Architects Group Associates Pte Ltd v Grandlink Group Pte Ltd
[2000] SGHC 49

Case Number : Suit 1940/1997
Decision Date : 30 March 2000
Tribunal/Court : High Court
Coram : Yong Pung How CJ
Counsel Name(s) : —
Parties : —

Between

Architects Group Associates Pte Ltd (RC No. 199404336K) ...Plaintiffs

And

Grandlink Group Pte Ltd (RC No. 199105156M) ...Defendants

Citation: **Suit No 1940 of 1997**
Jurisdiction: **Singapore**
Date: **2000:03:30**
1999:10:18
1999:09:20, 1999:09:14 - 1999:09:17, 1999:09:06 -1999:09:10
Court: **High Court**
Coram: **Yong Pung How**
Counsel:
Aloysius Leng (Abraham Low & Partners) for the plaintiffs

Steven Seah & Eric Chew (Drew & Napier) for the defendants

JUDGMENT:

Cur Adv Vult

The facts

1. The plaintiffs are a firm of architects who used to practise at No. 149, Rochor Road, Fu Lu Shou Building, Singapore before they moved to No. 100 Beach Road, Suite 29, Shaw Towers, Singapore. Their principal is one Ong Cher Keong (Ong) while Tay Cheow Bin (Tay) is their director and associate architect. Ong's wife Esther Tan Hwee Cheng (Esther) is the plaintiffs' accounts manager. The defendants are a Singapore company incorporated in 1991 with a registered address at No. 180, Clemenceau Avenue 01-00, Haw Par Glass Tower, Singapore. The main business of the defendants is that of a developer and holding company; it has at least ten (10) other property companies as its subsidiaries. The defendants' chairman, chief executive officer and majority shareholder is one Goh Chin Soon (Ricky Goh) while his nephew Goh Teck Beng (Danny Goh) is the vice-president.

2. In the early 90s, Ong was introduced to Ricky Goh by a mutual friend with a view to assisting Ricky Goh in developing some projects. At that time, Ong said he knew of Ricky Goh not as a developer but as a night-club owner (this was denied by Ricky Goh). Subsequent to that introduction, the two not

only became friends (who socialised frequently) but commenced a business relationship as Ong's firm (formerly Architectmatrix) was appointed as architects for all Ricky Goh's building projects. By 1993, the plaintiffs had been commissioned by Ricky Goh to work on 21 separate projects in Singapore; indeed, Ricky Goh became the plaintiffs' best client. Apart from Ricky Goh, only one other developer (Sin Chuan Development) gave all their projects to the plaintiffs at any one time. I should point out however that when cross-examined, Ong denied that he had requested for Ricky Goh's support when he left Architectmatrix to form the plaintiffs. He contended it was because he could service Ricky Goh that the latter gave him many if not, all construction projects. Ong asserted that in those days, Ricky Goh had no developer's licence or experience and it was he who could assist Ricky Goh, which assistance extended to becoming a director of Ricky Goh's companies in order to lend them 'credibility'.

3. According to Ong, the plaintiffs were involved in projects in China since early 1990, these included projects developed in Dalian, Donguan and Fujian, the last being constructed by a Singapore company (Dragon Land Pte Ltd).

4. In early 1993, Ricky Goh decided that the defendants would invest in the then booming China property market; he wanted to develop an International City (the project). In that connection, a delegation comprising of Ricky Goh, Ong, Ricky Goh's lawyer (Patrick Chee) and businessmen from Singapore and Taiwan made at least 4 exploratory trips to China to look at potential sites for the project in Dalian, Xiamen, Shanghai, Beijing and Dongshan. According to Ong, his task in those trips was to provide technical assistance or advice as to the suitability of sites for the project and the potential problems in developing particular sites. Because of his past experience in China projects, Ong claimed his assistance to Ricky Goh was invaluable.

5. For every prospective site that the delegation visited, Ong conducted a market survey (based on feedback from local Chinese officials) which he and Ricky Goh would then assess. Eventually, the two of them narrowed down their choice of site to either Shanghai or Qingdao and finally, they decided on Qingdao. The project became known as the Qingdao High Tech Industrial Park.

6. Even after Qingdao was chosen, there was still the task of selecting the actual site for development. The Qingdao authorities provided Ricky Goh and Ong with a general layout of the entire city (which turned out to be largely inaccurate) and a master plan; based on the former, Ong and Ricky Ong looked for the ideal locations. After the site(s) were selected, Ong drew up concept plans which he then passed on to his partner Tay and Tay's team to work on.

7. After the concept plans had more or less been finalised and approved by Ricky Goh, Ong and Tay flew to Qingdao to present them to the Chinese authorities in relation to the specific plots which the defendants intended to purchase for development. The defendants paid for the plots which were then assigned to them and their joint-venture partner (Qingdao High Tech Industrial Park Economic Development & Investment Company) after their location and boundaries were confirmed, a process which Ong described as 'tedious and time-consuming'. Thereafter, Ong and Tay would return to the plaintiffs' office to work on/out the details.

8. The project was divided into four (4) sectors:- Qingdao International City (the International City), Qingdao Design Centre (the Design Centre), Qingdao Marina (the Marina) and, Qingdao Grandlink Square (Grandlink Square). The site for the International City was selected followed by those for the other three (3) sectors. For the International City, the defendants planned to construct shophouses, bungalows, semi-detached and terrace houses as well as flats; these were intended for locals as well as overseas investors. For the concept of the Marina, Ricky Goh and Ong visited the Raffles Marina in Singapore with a delegation from Qingdao, who had been invited to Singapore by Ricky Goh for the

sales exhibition of the project. To conceptualise the Design Centre (which was supposed to be the headquarters of the defendants in Qingdao), Ricky Goh and Ong visited a recreational club in Singapore.

9. In April 1994, the defendants held a sales exhibition for the project at a local hotel; Ong was responsible for the sales brochures (D8), flyers, plans and mock-ups while Ricky Goh took care of public relations and a Chinese delegation which visited Singapore in connection therewith. The defendants needed and were issued, a permit for foreign sale of commodity housing by the Chinese authorities (D10) for the exhibition. The defendants engaged the services of property consultants (Debenham Tewson Pte Ltd) for the exhibition and the plaintiffs sent out 1,000 invitations to their clients. After Singapore, the defendants held a similar exhibition in Hong Kong (in October 1994 which itself was preceded by one in Qingdao in August 1994). The defendants said they sold about 500 out of 1,200-1,300 units available; purchasers mostly of flats paid a booking fee of $5,000 for a unit; no sales were effected for the shophouses or bungalows. Indeed right up to the trial, the defendants did not manage to sell a single bungalow. The plaintiffs on the other hand, asserted that the exhibition was a resounding success with many local and foreign buyers despite which, and the large profits which they made therefrom, the defendants did not pay the plaintiffs' fees.

The dispute

10. The plaintiffs claimed that in August 1993, Ong had informed Ricky Goh that the plaintiffs' architectural fees for the project would be based on 3% of total construction costs; the fee was based on Ong's experience with the Fujian project developed by Dragon Land Pte Ltd (Dragon Land). In their subsequent casual conversations, Ong claimed that the fee was mentioned to Ricky Goh who did not dispute the figure. Indeed, the plaintiffs contended, up to the time of the dispute (July 1996), Ricky Goh acted in a manner consistent with Ong's proposed fee. The 3% fee was also stated in the plaintiffs' letter dated 3 June 1995 (signed by Tay) to the defendants, which contained an estimate of $590,852,940 (with a breakdown) for the construction costs of the project; based on that estimate, the plaintiffs' fee of 3% amounted to $5,334,670.47.

11. The plaintiffs complained that the defendants were poor paymasters – they did not pay the plaintiffs' professional fees and disbursements between 1993 and May 1994. Consequently, after the defendants' sales exhibition in April 1994, the plaintiffs decided it was time to bill the defendants for all the work they had done. Accordingly, the plaintiffs sent the defendants a letter dated 3 May 1994 requesting payment of $250,000 (see exhibit TCB-41 in Tay's affidavit) as well as proposing a monthly fee of $45,000; the letter was ignored as were subsequent requests for payment sent by the plaintiffs (between October 1994 and August 1995) to the defendants. All the reminders to the defendants for payment were signed by Tay who was apparently unaware (not being told by Ong) that the defendants had paid a deposit of $200,000 to the plaintiffs towards end May 1994.

12. Things came to a head when, by a letter dated 26 August 1995 to the defendants, the plaintiffs stated they would not accede to the defendants' request for new/additional drawings for the project while the plaintiffs' bills remained unpaid. By October 1994, the plaintiffs had billed the defendants a total of $2,271,958.82 for the project. At Ricky Goh's request, Danny Goh approached the plaintiffs' office manager to arrange a meeting between Ong and Ricky Goh to discuss the plaintiffs' outstanding fees. A meeting was tentatively fixed for 7 September 1995 but Ricky Goh was unable to attend. Accordingly Danny Goh tried to re-fix another appointment for Ong and Ricky Goh to meet. Before the parties could meet, the defendants' deputy general manager Carol Lee called the plaintiffs' office on 15 September 1995 to arrange a meeting to discuss the layout for the project; she was apparently

informed *'no payment no meeting'*.

13. Ricky Goh was furious when told of the plaintiffs' stand. On the defendants' behalf, he faxed a letter on the same day to the plaintiffs instructing them to *'stop all the Qingdao architect work with immediate effect'* (see 15AB-229). The plaintiffs (through Tay) replied to the fax also on 15 September 1995, explaining their stand and forwarding again the plaintiffs' outstanding bills.

14. There was no further correspondence between the parties until the defendants received the plaintiffs' letter dated 7 March 1996 (15AB-228) requesting a confirmation of the plaintiffs' fees (based on 1% and 1.5% of 4 items) before the plaintiffs proceeded with further work. The plaintiffs gave notice that if the defendants did not agree to the new fee structure, then their previous fee proposal (based on 3%) would stand.

15. Sometime after the plaintiffs' letter dated 7 March 1996, Ricky Goh and Danny Goh met Ong to discuss drawings which the defendants requested of but which were not provided by, the plaintiffs. The defendants followed up the discussion with a letter dated 9 May 1996 to the plaintiffs enclosing the defendants' estimate ($591,637.88) of the plaintiffs' fees based on the estimated construction costs of the project with a breakdown for each of the items. The estimate of $591,637.88 covered the construction costs of the Marina (which included a hotel, marina clubhouse, shopping mall/complex and office tower) as well as the residential portion (studio apartments, shophouses, condominium and bungalows) of the project. The estimate was based on the construction costs in China then prevailing converted into Singapore currency based on a conversion rate of Chinese renminbi (RMB) 5.90 to S$1.00.

16. The defendants claimed that Ong, in a telephone conversation with Danny Goh on or about 4 July 1996, had agreed to accept a lump sum fee of $600,000 for the project and also to provide outstanding drawings as well as some additional drawings. Taking into account the defendants' deposit of $200,000, the defendants claimed that Ong had requested that a sum of $300,000 be paid first and the balance of $100,000 ($600,000 - ($200,000 + $300,000) be paid when the plaintiffs provided the drawings requested by the defendants. They said on 5 July 1996, Ong had visited the defendants' office where Danny Goh handed him a letter dated 4 July 1996 (signed by Ricky Goh) together with the defendants' cheque for $300,000; he requested Ong to acknowledge the letter. Ong had inquired if it was because the defendants did not trust him. Danny Goh replied that as the parties had reached an agreement, Ong should sign the letter to confirm; Ong then signed his name above the date **5.7.97** (which year is incorrect), made a notation against his signature and left with the defendants' Bank of China cheque no. 918844 (the cheque) dated 5 July 1996.

17. As the dispute between the parties centred on the interpretation of this letter, it is necessary to set out in full its contents; the letter addressed to the plaintiffs (see 15AB-233/234) reads:-

> Further to the tele-conversation between your goodself and our Mr Danny Goh, we wish to put on record on the few issues that was agreed on.
>
> During the discussion, it was agreed that the architectural fee for Qingdao International City and Marina City will be a lump sum of S$600,000.
>
> To date a total of S$200,000 was paid for the project and there is a balance of S$400,000. You have proposed to us to pay your company a sum of S$300,000 and the remaining S$100,000 to be paid upon completion of all architectural drawings including detail drawings and dimensional drawings.

It was also agreed upon that the Architects Group Associates to provide layout plans for Marina 5-Star Hotel and Marina Club. We have requested your company to co-ordinate with our Consultants and China Architect and, also redesign a new plan for the 5-star Hotel and Marina Club.

Architects Group Associates are to propose 5 designs for 15 blocks of 22-storey apartments and 10 designs for the hilltops 2 and 3 storey bungalows for the Marina City.

It is made clear to Architects Group Associates that they are to co-ordinate with our China Architects for any amendments when the need arise. And upon completion of all these works due by your group, you are to furnish us 5 complete sets of the final drawings of the whole Qingdao project.

We would like Architects Group Associates to propose 5 bungalow designs and 5 semi-detached designs – south facing, for the International City.

Lastly, we would like to draw to your attention that we have not received bungalow design S1 elevation 3 drawings for Marina City. And in future should there be any shortage of the previous drawings, our Ms Carol Lee will liaise with your Mr Tay.

I trust the above is in order and looking forward to work harmoniously with you.

18. To their surprise, on the following day, the defendants received the plaintiffs' letter dated 5 July 1996 signed by Ong (see 15AB-235) which inter alia stated:-

Your letter dated 4th July refers.

Your payment based on what we have agreed is acceptable. Computations of the total fee will be subject to final calculation later. This initial payment is to defray the works already done as agreed for both Qingdao International City and the Marinas

.

19. Ricky Goh telephoned Ong upon receipt of the letter and inquired why Ong had reneged on their agreement. He claimed Ong apologised and gave the excuse that Tay did not agree to the lump sum fee of $600,000. Ong added that the plaintiffs would not present the cheque of $300,000 for payment until such time as a settlement was reached.

20. Nothing happened until shortly before 1 September 1997, when Ong telephoned Ricky Goh to inquire whether the defendants' offer of $600,000 could be increased to $1m; Ricky Goh refused. The defendants then received a letter from the defendants' legal adviser dated 1 September 1997 (see 15AB-238) which reads as follows:-

We refer to the above and our letters dated 7 March 1996 and 5 July 1996 respectively, copies of which are enclosed herewith for your easy reference

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In particular, your good office had sent us a Bank of China cheque no. 918844

drawn in our favour for a sum of S$300,000 dated 5 July 1996. Subsequently, soon after, we received your instructions not to bank in the said cheque.

However, to-date, you have still not settled the outstanding fees due and owing to us. As such, we feel it appropriate to return the cheque as we deem you are not honouring the payment. In respect thereof, our agreement as enunciated in the aforesaid letters shall be construed as null and void by dint of your inaction.

Please note that we will therefore be forwarding you our billing as originally agreed in due course.

Please also note that we have been instructed by our Mr Ong Cher Keong to inform that legal action will be initiated against you and your Joint Venture partners in China or in Singapore as we deem fit without further reference if you fail and/or neglect and/or ignore our demand.

21. The above letter was followed by the plaintiffs' Note of Charges dated 8 September 1997 (the note of charges) in the sum of $5,334,670.47 covering the period 1993-95 for work done on the International City, the Marina, Grandlink Square and the Design Centre. On 22 September 1997, the defendants replied denying there was an agreement to pay the plaintiffs based on the note of charges, reminding the plaintiffs of the agreement reached between the parties on 4 July 1996. In the event, the plaintiffs commenced these proceedings on 12 November 1997.

The pleadings

22. In the Statement of Claim, the plaintiffs alleged there was an agreement reached in or about August 1993 (the 1993 agreement) whereby the plaintiffs would provide certain architectural services to the defendants for the construction of the project. The plaintiffs alleged it was further agreed that the plaintiffs' fees for the project would be 3% of the total construction costs payable by the defendants in stages with 30% payable upon completion of the project. The plaintiffs asserted they provided architectural services and in the process they incurred disbursements on behalf of the defendants. Arising therefrom, the plaintiffs claimed the sum of $5,334,670.47 was due and owing by the defendants which breakdown is as follows:-

A. Agreed professional fee 3% of total construction cost

B. Estimated construction cost RMB 1,200/M²

C. Total estimated area of the project 2,905,026.96M²

D. Total estimated construction cost (B x C) S$590,852,940.90

E. Total architectural fee $17,725,588.23 (3% x $590,852,940.90)

F. Fee for work done up to design development stage (30% of total architectural fees) $5,317,676.47

G. Disbursements paid on behalf of defendants by plaintiffs for perspective renderings $ 16,994.00

H. Total sum due and payable to plaintiffs

(F + G) $5,334,670.47

23. The plaintiffs alleged that apart from paying a sum of $200,000, the defendants had, in breach of the 1993 agreement refused, neglected or failed to pay the balance of the said $5,334,670.47 namely $5,134,670.47. In the alternative, the plaintiffs averred that they were entitled to reasonable remuneration in carrying out the said architectural works which sum was $5,134,670.47. The plaintiffs therefore claimed $5,134,670.47 as the balance of agreed fees, alternatively based on quantum meruit.

24. In the Defence, the defendants denied that the 1993 agreement was as alleged. They contended that the 1993 agreement reached between Ricky Goh and Ong was to the effect that the plaintiffs would provide architectural services in the form of a concept and master plan for the International City. They alleged that it was a term of the 1993 agreement that the plaintiffs' fees for providing plans for the International City would be agreed upon by the parties at a later stage, pending approval by the relevant Chinese authorities of those plans. Further, it was an express alternatively a n implied term of the agreement, that the plaintiffs would make such amendments, changes, modifications and or additions to the plans as required by the defendants and or the relevant Chinese authorities.

25. The defendants contended that in or about late 1994 it was agreed between Ong and Ricky Goh (the 1994 agreement) that the plaintiffs would provide a concept and master plan for the Marina. They averred that it was similarly a term of the 1994 agreement that the plaintiffs' fees for providing plans for the Marina would be agreed upon at a later stage pending approval by the relevant Chinese authorities and, that the plaintiffs would amend, modify, change or add to, the plans if the defendants or the Chinese authorities so required.

26. The defendants contended that subsequent to the 1993 and 1994 agreements, namely on 4 July 1996, the parties had, by an oral agreement (the 1996 agreement) made between Ong and Danny Goh, expressly agreed that the plaintiffs would charge a lump fee of $600,000 for the plaintiffs' services in rendering and finalising the plans for the International City and the Marina. They averred that the 1996 agreement was evidenced in the correspondence exchanged between the parties namely, a letter dated 4 July 1996 from the defendants to the plaintiffs and a letter from the plaintiffs to the defendants dated 5 July 1996.

27. The defendants asserted that of the lump sum fee of $600,000, $200,000 had already been paid and $300,000 was to be paid by the defendants forthwith to leave a balance of $100,000 which was payable upon completion of the plaintiffs' work. The defendants contended they did pay the plaintiffs $300,000 by the (Bank of China) cheque. As the plaintiffs' plans for the International City and the Marina had not yet been approved in their entirety by the Chinese authorities to whom the plans had been submitted and, the plaintiffs had refused or neglected to complete their work, the balance $100,000 of the lump sum fee was not yet payable.

28. The defendants asserted that as the parties were unable to agree on the plaintiffs' fees and the plaintiffs were not co-operative in rendering the services they had agreed to provide, the defendants were left with no alternative but to request the plaintiffs on 15 September 1995 to stop further work on the project pending agreement on the plaintiffs' fees. Between 15 September 1995 and 4 July 1996 the parties made several attempts at negotiations which ultimately resulted in the 1996 agreement.

29. In its Reply, the plaintiffs contended that the scope of their services for the project extended beyond providing a concept and master plan. They averred it was further agreed between the parties that:-

a. the defendants would instruct the plaintiffs on their design brief containing the design parameters and the defendants' general requirements in respect of the project;

b. the plaintiffs would make such amendments, modifications changes and or additions as the defendants requested so long as they fell within the plaintiffs' scope of works;

c. the plaintiffs' fee for their services for the project would be equivalent to 3% of the total construction costs which amount was to be paid to the plaintiffs in stages with 30% upon completion of the design development stage.

30. The plaintiffs alleged that it agreed to the 1996 agreement because of the defendants' financial difficulties and, that the plaintiffs would only charge $600,000 as a matter of goodwill for works done up to the design development stage, on condition that $300,000 was to be paid immediately. They alleged that the defendants issued the cheque in or around July 1996 to the plaintiffs but the plaintiffs were informed not to present the cheque for payment as there were no funds in the defendants' bank account. The plaintiffs then returned the cheque to the defendants in September 1997. The defendants were therefore in breach of the 1996 agreement which was rendered null and void due to a total failure of consideration. In the circumstances, the (original) fees under the 1993 agreement applied.

The evidence

(i) the plaintiffs' case

31. I preface my review of the plaintiff' evidence with certain observations which are pertinent to my subsequent findings. Although Ong claimed in his written testimony that the plaintiffs were ranked as one of the world's top 500 architectural firms (by a magazine called World Architecture), it was adduced from him in cross-examination that the ranking was based on architectural firms writing to the said magazine 'by invitation' to volunteer information; Ong was unaware of the basis of such 'invitations'. Neither could he disagree with the suggestion of counsel for the defendants that the magazine's ranking was not based on reputation or quality of service provided by the firms listed. It should be noted that at the material time, the plaintiffs only had Ong and Tay as registered architects.

32. In his written testimony, Ong had also deposed that he had acted as an independent expert witness in a few construction disputes. Questioned on this credential, Ong clarified the disputes he was involved in were between purchasers and contractors over the quality of floor finishes but he had never been involved in any case concerning the quantum of architects' fees.

33. Cross-examination of Ong (who was the first of the plaintiffs' three (3) witnesses) adduced the following evidence:-

a. he asserted that the 21 projects he undertook for the defendants' group of companies and/or Ricky Goh were based on the standard form of contract of the Singapore Institute of Architects (SIA), in that the plaintiffs' fees were based on a percentage of the construction costs;

b. he was of the view that the mode of payment spelt out in the SIA form of contract applied to this case. In any event, the plaintiffs followed the SIA mode of payment and the defendants paid;

c. for a previous project at Dongshan (for which he provided concept plans to Ricky Goh), Ong said he worked on the project for almost a year during which he prepared less drawings (perhaps 100) than the 200 or so the plaintiffs produced for this case; the area developed at Dongshan was smaller (40-60 sq. km.) than that at Qingdao. He did not charge for his services for the Dongshan project as he was Ricky Goh's co-investor;

d. however, he denied he was initially involved in the project as a co-investor and had agreed with Ricky Goh that the plaintiffs' fees would be used to pay for his share of the investment. He denied that during the period he was a co-investor, there was no agreement by the defendants to pay him for plans he had done. He further denied he changed his mind about investing when the time came for him to pay, that Ricky Goh accepted his decision and agreed to appoint the plaintiffs as architects for the project on condition they were paid only for plans which were used or approved by the Qingdao authorities – that could not be the case as the defendants made sales at the exhibition based on the plaintiffs' plans;

e. the construction of the International City was 'complex' because Ricky Goh as a layman would/could not understand the infrastructure and support services that were needed to make the project viable;

f. the project encompassed 67 sq. km. and it was envisaged that development would span 25 years;

g. he denied there was no agreement on the 3% fee the plaintiffs claimed let alone that it was an afterthought which he tried to justify in his affidavit;

h. it was from figures discussed with Chinese officials and those he obtained from quantity surveyors Langdon Every & Seah that he felt construction costs in China were 1/7th of those in Singapore;

i. of the twelve (12) or so China projects the plaintiffs were involved in (according to Ong's list in exhibit OCK-2 of his affidavit), only one preceded the project;

j. he agreed that for the other 21 projects he undertook for Ricky Goh's various companies, payment for the plaintiffs' services was agreed on a lump sum basis but he denied that the fees were agreed <u>after</u> the plaintiffs had commenced work on the projects concerned. Ong asserted that the lump sum fees were final figures both sides accepted at a later stage of each project – either when construction was about to start or a project was about to be or was, launched. The reason was because he and Danny Goh could never agree on the cost of construction for purposes of calculating the plaintiffs' architectural fees. Even then, the final figures agreed were very close to 3% of construction costs save that the plaintiffs compromised on the rates;

k. the plaintiffs' staff were present at the defendants' sales exhibition to answer 'technical questions' from guests and potential purchasers including matters concerning orientation, location, site reference to other areas and sizes of units.

34. I should point out that Ong's testimony in para 33(j) was not borne out by the example he cited; he had referred to a project of the defendants' subsidiary Escada Development Pte Ltd at Lengkong Empat called Escada View, for which the plaintiffs were paid $280,000 as architects' fees. He testified that the figure was based on 3% ($267,000 rounded up) of Danny Goh's estimate of $8.9m construction costs against his own figure of $10-$14m. However, counsel for the defendants drew Ong's attention to a letter dated 25 January 1994 (see 15AB-323) from the said developer (signed by Ricky Goh) addressed to the main contractor awarding the construction contract at $29.8m based upon which 3% should equate $894,000. Ong explained that the difference was because the lump sum fee of $280,000 had been agreed earlier, in October 1992, at which time he was not given the figure of $29.8m.

35. Although he denied that he had agreed to lump sum fees for the project, Ong admitted he did tell Ricky Goh and Danny Goh at one stage that he would charge fixed fees for designs of bungalow, terrace house and condominium. Even so, he contended, that did not mean that the plaintiffs had agreed to a lump sum fee. However, apart from the 200 or so drawings upon which the plaintiffs based their claim, Ong was unable to substantiate the additional work he claimed to have carried out for the project, including market surveys, studies and research.

36. I move next to the evidence of Tay (PW2). According to Tay (see exhibit TCB1 in his affidavit), his time charges alone incurred on 6 trips to China for the project came to $120,000 @ $250 per hour, for a minimum of ten (10) days per trip. Based on the table set out in Tay's exhibit TCB1, the plaintiffs would have spent 142 months (11 years 8 months) working continuously on the project. Due to the enormity of the project, Tay said he worked on it exclusively and was assisted by a team of 10-15 staff (including assistant architects, designers and clerk of works) who occupied the entire floor at #05-08 Fu Lu Shou Complex and also devoted their time solely to the project.

37. Tay said he received piecemeal instructions from Ricky Goh to provide architectural design drawings for the four (4) sectors of the project, for submission to Chinese contractors for conversion into construction drawings. By Tay's estimate, the plaintiffs' designs would be classified up to Ž of the details that would go into drawings for Singapore's Building and Planning stage of design, under SIA's standard form of contract. Besides having to liaise with Chinese contractors to ensure they converted the plaintiffs' drawings according to the plaintiffs' specifications and intent, Tay claimed that the plaintiffs were also required to give regular presentations to Ricky Goh (and his team) as well as full architectural drawing support by presentation to and liaison with, the Chinese authorities. He also spent time visiting sites in Singapore and looking at magazines to reinforce the plaintiffs' design direction for particular areas, prior to receiving the actual plans from Ong.

38. Although the plaintiffs produced eleven (11) volumes of drawings in the course of this lengthy trial, Tay said they were incomplete and the plaintiffs did at least 20% more drawings, designs, layout plans, elevations and artistes' impressions which he was unable to produce for three (3) reasons:-

1. nearly all the designs done were subject to numerous amendments, re-amendments and changes; some initial designs were not kept but discarded;

2. the plaintiffs moved office from Fu Lu Shou Complex to their present premises in September 1997; in the process, many designs and drawings were not packed but discarded while others were misplaced;

3. some missing drawings were in the defendants' possession or with their Chinese contractors for purposes of converting into constructions drawings; others were borrowed by the defendants and not returned.

39. Tay said he first became aware of the project in or about September 1993. When Ong commenced his exploratory trips to China, Tay would receive instructions from Ong by fax or telephone; the first instruction came on 15 September 1993 via a faxed plan of the area in Qingdao to be developed for the project. This was followed by subsequent faxes containing Ong's rough sketches of plots chosen by Ricky Goh and what would be contained in those plots. Tay and his team would then prepare drawings and designs based on those sketches encompassing sectors (6) which were described as:-

(i) general housing/condominium;

(ii) studio apartments;

(iii) shophouse/recreational areas;

(iv) war gaming centre;

(v) turf club;

(vi) bungalow/semi-detached units.

The drawings included flats and bungalow units of different variations (including studio apartments, 2-3 and 4-5 room units). Amendments were made to zoning and layout plans and there were at least three (3) changes of plots for the studio apartments, gaming centre and turf club. As there was a resultant change in the shapes of the plots, the drawings and designs had to be re-done. Tay testified that one change of plot was due to the presence of an underground electric power cable, another was to provide for a buffer zone between edges of different plots, a third was due to the presence of villages/brick factory, a fourth was because rocks embedded below the surface made piling impossible, the entire bungalow sector was shifted and yet another shift was needed to accommodate a rock known as 'Old Man's Rock' – in March 1995, the Qingdao authorities wanted a protruding rock in the sea to be visible right through the Marina as it had a historical significance; this requirement necessitated amendments to drawings previously prepared.

40. According to Tay, no designs, drawings or sectors were spared from amendments and changes. As examples, he testified that units of low cost housing were increased, blocks of studio apartments were increased to 16 from their original six (6) storeys (necessitating the installation of lifts), one (1) design for the bungalows was changed to 12 variations while a bungalow (with a 'grand' design) was sited on a hilltop for Ricky Goh's occupation, semi-detached houses had two (2) variations, the Marina was pushed further out to sea, the podium of the hotel was raised to four (4) levels, a four-storey shopping complex was added to the office units, the height of the office towers was increased to 38 storeys (although the Chinese authorities actually wanted 52 storeys) with a penthouse added for Ricky Goh's self-occupation. Ricky Goh also wanted the low cost housing units and certain other developments, to be more 'grand'. Finally, because the hotel had to be air-conditioned, the plaintiffs had to liaise with air-conditioner suppliers Daikin (as well as other suppliers) to make sure that the development was air-conditioner friendly.

41. Tay had filed a lengthy affidavit for his evidence-in-chief comprising 139 paragraphs in 27 pages much of which was taken up with the amount of work done and the time spent, by the plaintiffs on

the project, in order to justify the quantum of the plaintiffs' claim. Further, the plaintiffs had an alternative claim in quantum meruit. Not surprisingly, for the two (2) days he spent in the witness box, Tay was cross-examined at length on both bases of the plaintiffs' claim.

42. In the course of cross-examination Tay revealed that:-

a. he was assisted by ten (10) other architects who were not registered architects as such but included graduates from the local school of architecture;

b. he had relied solely on endorsements in his and Ong's passports to work out the number of trips to China the plaintiffs charged the defendants but, he had also made trips to China on other businesses and so did Ong;

c. he prepared drawings and designs based on Ricky Goh's instructions that approximately 10 [not 2] sq. km (out of a total of 67 sq. km allocated by the Qingdao government for the project) was slated for residential development, the area involved was as big as Toa Payoh;

d. the plaintiffs made provision for at least 2,000 units of bungalows, phases 1 and 2 consisted of 1,124 units (including semi-detached units) and formed the basis of the plaintiffs' fees; eventually only 32 bungalows were built;

e. he was unaware that the defendants only used 6 out of the 12 variations of bungalow designs;

f. he disagreed that even after the plaintiffs amended their drawings for the Marina to accommodate the 'Old Man's Rock', the plaintiffs' plans were still not approved by the Qingdao authorities but conceded he did not follow up with the Chinese engineers/contractors on the amended plans;

g. he was not aware that the plaintiffs' plans for Grandlink Square were not approved as the defendants did not inform him;

h. he was not privy to what transpired in July 1996 between Ong and Ricky Goh or Danny Goh, he concentrated on the architectural side of the services provided to the defendants while Ong handled the business side of the relationship including negotiation of the plaintiffs' fees;

i. before the Qingdao project, he had worked (without charge) on Ricky Goh's Dongshan project but disagreed with Ong's estimate that the latter spanned a year – all in, the time spent was about three (3) months;

j. when he wrote to the defendants on 17 October 1994 to ask for payment of $2,271,958.82, the bill was based on 1.5% not 3% of total construction costs based on gross floor area (GFA) because he knew the defendants would be difficult when it came to payment.

43. Tay clarified under re-examination that when he/Ong made presentations to the Qingdao authorities, it was only of the final drawings – amendments and changes were not shown to them. Further, the presentations were for the purpose of obtaining feedback from the authorities, not their approvals. Thereafter, Tay and Ong would meet Ricky Goh to discuss what the Qingdao authorities

required before making further amendments. This was a continuing process until the time the defendants launched the project. In answer to the Court's query, Tay claimed that the Marina hotel could be sold even before it was built. In any case, it came to his knowledge that the defendants did launch sales of the Marina. To another question from the Court, Tay said Ricky Goh had a *carte blanche* from the Qingdao authorities and did not need their approval – he could build what he wanted, where he wanted and how he wanted because he had such a good relationship (*guanxi*) with the authorities (N/E 162). As for the change of site due to the presence of villages and a brick factory, this was due to no fault of the plaintiffs – Tay had been instructed to design on the premise that he was doing so on a flat piece of land; he was told that whatever obstructions that existed would be removed which apparently turned out not to be the case. He could not/did not follow-up on the plaintiffs' designs as he was not introduced to any Chinese architects. However the Chinese officials who were usually with Ricky Goh had seen and liked the plaintiffs' plans. I should point out that this portion of Tay's testimony was disputed by Ricky Goh when he took the witness stand; he said the plaintiffs did not even prepare the master plan – it was the work of Shanghai Tongji University.

(ii) the defendants' case

44. Ricky Goh (DW2) was the defendants' principal witness apart from their expert witness Gan Eng Hoon (Gan). Ricky Goh's cross-examination took more than five (5) days as he disagreed with almost the entire testimony of Tay and Ong. I shall consider his testimony with regards to the plaintiffs' claim first and deal with the defendants' evidence (and the plaintiffs') on the issue of the cheque later.

45. On the question of the plaintiffs' scope of works, Ricky Goh disagreed with Ong's (and Tay's) testimony on the following salient points:-

a. that the project occupied not 2 but 10 sq. km. out of a total of 67 sq. km;

b. that the plaintiffs' scope of works went beyond drawings and concept plans;

c. that an agreement was reached in August 1993 or at any other time to pay the plaintiffs their fees based on 3% of total construction costs up to design development stage;

d. that the plaintiffs would be paid for all the plans and drawings they prepared and not only for approved concept plans;

e. that the plaintiffs' fees should be calculated on an estimated gross floor area of 10 sq. km (2,905,026.96) multiplied by RMB 1,200 per sq.m.

f. that Ong was never a prospective co-investor;

g. that the Marina was built let alone that units there were sold;

h. that there was low cost housing as part of the project;

i. that plans for the Dongshan (and Xiamen) proposed developments spanned a few months instead of 2 years;

j. on the purportedly vast number of drawings the plaintiffs said they prepared

for the project;

k. that various sites had to be shifted for various reasons;

l. that the plaintiffs had advised on the specifications for import of items; he had not even seen their list before this litigation. In any event the items were never and need not be, imported as they were available in China;

m. that Ong had told him the plaintiffs charged Dragon Land fees based on 3% of total construction costs;

n. that Ong became a director of Ricky Ong's companies to lend those companies 'credibility'.

46. Ricky Goh revealed that Ong produced many master and concept plans for Dongshan (which covered 40 sq. km) and Xiamen (30 – 40 times more than for the project) but these were all rejected by the Chinese authorities; hence the defendants did not proceed with their proposed developments in those areas; even so the defendants built 52 villas in Dongshan. He also testified that after he had forwarded to the plaintiffs the defendants' letter dated 19 September 1995 marked for Tay's attention, Ong had telephoned him to inquire why he (Ricky Goh) had mentioned to Tay the defendants' deposit of $200,000 which payment Ong apparently had not informed Tay. It had resulted in a quarrel between Tay and Ong as the former did not agree to the defendants being charged a lump sum fee of $600,000. Although Ricky Goh had officially told the plaintiffs to stop work by the defendants' letter dated 15 September 1995, they had ceased work much earlier.

47. Ricky Goh explained why Ong had a change of heart on being an investor in the project. Ong (together with other supposed investors) got 'cold feet' after the April 1994 sales exhibition where 500 units were sold and only $2.5m was collected by way of deposits – the sum was barely enough to cover the costs of holding the exhibition and other incidental expenses. Ricky Goh had then called for his fellow investors (10 or more) to pay up their share of capital as by then, he had paid a deposit of RMB 4m towards the land cost (of RMB 12m) for the project; it was at that juncture that Ong withdrew as an investor and requested that the plaintiffs be appointed architects instead, albeit with a limited mandate. As an indication of the extent of Ong's commitment had he been a co-investor, Ricky Goh testified that up to the trial stage, the defendants had invested RMB 300m-400m into the project which, based on an exchange rate of S$1.00 to RMB 5.00 would amount to S$60m-80m. Just for the International City alone, the defendants spent in excess of RMB 47m (see breakdown in D9).

48. In the midst of trial (on Sunday 12 September 1999), Ricky Goh flew to Qingdao and took photographs (see exhibit D6) to rebut Tay's assertion that the defendants had sold units in the Marina --- D6 clearly showed that the Marina was never built, because the local authorities rejected the defendants' proposed plans on or about 15 November 1996. Similarly no approval was given for Grandlink Square nor for the recreational centre, war gaming range and golf club range. The photographs also rebutted Tay's claim that Ricky Goh asked for the heights of studio apartments to be increased. To reinforce his testimony, Ricky Goh also produced approval letters and construction permits (D3-D5) issued to the defendants by the Qingdao authorities for general housing/studio apartments, shops, bungalows and semi-detached houses, as well as a rejection letter (D2) for the Marina. He pointed out that Ong prepared drawings for the Design Centre in 1993 before the plaintiffs were appointed architects for the project; hence the plaintiffs were not entitled to payment in any event.

49. As against the plaintiffs' estimated figures (which he described as grossly inflated), Ricky Goh was

able to provide the actual construction costs for the International City, as construction had been completed in 1996. The total GFA for the International City came to 113,740.40 sq. m which, multiplied by RMB 700 per sq.m for cost of construction multiplied by 1% came to S$176,827.56. If the calculation was based on the plaintiffs' estimated GFA for the Marina and Grandlink Square but multiplied by RMB 700 per sq.m, 1% would amount to S$414,810.32. Accordingly, the plaintiffs were at best entitled to S$591,647.88 as their total fees ($176,827.56 + $414,810.32). He also pointed out that the area covered by the plaintiffs' drawings was only about 5% of 10 sq. km.

50. Ricky Goh testified that although Ong was not paid for his work done on the aborted Dongshan project, he (Ricky Goh) had paid for all the travelling expenses incurred by Ong and his 4-5 staff every time they visited China and he provided them with free accommodation at his Dongshan hotel. Similarly, the defendants paid for the travelling expenses of Ong and Tay for the project. Although Ong said mock-ups were prepared for presentation to the Dongshan authorities, he omitted to mention that it was Ricky Goh who paid for the costs amounting to S$250,000 - S$300,000 as the mock-ups were ordered from Singapore. These mock-ups were plastic and were considerably bigger that the styrofoam model produced by the plaintiffs in Court (see exhibit P9); hence they were more costly.

51. In the course of her testimony, Esther (PW3) had produced a controversial letter dated 15 July 1996 (exhibit P8) written to the plaintiffs by the defendants purportedly signed by Ricky Goh. Counsel for the defendants had taken the stand that the plaintiffs had drafted the letter for the defendants' signature as, the copy initially produced in court did not have the defendants' signature; this was denied by Esther. However, after she produced the signed copy in P8, Ricky Goh (who could not recall signing it but accepted he did) pointed out that the contents were no different from those in the defendants' letter dated 4 July 1996 (para 17 supra) which Ong had acknowledged. The contents of P8 are as follows:-

> We confirmed that we have disagreed with the fees you are claiming for the above projects that your company has carried out for us in China.
>
> As such we are not paying for the invoices that you have billed us dated October 1994.
>
> We will only pay upon confirmation of the fees and works done on site. As such the bills submitted is [sic] withdrawn.
>
> In the meantime, we certified and confirmed herewith our tabulation of cost of building work in Qingdao which amounts to S$591,637.88 (copies enclosed) for your attention and updating. Therefore, the works carried out and claimable is S$600,000 of which S$200,0000 had been paid, the apportionment of the balance payment of S$400,000 will be as follows:
>
> S$300,000 to be paid by this week and the remaining S$100,000 to be cleared when all outstanding information required by our manager Ms Carol Lee has been given.

Ricky Goh said he thought the words *all outstanding information* in P8 referred to lay-out plans and designs he had asked for in his earlier letter dated 4 July 1996. He also pointed out (N/E-320/321) that a number of designs the defendants adopted for the project (including those for the semi-detached houses and bungalows) were taken from the defendants' Singapore projects for which they had already paid the plaintiffs their fees. Ricky Goh further asserted that the Qingdao authorities

rejected Ong's bungalow designs (see 4-AB4/5) as looking like 'military barracks' (N/E 322).

52. Cross-examined, Ricky Ong denied either the plaintiffs or Ong's previous firm were paid architects' fees based on 3% of construction costs – fees were always agreed on a lump sum basis after bargaining and after the plaintiffs had commenced work on a particular project. If it was a big project, the plaintiffs' fees were lower and vice versa if the development was only a few units.

53. As stated earlier (para 44), the defendants had Gan as an expert witness. He (DW1) is the executive chairman of DP Architects Pte Ltd (DP Architects) and has been a registered architect since 1967 both in Singapore as well as in Malaysia; he had had over thirty (30) years of experience as an architect in both countries. Although he was not registered as an architect elsewhere, Gan pointed out that he collaborated with architects on projects in other countries including the Philippines, China, Hong Kong, India and Indonesia. His firm's impressive credentials included the design of Wisma Atria and the massive Suntec City development for which DP Architects earned very substantial architectural fees; the firm's current local projects included The Esplanade – Arts by the Bay, Nanyang Polytechnic and the Camden Medical Centre.

54. Gan testified that when he was briefed by Ricky Goh and Danny Goh to be the defendants' expert witness, he was handed the plaintiffs' drawings and plans for all sectors of the project (10-11 volumes), the specifications, the sales documents, the manpower and expenditure for the project as well as relevant correspondence. After he had considered all the documents, Gan arrived at a figure of $560,000 as the total reasonable fees payable to the plaintiffs for the work they carried out for the defendants on the project. He said in the context of Singapore and Malaysia, the provision of concept plans would constitute about 15% of the total work which an architect is required to do in a particular project. A breakdown for his figure of $560,000 was set out in his letter dated 3 September 1999 to the defendants which was exhibited in his affidavit (see GEO-3). Gan's breakdown make provision for every sector which the defendants intended to build but had not, including the hotel and even the golf driving and war gaming ranges save for the Marina, since the plaintiffs' proposal for its development was not approved by the provincial government. I should point out that as against Tay's claim of 142 months for time spent on the project, Gan came up with an estimate of 3 months, based on the drawings the plaintiffs had produced.

The cheque

(i) the plaintiffs' version

55. I turn next to the controversy surrounding the cheque. First, I refer to Esther's evidence. Although she had no knowledge about the dispute between the plaintiffs and the defendants, Esther said she was aware that the defendants had not been paying the plaintiffs' bills for the project (even for disbursements of $16,994), save for one payment of $200,000 in May 1994, despite many reminders. When Ong gave her the cheque on 4 July 1996, he said that he had not read the defendants' covering letter when the cheque was handed to him; he read it later and realised it did not reflect the true understanding reached between himself and Danny Goh – that the figure of $600,000 was to defray ongoing costs and expenses incurred by the plaintiffs up to that date, for the project. Hence Ong sent a fax (see para 18 above) to Danny Goh the following day to clarify the position regarding fees payable to the plaintiffs. On Ong's instructions, Esther telephoned Danny Goh after the plaintiffs' said fax to inquire whether the cheque could be presented for payment. She was told by Danny Goh to hold onto the cheque as he was arranging to transfer funds to the defendants' Bank of China account to cover the amount; otherwise the cheque would be dishonoured. She was

further instructed to wait for Danny Goh's confirmation before presenting the cheque for payment. As she did not receive his confirmation thereafter, she contacted him a few times to inquire and on those occasions he told her again not to bank-in the cheque – in fact, he actively avoided her telephone calls. Consequently, the cheque was returned to the defendants under cover of the plaintiffs' letter dated 1 September 1997 (see para 20 above).

56. On his part, Ong denied he had agreed to withhold presenting the cheque for payment – Danny Goh had promised immediate payment of the sum. Danny Goh's allegation that the plaintiffs withheld presenting the cheque for payment for their own reasons was untrue. There was no reason for the plaintiffs to do that when they had been demanding payment for such a long time. In his written testimony, Ong also asserted that the defendants' contention that the cheque was forwarded to the plaintiffs as an advance payment was a blatant lie – he pointed out that the defendants had not produced bank account statements to substantiate that contention. Unfortunately for the plaintiffs, Ong's challenge was taken up by the defendants as can be seen from the next paragraph.

(ii) the defendants' version

57. Danny Goh denied he had requested the plaintiffs to withhold presenting the cheque for payment and that the defendants did not have sufficient funds to cover the cheque. Taking up Ong's challenge, he reinforced his denials by referring to the defendants' Bank of China statement for the month of July 1996 (see 15AB-276) which clearly showed that the defendants had a credit balance of $301,030.98 in their Bank of China account as at 6 July 1996. As the cheque could only be presented for payment on 5 July 1996 or later, there was no possibility it would have been dishonoured if it had been cleared by the Bank of China on 6 July 1996.

58. Danny Goh testified he had discussed with Ong on the telephone the plaintiffs' fees for the project; this was on 4 July 1996 before the defendants' letter forwarding the cheque. He had then informed Ong that by the defendants' computations made on 9 May 1995, the plaintiffs' fees approximated $591,637.88. Danny Goh said he was willing to round-up the defendants' figure to $600,000 provided the plaintiffs furnished some drawings that had not been provided to the defendants despite their request. In response, Ong proposed the defendants pay $300,000 plus another $100,000 upon completion of the drawings requested; Danny Goh agreed and told Ong to call at the defendants' office the following day to collect the cheque for $300,000. That was how the defendants' letter of 4 July 1996 came to be prepared by Danny Goh and signed by Ricky Goh. On the following day (5 July 1996), Ong came to the defendants' office where he was handed the letter which he read and acknowledged at Danny Goh's request.

59. Danny Goh testified that the defendants were surprised to receive the plaintiffs' letter dated 6 July 1996 which contradicted the understanding he had reached with Ong on the plaintiffs' fees. The defendants therefore wrote to the plaintiffs on the same day (see 15AB-236) to record their disagreement with his statement that *computation of the total fee will be subject to final calculation later*; they did not hear further from the plaintiffs until the defendants' receipt of the letter from the plaintiffs' legal adviser dated 1 September 1997, returning the cheque. As Ong had reneged on the agreement he had reached with Danny Goh, Ricky Goh instructed the Bank of China not to honour the cheque. According to Ricky Goh, another reason why the amount of $300,000 was not maintained in the said account after 6 July 1996 was because Ong had told him the plaintiffs did not want to bank-in the cheque.

60. Some time before 23 July 1996, Ong contacted Danny Goh to inquire about the bills for the

project. Danny Goh explained he was unable to pay in view of Ong's aforementioned letter dated 6 July 1996 but, if the plaintiffs did not dispute the lump sum fee agreement, the defendants would pay; Ong indicated he would not dispute the agreement. When Danny Goh asked for a letter from the plaintiffs to that effect, Ong said he preferred that the defendants wrote to the plaintiffs in accordance with a draft Ong would prepare. On 23 July 1996, Esther sent the defendants a draft but as it did not reflect what Danny Goh and Ong had agreed, Danny Goh did not prepare the letter for the defendants to sign. That draft however was the genesis of exhibit P8 which Ether denied she had prepared and which Ricky Goh could not remember when and why he signed.

The issues

61. The issues for determination in this case are:

> (i) was there an initial agreement between Ong and Ricky Goh on architects' fees payable to the plaintiffs and if so, what was agreed?;
>
> (ii) if there was an agreement, was it varied subsequently to a lump sum fee by Danny Goh and Ong?;
>
> (iii) if there was no fee agreed and or no variation thereof, what would be the plaintiffs' entitlement to fees based on quantum meruit?

The findings

62. Ong had given a detailed account in his affidavit evidence-in-chief of the scope of the works he/the plaintiffs undertook for the project. The impression given was, the services he/Tay rendered went far beyond the 'concept and master plan' parameters pleaded by the defendants in the Defence. It bears mentioning that Ong and Tay are the only two (2) principals or registered architects in the plaintiffs' organisation who worked on the project. It was also confirmed in the course of Ong's cross-examination, that neither he nor Tay are qualified to or are registered to, practise as architects in China and Qingdao in particular; neither were the plaintiffs supposed to oversee construction of the project.

63. Ong could not also recall whether he had told Ricky Goh about his past China experience or whether the defendants appointed the plaintiffs because of such experience. Yet in his affidavit, he had deposed that it was through the plaintiffs' assistance that Ricky Goh was able to lend credibility to the defendants' proposals for development in Qingdao. By the time he was cross-examined, Ong had downgraded (N/E 39B) the plaintiffs' initial role to that of assisting the defendants as agents. Although he was emphatic that he had told Ricky Goh 'quite early' about the plaintiffs' charges being 3% of construction costs (to which he received no objections), Ong had no recollection when he did so and whether this was before or after Qingdao had been selected as the site for the project.

64. Although he denied he had exaggerated the amount of work he had done, Ong was unable to reconcile his claim that he made at least four (4) trips to China between December 1993 and November 1994 (to look for potential sites) with the plaintiffs' pleaded case that they were first engaged by the defendants in August 1993. In his exhibit OCK-4, Ong had listed six (6) trips he made to China between 17 December 1993 and 27 July 1995 for which he charged the defendants

$138,750. Ong was also unable to reconcile his written testimony (para 19) that the plaintiffs would not charge any fee for the exploratory work he conducted, with his claim that he did far more than design the concept and master plans for the project. Under cross-examination (N/E 87), Ong had also admitted that the plaintiffs are not entitled to $5,134,670.47 if their claim is based on quantum meruit, but only to the sum of $1.5m when questioned on para 86 of his affidavit. However, he did not elaborate on how he arrived at that figure nor did his own counsel ask him in re-examination.

65. Despite his repeated denials, what clearly emerged from his testimony is, that Ong was not an architect per se; he was also a businessman who wanted to invest overseas and constantly looked for opportunities to do so, usually in tandem with Ricky Goh. He left the running of the plaintiffs' practice essentially to Tay. That was why he accompanied Ricky Goh on numerous trips to Donghan, Xiamen and Qingdao and many other cities well before the project was first mooted. I agree with Ricky Goh's testimony (N/E 278-9) that it is indeed strange that Ong, after categorically denying he was a co-investor for the earlier Dongshan and Xiamen projects (albeit aborted) later produced photographs, mock-ups and perspectives (P9 to P11) of his involvement with those projects for which he rendered no fees. In his submissions, counsel for the plaintiffs had stated that Ong's purported involvement in Ricky Goh's earlier projects were irrelevant to the present dispute not to mention that it was not pleaded in the Defence; I consider the evidence as relevant to Ong's credibility. Together with my earlier observations on his testimony, I find Ong to be a witness who did not impress me as speaking the truth; modesty is also a virtue he does not seem to possess. He as well as Tay, gave themselves/the plaintiffs far too much credit for their work on the project which is yet to be completed and which success is yet to be determined.

66. Considerable time was spent by counsel for the plaintiffs in cross-examining Ricky Goh on the 11 volumes of drawing produced in Court to support the plaintiffs' claim both on liability and quantum. Whilst I do not doubt that architectural services were indeed provided by the plaintiffs (and a large number of the proposals came from Ong), the services were considerably less than what Ong and Tay projected in their written testimony. Having claimed a very substantial sum as the plaintiffs' fees, both of them then sought to justify that figure retrospectively, in which process they greatly over-stated their roles, even at the April 1994 sales exhibition. In this connection Ong had agreed under cross-examination (N/E 48) with Gan's view that it was wrong of him not to discuss with the defendants before sending the plaintiffs' staff to the sales exhibition and then rendering the defendants a bill. It is a gross exaggeration to say the least, for Tay to claim that he and his team spent time on the project which equated 11 years 8 months; the figure of 142 months was also not supported by contemporaneous or any time-sheets. The drawings produced in Court could not/did not prove the extent of work Ong and Tay claimed to have done let alone the alleged repeated amendments and revisions. Neither do I accept that those plans comprised only 80% of the plaintiffs' work and went beyond the scope of concept and master plans. Further, the plaintiffs' plans covered at best 2 sq. km and not the entire area allocated to the defendants for the International City. It bears noting that the defendants (unlike the plaintiffs) had an office in Qingdao fully manned by 30-40 staff which included planners, quantity surveyors and construction personnel. What were these people being paid for if Tay and Ong were doing all the work that they claimed? Yet when it suited their purpose otherwise, Tay and Ong professed they were unaware of what transpired between the defendants and the Chinese authorities, including the issuance of approvals and construction permits by the latter nor were they (according to Tay) introduced by the defendants to the Chinese architects.

67. I had earlier adverted to the fact that neither Ong nor Tay are registered architects in Qingdao. This factor is significant as it was the plaintiffs' case that payment for their services was based on SIA's standard conditions of contract; yet it was clear from Ong's cross-examination (NE 41-42) that the plaintiffs did not provide the services set out in Part 2 of the SIA standard contract (headed

Architects' Services and Mode of Payment) save perhaps for the first basic service of schematic design (for which payment was to be 15% of total fees). Strangely enough, in their closing submissions, one of the grounds (see para 181) upon which the plaintiffs criticised Gan's opinion was the fact that he (Gan) had based it on the work of architects in Singapore and on SIA's standard conditions. The plaintiffs went further in para 186 of their submissions to say that any importation of the SIA conditions for the work done by the plaintiffs should be clearly rejected. I am unable to reconcile this inconsistent stand – if the plaintiffs say, after their case has closed, that the SIA contract does not apply, then there is no basis for the common contention of Ong and Tay that they are entitled to be paid in accordance with the rates provided under the SIA contract.

68. Not being registered as an architect in Qingdao or elsewhere in China, Ong was in no position (as he claimed with regards to the Design Centre) to visit the site during its construction (on no less than two (2) occasions), to render advice on aspects of design. By the same token, it would not have been feasible for Ong to have prepared plans with full details for construction let alone enlist professional engineers to help with the structural requirements to expedite building approval. With respect, such services would not have been of any use to the defendants given the differing conditions between Qingdao and Singapore. I find it far-fetched that Ong could have helped to refine construction details to reduce construction costs when he was not familiar with Chinese construction requirements. As an example, I refer to Ricky Goh's testimony (N/E 292) that the plaintiffs did abortive work for the designs of the bungalows (of which only 6 designs were used) because they were unaware of the standard requirement in China that all houses must be south facing. The defendants had to change the orientation of the plaintiffs' designs for studio apartments and general housing for the same reason. Such evidence contradicted Tay's testimony that Ricky Goh wanted a change in the orientation of the bungalows so that they faced the rear instead, of each other which (according to Tay) *'is the usual way'*.

69. Having looked at some of the designs before the Court, I am also inclined to agree with the defendants (and their expert witness) that some were repetitive, others had little variations and yet others were quite ordinary. Indeed, I thought that some of Ong's ideas were impractical if not hare-brained, including the proposal to build a turf club – gambling being anathema to a communist regime, albeit one which is gradually moving towards private enterprise and a laissez-faire economy.

70. Counsel for the plaintiffs had sought to show that Ricky Goh originally intended to build the Marina and other sectors besides the International City but, he deliberately chose not to do so in order to defeat the plaintiffs' claim. I reject this submission as it was not borne out by the evidence. The decision whether or not to build did not lie with the defendants but with the Qingdao authorities. Once the authorities had given the green light, Ricky Goh was committed and was in no position to change his mind even if he wanted to. Conversely, the defendants could not proceed to build if no approval was granted, as in the case of the Marina even though they had paid for the site and had held a groundbreaking ceremony.

The decision

(i) was there an agreement on the fees?

71. On the evidence, I accept the defendants' contention that under the 1993 and 1994 agreements, payment of the plaintiffs' fees was dependent upon approval of their plans by the Qingdao authorities and the quantum would be agreed after such approval – it would not make commercial sense otherwise. Ricky Goh had testified that every meeting between Tay and or Ong with the Chinese

authorities resulted in amendments of drawings. If the defendants were to pay for each and every plan produced, original as well as amended/revised, they exposed themselves to the possibility of paying very substantial fees, even for changes required by the authorities which instructions did not emanate from them. As a seasoned developer who had had previous dealing with Chinese authorities as well as with Ong, Ricky Goh would not be so foolish as to take such a risk.

72. Counsel for the plaintiffs had suggested to Ricky Goh (N/E 385) that the defendants' initial payment of $200,000 in May 1994 was not a deposit but part-payment for work already done by his clients. This is not a credible explanation because if it was indeed a part-payment, it would have been reflected in subsequent bills rendered by the plaintiffs (which it was not) and it would not have been such a convenient round number.

(ii) was there a variation of the fee agreement?

73. With regards to the cheque, I prefer Danny Goh's version of how it came to be issued to the plaintiffs. I accept the defendants' contention that the 1993 (as well as 1994) agreement was varied by the 1996 agreement made orally on 4 July 1996 between Danny Goh and Ong whereby the plaintiffs would be paid a lump sum fee of $600,000 for the project. I reject Ong's denial in this regard and his contention that he did not read its contents but only acknowledged the cheque when, the defendants' letter dated 5 July 1996 was handed to him. Indeed his own acknowledgement on that letter contradicts his denial; why would he state:

> We will call a meeting to co-ordinate your request with Carol & finalise the requirements.

unless he had read the contents which contained that specific request in the second last paragraph?

74. I find it equally incredible that although the defendants had sufficient funds in their Bank of China account to cover the cheque, Danny Goh would (as they alleged) request Ong and then Esther (repeatedly) not to present the cheque for payment. Why would the defendants hand over the cheque at all in the first place if it was not meant for immediate clearance? What is even more telling against the plaintiffs is the omission by Ong to record such a request from the defendants when he wrote to them the day <u>immediately after</u> he received the cheque or even later. It took the plaintiffs more than a year (until 1 September 1997) to write to the defendants to document this alleged request, by which time the cheque was already 'stale' and could no longer be cleared by any bank. Ong decided not to bank-in the cheque and concocted the excuse that it was because of Danny Goh's request, in his attempt to wriggle out of the agreement on the lump sum fee, after Tay voiced his disagreement.

75. It was apparent from Tay's letter dated 15 September 1995 at 15AB-216 (as was pointed out in the defendants' letter dated 19 September 1995 at 15AB-224-5) that he was unaware of the defendants' initial payment of $200,000 in May 1994. What must and did happen was, that Ong and Tay had a quarrel when Tay was told about the lump sum fee. The incident lends credence to Ricky Goh's surmise that Ong did not (fully) appraise Tay of all the commitments he had made to Ricky Goh on the plaintiffs' behalf. Accordingly, Tay's ignorance of the 1996 agreement (until after the fact) and his disagreement with the lump sum fee arrangement does not mean that no such agreement was reached.

(iii) what would be the plaintiffs' entitlement to fees if based on quantum meruit?

76. Even if I am wrong in my findings on the cheque as well as on what the parties had agreed, I am satisfied that a reasonable fee for the plaintiffs' architectural services based on quantum meruit would be $560,000, even if their scope of works went beyond providing concept plans; I accept the assessment of the defendants' expert witness Gan in this regard. Conversely, I reject the figure of $360,000 suggested by the defendants in their final submissions, relying on the 1993 (unreported) decision in *Chung Meng Soon & Others v Lee Kai Investment Pte Ltd* (SLR on CD Rom [149 MD 3]), the factual matrix between that case and this dispute being very different.

77. In his closing arguments, counsel for the plaintiffs had submitted that Gan's assessment was flawed – he said Gan had no direct architectural experience or actual knowledge of, working in China nor of the area and scale of the project. Gan's opinion was also flawed because he took into account irrelevant and not relevant factors. An example of the second flaw was, that he failed to take into account previous dealings and correspondence between the parties which information was crucial as otherwise the underlying agreements, changes and amendments ordered by the defendants and the Chinese authorities would be ignored. Gan was aware of but had chosen not to ask for, all the file papers from August 1993 to September 1995 from either Ricky Goh or Danny Goh. Having been briefed by the defendants or their counsel a few days before trial commenced, Gan could not have considered all the evidence carefully and fully; it was not possible to analyse lengthy architectural plans that spanned over two (2) years in such a short space of time.

78. In my view, the plaintiffs have not succeeded in their attempts to attack Gan's credentials or, to discredit his assessment either on merits or on the assumptions upon which the figure of $560,000 was arrived at; Gan did take into account all relevant factors before arriving at his figure. The plaintiffs chose not to call any expert witness to rebut Gan's opinion or to give the Court a comparative yardstick; neither did Ong comment on his testimony. Accordingly, I accept that Gan's estimate is a fair and reasonable fee for the plaintiffs based on quantum meruit. Although he was called as the defendants' witness, I do not agree with the plaintiffs' contention that Gan was biased towards the defendants and could not be considered an expert witness; I did not form that impression at all from his testimony.

The conclusion

79. Based on the evidence therefore, I am of the view that the plaintiffs have failed to prove (on a balance of probabilities) that an agreement was reached between Ong and Ricky Goh in August 1993, that the defendants would pay for the plaintiffs' services based on 3% of the construction costs of the project. Even if there was this 1993 agreement, it was in any event superseded by the 1996 agreement wherein it was agreed that the plaintiffs would be paid a lump sum of $600,000 on condition that the defendants paid $300,000 immediately followed by another $100,000 after the plaintiffs had furnished certain drawings the defendants had requested but which were still outstanding.

80. Consequently, the plaintiffs' claim for $5,134,670.47 is dismissed. Although there was agreement on $600,000 as a lump sum fee, the plaintiffs are only entitled to their fees based on quantum meruit for the reason that they failed to comply with the condition (under the 1996 agreement) to provide the defendants with outstanding drawings (for the International City and the Marina) in exchange for the defendants' immediate payment of $300,000. Therefore, the defendants are not bound by the agreed fee.

81. Accordingly, I award the plaintiffs the sum of $560,000 based on Gan's assessment. As $200,000 has already been paid to the plaintiffs, the balance outstanding is $360,000. As the defendants made no issue of the disbursements of $16,994 incurred by the plaintiffs for perspective renderings, the plaintiffs are also entitled to that claim. In addition, the plaintiffs are awarded interest on the total sum of $376,994 from date of writ (12 November 1997) until judgment. I shall not finalise my order for costs however, until I have heard further arguments from counsel.

LAI SIU CHIU

JUDGE

30 March 2000

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