certify PC 40. Accordingly, he concluded that he had no jurisdiction to hear the matter.⁶¹

C. The learned adjudicator's determination was set aside

30 The court disagreed with the learned adjudicator's decision and set aside his determination.

31 In gist, the court regarded the "default position" to be incorrect since it does not consider whether the termination clause was engaged in the first place. The court found that the position at law was in fact the converse:⁶²

... [a contractor's] entitlement to be paid based on a payment claim that is validly served before the termination event remains unaffected *provided that there are no contractual provisions to the contrary*. [emphasis added]

32 The court further referred to two Court of Appeal decisions in *Shimizu Corp v Stargood Construction Pte Ltd*⁶³ ("Shimizu") and *Orion-One Residential Pte Ltd v Dong Cheng Construction Pte Ltd*⁶⁴ ("Orion-One") where payment claims served after termination were found to be invalid as there was no contractual basis for the contractor to submit payment claims after termination of its employment.⁶⁵ However, the court found that these authorities relate to claims served *after* dates of termination and do not support a finding that a contractor's entitlement to payment arising from a payment claim served before termination will be

60 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [16].

61 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [16].

62 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [38].

63 [2020] 1 SLR 1338.

64 [2021] 1 SLR 791.

65 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [41] and [42].

negated or suspended upon termination if the contract does not expressly provide for the contractor to be paid post-termination.⁶⁶

33 In contrast, the court found that, based on the principles laid down by the Court of Appeal in *Shimizu* and *Orion-One*, the question is whether the contract precludes payment after termination⁶⁷ as the SOP Act is not intended to “override the terms of the contract which provide the contrary”⁶⁸ and that the Act can apply to payment claims served after termination subject to “any terms of the contract which provide to the contrary”.⁶⁹ Hence, if the contract does not expressly provide for entitlement to progress payments to be suspended, the entitlement continues to exist.⁷⁰ The court also found that this is consistent with the general principle that the rights accrued prior to termination are not be affected by the termination of the contract.⁷¹

34 Further, with regard to the application of s 4(2)(c) of the SOP Act which states that the SOP Act does not apply to terminated contract if it contains suspension of payment terms and that the date or event which brings the suspension to an end has not occurred, it was held that s 4(2)(c) of SOP Act would only come into play if the contractual provisions suspending payments are invoked and operative.⁷²

35 In the context of the REDAS Conditions, this means that since cl 30.3.1 of the REDAS Conditions was an effect of termination following the termination of the Contract pursuant to grounds set out in cl 30.2 for the contractor’s default, s 4(2)(c) would only be engaged if it was found that BH’s purported termination at common law was unjustified and JP had validly terminated the Contract under cl 30.2 of the REDAS Conditions.⁷³

66 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [43].

67 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [44].

68 *Shimizu Corp v Stargood Construction Pte Ltd* [2020] 1 SLR 1338 at [36].

69 *Orion-One Residential Pte Ltd v Dong Cheng Construction Pte Ltd* [2021] 1 SLR 791 at [48].

70 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [52].

71 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [51].

72 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [36].

73 *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [37] and [62].

D. Practical implications on contract drafting

36 Following the decision in *Builders Hub*, employers who wish to provide for progress payments to contractors for work done prior to termination to be suspended or negated following termination should expressly provide for the same in the contract. Such clauses should also set out in clear terms the grounds of termination which, if relied upon to terminate the contractor's employment, would give rise to the suspension or negation of progress payments.

37 While the decision in *Builders Hub* deals with a payment claim served before the termination of the contractor's employment, it is unlikely that one will be successful in its argument that in the absence of an express provision in the contract stating that the contractor is not entitled to progress payments after termination, the SOP Act does not apply. This is in light of the Court of Appeal's remarks in *Shimizu* that:⁷⁴

... all that the 2018 Amendments seeks to achieve is that the [SOP Act] *can in principle* apply to progress payment claims after termination. This is not controversial. However, it does not and was not intended to override the terms of the contract which provide the contrary. [emphasis in original]

38 The decision in *Builders Hub* also illustrates that the existence of a contractual clause suspending payment does not lead to the conclusion that the SOP Act does not apply. This approach is consistent with Parliament's intention that s 4(2)(c) of the SOP Act was introduced to respect the terms of the contract between parties.⁷⁵ It would thus be open for parties to dispute in adjudication proceedings whether the suspension of payment provided for under the contract was a consequence following the grounds of termination relied upon by the party.

⁷⁴ *Shimizu Corp v Stargood Construction Pte Ltd* [2020] 1 SLR 1338 at [36].

⁷⁵ *Builders Hub Pte Ltd v JP Nelson Equipment Pte Ltd* [2023] SGHC 120 at [35].

IV. Conclusion

39 The Amendments have altered the position at law in relation to the date of service of payment claims and a downstream contractor's entitlement to adjudication post-termination.

40 It is not uncommon for claimants to face objections raised by respondents like what the respondents had done in the decisions discussed above. It is thus crucial for claimants to be cognisant of the circumstances in which these objections apply. Else, they may be faced with undesirable outcomes of having their adjudication applications dismissed or the court setting aside an adjudication determination in their favour.