

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 26

Suit 1273/1988, Suit 1355/1998

Between

Chung Meng Soon
Alfred Chung Meng Ang
Chung Meng Lim all
practising in the name and
style of Chung Swee Poey &
Sons

... Plaintiff

And

Lee Kai Investment (Pte) Ltd

... Defendant

GROUND OF DECISION

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Chung Meng Soon and Others v Lee Kai Investment (Pte) Ltd

[1993] SGHC 26

Suit 1273/1988, Suit 1355/1998
Karthigesu J
02 February 1993

1 Judgment:

2 Coram: Karthigesu J

3 GROUNDS OF JUDGMENT

4 The plaintiffs and defendants in both these suits are the same. The plaintiffs are a firm of registered architects and civil and structural engineers. The defendants are a family owned investment company in which the principal, if not the only, shareholders and directors are Tan Geok Tee (Mr Tan) and his wife Ching Mun Fong (Mdm Ching). The claim in Suit 1273 of 1988 is in respect of the professional services rendered by the plaintiffs to the defendants in connection with the re-development of their property at 69 Belmont Road, Singapore, on Lot 187-92 Mukim IV ('the project'). The claim in Suit 1385 of 1988 is for damages arising from an allegedly defamatory letter dated 24 May 1988 ('the letter') which the defendants sent by facsimile transmission to the plaintiffs and copied to the Board of Architects concerning the professional fees charged by the plaintiffs for the project.

5 Both suits were fixed for hearing before me. I heard the two suits together, keeping them separate only in respect of the opening and closing addresses of both counsel. The evidence flowed naturally from Suit 1273 of 1988 to Suit 1355 of 1988; thus it was convenient to record the evidence in both suits without a break.

6 At the end of the hearing I gave judgment in favour of the plaintiffs in both suits as follow:

7 Suit 1273 of 1988

(i) Fees for the project at 65% of 7.25% of \$2,420,153.84	\$114,049.75
(ii) Fees for re-design work on a quantum meruit	\$ 39,600.00
(iii) Bill P/304/02/85, septic tank	\$ 912.05
	\$154,561.80
Less paid to account	\$ 30,000.00
	\$124,561.80

8 Judgment for the plaintiffs for \$124,561.80 and costs. Interest on the judgment sum at 8% per annum from date of writ to date of judgment.

9 Counterclaim dismissed with costs.

10 Suit 1355 of 1988 (the defamation suit)

11 Judgment for the plaintiffs in the sum of \$90,000 and costs.

12 The defendants have appealed in both suits. I now give my reasons.

13 The facts in Suit 1273 of 1988 and Suit 1355 of 1988 (the defamation suit)

14 It is a well known fact, of which judicial notice may be taken, that Belmont Road, situated in postal district 1026, is one of the more fashionable residential areas in Singapore. In fact in the written statement to the Master Plan, 1985 edition, Belmont Road is listed under 'good class bungalow areas'.

15 In about 1972 the plaintiffs were commissioned by the defendants to carry out some works on the existing bungalow house, 69 Belmont Road which stood on Lot 187-92 Mukim IV. The area of Lot 187-92 was approximately 48,000 sq ft. Plans were prepared and the approval of the Building Control Division (BCD) obtained, but the works were not carried out by the defendants. In about 1976 the defendants approached the plaintiffs again, but this time, with a view to demolishing the existing dwelling house and to erecting in its place a 3-storey bungalow, including a swimming pool, a two lane bowling alley and other amenities (the project). The plaintiffs were instructed to design the building together with the swimming pool and a two lane bowling alley. The plaintiffs proceeded to do so and in 1978 obtained 'in principle' approval from BCD but written permission to carry out the development was refused, inter alia, on the ground that the proposed building was not designed essentially for residential purposes. On the instructions of the defendants the refusal of written permission was made the subject of an appeal and taken up to ministerial level but without success. The matter was then left in a state of flux until about the end of 1982 or early 1983 when Mdm Ching told Alfred Chung Meng Ang (Alfred Chung), the first plaintiff that she knew of another architect who was prepared to re-submit the plans on the defendants' concept for development. Alfred Chung agreed provided that if the other architect failed to get approval he and his firm would be re-appointed as the architects for the project. The other architect did not get the approval and so, in about the end of 1983, or early

1984 Alfred Chung and his firm were re-appointed as the architects for the project.

16 There is documentary evidence, which was referred to at the trial, that there were several discussions between Alfred Chung and Mr Tan on the project. The type of development was discussed and it was pointed out by Alfred Chung to Mr Tan that the Belmont Road property was 'strictly a first class residential property' and hence it was 'not possible to have a commercial development erected on it'. In another context the project was described as a '2-storey luxurious bungalow cum amenities'. There is also documentary evidence that there were discussions on Alfred Chung's professional charges. In one letter dated 16 February 1976, Alfred Chung said to the defendants:

17 'In answer to your question as to whether there is a different rate of professional charges on a residential from a commercial type of development we would advise that there is no such demarcation or distinction. An architect's professional fee is essentially based on the SIA's "Conditions of Engagement: Scale of Professional Charges" - a copy of which is attached for your reference and retention. Where repetitive building works are involved, the fees may be reduced. Your Middle Road project would give you an idea of the arrangement.'

< Emphasis added. >

18 In another document, purportedly minutes of a meeting between Alfred Chung and Mr Tan held on 2 August 1977 and confirmed by Alfred Chung on 26 September 1977, the following is recorded:-

19 'It was agreed that the mode of payment of professional fees would be in the following manner:

20 (a) If total contract cost is less than \$500,000 professional fees would be charged at 10%.

21 (b) For total contract cost up to and including \$750,000 professional fees would be at 9% i.e \$67,500.

22 (c) For total contract cost ranging between \$750,000 to \$850,000 the total professional fees would be only \$67,500.

23 (d) For total contract cost exceeding \$850,000 total professional fees would be \$67,500 plus 9% of amount exceeding \$850,000.'

24 When the plaintiffs were re-appointed as the architects for the project in about the end of 1983 or early 1984, it appears that Alfred Chung completed the designing of the building which was now to be a 2-storey bungalow with a double squash court and a swimming pool and attended personally on Mr Tan on 6 March 1984 to discuss further refinements particularly to the roof form and to discuss his professional fees. He had two letters with him addressed to Mr Tan. In one of the letters he referred to the roof form as well as other minor adjustments to be made to the planning scheme and concluded as follows:

25 'We confirm that we are willing to revise and adjust the plans as necessary; including one of the re-designing and re-drawing same without additional charge or charge to the agreed fees which is conveyed to you separately.'

26 In the other letter Alfred Chung, inter alia, made the following observations:

27 'Following your request of yesterday seeking the terms and conditions of our re-appointment we would attach herewith and as a guide a photocopy of this which was given on 26 September 1977 and which was previously used as a basis of our engagement.

28 As some of the terms and conditions given therein are no longer applicable, largely due to the passage of time and the refusal by the Building Authority to permit a three-storey development nor ten-pin indoor bowling facilities, we are using this as a broad basis to adjust and re-offer.

29 A copy of the revised scope and professional fees payable is attached herewith for which we shall be pleased to receive your comments and/or endorsement of acceptance.'

30 The revised scope and professional fees payable were as follows:

31 'Scale of Charges

32 We would offer the following terms and conditions:

33 (i) On a contract totalling less than S\$500,000 our fees chargeable will be based on 10% of the final contract sum.

34 (ii) On a contract totalling up to and including \$750,000. Our fees will be 9% of the final contract sum i.e \$67,500.

35 (iii) On a contract ranging from \$750,000 to \$850,000 the total fees will be offered as for (ii) above i.e \$67,500.

36 (iv) For a contract cost in excess of \$850,000 our professional fees will be \$67,500 plus 9% of the amounts exceeding \$850,000.

37 Terms of payment

38 The professional fees shall be payable on the following basis:

39 (i) taking instructions, preliminary sketch plans and estimated cost, the fee payable shall be \$10,000.

40 (ii) taking instructions, preparing sketch plans; submission of 9(1) application and obtaining approval, 15 per cent of the total agreed fees.

41 (iii) taking instructions, preparing sketch plans, making approximate estimate of cost, preparing working plan/road plan/swimming pool approval, 30 per cent of the total agreed fees.

42 (iv) taking instructions, preparing sketch plans, making approximate estimate of cost, preparing and submitting building plans, preparing, inviting and awarding Building Contract 50% of the total agreed fees.

43 (v) And such remaining balance of 50% of the total agreed fees as the value of the completed works bears to the total value of the works.'

44 However during the meeting Alfred Chung had with Mr Tan on 6 March 1984 agreement on a different basis was arrived at. This is contained in the defendants' letter addressed to the plaintiffs dated 6 March 1984 and confirmed by Alfred Chung on 6 March 1984 on behalf of the plaintiffs (the letter of engagement). The relevant portions of the letter of engagement read as follows:

45 `Scope of Work

46 (a) Professional services include

47 (i) Architectural and Building

48 (ii) Civil and Structural

49 (iii) Mechanical and electrical and includes for air-conditioning

50 and includes for the preparation of sketches, details, specifications, tendering, general supervision submission of plans to the relevant authorities; obtaining approval and clearances, etc, and finally obtaining the Certificate of Fitness for Occupation. Details of built-in furniture required for within the kitchen and bedroom, toilet compartments and such like are also included.

51 (b) Professional services specifically exclude

52 (i) Quantity surveyor's work

53 (ii) Landscaping

54 (iii) Topographical and land survey

55 (iv) Interior designing and acoustics

56 Scale of Charges

57 Charges will be 7.25% of the total cost of the project.'

58 Alfred Chung gave evidence of the work he did and the services his firm rendered to the defendants following the re- appointment of the plaintiffs as the architects for the project. He was subjected to a long and testing cross-examination. In my view he came out of it unscathed. Alfred Chung's evidence was that on re-appointment he immediately set to work to prepare the necessary plans for submission to the authorities for approval under s 9(1) of the Planning Act. He said that there were frequent alterations to the instructions he was given. These are all documented in the exchange of correspondence between the plaintiffs and the defendants put in evidence. Reference to the exchange of letters dated 11 May 1984 will illustrate the point. On 11 May 1984 the defendants returned to the plaintiffs 18 copies of site layout plans and 9 sets of sketch plans and noted as follows:

59 `With reference to Mr G T Tan's conversation with Mr M A Chung on 9.5.84, Mr G T Tan intends to amend:

60 (1) The original place marked for squash. Mr Tan intends to change the area into a sporting place for table-tennis, billiards, etc.

61 (2) Move the swimming pool forward a little.

62 (3) The squash court will be fixed beside the swimming pool.

63 (4) To accommodate the space for the swimming pool and squash court, the pump room, male and female toilets will be moved to suitable places.

64 Mr Tan will accept the amendment of the above points and perhaps any further amendments in future after submission, free of charge.' < Emphasis is mine. >

65 To which Alfred Chung replied also on 11 May 1984, inter alia, as follows:

66 'We are pleased to confirm and comment as follows:

67 (1) The re-submission for the 9(1) application was made today.

68 (2) On your request and suggestion for amendments (to the layout) we would confirm and agree to have these put in hand. This is subject to the intended re-siting of the squash court and the structure generating additional gross area that is within planning constraints.

69 (3) As your request does not involve re-design rather than one that is for additional facilities, we are willing and agree that the original fee arranged will not be adjusted and increased on a percentage basis.' < Emphasis is mine. >

70 The planning approval under s 9(1) of the Planning Act was obtained on 2 July 1984. It was subject to the following conditions:

71 (a) Re retaining wall - not relevant.

72 (b) Submission of Building Plans to the Building Authority for approval within 3 months from the date of grant of planning approval.

73 (c) Commencement of building operation with the approval of the Building Authority within 6 months from the date of grant of planning approval.

74 (d) Construction to reach 2nd storey within 9 months from the date of grant of planning approval.

75 (e) If any of the above conditions (b), (c) and (d) is not fulfilled, the planning permission is deemed to be cancelled unless an extension of time is granted by the Competent Authority to fulfil planning conditions.'

76 The grant of written permission or planning approval under s 9(1) of the Planning Act was duly communicated by the plaintiffs to the defendants. According to Alfred Chung's evidence he received verbal instructions from Mr Tan to call for tenders and to implement the project. Accordingly Alfred Chung started work on the building plans and made an estimate of the construction cost. He was required to submit a 'planning statistics form' to the BCD which he did on 21 May 1984, in which he stated the estimated construction cost (excluding cost of land and moveable fixtures) at \$2.3m. In order to do this Alfred Chung stated in his evidence that he relied not only on his experience as an architect of 25 years but had called for quantification from the various trades like suppliers of lifts, swimming pool, squash court, aluminium windows and decorated ceiling plaster boards and had also taken account that Belmont Road was in a 'good class bungalow area' as stated in the written statement to the Master Plan. He also said in evidence that he had commenced preparing the specifications and had sought confirmation from the defendants of the appointment of a quantity surveyor with whom he would finalise and co-ordinate the preparation of the tender documents.

77 It is common ground that the defendants had not at anytime up to the withdrawal by the plaintiffs of their services to the defendants as their architects, been authorised to appoint a quantity surveyor, despite the many requests the plaintiffs, and in particular Alfred Chung, made to the defendants and to Mr Tan in particular (of which there is ample documentary evidence). This according to the evidence of Alfred Chung had thwarted the progress of the plaintiffs' work as the defendants' architects for the project and was one of the two reasons for

the plaintiffs withdrawing their services to the defendants. The other was the continued flow of instructions for alterations culminating in the re-design of the roof structure.

78 I will return to the reasons for the plaintiffs withdrawing their services to the defendants later. For the moment I want to deal more specifically with the progress of the architectural and other services rendered by the plaintiffs to the defendants for the project.

79 I have referred to the plaintiffs commencing work on the preparation of the building plans. This work which was commenced soon after the planning permission was obtained on 2 July 1984 was completed around September 1984. The building plans were duly approved by the defendants and submitted to the BCD on 24 September 1984 together with the appropriate submission form. The submission form requires certain data to be furnished and must be signed by the owner. The one I want to refer to is the 'estimate of construction (excluding cost of land and moveable fixtures)'. The figure given was \$2.3m. The submission form was duly signed by Mr Tan for the defendants. I make particular mention of this because of the issue taken by the defendants throughout the hearing that they never accepted that a fair estimate for the building they intended to put up would be anything like \$2.3m. On the documentary evidence I have referred to in this para I find that the defendants were well aware of and accepted Alfred Chung's estimate of the cost of construction of the building he had designed for them.

80 As is usual in these matters BCD will issue a number of written directions for compliance before approving the building plans. So it was also in this case. Written instructions were received from the BCD and promptly complied with by the plaintiffs.

81 The development of the project required that the sewerage system be connected to the public sewers. The existing 69 Belmont Road property was serviced by a septic tank. This meant that the septic had to be removed and a sewerage system laid and connected to the public sewer system. This work was undertaken on 19 September 1984. The work was duly completed. The plaintiffs rendered their bill dated 25 February 1985 for this work being their bill P/304/02/85 for the sum of \$912.05 being 7.25% of the final contract sum for this work of \$12,580. Up to the date of hearing this bill remained unpaid.

82 Whilst awaiting the approval of the building plans from BCD the plaintiffs advised the defendants that soil investigation work had been carried out and sent the soil specialist's report to the defendants for their information on 17 November 1984. By their letter the plaintiffs also informed that defendants that the plaintiffs' professional engineer would start work on the preparation of the foundation and other structural designs. The foundation and structural calculations were duly submitted to the BCD for approval.

83 The building plans were approved by BCD on 4 February 1985, slightly over four months from the date of submission. This is to my mind indicates the promptness with which the plaintiffs must have dealt with the written directions they received from the BCD. Alfred Chung said in evidence, and I accept it that normally BCD would take four to six months to approve building plans.

84 With the approval of the building plans and with the near completed specifications and tender documents, which only required the appointment of a quantity surveyor by the defendants to finalise, a stage had been reached when building operations could commence. The plaintiffs decided that it was time to render a bill for the stage of their professional work already reached and ask for payment to account. Accordingly on 25 February 1985 the plaintiffs addressed

a letter to the defendants drawing attention to the letter of engagement dated 6 March 1984 and in particular to the agreement of professional charges based on 7.25% of the total cost of the project and continued as follows:

85 'Whilst we had earlier estimated the total cost at \$2.3m and submitted this estimated figure to the Building Authority we have at this point in time used a lesser estimated cost and amount of \$1.5m and based our interim account No. 1 (as per the attached) on this estimated arbitrary figure and on 40% of the fees due and payable.

86 We shall be grateful therefore to be issued with your cheque for the amount of \$43,500 in settlement in due course.'

87 In his evidence Alfred Chung explained why he had departed from his earlier estimate of \$2.3m and why he had based his bill on 40%. He explained that his previous experience with the defendants (it is not denied that the plaintiffs have handled other projects for the defendants) was that they were tight with their money and never paid their bills promptly. He felt he stood a better chance of getting some payment if he lowered the figures for the interim account No. 1. He further maintained that he had in fact made it clear by his letter referred to above that he was basing his interim account No. 1 on figures lower than what he was entitled to whilst not conceding that he was not entitled to charge on \$2.3m and at a higher percentage than 40%. I have no hesitation in accepting Alfred Chung's explanation. I am satisfied that he was not revising the estimate cost of construction of the project to \$1.5m. Nor was he conceding that the stage of the professional services rendered did not entitle him to more than 40%. In fact he contended, which I accept, that under the SIA conditions he would have been entitled to 65%.

88 By another letter dated 25 February 1985 the plaintiffs gave the defendants a proposed schedule and asked for instructions relating to the implementation of the project vis a vis the preparation and calling of tenders and requested that a quantity surveyor be appointed. In a further letter dated 28 February 1985 the plaintiffs gave the names of three quantity surveyor firms for the defendants' consideration.

89 The defendants did not respond to the plaintiffs' letter dated 25 February 1985. The conditions of planning approval required building operations to commence six months from date of planning approval and according to the evidence of Alfred Chung the plaintiffs were getting no firm response from the defendants. There had been murmurings of further re-designing the roof and other alterations to the siting of the swimming pool and the employment of Hong Kong labour to keep the cost of construction down. All this caused him to write to the defendants on 4 March 1985, by a registered letter, as follows:

90 'We refer to the abovementioned development and in particular to our letters dated 25 and 28 February 1985.

91 For our records and proper order please confirm in writing your intentions for us to prepare Tender Documents and implementation of the building project approximately in accordance with the Programme/Work Schedule given in the first mentioned letter.

92 We would appreciate that this be given separately in writing within the next ten (10) days. Alternatively, your acceptance may be conveyed by your endorsement on and return to us of the attached copy of this letter.

93 As otherwise, notwithstanding our intentions given previously no action will be taken on tender documentation and the calling of tenders. Your attention is drawn to the conditions attached to the planning approval - under plan "AM" in DC 485/47 dated 2 July 1984. Permission is obtained for the commencement of building operation to be deferred now to 1 May 1985.'

94 The defendants still did not respond nor did they reply to the plaintiffs' letter of 4 March 1985. A reminder was sent on 18 March 1985. The result was that Alfred Chung met with Mr Tan at the defendants' office on 13 April 1985. Alfred Chung was handed a letter signed by Mr Tan for the defendants dated 13 April 1985 and a cheque for \$30,000. The letter read as follows:

95 'We refer to your letter ref MAC/JL/BR- 2.B dated 25 February 1985.

96 Notwithstanding your estimate of total project cost, as per para 2 of your letter, the architect's fee is 7,% of the total cost based on actual billing by contractors. We also reserve the right to call tenders and also to appoint and invite our own local and/or foreign contractors including Hong Kong contractors which may reduce actual construction cost to \$40 psf or about. Material used will be determined by us.

97 If the above condition is agreeable to you, kindly accept our Citicheque 045466 for \$30,000 being advance payment on above mentioned services rendered. < Emphasis added. >

98 Alfred Chung noted his agreement and acceptance on the letter which he signed and wrote thereon in his own handwriting the words - 'Proposed fees based on final actual contract sum'.

99 In his evidence Alfred Chung explained why he accepted the new term as a condition of the payment of the \$30,000. He knew that the proposed building could not be built at a cost of \$40 per square foot. He also knew that Hong Kong contractor's costs were generally 5 to 10 per cent higher than local prices. As for Hong Kong labour, they being more skilled than local labour would cost more in addition to which foreign worker's levy, air fares and lodging expenses would have to be incurred. He was quite happy to base his fees on the 'final actual contract sum' as this could well turn out to be more than the \$2.3m he had estimated. The explanation given by Alfred Chung made perfectly good sense to me.

100 The appointment of a quantity surveyor was still proving to be an issue. On 19 April 1985 the plaintiffs in a letter to the defendants addressed this question as follows:-

101 'We would reiterate that our appointment and professional services do not provide for quantity surveyor's services. We are now taking this opportunity of forwarding herewith the offers of

102 (a) Messrs WT Partnership dated 28 February 1985 and

103 (b) Messrs CKP Surveyors dated 25 March 1985.'

104 Despite the fact that the building plans were approved by the BCD as long ago as 4 February 1985 and the date by which building operations should have commenced was long past, even the extended date of 1 May 1985, and despite the fact that all tender documents were awaiting finalisation by the quantity surveyor to be appointed by the defendants, the defendants were still issuing instructions to the plaintiffs for further alterations to the building plans.

This is evident from the plaintiffs' letter to the defendants dated 25 June 1985 in which the plaintiffs noted as follows:

105 `We would confirm having been instructed recently by your Mr G T Tan to have caused the following modifications and revisions to be made to the approved plans and development:

106 (1) Raising the proposed datum floor level (now given as PL 129.05) by 1.45 metres. As a consequence the external aprons, terraces, steps, etc have to be adjusted to accommodate the increase in level.

107 (2) Provision of a steeper roof pitch thereby increasing the roof ridge by 500mm approx. together with adjustments and minimising concrete rainwater gutters to 400mm wide nominal.

108 We shall appreciate your confirmation and acceptance of the amendments at an early date in order that RC details may be accordingly adjusted to suit amended plans which are required for submission to the Building Authority.'

109 On 12 July 1986 the plaintiffs having complied with the above instructions sent the revised plans to the defendants and stated as follows:

110 `We would appreciate receiving your comments and/or instructions soonest possible although because of your urgency we are proceeding with the modifications and including same in our tender documentation.

111 In the event that you require further amendments/ revisions please indicate these on any of the several copies of the plans and return same for our

necessary follow through action. Please be informed that formal planning permission may be necessary on the deviations from the original approval.'

112 The flow of instructions for further modifications and revisions of the building plans and the development of the project continued unabated. These were all carried out by the plaintiffs. Still no quantity surveyor had been appointed by the defendants. By August 1985 an untenable position was reached. The plaintiffs by their letter dated 1 August 1985 commented as follows: (only the relevant portions are set out)

113 `On our initial discussions in mid April 1985 and as arranged we had proceeded with the preparation of tender documentations, viz architectural details, specification writing and structural computations and details. Your latest instructions which are more particularly detailed and discussed hereunder have created a likelihood that our efforts and time spent on the tender documentation and earlier submissions to the authorities to be unfortunately aborted as a consequence. < Emphasis added. >

114 Your latest instructions, inter alia:

115 (a) Re-orientating the main building with the eastern wall of the living and master bedroom inclined towards and closer to the eastern boundary with a consequent change in the layout and configuration of the main building.

116 (b) Deletion of the previously intended "double squash court" and in lieu thereof utilizing the area for a "games room".

117 (c) Increasing the ground/first storey floor level of the main building by one metre in height causing a consequent need to provide additional steps and increment in datum levels elsewhere to suit.

118 (d) Re-planning and re-locating rooms and areas, etc, to the servant's/driver's quarters together with miscellaneous modifications, viz re-siting swimming pool and enlarging change rooms.

119 (e) Widening driveway particularly serving front entrance to 4.5 metres wide with consequent adjustments to the driveway generally elsewhere and amending turfed/tree-planting areas to suit.

120 (f) Incorporation of a 6 passenger lift and enlarged front entrance.

121 We hasten to add that your instructions as contained under item (a) above would in our opinion necessitate a fresh submission on planning (as well as on building plan) application to be made. We are therefore unable to complete the tender documentation originally intended. < Emphasis added. >

122 In your request for re-orientating the main building a situation would arise where the roof lines of the main and outbuildings will not show a continuous profile. A "break" (which we consider as unsightly) would be evident at the west wall of stair "2".

123 We are hopeful that you will re-consider and not require substantial changes on item (a) abovementioned to be put in hand. The original orientation which provides a direct eye's view at entrance driveway gate in our opinion should not be compromised.'

124 However, the above instructions were insisted on by the defendants and were duly complied with by the plaintiffs. The new plan was admitted in evidence and is plan 8 in 2AB. The original approved plan also admitted in evidence is plan 5 in 2AB. Tracings of both plans were also provided so that by placing one over the other the differences in orientation and design could easily been seen. Even to the uninitiated there is no semblance between the two. Alfred Chung gave evidence detailing the differences in orientation and design of the two plans. Most strikingly the roof structure was completely different. Alfred Chung's evidence was supported by the plaintiffs' witness Raymond Kuah Leong Heng (Mr Kuah). Mr Kuah is an architect of 32 years experience. He holds a diploma in architecture from the University of Hull. He is an associate of the British Institute of Architects; a member of the Singapore Institute of Architects and a council member since early 1968. He is also an associate of the Institute of Arbitrators and a fellow of Singapore Institute of Arbitrators and an accredited arbitrator of the Singapore International Arbitration Centre.

125 I need not rehearse Mr Kuah's evidence. Suffice it to say that his opinion was that the original roof was a simple double peek roof whereas the later design of the roof was a complex structure. He had no doubt that the roof structure was a complete re-design. Furthermore the defendants did not call an expert witness to refute the evidence of Alfred Chung and Mr Kuah. Indeed the only witness for the defendants was Mdm Ching. On the evidence I have no difficulty in finding as a fact that the roof structure was totally re-designed and that the orientation of the main building was totally changed and further that the alterations to the main structure were substantial involving a re-calculation of the RC calculations.

126 This is not the end of this sorry tale of amendments and re-designs. Notwithstanding what the plaintiffs had advised the defendants on 1 August

1985, yet more instructions were given regarding the roof in particular on 7 September 1985. It was that 'the roof top of the main building should be in the same style as the building of the Indonesian Consul-General in Singapore'. The plaintiffs complied yet again and on 17 September 1985 wrote to the defendants, inter alia, as follows:

127 'In response and in connection with your wishes to re-orientate and revise the previous approved plans we are attaching hereto an up-dated revised sketch plan designated "Amended Sketch Plan F" and of today's date.

128 Finally, we feel it pertinent to point out that the validity date for implementation and commencement of construction works on the original building plan (BP 2275/84) will expire on 3 February 1986; i.e within one year from release of the original plan approval.'

129 Not having heard in reply to their letter of 17 September 1985 the plaintiffs wrote to Mr Tan on 19 December 1985 informing him that the several amendments, alterations, modifications and re-design necessitated submissions both for s 9(1) i.e planning approval as well as building plan approval. A reminder followed on 28 January 1986 and to make sure that Mr Tan would get the letter a copy was sent to his Hong Kong office as well. At the same time Mr Tan was addressed by a separate letter and sent to his Hong Kong office by registered airmail. This letter contained this para;

130 'We would remind that the validity date for lodgement of the Notice of Commencement of Works on the original approved building plan under BP 2275/84 will expire on 3 February 1984. To this end, we would require your urgent action and/or instructions respective to the works or otherwise we shall not be responsible for any consequences arising from the cancellation of

planning/building plan approvals which are in hand due for example to the delay in the lodgement of amendment plans which are presented before you.'

131 Still not getting a response and in sheer desperation the plaintiff wrote to the Deputy Director, BCD on 30 January 1986 seeking permission to have the validity of the building plan approval extended beyond a one-year period on the ground that the owner (Mr Tan) was in Hong Kong whose return was awaited for endorsement of the amended plans before making the necessary application. Further the defendants were urged by letter dated 13 February 1986 to endorse the relevant plans and documents for submission to the authorities. The response the plaintiffs received, to say the least, was most alarming. By their letter dated 29 March 1986 the defendants simply ignored all the earlier urgings of the plaintiffs regarding the endorsement of the plans and simply said - 'We are still considering your proposal and will communicate with you in due course'.

132 The defendants did communicate with the plaintiffs as they said they would but only to instruct still more changes of a relatively minor nature. Ultimately and with some difficulty the plaintiffs managed to get a renewal of the original building plans. This was achieved by getting the BCD to extend the validity of the planning approval to 1 July 1988. The result was that the commencement date of building operations was extended to 18 July 1987. The amendment plans, however, had not been submitted to the authorities for approval as the defendants would not endorse the amendment plans. It would appear that the defendants were contemplating still more changes and amendments.

133 The plaintiffs for their part kept pressing. Here is a summary.

134 27 October 1986- 'We await your comments and/or confirmation of acceptance of the revisions and shall be much obliged if such could be accordingly given in (-) of the drawings which we would ask that you return for our record and file at any early date.'

135 7 November 1986- 'We await your instructions if you may on an urgent basis please as otherwise we will take that you would like to let the application lapse with time.'

136 14 November 1986- 'Unless we are instructed immediately on your intentions, we will not act further on your behalf on the re-submission.'

137 26 November 1986- 'Unless we are otherwise instructed urgently in the interim, we will take no further action on the revisions and will allow the re-submission to lapse with time.'

138 Everyone including the BCD were tired of the defendants' procrastinations. On 9 December 1986 the BCD wrote to the plaintiffs as follows:

139 ' With reference to our letter dated 9.10.86 on the above subject (the amendments) it would be appreciated if you could kindly let us have your reply within two weeks from hereof.

140 2. If we do not hear from you by then, we may have to disapprove your application.'

141 A copy of the BCD's letter was sent to the defendants on 13 December 1986. In this letter the plaintiffs said:

142 'We repeat our request for your instructions on the re-submissions. We would otherwise take no further action on the matter and a disapproval notice will be issued by The Deputy Director (D&BCD).

143 We are attaching hereto copy of a letter of The Deputy Director (D&BCD) Ref DC 485/47-86/W/484 dated 9 December 1986. The letter is self-explanatory. We would draw to your attention that the original planning approval is renewed and its validity will lapse on 1 July 1988.'

144 The defendants were not moved by this letter into action and true enough on 6 January 1987 BCD withdrew the planning permission for non-compliance of the planning conditions.

145 The upshot of all this was that the plaintiffs gave notice to the defendants on 23 June 1987 that unless they were further instructed within 21 days and the balance of their interim bill amounting to \$14,412.05 paid they would terminate their professional services and present the defendants with their final account of outstanding professional fees and disbursements.

146 Receiving no response from the defendants the plaintiffs sent their final bill to the plaintiffs on 22 December 1987. A summary of the bill was as follows:

(1) For all professional services rendered up to termination at 65% of 7.2% of estimated development cost of \$1.9m	\$68,875.00
Less interim bill No. 1 dated 25 February 1985	\$43,500.00
	\$25,375.00
(2) To taking instructions, preparing sketches and amended planning permission	\$10,000.00
	\$35,375.00

147 Not receiving payment the plaintiffs made a demand for payment on 5 January 1988 of \$49,787.05 made up as follows:

(1) Bill No. P/367/012/87 dated 22 December 1987	\$35,375.00
(2) Bill No. P/305/02/85 dated 25 February 1985	\$43,500.00
(3) Bill No. P/304/02/85 dated 25 February 1985 (septic tank)	\$ 912.05
	\$79,787.05
Less payment to account	\$30,000.00
Balance outstanding	\$49,787.05

148 The defendants still did not pay. The plaintiffs sent reminders on 6 January and 2 February 1988. On 6 February 1988 the defendants contended that the plaintiffs had wrongfully withdrawn their services and refused to pay the plaintiffs anything. They also demanded the refund of the \$30,000 paid to account.

149 The plaintiffs then took legal advice and addressed the defendants on 27 April 1988. They revised their claim by revising the estimated cost of the development of the project from \$1.9m to \$2,420,153.84. A summary of their revised claim is as follows:

(1) Fees due up to withdrawal of services at 65% of 7.25% of \$2,420,153.84	\$114,049.75
(2) Taking instructions, preparing revised sketch proposal plans and making amended planning application	\$ 10,000.00
(3) Septic tank bill	\$ 912.05
	\$124,961.80
Less payment to account	\$ 30,000.00
Amount due	\$ 94,961.80

150 On 30 April 1988 the defendants made the following request:

151 'To enable us to substantiate your claim, we request that you forward to us all documentary evidence in your possession and any instructions given to you by us until the present stage as you allege.'

152 I find this request utterly strange. The fees of the plaintiffs had been agreed to in writing by the letter of engagement dated 6 March 1984. The defendants were well aware that planning approval has been obtained as well as that the building plans had been approved. They were well aware of the changes to the roof design and the re-orientation of the building as these were all requested for by them. They ought to have realised that but for their own procrastinations and their demands for changes to design, alterations and modifications upon changes to design alterations and modification, building operations could have commenced well within the conditions imposed by BCD. A matter which was begun in early 1984 was dragged through to June 1987 through no fault of the plaintiffs but entirely through the actions, delays and refusals of the defendants.

153 I find the demand of the defendants as contained in their letter of 30 April 1988 most unreasonable. What if anything was negotiable was the estimated construction cost of \$2,420,153.84 and to a much lesser extent the 65% basis.

154 Anyhow the plaintiffs refused to comply with the demands of the defendants as contained in their letter dated 30 April 1988 and threatened legal action.

155 This brings me now to Suit 1355 of 1988 (the defamation suit).

156 On 24 May 1988 the defendants addressed a letter to the plaintiffs which they copied to the Registrar, Board of Architects, Singapore and faxed to the plaintiffs. It was not signed by Mr Tan or Mdm Ching, the two directors of the defendants but it was admitted by Mdm Ching that the letter was written and sent on her instructions. She said in her evidence - 'I did this to see that justice was done'. The letter reads as follows:

157 '1. Further to our Fax Ref: EK/MS/AN/0377/88 dated 13.5.88, we again point out that you have made contradictory demands in your previous letters, eg. your letter of 22.12.87 mentioned that your fee will be 55% of 7.2% of the estimated development cost of \$1.9m whereas your letter of 27.4.88 computed your fees to be 65% of 7.25% of estimated development cost of \$2.42m, all at such high cost. As an experienced architect, you have to understand that the development cost of a 2-storey private residential house should not exceed S\$700,000.00, as such, you are purposely trying to raise the development cost of our project, because you expect to obtain higher professional fees from us by your fraudulent tactics. If we presume that the total cost of the project is S\$700,000.00, then we can compute the architect fees as follows:

158 $S\$700,000.00 \times 7.2\% \times 65\% = S\$32,760.00$

159 Since the date of your termination on 23 June 1987, you didn't submit your architect fee immediately, and also did not disclose the following information upon your termination -

160 a) Your letter dated 28 February 1985 that claimed instructions relating to tender for works, to date not extended copy of specification.

161 b) RC details not extended to us for information and/or record.

162 c) "True copy of approved plan/s" if any so extended are in fact misrepresented.

163 d) Valid approved building plans at time of your termination of professional services not made known. No mention made at time of termination of professional services.

164 2. You are in possession of the set of building plans approved under section 5 of the Building Control Act, yet you could conveniently fail to bring to our attention and remind us whether such plans require further renewal. Hence the fees accrued thus far does not even equal to \$32,760.00.

165 3. We refer to your letter dated 18 May 1988 and note that by your letter dated 23 June 1987 you abruptly terminated your appointment and your responsibility in the project. You exercise such unprofessional conduct towards your long established client and an old friend of your late father. Let us draw your attention back to 14 years ago, when your father died. Your father had 9 sons and several daughters, amongst whom your Mr M A Chung came to see Mrs Tan and told her that you were financially impoverished at that time, and asked our Mrs Tan to make a donation of S\$10,000.00 for all funeral expenses including the cost of coffin. Now you may recall that our Mrs Tan had given S\$10,000.00 to buy coffin for your father. If you would allow your father to rest-in-peace you should face the consequences for what have you done now after 14 years to reciprocate our favours.

166 4. In the circumstances, we reserve our rights to counterclaim against you and disclose your malpractices to the court should the matter proceed to trial.'

167 The plaintiffs contended that on the plain and ordinary meaning of the defendants' letter dated 24 May 1988 the defendants were accusing the plaintiffs of fraudulent tactics to obtain higher fees than they were entitled to; makes adverse comments on the plaintiffs' professional conduct throughout the period when the project was handled by them; makes personal allegations against the plaintiffs, and in particular against Alfred Chung, of ingratitude with reference to personal favours the defendants had supposedly extended to the plaintiffs. In short the plaintiffs alleged that the defendants' letter of 24 May 1988 cast injurious imputations on the plaintiffs as professional architects and engineers as well as on the personal character of Alfred Chung in particular. Accordingly the plaintiffs through their solicitors' letter dated 1 June 1988 demanded a retraction. The defendants, through their solicitors refused to do so disclaiming the defamatory nature of the letter and contended that even if the letter was defamatory they were protected by the defence of qualified privilege (which was in fact pleaded later) as their letter dated 24 May 1988 was in the nature of a complaint to the professional body regarding the conduct of professional architects. Publication of the letter dated 24 May 1988 was at first denied by the defendants but it was conceded at the trial.

168 The issues, submissions and findings in Suit 1273 of 1988

169 The defendants' notwithstanding the position taken by their defence and notwithstanding their counterclaim, inter alia, for the return of the \$30,000 paid to account of the plaintiffs' professional fees conceded at the trial that the plaintiffs were entitled to be paid for the professional services rendered by them but questioned the basis upon which such fees ought to be computed. Thus, the issues as I saw them were:

170 (a) What were the terms of engagement? Did the parties have in mind the Singapore Institute of Architect's Conditions of Engagement, Scale of Professional Charges (SIA Conditions) as contended by the plaintiffs or did they not have any particular scale of charges in mind as contended by the defendants, in which case, as again contended by the defendants, the Architects' Rules 1982 should apply.

171 (b) Were the plaintiffs entitled to withdraw or terminate their professional services to the defendants in the events which had occurred, and if so what stage of work had the plaintiffs reached when they withdrew or terminated their professional services.

172 (c) What would be a fair estimate of the total development costs of the aborted project on which the percentage of fees should be calculated.

173 (d) Were the plaintiffs entitled to claim additional fees for re-designing the roof structure from the original approved roof structure and for the numerous and various alterations, amendments and revisions of the original approved building plans.

174 I will now deal with each of these in turn.

175 (a) I have set out the facts of this case with much detail. I will not repeat them again. The first engagement relating to the project was (omitting the 1972 works to the existing bungalow at 69 Belmont Road) in 1976 when there were detailed discussions between Mr Tan and Alfred Chung not only as to the type of development amenable to the size and location of the land in question but also on the professional charges payable by the defendants. The SIA conditions were specifically referred to and the plaintiffs sent a copy thereof to the

defendants. (See the plaintiffs' letter to defendants dated 16 February 1976 referred to above.)

176 At a meeting between Mr Tan and Alfred Chung on 2 August 1977 and confirmed by Alfred Chung on 26 September 1977 (also noted above) the mode of payment was agreed. I see this as an adaptation of the SIA conditions on a projected construction cost ranging from less than \$500,000 to an amount exceeding \$850,000.

177 When in 1983 or 1984 the plaintiffs were re-engaged by the defendants, the plaintiffs re-adjusted the August/September 1977 agreed scale and proposed another scale based on the stages of work and the appropriate percentage for each stage of work to be based on 'the total agreed fees' the basis of which was also stated. (See plaintiffs' letter dated 6 March 1984 set out above). There can be no doubt that this again was an adaptation of the SIA Conditions. However, the defendants counter-proposed a flat charge of '7.25% of the total cost of the project' (see defendants' letter dated 6 March 1984 set out above) which was accepted by Alfred Chung on behalf of the plaintiffs. The defendants' letter of 6 March 1984 did not provide for payment according to the stages of work and so it was argued by defendants' counsel that Mr Tan did not have the SIA Conditions in mind. However, it must be assumed that Mr Tan had knowledge of the SIA Conditions since he was given a copy of it by the plaintiffs in 1976. Further, Alfred Chung maintained, especially when cross-examined that Mr Tan was well aware of the SIA Conditions as they had always formed the basis of fee charges for the works done for Mr Tan and his companies in the past. Mr Tan did not give evidence at the trial. The defendants' only witness, Mdm Ching, was unable to throw any light on this aspect of the case as her involvement with it was minimal. The inference I draw from the totality of the evidence both viva voce and from the documents is that on 6 March 1984 Mr Tan was concerned

only to fix the total fee payable to the plaintiffs which will be 7.25% of the total cost of the project and not so much on the interim payments according to the stages of work reached and for that reason did not make provision for it even though the plaintiffs' offer to which he was countering had done so. It is conceivable that Mr Tan was content to accept the stage payments proposed by Alfred Chung.

178 In my view it does not necessarily follow from all this that the parties did not have the SIA Conditions in mind. Certainly they did not have the Architect's Rules 1982 or any other formula for providing for stage payments in mind. No mention of them has ever been made. It would be wholly unrealistic to say that because no mention is made in the defendants' letter dated 6 March 1984 of stage payments, none was intended. If that were so the plaintiffs would be financing the defendants' project throughout the period of construction. No architect could accept that.

179 Not having had the benefit of evidence from the defendants on this point but only the submissions of defendants' counsel by which I am not persuaded, I find that on a balance of probabilities the SIA Conditions applied to the engagement of the plaintiffs as the defendants' architects, if for no other reason, that the parties could not have contemplated that firstly there would be no interim or stage payments during the period of construction and secondly architects in Singapore, invariably adopt the SIA Conditions (see the evidence of Mr Kuah). Furthermore on the evidence of Alfred Chung Mr Tan was familiar with the SIA Conditions.

180 Alternatively defendants' counsel urged upon me that if the evidence as to what the parties had in mind to govern the terms of engagement was inconclusive I should apply the Architects' Rules 1982. In view of the finding

above I am unable to accept this argument. The fees payable in accordance with the Architects' Rules 1982 apply only in the absence of any agreement between the architect and the client. Here I have found on a balance of probabilities, albeit impliedly, that the plaintiffs and the defendants throughout their fee negotiations had at the back of their minds the SIA Conditions, that being best known to both of them. They had not expressly agreed on a different basis for the interim or stage payments and impliedly agreed that the SIA Conditions would apply.

181 Lastly I must mention that I find defendants' denial that the terms of engagement were governed by the SIA Conditions strange in view of defendants' letter dated 24 May 1988 - 'If we presume that the total cost of the project is S\$700,000.00, then we can compute the architect fees as follows:

182 $S\$700,000.00 \times 7.2\% \times 65\% = S\$32,760.00'$

183 Accordingly I found that the terms of engagement of the plaintiffs by the defendants for this project was governed by the SIA Conditions.

184 (b) The facts which I have set out in detail above starkly illustrate that the defendants not only consistently procrastinated in responding to the plaintiffs' requests for instructions but also completely ignored the plaintiffs' requests for instructions. The correspondence to which I have referred to above from 27 October 1986 to 23 June 1987 amply illustrate this.

185 I have no doubt that there must be implied in engagements such as this between an architect and a building owner actively engaged in the development of a property where time limits have to be kept by the architect that requests for instructions by the architect must be complied with by the building owner within

a reasonable time. In my view the plaintiffs' letter dated 23 June 1987 that they would terminate their services unless they were given further instructions within 21 days was a reasonable stand for them to take. In the circumstances of this case, having regard to the fact that the original building plans had been approved by BCD and that it was the defendants themselves who were contemplating further changes and amendments since about October 1986 and were being pressed for instructions by the plaintiffs from 27 October 1986, I do not find the period of 21 days limited by the plaintiffs to be unreasonable. In any event no instructions were given by the plaintiffs and on 22 December 1987 the plaintiffs sent their final bill to the defendants, that is to say six months later.

186 Further, and since I have held that the SIA Conditions governed the terms of engagement and since no instructions were given by the defendants to the request made by the plaintiffs by their letter dated 23 June 1987 within three months, the defendants must be deemed to have abandoned the project vide Condition 3(viii)(b) of the SIA Conditions.

187 I therefore found that the plaintiffs had validly and lawfully terminated their services as the defendants' architects for the project or alternatively that the defendants had abandoned the project within the meaning of the SIA Conditions and accordingly the plaintiffs were entitled to be paid for their services up to the stage of work reached in accordance with the SIA Conditions.

188 There was no dispute between the parties that building plan approval had been obtained from BCD. Accordingly stage 3(iii) of SIA Conditions had been reached. This would entitle the plaintiffs to a fee of 'one-half of the appropriate percentage due on the estimated cost of such works'. In this case it would be 50% of 7.25% of the estimated cost of the project.

189 The real contention between the parties was whether the plaintiffs could charge up to stage 3(iv) in which case the formula to apply would be 2/3rd of 7.25% of the estimated cost of the project.

190 Stage 3(iv) of the SIA Conditions reads as follows:

191 'For taking client's instructions, preparing sketch design, making approximate estimate of cost of cubic measurement or otherwise, and preparing working drawings, specifications, or such other particulars as may be necessary for the preparation of bills of quantities by an independent quantity surveyor, or for the purpose of obtaining tenders, the fee shall be two-thirds of the appropriate percentage due on the estimated cost of such works.'

192 Without repeating the evidence and facts I have dealt with in great detail above it was clear to me from the evidence of Alfred Chung that he had done the bulk of the preparatory work for the completion of the bills of quantities and was awaiting the appointment by the defendants of a quantity surveyor. He had already submitted a short list of three quantity surveyors to the defendants and had pressed them over and over again for them to make their appointment. He had also obtained quotations from the various trades and had started compiling a schedule of finishes which was incomplete only because of the changing instructions from the defendants. The plaintiffs' engineer, Chung Meng Lim (PW-3) had carried out soil tests and the sewer diversion work had been completed. Furthermore Chung Meng Lim had started work on foundations and structural drawings and had made his calculations. The road, culvert and drainage plans had been submitted for approval and approval obtained on 16 August 1985. Mr Kuah an expert witness called by the plaintiffs reviewed the work done by the plaintiffs and testified that in his opinion the plaintiffs had certainly reached stage 3(iv) of the SIA Conditions. He was not shaken in cross-

examination and the defendants gave no evidence to controvert Mr Kuah's evidence.

193 On the evidence before me I had no hesitation in coming to the conclusion that the plaintiffs had definitely reached stage 3(iv) of the SIA Conditions and were entitled to charge for their service up to and including stage 3(iv). In any event condition 3(viii) inter alia provides as follows:

194 'Should the work proposed fall between the stage of work set out above, then the fee chargeable shall be the percentage chargeable for the stages of the higher level.'

195 Accordingly I found that the plaintiffs were entitled to charge 65% of 7.25% of the estimated cost of the project.

196 (c) I turn now to the estimated cost of the project. It will be remembered that the figure estimated by Alfred Chung for submission to the BCD was \$2.3m which was not demurred by Mr Tan when he signed the building plans. At the trial the defendants contended for \$700,000 as the proper estimated cost of the project. They, however, produced no evidence to support the figure of \$700,000. On the other hand the plaintiffs called Chng Heng Chong (PW-2) a quantity surveyor, of 20 years experience and who holds the degree of B.Sc (Hon) in Building Economics and a diploma in Building. I was satisfied he was experienced in preparing cost estimates of buildings. His evidence from the material furnished to him by the plaintiffs of the entire work on this project was a total construction costs of \$2.9m for this project which worked out at \$160 psf. Furthermore he compared the buildings costs for the years 1984, 1985 and 1986 he arrive at his estimate.

197 I also found that Chng Heng Chong's evidence was supported by the evidence of Mr Kuah who in giving his estimate of construction costs took the architect's approach of estimating building costs and placed it at between \$120 to \$200 psf depending on the quality of the finishes for a building in a 'good class' residential area as Belmont Road. These figures were based on his actual experience.

198 I rejected totally the defendants' figure of \$700,000 or the \$70 psf which Mdm Ching was prepared to accept at the trial.

199 Accordingly I found that the proper estimated construction cost of this project was \$2.9m. Therefore the \$2.4m used by the plaintiffs for the computation of their fees was perfectly proper.

200 (d) Much was made of at the trial as to whether the re- designing of the roof came within amendments and additions to the original building plans. If it did then that work would be covered by the fee already agreed upon.

201 On the evidence there is no doubt in my mind that a whole new concept was introduced to the roof structure when the defendants instructed the plaintiffs to re-design the roof structure to an Indonesian type roof structure. There is also no doubt in my mind that this work was undertaken by the plaintiffs and completed but through the lack of instructions from the defendants the re-designed roof was not submitted to the BCD for approval. I accepted Alfred Chung's evidence which was not controverted by the defendants' evidence.

202 I need only refer to Mr Kuah's evidence on this aspect of the case. He said:

203 `To the lay persons looks like no difference. To the trained eye - considerable difference in layout.

204 PD17 - roof - simple double peak.

205 PD18 - roof structure complex. Research as to how it will stand up to wind pressure. Even inside layout also considerable change as seen from the plans.

206 This was re-design.

207 Amendment involves minor changes without altering the main structure.

208 Re-design changes the shape of the building.

209 To get from PD17 to PD18 time taken would be at least 4 weeks since some of the old drawings could still be used with changes made to them.'

210 I also found Alfred Chung's rate of charge of \$300 per hour to be reasonable.

211 Accordingly I found the roof structure was re-designed by the plaintiffs and allowed them an additional charge on a quantum meruit basis of \$39,600.

212 Summary

213 For these reasons I concluded that the plaintiffs were entitled to charge the defendants for their architectural services, \$114,049.75 on the basis of 65% of 7.25% of \$2,420,153.84; for the re-design of the roof structure, \$39,600 on a quantum meruit basis for both of which I gave judgment together with judgment

for bill P/304/02/85 for the septic tank of \$912.05 making a total of \$154,561.80 less the advance payment of \$30,000 making the amount payable by the defendants the sum of \$124,561.80 with interest at 8% pa from date of writ to date of judgment and costs. I dismissed the defendants' counterclaim with costs.

214 The issues, submissions and findings in Suit 1355 of 1988 (the defamation suit)

215 The plaintiffs contended that the words of the letter dated 24 May 1988 (the letter) in their natural and ordinary meaning meant and were understood to mean,

216 (i) that the first, second and third plaintiffs fraudulently exaggerated the development costs of the project to secure higher fees.

217 (ii) that the first, second and third plaintiffs were guilty of a misrepresentation in the 'true copy of approved plans'.

218 (iii) that the first, second and third plaintiffs had not done the work or performed the services for which fees were being claimed and were thereby dishonest in their claim for fees.

219 (iv) that the first, second and third plaintiffs were negligent in the discharge of their respective professional duties in that they (and each of them) did not furnish to the defendants such documents and information which the first, second and third plaintiffs were obliged to furnish and/or did not properly advise the defendants in relation to the renewal of the approved building plans.

220 (v) that the first, second and third plaintiffs were guilty of unprofessional conduct and malpractice.

221 In my judgment the words of the letter are the plainest words of defamation that anyone can find of professional men. The words of the letter clearly accuse the three plaintiffs of fraudulent tactics in the conduct of their professional practice and of unprofessional conduct and malpractice.

222 Publication of the letter, although denied at first, was admitted by the defendants at the trial. It only remains to consider the defences raised. They were justification, and qualified privilege.

223 The defendants submitted that the words of the letter in their natural and original meaning were true in substance and in fact in that

224 (i) the plaintiffs did try to obtain higher fees by making high and contradictory estimates of the development costs of the project and thereby exaggerated their entitlement to fees;

225 (ii) the plaintiffs did after they had terminated or withdrawn their services by their letter dated 30 June 1987 fail to disclose to the defendants the documents and information sought; and

226 (iii) the plaintiffs did fail to renew and remind the defendants' to renew the building plans which had lapsed by the time the plaintiffs terminated or withdrew their services by their letter dated 30 June 1987.

227 There is no substance whatsoever in the three grounds above which can support the defence of justification. As to (i) above it will be remembered that the earliest estimate given by Alfred Chung for the project was when the building plans were first submitted to BCD for approval and as required by BCD when building plans are submitted for approval an estimate of the construction

cost (excluding cost of land and moveable fixtures) is required to be given. The estimate then given by Alfred Chung was \$2.3m. He never waived from this estimate. When the first bill was delivered on 22 December 1987 the plaintiffs based it on an estimated building cost of \$1.9m but later having taken legal advice when the defendants failed to pay the final bill revised the estimated building cost to \$2,420,153.84 on 27 April 1988 which was the estimated building cost they contended for at the trial. I did not overlook the fact that when the interim first bill was delivered on 25 February 1985 it was based on an estimated building cost of \$1.5m. At the same time one must not also overlook what Alfred Chung said in his letter to the defendants dated 25 February 1985. It bears repeating. He said:

228 'Whilst we had earlier estimated the total cost at \$2.3m and submitted this estimated figure to the Building Authority we have at this point in time used a lesser estimated cost and amount of \$1.5m ...'

229 Furthermore Alfred Chung explained in his evidence why he did this. I have dealt with this evidence earlier which I accepted then and I accept here as well.

230 As for the \$1.9m used in the final bill delivered on 22 December 1987 Alfred Chung's evidence was that he had tried to compromise between the original building plan on which most of the work was done and on the re-design plan and the downturn in the property market.

231 Be that as it is the fact that the plaintiffs had used a lower estimated building cost for the purpose of billing in the situation in which they found themselves, that is to say, faced with a recalcitrant client, in order to get ready and early payment for work done, does not to my mind amount to making high

and contradictory estimates of construction cost. The fact is that the estimated building cost of \$2.3m made when submitting the original building plans to BCD was maintained throughout by the plaintiffs and was only minimally exceeded when more accurate estimates were made when more detail was available. As a question of fact I did not find that the plaintiffs here made contradictory estimates of construction costs. The figure of \$2,420,153.84 was clearly supported by the evidence of Chng Heng Chong as already discussed above.

232 As for (ii) above, again I find that there was no substance in it. The defendants were kept fully informed of every step taken of the plaintiffs throughout the period of the engagement and were supplied with all plans and data. Were the defendants minded to make their own estimates of the building costs they were in a position to do so by employing their own quantity surveyor. What was in issue was the estimated building costs. The plaintiffs had given their estimate and if the defendants challenged it it was for them to put forward their own estimate. What they did was to hold fast to the completely unsupportable building cost of \$700,000 without ever attempting to justify it.

233 The only information the plaintiffs refused to give was the RC calculations. On this, the evidence was clear. Mr Kuah confirmed it that RC calculations are never released.

234 As for (iii) above the defendants may be technically correct but as it happened nothing turned on it. In any event the evidence shows that the plaintiffs rectified the matter and the defendants were never prejudiced by it.

235 I found that the defence of justification was not made out.

236 On qualified privilege the defendants' contention was that they were seeking redress from the Board of Architects as they were aggrieved by the professional conduct of the first and second plaintiffs both of whom were architects. I find this contention strange as the letter was not addressed to the Board of Architects. It was copied to them. It was copied to the Board of Architects clearly to bring pressure on the plaintiffs to reduce or forgo their professional charges. I have no doubt of that. Had the letter been truly a complaint it would have been addressed to the Board of Architects in the first place, and if it was truly a complaint why was it necessary to refer to Alfred Chung's ingratitude in so much detail and emotive language.

237 In my judgment the defence of qualified privilege must also fail. There was clearly malice which I find as a fact.

238 In assessing the damages I took into account the conduct of the plaintiffs which I found to have been perfectly proper and highly professional throughout. The longstanding of each of the plaintiffs in their respective professions. Finally the conduct of Mr Tan and Mdm Ching which I found deplorable and not least the conduct of Mdm Ching at the trial when towards the end of the first day's hearing she had to be cautioned by me for trying to commit a scene when Alfred Chung was giving evidence. Mdm Ching showed no remorse, refused to make any retraction or apology and tried to justify her actions.

239 Taking all the foregoing into account I arrived at \$90,000 as a global sum by way of damages without apportioning it between the three plaintiffs, which sum I duly awarded them with costs.

240 < Does not merit reporting >

Karthigesu J

Christopher Chuah (Drew & Napier) for the plaintiffs
Jimmy Yap with John Chung (Donaldson & Burkinshaw) for the
defendants
