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

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Vicson General Contractors Pte Ltd v Dai-Dan Co Ltd

[1997] SGHC 345

Suit No 1641 of 1995
Judith Prakash J
29 December 1997

Judgment:

Cur Adv Vult

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 construction industry.

2. In August 1994, Kajima Overseas Design Asia Pte Ltd (Kajima) was interested in securing the main contract for the construction of 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.

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.

The pleadings

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.

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

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

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.

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.

The plaintiffs' story

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

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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.

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.

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

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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.

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.

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.

13. On 30 August 1994, Mr Seet and Mr Cheng went to the defendants' office. There they met Mr Toyoda and explained the specifications to him. They also

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gave him the completed Schedule of Technical Data of Equipment. The next day, Ms Ho asked Mr Seet to provide her with details of the partition joints. He instructed Mr Cheng to work out these details and faxed the detailed drawings to the defendants the same day.

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.

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.

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.

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

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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.

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.

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.

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

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portion of the clean room. He wanted Mr Seet's assistance to evaluate whether Matsushita could do the job.

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.

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.

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

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many discussions between Mr Fujisawa and his staff regarding the details of the curtain installation. Seven pages of drawings were sent regarding those details.

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.

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.

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.

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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.

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.

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.

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

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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'.

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 concentrate on producing better work for the Seagate project.

32. Following this letter, Mr Seet had a meeting with Mr Sano. Mr Seet's evidence was that it was agreed at this meeting that the plaintiffs be given one

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third of the contract and be paid a consultation fee. This agreement was reflected in Mr Seet's letter of 28 April in which he referred to the meeting and stated that the consultation fee should be 'around $200,000.00 for unaccountable sinking fees as well as those items already carried out as mentioned in our 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.

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:

'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.'

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34. In his letter, Mr Seet went on to make three proposals to the defendants as follows:

(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;

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

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

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.

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:

(1) increasing their supervisory force and setting up a new office to meet the demands of the project;

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(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;

(3) Mr Seet's travel to Taiwan and the United States to secure professional advice and information;

(4) the expense of providing samples, confidential documents and drawings;

(5) training fees for upgrading the supervisory team;

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

(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.

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

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.

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

'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

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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'.

The defendants' position

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.

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.

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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.

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.

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.

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

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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.

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.

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.

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

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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.

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.

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.

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

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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.

51. Mr Maeno testified that he was employed by the defendants as a project manager. He asserted that he was involved and participated in the drafting of all plans relating to the construction of the clean rooms in the Seagate factory. The final plans which were submitted to and accepted by Kajima were directly derived from draft plans supplied by Kajima itself. He asserted that in the preparation of the plans, neither he nor his colleagues relied on any plans or advice given by the plaintiffs. He also claimed that there was nothing unusual about the Seagate project which required external consultants. It was a standard factory building for manufacture of computer components and chips. All plans showed a simple layout.

52. Ms Shirley Ho was involved in the 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.

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Findings

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.

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.

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

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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.

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

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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.

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.

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

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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.

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

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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.

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.

61. In the result this action fails and must be dismissed with costs.

JUDITH PRAKASH

JUDGE

SINGAPORE

Date: 29 December 1997

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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

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