

HONG KONG / JUDGMENT

LI'S FIRE ENGINEERING CO LTD v. TAK CHEONG CONSTRUCTION CO LTD

COURT

District Court

DECIDED

2 March 2007

CASE / FILE NUMBER

DCCJ5714/2005

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bjbj DCCJ 5714/2005 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION CIVIL ACTION NO. 5714 OF 2005

BETWEEN LI S FIRE ENGINEERING COMPANY LIMITED Plaintiff and TAK CHEONG
CONSTRUCTION COMPANY LIMITED Defendant

Coram: Her Honour Judge C.B. Chan in Court Dates of Trial : 5th to 8th, 12th February 2007 Date
of Handing down of Judgment : 2nd March 2007

JUDGMENT

The Plaintiff was a contractor registered under the Fire Services Ordinance carrying on a business of supplying and installing fire safety devices. The Defendant was the main contractor employed to perform the renovation works of Winning House (the Building) including inter alia, designing, supplying, and installing a Sprinkler System for the Building. On the 11 April 2002, the Plaintiff and the Defendant entered into an agreement evidenced in a quotation signed by respective parties (the Agreement) at page 003 of the Bundle of Documents (BD-D) wherein the Plaintiff as subcontractor to the Defendant was to design, supply, provide and install the Sprinkler System for the Building pursuant to the terms and conditions stated in the Agreement in the total price of HK\$640,000.00, which sum was subject to adjustment depending on the total quantity of the sprinkler heads installed. It is not in dispute that on the 17 April 2002 the Defendant paid the sum of \$20,000.00 as deposit pursuant to an Invoice (page 004 of BD-D) issued by the Plaintiff. Further on the 29 July 2002, the Plaintiff issued an invoice (at page 038 of BD-D) to claim for \$134,500.00 for work done. The Defendant approved the sum of \$50,000.00 as interim payment in response thereto. Again on 16 September 2002, the Plaintiff issued an invoice to the Defendant claiming for an outstanding sum of \$352,960.00 for work done. The Defendant approved and paid the Plaintiff the sum of \$130,000.00 as further interim payment. Hence it is

not in dispute that the Plaintiff received a total sum of \$200,000.00 in interim payment. In this action, the Plaintiff claims the sum of \$244,810.00 being the outstanding value of work done which is unpaid pursuant to Invoice No. 20211470, which was delivered by the Plaintiff to the Defendant on 1 November 2002. Apart from that the Plaintiff claims the sum of \$37,620.00 being the value of additional work under Invoice No. 05091483 dated 15 September 2005. The Defendant disputes that the Plaintiff is entitled to the further sum of \$244,810.00 as interim payment and the sum of \$37,620.00 for variation works. The Defendant's case is that the total value of the work done and materials supplied by the Plaintiff amounted to the sum of \$200,420.00. The Defendant has paid the Plaintiff the sum of \$200,000.00 and would have to pay the Plaintiff the sum of \$420 but for the fact that the Defendant discovered that the electric cables of the Sprinkler System installed by the Plaintiff were not made of fire resistant cable. The Defendant had to employ another sub-contractor to remove the cables installed by the Plaintiff and re-install fireproof cables into the Sprinkler System at the cost of \$60,000. The value of work done by the Plaintiff therefore was only worth \$140,420. Therefore, Defendant overpaid the Plaintiff the sum of \$59,580. The Plaintiff also failed to return to continue the work at the worksite pursuant to the Agreement when requested by the Defendant who wrote letters on or about 3rd November 2003 and again on the 7th November 2003, and finally by letter on the 12th November demanding the Plaintiff to deliver up the materials, equipment and plants to the Building to resume the work under the Agreement. The Plaintiff refused and failed to do so in repudiatory breach of the Agreement. By a letter dated 21st November 2003, the Defendant accepted the repudiation of the Agreement by the Plaintiff. On the 4th December 2003, the Defendant gave notice to the Fire Services Department to terminate the employment of the Plaintiff as the sub-contractor and appointed another sub-contractor to replace the Plaintiff. In relation to the alteration works in the sum of \$37,620 claimed by the Plaintiff, the Defendant's case is that these were not alteration works but were in fact rectification works for defective work. Hence the Plaintiff is not entitled to payment. The Defendant Counterclaims for the sum of \$143,960.00 being the extra sum the Defendant had to pay for the completion of the work by others at the total sum of \$476,800.00, which together with the sum of \$200,000.00 paid to the Plaintiff amounts to \$676,800.00. The total sum of \$475,800 is made up of the following: \$360,000.00 Costs for completing the remaining and/or incomplete work regarding pumps, pipes, sprinklers, electricity wiring/connection, and other accessories page 126-129 BD-D \$60,000.00 Costs for replacing the Power Supply Cable page 131 BD-D \$23,800.00 Costs for repairing and mending the walls and floors of the Building page 135 BD-D \$33,000.00 Costs incurred for looking for and employing new sub-contractors to complete the works. Page 80 para 49 BD-A

\$476,800.00 The sum the Defendant would have to pay the Plaintiff if the Plaintiff had completed the contract would have been \$532,840.00 after having taken into account the total number of the sprinklers actually installed by the Plaintiff being 206 instead of the 488 which had been quoted for in item 4.3 of the Agreement at page 003 of BD-D. Hence the Defendant's loss arising from the Plaintiff's purported repudiation of the Agreement is the sum of \$143,960.00 (\$676,800.00 - \$532,840.00). The Issues Whether the Defendant breached the Agreement by refusing to pay the

Plaintiff's Invoice for \$244,820.00. Whether the Plaintiff breached the Agreement by refusing to complete the works under the Agreement and thereby repudiated the Agreement. If so, whether the Defendant suffered loss thereby. Whether the Plaintiff is entitled to claim the costs for the purported variation works in the sum of \$37,620.00. The 1st Issue The Plaintiff's case is that the Defendant breached the Agreement by refusing to make interim payment for works done and material supplied by the Plaintiff pursuant to Invoice No. 20211470 tendered by the Plaintiff. The Defendant agreed that it is the trade practice in construction contracts that the principal contractor would make interim payment to the subcontractor for the value of work done and materials supplied by the subcontractor. The Plaintiff in its Amended Reply and Defence to Counterclaim pleads that it is an implied term of the Agreement that the Defendant should make periodical and interim payments to the Plaintiff for the work done and materials supplied. The basis is that, in construction contracts, it is common trade practice that interim bills are issued to employer by contractors for work done and/or materials supplied in different periods of time. Further the Defendant's conduct in effecting payment to the Plaintiff's invoices for interim payments suggests such an implied term. I have no difficulty in coming to the finding that this is an implied term of the agreement on the basis of the trade practice and the Defendant had seemed to act as if such a term were in existence. However, there is no agreed method for measuring the value of work done by the Plaintiff so that in the case of dispute as regards the value of work done and materials supplied there is a way of measuring the value of work done whether it is by architect's certificate or by the contractor's approval. In this case there is an argument between the parties as regards the value of work done that is submitted to the Defendant by the Plaintiff in respect of the amount claimed in the sum of \$244,810.00. The Invoice is at page 56 of BD-D. The Plaintiff claimed a percentage of each of the items of work completed. The agreement is not itemised in detail nor is the value of the individual items stated. The Agreement contains 10 items. Each of these items contain a lot of individual items of work and the entire Sprinkler System is quite complicated and is not simple. Both Mr. Keung for the Plaintiff and Mr. Lam for the Defendant explained the Sprinkler System with reference to the Schematic Diagram of the Sprinkler System at page 59 of BD-D. As stated by the Defendant's Counsel in submission, the Sprinkler System does not merely consist of pumps, pipes and sprinklers, so as to supply water when fire breaks out, but is in fact a complicated system working with lots of automatic switches and valves, such as flow switches and electrically monitored valves, controls, display panels, and alarm bells all connected with electric wires. As stated by Mr. Keung, there are controls in the system so that upon the burst of a sprinkler, the pump will be automatically triggered to maintain water pressure by pumping water from the water tank on the roof and signals will be triggered to operate the alarm bells and connect the alarm to the Fire Services Station. The control panel will also indicate the floor that is on fire. Other panels will indicate other information, which is vital to the running of the system. I shall paraphrase into English the Agreement containing the items of work which is in Chinese without certified English translation together with the Plaintiff's claimed percentage of completion of work. Work Items Price \$ Completed Plaintiff's Claim Item 1: applying and installing underground sprinkler system Yue Hing water inlet 2,000 100% \$2,000 Item 2: supplying and Installing Reliable Sprinkler controlling Device together with all TYT taps, HC alarm bells Water-flowing devices and All

accessories. 42,000 \$39,900 Item 3: supplying and Installing Spraysafe sprinklers and pipes. The Sprinklers cover G/F, all Floors, staircases, smoke-Preventing corridors and Toilets. 185,440 for 488 sprinklers 199 sprinklers installed \$75,620 Item 6: supplying and Installing Tosa lead-pipes And pipe-connectors in Fire-prevention staircases And connecting with all Sprinkler devices. The said Works include digging and mending floorings and walls 260,000 100% \$260,000 Item 7: supplying and Installing Precept 64 Zone Sprinkler Signal Display board, including Connecting electric wires and plastic pipes with the electric supply system of the building and all necessary accessories 35,000 \$28,000 Item 9: the Plaintiff Should engage registered fire safety contractor in order to ensure the system installed complies with the Loss Prevention Council () Standard. The design and drawings should be submitted to Fire Services Dept and Water Supplies Dept for approval, application for commencing and completing works, checking the system and completing relevant forms and liaising with government departments. The said works include paying for drawings and inspection fee. 35,000 \$33,250 Item 10: the Plaintiff Should engage registered electrical contractor to carry out all necessary works of the sprinkler system including checking system, issuing certificate, liaising with relevant government department and paying drawings and inspection fee. 7,560 \$6,040 Neither the Plaintiff nor the Defendant has adduced any independent expert reports related to the value of work done. The Defendant s assessment of work done is quite different. I shall incorporate hereunder the Defendant s Reply to the Plaintiff s Scott Schedule at pages 50 to 62 of BD-D hereunder: Work Item Defendant s Comments Value Given by Defendant Item 1 The works done under this item had not been tested and had not been in commission. The Plaintiff had failed to arrange an inspection of the said work to be carried out by the Fire Service Department (). The Plaintiff had failed to obtain certificate and approval from the FSD to certify the work done and completed. The Plaintiff had failed to install the stainless steel door and cabinet. The Defendant had certified and paid 50% of the contract price to the Plaintiff under this item as interim payment. The work under the Agreement has since been suspended and the Plaintiff refused to resume carrying out the remaining work thereafter. \$1,000 Item 2 The Plaintiff had failed to install the fire alarms. The Plaintiff had failed to connect the controlling device to the Building s power supply system. The work done under this item had not been tested and had not been in commission. The Plaintiff had failed to arrange an inspection of the work done to be carried out by the FSD. The Plaintiff had failed to obtain certificate and approval to be issued by the FSD to certify the work done and completed. The Defendant had certified and paid 50% of the contract price to the Plaintiff as interim payment. The work under the Agreement had since been suspended and the Plaintiff refused to resume carrying out the remaining work thereafter. \$21,000 Item 3 The Plaintiff had installed 206 sets of sprinklers with pipes connected therewith. The Sprinklers and pipes had not been tested and had not been in commission. The Plaintiff had failed to arrange an inspection of the said work done to be carried out by the FSD. The Plaintiff had failed to obtain certificate and approval from the FSD to certify the work done and completed. The Defendant had certified and paid 50% of the price of the said 206 sets of sprinklers to the Plaintiff as interim payment. The work under the Agreement had been suspended and the Plaintiff refused to resume carrying out the remaining work thereafter. \$39,140 Item 6 The Plaintiff had failed to install a lead pipe on 11th floor of the Building. The Plaintiff had failed to repair and mend the walls and floors. The pipes had not been tested. The

Plaintiff had failed to arrange an inspection of the said work done to be carried out by the FSD. The Plaintiff had failed to obtain certificate and approval to be issued by the FSD to certify the work done and completed. The Defendant had certified and paid 50% of the contract price to the Plaintiff as interim payment. The work under the Agreement had since been suspended and the Plaintiff refused to resume carrying out the remaining work thereafter. \$104,000 Item 7 The Plaintiff had installed the signal display board but failed to connect the same to the Building's power supply system. The work done had not been tested and had not been in commission. The Plaintiff had failed to arrange an inspection of the work done to be carried out by the FSD. The Plaintiff had failed to obtain certificate and approval to be issued by the FSD to certify the work done and completed. The Defendant had certified and paid 40% of the contract price to the Plaintiff as interim payment. The work had since been suspended and the Plaintiff refused to resume carrying out the remaining work thereafter. \$14,000 Item 9 The main electrical cable provided and installed by the Plaintiff in the sprinkler system was not fire-resistant and had not complied with the Loss Prevention Council. The Plaintiff had not applied to the FSD for the certificate to certify the completion of the work done under the Agreement. The Plaintiff had failed to examine, check and test the work done. The Plaintiff had failed to sign and issue forms to apply to the relevant government departments for certificates of the work done and completed from time to time until the work under the Agreement was completed. The Plaintiff had failed to liaise with the relevant government departments from time to time for making any necessary applications or arrangement for the work done and to be done under the Agreement, until the work was completed. The Defendant had certified and paid 50% of the contract price under this item to the Plaintiff as interim payment. The work had since been suspended and the Plaintiff refused to resume carrying out the remaining work thereafter. \$17,500 Item 10 The Plaintiff and/or its agent had failed to examine, check and test the electrical device and parts built in or connected with the sprinkler system. The Plaintiff had failed to obtain certificates to certify that the said electrical device and parts had been properly installed and completed. The Plaintiff and/or its agent had failed to liaise with the relevant government departments from time to time for making any necessary applications or arrangement until the work under the Agreement was completed. The Defendant had certified and paid 50% of the contract price of the work under this item to the Plaintiff as interim payment. The work had since been suspended and the Plaintiff refused to resume carrying out the remaining work thereafter. \$3,780 In relation to the percentage of completion of work assessed by the Plaintiff, as there is no independent surveyor to assess the value of work and which of the work had been completed by the Plaintiff and which had not, it is not easy to assess the percentage of work done. It is more or less a blind guess if the Court were to make an assessment. However, it is possible to see whether the Plaintiff's evidence is believable and believed by me in relation to the work that had been done and completed by him. If I could not believe nor accept his evidence, then his own assessment of the percentage of work done could not be accepted by me. I find parts of the evidence of the Plaintiff's witness Mr. Keung is obviously not true and could not be accepted by me. Item 4.6 is an item for supplying and installing Tosa lead-pipes and pipe-connectors and for their connection to the sprinkler device. From the Schematic Diagram prepared by the Plaintiff at page 59 of BD-D, it is clear that there are two 100 mm lead pipes and one 50 mm lead pipe. The leftmost 100 mm lead pipe

connects from the ground floor to the pump on the roof. The one on the right connects from the pump to the sprinkler inlets on each floor. The Plaintiff's witness Mr. Keung Chi Leung stated that these pipes had been installed by the Plaintiff and indeed the Plaintiff in the Invoice in relation to the sum claimed in the action, at page 56 of BD-D states that 100 % of the work in Item 4.6 has been completed. Mr. Lam Siu Hing, Andy, the technical director of the Defendant gave evidence on behalf of the Defendant to state that upon the refusal of the Plaintiff to return to the Building to complete the work as referred to above, the Defendant invited five Fire Services Installation Contractors to tender for the remaining work to be done on the Sprinkler System. In order for these contractors to see the extent of the work to be done and to be tendered for, he took them to the Building to inspect the work done by the Plaintiff. It was then that he discovered that the leftmost 100 mm Tosa lead pipe had not been installed. Each of those 5 contractors in their tender included the item of the installation of this 100 mm lead pipe. In the British Chinese Company tender at page 119 of BD-D, they included the item of the installation of the 100 mm diameter pipe from the ground floor to the roof in item 11 on that page. In the tender of Safety Fire Fighting Equipment Ltd. at page 117 of BD-D, the item is Item 7 therein. In the tender of Mr. K.F. Chan at page 126 of BD-D, this was the tender that was accepted, Item 13 shows a G.I. Pipe of 100 mm diameter of 32 meters length had to be installed. In the tender of Kea Kwun (International) Fire Service Engineering Limited, at page 123 of BD-D, Item 14 thereof shows the installation of a 100 mm lead pipe of the length of 30 meters. Mr. Lam explained that he found it logical not to install this 100 mm pipe when the location of the pump on the roof is not yet determined at the time when the Invoice for payment was submitted by the Plaintiff. The stairs is in the middle of the floor plan. It would be inconvenient if the 100 mm pipe were located on the wrong side of the staircase for it will make connection to the pump more difficult. I accept as clear evidence that the 100 mm pipe had not as yet been installed by the Plaintiff and Mr. Keung's evidence that the Plaintiff had installed it cannot be true. There is no basis for the Plaintiff to claim for 100% completion for the work in Item 4.6 of the Agreement as the work is clearly not 100% completed. Further Item 4.6 of the Agreement includes the work for mending the walls and the floors where holes had been dug for pipes to go through. Mr. Keung acknowledged that this work has not been done because he said that this work was to be done when all the work has been completed. Yet he claimed 100% completion of work on the pretext that the cost for doing this work is minor. In my view this work could not be minor as claimed so that it costs a negligible sum because there must be many holes for the numerous pipes to go through. This clearly shows that the claim for completion of this item of work is greatly inflated. Again, Mr. Keung gave evidence that all the electrical wires had been installed but had not been connected to the main supply. However, Mr. Lam explained in relation to Item 4.7 that the signal cables connected to the sprinklers system have not been installed. He stated that basically the whole electrical side is not connected and is not there. After the Plaintiff submitted the Invoice at page 56 of BD-D, he conducted an inspection with Mr. Yu Ka Wai of the Plaintiff and found out that most of the wires were not connected with the electrical work of the system. Mr. Lam explained the workings of the sprinkler system. He said that when there is a fire, the sprinkler head will burst and water would gush forth. The electrical signal system attached to the sprinklers will send a signal to the pump to pump more water to the building and to the sprinklers and at the

same time the signals goes to the control panel which sends a signal to the control centre of the Fire Services Department. The Control Panel should have a lot of wires inside. When he inspected with Mr. Yu he found that the Control Panel was empty and had no wires inside. The signal cables should be connected to the control panel, to the alarm bells and to the pump. However the signal cables were not there and not connected. Mr. Keung claimed 80% of the work in Item 4.7 was completed when according to Mr. Lam the signal wires being an important component of the signal system and the alarm bells system was not connected. Mr. Lam referred to the tenders supplied by the 5 Fire Services Companies to show therein items for cable connection. In the tender of British & Chinese Company, Item 47 show an item for Sprinkler Pump Control Panel Conduit and Wiring for the sum of \$15,000. There is also an Item 58 for Cable connection from Pump panel to Sprinkler Pump for the sum of \$30,000. In the quotation given by Mr. K.F. Chan in the section related to Sprinkler System , items 18 to 19 are items related to G.I. conduit for the passing of cables through and the PVC cable are PVC conduits for passing cables through. The quotation of Safety Fire Fighting Equipment Ltd. at page 117 of BD-D contains item 8, which relates to the supply and installation of fire services electrical item hVMO# when it is clear that the Mr. Keung claimed that the electrical wires had not been connected to the sprinkler controlling device, alarm bells etc. Mr. Keung stated that there were only two wires to be connected, as there was only one alarm bell. However, this is not as simple as it sounds as stated by Mr. Lam that there are more wires than is stated. It simply could not be the case that 95% of the work in Item 4.2 has been completed in the face of the lack of electrical connections. Mr. Keung claimed that 95% of the work in Item 4.9 had been completed. It is clearly the case that the installation of the system had not been completed so that the approval for the completion of works is not ready to be done and has not been done. Only the initial submission of plans related to the design had been done. However, Item 4.9 involves application for completing of works, checking the system and obtaining the issue of the relevant forms and it seems to suggest an inspection is required. Having considered the aforesaid evidence, it is clear that the evidence of Mr. Keung the Plaintiff s witness is not reliable related to the extent of the work completed by the Plaintiff and as I could not accept his evidence, his claim related to the percentage of work done as stated in the Invoice at page 56 of BD-D could not succeed. I find that the Plaintiff s claim for the sum of \$244,810.00 due from the Defendant for the works completed cannot succeed I cannot accept the Plaintiff s assessment of the percentage of work done and the Plaintiff has no independent expert to value the extent of work done by him. As I cannot accept the evidence of Mr. Keung on behalf of the Plaintiff, I find that the Plaintiff has not established that when it tendered the Invoice at page 56 to the Defendant for payment for work done, that the Plaintiff was entitled to be paid the sum stated therein. The 2nd Issue In the premises the Plaintiff has breached the Agreement when the Plaintiff refused to return to the Building to complete the remaining installing work pursuant to the Agreement upon the written request by the Defendant by letters on 30 October 2003 (page 108 of BD-D), 3 November 2003 (page 109 of BD-D) and on 7 November 2003 (page 113 of BD-D) and on 12 November 2003 (page 114 of BD-D). The Plaintiff s solicitor submitted that the Plaintiff s claim that the Defendant breached the Agreement was on two limbs, firstly that the Defendant did not give working instructions to the Plaintiff in or about October 2002 so that no work could be performed by the Plaintiff and

secondly the Defendant's failure to pay the invoice for the work done in the amount of \$244,810.00. The evidence related to the Plaintiff's allegation that the Defendant failed to give instructions to the Plaintiff for work relates to the installation of the pump because the location of the pump room was not determined. The Defendant informed the Plaintiff that the location of the pump room was not a matter within the decision of the Defendant and it was for the architect and the Incorporated Owners to decide. Mr. Lam gave evidence that the decision related to the location of the pump room encountered delay because the original location where the Incorporated Owners intended to build the pump room had to be changed. That was because the location on the roof where the pump was to be installed was discovered to be under the ownership of a landlord. Hence the Incorporated Owners had to choose another location. They also had to seek permission from the Building Authority for the building of the pump room. The evidence showed that the Agreement did not contain any clause, which made time of the essence for the performance of the Agreement by the Plaintiff. The reason the Defendant was not able to give instructions for the location of the pump was that the decision is beyond the control of the Defendant. In my view there was no breach of the Agreement by the Defendant arising from that. Having so found, I am of the view that the Plaintiff breached the Agreement when it failed to return to the Building to complete the work as requested by the Defendant. In so doing it repudiated the Agreement. The Defendant has accepted the repudiation of the Plaintiff by its letters dated 7 November 2003 and 12 November 2003. The 3rd Issue As a result of the failure of the Plaintiff to return to the Building to complete the work, Mr. Lam stated in evidence that the Defendant put out to tender to five Fire Service Installation Contractors the remaining work to be done. He stated that he took each of the companies invited to tender, to the site to inspect the remaining work. They were requested to give quotations for the remaining work. The five quotations are from Wai Lee Fire Engineer Co at pages 115 to 116 of BD-D, from Safety Fire Fighting Equipment Ltd at pages 117 to 118 of BD-D, from British & Chinese Company at pages 119 to 122 of BD-D, from Kea Kwun (International) Fire Service Engineering Limited at pages 123 to 124 of BD-D and lastly from K.F. Chan at pages 126 to 129. He stated that K.F. Chan is not himself a registered Fire Services Installation Contractor but he works with one named Renoright Construction Co., Ltd. In fact this is stated in Item 5 of the Remark of the Quotation from K.F. Chan at page 129 of BD-D. Page 129 of BD-D shows the signature and chop of the Defendant Company accepting the tender of K.F. Chan. The Defendant's case is that the Defendant to complete the remaining work of the Agreement has to pay the sum of \$360,000.00. However this sum does not include the amount for the installation of the fire resistant cable for electricity supply to be connected to the pump room. When the quotes were obtained from the five contractors aforesaid, there was a cable installed by the Plaintiff to the pump room for supply of electricity. It was not known that this cable was not fire resistant cable and hence had to be removed and a fire resistant cable put in. There was a further cost for that and the quotation to cover that is at page 131 of BD-D in the sum of \$60,000. After the completion of works, the Defendant had to expend manpower and resources to make good the holes on the walls and the floors and the cost of that is at page 135 of BD-D in the sum of \$23,800. Further Mr. Lam of the Defendant stated that he spent 22 hours on re-tendering the remaining work and charged the sum of \$33,000 at \$1,500 per hour. I accept evidence of Mr. Lam that the Defendant accepted the

quotation of Mr. K.F. Chan in the sum of \$360,000.00 to complete the remaining works. In relation to the installation of the fire resistant cable, the Defendant stated that the old one had to be removed and the fire resistant cable installed at the cost of \$60,000.00. I accept this evidence. In relation to the cost of making good the holes by the Defendant in the cost summarised at page 135 of BD-D. There is little supporting evidence for the cost in the statement. Because of that I discount that by 50% as it seemed rather high and I award the sum of \$11,900. In relation to the sum for re-tendering the contract, I grant the Defendant a sum of \$10,000. Having so found, I am of the view that the total sum expended by the Defendant to complete the remaining work of the Agreement is \$441,900.00. The total cost of the Agreement in the quotation of the Plaintiff at page 002 of BD-D is \$640,000.00 - \$107,160 being the price of 289 (488

206) sprinklers not installed at \$380 per sprinkler ($\$380 \times 282 = \$107,160.00$). The cost of the work according to the Agreement is \$532,840. The Defendant paid the Plaintiff \$200,000.00. It would have cost the Defendant the sum of \$332,840.00 to complete the work. As a result of the Plaintiff's failure to complete the work, the Defendant stood to lose the sum of $\$441,900.00 - \$332,840.00 = \$109,060.00$. Even though the Defendant has failed to submit the receipt for final payment of the amount of the completed works to Mr. K.F. Chan I accept that the Defendant is liable for the completion of the works pursuant to the Agreement and the cost of completion the works is proved aforesaid. I am satisfied that the quotation of the works by Mr. K.F. Chan was accepted and the work proceeded as shown by the letter from Renoright Construction Company Ltd. to the Fire Services Department related to the F.S. drawings submitted by them in respect of the Building marked Exh D2. The Defendant is entitled to damages for breach of contract to be paid by the Plaintiff in the sum of \$109,060.00 and succeeds in its counterclaim against the Plaintiff in respect of this sum. The 4th Issue The facts in relation to the variation works or additional works as claimed by the Plaintiff are stated hereunder. The Plaintiff's task was to design and install a Sprinkler System in the common areas of the Building, which is approved by the Fire Services Department and the Water Supplies Department. Sprinklers were to be installed in the corridors of each of the floors of the Building, being a commercial building. Photos of the final state of the pipes, which the Plaintiff built and on which the sprinklers were to come from along corridors of the floors are at pages 90 to 92 and 92b and 92c of BD-D. Page 92a. There were submitted into evidence and show horizontal beams across the ceiling of the corridor. These horizontal beams come down from the ceiling to quite a distance but it is not possible to know how far they come down. Originally, the pipes along the corridor from which would hang sprinklers were all at one level below the level of the beams. Mr. Lam of the Defendant drew a diagram showing the original positional of the pipe below the beam in a straight line with a sprinkler hanging from it. This showed the positioning of the pipe and the sprinkler before the alterations. According to Mr. Keung, the Defendant and the Incorporated Owners as well as architect were shown the drawings of the Plaintiff and had no comments on them before the Plaintiff started to install the pipes. After the sprinklers of most of the pipes and sprinklers, the occupiers complained against the positioning of the pipes and sprinklers as being too low. At a meeting of the Incorporated Owners, the

Architect, the Defendant and others this was raised. The Minute of the Meeting with the complaint is at page 94 of BD-D. Again a second complaint at a similar meeting was raised where the Minutes of Meeting at page 97 of BD-D stated that the Incorporated Owners stated that they could not accept the positioning of the sprinklers being too low. The Defendant should copy the sample of the positioning of the sprinklers and pipes installed on the 10th floor. The situation is that after the initial complaint only the 10th floor piping was as yet undone and the Plaintiff was asked to install the pipes on the 10th floor higher like that shown in photo at Exh D1. After that the Incorporated Owners requested that the piping of all the other floors should be altered in accordance with the way it was installed on the 10th floor. The Defendant wrote a letter to the Plaintiff requesting that the Plaintiff install the sprinklers and pipes according to the sample on the 10th floor (see page 99 of BD-D). The Plaintiff wrote to the Defendant that during the meeting with the Incorporated Owners in May, the Incorporated Owners agreed for the work to be carried out in accordance with the approved plans of the Fire Services Department. There were no comments on the installation of the sprinklers. As it is now requested that the Plaintiff should alter the positioning of the sprinklers in accordance with the sample on the 10th floor, the Plaintiff would require payment in the sum of \$3,420 for each floor. There were no letters in reply from the Defendant. Subsequently after the Plaintiff had commenced the alteration works on the piping and sprinklers, the Defendant wrote the Plaintiff a letter disputing the Plaintiff's quotation for alteration works at page 100 of BD-D. The Plaintiff replied by their letter dated 25 Sept 2002 at page 54 of BD-D stating that in their letter dated 2 July 2002 they notified the Defendant that were there any alteration of the works from the plans submitted, the Plaintiff would regard such works as alteration works. Hence the Plaintiff requested the Defendant to pay for the sum for the alteration of the sprinklers and pipes of eleven floors. The letter dated 2 July 2002 from the Plaintiff is at page 008 of BD-D. In this letter the Plaintiff states that if works were carried out before having obtained the Fire Services Department's approval to the drawings and thereby rendering a need for alteration of works, such alteration works would be treated as additional works and should be paid by the Defendant. I look to see the plans of the Plaintiff, which were submitted to the Fire Services Department for approval. Page 59 shows the Schematic Diagram of the Sprinkler System. It is a cross section of the Building and shows the horizontal pipes on the corridor of each floor. The sprinklers look like circular bulbs hanging from a horizontal line, which is the pipe from which they extend downwards. It is clear that the diagram shows the pipes as a straight line and not bent around beams as the alteration seeks to do. The sprinklers hang from the pipes. The hanging of sprinklers must be fairly standard. The complaint is that the pipes did not bend upward back onto the ceiling from below the area occupied by the beams. However, the plans already show that the pipes are on a straight line and do not bend. As the plans were submitted to the Incorporated Owners and to the Defendant and no doubt to the Architect as well and they did not make comments, it is clear that the Plaintiff could not be held responsible for the subsequent alteration works when it would have been clear to the architects and to the principle contractor that the pipes are located in a straight line at the level of the beams below the actual ceiling. This is

particularly in view of the warning in the Plaintiff's letter at page 8 of BD-D the gist of it meaning that were there subsequent alteration of works being departure from the plans after the works have started the Defendant would have to pay for such alterations. In view of the aforesaid, I am of the view that the Defendant has a responsibility in respect of the location of the sprinklers and the pipes and should have looked carefully at the plans together with the Architect and made their comments on the location of the pipes and the sprinklers before the Plaintiff undertook the work. Further, Mr. Lam has no specific evidence as regards how low the sprinklers were on the 1st to 9th and 11th floors before the alteration works. There are no measurements of the level of the beam. No measurements of the level of the pipes and sprinklers as originally installed by the Plaintiff before alteration. There is no evidence to show that the actual level of the sprinklers being so low that it could pose a danger to those walking on the corridors. I see the door leading into the corridor. The highest level of the door is much below the lowest level of the beam. The opening of a door is usually higher than the tallest person who could walk through it. Hence I am not satisfied that the level of the pipes and sprinklers originally installed by the Plaintiff were so low that these were of a design that was unacceptable to a reasonable customer. In fact, the Defendant and the Architect should bear responsibility for not considering the design in the Schematic Diagram of the Sprinkler System more carefully before asking the Plaintiff to commence work. I therefore find that the Plaintiff is entitled to this sum claimed. The Defendant has in its Defence and Counterclaim pleaded a set off of the sum set out in the Counterclaim against the sum claimed by the Plaintiff. I find that the set off is an equitable set off as it is related to the original subject of the action, or the set off is a cross claim flowing out of and inseparably connected with the dealings and transactions which also give rise to the claim. An equitable set off has the effect of diminishing the value of the work done and in effect reducing the amount of the claim made (*Golden Jet Forwarders Ltd. v Transmeridian Air Cargo Ltd* [1982] H.K.L.R. 228, Halsbury's Laws of England Vol 42 para 430, 4th Ed). The amount of the set off is greater than the amount which the Plaintiff succeeded in the claim. I give judgment for the Defendant on the Counterclaim after setting off the amount which I find is due from the Defendant to the Plaintiff in the sum of \$37,620.00 (\$111,720.00 - \$37,620.00) = \$74,100.00. In relation to the costs of the action, I take into account that the Defendant has succeeded in obtaining judgment but also take into account that the Defendant failed in defending the item of the claim related to the additional works. I take into account the time taken during the trial by the Defendant in defending the payment for the alteration works claimed by the Plaintiff and therefore deduct a portion of the costs from the costs of the action due to the Defendant. Judgment for the Defendant in the sum of \$74,100.00 together with interest thereon from date of Counterclaim to date of Judgment at judgment rate and thereafter until payment at judgment rate. I grant an order nisi that the Plaintiff pays three quarters of the costs of the action to the Defendant to be taxed if not agreed with Certificate for Counsel. C. B. Chan District Judge Representation: Miss Tang Ka Man Carmen of Messrs Chak & Associa 1udk 1udk K L M N O P Q R S T U V &`#\$ W** *\mT zo/< xC&1 P0} W~7gb eUgd \oor W~7g xC&1 W** \oor |a2; z\8; ~^d! & 6" ABC.dot setup Microsoft Word 9.0 Judiciary Title Microsoft Word

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Prepared on 26 October 2026 · Esheria