IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1991] SGHC 175

Suit 3989/1984

Between

BEP Akitek (Pte)

… *Plaintiff*

And

Pontiac Land Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Building and Construction Law — Architects, engineers and surveyors — Contract of employment; Professions — Architects; Words and Phrases

Version No 1: 11 Sep 2026 (01:05 hrs)

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BEP Akitek (Pte) v Pontiac Land Pte Ltd

[1991] SGHC 175

Suit 3989/1984
Goh Joon Seng J
30 November 1991

1 Cur Adv Vult

2 The plaintiffs are a company incorporated in Singapore on 2 March 1974 with unlimited liability. The objects under the memorandum of association are, inter alia, to `... carry on the practice of architects in accordance with the laws, rules and regulations relating thereto and for the time being in force in Singapore and to enable the members of the company and such of its employees as are qualified to do so under the laws of Singapore for the time being in force to practise as architects under the company`s name`.

3 Upon its incorporation, it took over the architectural practice of the partnership firm of BEP Akitek on 1 April 1974.

4 The defendants are, inter alia, property developers and were formerly known as Pontiac Trading Co (Pte) Ltd.

5 Prior to the incorporation of the plaintiffs, the firm of BEP Akitek had been engaged by the defendants as project architect for the project known as

Pertamina Building at Jalan Slipi, Jakarta (`Pertamina Building`). The defendants were the contractors.

6 On 29 May 1974 the plaintiffs notified the defendants in connection with the Pertamina Building project as follows:

> *We write to inform you that as from 1 April 1974, the partnership firm of BEP Akitek has been sold as a going concern to BEP Akitek (Pte), a company incorporated in Singapore on 2 March 1974, and whose shareholders are the partners of BEP Akitek. The directors of the company are Ong Eng Hung, Alex Foo Kee Fong, Tay Lee Soon and Yang Soo Suan.*

7 It is proposed that all pending and outstanding professional services due to be rendered to you in respect of the above project by BEP Akitek will be rendered by BEP Akitek (Pte) instead, and we would request you to address all your further communications and instructions in this regard to BEP Akitek (Pte).

8 Similarly, it is proposed that all bills for outstanding fees for professional services already rendered and for fees for services to be rendered to you in respect of the above project whether rendered by BEP Akitek or BEP Akitek (Pte) will be issued to you by BEP Akitek (Pte), to whom you are requested to make all further payments. To the extent that they relate to professional services rendered by BEP Akitek, all such payments will be accepted by BEP Akitek as a full discharge of their claims in this regard. ...`

9 The defendants agreed to the plaintiffs taking over as the project architect for the Pertamina Building project.

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10 As at July 1976 the fees due to the plaintiffs as project architect for the Pertamina Building project was $606,318 less the sum of $290,000 paid leaving a balance of $316,318.

11 Due to cancellation of the Pertamina Building project by the employers, the plaintiffs at the request of the defendants agreed to accept $100,000 in full settlement of the balance of $316,318. This was subject to the plaintiffs being retained, should the defendants decide to `continue with the projects at Institution Hill and Grange Road, ... at agreed fees`, as their project architect for these two projects - vide letter of 12 August 1976 from the defendants to the plaintiffs being DB25. This is confirmed by the evidence of PW1, Mr Ong Eng Hung, testifying for the plaintiffs at p 20 of the notes of evidence:

> Q: See PB14 of 25 May 1976 your letter to defendants and DB24 of 27 July 1976 your letter to defendants. DB25 of 12 August 1976 is the reply. These are letters referred to in the pleadings. The appointment is still subject to fees to be agreed?
>
> A: Yes.

12 In the events that followed no agreement on fees and other terms was arrived at. So on or about 20 September 1983 the defendants discharged the plaintiffs as the architects for their projects, namely, at Grange Road, Institution Hill and Oxley Road and the plaintiffs agreed to give their letter of release to the Board of Architects only upon payment of their fees for work done prior to their discharge. Their claims as set out in their statement of fees in DB54 are as follows: (a) Pertamina Building - $216,318; (b) Orchard Boulevard/Grange Road - $108,948.91; (c) Institution Hill - $229,152; (d) Oxley Road - $25,000.

13 On receipt of the statement of fees the defendants paid up in full for the Institution Hill project at $229,152 and the Oxley Road project at $25,000. For

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the Orchard Boulevard/Grange Road project, the defendants paid $101,825.91. The difference arose because the plaintiffs based their calculation on `statistical gross floor area` whereas the defendants contended that it should be based on `gross building area`. The claim for $216,318 for the Pertamina Building Project was rejected by the defendants on the ground that the plaintiffs had accepted $100,000 in full settlement of fees due thereon.

14 As the plaintiffs` claims were not paid in full, the plaintiffs withheld issuing their letter of `release`, hence no other architect could be appointed in their place. The defendants thereupon furnished to the Board of Architects two banker`s guarantees for the amounts in dispute, ie $7,123 for the Orchard Boulevard/Grange Road project and the other for $216,318 for the Pertamina Building project. Following this the plaintiffs gave their letter of `release` thereby permitting other architects to be appointed.

15 On 20 June 1984 the plaintiffs commenced proceedings. On 27 July 1984 they filed an amended writ with a statement of claim claiming as a firm of architects practising in partnership for the sum of $946,668 being loss of expected profits due to the unlawful termination by the defendants of their professional services as architects for the Institution Hill and Grange Road/Orchard Boulevard projects. No claim was made for the $216,318 being the balance of fees for the Pertamina Building project.

16 The defendants by their amended defence filed on 2 May 1990 contended that the plaintiffs are an incorporated company and as such `are not a "registered architect" within the meaning of the Architects Act` and `are prohibited by law from claiming or recovering any charge fee or remuneration from the defendants` for work done by them as architects.

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17 The plaintiffs thereupon amended their claim to one for damages for wrongful termination of their services in causing the defendants to be provided with professional architectural services through their members and employees who were registered architects in respect of the Institution Hill and Grange Road/Orchard Boulevard projects. In his written submission counsel for the plaintiffs stated at para 9.5:

> *In the premises, it is unrealistic for the defendants to assert that the plaintiff-company, a non-natural entity, rendered professional services as an architect in Singapore. In reality what the plaintiff-company did was that it provided architectural services through the medium of natural persons who, the defendants well know, are registered architects within the meaning of the Architects Act.*

18 Under the Architects Act (Cap 213, 1970 Ed) s 11(1), `no person, company or firm not duly registered and in possession of a valid certificate of registration` shall `practise or profess to practise as an architect,` or `sell hire or otherwise supply for gain` any architectural plans or `be entitled to recover in any court any charge or remuneration for professional services rendered as an architect in Singapore`.

19 The plaintiffs were not registered with the Board of Architects as building or engineering contractors under s 5(1)(c) and s 9 of Cap 213. When Cap 213 was repealed and replaced by the Architects Act No 14 of 1976 (`the 1976 Act`) with effect from 21 January 1977 only natural persons holding approved architectural qualifications could be registered with the Board of Architects. Section 17 of the 1976 Act prohibits any person not registered under it from practising as architects and by sub-s (2) `no person, other than a registered architect, shall be entitled to recover in any court any charge, fee or remuneration for any professional service rendered as an architect in

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Singapore`. Section 18(1) of the 1976 Act also prohibits any person from employing `as an architect any person who is not registered under this Act`.

20 Section 2(1) of the Interpretation Act (Cap 1) reads:

> *In this Act, and in every written law enacted before or after the commencement of this Act, the following words and expressions shall, without prejudice to anything done prior to the commencement of this Act, have the meanings respectively assigned to them unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided:*
>
> *`person` and `party` include any company or association or body of persons, corporate or unincorporate.*

21 There is nothing in s 17 which renders it inconsistent to construe `person` as including a company and the provisions of s 17 therefore apply to a company.

22 In **Raymond Banham & Anor v Consolidated Hotels Ltd** [1976] 1 MLJ 5 the plaintiffs who were partners of a firm of consulting mechanical and electrical engineers practising in Hongkong rendered professional services in respect of the Hotel Sheraton project owned by the defendants. This was pursuant to a contract made between the plaintiffs and the defendants. The claim was for $106,250 being 85% of the value of work completed by them. The claim was dismissed on the ground that the plaintiffs were not registered under the corresponding provisions of the Professional Engineers Act No 29 of 1970 (`the PE Act`) and they therefore contravened s 18 of the PE Act even though the drawing of plans was carried out in Hongkong. Section 18 of the PE Act provides that:

> *Any person who not being registered as a professional engineer under this Act -*
>
> *...*

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> (c) engages in professional engineering work except under the direction or supervision of a registered professional engineer,
>
> *shall be guilty of an offence ...*

23 Section 19 of the PE Act also prohibits any person from employing `as a professional engineer any person who has not been registered under this Act`. Unlike Cap 213 and the 1976 Act, the PE Act does not contain express provisions prohibiting an unregistered person from recovering fees for his professional engineering services. A fortiori therefore if the plaintiffs` claim is for professional services ***rendered by them as architects*** , the claim will not be enforceable.

24 The purpose of the incorporation of the plaintiffs was to carry on the practice of architects under the name of the plaintiffs. The partnership of BEP Akitek was sold to the plaintiffs `as a going concern`. The plaintiffs were then appointed by the defendants as architects for the Pertamina Building project. After the cancellation of the Pertamina Building project, pending finalization of the terms of their appointment as the architects for the defendants` two projects which are the subject matter of this action, they carried out work as project architects. In exh P1 being the proposed condominium housing development typical floor plan for the Grange Road/Orchard Boulevard project, the plaintiffs were named therein as the architects. So also is the case in exh P2 being the site plan for the proposed condominium development at Institution Hill. All applications for development approval for the two projects were submitted by the plaintiffs.

25 On 3 March 1978 in PB85, PW1 wrote to the Minister for National Development addressing the problem of incorporated companies carrying on architectural practice:

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> *Dear Kim San,*
>
> *Registration of architectural companies*
>
> *I had thought that one of the effects of the Architects Act 1976 would enable architects to group into `companies`, and through `companies` to expand into joint ventures and wider activities. Such a trend would improve the standard and capability of our construction industry as a whole.*

26 Recently however a lawyer friend of mine said that in one of his cases he ran into difficulties on whether an architectural company has any right to fees if it is not registered by the Board of Architects.

27 Section 17 of the Act requires persons (which presumably include companies) to be registered before they can become entitled to fees. Yet in reply to my enquiry, the Board replied that it registers only natural-born persons.

> *... .*

28 In the reply dated 24 May 1978 PB86, the Permanent Secretary stated:

> *The Architects Act provides for registration of natural persons, but not companies, as architects. By virtue of s 17(2) of the Act, only registered architects or `partnerships` formed by registered architects can sue for fees for services rendered. A company (as distinct from a partnership) incorporated under the Companies Act is a separate legal entity and since it is not a natural person, it cannot be registered under the Architects Act. Such a company cannot therefore sue for fees under the Architects Act although there is nothing to prevent the registered architects who are members of or employees of the company to sue for fees for services rendered.*
>
> *... .*

29 Going to the evidence of PW1, at p 15 of the notes of evidence:

> Q: In the light of PB86 the plaintiff company continued with the architectural practice?

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> A: On the assurance that the company was not illegal. The advice in PB86 was that we cannot sue for fees. We therefore carried on as at that time we had many ongoing projects and none of the clients had raised this point about not having to pay our fees.

30 At p 16 of the notes of evidence:

> Q: DB30 of 12 April 1979 from Board of Architects to plaintiff company. Also advised company that it could not receive fees since the company is not registered and should cease to offer architectural services. Did you heed the Board of Architects` advice?
>
> A: Our position is that we had many ongoing projects. We took a gamble. Besides only our registered architects were handling the projects. We saw nothing wrong with that.

31 At p 17 of the notes of evidence:

> Q: What was the amount of fees involved?
>
> A: $5m or more in 1979.
>
> Q: In other words you took the risk that if the official views were correct that you might be precluded from recovering more than $5m?
>
> A: No. My point is all my clients were happy to pay the fees. Whereas if I were to inform them that I had no right to their fees I might not be able to recover my fees. Or I might lose part of it.

32 The guarantees furnished to the Board of Architects are in favour of the plaintiffs and the `release` thereby permitting the defendants to engage other architects was given on behalf of the plaintiffs.

33 Clearly it was the plaintiffs who undertook the professional architectural work though the same was executed by registered architects who were either shareholders or employees of the plaintiffs. Accordingly the plaintiffs` claim was unenforceable under the Architects Act (Cap 213, 1970 Ed) and/or the 1976

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Act in force at the material time. In my view the plaintiffs have also not suffered any loss due to the `premature termination` as they were fully occupied with other projects. Therefore the plaintiffs` claim was dismissed with costs.

34 **Outcome:**

35 Claim dismissed.

Goh Joon Seng J

Jimmy Yap (Donaldson & Burkinshaw) for the plaintiffs
Tang Khin Wai (Lee & Lee) for the defendants

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