

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 345

Suit No 1641 of 1995

Between

Vicson General Contractors
Pte Ltd

... Plaintiff

And

Dai-Dan Co Ltd

... Defendant

GROUND OF DECISION

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Vicson General Contractors Pte Ltd v Dai-Dan Co Ltd

[1997] SGHC 345

Suit No 1641 of 1995
Judith Prakash J
29 December 1997

1

Judgment:

2 Cur Adv Vult

3 1. The plaintiffs, a Singapore company, are

general contractors in the business of, inter alia, constructing and designing the ultra

clean manufacturing environments commonly known as clean rooms. The defendants, a Japanese

company with a registered branch in Singapore, are also contractors involved in the

4 2. In August 1994, Kajima Overseas Design

a factory building in Ang Mo Kio on behalf of Seagate Technologies (Seagate).
The factory

building included seven clean rooms. Kajima asked various sub-contractors for quotations.

The defendants were among these sub-contractors and they in turn approached the plaintiffs

for a quotation relating to the clean room portion of the works thus setting in train the

events which led to the present action.

5 3. The plaintiffs are claiming \$261,900 as a
reasonable sum for their work and services rendered in assisting the defendants
to tender

for the construction of a clean room plant in the Seagate factory pursuant to an oral

agreement made between the plaintiffs and the defendants. Alternatively, the plaintiffs

claim \$261,900 on a quantum meruit basis. The defendants' stand is that they owe the

plaintiffs nothing. The plaintiffs were merely acting as tenderers and, since their tender

was unsuccessful, they are not entitled to a single cent.

6 The pleadings

7 4. The meat of the plaintiffs' case, as

pleaded, was in paragraph 3 of the statement of claim. This stated that by an oral

agreement made between Mr Toyoda, senior project manager of the defendant company, and Mr

Seet Poh, managing director of the plaintiff company, in or about August 1994, the

defendants engaged the plaintiffs to provide inter alia their expertise in assisting the

defendants to tender for the construction of a clean room plant for Seagate at Ang Mo Kio

Avenue 5. Para 4 of the statement of claim went on to state that it was an express and/or

implied term of the agreement that the defendants would pay a reasonable price for such

expertise, work and services rendered.

8 5. In para 5, the plaintiffs set out particulars of the effort, time, expertise and services which they had provided to the

defendants to assist the latter in tendering for the Seagate project. The plaintiffs then

pleaded that as a direct result and in consequence of the plaintiffs' services, efforts and time, the defendants were awarded the tender for the Seagate project in

October 1994. They went on to claim a sum of \$261,900 being the amount of a reasonable

price for such expertise, work and services. It should be noted that the plaintiffs'

original claim as filed in September 1995 was for \$768,800 but in December

1996, they

amended this to the lower figure. During the course of the trial, the statement of claim

was further amended by the provision of particulars to substantiate the sum of \$261,900.

9 6. By their defence, the defendants denied

that their senior project manager or any employee or agent had made any agreement, oral or

otherwise, with the plaintiffs or engaged the plaintiffs to provide any services as

alleged by them. The defendants averred that Kajima had awarded the sub-contract for the

construction of the clean rooms for the Seagate project to the defendants on or about 27

March 1995.

10 7. By para 3 of the defence, the defendants

averred that in August 1994, they had invited tenders or quotations for a sub-contract

which they would award in a construction of a clean room plant for Seagate. It was an

express/implied condition that any tenders, quotations or offers made by any party,

including the plaintiffs, to the defendants in response to the defendants' invitation

to tender were merely and only offers of quotations subject to final acceptance by the

defendants. Further the plaintiffs in their quotations had themselves admitted that the

same were subject to the defendants' approval and acceptance. In May 1995, the

defendants rejected the plaintiffs' tender. The defendants also denied that the

plaintiffs had expended time or rendered services or expertise to them at their request

and they put the plaintiffs to proof both of the efforts made and of the justification of

the sum of \$261,900. The defendants ended by stating that the plaintiffs were not entitled

to recover the sum claimed or any sum at all from the defendants.

11 The plaintiffs' story

12 8. From the summary of the pleadings, it can

be seen that the issues in this case are mainly issues of fact as to what the parties had

agreed and what they had actually done. The onus of proof is on the plaintiffs who have to

establish that a contract existed and also the nature of such contract. I will therefore

recount their version of what occurred as told by Mr Seet Poh, their managing director. He

was their main witness as he was the only person to whom the defendants' alleged

promises were made. The two other witnesses the plaintiffs adduced, Mr Cheng and Mr Davis,

testified as to various meetings between the parties and the work done by the plaintiffs

and their impressions of the defendants' knowledge. There is no doubt that Mr

Seet is

the moving spirit in the plaintiff company and that the substance of the case comes from

his testimony.

13 9. In his affidavit of evidence-in-chief, Mr

Seet stated that his first contact with the defendants came through one Mr Chua who

arranged a meeting with him in early July 1994 to find out whether the plaintiffs could

work with the defendants on any clean room jobs in Singapore.

14 10. Another meeting was fixed by the

defendants on 17 August 1994. At that meeting, Mr Seet was introduced to Mr Toyoda, the

senior project manager. Mr Toyoda told him that the defendants were tendering for the

electrical and mechanical portion as well as the clean room portion of the Seagate project

and he wanted the plaintiffs to render assistance in respect of the clean room

portion.

According to Mr Seet, Mr Toyoda told him that if the defendants got the job from Kajima

they would award the clean room job to the plaintiffs. Mr Toyoda further added that if the

defendants did not get the job, then he would not expect the plaintiffs to charge them for

the assistance rendered. Mr Toyoda wanted Mr Seet to supply, as references, copies of the

plaintiffs' designs for their previously completed jobs. He also told Mr Seet that

the defendants had no experience in clean room projects, especially the architectural

works. As will appear from the account hereunder, much of Mr Seet's evidence was

devoted to establishing that the defendants knew little if anything about constructing a

clean room (although they did have expertise in the mechanical and electrical aspects of

clean room operations) and he therefore went on at length about the information and

documents which the plaintiffs had provided the defendants with.

15 11. On 19 August 1994, Mr Toyoda gave Mr

Seet three basic design drawings for the clean room and asked the plaintiffs to prepare a

detailed quotation based on the drawings. He also handed the plaintiffs two pages of a

Schedule of Technical Data of Equipment for the clean room which he wished the plaintiffs

to complete. The plaintiffs forwarded their detailed quotation to the defendants on 24

August 1994. On the same day, Kelvin Cheng Kok Wah, the plaintiffs' project manager,

and Ms Yeoh Ching Ching, the assistant project manager, went down to the defendants'

office to discuss the quotation. They explained the technical specifications and data in

their quotation. The next day, the plaintiffs gave the defendants a revised quotation to

include items which had been omitted from the first quotation. In the quotations, the

plaintiffs proposed alternatives for the materials to be used in the construction.

Depending on which materials were chosen, the total amount quoted came to around \$12

million or \$14 million.

16 12. On 29 August 1994, Mr Seet received a

call from Ms Shirley Ho, a project engineer with the defendant company. She told him that

she would be faxing to his office the clean room technical specifications for his perusal

and wanted him to confirm whether the plaintiffs' quotations complied with these

specifications. She further told Mr Seet that she required his confirmation because the

defendants did not understand the specifications.

18 14. On 15 September 1994, the defendants

faxed to the plaintiffs a whole page of questions regarding the clean room and
wanted Mr

Seet to assist them to answer the questions on the documents. They also asked
him to reply

the same day. Mr Seet immediately contacted his suppliers to provide him with
some of the

information which he needed to answer the defendants' queries. His suppliers
replied

the same day and he submitted his replies to the queries, together with some samples, to

the defendants on 16 September 1994.

19 15. On 19 September there was another meeting in the defendants' office between the plaintiffs' personnel and the defendants' staff. They discussed the defendants' tender documents to Kajima.

20 16. In October 1994, there were several contacts between the two parties. First, around 10 October, Mr Toyoda called Mr Seet and told him that the defendants were cost conscious. He asked Mr Seet to propose an

alternative system to accommodate their budget. The plaintiffs' revised quotation was

forwarded on 14 October. On 17 October, Mr Seet, Mr Cheng and Ms Yeoh met Mr Toyoda to

discuss the construction details of the clean room. Mr Toyoda wanted to know more about

the ceiling grid, the raised floor, the partitions and the laminated glass for the windows

used for the room. He again asked for the costs to be cut down and wanted another

quotation.

21 17. Another meeting at the defendants'

office took place between the parties on 25 October. The defendants were given all the

technical specifications they had requested at the previous meeting as well as a revised

quotation indicating alternative materials and the, additional, costs of testing the clean

room performance. At that meeting the plaintiffs were introduced to Mr Sano whom they were

informed was the defendants' project manager for the Seagate project.

22 18. Sometime in late October the plaintiffs

met another group of the defendants' staff namely, Mr Ichiro Fujisawa (manager of the

research and development department), Takahisa Maeno (assistant manager, design

department) and Mr Kuronita (electrical engineering and design department) from the

defendants' Tokyo office. According to Mr Seet, this team posed a series of questions

on certain design drawings which they showed him during the meeting. Mr Fujisawa also

wanted a list of completed clean rooms which the plaintiffs had constructed.

23 19. The parties had various discussions

about the location of fire proof walls and catwalks. Mr Seet was asked whether there was

an alternative solution which would do away with the installation of the catwalk so that

the defendants could minimise costs. They also wanted to know how to control the air flow

in the clean room. On 28 October Mr Seet faxed to Mr Sano an alternative ceiling grid

which could be walked on and on the next day he faxed them a copy of an air control

system.

24 20. In November there were more contacts. On

1 November, the plaintiffs sent a revised quotation which included the installation of the

fire proof wall and catwalk system. They also forwarded drawings related to their previous

clean room projects. A meeting was held in early November where they discussed in detail

with Mr Toyoda all the works scheduled for the project. Mr Toyoda asked Mr Seet at that

meeting whether Matsushita Electric Works (Asia) Pacific Pte Ltd (Matsushita) could come

in as a sub-contractor to provide the raised floor portion of the clean room. He wanted Mr

Seet's assistance to evaluate whether Matsushita could do the job.

25 21. On 14 November 1994, the defendants

arranged for a meeting at Matsushita's office. At that meeting, Mr Seet was

introduced to various Matsushita personnel. He also met his business associate,
Mr Cecil

Davis from Daw Technologies Inc, an American corporation dealing with the
design and

construction of clean rooms. Technical details about the raised floor were
discussed

during the meeting. The defendants said that they wanted the raised floors
supported by

pedestals which were placed at wider intervals than the standard two feet by two
feet. Mr

Davis and Mr Seet said that they would come up with a solution to this problem.
Mr

Davis' company was in fact the designer/manufacturer of this product. Mr Seet
noticed

that during the discussion Mr Sano asked many questions relating to clean room
design

problems which the defendants were facing. Mr Seet noticed that Matsushita
was not able to

come up with any solution. He continued meeting Matsushita on 15, 16 and 23 November and

found that Matsushita was not suitable for the project as they lacked clean room experience. Accordingly, Mr Seet did not recommend Matsushita to the defendants.

26 22. On 30 November 1994, Mr Seet gave the defendants details of the solutions to the problems they had discussed over the previous

few days. He had specially instructed his staff to prepare detailed construction drawings

and on that day he gave the defendants approximately 54 pages of drawings and specifications.

27 23. In December, Mr Fujisawa asked the plaintiffs to help the defendants find a solution for the curtain rail installation in the

clean room. Advice on this was given on two occasions in December 1994. Mr Seet also

stated that there were many discussions between Mr Fujisawa and his staff regarding the

details of the curtain installation. Seven pages of drawings were sent regarding those

details.

28 24. Mr Seet asserted that in order to

provide satisfactory answers to defendants' technical problems, he had to travel to

the United States of America on or about 7 December 1994 to meet his various clean room

component suppliers to discuss the likely costs of their components and to obtain samples

as well as possible delivery dates. This process took more than a week and the expenses of

the trip were paid by the plaintiffs.

29 25. There was other work done for the

defendants in December. On 20 December, the plaintiffs provided the defendants, in

response to a request made by Mr Fujisawa, with details of the dry coil installation

method. The next day, Ms Yeoh and Mr Cheng had a meeting with Mr Sano at which they were

shown 14 building architectural layouts of the Seagate factory received from Kajima, 24

drawings of the clean rooms for the factory which the defendants had prepared, and a bill

of quantities. Mr Sano requested them to go through all these documents to ensure the

defendants' drawings complied with Kajima's drawings and that no items required

for the work had been omitted from the bill of quantities. All this work was duly done by

the plaintiffs who subsequently returned the documents to the defendants with their

comments and recommendations.

30 26. On 23 December 1994, there was another

meeting. Mr Sano asked the plaintiffs to meet Clean Creative Co Ltd, a contractor from

Korea, to ascertain its capabilities because Mr Sano himself could not pose questions in

relation to the architectural aspect of the clean room project and wanted the plaintiffs' assistance. The plaintiffs' staff attended the meeting as requested.

At the end of December further information was given to Mr Fujisawa per his request.

31 27. Around December 1994, the defendants

also told Mr Seet that his quoted prices did not meet their budget and they wanted him to

give a quotation which would indicate the costs of doing the installation work and

providing management services only. The materials would be supplied by someone else. The

plaintiffs forwarded the revised quotation on 11 January 1995. The total amount of this

quotation was approximately \$5.7 million which was more than a 50%

reduction from the

quotation of 1 November 1994 which had amounted to approximately \$13.9 million.

32 28. In January and February 1995, there were numerous discussions on the plaintiffs' quotation because of the defendants' tight budget. The plaintiffs submitted six further quotations to the defendants between 14

January and 22 February 1995. The last quotation was for approximately \$3.88 million for

the main work and included separate charges for provisional items.

33 29. According to Mr Seet, even while the negotiations on the quotations carried on, the defendants continued to ask him for advice

on certain details on the clean room construction. They even went to the extent of asking

him to show them any completed clean room project to enable them to study how an actual

clean room functioned. He told them that it was impossible to show them any

completed

clean room in Singapore but that he could show them one in Taiwan. They were very pleased

and asked him to accompany them on a visit to Taiwan. On 6 February 1995, Mr Seet flew to

Taiwan to meet Mr Sano and Mr Fujisawa. He took them to see the clean room at the factory

of Mosel Vitelic Inc.

34 30. In early April 1995, Mr Seet was still

negotiating his quotation with the defendants as Mr Sano kept complaining that the

plaintiffs' prices could not meet his budget. These complaints prompted him to write

to the defendants on 13 April 1995. In that letter, Mr Seet said that on that day he had

been given 'a last chance to negotiate about the final offer or give up'. He

stated that after his last quotation of \$4.9 million had been rejected, he had brought his

price down to \$4.5 million which was \$1.16 million higher than an offer made to the

defendants by another sub-contractor. He then put forward a final offer of \$2.983 million

for all the work except the brick wall which was the main item making up the great price

difference between the plaintiffs' offer and that of the other contractor. Mr Seet

ended his letter by stating 'I would like to explain to you that my final

offer's profit now is almost for paying safety factors. So if I cannot meet your

budget I will give up this contract and I will accept you to pay for consultation fees

only'.

35 31. The defendants' response was to

offer the plaintiffs only one third of the clean room contract. The full contract would

have consisted of the construction of seven rooms, three on the second and third storeys

of the factory, two on the fourth and fifth storeys and two on the sixth and seventh

storeys. The defendants' offer to the plaintiffs was for the fourth and fifth

storeys. Mr Seet did not agree and wrote to the defendants on 27 April 1995 informing them

that much time and effort had been expended by him to help the defendants secure the

contract from Kajima. In the third paragraph of his letter he stated that all the while Mr

Sano and Mr Toyoda had told him that he would be awarded at least half of the contract. He

wrote that the profit to be made on one third of the contract would not cover the expenses

that he had incurred in assisting the defendants and travelling overseas to obtain the

best information possible. He also said that due to the tight schedule for the Seagate

project he had given up two other projects offered to the plaintiffs in order to

36 32. Following this letter, Mr Seet had a

the plaintiffs be given one third of the contract and be paid a consultation fee.
This

meeting and stated that the consultation fee should be 'around \$200,000.00 for

previous letters'. He further highlighted to the defendants that they should consider

giving the plaintiffs the fourth and fifth and the sixth and seventh floors since those

had a similar layout. The defendants' response was to propose, the same day, that the

plaintiffs carry out the fourth and fifth storeys for \$1.008 million and be paid a consultation fee of \$100,000.

37 33. On 29 April, Mr Seet wrote to the

defendants to inform them that their offer was not fair in view of the time spent and

efforts made by the plaintiffs in assisting the defendants to secure the project. In the

third paragraph of the letter, Mr Seet said:

38 ‘In view of the above, in dealing with

your Mr Toyoda from whom it was learnt that your Company is a layman towards Clean Room

Project, we provide your Company with full support by using up all our best effort to

impart and disclose all confidential matters and details of Clean Room’s requirements

and tender design for this project. During such period, we have given most of our time to

pursue our interest in furnishing Mr Toyoda and Fujisawa with whatever

informations and

datas needed to assist your Company to secure this project. After such lengthy discussions

and adjustment of our prices, Mr Toyoda himself promised us that irregardless (sic) of

whether our price is slightly higher than others, he will still accept our Company to

execute this job for your Company since he was very appreciative of our feedback and

experiences in Clean Room as well as the assistance we have rendered to him to support

your Company all along.’

39 34. In his letter, Mr Seet went on to make

three proposals to the defendants as follows:

40 (1) that the plaintiffs be awarded the

fourth and fifth and the sixth and seventh floors at a price based on the last negotiated

figure and not be paid any consultation fee;

41 (2) that they be awarded the sixth and seventh floors with another \$200,000 paid as consultation fee; or

42 (3) that they be paid \$300,000 as consultation fee only and they would then withdraw from further participating in the job.

43 35. The defendants' reply was contained in their letter of 2 May 1995. They stated that they were aware of the time as well as the

efforts expended on their project and went on to say 'Out of goodwill and kind gesture, we have provided \$100,000 as consultant's fee for your time spent'.

They also said that the plaintiffs' price was 'tremendously high' in comparison with that of other contractors and due to their tight budget they could not

award the whole contract to the plaintiffs but that 'in order to show appreciation to

your support' they would give the plaintiffs the fourth and fifth floors.

44 36. On 4 May 1995, the plaintiffs rejected

this offer. In their letter they stated that \$100,000 was insufficient to cover their

losses which included:

45 (1) increasing their supervisory force and

setting up a new office to meet the demands of the project;

46 (2) the involvement of their management and

supervisory personnel in discussions and meetings and also the involvement of
overseas

specialists to obtain the best information;

47 (3) Mr Seet's travel to Taiwan and the

United States to secure professional advice and information;

48 (4) the expense of providing samples,

confidential documents and drawings;

49 (5) training fees for upgrading the

supervisory team;

50 (6) the provision of special salary increments and bonuses to motivate and retain staff;

51 (7) rejecting three big projects worth about \$3 million to \$4 million from their regular clients in order to avoid any clash with the defendants' project.

52 In view of the above, Mr Seet stated that a \$300,000 consultation fee would be fair to the plaintiffs.

53 37. The defendants' response was to instruct their solicitors to write to the plaintiffs' solicitors to say that there was no legal obligation to pay for any consultation services.

54 38. Mr Seet ended his affidavit of evidence-in-chief with the following statement:

55 'I wish to say that right from the outset when the Defendants brought me into the project, the Defendants promised me that if

they were awarded the contract, they would give me the sub-contract for the clean room.

They required me to help them secure the project by giving them the technical support

since they had no experience in the architectural aspects of clean room construction. My

staff and I have spent a lot of time and effort to give them support. Time and time again

the Defendants wanted information on an urgent basis. They used me as the main source of

supply for information on materials, construction details and specifications. I mobilised

eight of my office staff to attend to all their queries. I even sent one staff from my

office in Malaysia to do the back up support. ... As a result of my efforts, the

Defendants were able to secure the project. It is not in doubt that we were consultants to

the Defendants right from the outset and that was the reason why they offered a

consultation fee at the end when they were unable to deliver what they had promised’.

56 The defendants’ position

57 39. Before I go on to analyse the case, I

think I should provide a short summary of the defendants’ evidence. They had four

witnesses. The first was Mr Toyoda, an engineer, who had been with them for
26 years, ever

since he left university.

58 40. According to Mr Toyoda, the defendants

had had more than 30 years experience in building clean rooms for the
manufacture of

electronic components, semi-conductors and similar items. They had completed
22 such

projects between 1990 and 1995. Among these were three factories in Japan
which were

constructed for the manufacture of semi-conductor parts and which had
cleanliness

requirements similar to those of the Seagate project. As at June 1997, the defendants were

in the midst of the construction of the Yonago Fujitsu LCD Factory in Tottori, Japan which

had requirements similar to that of the Seagate project.

59 41. Mr Toyoda averred that the defendants

were themselves specialists in the area of clean room construction. They had in-house

engineers and designers for such projects and did not require the services of any

consultants. In fact, they were able themselves to serve as consultants. He gave a list of

27 major projects which the defendants had completed in Japan and South East Asia

including Malaysia, Thailand and Singapore.

60 42. According to Mr Toyoda, in all such

construction matters, the owner or main contractor of the site does not have a plan or

design of the clean room. This is left to the sub-contractors. This is what is known as a

‘design-and-build’ scheme. In this case, Kajima was a bidding main contractor

for the project owned by Seagate. The defendants had been invited by Kajima to bid against

other specialists to give Kajima a competitive quotation which Kajima would then tender to

Seagate. Similarly, the defendants would call competing tenders for the sub-contract or

portions of it to arrive at the best quotation to give Kajima.

61 43. This was the situation in August 1994:

Kajima had no contract with Seagate yet neither did the defendants have any contract with

Kajima. With this in mind, the defendants called for competing tenders for the following

scope of works for the clean room: the ceiling, the walls, the flooring and the fan

filtration units. They called a few companies among whom were the plaintiffs,

SG-Bogen (S)

Pte Ltd, Gen-Mech Engineering Pte Ltd and Clean Creative Co Ltd. As Mr
Toyoda admitted

during cross-examination, only the plaintiffs responded enthusiastically initially

although he subsequently (after October 1994) also received quotations from
SG-Bogen,

Clean Creative and others.

62 44. Prior to the Seagate project the

defendants had not dealt with the plaintiffs on any project either directly or
indirectly.

They had had no experience with the plaintiffs. Mr Toyoda therefore considered
to be

nonsense the allegation that the defendants would deal with the plaintiffs on a
verbal

basis, especially on something as important as whether the plaintiffs would be
consultants

or not.

63 45. In August 1994, Mr Toyoda's

responsibilities were to oversee and co-ordinate the gathering of tender quotations for

final decision by Mr Sano. During this exercise, he relayed requirements, changes and

amendments from Kajima to the tenderers in order for them to make the necessary amendments

to their quotations. At that stage, there were many items and matters yet to be finalised

between Seagate and Kajima and Kajima and their sub-tenderers. Mr Toyoda asserted that

there was no certainty in August that the defendants would get a contract from Kajima and

they therefore had no basis on which to make any firm commitments to tenderers.

64 46. In reference to the first meeting which

he had with Mr Seet, Mr Toyoda said that he had briefed him on the general requirements of

Kajima and the project. At that stage he knew nothing of the plaintiffs' track record

in building such rooms. He had not met Mr Seet previously. He was also, naturally, not yet

aware of what the plaintiffs' final quotation for the project would be. He asserted

that all that the defendants needed from the plaintiffs was a final and competitive

quotation fitting all required specifications for their onward tender to Kajima.

In the

event that the defendants were to get the contract from Kajima, they would award their own

sub-contract to the quotation that was most competitive. In August 1994, the defendants

could not make any commitments since they did not what the final quotation of any of the

competitors would be.

65 47. Mr Toyoda claimed that he did not make

any promise during the first meeting that he would take on the plaintiffs as a consultant.

He said he had no need to make such a promise since the defendants themselves had had

experience in the field for 30 years. They needed the plaintiffs only as a sub-contractor

since they did not maintain a work force in Singapore and the actual works would have to

be executed through sub-contractors.

66 48. According to Mr Toyoda, his involvement in the Seagate project was only during the initial stages of preparing the tender. After

he discharged his responsibilities in that respect, he was re-assigned to other project

around Singapore. However, in March 1995 at the time when Kajima was to confirm whether it

was going to award the contract to the defendants or not, Mr Seet called him almost

everyday to persuade that the plaintiffs' price was the best and that they should be

awarded the job. At no time did Mr Seet or the plaintiffs ever raise the point of their

position as consultants.

67 49. Mr Sano was also employed by the

defendants as a senior project manager. At the time of the trial he had worked with them

for over 25 years. He attested that the defendants' first quotation was given to

Kajima on 26 August 1994 for a total price of over \$91 million. The defendants were told

by Kajima that if they wanted the contract they had to lower their price. Thereafter, the

defendants submitted numerous letters of quotation steadily reducing their price until, by

February 1995, they were quoting around \$74 million. Of this figure, about \$26.5 million

related to the clean room.

68 50. In relation to the sub-contractors, Mr

Sano dealt with the plaintiffs, SG-Bogen, Gen-Mech and Clean Creative. His job was to run

through their figures, compare them with the defendants' own experience and staff,

compare them with the defendants' tender to Kajima, refer to their technical specifications to ensure they fitted those supplied by Kajima, and to see whether the

quotations could be lowered. He communicated with the tenderers through Mr Toyoda and Ms

Shirley Ho as well as dealing directly with them. He stated that though he did have

meetings with the plaintiffs, as well as other sub-contractors, such meetings concerned

clarification of the plaintiffs' figures and specifications. The plaintiffs never

participated in the discussions as consultants and/or as advisers on the defendants'

submissions to Kajima.

Seagate project during the tender stage. She had the responsibility of inviting

interested

sub-contractors to submit tenders, assisting the defendants in gathering the quotations

and compiling them and ensuring that they met with Kajima's and the defendants'

own specifications. She was familiar with Mr Seet and dealt directly with him on several

occasions during the plaintiffs' tender of quotations. Mr Seet never told her that

the plaintiffs were acting as the defendants' consultants. In her dealings with the

plaintiffs and Mr Seet she treated them as interested contractors tendering for such

contracts on the same basis as SG-Bogen and Clean Creative. Although she did ask the

plaintiffs for drawings and other information at times, the purpose of her requests was to

ascertain whether the plaintiffs' proposal matched the specifications given to the

defendants by Kajima.

71 Findings

72 53. What emerged very clearly at the end of

the case was that there was a dichotomy between the plaintiffs' position as pleaded

and their position on the evidence. The pleaded allegation was that a contract was made on

17 August 1994 or, at least at the first meeting between Mr Seet and Mr Toyoda, whereby

the plaintiffs were to provide the expertise in assisting the defendants to tender for the

clean room. In exchange for their work, the plaintiffs were promised expressly or

impliedly payment for services rendered. The pleaded claim is for payment for the services

so rendered which enabled the defendants to get the contract from Kajima.

73 54. The evidential position was that the

actual promise made by Mr Toyoda at that first meeting was to give the plaintiffs a

contract to build the clean room. Mr Seet said that. So did Mr Cheng, his employee to whom

Mr Seet had communicated that the plaintiffs had got the job. Even the independent witness

called by the plaintiffs, Mr Davis, testified that from what Mr Seet had told him, he had

gained the impression that the plaintiffs were not pursuing a consultancy position with

the defendants but rather were actively trying to secure a sub-contract from them. Mr

Davis believed that a promise of a sub-contract had been communicated to the plaintiffs by

the defendants. Since the defendants did not fulfil the promise to give them a contract

or, at least a contract they were comfortable with, the plaintiffs said in closing that

they were entitled to damages and/or compensation for loss of profits. On this position,

the promise to give them a contract is the basis on which the plaintiffs seek to

show that

an obligation arises on the part of the defendants to pay the plaintiffs damages.

74 55. Having considered Mr Seet's

testimony and the other evidence adduced for the plaintiffs, I am satisfied that they have

pitched their case wrongly. The plaintiffs are not entitled to be paid a fee as

consultants either on the basis of an implied agreement for a reasonable fee or on a

quantum meruit basis. They were not employed as consultants from the very beginning. They

did not render any services or give any information to the defendants on the basis of a

consultancy. Further, I accept the defendants' evidence that they did not need the

services of a consultant. Even if they had, it is not probable that they would have hired

the plaintiffs to fulfil this position as they had had no previous dealings with the

plaintiffs and, though the plaintiffs may have had long experience in constructing clean

rooms, they were not technical wizards and could not offer the defendants more than their

local expertise.

75 56. What I believe happened is that at the

time when Mr Seet first met Mr Toyoda, the latter was in a difficult position. He had to

put in a quotation to Kajima on an urgent basis. The defendants wanted the job very badly.

They knew that although they had the technical expertise in Japan to carry it out, in

Singapore they would have to employ sub-contractors as they did not employ local

construction workers and had only supervisory capacity. Accordingly, they needed input

from local contractors in order to put up a feasible quotation to Kajima. They had

therefore called various firms and asked them to quote. Unfortunately, at that time, the

market rumour was that Kajima would definitely not get the main contract and therefore

most of the local firms did not respond to the defendants' request for quotations

believing that any effort would be futile. The only persons to react positively were the

plaintiffs. Thus, in August 1994, Mr Toyoda was in the position of needing a quotation

from Mr Seet on an urgent basis. It is probable therefore that he did make a

representation to Mr Seet to the effect that if the plaintiffs gave the defendants the

necessary quotation quickly enough to enable the defendants to put in their own quotation

to Kajima and the defendants were, consequently, awarded the contract they would in turn

do business with the plaintiffs. Such representation could not lead to a consultancy

contract, something which I do not believe can have been in anyone's mind or contemplation at the relevant time.

76 57. Further, the actual legal effect of Mr

Toyoda's representation is a matter of some doubt because too many unknowns were left

in the air for an enforceable obligation to arise. Whilst Mr Seet believed that he would

share in any good fortune accruing to the defendants and therefore expended much more time

and effort than was customary in the trade in giving his quotations, explaining them and

dealing with technical queries made by the defendants, he did not consider that he had a

fixed sub-contract for a definite scope of works with a definite price. Being an old hand

in the business, he knew that sub-contracts of this sort were subject to much negotiation

both as regards price and as regards the scope of the work to be done. He did

not expect

that his initial quotation would be accepted and his understanding of the situation is

shown by his willingness to requote more than ten times and to keep accommodating the

defendants' requests for changes. Even when he was told that the defendants wanted

him to quote only for the supply of labour and management and not for the supply of

materials which meant that the value of any job awarded to the plaintiffs would be reduced

by more than half, he did not protest but put in a new quotation as a matter of course. Mr

Seet did not believe that he was entitled to a specific contract. What he considered was

that he was entitled to some part of the work. It is noteworthy that he did not ever write

to the defendants accusing them of being in breach of contract on the basis that Mr Toyoda

had promised him a specific contract for the whole project in August 1994.

77 58. The defendants, I hold, were aware that

they had made a promise to Mr Seet and that was why he had rendered them
assistance over

and beyond that usually available from a tenderer. They did recognise that the
plaintiffs

had worked hard for the project and that they owed the plaintiffs some return
for the

efforts made. They considered that they had some sort of obligation to him. That
is why in

April 1995 they offered the plaintiffs not only one third of the clean room project
but

also a consultation fee. In my judgment, however, there was no understanding
between the

plaintiffs and the defendants that if no sub-contract was awarded to the
plaintiffs, the

plaintiffs would be paid either as consultants or otherwise for the time and
efforts they

had expended. All the work that was done, was done on the basis that eventually a

sub-contract would issue (if the defendants were awarded the job by Kajima) and that such

sub-contract would be the only reward which the plaintiffs would get for their work. In

due course, the defendants did make the plaintiffs an offer even though the

plaintiffs' price was much higher than that of their competitors. The plaintiffs were

not willing to accept this offer and that was their prerogative. They were not thereafter

entitled to sue the defendants for something which was outside the understanding of the

parties who had dealt together on the usual basis of a contractor and potential

sub-contractor. The plaintiffs knew that this was the basis on which they were approached.

If the defendants had wanted to employ the plaintiffs as advisors/consultants or

administrators, a type of employment which was different from that common in the

construction business, I agree with Mr Toyoda that the defendants would have acted more

formally. There would not have been verbal assurances alone. In addition the scope of the

contract (ie the exact services which the plaintiffs were to provide) and the payment

terms and price would have been precisely delineated in writing.

78 59. Mr Seet was, I believe,

over-enthusiastic. He saw the prospect of obtaining a contract which was bigger than any

other project which the plaintiffs had worked on and he therefore went over-board in his

attempts to sew up the deal. His trips to the United States and to Taiwan were, I believe,

arranged at his own initiative and not at the request of the defendants. There was no real

need as far as the defendants were concerned for either of the trips. The defendants did,

to an extent, take advantage of Mr Seet's eagerness to please them and they must have

recognised this since they offered him part of the job despite the price difference between him and the other contractor, SG-Bogen.

79 60. Any legal rights which the plaintiffs

had against the defendants arose from Mr Toyoda's representation that the plaintiffs

would have some sort of a job if the defendants were successful in their tender to Kajima.

That representation is what the plaintiffs might have been able to sue on though even then

they would have faced problems as to the exact nature and terms of the contract which

resulted. The plaintiffs chose not to sue on the basis of that representation because they

realised that the other difficulty they faced in doing so was the fact that an offer

had

been made and it was the plaintiffs who rejected it because they did not find it

sufficiently profitable. In those circumstances, any allegation of a breach of contract or

representation would have rung hollow. So the plaintiffs chose the alternative course of

pleading that there had been an agreement that they were engaged to provide expertise to

assist the defendants to tender for the contract. They were not able to support that

pleading.

80 61. In the result this action fails and must

be dismissed with costs.

81 JUDITH PRAKASH

82 JUDGE

83 SINGAPORE

84 Date: 29 December 1997

85 This does not merit reporting

Judith Prakash J

Arthur Quay with Jeanette Lee (J Y P Chia & Co) for the plaintiffs
Michael Loh with Wendy Lee (Peter Moe & Partners) for the
defendants
