

HONG KONG / JUDGMENT

CS v. HKR

[2024] HKCFI 3366

COURT
Court of First Instance

DECIDED
22 November 2024

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[2024] HKCFI 3366 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION COURT OF FIRST INSTANCE CONSTRUCTION AND ARBITRATION
PROCEEDINGS NO 72 OF 2024

IN THE MATTER OF THE ARBITRATION ORDINANCE (CAP 609) and IN THE MATTER OF AN
ARBITRATION

BETWEEN CS Plaintiff (Respondent in Arbitration) and HKR Defendant (Claimant in Arbitration)

Before: Hon Mimmie Chan J in Chambers Dates of Written Submissions: 5, 13 and 20 September
2024 Date of Decision: 22 November 2024

DECISION

Background

This is an application made by the Plaintiff for leave to appeal against the Interim Award on Liability and Quantum of the Arbitration published on 3 May 2024, as amended on 27 May 2024 (Award). The application is made pursuant to s 6(1)(b) of Schedule 2 (Schedule) to the Arbitration Ordinance (Ordinance). 4 questions of law are identified for the intended appeal. Under s 6(3) of the Schedule, the Court must determine an application for leave to appeal without a hearing unless it appears to the Court that a hearing is required. Under s 6(4), leave to appeal is

only granted if the Court is satisfied of three cumulative conditions. These are that (a) the decision of the question will substantially affect the rights of one or more of the parties; (b) the question is one which the arbitral tribunal was asked to decide; and (c) on the basis of the findings of fact in the award, the decision of the tribunal on the question is obviously wrong, or the question is one of general importance and the decision of the tribunal is at least open to serious doubt. In this regard, I wish to repeat the observations made in *P v C* [2019] HKCFI 2625, at paragraphs 4 to 5:

4. It has to be borne in mind that an application for leave to appeal on a question of law arising out of an award is a filtering process. As highlighted in the decision of Mustill J (as His Lordship then was) in *Vinava Shipping Co Ltd v Finelvet AG (The Chrysalis)* [1983] 1 Lloyd's LR 503, the court at the first stage, of the application for leave, gives effect to the policy whereby the interests of finality are placed ahead of the desire to ensure that the arbitrator's decision is strictly in accordance with the law. As His Lordship explained: Some examination of the merits takes place at this stage, because the stronger the applicant's case for saying that the arbitrator was wrong, the better his prospect of obtaining leave to appeal. But the examination of the law is summary in nature, and does not lead to any definite conclusion. The exercise is discretionary throughout; the mesh of the filter is fine; and it must, I think, be recognized that some cases will be caught in the filter which would, if the appeal had been allowed to go forward, result in a decision that the award could not stand.
5. The judgment in *The Chrysalis* also contains a helpful summary on the 3 stages of an arbitrator's process of reasoning, with the reminder that only the second stage of the process is the proper subject matter of any appeal on law:
 - (1) The arbitrator ascertains the facts. This process includes the making of findings on any facts which are in dispute.
 - (2) The arbitrator ascertains the law. This process comprises not only the identification of all material rules of statute and common law, but also the identification and interpretation of the relevant parts of the contract, and the identification of those facts which must be taken into account when the decision is reached.
 - (3) In the light of the facts and the law so ascertained, the arbitrator reaches his decision. On 4 July 2024, I gave directions for parties to file succinct written submissions confined to 3 pages for each question of law, with 1 page in reply. The Originating Summons () filed in support of the application in this case goes up to a staggering 56 pages. Whilst I would not rule (as the Defendant submits) that the OS and the affidavit in support amount to an abuse of process, I agree that they ignore paragraphs 17 to 19 of Practice Direction 6.1, which require the statement of each ground of appeal to be succinct. It also defeats the object and principles of the Ordinance, and goes against the criteria set out in section 6 for the grant of leave to appeal against an award, to require the Court to sieve through the lengthy OS, in order to identify firstly the questions of law decided by the tribunal and then, the errors of law claimed to have been made. This Court is no stranger to the complex nature of

construction disputes and the need to file detailed submissions to elucidate the issues. However, parties must not lose sight of the fact that an application for leave to appeal on a question of law arising out of an award is a filtering process, intended to be summary in nature. Where lengthy written submissions and a prolix OS are filed, that may work to the detriment, as opposed to benefit, of the appellant. This is because the onus is on the appellant to demonstrate, quickly and easily, without meticulous argument, that the decision of the tribunal is obviously wrong or at least open to serious doubt : W v Contractor [2024] HKCFI 1452

7. On either test, the threshold is high. What has to be demonstrated to the Court, quickly and easily, without meticulous legal argument, is that the decision of the tribunal simply cannot be right, or that there are serious doubts as to the correctness or reasoning of the award, according to the appropriate tests (Chun Wo Construction & Engineering Co Ltd v The Hong Kong Housing Authority [2018] HKCFI 147, paragraph 13). It is also pertinent to bear in mind the observations made by Lam VP in Maeda Kensetsu Kogyo Kabushiki Kaisha (also known as Maeda Corporation) and China State Construction Engineering (Hong Kong) Limited v Bauer Hong Kong Limited HCMP 1342/2017, 4 September 2017, that the assessment of whether the decision of the tribunal is at least open to serious doubt can be subjective, and different judges can reasonably come to different views. In a matter concerning the construction of a contractual document, the court dealing with the application for leave to appeal may have a different view as to the possible meaning of a provision, but it does not follow from that, that the meaning ascribed by the tribunal to that provision was obviously wrong . As this Court already pointed out in Maeda Kensetsu Kogyo v Bauer [2019] HKCFI 1006 (at paragraph 70), Order 41 rule 5 RHC contains the general statement that an affidavit may contain only such facts as the deponent is able of his own knowledge to prove. Submissions and arguments should not be made in affidavits filed in proceedings, as these should properly be made by counsel or the advocate, in skeleton arguments which should comply with the practice directions and any specific directions which may be made by the court. Affidavits made by the solicitors acting for the parties, containing lengthy submissions and arguments on the issues, questions and errors of law, and on what is or is not claimed to be relevant or correct, are totally unnecessary and inappropriate, whether or not such submissions and arguments are then referred to or repeated in part by Counsel in their skeleton submissions, and responded to by the other side. This manner of presenting and dealing with the case is totally unhelpful to the court's efficient consideration and disposal of the questions to be decided. Apart from the scanty matters of facts contained in the affidavits filed in these proceedings, no reference has been made to the affidavits as it is not necessary to do so, and only the submissions made in Counsel's skeletons have been considered. The affidavits and the costs incurred were totally unnecessary, and in the usual course if and when costs are considered on taxation, I would consider that such costs should not be allowed on taxation, and would further regard such costs imposed on the lay clients to be unreasonably incurred. In this case, however, my order for costs (as shown in paragraph 51 below) is that the costs of the application are to be paid by the Plaintiff to the

Defendant. The questions of law The 4 questions of law claimed by the Plaintiff to have been decided by the tribunal and which contain errors relate to:-

- a. The environmental requirement and the subcontract obligation on the part of the Defendant to maximise the use of public fill to 30% of the overall Type A fill (Question);
- b. Whether there was an error in the adoption of an assessment methodology and computation on MM17.14 (Question 2);
- c. Whether the tribunal erred in allowing double recovery for non-material costs under BQ item no 19 and then again as extra works under BQ item no 20 (Question 3);
- d. Interpretation of GCSC 31 concerning the omission of the remaining seawall work on 7 July 2014 (Question 4). Question 1 Question 1 targets paragraphs 44 to 54 of the Award, which is titled BQ Item 17 Sandfill (Material supplied by HKR) . It is framed as a question of contractual interpretation, namely What was the requirement, in light of the Environmental Permit and HKR s subcontract obligations, for the use of public fill in the reclamation deposited by HKR from the seabed at -2.0mPD to +2.5mPD and, the extent of HKR s entitlement to be paid for the public fill and the sand fill within the overall Type A fill . First, I accept that this question substantially affects the rights of the parties. The Award includes the Defendant s entitlement to payment for public fill, which was assessed at a rate much cheaper (\$47 per cu m) than that of sand fill (\$150 per cu m). If the Arbitrator is shown to have erred, the Award would be reduced by a significant sum (more than \$22 million), to substantially affect the rights of both parties. However, I do not accept that this is a matter of general importance. Even if I accept the Plaintiff s submission that GCSC 3(1) and GCSC 3(2) are commonplace in the construction industry and are present in many standard form subcontracts, construction of these isolated provisions is of no general utility as each contract has to be read as a whole, and to be construed against the factual matrix and the circumstances of the case, and then applied to the individual facts of the case. I therefore apply the obviously wrong test. Counsel for the Defendant argued that Question 1 was not a question which the tribunal was asked to decide in the Arbitration, as there was no dispute as to the requirement for the use of public fill in the reclamation in question. According to the Defendant, there was no issue as to the meaning of the Environmental Permit (), which stipulated that not more than 30% public fill shall be used for reclamation filling below+ 2.5mPD, unless otherwise agreed by the Director . Nor had the Defendant disputed the applicability of the EP requirement to the Sub-Contract between the Plaintiff and the Defendant (Sub-Contract). Having considered the Lists of Issues submitted in the Arbitration, I would accept that the dispute submitted to the tribunal for determination included the question of (a) whether or not the Plaintiff had given instruction to the Defendant to use public fill as a component of the reclamation fill to be deposited to beneath+ 2.5mPD; (b) the proportions thereof; and (as proposed by the Plaintiff) (c) whether there had been incorporated into the Sub-Contract the obligation for public fill to be used whenever possible (as specified in the Main Contract), and for the maximization of use of suitable public fill . Whilst questions (a) and (b) may be purely factual, question (c) is legal or

a mixed question of fact and law, which would inevitably require the tribunal to consider the relevant terms and conditions governing the contractual obligations of the Defendant with regard to the use of public fill, the proportion to be used in its works, and the legal effect of such terms and conditions. The relevant terms and conditions include but are not restricted to the requirement under the EP which the Defendant claims to be undisputed. Having read paragraphs 44 to 54 of the Award, however, I agree with the Defendant that the intended appeal on Question 1 is nothing more than a challenge to the Arbitrator's findings of fact, disguised as a purported error of law. I accept the Defendant's submissions, that the Arbitrator found that, notwithstanding the EP requirements, the Plaintiff was not entitled to contend that Type A fill had to be 30% public fill because the Plaintiff had already agreed at the tender meeting that Type A fill would be 100% sand (which is more expensive than public fill) (paragraph 48 of the Award). At paragraph 47 of the Award, the Arbitrator referred to the fact that the agreement reached at the tender meeting was reflected by the Plaintiff's change of the description of BQ Item No 17 from Type A fill to +2.5mPD to Sand fill (material supplied by Sub-contractor) in the Subcontract booklet. At paragraph 48 of the Award, the Arbitrator referred to the witnesses testimony in the Arbitration, accepting the evidence of the Defendant that as a result of the exchange between the parties as to the type of material they were proposing under Type A fill and the price therefor, the Defendant had proposed 100% sand to be used, and that such proposal had been accepted by the Plaintiff, as otherwise the Plaintiff should have requested (the Defendant) in the tender meeting to quote for Type A fill, namely maximum 30% public fill or even different rates for different % public fill, rather than changing the description of BQ Item No 17. This is a finding of fact made by the Arbitrator on the evidence adduced and on the submissions made in the Arbitration. The Arbitrator further rejected the Plaintiff's argument that Note 1 of the construction drawings required the maximization of public fill to 30% overall in the reclamation, finding that it was the Plaintiff which was responsible for the settlement design and to instruct the Defendant to use the appropriate percentage of the two fills, but that the Plaintiff had never done so (paragraphs 46 to 50 of the Award). In particular, the Arbitrator explained at paragraph 48 of the Award that what Note 1 specified was: To maximize the use of public fill, Type A fill (sand fill with public fill) will be adopted for filling below + 2.5mPD. The actual use of public fill will depend on the settlement design, site progress, and availability of filling materials etc. In any case, the Type A fill should contain no more than 30% of public fill. The Arbitrator proceeded to state, as follows: It does not say type A fill must be 70% sand and 30% public fill. The main contract is a design and build contract and (the Plaintiff) must have design responsibility. On the other hand, the Subcontract is a remeasurement contract so that (the Defendant) should not be responsible for any design, including the settlement design. As the actual use of public fill will depend on the settlement design and progress as stated in Note 1, I find that (the Plaintiff) would have requested (the Defendant) to quote for type A fill under different % of public fill had (the Defendant) not accepted 100% sand to be used as type A fill in the tender meeting. Accordingly, I find that (the Plaintiff) had accepted (the Defendant

- s) proposal to use 100% sand as type A fill under BQ Item 17 in the tender meeting, perhaps to suit its progress. That was the reason why (the Defendant) and (the Plaintiff) referred to sand fill in the minutes of meeting. (Emphasis added) From the reasons given, it is clear that the Arbitrator found that the parties had agreed at the tender meeting that Type A fill would be 100% sand, and that the Plaintiff had the obligation under the Sub Contract, but had failed to stipulate, what proportion of sand fill and public fill the Defendant was required to use. I accept the Defendant's submission, that the Court is not entitled to interfere with these factual findings of the Arbitrator. It would also appear that on the question of whether the obligation to maximize the use of public fill had been incorporated into the Sub-Contract, the tribunal answered it by construing the obligation in the manner set out at paragraph 48 of the Award, and finding that (even if the obligation had been incorporated) there was no breach by the Defendant of such obligation. The Plaintiff has not persuaded me on the materials, and on the reading of the Award, that on the basis of the findings of fact in the award the decision of the tribunal on the question is obviously wrong. In any event, I am not satisfied that the Arbitrator's conclusion was either obviously wrong, or (if I am wrong on the applicable test) open to serious doubt, for the following reasons:-
- a. The Environmental Permit provides that not more than 30% public fill shall be used for reclamation filling below +2.5mPD.
 - b. ER 1.31F(4) and CS 6.09(14) required the maximisation of public fill, but did not stipulate how it was to be maximised.
 - c. In other words, it was not a contractual requirement that the reclamation filling below +2.5mPD must be 30% public fill.
 - d. The tribunal was entitled to find as a matter of fact that the parties had reached a different agreement as to the percentage of public fill, namely (1) the Defendant agreed at the tender meeting that Type A fill would be 100% sand, and (2) although the Plaintiff bore the responsibility for settlement design under Note 1 of G/3, it did not reject HKR's proposal of using 100% sand as type A fill in the tender meeting (paras 46-50 of the Award). I do not grant leave to appeal on Question 1. Question 2 addresses paragraphs 55 to 63 of the Award, entitled BQ Item No 18 Size 10mm to 37.5mm rock fill for the TWP (material supplied by HK River). While the Plaintiff does not dispute that the Arbitrator correctly interpreted MM 17.14, it submits that the Arbitrator had erred in his adoption of an assessment methodology and computation (paragraphs 5.19 to 5.20 of the OS). In other words, the Plaintiff's case is that the Arbitrator identified the correct legal test, but applied it wrongly to the facts. I accept that Question 2 substantially affects the rights of the parties. There is a difference of some HK\$20 million in calculation. I further accept that the correct interpretation and application of MM 17.14 was a question the tribunal had to decide. However, given that (as pointed out by the Defendant) MM 17.14 is a one-off clause which was specifically drafted by the Plaintiff for this Sub-Contract, I do not see how its interpretation and application can be a question of general importance. The obviously wrong test applies. The Plaintiff submits that although the tribunal correctly interpreted MM

17.14, it applied that test wrongly on the facts. On the Defendant's part, it submits that Question 2 relates to the experts methodology and calculations and is a question of fact, and not of law. The methodologies in question are for the calculations of the quantities of rock fill reused in the construction of the TWP (ie Temporary Working Platform). As the Arbitrator pointed out at paragraph 56.1 of the Award, BQ18 is principally a dispute on the interpretation and application of (the relevant mm) . Different and alternative methodologies had been proposed by the experts called respectively by the Plaintiff and the Defendant in the Arbitration, and they formed part of the evidence before the tribunal. As the Defendant pointed out, the parties in the Arbitration had chosen to appoint an experienced quantity surveyor to be the arbitrator, for the purpose of deciding the highly technical issues raised in the Arbitration concerning the measurement of works and the calculations of the amounts claimed. The Plaintiff highlighted the fact that the Arbitrator had stated (at paragraph 61 of the Award) that he found the Plaintiff's approach and interpretation of MM 17.14 more preferable, but that he adopted the alternative assessment of the Defendant's expert, which (the Plaintiff claims) did not follow the methodology advocated by the Plaintiff. From reviewing paragraphs 55 to 62 of the Award, the tribunal had clearly considered the expert evidence, the formulae proposed by them (which included the experts primary and alternative assessments), and had compared the different assessments and the resulting figures produced by the two experts. At paragraph 61 of the Award, the Arbitrator had pointed out that the Plaintiff's expert (Je) had agreed on the calculation of BQ No 18 based on the Defendant's position. The Defendant's expert (Nie) had also conducted an assessment based on the Plaintiff's formula. The Arbitrator eventually decided to adopt the Defendant's expert assessment, of \$73,649,250. In essence, what the Arbitrator did was to consider different aspects of each expert's methodology/calculations, and adopted parts thereof, whilst rejecting others, in arriving at his final award. I accept the submissions made for the Defendant, that expert evidence is part of the evidence to be considered when the court/tribunal reaches a conclusion of fact (paragraph 45-25, Phipson on Evidence (20th edition)). As this Court explained in *Employer v Contractor* [2023] HKCFI 2911 (at paragraphs 33 to 38), and as Counsel for the Defendant in this case highlighted, an arbitrator is entitled to accept the valuation of one expert over another's, and doing so is neither plainly wrong nor open to serious doubt . This naturally extends to where the arbitrator decides to accept one part of an expert's valuation, and another part of another expert's valuation, on the basis of the arbitrator's own expertise. In my judgment, the Plaintiff has failed to show that the Arbitrator's decision on Question 2 is obviously wrong.

Question 3 Under Question 3, the Plaintiff submits that the tribunal erred in law by allowing double recovery for non-material costs, firstly under BQ 19 (at paragraphs 64-66 of the Award), and again under Extra Works 20 (at paragraphs 165-170 of the Award), for the same 23,059 cu m of the 40mm rock fill. The Plaintiff emphasized the fact that the Defendant has not challenged whether the issue of double counting is a matter of general importance. I accept that the issue substantially affects the rights of the parties. The question of law posed by the Plaintiff is whether it is lawful to award the same subject matter twice (albeit at different rates), resulting in a double-recovery in favour of one party (paragraph 6.1 of the

OS). I agree with the Defendant that this question, formulated as such, was not one which the tribunal was asked to decide in the Arbitration. The Plaintiff does not dispute that the issue of double counting was never raised in the course of the Arbitration. Crucially, the Plaintiff accepts that this double recovery arose from neither party's pleaded case and only arose in the Award. Reading paragraphs 165 to 170 of the Award which deal with the claim under Extra Works Item No 20, the parties had clearly made ample submissions in the Arbitration on the meaning and effect of the claim, and how the works in question should be assessed. The Arbitrator referred to the factual evidence adduced by the parties and to the expert evidence as to the work and quantities covered, and how they should be paid for. He explained that he found the conclusions made by the Plaintiff's expert as to the material removed and how they had all been used to be unreliable and without factual basis, and found the Defendant to be entitled to \$6,124,150 under the claim. The Plaintiff sought to correct the Award under the slip rule, on the basis that there had been double recovery as a result of the Arbitrator's decision on the claim. The Defendant objected on the basis that this was a new submission that blatantly violates the rules of the Arbitration, as it is not permitted to introduce such new submissions at this stage. The Arbitrator obviously agreed, as he did not correct this part of the Award. It is therefore clear that the Plaintiff had never raised the issue of double recovery arising from the assessments contended for Extra Works No 20, and the valuation for BQ No 19, as now claimed. Since the Plaintiff cannot establish that the Arbitrator's decision on Question 3 is one which the tribunal was asked to decide (as required under s 6(4)(b) of the Ordinance), I decline leave to appeal. In any event, I accept the submissions made for the Defendant that on a proper reading and understanding of the Award, there was no overlap in the rates for Extra Work No 20, and the rates for BQ No 19. It was the Defendant's case in the Arbitration that the former was concerned with the deposition cost and the rate for the formation of the rockfill, whereas BQ No 19 was concerned with measuring the quantity for excavating the rock fill. Whereas the Plaintiff had submitted in the Arbitration that the rate of BQ No 19 should apply for Extra Work No 20 as well, the Defendant had submitted that the rate for Extra Work No 20 should be the supply and deposition cost of rock fill minus the material cost of the excavated rockfill. As recited at paragraph 165.1 of the Award, the Defendant's submission was that: 165.1. ... 25,455m³ of rockfill were deposited before 31 October 2013 and 23,059m³ of rockfill were deposited after 31/10/2013. For the latter quantity of 23,059m³, they were reused rockfill. Mr. Chu agreed that prior to the instruction recorded in item 7.1 of the minutes of meeting no. 68 dated 18/12/2013, HKR had used new rockfill to TWP (see [Day12/20/20 to 21/6]) [#932 C Closing]. 165.2. Mr. Yu's evidence was that before November 2013, new rockfill was imported to do the TWP and after November 2013, CSHK asked HKR not to import new rockfill (see [Day6/89/2-9]) [#933 C Closing]. 165.3. Therefore, for the former quantity of 25,455m³, it is submitted that they were newly imported rockfill and 25,455m³ rockfill shall be paid at \$150/m³ in any event [#935 C Closing]. 165.4. In order to calculate the rate for BQ item 19, the tenderer had to estimate the quantity of reuse rockfill to be re-deposited to other marine works because the re-deposition cost of such quantity will not be paid for [#939 C Closing]. 165.5. Since all these construction drawings, specification and GCSC do not show the 40mm

rockfill to reclamation ch 2070, the item coverage of redepositing the material for permanent seawall or any other marine works did not cover the work of the 40mm rockfill to reclamation ch 550-2070 [#953 C Closing] 165.6. HKR is entitled to 25,455m³ new rockfill at \$150/m³, i.e. \$3,818,250 in any event [#975 C Closing] 165.7. In case the Tribunal considered that HKR is not entitled to use the 23,059m³ excavated rockfill as its own property, and therefore, the property right belonged to CSHK. Then CSHK is entitled to charge the material cost of the excavated rockfill against HKR [#977 C Closing]. The Defendant's submission was apparently accepted by the Arbitrator, with the result that Extra Work No 20 was an award for the deposition cost, without any element of excavation. It cannot readily be seen that the Arbitrator's decision was either obviously wrong or open to serious doubt.

Question 4 Under Question 4, the Plaintiff submits that the question of law the Arbitrator was asked to decide was the interpretation of GCSC 31 - in the context of the omission (or taking-away) by CSHK of the remaining permanent seawall works from HKR on 7 July 2014, in reliance on the state of affairs immediately prior to 7 July 2014. The interpretation of GCSC 31 is relevant to the Plaintiff's counterclaim regarding the omission of the remaining permanent seawall from the Defendant's scope of the Sub-Contract works on 7 July 2014. I accept the Plaintiff's submission that the Arbitrator's interpretation of GCSC 31 was relevant to assessing the Plaintiff's entitlement in respect of the counterclaim, and therefore substantially affects the rights of the parties. However, as stated in paragraph 14 above, the decision on Question 4 is one of applying the relevant contractual provision to the facts of the case. I do not agree that this is a question of general importance, and the obviously wrong test is appropriate. The Plaintiff submits that if the Arbitrator had correctly interpreted GCSC 31, he would have held that the Plaintiff was entitled to take back/omit any part of the Sub-Contract Works if the Defendant had failed to carry out the Sub-Contract Works in accordance with the Plaintiff's requirement. It further relies on the case of *Maeda-China State JV v Bauer* [2020] HKCA 158 to argue that the Arbitrator had ignored the clear language of the contractual provision and rewrote the provision. Having read paragraphs 187 to 192 of the Award, it is clear that the Arbitrator had simply rejected the Plaintiff's counterclaim made on the basis of the Defendant's disastrous progress on the permanent seawall works, for the reasons stated in paragraph 192: that the relevant work and delay was not critical (having rejected the report and evidence of the Plaintiff's expert), that the Plaintiff had been obstructed in the execution of the relevant works, and that the Plaintiff had delayed the approval of rock material. These are all factual findings made on the basis of the expert and factual evidence before the tribunal, leading to the Arbitrator's conclusion that in the absence of any delay, there was no failure on the Defendant's part to carry out the works in accordance with the Plaintiff's requirement, and no failure to perform the obligations stipulated in the Sub-Contract. On that basis, the Arbitrator found that the Plaintiff had no grounds to invoke GCSC 31, to remove the work from the Defendant and to incur any recoverable expense for the completion of the remaining permanent seawall. I see no basis for the Court to interfere with the findings made by the Arbitrator and see no obviously wrong decision on the interpretation of GCSC 31 to grant leave to appeal. Even if the open to serious doubt test should apply, my finding is that this standard has not been

met.

Disposition

For all the above reasons, I decline to grant leave to appeal on all 4 grounds. It follows that the Plaintiff is to pay the costs of the application for leave to appeal, on indemnity basis with certificate for two counsel. (Mimmie Chan) Judge of the Court of First Instance High Court Mr Peter Clayton SC, instructed by J Chan, Yip, So & Partners, for the plaintiff Mr Douglas Lam SC and Mr Solomon Lam, instructed by Wong & Lawyers, for the defendant Nomenclature and abbreviations in the Award are adopted PAGE - A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V h%k% gdnX gdnX gdnX gdnX gdK5 gd3^ zunu ho::~ gdnX gdnX |pg_ gd! X gd!X gd!X hFwd hln} hln} h_j# gd . h7v\ h7v\ hJSZ hln} h7v\ hUjZ hln} gdJ_ gd/| gdf<u h2lm h+Q> hln} hln} h_/u htim hln} gd_/u gdJ_ gdJ_ gdJ_ }soj h_/u ho::~ hQ~g gdU[: h%k% hEL^ h%k% h%k% h%k% h%k% hln} gdEL^ gdLJ h%k% h%k% h%k% h%k% h%k% h%k% h%k% h%k% h%k% h%k% h%k% h%k% (#p# [Content_Types].xml _rels/.rels theme/theme/ themeManager.xml K Y, sQ}# theme/theme/theme1.xml \$O}) Xp90 +PHI| PP yu 9xu5 fs+W VF7H q=. 8}d- qyI@ j!Q_ jyV` |PZ+ T ""p < 4V O&x\$ A8>v ;EUC n 8r *~P(5 .}x E /EE} theme/theme/_rels/ themeManager.xml.rels 5 6?;\$Q K(M&\$R(.1 [Content_Types].xmlPK _rels/.relsPK theme/theme/ themeManager.xmlPK theme/theme/theme1.xmlPK theme/theme/_rels/ themeManager.xml.relsPK <?xml version="1.0" encoding="UTF-8" standalone="yes"?> <a:clrMap xmlns:a="http://schemas.openxmlformats.org/drawingml/2006/main" bg1="lt1" tx1="dk1" bg2="lt2" tx2="dk2" accent1="accent1" accent2="accent2" accent3="accent3" accent4="accent4" accent5="accent5" accent6="accent6" hlink="hlink" folHlink="folHlink"/>! pB8\$ m5gE2 9I[*Rm0# m5gE user Normal.dotm Ma Wai Fong Joanne Microsoft Office Word Judiciary Hong Kong Title <?xml version="1.0" encoding="UTF-8" standalone="no"?><b:Sources SelectedStyle="\APA.XSL" StyleName="APA" xmlns:b="http://schemas.openxmlformats.org/ officeDocument/2006/bibliography" xmlns="http://schemas.openxmlformats.org/ officeDocument/2006/bibliography"></b:Sources> <?xml version="1.0" encoding="UTF-8" standalone="no"?> <ds:datastoreItem ds:itemID="{C8A6597B-9917-4269-BBDD-52EF688CA497}" xmlns:ds="http://schemas.openxmlformats.org/officeDocument/2006/ customXml"><ds:schemaRefs><ds:schemaRef ds:uri="http://schemas.openxmlformats.org/ officeDocument/2006/bibliography"/></ds:schemaRefs></ds:datastoreItem> Microsoft Word 97-2003 Document MSWordDoc Word.Document.8

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