

7. BUILDING AND CONSTRUCTION LAW

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I. Introduction

7.1 The year 2025 yielded a series of significant judicial decisions that refined and applied well-settled contract principles in the specific context of contracts particular to the industry. The courts have addressed a number of important questions arising from performance bonds, contractual damages, payment obligations, and statutory rights under the Building and Construction Industry Security of Payment Act 2004¹ (“SOP Act”). These decisions provide important guidance on the interaction between adjudication determinations and performance bond enforcement, clarify the basis for awarding cost of cure damages for construction defects, and resolve a number of issues about payment terms and back-charge claims. In particular, the courts have clarified the jurisprudence on unconscionability in performance bond calls, the reassessment of the role of intention to cure in damages claims, and the clarification of parties’ rights and obligations under payment provisions in construction contracts.

1 2020 Rev Ed.

II. Performance bonds

A. *Distinction between indemnity bond and on-demand bond*

7.2 During the year under review, the General Division of the High Court affirmed that the determination as to whether a bond operates as an on-demand bond turns essentially on the terms of the bond. The terms of the bond require careful drafting as demonstrated in *Tradesmen Pte Ltd v Ten-League Corporations Pte Ltd*² (“*Tradesman*”). The facts of that case concerned a design and build contract incorporating the REDAS Design and Build Conditions of Main Contract³ (“REDAS Conditions”). The employer terminated the contract, but an adjudicator determined the termination was wrongful. The employer nevertheless called on the performance bond.

7.3 The threshold question was whether the bond was an on-demand bond or an indemnity bond. Clause 1 of the bond appeared to give effect to an on-demand bond, using language to the effect that the bank “irrevocably and unconditionally undertakes ... to pay in full immediately”.⁴ Clause 2 stated that the bank “shall indemnify [the Respondent] against all losses, damages, costs, expenses or otherwise sustained by [the Respondent] up to the sum of the Guaranteed Sum”.⁵ However, several contextual factors led the court to find that the bond was an indemnity bond. This characterisation was supported by several factors. First, the REDAS Conditions explicitly provided for the possible procurement of an on-demand bond and included a specimen on-demand bond. The parties were thus taken as having knowledge of specimen on-demand bond wording. The deliberate departure from this specimen language indicated an intention to create something different. Second, the bond was given in lieu of a retention sum. The court considered that in these circumstances the bond was intended to indemnify against actual loss. Third, where bond language is ambiguous, it should be construed as conditioned upon facts rather than mere demand, and any ambiguity should be construed against the beneficiary.⁶

2 [2025] SGHC 114.

3 4th Ed, 2022.

4 *Tradesmen Pte Ltd v Ten-League Corporations Pte Ltd* [2025] SGHC 114 at [7].

5 *Tradesmen Pte Ltd v Ten-League Corporations Pte Ltd* [2025] SGHC 114 at [7].

6 *Tradesmen Pte Ltd v Ten-League Corporations Pte Ltd* [2025] SGHC 114 at [30] and [32].

B. “duty to speak”

7.4 The doctrine of unconscionability was revisited in *Ee Hup Construction Pte Ltd v China Jingye Engineering Corp Ltd (Singapore Branch)*⁷ (“*Ee Hup*”). The facts in that case related to a subcontract. The subcontractor had procured a performance bond in favour of the main contractor as a term of the subcontract. Disputes arose over back-charges allegedly incurred by the main contractor on behalf of the subcontractor. In two adjudications under the SOP Act, the main contractor withdrew its back-charges claim, with the result that the adjudicators did not determine them. However, the main contractor subsequently called on the performance bond on the premise of these back-charges.

7.5 The subcontractor argued the main contractor had acted unconscionably by withdrawing back-charges from adjudication proceedings but subsequently calling on the performance bond for those same back-charges. The contractor contended this breached the employer’s “duty to speak” under s 15(3) of the SOP Act. The Appellate Division of the High Court rejected this argument. Section 15(3) of SOP Act only obliges a respondent to raise in its payment response those objections it intends to ventilate at the adjudication stage. It does not mandate that a respondent pursue all potential objections at adjudication, nor does it prevent withdrawal of objections. A respondent remains at liberty to pursue objections later in another forum such as arbitration.⁸

C. Negation of adjudication determination and unconscionability

7.6 In *Ee Hup*, the court distinguished the case from *Samsung C&T Corp v Soon Li Heng Civil Engineering Pte Ltd*⁹ (“*Samsung*”) where the bond call was found to “negate” the adjudication. In *Samsung*, the matters forming the basis of the bond call had already been adjudicated upon and rejected by the adjudicator. Here, the adjudicator made no determination on the back-charges as they were withdrawn from adjudication.¹⁰

7.7 A similar distinction was made in *Tradesmen*. Once again *Samsung* was distinguished on the ground that the basis for the bond

7 [2025] 1 SLR 175.

8 *Ee Hup Construction Pte Ltd v China Jingye Engineering Corp Ltd (Singapore Branch)* [2025] 1 SLR 175 at [16]–[17].

9 [2020] 2 SLR 955.

10 *Ee Hup Construction Pte Ltd v China Jingye Engineering Corp Ltd (Singapore Branch)* [2025] 1 SLR 175 at [19]–[20].

call in that case was essentially identical to matters that had been raised and determined in the adjudication. In *Tradesmen*, the bond was called for matters that the adjudicator had not adjudicated on. This distinction was material. The temporary finality that SOP Act adjudication affords should not be undermined by bond calls that effectively reverse adjudicated determinations.¹¹

D. Characterisation of on-demand bond

7.8 In *Tradesmen*, the finding that the true character of the bond was an indemnity bond was sufficient to invalidate the call of the bond in that case. However, the court proceeded to consider whether the call would have been unconscionable had the bond been an on-demand bond. This analysis clarifies the boundaries of unconscionability in the context of performance bonds called following adjudication determinations.

7.9 The employer sought to recover several categories of loss through the bond call. The court examined each category separately. With respect to losses allegedly incurred following the employer's termination of the contract, the court found that calling on the bond for such losses would be unconscionable. Both the adjudicator and the court had found that the termination was wrongful. The employer sought to recover several categories of loss, including losses allegedly incurred following termination. Given that both the adjudicator and the court had found the contract to be wrongfully terminated, the employer had no reasonable basis for believing it was entitled to recover such losses.¹² Consequently, it would be unconscionable of the employer to call on the bond to cover losses arising from the employer's own wrongful termination.

7.10 However, the bond call was not unconscionable as a whole because the employer was entitled to recover other legitimate categories of loss. First, the employer could recover the unexpended portion of the advance payment. Since the contractor was no longer obliged to perform works following termination, there was no basis for the contractor to retain funds advanced for future work. Second, the employer could recover losses incurred in completing defective and outstanding works. Significantly, although the adjudicator determined that the termination was wrongful, he also concluded that the contractor had breached the contract. The employer thus had a valid claim for losses arising from those breaches. Third, the employer could recover an unpaid loan of

11 *Tradesmen Pte Ltd v Ten-League Corporations Pte Ltd* [2025] SGHC 114 at [51].

12 *Tradesmen Pte Ltd v Ten-League Corporations Pte Ltd* [2025] SGHC 114 at [41].

S\$150,000 which it had made to the contractor specifically to pay for the performance bond premium.¹³

7.11 The contractor's only argument against this recovery was that the loan did not constitute a loss incurred due to breach. The court rejected this argument, reasoning that if the bond had been an on-demand bond, there would be no requirement to prove breach or that any loss resulted from breach. It would thus be fair and reasonable for the employer to recover its debt by calling on the bond.

7.12 Since the total of these three legitimate categories of loss exceeded the guaranteed sum under the performance bond, it was not fraudulent or unconscionable for the employer to call on the entire guaranteed sum, even though one category of alleged loss would have been unconscionable if considered in isolation.

E. Ulterior motive and bad faith

7.13 An issue raised in both *Ee Hup* and *Tradesmen* was whether the bond call in each case was actuated by ulterior motives. In both cases, the argument was made in relation to the timing of the call.

7.14 In *Ee Hup*, the court rejected the argument that the call on the bond was evidence of bad faith because it was made shortly before expiry of the bond. The Appellate Division of the High Court held that the mere calling on a valid bond before its expiry cannot be unconscionable. The bond remained in full force until the expiry date and the employer was contractually entitled to call on it during that period.¹⁴ Furthermore, the contractor's failure to request a bond extension when given the option did not render the subsequent call unconscionable. There was no "unfairness" to the contractor arising from the employer's timing.¹⁵

7.15 In *Tradesmen*, the mere fact that the call on the bond was made five months after works had stopped following termination was necessarily evidence of bad faith. The court held that timing alone was insufficient to establish unconscionability in the absence of other evidence of improper purpose. There were many possible legitimate

13 *Tradesmen Pte Ltd v Ten-League Corporations Pte Ltd* [2025] SGHC 114 at [44]–[47].

14 *Ee Hup Construction Pte Ltd v China Jingye Engineering Corp Ltd (Singapore Branch)* [2025] 1 SLR 175 at [21].

15 *Ee Hup Construction Pte Ltd v China Jingye Engineering Corp Ltd (Singapore Branch)* [2025] 1 SLR 175 at [21].

explanations for the timing, including the employer's need for time to calculate its losses accurately.¹⁶

F. General observations of the decision

7.16 These two decisions provide helpful clarification on the interaction between SOP Act adjudication and performance bonds. Three points are noteworthy.

7.17 First, the court in each case confirmed that s 15(3) of SOP Act does not create an obligation to pursue all potential defences at adjudication. This is consistent with the temporary finality nature of adjudication. Parties remain entitled to ventilate disputes comprehensively in final dispute resolution forums. The *Audi* duty to speak¹⁷ is simply an obligation to flag in the payment response those matters the respondent wishes the adjudicator to consider.

7.18 Second, the decisions recognise that not all bond calls post-adjudication undermine temporary finality. A crucial distinction exists between cases where a beneficiary deliberately excludes matters from adjudication (as in *Ee Hup*) and cases where matters have been determined against the beneficiary in adjudication (as in *Samsung*). In the former scenario, a subsequent bond call does not undo an adjudicated determination because no such determination was made. This distinction is principled. The beneficiary has made a tactical decision not to have matters adjudicated, accepting that payment is presently due but reserving rights to claim via other mechanisms or forums.

7.19 Third, the court in each case emphasised that unconscionability assessments are intensely fact-specific. Conduct must be examined in its proper context. In *Ee Hup*, the main contractor had an arguable basis for believing back-charges fell outside the adjudicator's remit under s 17(3) of the SOP Act. The withdrawal of these claims from adjudication was thus explicable on legitimate grounds, rather than as a stratagem to circumvent the adjudication process.

16 *Tradesmen Pte Ltd v Ten-League Corporations Pte Ltd* [2025] SGHC 114 at [50].

17 See *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317.

III. Damages for construction defects

A. *Relevance of intention to remedy*

7.20 An instructive decision was delivered by the Appellate Division of the High Court, clarifying the entitlement of a claimant to claim the cost of cure as the basis for damages for defective construction work. Of particular interest is whether a claimant must prove an intention to effect remedial works to recover such damages.

7.21 In *Terrenus Energy SL2 Pte Ltd v Attika Interior + MEP Pte Ltd*¹⁸ (“*Terrenus*”), a contractor failed to embed solar panel mounting rods to the contractually specified minimum depth. The employer claimed damages representing the cost of rectifying this defect, even though: (a) the employer did not intend to carry out the rectification; and (b) the defects posed no structural risk to the solar panels. The Appellate Division of the High Court held that the intention to cure is neither a prerequisite nor generally a weighty factor in awarding cost of cure damages. Rather, it is one of several factors to be considered in assessing whether it is reasonable and proportionate to award cost of cure.¹⁹

7.22 In arriving at its judgment, the Appellate Division considered but disagreed with the views expressed in *JSD Corporation Pte Ltd v Tri-Line Express Pte Ltd*²⁰ (“*JSD Corporation*”). In *JSD Corporation*, the General Division of the High Court held that the intention to cure was a *weighty* factor in assessing the reasonableness of granting the cost of cure, to the extent that the failure to prove an intention to cure would, absent very special countervailing factors, result in the claim for the cost of cure being disallowed.²¹

B. *Expectation loss*

7.23 The Appellate Division of the High Court reasoned that the overarching purpose of contractual damages is to place the claimant, as far as money can, in the position as if the contract had been performed. There are two main methods: (a) diminution in value of the delivered product; and (b) cost of cure. The latter aims to give the claimant the financial means to obtain actual performance.²² A claimant is, in principle, entitled to seek actual performance. Where specific performance is

18 [2025] 1 SLR 306.

19 *Terrenus Energy SL2 Pte Ltd v Attika Interior + MEP Pte Ltd* [2025] 1 SLR 306 at [44].

20 [2023] 3 SLR 1445 at [39]–[40].

21 *JSD Corporation Pte Ltd v Tri-Line Express Pte Ltd* [2023] 3 SLR 1445 at [82].

22 *Terrenus Energy SL2 Pte Ltd v Attika Interior + MEP Pte Ltd* [2025] 1 SLR 306 at [40].

unavailable or impractical, cost of cure is the most logical method of remedying expectation loss. However, considerations of reasonableness and proportionality operate as pragmatic limitations. Where cost of cure is disproportionate to the value of expectation loss (eg, where a building must be demolished to replace non-compliant components), it may not be reasonable to award it.²³

C. Reasonableness and proportionality

7.24 The intention to cure becomes relevant only when assessing reasonableness and proportionality, but only as one factor among several. Other relevant factors include: (a) the level of disproportionality between cost of cure and benefit; (b) the extent and seriousness of defects; (c) the nature and purpose of the contract and degree to which contractual objectives were achieved; and (d) any “consumer surplus” or personal subjective value.²⁴

D. Impact of decision

7.25 *Terrenus* resolves an interesting point on the law relating to damages awarded for construction defects. The objective of contractual damages is compensation for loss suffered, not policing how damages are spent. The court is ordinarily not concerned with the use to which damages are put. Making intention to cure a prerequisite would represent an unprincipled departure from this fundamental position. That said, the court recognised that intention remains relevant to the reasonableness assessment. This is appropriate. Where a claimant insists that defects greatly affect its enjoyment yet displays no intention to remedy them, this may raise legitimate doubts about whether the claimed consumer surplus truly exists. The significance of intention will thus be context dependent.

IV. Payment terms

A. Condition precedent for payment

7.26 The question as to when payment becomes due arose acutely in *Terrenus* where the parties disputed whether the Certificate of Statutory Completion (“CSC”) was a condition precedent for payment

23 *Terrenus Energy SL2 Pte Ltd v Attika Interior + MEP Pte Ltd* [2025] 1 SLR 306 at [41]–[43].

24 *Terrenus Energy SL2 Pte Ltd v Attika Interior + MEP Pte Ltd* [2025] SLR 306 at [45], citing with approval the decision of the House of Lords in *Ruxley Electronics and Construction Ltd v Forsyth* [1996] AC 344.

of the balance 40% of the contract sum. The employer had terminated the contract on a without-fault basis before the CSC was issued. Under cl 14.3.2 of the contract, upon such termination the employer was obliged to “certify payment to [the contractor] for all work executed prior to the date of termination as set out in the Agreement”. The employer argued that this phrase incorporated the milestone payment schedule (Annex F) which made the CSC a condition precedent for the 40% payment.²⁵

7.27 The court rejected this interpretation. Clause 14.3.2 made it clear that only work stipulated in the Scope of Works that the contractor had carried out prior to termination qualified for payment. It did not make certification and payment subject to satisfaction of the milestone payment schedule. The court held that where a contract was terminated on a without-fault basis before a milestone was achieved, the contractor remained entitled to payment for all work substantially performed.²⁶

B. Set-offs and deductions

7.28 *Terrenus* also addressed the employer’s right to make deductions from sums due to the contractor. The trial judge had deducted certain disputed sums from the amount payable, even though the parties had agreed these items would be determined through neutral evaluation rather than in the proceedings. The Appellate Division of the High Court held the trial judge erred. Although parties had initially pleaded these claims, they subsequently agreed to exclude them from the trial and have them determined separately. As the claims were not before the judge, he did not have jurisdiction to make deductions in respect of them. The court allowed the cross-appeal on this ground.²⁷

C. Acknowledgment of delivery

7.29 In *Wish Controls Pte Ltd v Trident Water Systems Pte Ltd*,²⁸ under a subcontract to supply and install a wastewater treatment system, the purchase order contained a term providing for payment within 30 days. The claimant subcontractor issued delivery orders which the respondent subcontractor signed and acknowledged that the goods have been received in good condition. However, the respondent refused to pay the sums invoiced by the claimant arguing that the claimant breached the implied terms of the subcontract.

25 *Terrenus Energy SL2 Pte Ltd v Attika Interior + MEP Pte Ltd* [2025] 1 SLR 306 at [86].

26 *Terrenus Energy SL2 Pte Ltd v Attika Interior + MEP Pte Ltd* [2025] 1 SLR 306 at [87]–[89].

27 *Terrenus Energy SL2 Pte Ltd v Attika Interior + MEP Pte Ltd* [2025] 1 SLR 306 at [90].

28 [2025] SGHC 256.

7.30 Before the General Division of the High Court, the respondent argued that payment was only due upon “completion and acceptance of the works” to the satisfaction of the main contractor and/or employer. The court rejected this argument, holding that once the respondent had signed the delivery orders and endorsed the statement that the goods were “checked & received in good condition”, it could not withhold payment on the ground that the works were incomplete.²⁹ The court further held that even if there was a breach arising from incomplete works, this did not automatically entitle the respondent to withhold payment. The innocent party’s remedies for breach are: (a) termination (if the term breached is a condition or if the contract provides for it); or (b) damages. By signing delivery orders and accepting performance, the respondent had affirmed the contract and waived its right to terminate. It therefore remained obliged to pay.³⁰

D. Back-to-back provisions

7.31 The respondent also argued that the purchase orders should be read on a back-to-back basis with the upstream main contract. The court acknowledged that it is common for construction contracts to be on a “back-to-back” basis but pointed out that this is not a standard or a default position. The parties must provide for this term in their contracts. In this case, no such term was imposed on the subcontract between the parties and therefore this argument failed.³¹

V. Back-Charges

A. General principles

7.32 Back-charges are a familiar creature in construction disputes. They are deductions made by an upstream contracting party (usually the main contractor or employer) to recover costs incurred for, or costs incurred as a result of, the downstream party’s failure or inability to perform its contractual obligations.

7.33 During the year under review, the subject was raised before the General Division of the High Court in *DMC v DMD*.³² In the course of its decision, the court addressed a number of aspects of the subject,

29 *Wish Controls Pte Ltd v Trident Water Systems Pte Ltd* [2025] SGHC 256 at [4]–[5].

30 *Wish Controls Pte Ltd v Trident Water Systems Pte Ltd* [2025] SGHC 256 at [9]–[10].

31 *Wish Controls Pte Ltd v Trident Water Systems Pte Ltd* [2025] SGHC 256 at [7].

32 [2025] SGHC 151.

including issues arising from notice, determination of entitlement and the quantum of these claims.

7.34 The case concerned a subcontract for carrying out road marking works. The subcontractor failed to perform a large part of its obligations, the main contractor stepped in to complete the works and claimed the costs incurred as back-charges.

7.35 The court reaffirmed the following principles laid down in *Pro-Active Engineering Pte Ltd v Prime Structures Engineering Pte Ltd*³³ (“*Pro-Active*”). Essentially, to establish a back-charge claim, a claimant must prove:³⁴

- (a) the expense was actually, necessarily and reasonably incurred;
- (b) by the terms of the subcontract or other agreement, that the charge relates to a task for which the subcontractor undertook responsibility;
- (c) the expense was incurred because the subcontractor defaulted; and
- (d) prior to incurring the charge, notice was given to the subcontractor of the default and a reasonable opportunity to cure it.

B. Notice requirement

7.36 The court clarified that the notice requirement laid down in *Pro-Active* did not apply universally. In *Vim Engineering Pte Ltd v Deluge Fire Protection (S.E.A.) Pte Ltd*,³⁵ the court explained that the notice requirement exists to give the subcontractor a reasonable opportunity to cure the default and avoid the main contractor incurring costs. Where a subcontractor is no longer on-site or has abandoned works, such a notice would be pointless.³⁶ In these circumstances, the main contractor need not issue notice before stepping in. At any rate the learned judge said in his judgment that even if there is an express notice requirement in the contract and this has not been complied with, the claimant’s right to damages is not necessarily extinguished.³⁷

33 [2023] SGHC 205.

34 *DMC v DMD* [2025] SGHC 151 at [15] and [17], citing *Pro-Active Engineering Pte Ltd v Prime Structures Engineering Pte Ltd* [2023] SGHC 205 at [102].

35 [2023] 2 SLR 468.

36 *Vim Engineering Pte Ltd v Deluge Fire Protection (S.E.A.) Pte Ltd* at [15].

37 *Vim Engineering Pte Ltd v Deluge Fire Protection (S.E.A.) Pte Ltd* at [22].

C. Entitlement to claim

7.37 The court held that where a main contractor had stepped in to complete subcontract works in circumstances that entitled it to do so, it is entitled to claim the costs incurred. The subcontractor bears the burden of proving that the main contractor failed to mitigate its loss. In this case, the court found that the subcontractor had not satisfied its burden of proving that the main contractor failed to mitigate.³⁸

VI. Security of Payment

A. Waiver of the right to suspend work

7.38 During the year under review, the General Division of the High Court had to consider, for the first time, a claimant's exercise of its right to suspend work under s 26 the SOP Act. In *DMC v DMD*,³⁹ the subcontractor had been successful in proceeding against the main contractor under the SOP Act. The issue before the court was whether this right was capable of being waived.

7.39 A waiver by election arises where a party has, by words or conduct, communicated clearly and unequivocally that it has elected not to exercise one of two inconsistent rights. The communication need not be express; it may be inferred from conduct. Once an election is made, it is final and binding, and the party will be taken to have abandoned the right it has elected not to exercise. Importantly, the doctrine of waiver by election can be differentiated from the doctrine of waiver by estoppel. The latter has detrimental reliance as a prerequisite, because it is premised on inequity rather than choice. Waiver by election, by contrast, is premised on the party having made a clear choice between two inconsistent rights. Detrimental reliance is therefore not a necessary element.⁴⁰

B. Suspension of work and right to payment

7.40 In this case, the two inconsistent rights before the subcontractor were: (a) the right to suspend works pursuant to s 26 of SOP Act on the ground of non-payment of adjudicated amounts; and (b) the right to continue performing the works and to claim payment for the value of those works. These rights are inconsistent because a party cannot

38 *DMC v DMD* [2025] SGHC 151 at [59]–[60].

39 [2025] SGHC 151.

40 *DMC v DMD* [2025] SGHC 151 at [74]–[76], citing *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 at [54] and [57].

simultaneously maintain that it has suspended works and claim payment for work done during the alleged suspension period.

7.41 The court found that the subcontractor had communicated its election to forgo its right to suspend works through its conduct. Specifically, the subcontractor revealed that it had in fact carried out field tests during the period when it allegedly suspended works. Moreover, DMD counterclaimed for the value of these tests. By claiming payment for work done during the alleged suspension period, the subcontractor unequivocally communicated that it had elected to continue working rather than to suspend. This conduct was fundamentally inconsistent with any assertion of a right to suspend.

C. Relevance of detrimental reliance

7.42 Crucially, because detrimental reliance is not a prerequisite for waiver by election, it was immaterial that the communication by the subcontractor of its election was made only after the main contractor had already incurred the costs in question. The relevant inquiry is whether the subcontractor made a clear election between inconsistent rights, not whether the main contractor relied on that election to its detriment.⁴¹

VII. Contract interpretation

A. Uncertainty and agreements to agree

7.43 In *Arki-Tech International Pte Ltd v Rentak Bina (S) Pte Ltd*,⁴² the General Division of the High Court applied settled principles of contract interpretation to allegations that a project management contract was unworkable and unenforceable due to uncertainty in a value engineering payment clause. The defendant argued the clause was void for uncertainty and constituted an unenforceable agreement to agree. The court emphasised that while terms must be certain for a contract to be enforceable, the law is not overly astute in finding drafting defects. Rather, the law construes documents fairly and broadly, endeavouring to uphold agreements. This suggests a presumption that contracts are valid. In considering whether a term is void for uncertainty, the court may have regard to the principle of reasonableness.

7.44 The facts in that case concerned an agreement for design management services (“DM Agreement”). Item 1 of the Term Sheet

41 *DMC v DMD* [2025] SGHC 151 at [77].

42 [2025] SGHC 233.

provided, *inter alia*, that for managing and executing value engineering services, the claimant, Arki-Tech International Pte Ltd (“ATC”), was entitled “to 20% of all cost savings against a formal quantity surveyor QS cost estimate to validate data and costings described herein and in accordance to PDF drawings tabled for the Parties discussion”.⁴³

7.45 ATC claimed approximately \$26m in fees under the DM Agreement. However, the project eventually fell through when, Rentak Tebrau Sdn Bhd (“Rentak”), the employer, refused to pay the claim. Rentak defended the claim on the basis that the relevant terms governing the value engineering work and the payment clause were uncertain and constituted an unenforceable agreement.

B. Approach to interpretation of contract

7.46 The court began by pointing out that that contractual terms must be reasonably clear and certain to be enforceable. However, the law is not overly astute or subtle in finding defects in contractual terms. Instead, the law construes documents fairly and broadly, endeavouring to uphold an agreement rather than to strike it down. This approach, the court observed, suggests a presumption that contracts are valid. In considering whether a term is void for uncertainty, the court may have regard to the more general principle of reasonableness.⁴⁴

7.47 The court then turned to address RBP’s specific arguments regarding uncertainty. Firstly, RBP argued that there was uncertainty regarding the identification and selection of the quantity surveyor (“QS”). The court rejected this argument. While the DM Agreement did not contain a clause specifically providing for the manner of appointment of the QS, it is clear in the DM Agreement that it was for RBP to employ the QS. It was never the parties’ intention in the present case that they had to further agree on the identity or mechanism for the appointment of the QS. Hence, there was no uncertainty as to the identity of the QS or the mechanism to be employed to appoint the QS.⁴⁵

7.48 Secondly, there was no uncertainty in the phrase “20% of all cost savings from VE”. Properly construed, cost savings were to be calculated

43 *Arki-Tech International Pte Ltd v Rentak Tebrau Sdn Bhd* [2025] SGHC 233 at [9].

44 *Arki-Tech International Pte Ltd v Rentak Tebrau Sdn Bhd* [2025] SGHC 233 at [23].

45 *Arki-Tech International Pte Ltd v Rentak Tebrau Sdn Bhd* [2025] SGHC 233 at [43]–[45].

at the tender award stage based on the successful tenderer's prices against the QS's detailed cost estimates.⁴⁶

7.49 Thirdly, there was no uncertainty as to what the expression "detailed cost estimates" means.⁴⁷ It was unnecessary for the parties to stipulate the exact level of detail required because it would be impractical to do so. It sufficed that the parties intended and stipulated for the QS to produce a thorough analysis and detailed calculations. A professionally qualified QS with his own expert domain knowledge will know what sort of cost information to extract from the successful tenderer's tender prices for the various types of construction work in the project.⁴⁸

C. *Intention to be bound*

7.50 The argument that the clause was an unenforceable agreement to agree was also rejected. Parties can conclude a binding contract notwithstanding that certain terms remain to be agreed, provided they have demonstrated an intention to be bound by the essential terms. Construed objectively, the relevant provisions did not suggest payment terms were subject to further negotiation. Rather, they provided a default payment mechanism the plaintiff could invoke if the defendant failed to pay.⁴⁹

VIII. Conclusion

7.51 Across the decisions reviewed, a consistent judicial philosophy is discernible. The courts have been careful to apply established contractual principles with precision rather than to fashion new rules, while remaining alert to the particular demands of the construction industry. In the performance bond cases, the courts have drawn principled distinctions that protect the integrity of adjudication regime under the SOP Act without unduly restricting a beneficiary's contractual rights. The recalibration of the intention-to-cure doctrine in damages claims reflects a return to orthodoxy on the compensatory purpose of contractual damages. In the payment and back-charge decisions, the courts have reinforced the importance of clear contractual drafting and timely compliance with procedural obligations. Taken together, the year's

46 *Arki-Tech International Pte Ltd v Rentak Tebrau Sdn Bhd* [2025] SGHC 233 at [48]–[53].

47 *Arki-Tech International Pte Ltd v Rentak Tebrau Sdn Bhd* [2025] SGHC 233 at [55].

48 *Arki-Tech International Pte Ltd v Rentak Tebrau Sdn Bhd* [2025] SGHC 233 at [55]–[57].

49 *Arki-Tech International Pte Ltd v Rentak Tebrau Sdn Bhd* [2025] SGHC 233 at [71]–[77].

cases affirm that the courts remain committed to upholding commercial certainty in construction contracts while ensuring that the statutory framework under SOP Act continues to function as intended.
