Cheng Song Chuan (trading as Trade Sources Enterprise) v Chin Ivan [2008] SGHC 39

Case Number : Suit 490/2007, RA 338/2007, 388/2007

Decision Date : 19 March 2008

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Eugene Tan and Nicholas Lauw (Drew & Napier LLC) for the plaintiff; Paul Wong and Daryl Ong (Rodyk & Davidson LLP) for the defendant

Parties : Cheng Song Chuan (trading as Trade Sources Enterprise) — Chin Ivan

Civil Procedure

Contract

19 March 2008

Lai Siu Chiu J:

1 Cheng Song Chuan ("the plaintiff") applied by Summons No 4124 of 2007 ("the summary judgment application") for judgment against Ivan Chin ("the defendant") under Order 14 of the Rules of Court (Cap 322, R5, 2006 Rev Ed) ("the Rules"). He succeeded and was awarded final judgment on 7 November 2007 against the defendant in the sum of $201,978.00 with interest and costs, pursuant to s 57 of the Bills of Exchange Act (Cap 23, 2004 Rev Ed) together with interlocutory judgment (with damages to be assessed) on the defendant's repudiation of contract.

2 Almost a month after judgment had been entered against him, the defendant applied by Summons No 5387 of 2007 ("the amendment application") to amend his defence and counterclaim to plead illegality and for ancillary orders consequential on the amendments. The amendment application was dismissed by the court below.

3 The defendant filed Registrar's Appeals ("RA") against the decisions of the Assistant Registrars in both applications. RA No 338 of 2007 ("the first Appeal") was the defendant's appeal on the summary judgment application while RA No 388 of 2007 ("the second Appeal") was his appeal on the amendment application.

4 The first and second Appeals came up for hearing before me and I dismissed them. The defendant has now filed Notices of Appeal in Civil Appeals Nos 2 and 3 of 2008 against my dismissal of the second and the first Appeals respectively.

The facts

5 The defendant is the registered owner of two plots of land situated at Sentosa Southern Cove, Singapore ("the properties"). By a contract evidenced in a letter of appointment from the defendant to the plaintiff dated 28 November 2006 ("the letter of appointment"), the defendant agreed to appoint the plaintiff as the project manager to procure a design team to provide architectural, structural engineering, mechanical/electrical ("M&E") engineering and quantity surveying services for the design and construction of two 2-storey detached houses with a swimming pool ("the project"),

as set out in the plaintiff's letter to the defendant dated 28 November 2006 ("the plaintiff's letter"). Under clause 6 of the plaintiff's letter, the fee payable was as follows:

(i)	Upon confirmation of appointment	5%
(ii)	Upon submission to Urban Redevelopment Authority ("URA")	10%
(iii)	Upon tender preparation	15%
(iv)	Upon grant of provisional permission by URA	5%
(v)	Upon award of main contract	10%

6 Pursuant to the letter of appointment, the plaintiff commenced work in November 2006 and appointed for the project:

(a) Strategic Design International ("Strategic") as the architects;

(b) THK Consultant Engineers as the civil and structural engineers:

(c) BCM Consultants Pte Ltd as the quantity surveyors;

(d) Tan Consultants as the mechanical and electrical engineers

(hereinafter referred to collectively as "the consultants"). The plaintiff's sole proprietorship Trade Sources Enterprises ("Trade Sources") was appointed the project manager. In the plaintiff's letter, the plaintiff gave a breakdown of the fee of 11.5% payable to the consultants, based on the total contract value.

7 Provisional permission by URA for the project was issued on 4 December 2006 and 14 March 2007 for the properties. By May 2007, the consultants had prepared the tender documents for the project.

8 Having provided the services stipulated under cl 6(i) to (iv) of the letter of appointment, the plaintiff rendered an invoice to the defendant dated 3 April 2007 ("the invoice") for 35% of the fee ($192,360) plus 5% GST ($9,618.00) totalling $201,978 ("the invoice amount"). The figure $192,360 was based on the total estimated construction costs of $420.00 per square foot for the project which in turn was based on the construction costs of $380 to $450 for similar properties at Sentosa Cove. The defendant issued the plaintiff a cheque No 561824 dated 4 April 2007 ("the cheque") drawn upon Citibank for the invoice amount.

9 The plaintiff presented the cheque for payment but on 9 April 2007, he was informed by his bank United Overseas Bank Ltd ("UOB") that the defendant had countermanded payment on the cheque.

10 The plaintiff's solicitors wrote to the defendant on 3 May 2007 giving notice of the dishonour of the cheque and demanded payment of the invoice amount. The defendant's solicitors replied on 25 May 2007 to deny that the plaintiff had carried out any work that justified payment of the invoice amount. The letter also demanded that the plaintiff cease all involvement in the project.

11 The plaintiff treated the defendant's solicitors' aforesaid letter as repudiation of the letter of appointment. Accordingly, by his solicitors' letter dated 28 June 2007, the plaintiff accepted the

defendant's repudiation. This was followed by the issuance of the writ of summons herein on 6 August 2007.

The pleadings

12 In the statement of claim, the plaintiff premised his claim on repudiation of the letter of appointment. In the alternative, the plaintiff claimed the amount in the cheque based on s 57 of the Bills of Exchange Act (Cap 23, 2004 Rev Ed).

13 In his defence filed on 4 September 2007, the defendant *inter alia* denied that the letter of appointment was for the plaintiff to procure the services of professionals as stated. The defendant alleged that the plaintiff had in fact represented that the design team for the project was under the plaintiff's organisation and that the plaintiff was providing the services of the professionals as stated. The defendant admitted that he issued the cheque to the plaintiff and that he countermanded payment thereon. He further denied being in repudiation of the letter of appointment.

14 The defendant denied liability under the letter of appointment as well as under the cheque. He contended that consideration for the cheque had totally or partially failed. The defendant further contended that the plaintiff's failure to prepare and/or to call for a tender disentitled the plaintiff from his claim of 35% of the fee.

15 In the further alternative, the defendant alleged that payments under the letter of appointment were based on a percentage of the total contract value. Consequently, until the total contract value was determined, the exact amount of payment due to the plaintiff could not be determined. Therefore no sums were due and payable to the plaintiff. The defendant added that any such payment ought to be made directly to the relevant member of the design team who carried out the work and not to the plaintiff. The defendant claimed he had made such an offer on 6 August 2006. The defendant counterclaimed for a declaration that he had validly rescinded the letter of appointment and alternatively, for rescission of the letter of appointment as well as damages (due to loss he had suffered [but not specified] arising from the plaintiff's misrepresentation).

16 Nothing turns on the plaintiff's reply and defence to the counterclaim as it essentially denied all the defendant's allegations apart from an admission that the plaintiff had told the defendant that he had experience acting as a project manager.

The summary judgment application

17 Both parties filed two affidavits each as did the architect from Strategic who was in charge of the project, namely Philip Lee ("Lee").

18 In his "show cause" affidavit filed on 23 October 2007, the defendant (who is a businessman) described the plaintiff in disparaging terms as a man of "insignificant means" who cultivated the defendant's friendship because the plaintiff knew him to be a person of means and the latter sought to be in the defendant's "good books". Conversely, the defendant was not modest in describing himself and his means. He said he was amongst selected invitees who attended the auction of the Sentosa Cove properties to which the plaintiff was not invited but attended through him. The defendant deposed that he purchased properties either for investment or for his own use.

19 The defendant alleged that the plaintiff represented that as a friend he (the plaintiff) would help him (the defendant) to avoid being cheated and the defendant should appoint the plaintiff's design team for the building works, to save costs and time. The plaintiff also represented to the defendant

that the commission for the plaintiff and his design team would be very low, at 13% (of construction cost). Believing what the plaintiff said, the defendant signed the letter of appointment as a "friend".

20 The defendant claimed that after the letter of appointment was signed and after URA had granted provisional permission, there was little progress on the project and he had to chase the plaintiff constantly and repeatedly for progress reports. However, the plaintiff never had anything concrete to offer and stalled for time so much so that the defendant had to contact Strategic directly to push for the design work for the properties.

21 By end-March 2007 the defendant deposed that he became increasingly frustrated at the lack of progress and the plaintiff's failure to provide any value to him. He deposed that he confronted the plaintiff who allegedly said his (the plaintiff's) role was very limited. The plaintiff then admitted that he had provided no value to the defendant as a result of which the plaintiff agreed to forgo his portion of the commission as set out in the plaintiff's letter in [6] above. That was the reason why the plaintiff struck out from the plaintiff's letter the item "project manager' and the figure "1.5%" in the breakdown of costs for the design team and reduced the total percentage of 13% to 11.5%. The plaintiff agreed to acknowledge the revision in writing.

22 On 4 April 2007, the plaintiff handed the defendant a revised letter of appointment (bearing the original date of 28 November 2006) which showed against the item "project manager" a zero percentage. At the same time, the plaintiff requested the defendant for some payment stating it was overdue as works were done and the consultants were pressing him. The plaintiff handed the defendant the invoice stating that the invoice amount was "very low".

23 On the following day, while talking to his business acquaintances, the defendant discovered (contrary to the plaintiff's assurances) that construction costs at $420.00 per square foot were excessive. So too was the design team's fee of 11.5%. This was confirmed when the defendant engaged Turner &Townsend Pte Ltd who estimated that construction costs should be in the region of $250.00 to $280.00. The plaintiff's claim based on $420.00 per square foot was therefore "arbitrary".

24 On the advice of his business acquaintances, the defendant said he conducted a search in the records of the Accounting & Corporate Regulatory Authority and ascertained therefrom that Trade Sources was in the business of trading in chemicals and chemical products and had nothing to do with construction activities. The defendant said he telephoned the plaintiff to ask the plaintiff not to bank in the cheque as he wanted to discuss the matter further with the plaintiff; the plaintiff agreed. As a precaution, the defendant stopped payment on the cheque. The defendant followed up by using the short message service (SMS) on his mobile phone to tell the plaintiff to stop work on the project.

25 The defendant further claimed that although it was provided for in the letter of appointment, no tender was carried out or called for by the plaintiff. The plaintiff was therefore disentitled from claiming 35% of the contract sum as it included works not yet carried out. The defendant added that if any payment was to be made, it should be made directly to relevant members of the design team, not to the plaintiff.

26 The defendant claimed he was still prepared to resolve the matter amicably and to pay for works done or costs justifiably incurred. However, the plaintiff failed to justify his charges or reply to the defendant's SMS.

27 The plaintiff refuted the defendant's many allegations in his second affidavit. First, the plaintiff pointed out, he was not a man without substance as his family had/has a reputable company called Wee Hur Construction Pte Ltd ("Wee Hur") which engaged in property development and construction.

The plaintiff cited notable projects that had been undertaken by Wee Hur including refurbishment of The Old Parliament House, construction of the INSEAD Building and various condominium projects. In addition, the plaintiff owned or had a share in three properties in Singapore. There was no need therefore for the plaintiff to ingratiate himself with the defendant as the defendant claimed.

28 The plaintiff deposed that both he and his family had extensive experience in property development and in the construction industry. The plaintiff listed projects that he had undertaken or would undertake in the future; this included developing another plot of land at Sentosa Cove for which he was appointed project manager.

29 The plaintiff denied having represented to the defendant that the consultants were the plaintiff's employees. Indeed, he made it clear in his discussions with the defendant that the consultants were the plaintiff's associates who had previously worked with Wee Hur or Trade Sources. The plaintiff brought the architect (presumably Lee) to do a presentation for the defendant after which the defendant agreed to appoint Trade Sources to be the project manager.

30 The plaintiff refuted the defendant's allegation that the plaintiff misled him into thinking the consultants were the plaintiff's employees. The plaintiff referred to the letter of appointment which full text reads as follows:

> APPOINTMENT OF DESIGN TEAM FOR PROPOSED ERECTION OF A 2 STOREY DETACHED DWELLING HOUSE AND A SWIMMING POOL ON LOT B18-13 AT SOUTHERN COVE
>
> I, Ivan Chin Nric no..... the owner of the above house hereby appoint TRADE SOURCES ENTERPRISE as the project manager for the above project based on the terms stated in this letter dated 28 November 2006. We also appoint the team led by the Project Manager for the project.

31 As the letter of appointment referred to the plaintiff's letter, it would be appropriate at this juncture to look at the document. The opening paragraph of the plaintiff's letter (on Trade Sources' letterhead) signed by Jonathan Cheng (who is the plaintiff) as manager states:

> Thank you for the invitation and we write on behalf of the Design team to submit a fee quotation based on 13% [subsequently revised to 11.5%] of the total contract value based on the following scope of work:.....

The plaintiff pointed out there was nothing in either the letter of appointment or in the plaintiff's letter that stated or implied that the design team was employed by him.

32 The plaintiff explained that the fee reduction from 13% to 11.5% came about because the defendant gave him the impression (after the letter of appointment was signed) that there was the possibility of appointing Trade Sources as the contractor for the project. Should that happen, the defendant pointed out that there would be a conflict of interest if the plaintiff was paid as a project manager. To keep open the possibility of appointing Trade Sources as the contractor, the plaintiff deleted the fee of 1.5% allocated to the project manager. Consequently, the plaintiff subsequently issued a revised letter of appointment containing the exact same terms as the letter of appointment save that the fee of 1.5% allocated to the project manager was omitted.

33 The plaintiff said the defendant lied in his allegation that the plaintiff hardly did anything and the defendant was forced to contact the architect direct (see [20] above). The plaintiff deposed that both he and the architect (corroborated by Lee's affidavit) met often at the defendant's home to

update the defendant on the progress of works as well as to seek the defendant's views on the design of the houses. The plaintiff denied that his role was merely to chit-chat as the defendant had alleged and denied having admitted to the latter that because he had created no value for the defendant, the plaintiff was willing to forgo any part of his fee as project manager.

34 By the time the invoice was rendered to the defendant, the plaintiff deposed that he had carried out work for five to six months. By then, the architectural, structural, mechanical and engineering drawings had been prepared together with the tender drawings (copies of which the plaintiff exhibited to his second affidavit). After the cheque was dishonoured, the plaintiff spoke to the defendant who asked him to justify the invoice amount. The plaintiff then forwarded copies of the tender documents and drawings (35) to the defendant. The voluminous documents numbered 968 pages. The plaintiff noted that the defendant made no mention of this fact in his affidavits.

35 Contrary to the defendant's claim, the plaintiff deposed that in his telephone conversation with the defendant on the evening of 4 April 2007, he did not promise not to bank in the cheque – he had in fact told the defendant that he had already deposited the cheque into his account. On hearing this, the defendant hung up the telephone.

36 The plaintiff revealed that he met the defendant in the third week of April 2007 to try to resolve the dispute on payment. It turned out that what the defendant wanted was to discount the fee to 8%, which the plaintiff refused for the reason that he had already reduced the figure to 11.5% from 13%. The plaintiff concluded with the comment that not only had he not been paid, neither had any of the consultants.

37 In his reply affidavit, the defendant disputed the plaintiff's version of facts as set out in the latter's second affidavit. The defendant deposed it was disingenuous of the plaintiff to suggest that the tender documents exhibited in the plaintiff's affidavit entitled the plaintiff to payment of 15%. The defendant asserted that when he required the plaintiff to justify the invoice amount, the plaintiff was unable to produce any documentation. The defendant added that prior to April 2007, the parties had never raised the issue of or preparation of a tender because the architectural works were not finalised and the defendant had never met the consultants apart from the architect. The defendant claimed that the plaintiff failed to provide any documentation to him for more than 2 weeks after their meeting in mid-April 2007. It was only on 8 May 2007 that the defendant received a telephone call from Lee informing him the latter would be forwarding to him documents received from the plaintiff which turned out to be the "so-called tender" (in his words). The defendant described the tender as having been hastily prepared and that it included a soil investigation report that did not relate to the properties.

38 I turn now to Lee's affidavits which essentially corroborated the plaintiff's version of events. In his first affidavit, Lee (who is the sole-proprietor of Strategic) deposed that he readily accepted the plaintiff's brief to do the design for the project as he had worked with the plaintiff previously either through Wee Hur or through Trade Sources. After he had completed the design brief, Lee accompanied the plaintiff to the defendant's house where Lee gave his presentation which he noted clearly pleased the defendant as soon thereafter, the plaintiff was appointed the defendant's project manager whilst Strategic was appointed the architect by a letter of appointment dated 1 December 2006 ("Lee's letter of appointment") from Trade Sources. Under the terms of Lee's letter of appointment, Strategic would be paid a fee based on 6.5% of the estimated total construction value as set out in the plaintiff's letter at [6] above.

39 Lee confirmed that he did not deal with the defendant when it came to payment of his fees. That was between the plaintiff and the defendant in line with the terms of the letter of appointment. Further, the defendant never broached with Lee the subject of payment until after the dispute herein

arose. Lee recalled a meeting between the plaintiff, the defendant and himself in April 2007 where the defendant attempted to change the payment terms to payment being made directly to the consultants but the plaintiff refused. Lee confirmed he had not received any payment from the defendant.

40 Lee refuted the defendant's allegation that the plaintiff had misrepresented to the defendant that the design team (including Strategic) was part of the plaintiff's organisation. When Lee made his presentation, he had given the defendant his business card, resume and Strategic's portfolio. The defendant well knew therefrom that Lee had his own business separate from the plaintiff's. Until he read the defendant's affidavit, Lee was unaware of the defendant's complaint.

41 Lee further refuted the defendant' allegation, that the plaintiff did nothing to earn the invoice amount. He said he and the plaintiff met the defendant regularly to obtain the latter's feedback and comments on the design of the two houses and the defendant was kept apprised of the progress of work for the project.

42 Lee confirmed that the tender documents and drawings (as exhibited in the plaintiff's affidavit) were prepared and were it not for the dispute between the parties, the tender for construction would have been called in May 2007.

43 Lee disagreed with the defendant's claim that the plaintiff was out to cheat the defendant or that the plaintiff was trying to enrich himself unjustly. Lee confirmed that substantial work had been done by him for the project for which he had not been paid. Prior to the invoice date, Lee had asked the plaintiff several times about his fees.

44 In his second affidavit (filed on 9 November 2007), Lee clarified he was not in a position to say how much work had been done for the project by the other consultants. However, Lee noted that the tender documents were not complete as missing therefrom were/was:

(a) piling drawings;

(b) schedule of finishes;

(c) mechanical and electrical drawings and

(d) a drawing list

while the structural drawings contained comments.

45 Lee recalled that when the plaintiff handed the tender documents to him on 8 May 2007, he was informed that the structural engineer required a soil investigation report but the plaintiff expressed concerns that the defendant was not willing to pay for the same.

46 Based on the affidavits as filed, the Assistant Registrar below formed the view that the defendant had shown no triable issues as to whether there was total or partial failure of consideration and as to whether there had been misrepresentation on the part of the plaintiff. Accordingly, he granted an order in terms of the summary judgment application plus costs.

The arguments

47 The arguments of counsel for the defendant to persuade the court to allow the first Appeal was predicated on the defendant succeeding in the second Appeal on the basis that the defendant's

proposed amendments (if allowed) would afford him a complete defence to the plaintiff's claim. Consequently, I turn my attention now to the amendment application and to the second Appeal.

The amendment application

48 In his affidavit supporting the amendment application, the defendant deposed that he had ascertained that the plaintiff was not registered either as an architect with the Board of Architects Singapore or as an engineer with the Professional Engineers Board of Singapore and he did not hold a practising certificate issued by either body. No explanation was proffered on the lateness of the amendment application.

49 The defendant's proposed amendments to his defence were first, to add an alternative defence (to para 12) to plead that the payments under the letter of appointment were based on a percentage of the total contract value and until that figure was determined (which could only be done after the main contract for the project was awarded), the total amount payable to the plaintiff (if any) could not be determined; hence, no payment was due to the plaintiff.

50 Secondly, the defendant wanted to add a new para 13A to his defence to say that the consideration for the cheque was illegal and/or the underlying contract for which the plaintiff sought payment was an illegal contract. In the particulars under this para 13A, the defendant averred that the plaintiff was not a registered architect under s 10 of the Architects Act (Cap 12, 2000 Rev Ed) ("the Architects Act"). As such it was illegal for the plaintiff to provide architectural services. In addition, s 11 of the Act disentitled any person from recovering fees for architectural services rendered in Singapore unless the person was authorised by the Architects Act to supply such services. The defendant repeated the same allegation in relation to ss 10 and 12 respectively, of the Professional Engineers Act (Cap 253, 1992 Rev Ed) ("PE Act").

51 The court below had dismissed with costs the amendment application because it was made at a very late stage (as the plaintiff had submitted) when it could and/or should have been pleaded at a much earlier stage. The Assistant Registrar opined that the proposed defence of illegality was not consistent with the statutory language of the two Acts in question and that the proposed amendments in particular of para 12 (see [49]) did not clarify the case before the court.

The second Appeal

52 At the hearing before me, the defendant did not pursue the amendments for para 12 of the defence but only for para 13. While conceding that the amendment application was made very late in the day, counsel for the defendant argued that the court had the discretion to allow amendments even after judgment albeit such discretion should be exercised reservedly, relying on *Invar Realty Pte Ltd v Kenzo Tange Urtec Inc* [1990] SLR 791 ("*Invar's* case") so long as the opposite party could be adequately compensated by an order for costs. (In *Invar's* case, the amendment after judgment was disallowed as it would result in the removal of the plaintiffs' admission on which summary judgment to the second defendant was awarded). *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR 258 was the second authority cited by the defendant in support of this submission. (In that case the amendment too was disallowed as the court had just delivered judgment after a full trial).

53 Counsel submitted there were two good reasons for the court to overlook the lateness of the application. First, the defendant intended to raise the issue of illegality. He cited *Sim Tony v Lim Ah Ghee* [1994] 3 SLR 224 for the proposition that the court cannot assist in the enforcement of an illegal contract and would take cognizance of an illegality even when it was not pleaded. Here, all the

facts relating to illegality were already before the court. There can be no prejudice to the plaintiff since by the principles enunciated in *Sim Tony v Lim Ah Ghee*, the court would in any event have to take cognizance of the illegality. Counsel pointed out that the plaintiff had claimed payment on the cheque that was issued as part-payment for the procurement *inter alia* of architectural and professional engineering services, even though the plaintiff was neither a registered architect nor registered engineer under the relevant legislation. Citing *BEP Akitek (Pte) v Pontiac Land Pte Ltd* [1992] 1 SLR 251 ("*BEP Akitek*") and *Skilling John B& Ors v Consolidated Hotels Ltd* [1978-1979] SLR 137 ("*Skilling*"), counsel argued that the plaintiff was precluded from recovering the invoice amount.

54 As an alternative, counsel for the defendant argued that contravention of ss 11 and 12 of the Architects Act and PE Act respectively were questions of law and need not be pleaded, citing *Wong Bark Chuan David v Man Financial (S) Pte Ltd* [2007] 2 SLR 22, *Development Bank of Singapore Ltd v Bok Chee Seng Construction Pte Ltd* [2002] 3 SLR 547 and *Banner Investments Pte Ltd v Hoe Seng Metal Fabrication & Engineers (S) Pte Ltd* [1997] 1 SLR 461.

55 The second reason proffered by counsel for the defendant to allow the amendments was the fact that the hearing before the court was by way of a rehearing and it was trite law that new evidence can be adduced in such cases. Relying on the appellate court's decision in *WBG Network (S) Pte Ltd v Sunny Daisy Ltd* [2007] 1 SLR 1133 (which referred to *Lassiter Ann Masters v To Keng Lam* [2004] 2 SLR 392), he said the second and third principles in *Ladd v Marshall* [1954] 1 WLR 1489 did not apply for admission of new evidence at Registrar's Appeals (*viz* the requirement that the evidence must be such that if given, it would probably have an important influence on the result of the case and it must be apparently credible but need not be incontrovertible).

56 Counsel for the plaintiff not unexpectedly submitted that the second Appeal should be dismissed. He pointed out that from the outset the plaintiff never held himself out to the defendant as either an architect or an engineer. The defendant could have personally appointed all the consultants individually but saved himself that hassle by getting the plaintiff to appoint them himself. The arrangement was for the defendant to pay the plaintiff who would in turn pay all the consultants, all of whom were qualified in their own right (a fact that the defendant had not disputed). Counsel also relied on s 10(5A) of the Architects Act. He said if the defendant's argument was accepted, it meant the defendant would walk away with paying nothing.

The decision

57 As the submissions from both counsel require looking into the relevant provisions in the Architects Act as well as the PE Act, I now turn to the Acts in question.

58 The relevant sections of the Architects Act are set out hereunder:

> 10 (1) Subject to the provisions of this Act, no person shall draw or prepare any architectural plan, drawing, tracing, design, specification or other document intended to govern the construction, enlargement or alteration of any building or part thereof in Singapore unless the person is –
>
> (a) a registered architect who has in force a practising certificate; or
>
> (b) under the direction or supervision of a registered architect who has in force a practising certificate……..

(5) Subject to the provisions of this Act, no person shall —

(a) supply or offer to supply architectural services in Singapore

unless the person is —

(i) a registered architect who has in force a practising certificate and is doing so on his own account or as a partner in a licensed partnership, a licensed limited liability partnership or a partnership consisting wholly of registered architects who have in force a practising certificate;

(ii) an allied professional and is doing so only by reason of being a partner in a licensed partnership or limited liability partnership; or

(iii) a licensed corporation or limited liability partnership.

(5A) Notwithstanding subsection (5), a builder may supply or offer to supply architectural services in Singapore in connection with any building works which he undertakes to carry out if the architectural services are provided by a person referred to in subsection (5)(i)(ii) or (iii).

11 Subject to the provisions of this Act, no person shall be entitled to recover in any court any charge, fee or remuneration for any architectural services rendered in Singapore unless the person rendering such services is authorised by this Act to supply those services.

59 Section 10 of the PE Act states:

(1) Subject to the provisions of this Act, no person shall engage in any of the prescribed branches of professional engineering work in Singapore or draw or prepare any plan, sketch, drawing, design, specification or other document relating to any of the prescribed branches of professional engineering work in Singapore unless the person –

(a) is a registered professional engineer who has in force a practising certificate authorising him to engage in that branch of professional engineering work; or…..

60 However before I deal with the issue of illegality in relation to the above provisions of the Acts, I have first to address the deficiency of the defendant's affidavit filed in support of the amendment application.

61 As alluded to earlier (at [48]), the defendant's supporting affidavit (six brief paragraphs) did not explain the reason for the late amendment. In para 3 thereof the defendant made the following statement:

I make this affidavit to put forward the following information to this Honourable Court:

(1) the plaintiff is not registered under the Board of Architects of Singapore as a practitioner architect and/or does not hold a practising certificate issued by the Board of Architects of Singapore; and

(2) the plaintiff is not registered under the Professional Engineers Board of Singapore as a practitioner engineer and/or does not hold a practising certificate issued by the Professional Engineers Board of Singapore.

62 The defendant then exhibited online searches he had conducted on 4 December 2007 in the Register of Practitioners of the Boards of Architects and Professional Engineers. There was no explanation whatsoever as to why the information the defendant produced in his two exhibits could not have been obtained earlier and/or why the original defence could not have included the issue of illegality, well before the summary judgment application was filed.

63 It is a fundamental rule that a party who applies for leave of court to amend pleadings (particularly after judgment has been entered against him) must explain on affidavit the reasons for the proposed amendments as well as for the lateness therefor. The requirement is to assist the court to decide whether it should exercise its discretion in favour of the applicant. As the defendant failed to comply with this basic rule, why should the court (below and on appeal) even consider the proposed amendments?

64 In any event, despite the defendant's non-compliance with the affidavit requirement, I went on to consider the arguments presented for the second Appeal vis a vis the issue of illegality.

65 At the outset, I would point out that this case was vastly different from the two cases cited on the defendant's behalf. In *BEP Akitek* and *Skilling* ([53] *supra*), architects (as an incorporated body) and foreign engineers both of whom were not registered in Singapore under the prevailing Architects Act and PE Act respectively, failed in their claims against developers for professional services rendered. The plaintiff here did not claim for professional fees rendered either as an architect or as an engineer. The consultants' names, *not* the plaintiff's, appeared in the tender documentation. The plaintiff's task was that of a project manager; he was to appoint all the necessary consultants, co-ordinate their work, act as a liaison between the former and the defendant and collect the consultants' fees on their behalf.

66 My view is corroborated by Lee's affidavit. Lee had deposed that he left the issue of payment of his fees to the plaintiff. As an aside, I noted that Lee had also confirmed that he received no payment from the defendant, despite the defendant's professed willingness to pay the consultants direct. The defendant had produced no evidence of his alleged offer of 6 August 2006 in [15] and nothing to show that he followed through on that offer if indeed it was made. As Lee's letter of appointment was signed with the plaintiff, I wonder whether the defendant would indeed have paid, had Lee presented the defendant with his invoice for architectural services rendered. If the plaintiff is unable to recover his fees and those of the consultants and if Lee is precluded by lack of privity of contract from claiming his fees directly from the defendant, it would mean (as counsel for the plaintiff submitted), that the defendant ended up with free services while the plaintiff would have to meet the individual consultants' charges from his own pocket. That cannot be right.

67 Consequently, notwithstanding the lengthy and valiant submissions put forth in that regard by counsel for the defendant (and contrary arguments from his counterpart for the plaintiff) that the plaintiff had contravened s 10 of both the Architects Act and the PE Act, I was of the view that the two provisions were irrelevant.

68 An alternative submission from counsel for the plaintiff was that his client came within the saving provision of s 10(5A) of the Architects Act as he was a "builder" who had provided architectural services through Lee, who being a registered architect, came within the ambit of s 10(5)(a)(i) of the same Act. "Builder" is not defined in the Architects Act but it adopts the meaning in The Building Control Act (Cap 29, 2004 Rev Ed ("the BCA"). In the BCA, "builder" means

> any person who undertakes, whether exclusively or in connection with any other business, to carry out any building works for his own account or for or on behalf of another person (referred

to in this definition as A), but does not include any person who contracts with a builder for the execution by that person of the whole or any part of any building works undertaken by the builder for and on behalf of A under a contract entered into by the builder with A.

Based on the above definition, clearly the plaintiff cannot come within the ambit of a "builder" under s 10(5A) of the Architects Act.

69 If neither s 10 of the Architects Act nor of the PE Act applied to the plaintiff's claim, how would the issue of illegality assist the defendant let alone raise triable issue so as to afford him a defence? It bears remembering that it is a well-established rule that leave to amend pleadings will be refused if the new claim is bound to fail. In this case, the defendant's defence of illegality was a non-starter.

70 Consequently, I dismissed the second Appeal with costs. Having disposed of the second Appeal, I turned back to the first Appeal. In the light of my earlier comment (in [47]) that the first Appeal hinged on the fate of the second Appeal, it followed that I had no hesitation in dismissing the first Appeal. It was clear on the affidavits that the defendant's allegations were generally untrue and the defence that he had filed was at best shadowy.

71 I refer to four instances where he was clearly shown to be untruthful. First, only the defendant would believe his own allegation that the 968 page tender documents and 35 drawings were hastily prepared. Secondly, Lee refuted the defendant's claim that the defendant was forced to contact the architect direct because the plaintiff did very little or nothing; Lee's only contacts with the defendant were made through the plaintiff. Third, the defendant should have or could have produced the report of Turner & Townsend Pte Ltd if indeed they confirmed to him that construction costs should only approximate $250 to $280 per square foot. Lastly, failing the report of Turner & Townsend Pte Ltd, the defendant could have got at least one of his many well-meaning acquaintances to depose on oath that the plaintiff's estimated cost of construction of $420.00 was indeed excessive. He could have done considerably more but he did not. Coupled with the fact that he raised the issue of misrepresentation only after the plaintiff requested for payment of the dishonoured cheque, the defendant's allegations and defence did not appear to me to be bona fide. Instead, his actions showed he was attempting to avoid paying what was due to the plaintiff.

72 Counsel for the plaintiff had also complained that the defendant had attempted to delay the plaintiff's summary judgment application by applying for an adjournment at the first hearing in order to file his affidavit when the defendant could have done so in the five weeks prior to the hearing. For the adjourned hearing on 5 November 2007, counsel for the defendant requested another adjournment and offered to pay costs to the plaintiff. The court granted an adjournment to 7 November 2007 without ordering costs against the defendant. On 7 November 2007, the defendant's second affidavit was served on the plaintiff's solicitors that morning itself leaving counsel for the plaintiff with little time to respond. Counsel for the defendant further applied to the Assistant Registrar for leave to file Lee's second affidavit. Such tactics by the defendant were aimed at obtaining another adjournment. However the Assistant Registrar ordered the hearing to proceed noting that there had clearly been delay on the defendant's part in filing his affidavits at the eleventh hour. I should add that Lee's second affidavit was eventually filed by the plaintiff's solicitors on 9 November 2007 (after the summary judgment application).

73 The defendant had no plausible defence on the dishonoured cheque. Section 30(1) of the Bills of Exchange Act at [1] states:

> Every party whose signature appears on a bill is prima facie deemed to have become a party thereto for value.

Case law states that a bill of exchange or a promissory note is to be treated as cash and the court will give summary judgment for the claimant save in exceptional circumstances (see *Chalmers and Guest on Bills of Exchange, Cheques and Promissory Notes,* Sweet & Maxwell, 16th Ed, 2005 at p 233 para 4-010). The burden under s 30(3) of the said Act was on the defendant (which he failed to discharge) to prove exceptional circumstances such as that the cheque was affected by fraud, duress or illegality. I therefore affirmed the decision of the court below in awarding final judgment in the sum of $201,978 to the plaintiff under s 57 of the Bills of Exchange Act with interest plus costs.

74 In the light of my earlier observations in [71] and my dismissal of the defence of illegality (which would have rendered the consideration void), the defence of partial consideration is again unsustainable; the plaintiff was able to substantiate what he had done for the defendant through Lee as well as through the thick tender documentation. The defendant can only succeed in this defence if the amount can be ascertained and liquidated, which he did not or could not do in the court below (see *Nova (Jersey) Knit v Kammagarn Spinnerei Gmbh* [1977] 1 WLR 713 at 720).

75 Counsel for the defendant sought to persuade me that consideration for 15% relating to tender preparation which formed part of the plaintiff's claim of 35% of total contract value had failed. The 15% amounted to $86,562 (inclusive of GST). He submitted the consideration had failed because it was the defendant's case that the architect was required to prepare a tender based on a confirmed design but the defendant had not yet confirmed the design. I noted that nowhere in the communication between the parties or in the affidavits of the defendant was the issue of his lack of confirmation of the design raised. It was most certainly an afterthought. In any case, based on the wording in the plaintiff's letter at [6] above, there was no requirement of confirmation of design by the defendant before the plaintiff was entitled to 30% payment, once the tender was prepared.

76 On the facts, it certainly looked like the defendant had repudiated the letter of appointment, first by his own SMS message to the plaintiff and later by his solicitors' letter dated 25 May 2007. Accordingly, the plaintiff should have been entitled to damages for the defendant's breach of contract. Even so, notwithstanding such apparent breach and my scepticism of the veracity of the defendant's allegation that he had been misled by the plaintiff, I nonetheless gave the defendant the benefit of the doubt.

77 Accordingly, I varied the order of the court below by setting aside the interlocutory judgment awarded to the plaintiff and directed that the issues of misrepresentation and repudiation of contract go for trial with costs in the cause.