

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 175

Suit 1668/1997

Between

Chua Hock Soon trading as Jai
Li Home Interior Design

... Plaintiff

And

Tropical Associated
Construction Co Pte Ltd

... Defendant

GROUND OF DECISION

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**Chua Hock Soon trading as Jai Li Home Interior Design v
Tropical Associated Construction Co Pte Ltd**

[1999] SGHC 175

Suit 1668/1997
Lai Kew Chai J
30 June 1999

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JUDGMENT:

2 GROUNDS OF

DECISION

(a) Re-entry costs by developer

\$14,497.00

developer for varnishing to parquet

floor for Plots 1 to 9

(b) Clearing and cleaning of materials
\$
1,473.44

and housekeeping for Plots 1, 4, 7,
8 and 9

(c) Housekeeping, clearing and cleaning \$ 4,431.25

(Plot 5)

(d) Parquet floor, clearing of sanding dust \$ 9,060.00

at \$60.00 per unit (Plot 4: 151 units)

(e) Parquet hollow rectification work
\$ 9,540.00

(f) Door knobset damaged and wrong
\$ 90.65

installation

(g) M & E riser shaft door frames -

\$27,800.00						
	double	handling	costs			
at						
\$200.00						
per	door	frame	(Plot	4,	5,	6)
(h)	Double	handling	due	to	misalignment	\$ 840.00
of	door	frame	installation	(Plot	6)	
(i)	Double	handling	due	to	misalignment	\$ 5,320.00
of	door	frame	installation	(Plot	4)	
(j)	Rectification	works	for	misalignment	\$ 5,200.00	
of	door	frames	(Plot	5)		
(k)	Misalignment	in	installation	of	door	
		\$			8,600.00	

frames (Plot 6)

(l) Misalignment of door frames (Plot 5) \$ 960.00

(m) Costs incurred by defendants in carrying \$29,370.00

out re-varnishing works to wardrobes

(n) Material costs

\$ 1,735.30

(o) Administrative costs

\$12,270.00

(p) Unauthorised purchases

\$ 1,021.97

(q) Loss/damage to machineries borrowed \$10,801.78

by plaintiff

Chua Hock Soon trading as Jai Li Home Interior Design v Tropical Associated Construction Co Pte Ltd [1999] SGHC 175

143,011.39

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3 13 In view of the many changes, it was inevitable that the claims of
the defendants had to be scrutinised with care. Substantiation of each item had
to be
proved on the many issues raised. These issues were as follows: (1) Are the
defects
complained of within the scope of the plaintiff's work?, (2) Were the defects
caused
by the plaintiff's workers?, (3) Was the plaintiff given an opportunity to rectify
the defects?, (4) Were the rectification costs properly incurred by the main
contractor
and properly claimed from the defendants or properly incurred by the
defendants, as the
case may be?

4 The Evidence

5 14 Mr See Boon Chai, who joined the service of the defendants only in

September 1995, was the first witness for the defendants. He was the operations manager.

By the time he gave evidence, he had obtained a Master of Science degree and was the

defendants' Assistant General Manager. He has been in the construction industry since

1983 after his ROD from national service. Upon joining the defendants, he inspected the

quality of work of the plaintiff. The quality of work and workmanship of the

plaintiff's workers were of poor quality. The manpower was insufficient and the

datelines were difficult to keep. He therefore instructed the defendants' quantity

surveyor to certify the work done up to a limit of 80% so that the remaining margin could

take care of the poor quality of the plaintiff's work. He was regularly at the site.

6 15 He said they had weekly meetings with Hazama. The plaintiff or his

brother Michael Chua was present. Defects and delays were identified and the plaintiff or

his brother was instructed to proceed with despatch or rectify the defects. He gave

evidence of the defects he found. Regarding the door frames and doors, he said they were

not aligned correctly. There were wide gaps between the door panels and flooring. The

doors could not open or close properly. They were scratched. The hinges were not screwed

properly, the locks were aligned wrongly and could not close. Parts were loose and faulty.

He described the defects of the wardrobes and vanity cabinets. There were gaps between

different panels of wood. The joints were not tightly secured. There were scratches and

dents on the doors and cabinets. As regards the parquet flooring, there were gaps in the

joints between the timber strips and at the thresholds. The joints were not level and

flushed. The nailing of the timber strips were not properly patched up. Sanding

of the

parquet flooring was badly done, resulting in unevenness and patchy roughness.

7 16 Mr See Boon Chai referred to the daily record of the manpower on

site kept by Hazama from 9 November 1995 to 31 January 1997, especially for
the door frame

installation. The record shows that the plaintiff did not provide enough workers
on site

to keep up with the schedule for the door frame installation for Plots 4 to 6.
Shortage of

manpower was the main reason for the delays in the installation. He candidly
admitted that

the defendants themselves were unable to provide enough workers to work in
the other

Plots. Hazama through their site managers sent memos on the defects and delays
in the

installation of the door frames.

8 17 During the period of construction, the defendants were informed by

Hazama that they would claim back charges from them for defects and housekeeping

responsibilities which Hazama had to do themselves since the plaintiff failed to do so.

Hazama also took photographs which were produced at the trial. By a letter of 19 May 1998

Hazama submitted their back charges against the defendants. The claims total \$713,072.91.

They were for varnishing to the doors and parquet flooring, touch up of the main door,

double handling of plastering, and housekeeping items. However, the letter did not give a

breakdown of the back charges payable in respect of which unit or Plots.

9 18 On 3 April 1998 the defendants commenced proceedings in the High

Court against Hazama claiming \$666,498.24 being the balance due for work done and

materials supplied in relation to vanity cabinets, timber doors and frames, wardrobes,

parquet flooring, painting, staining and varnishing works to timber doors, door frames,

architraves and variation orders thereto at the Anchorage Condominium project. The claim

was based on a total contract value of \$7,877,614.29. The suit was settled and compromised

between the defendants and Hazama. One condition of the settlement was that the defendants

had to accept the back charges incurred by Hazama and set out in their letter of 19 May

1998. Mr See Boon Chai told the court that he accepted the back charges as they were

supported by documents and what he had seen with his own eyes. Eventually, the settlement

agreement was reached on the basis of the defendants receiving a net sum of \$7.45 million

for all their works and materials supplied after deducting the back charges. This meant

that the defendants had to re-adjust the total contract amount to \$8,163,072.91

notwithstanding the fact that the defendants' own quantity surveyor had put the contract value at about \$8.275 million.

10 19 (a) Pursuant to the Hazama settlement, the defendants were given 3 files containing the documents in support of the back charges. Mr See and the defendants' quantity surveyor went through the documents and apportioned the sum of \$192,864.12 out of \$713,072.91 as payable by the plaintiff. Upon scrutiny in court, the sum has been reduced to \$143,011.39. Apart from the claim for administrative costs in the sum of \$12,270.00, all the other items set in paragraph 12 herein are supported by the exhibits referred to in the schedule to the defendants' written submissions.

11 (b) The strength of the defendants' counterclaims hinges on the evidence of Mr Nobutaka Tegushi, who was the Senior Project Manager of Hazama. He was

personally involved in quality control and the monitoring of the schedule of the
work in

progress. He confirmed the validity of the back charges. He identified all the
documents

which supported the counterclaims, as finally reduced and in respect of which
all the

Hazama documents were identified in the schedule to the defendants' written

submissions. The contemporaneous documents kept by Hazama, an
independent party, tells

greatly against the plaintiff.

12 (c) The plaintiff denies that he is liable for any of the
counterclaims. But he could not refute the evidence of Mr Tegushi and, more
importantly,

the contemporaneous documents and photographs maintained by Hazama.

13 20 In cross examination, Mr See was asked questions regarding the
defendants' counterclaims for double handling of the M & E riser shaft shaft
doors. He candidly admitted that the defendants themselves were late in the

delivery of

the materials; but he said the defendants had properly apportioned the number
of doors

directly due to the fault of the plaintiff. It is the defendants' case that the

plaintiff ought reasonably to have started the installation of the door frames
from the 8th

floor onwards. This contention is not persuasive. The defendants were
themselves late in

the deliveries; and it was wholly unreasonable to expect the plaintiff to take on
the task

of co-ordinating and scheduling from which floor installation should take place.
In my

judgment, the defendants' counterclaim of \$27,800 in connection with the M &
E

shaft door frames was not made out.

14 21 The other items that are not made out, in my judgment, are the claim

for administrative cost of \$12,270.00 and the loss and damage to the
machineries borrowed

by the plaintiff. The administrative cost is normally an item that is factored into the

price of the contracts. No basis for quantifying it at \$12,270 was effectively shown. As

regards the claims concerning the machineries, the records were not reliable enough. No

system of its reliability was shown and it would be wrong to accept the mere word of the

defendants' employees. The item was not raised and there was no complaint about the

machineries at all.

15 22 There will be judgment for the defendants on their counterclaims as

set out in the schedule to their written submissions except for the items mentioned above.

There will also be judgment for the plaintiff in respect of their retention monies. On the

costs of both parties, I must say that there has been several amendments to the

counterclaims. With the help of schedules ordered by this court, there was a
much clearer

joining of issues and the identification of the proper documents and
photographs, which

resulted in the defendants reducing their counterclaims. Taken as a whole, the
defendants

should be awarded only half of the costs of these proceedings. Parties are
directed to

settle the draft orders, failing which they have liberty to apply to me.

16 Sgd: Lai Kew Chai

17 Judge

18 Singapore

Lai Kew Chai J

Conrad Campos [Colin Ng & Partners] for the plaintiff
Tan Yew Cheng and Chin Li Ling [Edmond Pereira & Partners] for
the defendants
