IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 310

Suit 2487/1996

Between

Stangee Developments Pte Ltd

… *Plaintiff*

And

Chia Yong Kwang (a chartered architect practising under the style of Architects Action International Incorporated)

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Stangee Developments Pte Ltd v Chia Yong Kwang (a chartered architect practising under the style of Architects Action International Incorporated)

[1998] SGHC 310

Suit 2487/1996
Amarjeet Singh JC
18 September 1998

1 **Judgment :**

2 **Cur Adv Vult**

3 Introduction

4 1. The Plaintiffs are property developers.

5 2. The Defendant is a Chartered Architect practising under the name and style of Architects Action International Incorporated. He has been in practice for 27 years.

6 3. The Plaintiffs were at all material times the owners of Lots 137-13, 137-15, 3398 and 6691 Mukim 26 at Chapel Close/Lorong Stangee/Duku Road ('the land') and the developers of a condominium consisting of 3 blocks of apartments thereon collectively known as 'Chapel Lodge'.

7 4. The Defendant was at all material times engaged by the Plaintiffs as the Project Architect in the said development.

8 Issues

9 5. The issues that arose at the trial were:

> i) Was the Defendant negligent in coming up with a design of Chapel Lodge that left unutilised an area of ***154 m2***. of the maximum *permissible* Gross Floor Area ("GFA") and in determining negligence what is the duty of care owed by the Defendant as an architect to the Plaintiffs the developers of Chapel Lodge as his employers?
>
> ii) Was the Defendant responsible for the delay in obtaining the Certificate of Statutory Completion (CSC) and Strata Subdivision?
>
> iii) In the event the 1st and 2nd issues are decided in favour of the Plaintiffs, what if any loss was suffered by the Plaintiffs for which the Defendant is liable?

10

11 Background

12 6. The background of the case is that originally, the Plaintiffs were owned by one Goh Hoon Leum, DW2 (‘Goh’), the Plaintiffs’ co-director and other shareholders. Sometime in early August 1989 the Plaintiffs had acquired the land as stated hereinbefore for the development of Chapel Lodge condominium. Goh had in the past been actively involved in property development from the design stage to physical completion in his capacity as a Project Manager of Hong Leong one of Singapore’s biggest property developers.

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13 7. Sometime in July 1989 the Defendant was appointed as the Plaintiffs' Architect by Goh.

14 7.1 It was both Goh's evidence and the evidence of the Defendant that the land to be developed posed many difficulties as it was of *irregular* rectangle size and surrounded on all four sides by buildings. The designing of the condominium was further aggravated by the fact that its size was affected by a 4 - 6 m wide drainage reserve which divided the site. The Plaintiffs had also to comply with the minimum building setback from the drainage as required by the Urban Redevelopment Authority ('URA'). This factor would further reduce the achievable 'footprint' of the building. It was Goh's further evidence that he instructed the Defendant to design Chapel Lodge with more Common Open Space ('COS') in the development and provide minimum facilities i.e. there should be no swimming pool provided so that minimum maintenance charges would be paid by end-buyers and which in turn would translate into a good selling point.

15 7.2 The Defendant he said thereafter produced a design of the Chapel Lodge keeping Goh informed of the design and its details at all times.

16 8. Chapel Lodge as designed comprised **three,** 4-storey blocks of some 44 flats or units.

17 8.1 Eight of the ground floor units of Blocks 1 and 2 would each have a Private Enclosed Space ('PES') of ***6m2*** which was to be included as part of the Gross Floor Area ('GFA'). (However on 15 July 1993, URA had revised the definition of GFA to exclude the PES from GFA but this revision both Counsel

agreed during the trial was not of relevance to the case coming as it was after the completion or near completion of the building).

18 8.2 There would be no PES for the two ground floor units of Block 3.

19 9. On 14th December 1990 after two submissions for planning approval had been rejected, the Plaintiffs obtained a *Grant of Provisional Permission* subject to *conditions* to build Chapel Lodge.

20

21 Events surrounding the construction of Chapel Lodge

22 10. Following the *Grant of Provisional Permission*, Goh and his colleagues decided to sell and sold the land together with the benefit of the *Grant of Provisional Permission* (subject to *conditions*) to build Chapel Lodge for about $5.9 million to one Ch'ng Gim Huat (PW1) ('Ch'ng') who was introduced through a property agent to Goh. According to Goh, Ch'ng was satisfied with the proposed development as explained to him by Goh and the various design plans shown to him before agreeing to buy it.

23 10.1 The Sale and Purchase Agreement in respect of the land with *Grant of Provisional Permission* to build Chapel Lodge was entered into on 17th November 1990.

24 10.2 Having purchased the property, Ch'ng thereafter retained the Defendant as his Architect re-appointing him on 9 January 1991. At a meeting on 14 January 1991, the Defendant briefed Ch'ng on the design. The Defendant said Ch'ng was happy. Ch'ng stated, though, that the PES of the eight ground

floor units of ***6 m2*** was not discussed. He agreed though that it would be in the drawings which he received from the Defendant and passed on to his Surveyors.

25 11. It was the Defendant's evidence that he had submitted his design for the proposed Condominium based on a *Proposed GFA of 6,750.02 m2* as against the maximum *Permissible GFA of 6,761.07*. The difference was only *11.05 m2* ('***11m2***') and that too, to provide for any subsequent contingency. He said after his re-appointment as the Plaintiffs' Architect, he was instructed by Ch'ng to proceed to submit drawings for *Written Permission* from URA and in doing so to comply with the *conditions* attached to the *Grant of Provisional Permission*. He did so accordingly on 28 February 1991. The application for *Written Permission* was signed by Ch'ng. The main *condition* as set out in the *Grant of Provisional Permission* required to be fulfilled was that Block 3 be set back by 9 meters instead of 7.5 meters on two sides from the boundary. As a result, his *Proposed GFA* became *6,721.28 m2* as against the *Permissible GFA* of *6,761.07* i.e. it threw up a difference of ***39.79 m2 ('40 m2')*** i.e. about ***29 m2*** more because of the increased set back clearance of Blk 3.

26 12. However, URA soon afterwards on 26 April 1991 informed the Defendant to revise the GFA. The effect of complying with URA's written direction was that now the total excess GFA for utilization was increased to ***154.01 m2*** ('***154 m2***'). The second increase in the GFA from a shortfall of ***40 m2*** to ***154 m2*** came about because URA had increased the plot ratio of one of the four plots of land as set out in **Exh. AB1(63) item B(2)** resulting in the *Permissible* GFA increasing to *6875.29 m2* whilst the Defendant's *Proposed GFA* remained at *6721.28 m2*. The Defendant at page 61 of the Notes of Evidence explained all this as follows:

> " In **Exh AB1(63)** item B(2) 'Max Density Pt 245 ppha/Pt 345 ppha' (per person hecta) allowed us a little more density throwing up **more excess area on paper**. At all times the number of flats remained the same and the built up area remained the same **i.e. physically on the ground the excess area was still only about 40 sq.m.** On paper because of part increased density of 345 i.e. from part of plot the excess area on paper became ***154 m2***. " [pg 61 NE]

27 (emphasis added)

28 The Defendant had previously explained that when he was first approached as the Architect for the development of Chapel Lodge and designed the building, the designated density of the property was 245 ppha.

29 13. According to the Defendant, Ch'ng was very eager to put the units for sale as soon as possible because of the very favourable market then. The Defendant said he was being pressed by Ch'ng to obtain approval of the *Building Plans* with this end in mind. Without building approval, the Plaintiffs would not be allowed to launch the sale of units in the condominium. Accordingly, even before the *Written Permission* was granted, the *Building Plans* were prepared by the Defendant accordingly and submitted on 20 May 1991 to URA. The *Building Plans* were signed by Ch'ng on behalf of the Plaintiffs. The area of the PES in the *Building Plans* of the eight ground floor units of Blks 1 and 2 continued to be ***6.0 m2*** each.

30 13.1 The Defendant having promptly complied with URA's direction dated 26 April 1991 the *Written Permission* by URA was granted on 23 May 1991.

31 13.2 The *Building Plans* were approval on 11 November 1991.

32 13.3 The Defendant had been *cross-examined* by Plaintiffs' Counsel on the question of whether he informed Ch'ng about the GFA of ***154 m2*** being available on or about 26 April 1991 pursuant to URA's letter. The questions and answers were as follows:

33 " Q: Did you tell this to PW1?

> A: There is no need. Instructions earlier were to go ahead quickly to obtain written approval as it was designed.
>
> Q: Could more flats have been added?
>
> A: No
>
> Q: Can area of flats be increased?
>
> A: Very difficult. This is a difficult piece of land. Any changes if made would involve additional difficulty because it involved alienation of state land. One of the pieces of land was state land. It was a lot of effort on the part of previous shareholders and myself to get the freehold title of the state land.
>
> "

34 In further *cross-examination* when pressed again, the Defendant responded to the

35 question further thus:

36 Q: As far back as May 1991 provison could be made for a larger PES for Blks 1 and 2 using ***154 m2***?

37 A: No because if you change design it will affect COS. It may delay or jeopardise the provisional planning approval.

38 13.4 The Plaintiffs had also engaged How Huai Hoon Surveyors as Surveyors of Chapel Lodge. The said firm of Surveyors had appointed one Lau

Hua Peng, PW5, ('Lau') to look after the survey of the Chapel Lodge project. The Surveyors' work was to study the design plan drawn to scale by the Defendant and prepare precise plans worked out of the Defendant's said scale drawings (1mm:100mm). The Surveyors had also importantly to follow the approved plans by URA and to subsequently submit applications for strata subdivision and title in respect of the units in Chapel Lodge.

39 13.5 Although it was not disputed that both the *Grant of Written Permission* as well as the *Building Plans* which latter Plans were approved on 11 November 1991 did not provide in respect of Blk 3 a PES, the Plaintiffs' Surveyors Ms How Huai Hoon had however prepared and submitted floor plans showing PES of approximately ***7.9 m2*** in respect of the two ground floor units in Blk 3. Although the said Surveyors had sent to the Defendant the calculations for the areas of the relevant two units showing a PES of *7.9 m2* and that of Blks 1 and 2 which correctly showed a PES of ***6 m2***, the Defendant did not approve the said calculation. Instead the Defendant wrote to the Surveyors on 24 July 1991 drawing to their attention his own tabular calculations of the area.

40 13.6 Notwithstanding that, the surveyors submitted their own calculations to the relevant authorities on 11 October 1991 i.e. which included the PES of ***7.9 m2*** for the two ground floor units in Blk 3.

41 13.7 The Plaintiffs had also prepared *Construction Drawings or Contract Drawings* dated 18 March 1992 to scale for the calling of tenders from contractors for the building works of the Chapel Lodge condominium.

42 13.8 The Plaintiffs at about the same time without consulting the Defendant, prepared and printed sale brochures showing the two units in Blk 3

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as having a PES (i.e. of ***7.9 m2***). The Defendant only became aware of the same on 17 December 1991 when copies of the brochures were faxed to him whereupon the Plaintiffs were advised by him not to sell the said units in Blk 3 because both the *Grant of Written Permission* and the approved *Building Plans* had no provision for them. The Plaintiffs instead instructed him to submit amended plans incorporating the PES of ***7.9 m2*** for the two units.

43 13.9 The Plaintiffs launched the sale of the units in the condominium in April 1992 in excess of $4,000 per m2 (or above $400 per sq ft).

44 13.10 The Defendant submitted the *amended* plans incorporating the PES of ***7.9 m2*** for the two units in Blk 3 together with plans for certain additional structures consisting of:

45 (i) Telecom MDF room, required by URA;

46 (ii) switch room required by URA;

47 (iii) a guardhouse required by the Plaintiffs

48 as required were submitted to the URA on 24 August 1993 and the three additions utilised a GFA of about ***11 m2***.

49 14. *Grant of Written Permission* for the *Amendments* was obtained on 17 December 1993.

50 15. As for the construction of Chapel Lodge piling commenced on 19 December 1991 and building works commenced on 15 June 1992 and were largely completed on or about 15 July 1993.

51 16. The Temporary Occupation Permit (TOP) for the project was issued on 28 February 1994.

52 17. On or about 6 May 1994 the Plaintiffs applied for Strata Subdivision from URA. The Surveyors had submitted plans on behalf of the Plaintiffs to obtain the Strata Subdivision. The Surveyors' plans showed a PES of ***24 m2*** for the eight ground floor units of Blks 1 and 2. The PES of ***24 m2*** represent by the Surveyors in the plans for the said units came to light in the following manner. The building contractor had measured the PES from the construction drawings prepared by the Defendant. It was found by the Contractor to be ***24 m2*** (See **Exh. N1**). In **Exh. N1**, the PES (as highlighted in Court) is bordered in blue. The enclosed blue area is shown as ***24 m2*** because at top of the drawn section the area 5900 mm if added to 3815mm would be 9715mm. This was the length of the PES. The width is shown by the lines 400mm and 2100mm making the total width 2500mm giving upon multiplication of the length and width the ***24 m2*** PES (the plan being drawn on a scale of 1mm to 100 mm).

53 Accordingly, ***24 m2*** for each of the eight units was measured off on site i.e. on the ground of each such unit and a wooden fence had been erected on the borders of such space by the contractors.

54 The Plaintiffs' Surveyors came along and measured the physical space demarcated by the wooden fence and had found it to be ***24 m2*** and in their survey they thus verged the area enclosed by the timber fencing as the actual PES when it was not according to the *Grant of Provisional Permission* and *Written Permission*.

55 18. The PES of ***24 m2*** for each of the 8 units in Blks 1 and 2 was also soon afterwards conveyed to the Plaintiffs by the Surveyors.

56 19. The consequence was that by letter dated 14 June 1994 to the Surveyors and copied to the Plaintiffs, URA only granted *Provisional Permission* for amalgamation and subdivision of land into 3 plots and strata subdivision of Blks 1 and 2 and required the Surveyors to comply with several *conditions* listed in their letter one of which was

> " 1(d) Strata verging for private enclosed space [PES] in Blocks 1 and 2 to tally with approved plan. "

57 19.1 Lau representing the Surveyors testified claimed he had told the Defendant about the letter from URA.

58 19.2 The Defendant denied ever being so told or ever receiving a copy of the said letter from the Surveyors.

59 20. The Defendant's further testimony was:

> (i) that he was only told of the URA's letter and the discrepancy of ***24 m2*** and to resolve it at a meeting which the Plaintiffs and their Surveyors convened on 1st April 1995 i.e. some 10 months later at which all parties were present. The Defendant maintained at the meeting the PES of ***6 m2*** of the eight units in Blks 1 and 2 to be the correct approved area as set out in the *Grant of Written Permission* as required by the Plaintiffs. The Defendant was asked to submit the necessary amendment plans to the URA on 6 April 1995 to rectify the discrepancy. He did so. The amendments were approved on 22 April 1995.
>
> (ii) The PES area of ***24 m2*** of each of the said eight units as shown and demarcated by a timber fencing on the *Building Plans* had been ***mistakenly*** reflected on the plans because Ch'ng was rushing the project and he was pressured to do the construction drawings to go for tenders to construct because of the good property market. The mistake would he said have possibly resulted from using a computer to model and a wrong line drawn and extended to full and subsequently the detail

> prepared according to a wrong projection by his staff which he had overlooked when checking the drawings.

60 Submissions

61 Plaintiffs:

62 Alleged Acts of Defendant's Negligence

63 21. Briefly then, the Plaintiffs' claim for negligence against the Defendant was founded on two aspects as submitted on their behalf in the Plaintiffs' closing submissions:

> **(a)** Negligence in:
>
> (i) failing to provide advice in relation to the available GFA i.e. the difference between *Permissible GFA* and *Proposed GFA* resulting in some ***154 m2*** of available GFA remaining when construction started resulting in loss and damage to the Plaintiffs through the non-utilisation and sale of the said space.
>
> (ii) in the preparation of drawings/plans. The *construction drawings* showed a fence to be constructed enclosing an area of ***24 m2*** for each of the ground floor units for Blks 1 and 2. Fences had been erected accordingly. The URA had, however, only given permission for an enclosure of ***6 m2*** for each of these units. Consequently, the fences had to be relocated and the building plans regularised.
>
> (b)
>
> The delay caused as such by the relocation of the enclosure and regularisation and submission of further amended plans and their approval had in turn delayed the Plaintiffs' collection of the final 15% of the purchase price of all units in the development resulting in a loss of payment of interest on the earlier collection of such monies and their deposit in the Plaintiffs' bank.

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64 22. The core of the Plaintiffs' case to establish the Defendant's negligence according to Ch'ng was that the Plaintiffs would have developed the maximum GFA allowed by URA. The Defendant had failed to inform the Plaintiffs that ***154 m2*** was available for development when URA directed the Defendant to revise the *Proposed GFA* filed in February 1991 (upwards) by letter on 26 April 1991. Ch'ng's further evidence was that had the Plaintiffs been informed of this additional GFA available for development he would have instructed the Defendant to increase the area of the PES from ***6 m2*** to ***24 m2***. According to Ch'ng the Defendant had already in the Construction Plans demarcated ***24 m2*** for each of the eight ground floor units in Blks 1 and 2 and it was proof that there was space in front of each of the units which would have allowed the Plaintiffs to sell the additional area of ***18 m2*** (***24 m2 minus 6 m2***) to each of the units' buyers. The project as constructed and sold was therefore done with under-utilized *Permissible* GFA. The Plaintiffs' further case was that the Defendant had apart from failing to inform the Plaintiffs of the additional GFA ***154 m2*** available for development also failed to advise the Plaintiffs that it was possible to amend the Application for *Grant of Written Permission* to provide for ***24 m2*** instead of the ***6 m2*** provided in the Submission for *Written Permission* as permission had not been granted yet. The *Grant of Written Permission* was only given subsequently on 23 May 1990 i.e. about three weeks later. Plaintiffs' Counsel asserted by way of example that the Defendant had on instructions submitted amended plans after the Surveyors had mistakenly incorporated a PES (of ***7.9 m2***) for the two ground floor units in Blk 3 and URA had allowed the amendments submitted by the Defendant to retain the same. URA therefore similarly would have allowed the amendments of the increased PES of ***24 m2*** for each of the eight units in Blks 1 and 2.

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65 22.1 It was the Plaintiffs' further evidence through Ch'ng that as a result of the Defendant's negligence, the Plaintiffs had suffered a loss of $710,999.46. The loss was computed on the selling price of each unit as explained at paragraph 14 of the Plaintiffs' *Amended Statement of Claim* and calculated based on the potential proceeds for the extra ***18 m2*** of PES that would have been otherwise earned and for each of the eight ground floor units, the sale prices of which were between $4,581/- p.s.m. to $5,878.38 (the corresponding losses incurred for each unit being between $82,459.62 to $105,810.84).

66 22.2 Counsel for the Plaintiffs supported the Plaintiffs' evidence and his own submission by submitting on the law. Counsel referred to the Defendants' terms of appointment (**AB20**) which stated:

> "The Architect's service shall be of normal duties and responsibilities……"

67 Counsel submitted that the normal duties and responsibilities of an architect were set out in ***Hudson's Building and Engineering Contracts*** Vol. 1 11th Edn.. Sweet & Maxwell 1995 at pgs 284 - 285 as being:

> 'Generally, an owner under a building or engineering contract will have four main interests which he employs his professional adviser to secure, namely:
>
> (i) a design which is skillful and effective to meet his requirements..;
>
> (ii) …
>
> (iii) efficient supervision to ensure that the works as carried out conform in detail to the design and specification; and
>
> (iv) efficient administration of the contract so as to achieve speedy and economical completion of the project.
>
> In so far as any act or omission of the architect or engineer prejudices any of these interest, and is due to lack of care or skill on his part, he will be failing in his obligations and will, if

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> the breach of duty is clear, be responsible to his employer for any damage which he may suffer. "

68 Counsel stressed that an architect must have regard to his clients' requirements. In this case, the Defendant's clients were Developers and their intention primarily was to make profits from selling units in the development.

69 22.3 Counsel additionally referred to the evidence of Ho Ann Soon, PW4, ('Ho') an architect whom he called as an expert witness. Ho had stated in his Affidavit of Evidence-in-Chief paragraph 8:

> "The architect of a project is obliged to advise his client the developer concerning the *permissible* and *proposed* GFA of a project. Without such advice, the client will not be able to make an informed decision concerning the utilisation of GFA."

70 22.4 It was also Counsel's contention that the Defendant had drawn up the building plans and drawings negligently. The further duties he added of an architect as stated in ***Hudson's Building and Engineering Contracts*** Vol. 1 11th Edn.. Sweet & Maxwell 1995 pg 298 were of a *continuing nature* requiring that the architect check his design and that his design will work in practice and to correct any errors which may emerge.

71 22.5 The Plaintiffs' pleaded case was that the Defendant was by his negligence responsible for their Surveyors' delay in obtaining the strata subdivision and CSS. Because of the delay some 15% of the purchase price ($3,891,346.50cts) of the said units in the development was collected late and asked for interest at 1% above the then average bank lending rate which was about 7% i.e. as just compensation. However, Plaintiffs' Counsel, in his final written submission conceded:

> "In the light of the evidence relating to CSC, the Plaintiffs now seek only to be compensated for delay in the collection of 2% of

> the purchase price, on account of delay in strata subdivision (and consequent delay in legal completion)".

72 This concession was made no doubt because the Plaintiffs' surveyor had testified that up to 22 April 1995, he had not attended to the URA's Condition 2 (ii) set out in its letter of 4 April 1995 "to ensure that the 1st storey line of Blk 3 tallied with the approved plans (D/E in DC 111/62 Pt 4)" and that until he complied, he could not get *Written Permission* for Strata Title. The Plaintiffs' case was that the Defendant should be held liable on 2% of the purchase price only for delay for the period from 22 April 1995 till 3 October 1995 (165 days) when permission for strata subdivision was obtained or for the lesser period to 11 September 1995 (143 days) when the timber fences were removed.

73 Defence and Counterclaim

74 23. Defence Counsel refuted the submissions of the Plaintiffs' Counsel. In summary the Defence case denying any negligence was that the Plaintiffs through Ch'ng in particular received briefing from Goh who sold the project to him on the design and the *Grant of Provisional Permission,* as well as again by himself on 14 January 1991 after the sale, and was given all the design plans by the Defendant. Ch'ng had also the benefit of advice from his Surveyors and that he knew all along and had accepted the design including the PES of ***6m2*** in respect of the eight ground floor units. Ch'ng expressed only two concerns to the Defendant all along, namely obtaining from the Defendant an assurance both orally and later in writing that the said condominium project would not incur any development charges which assurance he had also got from Goh and that further the Defendant should put in the plans for *Grant of Written Permission* and *Building Plans* for approval immediately because he wanted to put the condominium units on sale as soon as possible as the property market had

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moved up and he wanted to take advantage of it. The Defendant stressed that the *construction drawings* showing the dimension of PES of ***24 m2*** as drawn was a ***mistake*** or ***error*** made by the Defendant as to the said area when it should have been ***6 m2*** as already approved in the *Grant of Provisional Permission* and the original submission made for *Written Permission* which ***mistake*** or ***error*** he subsequently rectified.

75 The Defendant admitted that he indeed did not specifically inform Ch'ng or the Plaintiffs on or after 26 April 1991 that there was another ***114 m2*** of GFA thrown up making a total of ***154 m2*** GFA available. He said there was no need to because Ch'ng knew all along the PES of the eight ground floor units was ***6 m2*** and had never objected to it; he had been instructed to get the *Grant of Written Permission* and approval of the *Building Plans* quickly; Ch'ng wanted to market the properties quickly; the intimation by URA of ***110 m2*** of extra GFA coming as late as it did i.e. after the *Provisional Permission* had been obtained, the submission for *Grant of Written Permission* and *Building Plans* which had already been submitted would have meant amendment and resubmission of all the three plans again as well which in his view would have delayed the approvals with its attendant risk of rejection thus delaying the marketing of the units with which Ch'ng was preoccupied; that the aesthetics of the design and other considerations required by URA such as COS which was his professional responsibility would be seriously affected or risked.

76 23.1 As for damages, Defence Counsel's submission was:

> (a) the Plaintiffs' basis of calculating damages at $710,000/- for the loss of profits from sale of the extra ***18 m2*** was flawed as the value of the PES could not and never be equated to and be equal of the ***"m2"*** selling price of the units which exceeded the average range of $4,000/- p.m.2. The Plaintiffs had assumed that the value of the PES was the same as that of the built-in

> areas of all the units. It simply could not be so because the Plaintiffs themselves in pricing their units only valued the PES of ***6 m2*** at a total of $12,000/- which works out to $2,000/- p.s.m. with the result that the Plaintiffs would only be entitled to $36,000/- for the additional ***18 m2*** of PES for each of the eight ground floor units. The maximum the Plaintiffs would be entitled to if the Defendant was found liable would accordingly be $288,000/- (8 x 36,000) and not $710,000/-. In any case, there was no expert evidence led by the Plaintiffs showing that the Plaintiffs' method of valuation was correct.
>
> (b) assuming that the Defendant was held liable which the Defendant denied he was, for the delay on account of his negligence concerning the delay based on 2% of the purchase price as claimed in the Plaintiffs' final submission relating to the approval of the strata subdivision of the land and the units the Plaintiffs' assessment based on 8% being the bank lending rate or his borrowing costs from a bank was again flawed as on proper principles the damages should be assessment on the banks' fixed interest rates for depositors which then was about 3% p.a. As 2% of the purchase price was $518,000/- for the relevant period, it would have resulted in a loss to the Plaintiffs if it was 165 days a sum of $7,036.41 and if it was 143 days a sum of $6,098.22cts respectively at 3% p.a. and no more. The Plaintiffs had at the relevant time no overdraft facility existing to make the type of claim they were making. Their overdraft facility had been repaid by 28 February 1994 a fact which was not disputed by the Plaintiffs.

77 23.2 Defence Counsel had submitted that the Defendant could not at all be responsible under the above head of damages in negligence i.e. in respect of the $7,036.41cts. or the lesser amount of $6,098.22cts. Defence Counsel's contention was that the delay in getting CSC had nothing to do with the erection of the timber fencing and that this evidence was wholly unchallenged by the Plaintiffs. The delay was caused solely by the Engineers' failure to obtain the necessary clearance from the Central Building Plan Unit. Part of the reason for the delay was also the necessity to divert a telephone pipe (**pg. 75 DBAEC and pg 32 NE letters B to C**) and that it was manifestly clear that the delay in obtaining CSC had nothing to do with the timber fencing and therefore the Defendant clearly was not liable for any such delay. Because of actions still

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needed to be taken by the Surveyors and the Engineer, the Plaintiffs would never have been able to obtain strata subdivision and CSC during the period 1st April 1995 to 3rd October 1995. The Defendant therefore cannot be held liable for the delay in getting strata subdivision and CSC during the said period.

78 23.3 The Defendant in denying the Plaintiffs' allegations of negligence counterclaimed a sum of $12,073.58 being the balance of his fees due to him with interest in respect of his agreed fees. Plaintiffs' Counsel did not dispute that in the absence of negligence this balance of fees was payable to the Defendant.

79

80 Evaluation and Findings

81 24. I propose to deal with the issue of damages first and thereafter with the issue of liability.

82 Damages

> (1) *As to non-utilization of extra GFA* - I agree completely with the submission of Defence Counsel that the loss of profits from the sale of the extra ***18 m2*** of GFA (or garden space) to each of the eight ground floor unit holders if there had been one could not and never be equated with the selling price of the said units as claimed by the Plaintiffs. The Plaintiffs had wrongly assumed that the value of the PES was the same as that of the built-in area of each of the units. In any case, the Plaintiffs provided no basis for such a claim. In the circumstances, if I hold the Defendant liable in negligence, the Plaintiffs' loss would be restricted to $288,000/- as submitted by Defence Counsel.
>
> (2) *Delay in obtaining Strata Title* - as to the delay of 165 days in getting permission for the strata title i.e. 22 April 1995 till 3 October 1995 (which I hold the correct period rather than the 145 days from 22 April 1995 to 11 September 1995 as

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> permission for the Strata Title was given on 3 October 1995) such delay was, in my opinion, substantially caused by the Plaintiffs' Surveyors as they had *admittedly* not complied with still outstanding conditions imposed by URA for grant of the Strata Title which Defence Counsel explained and which explanations I accept as is further borne out by the relevant documents. The Plaintiffs are therefore not entitled to any damages under this head in any case.

83 25. Liability

84 It is plain that a relationship between an architect and his client is primarily contractual. In ***Halsbury's Laws of England*** Vol 4(2), 4th Edn. Re-Issue para. 524 it is stated:

> ".....The test of whether the architect is in breach of his duty is whether an architect did or did not exercise the skill and care to be expected of an ordinary architect exercising and professing to have that skill."

85 The test is based on the dicta of McNair J in ***Bolam v Friern Hospital Management Committee*** [1957] 2 All ER 118 at 121 which has been generally approved.

86 26. The standard was more fully expressed ***in Voli v Inglewood Shire Council*** [1963] ALR 661 an Australian case where Windeyer J said:

> "
>
> An architect undertaking any work in the way of his profession accepts the ordinary liabilities of any man who follows a skilled calling. He is bound to exercise due care, skill and diligence. He is not required to have an extraordinary degree of skill or the highest professional attainments. But he must bring to the task he undertakes the competence and skill that is usual among architects *practising* their profession. And he must use due care. If he fails in these matters and the person who employed him thereby suffers damage, he is liable to that person. This

> liability can be said to arise either from a breach of his contract or in tort. "

87 What is necessarily required however to fulfill the test or standard will vary very much according to the facts and circumstances of a particular case. As to evidence of general *practice*, Sachs L J in ***Worboys v Acme Investment Ltd*** [1969] 210 EG 335 C.A. cited the extreme case of a house being built without a staircase which required for instance no evidence of *general practice* whilst on the other hand, he observed that there could be other omissions in respect of which it would be "grossly unfair" to architects to condemn them in negligence in the absence of professional evidence that they had failed to exercise due care, skill and diligence. Whilst such evidence of general practice would considerably assist the Court, it is for a Court to decide in the end what exactly is required to discharge the standard of reasonable care.

88 27. The standard of care and skill required of the Defendant in the present case is to be judged primarily on the considerations:

> (a) as to when he designed the condominium Chapel Lodge and submitted the plans of the same for obtaining *Provisional/ Written Permission* and whether the design and submissions in respect thereof met the then URA building requirements.
>
> (b) in the event changes were required to be incorporated in the design thereafter to overcome specific obstacles concerning safety or defect or to meet new or revised building requirements by or as required by the URA (in view of an architect's duty to continually keep his design under review).

89 However, as was so well expressed by Lord Edmund Davies in ***I.B.A. v E.M.I. & B.I.C.C.***[1980] 14 Build L.R. 1 at 31:

> "Judgment on hindsight must be avoided…….Justice requires that we seek to put ourselves in the position of BICC when first confronted by their daunting task ….".

90 28. Having regard to all these principles and the evidence and submission of Counsel, I am satisfied that the Plaintiffs have failed to prove on a balance of probabilities that the Defendant had not conducted himself as an ordinary competent and skilled practitioner. Hence I find the Defendant was not negligent in the discharge of his professional duties to them in the construction of Chapel Lodge for the reasons which I now proceed to give.

91 28.1 I accept the Defendant's evidence that the Plaintiffs through Ch'ng, well knew when he purchased the land in question with *Provisional Permission* to build the condominium, Chapel Lodge, that the PES of each of the eight ground floor units was ***6 m2*** and none for Blk 3 units. In his *cross-examination* he was asked and answered:

92 Q: The dimension of the enclosed area would be in the calculation drawings?

93 A: Yes. After he passed on drawings to us, I passed them to my Surveyors.

94 Q: Put: You knew from the beginning PES was ***6 m2*** for Blks 1 and 2 and nil for Blk 3?

95 A: I agree.

96 Court: Q: You agree you knew from the beginning?

97 A: Yes

98 Again, Ch'ng admitted that no PES had been provided for the two units in Blk 3 by the Defendants made clear by Ch'ng's evidence in *cross-examination*:

99 Q: It was your Surveyors who provided for PES for two units in Blk 3 although architect had not done so?

100 A: Yes

101 Q: Defendant pointed out error in Surveyors' calculation including PES for 2 units in Blk 3 i.e. it should not be there?

102 A: Yes

103 28.2 The Plaintiffs had relied on Ch'ng's evidence that as there became available a GFA of ***154 m2*** about late April 1991 which would be unutilised, the Defendant had failed to inform and advise them of this as was his duty to do to and was thus negligent. Further that the Defendant's *construction drawings* had confirmed that an extra ***18 m2*** could indeed have been added to the ***6 m2*** of PES of each of the eight units to make up an area of ***24 m2***. The additional area was valuable and would have been sold by the Plaintiffs to the respective eight ground floor unit holders thereby netting the Plaintiffs' additional profit which they lost as a result. That the Defendant did not inform or seek Ch'ng's advice in respect of the unutilised GFA of ***154 m2*** was not denied by the Defendant.

104 28.3 It remains for the Court to determine whether the omission to so inform and seek Ch'ng's instructions (and hence the Plaintiffs') in respect of the additional usable GFA suddenly being made available, in late April 1991 from the URA and the Defendant's admitted *mistake* or *error* in the construction

drawings which showed a PES of ***24 m2*** instead of ***6 m2*** was in the light of all the Plaintiffs' evidence and the Defendant's explanations excusable i.e. it did not impinge on his lack of competence or skill and hence did not amount to negligence or whether specifically the failure to inform and advise in respect of the same amounted to negligence occasioning a loss to the Plaintiffs.

105 28.4 First, as to the mistake or error in the *construction drawings*, Ch'ng in his evidence had mainly equated the Defendant's said *error* in the *construction drawings* as negligence as is shown in his *cross-examination*:

106 Q: The Defendant is entitled to provide for contingency that URA might have different calculation?

107 A: There was no alteration in area. **His negligence is in respect of drawings of fencing.** (emphasis added)

108 However, not every error or mistake *per se* is necessarily negligence as the standard of reasonable care and skill is not one of perfection. In my opinion, showing a mere ***error*** such as an increased PES of ***24 m2*** in the *construction drawings* which was only for the inviting tenders from contractors, and resulting in no risk to any structure in the building, the PES being outside the building and in the light of the fact that it was correctly reflected in the design drawings submitted for *Provisional Permission* and *Written Permission* which were granted, is by itself insufficient. Earlier, Goh who sold the Defendant's design and drawings as approved by URA had himself wanted only ***6 m2***. Ch'ng knew about it from the outset after buying the land on 17 November 1990 with the *Grant of Provisional Permission*. The actual erection of the timber fence by the contractor came about after the construction of building was completed in about

July 1993 and the Surveyors had as a result of a site inspection included the ***24 m2*** into their plans for the submission for the Strata Title without consulting the approved plans constituted by the *Written Permission* and *Building Plan Permission*. By increasing PES, the only cost had been as to the extra fencing which was later removed.

109 28.5 A building project always involves a matrix of relationships. An architect's responsibility can sometimes only be evaluated in the light of the responsibilities assumed by others such as surveyors, engineers etc. The Surveyor was, in my opinion, duty bound to counter-check with these plans to ascertain if the contractor had correctly demarcated the timber fencing. He had thus omitted in his duty to do so. If the surveyors had consulted the plans constituting the *Written Permission* they would have been alerted to the error in the *construction drawings* and on site and would have instead followed the boundaries set out in the plans relating to the *Written Permission* which were the authoritative plans. Notwithstanding all this, the Defendant's *error* did not touch the essentials of construction so as to place any aspect of the building or life in any danger. The Defendant's *error* did not reflect on the design of the building as lacking his skill and expertise. It was nothing more than an oversight the likes of which are tolerated in all professions. The Defendant had corrected the error with the authorities within a short space of time when it was drawn to his attention although it was drawn to his attention very late by the Surveyors i.e. some 10 months later. As for the lateness of the Defendant or the delay in his taking corrective action on the matter, I completely accepted and believed the evidence of the Defendant that the Surveyors had not drawn his attention any earlier than the meeting of 1st April 1995 although URA had informed the Surveyors by letter on 14th June 1994 (and copied to the Plaintiffs) of the same i.e. the strata verging of PES in Blks 1 and 2 to tally with approved plan. Lau

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(the Surveyor in charge of the Chapel Lodge project), could provide no proof in writing such as by a covering letter or memo that URA's letter of 14th June 1994 had been forwarded to the Defendant. Lau's oral assertion in Court that he had done so, did not impress me. He had also been hesitant and appeared unconvincing when answering the series of questions on the point.

110 28.6 It was probably partly for all the above reasons that Plaintiffs' Counsel during final submission conceded that in the light of the evidence relating to CSC he was restricting himself to compensatory relief in the collection of only **2%** of the purchase price (from **15%** as claimed) on account of the delay in strata subdivision and consequent delay in the completion and only for the period of 165 days or alternatively 143 days in respect of the periods already stated earlier.

111 29. I now come to the Plaintiffs' Counsel's main complaint as constituting negligence, namely that the Defendant had not advised the Plaintiffs of the ***154 m2*** unutilised GFA that came about at the end of April 1991 (which is not denied by the Defendant) depriving the Plaintiffs thereby of selling the extra GFA or substantial part of the GFA. This the Plaintiffs said could have been done by the Defendant making further amendment of the various plans and their submission to URA for approval.

112 29.1 The Defendant gave several reasons as to why he had not done so. I accept the Defendant's reasons for his omission as to why he did so. I am satisfied they were compelling reasons.

113 29.2 *Firstly*, the Plaintiffs had accepted (through Goh and later through Ch'ng) a PES of ***6 m2*** for each of the eight ground floor units in Blks 1 and 2

and *Provisional Permission* had already been granted in respect of the design on 14 December 1990.

114 29.3 *Secondly*, Ch'ng who had substantially taken over the Plaintiffs' company had instructed the Defendant in January 1991 to obtain the *Written Permission*, immediately from URA which was the next stage so that the Plaintiffs could sell the units in Chapel Lodge and benefit from the property market which had then risen. The Defendant accordingly made the submission in February 1991.

115 29.4 *Thirdly*, the Defendant had, at the design stage when he obtained *Provisional Permission*, already *proposed* the maximum possible GFA of 6,750 m2 as against the *Permissible* GFA of 6,761.07 m2 leaving only ***11.05 m2*** for any contingency. This GFA came in useful later to cover a Telecom MDF room and switch room which was required by URA and a guard house as required by Plaintiffs in respect of which amended submissions of plans were made. The *Provisional Permission* originally had come with an important condition namely that Blk 3 be set back by another 1.5 meters on each of two sides of the drainage/boundary of the land which set back had then gave an unutilised area of ***40 m2***. Indeed, this extra area that was thrown up according to the uncontradicted evidence of the Defendant was actually unusable because Blk 3 had to be set back. Added to this ***40 m2*** was approximately the ***114 m2*** plus relating to higher density being allowed in relation to one of the lots as explained earlier by the Defendant thus increasing the available GFA ***154 m2***. The Defendant had been *cross-examined* as to why he had not informed the Plaintiffs of this additional figure that had become available which totalled ***154 m2***. The Defendant's explanations were unchallenged by the Plaintiffs' Counsel or his

witnesses especially Ho, the architect called in as an expert witness. The Defendant had answered in *cross-examination*:

116 A: ……At all times the number of flats remained the same and the built up area remained the same i.e. physically on the ground the excess area was still only about ***40 sq.m***. On paper because of part increased density of 345 i.e. from part of plot the excess area on paper became ***154 m2***.

117 Q: Did you tell this to PW1?

118 A: There is no need. Instructions earlier were to go ahead quickly to obtain written approval as it was designed.

119 Q: Could more flats have been added?

120 A: No

121 Q: Can area of flats be increased?

122 A: Very difficult. This is a difficult piece of land. Any changes if made would involve additional difficulty because it involved alienation of state land. One of pieces of land was state land. It was a lot of effort on the part of previous shareholders and myself to get the freehold title of the state land.

123 The answers had not been challenged by Plaintiffs' Counsel or by contrary evidence of Ho, the architect called as a witness by the Plaintiffs (though he was strictly not in my opinion an expert) or by the Plaintiffs.

124 29.5 *Fourthly*, the land being a difficult piece, the Defendant had already carefully calculated the GFA as against Common Open Spaces - the COS which

was to be enjoyed by the 2nd, 3rd and 4th floor unit holders. On the whole, the design had only a small garden of 2% GFA to be enjoyed in common by the said purchasers whilst the rest of the COS was taken up by road and drains with the condominium. The increase in PES and a corresponding reduction of the COS could have a very adverse effect on the sale of the upper floor units of Blks 1 and 2.

125 29.6 *Fifthly,* and assuming again that the Plaintiffs wished to increase the PES of the eight ground floor units from ***6 m2*** to ***24 m2*** or by a total of ***144 m2*** (***8 units x 8 m2***) the Defendant would have to re-amend all the plans and resubmit them in May or June 1991. Such amendments if made risked rejection by URA or if allowed there would have been such a delay in their approval as to affect the launch of the sale of the flats which the Plaintiffs were very eager to undertake at the earliest possible time and was uppermost in their minds as was evident from the fact that the Defendant was rushed into submitting the *Building Plans*, grant of which was a pre-requisite to sales being launched, even before the *Written Permission* was granted. In view of the pressing instructions to the Defendant by Ch'ng that he wanted to market the units quickly, which fact Ch'ng did not contradict, I am satisfied that even if the Plaintiffs had told Ch'ng or any other representative of the Plaintiffs of the extra area available, the reasonable inference which I have drawn is that the Plaintiffs would have forgone the extra area as the Defendant would also have explained the reasons why the extra GFA would have been unusable. This was also the answer of Goh in *cross-examination* by Plaintiffs' Counsel.

126 29.7 Further, I noted that statistically, out of the ***154 m2***, about ***11 m2*** plus ***15.8 m2*** (totalling about ***26 m2***) had already been used for housing the guard house etc and the PES of the two units in Blks 3 leaving only ***128 m2*** part

of which area i.e. ***29 m2*** was obtained from setting back Blk 3 and hence unusable. That left ***117 m2*** which was less than the ***144 m2*** required by the eight ground floor units if their area was to be increased by ***18 m2*** as purportedly required by the Plaintiffs assuming area was usable.

127 29.8 Having seen and heard the Defendant and heard Goh and visited the site with the parties, I agree with Defence Counsel and was satisfied that the Defendant had come up with what he believed was the best design based upon the instructions given by Goh the Plaintiffs' previous substantive owner and accepted by Ch'ng the Plaintiffs' present substantive shareholder and Managing Director and further taking into account the difficulty posed by the site. On my visit, I indeed found that the site was narrow and a very difficult site with very little garden area. I found the Defendant's evidence as unchallenged that neither more flats could have been added nor the area of the flats increased and that any increase in PES would only affect COS with the result that URA could refuse increase in the PES as the aesthetics and design of Chapel Lodge would be seriously affected and risked. As Goh correctly put it - large PES areas would affect attractiveness of the upper floor units and that a development should have a comfortable commercial area and that Chapel Lodge had no views as there were buildings all around it. No evidence was adduced by the Plaintiffs to show that URA would have permitted the increased PES. I found on the facts such reality of a refusal distinctly probable.

128 29.9 I also found that Ch'ng was a newcomer and a novice as a developer who did not understand the ramifications relating to obtaining approvals from URA of *Building Plans* and the criteria behind the grant of such approvals. Further, a review of design and drawings by an architect so that additional marginal profit therefrom can be made by a developer at a late stage when some

approvals had been granted and follow up submissions of other plans made were about to be approved as placing a very onerous burden on the architect to start anew. The fact that URA allowed a PES in respect of the two ground floor units in Blk 3 because of the Surveyors' mistake and after the plans had been amended could not, in my opinion, lead to the reasonable inference that URA would similarly have allowed an increase in PES to ***24 m2*** from ***6 m2*** for Blks 1 and 2 which had already been the subject of approval at ***6 m2***.

129 29.10 I was also satisfied on the evidence which was uncontradicted by Ch'ng or the other witness of the Plaintiffs that the Plaintiffs were targeting for sales as early as was possible. I was further satisfied that the Plaintiffs had brought the present proceedings as a result of *hindsight* principally because the Defendant committed an *error* in projecting a PES of ***24 m2*** in the construction drawings concerning Blks 1 and 2 and because two of the units in Blk 3 were granted permission to retain the PES as a result of the Surveyors' mistake in so providing the said PES (i.e. ***7.9 m2***) in respect of which the Defendant had to submit amended plans. This though had been done after the building was nearly completed or completed.

130 30. The Defendant was all said not wanting, in my opinion, in the requisite skill, care and diligence and had served the Plaintiffs loyally and expeditiously to enable them to get the requisite approvals from URA to achieve a sales launch as soon as possible resulting in the fact that the Plaintiffs according to the Defendant, made a very large profit of approximately ***$13 m*** from the project. The fact of the Plaintiffs having made this profit was uncontradicted. The Plaintiffs ironically appeared to be lamenting, having well timed their sales, that they could have made another $288,000/- (as assessed earlier subject to liability being determined) by reducing and selling off some

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portions of the COS designed as a garden space fronting each of the eight ground floor units without any thought of the interests of the potential upper floor unit buyers and marketability of the units.

131 31. I therefore find the Defendant not negligent nor liable for any of the Plaintiffs' perceived losses and as such, I dismiss their claim with costs to be taxed or agreed.

132 32. The Defendant's counterclaim for the balance of his fees is $12,073.58cts. after part payment of $178,500/- the total fee being $190,573.58 based on 3% of $6,352,452.46 being the construction costs. There will therefore be judgment for the Defendant in respect of this counterclaim for $12,073.58 with costs to be taxed or agreed.

133 Dated this 18th day of September 1998

134 AMARJEET SINGH

135 JUDICIAL COMMISSIONER

136

Amarjeet Singh JC

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Stangee Developments Pte Ltd v Chia Yong Kwang (a chartered architect practising under the style of Architects Action International Incorporated) [1998] SGHC 310

Andre Maniam assisted by Daniel Koh (Wong Partnership) for the plaintiffs
George Pereira (Pereira & Tan) for the defendant

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