Chai Yong Construction Co Pte Ltd v Chan Hock Seng and Another
[2001] SGHC 360

Case Number : Suit 600276/2000

Decision Date : 05 December 2001

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Raymond Wong (Wong Thomas & Leong) for the plaintiffs; Leo Cheng Suan and Michael Chia (Infinitus Law Corporation) for the defendants

Parties : Chai Yong Construction Co Pte Ltd — Chan Hock Seng; Han Lili

Judgment

GROUNDS OF DECISION

Introduction

1. This is the saga of the house that 'Jack' built, 'Jack' in this case refers to the first and second defendants who are husband and wife respectively. Chai Yong Construction Co Pte Ltd (the plaintiffs) were the contractors who were engaged by the defendants to build a new 2 storey detached house (with attic and basement) at No. 16, Angsana Avenue (the property) and to carry out additions and alterations at No. 18, Angsana Avenue (the second property), an existing semi-detached house next door to the property. Henceforth, I shall refer to both houses collectively as 'the properties' or where more appropriate, as 'the site'. Trial of this dispute took place over 15 days with the same number for the witnesses who testified. After the April part-hearings, counsel for the defendants discharged himself from further acting for them. I heard and granted their counsels application. I expressed some reservation when the first defendant indicated that he would not be appointing another counsel to act for him and his wife, assuring me proceedings would be much faster if he acted in person. He did act personally when trial resumed in July 2001 and, filed his own closing submissions.

The facts

2. By an agreement evidenced in a letter of award dated 31 July 1998 (the agreement) from the defendants' architect, the plaintiffs agreed to continue the construction of the property and the renovations of the second property, at a lump sum price of $729,000 (the contract sum). I use the word *continue* because the plaintiffs were taking over from another contractor Rock Create Pte Ltd (Rock Create) who had been awarded the original construction contract by the defendants in May 1997 but, whose performance was unsatisfactory as which result their services were terminated on 3 August 1998. The defendants' architect was Soh Chip Leong (Soh) who practises under his own name, while John Portwood (Portwood) of Portwood & Associates was their structural engineer. The plaintiffs' managing director, who negotiated with the defendants through Soh, accepted the agreement and oversaw the plaintiffs works, is Ho Bock Kee (Ho) who is referred to as Michael Ho in the relevant correspondence produced in court.

3. The agreement (see 1AB482-486) inter alia provided:

a. for a contract period of eleven (11) months;

b. that the Singapore Institute of Architects Conditions (SIA Conditions) of Contract (for lump sum contracts) would govern the contract.

The SIA Conditions of Contract inter alia, stipulated that progress claims rendered by contractors which were accepted/approved for payment by the architect must be paid within 14 days of certification by the architect. The SIA Conditions also define what is meant by completion of works. The plaintiffs also had a set of the original tender documents as, prior to the award of the construction contract to Rock Create in May 1997, the plaintiffs had in fact tendered for the project but were unsuccessful as their price was higher than Rock Create's ($620,000).

4. Pursuant to the terms applicable to the agreement, the plaintiffs furnished to the defendants a performance bond (the performance bond) dated 31 August 1998 from Cosmic Insurance Corporation Ltd (Cosmic) in the sum of $72,900, being 10% of the contract value; the performance bond was payable on demand. The plaintiffs were given possession of the site on 7 August 1998 and Soh advised them that the completion date under the agreement would be 6 July 1999.

5. There was some urgency for the plaintiffs to take over the site because of the very precarious site conditions; the excavations were in danger of collapse, causing concern to Soh, Portwood and the temporary works engineer. Rock Create had in fact stopped work, after they had done demolition, piling, temporary and earth works. When the plaintiffs took possession of the site, they did not carry out any excavations and, the only temporary works they did was to strengthen (by blinding the base of the excavations) and rectify Rock Creates temporary works, in order to make the site safe and to save the excavation, according to Portwoods testimony (V/N 33). He (PW7) described the plaintiffs as a breathe of fresh air, after Rock Create (V/N 43).

6. I should mention that for the greater part of the contract period, the first defendant was absent he was serving an 18 months' jail term for the offence of molest. He gave the second defendant a power of attorney authorising her to act on his behalf. while he was in prison. During the first defendants incarceration (July 1997 to 7 January 1999), progress payments to the plaintiffs were made by the second defendant, who also attended site meetings. In the absence of the first defendant, Soh and Portwood took instructions from the second defendant; whether she consulted the first defendant in turn was not adduced in evidence.

7. The plaintiffs did not carry out any piling works but reinforced those already done by Rock Create, whose contract was terminated at the piling stage. The plaintiffs commenced construction under the agreement (from 7 August 1998 onwards) and completed them on 2 June 1999. An inspection (the inspection) was carried out on 5 July 1999 by an inspector from the Building Control Authority (BCA) at the request of Soh, with a view to obtaining Temporary Occupation Licence (TOP) which would have allowed the defendants to move into the property. The inspection was not successful, BCA refused to issue a TOP for reasons set out in their letter on the same day to Soh. Two (2) days later, on 7 July 1999 (1AB653) Soh issued a Delay Certificate certifying that the plaintiffs were in default for not completing the works by 6 July 1999.

8. Prior to the inspection, the plaintiffs had rendered progress claim no. 9 for $94,050.97 for work completed as at 6 June 1999. Pursuant thereto, Soh issued a certificate of payment no. Ala/09 (the certificate) dated 30 June 1999 (1AB885) but only for the sum of $50,453.55. When he testified (N/E 111C), Soh said he deemed it not prudent for him to certify payment for the full sum claimed as, the defendants (or more correctly the first defendant) had by then raised a list of defects concerning the plaintiffs' work; consequently, Soh held back $43,597.42. Even so, the defendants did not pay on the certificate either by the deadline of 16 July 1999 (the certificate having been delivered to the defendants on 2 July 1999) or at all.

9. The plaintiffs (by Ho) not unexpectedly, took issue with the Delay Certificate issued by Soh. They

wrote to him on 9 July 1999 (1AB660-661) referring to the inspection and the outstanding items which caused BCA to refuse to issue the TOP; the plaintiffs asserted that there were reasons for the delay in the issuance of the TOP which had nothing to do with them. In any case, only four (4) of the seven (7) items listed by the BCA related to the plaintiffs' outstanding works - the plaintiffs did not carry out the remaining works as those were outside their area of responsibility, relating to submissions to the authorities. Hence, the plaintiffs submitted, they were entitled to an extension of time from Soh, pursuant to cl 23 of the SIA Conditions, until such time as the delay factors no longer operated. Accordingly, the plaintiffs requested that the Delay Certificate be withdrawn.

10. When he testified (N/E 112 and 117), Soh confirmed that the plaintiffs position was correct. Soh added that, in the light of the plaintiffs' letter dated 9 July and their earlier letter dated 8 July 1999 (1AB656) wherein they had requested issuance of an Architect's Instruction for handrail installation with the appropriate extension of time to do the work, he would have recommended to the defendants that the plaintiffs be granted an extension of time. In fact, Soh had on 9 July 1999, issued an Architect's Instruction for installation of the handrails.

11. However, before Soh could recommend or grant an extension of time to the plaintiffs, the first defendant ejected the plaintiffs from the site on Sunday 11 July 1999. According to the plaintiffs, when their Thai worker Phayad Phraiwan (Phayad) returned to the property in the afternoon of 11 July 1999, he found all the locks securing the property had been changed and he could not enter; the plaintiffs alleged the first defendant was responsible for changing the locks. Further, the first defendant chased Phayad out of the property. Phayad was by then living in the basement of the property as a caretaker/guard. Phayad did not testify at this trial although he had filed an affidavit on the plaintiffs' behalf, on 29 October 1999. The reason was because he left Singapore on 18 December 2000 when the plaintiffs could not extend his work permit (N/E 19). Despite inquiries made by Ho of Thai construction workers in Singapore, Phayad's whereabouts (reportedly in Australia or Taiwan) could not be traced. Ho lodged a police report (1AB679) on the incident of 11 July 1999. He alleged there were two (2) other occasions prior to 11 July 1999, when the first defendant gained forced entry into the property, once was on 9 July and the other on 10 July 1999. On both those occasions, the first defendant cut the padlock the plaintiffs used to secure the side gate. Indeed, according to Ho (N/E 14), the first defendant scaled the fence on the property and used an electric grinder to cut the fence. Ho refuted counsel's contention that the first defendant was denied access, pointing out that before 5 July 1999, he had consented to and allowed the first defendant entry into the property to install air-conditioners and fixtures, without Soh's knowledge; so why would he deny the first defendant access a few days later?

12. The plaintiffs recorded the incidents of 10 and 11 July 1999 in their letters (3) to Soh (1AB680, 682 and 686), unlike the first defendant whose version was purely oral. The first defendant initially denied he had cut the padlock but finally admitted doing so under cross-examination (N/E 703). However, the first defendant gave a vastly different version of what happened on the three (3) dates. In regard to the incident on 10 July, his version (V/N 690) was, that he had observed a party at the property being held by the plaintiffs Thai workers and he joined in the merrymaking. On 11 July, the first defendant alleged that he found a Thai worker (whom he claimed was not an employee of the plaintiffs) with a woman in the master bedroom at 7am that morning; he advised them on the strict laws pertaining to molest and rape in Singapore (V/N 692), chased them out of the property and then left. He only locked the side-gate but left the main gate unlocked; the plaintiffs therefore still had access. The first defendant claimed he returned in the evening, found the gate locked and left without entering the property. He claimed he returned to the property at 7am the following day and found the gate again locked. Neither he, nor the plaintiffs' plumbing subcontractor (who was there to install certain sanitary fittings) could gain entry, so both of them left the property. However, the first defendant changed his version when he resumed testifying on Monday 6 August 2001 (see V/N 869-

15).

13. The plaintiffs refuted the first defendant's first version of the incident on 12 July 1999. Ho contended that if indeed Phayad had not been locked out of the property on 11 July evening, there was no reason for Phayad to spend the night at the plaintiffs' construction site at Ang Mo Kio without any of his personal belongings. Ho's version of events was corroborated by Soh as well as by Soh's assistant Doreen Poh (Doreen). Doreen (PW4) testified (N/E 252) she had visited the property on the evening of 12 July (after Soh had himself verified Ho's complaint that both gates were indeed locked). She entered the property with a set of keys left for her by the first defendant, in order that Phayad (whom she accompanied) could retrieve his personal belongings.

14. A day before he purportedly repudiated the agreement, the first defendant had faxed/handed to Soh a comprehensive list of defects (see 1AB670-675) pertaining to both properties. Earlier, at a site meeting on 10 June 1999, the first defendant had submitted another list of defects which he claimed (para 32 of his affidavit evidence) Ho tore up when he attempted to hand it to Ho; this was denied by Ho (N/E 82) who said he merely told the first defendant to hand the list to Soh, which evidence Soh corroborated (N/E 200).

15. Although the plaintiffs treated the first defendant's conduct in ejecting Phayad from the site on 11 July 1999 as a repudiation of the agreement which the plaintiffs accepted, Ho was nonetheless willing to accede to Soh's (telephone) request made on 12 July, that the plaintiffs complete the two (2) outstanding items of work namely, installation of the handrails and the missing toilet doors, in order to resolve the dispute amicably. Ho indicated he also wanted the issue of the Delay Certificate resolved. To that intent and purpose, Ho, Soh, the first defendant and counsel for the plaintiffs held 'without prejudice' negotiations which culminated in a meeting on 5 August 1999, at which several proposals were raised and one mutually acceptable proposal finally emerged. The plaintiffs' solicitors wrote to the defendants as well as to Soh on 6 August 1999 (at 1AB715A-C) setting out the terms of what the plaintiffs said had been agreed a day earlier between the parties.

16. The defendants did not respond to the plaintiffs' solicitors' aforesaid letter although the first defendant had indicated at the 5 August meeting that he would revert on the proposal within a few days. On 13 August 1999 (1AB717), Soh wrote to the plaintiffs' solicitors to inquire if the plaintiffs would be willing to install the handrails and toilet doors so that TOP could be obtained; the plaintiffs were forwarded a copy of Soh's letter the same evening. On 19 August 1999 (1AB724) the plaintiffs' solicitors replied to Soh indicating the plaintiffs' willingness to do the work requested. Unbeknownst to Soh and the plaintiffs, the first defendant had, on 13 August 1999, issued a Notice of Termination (the Notice) to the plaintiffs, copied to Soh. The Notice (1AB718) however was not faxed/forwarded to the plaintiffs. Instead, it was sent to Cosmic under cover of the first defendant's letter dated 18 August 1999 (1AB722-723) calling for payment on the performance bond. On 13 August 1999, the defendants wrote separately to Soh (1AB719-721) requesting his action on 23 letters they had previously written to Soh and to their list of defects submitted on 10 June 1999.

17. In his testimony, (N/E118-119) Soh said that although he received the Notice, he was unaware of the defendants' call on the performance bond until he was informed by Ho on 19 August 1999; Ho in turn, had been informed by Cosmic that afternoon. On the next day, Soh told Ho that he (Soh), would speak to the first defendant with a view to resolving the matter amicably. Ho informed Soh that the plaintiffs' solicitors were preparing court papers for an injunction to stop the defendants from calling on the performance bond; he would however instruct the plaintiffs' solicitors to hold the application in abeyance until 23 August 1999, for Soh to revert after speaking to the defendants. On 23 August 1999, Soh told Ho that he was discussing the matter with the defendants and was confident that a settlement could be achieved. On the same day (1AB728) Soh wrote to the BCA to say that five (5)

of the items highlighted in BCA's letter dated 5 July 1999 would be complied with.

18. Soh's optimism however proved to be premature as, on 21 August 1999 (1AB725), the defendants wrote to the BCA, copied to Soh and Portwood, to withdraw their application for TOP. Puzzled by this turn of events, Soh told Ho he would speak to the defendants.

19. Before he could hear further from Soh, Ho received a telephone call from Cosmic on 31 August 1999, informing him the first defendant was at the premises of Cosmic, demanding payment of the sum under the performance bond, in an abusive and threatening manner. The visit was denied by the first defendant in court but not in his written testimony; he claimed he did not know the whereabouts of Cosmic's office and merely telephoned the company. On the following day, the plaintiffs filed D C Suit No. 4415 of 1999 (the suit) and applied for an interim injunction to restrain the defendants from calling on the performance bond; they succeeded. By their letter dated 6 September 1999, the defendants suspended the services of Soh with immediate effect. Soh notified the plaintiffs by his letter dated 10 September 1999 that he was no longer the qualified person for the project. On 8 October 1999, the defendants applied to set aside the plaintiffs' interim injunction but failed. They appealed against the dismissal of their application but withdrew the appeal subsequently. In January 2000, the defendants appointed Peter Von Selkey of Seifert Asia to take over from Soh as the architect. On 23 March 2000, the TOP was issued for both properties followed by the Certificate of Statutory Completion (CSC) on 10 November 2000 (1AB844).

The pleadings

20. In the statement of claim, the plaintiffs (after referring to the relevant clauses in the SIA Conditions of Contact) claimed the balance contract sum of $111,264.23 which included a sum of $10,450.50 for variations but excluded the sum ($50,453.55) due under the certificate, which was separately claimed.

21. The defendants not only denied liability in their (amended defence) which was prolix (20 pages) to the extreme but, went further to lodge a counterclaim, alleging that:

> (i) the plaintiffs works were defective (listing out 48 items) which disentitled them to payment;
>
> (ii) the plaintiffs claims were inflated or fictitious and, their works were delayed and incomplete;
>
> (iii) their consultants had advised them that rectification works would cost about $550,000;
>
> (iv) the plaintiffs had damaged a neighbouring property at No. 9 Belimbing Avenue whose owner Low Wai Seng sued the defendants in DC Suit No. 5114 of 1999; they sought an indemnity from the plaintiffs if they were found to be liable to Mr Low;
>
> (v) the plaintiffs wrongfully obstructed their call on the performance bond
>
> (vi) the plaintiffs failed to apply for their own utilities and tapped water and electricity supplies from the second property, which resulted in the occurrence of extremely low water pressure and frequent trippings in the electrical

connection respectively, at the second property. This forced the defendants to move out from the second property and to their flat, causing them to lose rent of $4,500 per month for the flat.

22. As the defendants counterclaim exceeded the jurisdiction of the district courts, the suit was transferred to the High Court (in Originating Summons no. 1475 of 2000) on the defendants' application, by an order of court which I granted on 4 October 2000 and, converted to this Suit. Because of the innumerable complaints of defects by the defendants, the plaintiffs were forced to call a number of people involved in their construction of the properties to testify, including their roof tiles supplier, their electrical subcontractor, their aluminium/window frames subcontractor and their handrails/staircase subcontractor. Their witnesses totalled 11, including Ho. Although he played a pivotal role in the plaintiffs construction works, Soh was reluctant to attend court as their witness and had to be subpoenaed. Similarly, Portwood and Doreen were subpoenaed to testify, together with the defendants new architect Peter Von Selkey (Selkey), who took over from Soh. Besides themselves, the defendants had two (2) other witnesses namely, their building surveyor Paul Crispin Casimir (Casimir) and their professional engineer Raymond Hatfield (Hatfield). In the course of the trial, the plaintiffs produced 18 exhibits while the defendants produced 14, including a window frame (**D6**) the first defendant claimed to have dismantled from the property, which he alleged the plaintiffs installed and, which contained scratches from the outset.

The evidence

23. It would be well nigh impossible to address each and every item of the litany of complaints raised by the defendants, in a concise judgment. What I propose to do therefore is, to deal with the major items alleged by the defendants to be defects in the plaintiffs workmanship and relying on my findings on those items, determine whether the other complaints are likely to be valid/justified.

(i) basement not watertight resulting in water ingress.

24. In relation to this complaint, Soh, Doreen, Portwood, Selkey and Chin Cheong (the plaintiffs surveyor) all testified that they had seen the basement flooded to various depths at different points in time. Portwood (V/N 54) said the water was 8" deep when he inspected the property in early August 1999 while Selkey (PW8) testified he saw water approximately 15mm below the wall sockets (which were 1.5m above the floor) in January 2000 and, a rubber dinghy in the basement. The first defendant did not deny there was a rubber dinghy and explained (V/N 894) he needed it to get to the pumps (6) which he used to pump out the water. Neither did he deny he wanted to turn the basement into a swimming pool (V/N 898-899). Chin Cheong (PW11) noted there was a pool of water in the basement in March 2001, which did not give off a foul smell (V/N 453). Doreen said (N/E 253) the first defendant had told her he wanted the wall sockets moved 1.5m above the floor so that he can flood the basement.

25. Soh testified (N/E 124-125) that in September 1999, he noticed about 1 foot (30cm) of water in the basement. He further observed that the attic gutter was filled with water, which was then channelled through a hose leading to a filter box in the bathroom of bedroom 1; from there it went to the second storeys reinforced concrete (RC) roof and into the basement. Soh noted that the RC flat roof was flooded to about 40cm, up to the level of the parapet wall and putty had been used to seal up the windows, to prevent water, which was up to that level, from getting into the bedrooms. Photographs corroborating what Soh saw on the RC flat roof and in the basement were exhibited in the affidavit of Chin Cheong (see exhibit CC2 at pp 55 [B10], 62, 66, 67 [B33], 79 [C23], 80[C25] and

92 [D29]) as well as at 1AB956. When Soh inquired of the first defendant why he had flooded the basement, the latter said he wanted to convert it to an indoor swimming pool (N/E 125). Some corroboration of Sohs testimony can be found in the first defendants own letter dated 5 April 2000 to Portwood (1AB827) where he stated:

> .We had not filled up the basement to more than eight inches of water at any one period of time. Please be reminded that you had been told from the very beginning when designing the basement that there is the intention to convert the basement into a swimming pool in future. You had also been told that there is a possibility that the whole basement could one day be flooded and that we would be away for a long period of time.(emphasis added)

26. Soh opined that (N/E 125) aside from rain, the water he saw in the basement could not possibly have come through the basement wall. Further, up to his termination, he did not notice any water seepage through the basement wall. If there was water seepage from the outside soil into the basement, the walls of the basement would have been damp. Even then, it would not be up to 30cm. Photographs taken by Ho of the basement on 6 July 1999 (at 1AB1002-1004 and 1010), the day after the unsuccessful TOP inspection, showed no signs of water seepage. Portwood said he inquired of the first defendant why there was water present; the first defendant professed ignorance.

27. If indeed there was ground/soil water seeping into the basement from outside the walls due to the plaintiffs failure to apply the specified/adequate waterproofing compound and thereby to provide an integral waterproofing system, one would not have expected to see such consistent watermarks on all the walls of the basement as shown in the photographs taken by Chin Cheong and Casimir (DW4). Instead, there should have been patches and uneven staining on some of the walls (since the plaintiffs had coated two (2) of the basement walls with Shelkote waterproofing membrane), as well as a stench/foul odour emanating from the water itself.

28. The evidence from the various witnesses who saw the water in the basement leads me to conclude that the first defendant had deliberately flooded the basement to turn it into an indoor swimming pool. My finding is reinforced by the evidence from Soh and the photographs referred to earlier taken by Chin Cheong; the photographs showed that the first defendant had deliberately flooded his roof and roof gutters to create an aquarium effect; in effect he was storing rainwater in an outsize tank on the roof and channelling it into the basement for his DIY swimming pool.

29. The first defendant did not deny he had flooded the roof and gutters but claimed he was conducting ponding tests. This explanation was questioned by Soh who said (N/E 132) that ponding tests did not need water to be first filtered and, only 10cm not 45cm of water would be needed for ponding tests (N/E196). Ho (N/E 47) also said waterproofing tests would not require the entire roof to be flooded not to mention that, flooding the gutters would cause water ingress into the bedrooms and marble flooring and, may also affect the structural integrity of the gutters. I disbelieve and accordingly reject, the first defendants preposterous explanation.

(*ii) no anti-termite treatment and no 10 year warranty for the same*

30. In his testimony, Ho readily admitted that he had made a mistake in including this item priced at $920 in the plaintiffs tender when the treatment was not carried out, with Sohs agreement. Soh on his part explained that anti-termite treatment could not be carried out at the site because it was in a high water table area and it was poisonous. However, treatment could have been carried out at the apron area which Soh thought he had told the plaintiffs to do, but which they apparently did not. All

that is needed to redress this complaint is an omission of the appropriate amount for this item from the plaintiffs claim.

(iii) failure to install precast decorative window frames

31. Ho said he did not do this work because Soh had not provided for it in the contract drawings. When he checked with the Soh, Soh confirmed the work need not be done. As the plaintiffs are contractually obliged to follow the instructions of the defendants architect, there is no basis for the defendants to complain against the plaintiffs. Their remedy if any, is against Soh.

(iv) window frames not watertight

32. Neither Ho nor Soh had any opportunity to verify the veracity of this complaint. It was first raised in the defendants list of defects which Soh forwarded to the plaintiffs on 29 June 1999. Ho said that before the plaintiffs could look into the complaint, they were ejected from the property by the first defendant. The first defendant on the other hand, said that the sealant seen on the windows in the photographs he had taken (1AB956) and seen by Soh, showed that the plaintiffs had made attempts to rectify the leaks. I note that unlike their usual practice, there was no correspondence from the plaintiffs to Soh on this complaint. Coupled with the obviously amateurish attempts (using putty) to prevent leakage which Soh witnessed when he visited the property in September 1999 and, in the light of the evidence that the first defendant flooded the roof areas up to 30cm, I am of the view that the leaks if any, were of the first defendant's own making.

(v) mismatching of roof tiles

33. The defendants' complaint essentially was, that the plaintiffs had used two (2) different types of roof tiles, one **Iwatomi** and the other **Shinto** brand, albeit both were 'J' type tiles. The defendants had chosen **Iwatomi** blue tiles. In his written testimony (para 65), Ho had said that due to wastage by the plaintiffs' workers caused by the irregular (triangle) shape of the roof, the number of **Iwatomi** tiles he had ordered from Andy Roofing Tiles Supplies Pte Ltd (Andy Roofing) were insufficient. However in his oral evidence-in-chief (N/E 3), Ho corrected his para 65 and testified that the problem was actually the inability of Andy Roofing to supply the quantity of **Iwatomi** tiles he needed and had ordered. After being assured by Andy Seow (Seow) the company's managing-director, that **Iwatomi** and **Shinto** blue tiles were identical in design and colour, Ho ordered **Shinto** tiles from Andy Roofing to make up for the shortfall in **Iwatomi** tiles. He pointed out that if the two brands were not identical in design, they would not interlock which they did, relying on a photograph (1AB952) of the roof. He noted that the defendants' photograph numbered 15(d) (1AB956) showed the (brown) underside of the tile.

34. Seow (PW3) confirmed Ho's testimony; he said he then had only 1,500 pieces of **Iwatomi** tiles whereas Ho wanted 1,900 pieces. So he recommended **Shinto** tiles for which he charged the plaintiffs 0.30 more per piece for 400 pieces. Seow explained (N/E 236) that as tiles are natural clay products, it is not possible to get the exact same colour when they are fired (not even for the same brand) particularly for coloured tiles, due to chemical reactions under high temperatures. He also confirmed that J type tiles of the same size will interlock, regardless of the brand (N/E 241).

35. To verify that a sample **Iwatomi** tile (**P3)** interlocks with a sample **Shinto** (**P15**) tile, I requested the defendants' surveyor Casimir when he testified, to interlock the two (2) tiles (V/N 1184). He did

and confirmed (V/N 1188-1189) that the tiles were quite stable and interlocked (with the **Iwatomi** being placed on top of the **Shinto** tile) save that one edge had a movement of 2mm. Casimir said the design of the tiles was not to have perfect interlocking in any case as otherwise, there would be rainwater ingress by reason of capillary action. When I inquired of him whether anybody would have any reason to go on top of the roof and press the tiles in the middle or at their edges (save perhaps for the first defendant), Casimir acknowledged that it was unlikely. However he added, the tiles should be nailed to secure them in place.

36. Then, there was Soh's testimony; he said (N/E 121) he was aware that two (2) brands of tiles were used but from below, one could not tell the difference as the colour was the same and they interlocked well. Chin Cheong (when cross-examined) disagreed (V/N 575) with the first defendant's suggestion that the tiles on the roof looked ugly from a distance. Chin Cheong opined that from a distance, one would be unable to tell virtually although there may be some differences in tonality. Further, because of shading from surrounding trees, one would get an optical illusion of different colours; I note that the roof tiles are highly reflective. In the light of the evidence from both parties' witnesses, this complaint has not been proven at all.

(vi) failing to install bi-fold/double panels back door

37. Like item (iii) in para 31, this item was omitted by the plaintiffs on the instructions of Soh, when Ho (N/E 122) brought to Soh's notice that there was a discrepancy in the drawings. Consequently, the defendants have no basis to complain against the plaintiffs.

(vii) roof tiles not covering the gutter or overhang the edge of the roof

38. Ho testified that the triangle shape of the roof was a construction problem as the three (3) sides were unequal not to mention that the ridge was not perpendicular to any side. The plaintiffs did their best to comply with both the structural and architectural drawings. Soh testified (N/E 159) that because of the peculiar shape of the roof, the gutter was wider than usual. If the roof tiles had covered more of the gutter, the latter would have been too narrow to walk on. Hence, when the first defendant complained that the gutter was very wide, Soh explained to him which reason the first defendant accepted. The first defendant then requested for the gutter to be painted blue to match the roof tiles; the request was included as item 34(ii)(a) in the first defendant's list of defects dated 10 June 1999 (1AB605) handed to Soh and in turn to the plaintiffs. Soh disagreed with the suggestion of counsel for the defendants that colouring the gutter blue was only a temporary measure, to minimise the ugliness. Counsel for the plaintiffs submitted that the defendants were nit-picking as the gutter is barely noticeable from the ground level. I fully agree with the plaintiffs' submission (para 66).

(viii) roof leakage

39. Soh testified (N/E 120) that sometime between 13-20 September 1999, he inspected the roof with the first defendant because of the latters complaint of leakage. He waited for a rainy day and inspected just after the rain had stopped - he found no leakage. Soh had also written to the BCA on 20 September 1999 (1AB765) to say that he did not detect any leakage. When the first defendant testified (V/N 924), he gave a convoluted and totally unconvincing explanation why Soh found no leakage - he claimed it was because the leak had dried up within to 1 hour after the rain! Soh had gone onto the roof more than two (2) hours after the rain had stopped. I note that Chin Cheong did testify he saw four (4) spots of roof leakage in March 2001.

(ix) insufficient roof insulation

40. Sohs testimony that he saw no big gaps in the roof insulation nor was the fact highlighted to him by the first defendant, is significant in relation to the defendants second complaint of inadequate roof insulation. Nothing turns on this alleged defect now in the light of the first defendants admission (V/N 930) that he tore parts of the roof insulation, supposedly to inspect the plaintiffs works. His own expert Casimir (V/N 1294) agreed with counsel for the plaintiffs that the roof insulation had been tampered with, prior to his February 2000 inspection.

(x) installing Parsec instead of reflectrix double blister foil insulation

41. The defendants had specified reflectrix double blister foil as roof insulation. Unfortunately, neither Ho nor Soh nor even Seow had heard of it; the plaintiffs installed 'Parsec' instead. Both Soh and Seow were familiar with Parsec (**D1**) which they described as superior/good quality, widely used in the construction industry. Chin Cheong testified it was widely used for pitch roofs in Singapore and was by far the most expensive insulation in the market. Seow revealed (N/E 251) that he was approached by the first defendant for a quotation which he gave, dated 8 September 1999 (1AB752), for the price of Japanese 'Toyo' S type tiles as well as for double bubble pack with double-sided aluminium foil @ $6.20 per sq.m for 46 sq.m ($285). In the light of the evidence especially Seow's (whom I consider to be a completely independent witness) and without any evidence from the defendants that Parsec is inferior and or less expensive than reflectrix double blister foil (which sample was not produced in court as, sample 'A' was from Seow's quotation which did not mention reflectrix), this complaint is frivolous to say the least.

(xi) failing to install RC structural beams RB7, 8, 9,10 to the roof

42. Portwood testified that he agreed with Hos suggestion to change the beams RB 7 and 8 from concrete to timber as otherwise, the size of the concrete beams would have reduced the size of the attic dormer windows. Ho candidly admitted that he made the mistake of also changing the beams RC9 and 10 from concrete to timber. However, Portwood had checked and found that the roof was structurally sound nevertheless. As Ho has indicated his willingness to allow an omission for RC 9 and 10 beams, nothing more needs be said about this complaint. If indeed the defendants felt so strongly about the unauthorised changes, their remedy if any is against Portwood, not the plaintiffs.

(xii

) *the basement handrail was slanted/off-centred*

43. The defendants had produced photographs (2) which showed (see 1AB984) that the handrail for the basement stairs was off-centred. Soh testified (N/E 127) it was not due to the plaintiffs' poor workmanship but because of a building requirement that there must be 4cm finger space between the railings and the wall. Consequently, although he acknowledged that aesthetically it would be better for the railings to be centred, Soh said it could not be done. I accept Soh's explanation which effectively answers this complaint.

(xiii

) *failing to supply/install mirror polish stainless steel railings*

44. Here again the defendants produced two (2) photographs (dated 2 September 1999); they showed the handrails were rusty with unsightly and badly welded joints. Had the plaintiffs been given an opportunity, Ho said (para 95 of his affidavit) he would have attended to the problem after the TOP but before actual occupation; it would not have taken long (a few hours only) to rectify. That opportunity was never given to the plaintiffs because of the first defendant's conduct in the July incidents (paras 11 and 12 *supra).* Ho added that the condition of the handrails as at 6 July 1999 was not as bad as that shown in the defendants' aforesaid photographs. In this connection, the plaintiffs called their railings subcontractor Lee Heng Engineering Works Pte Ltd (Lee Heng) to testify. Tan Hui Seng (Tan), the managing-director of Lee Heng said that he had obtained his raw material from Nisshin Steel Company Ltd who gave him an analysis certificate (**P13**) to prove the material would not rust. He then fabricated the railings and installed them at the site. Tan was referred to the defendants' aforementioned photographs; he said the railings were installed (5-6 months before the photographs were taken) and he was surprised at the condition shown in the photographs. He did not know (V/N 386) how it came to be so, it was all very nice when his company fabricated otherwise the plaintiffs would not have paid him. In his 21 February 2000 report, Casimir had said that the railings appeared to suffer from corrosion. When he was referred to Casimir's report, Soh opined (N/E 138) that stainless steel railings should not corrode under normal conditions, unless they were exposed to certain chemicals. He then added that corrosion of the fixing nails for the ceiling (another complaint of the defendants) could be due to the dampness in the basement; nails are made of alloy and should be corrosion-free.

45. I cannot imagine that any self-respecting contractor let alone Ho, would have accepted the railings from a subcontractor and paid for them had their condition been what is reflected in the defendants' photographs; acceptance would have been even less likely, if the railings suffered from corrosion at the time of delivery/installation. I therefore accept the plaintiffs' submission (para 146) that the rust/corrosion resulted from the application of chemicals; I would venture a guess that the likely cause is acid. The defendants' photographs were taken some two (2) months after the plaintiffs had left the site; the plaintiffs' photograph of the railings taken on 6 July 1999 (1AB1005) showed no rust or corrosion. This complaint is without merit.

(xiv) failure to use heavy duty grating for the car porch

46. The defendants complained that the plaintiffs did not use heavy duty grating; the plaintiffs' stand was that the contract did not call for heavy duty grating, which Soh confirmed. The plaintiffs' contention appeared to be accepted by the first defendant as, when he cross-examined Chin Cheong (V/N 581), he stated that although heavy duty grating was not stated, it would be 'common sense' to provide heavy duty; otherwise the grating would be damaged if a Mercedes Benz went over it. The first defendant then referred to a photograph (C19) in Chin Cheong's affidavit (exhibit CC-2 p 78) which showed a perfectly good grating which he asserted was bent. The exchange between the court and the first defendant on the photograph is reflected in V/N 581 while the first defendant's cross-examination is set out in V/N 978.

47. When he testified (N/E 126), Soh said the gratings were normal gratings and were acceptable. However, he had requested Ho to change one piece of the car porch grating as it may bend under the weight of a car. The grating was supplied by the railings subcontractor Lee Heng and, Tan from the company opined that (V/N 388) based on his experience, the grating would be able to take the weight of ordinary cars but it would definitely sag if a lorry is driven over it. I conclude that this is yet

another frivolous complaint on the part of the defendants/first defendant.

(xv) leaks from copper piping

48. This was a strange defect; the defendants alleged that the copper piping embedded in the wall of one of the bathrooms leaked. They produced a photograph dated 2 September 1999 (1AB981) which showed a greenish stain on the wall of the bathroom. Ho had testified there was no such leak as at 11 July 1999 (N/E 76). Soh thought (N/E 143-144) that the stain was similar to that on the opposite side of the wall on the RC flat roof; Soh suspected that it could have been caused by the first defendants flooding of the RC roof. When Soh was being cross-examined on 26 April 2001, counsel for the defendants produced two (2) photographs (marked '**D**') which he said Casimir had taken two (2) days earlier, showing water spraying out from the leak; Soh's comment was that a hole had to be drilled through the wall for such a phenomenon to happen, pointing out that the photograph taken at 1AB981 did not show a spray. Counsel for the plaintiffs pointed out it did not exist even when the plaintiffs' surveyor Chin Cheong took photographs in March this year; otherwise he would have taken photographs. As I was not satisfied with the unconvincing explanation of counsel for the defendants why Casimirs photographs could not have been taken and disclosed much earlier, I directed counsel for both parties, Soh, Ho and the first defendant to visit the property and see the leak for themselves; this was done the very same afternoon.

49. When hearing resumed the following morning with Soh in the witness stand, he said he had observed a hole between tiles and when the hot water pipe from the solar heater was turned on, water gushed out from the hole (about 2 foot [60cm] from the floor), the stain was 30cm from the floor and, there was a crack in the tile below the leak. Soh also noticed a fine crack in the ceiling where the control valves to these pipes were located. Re-examined, Soh agreed (N/E 229) that if indeed the water heater had not yet been commissioned and the valve was turned off, there should not even be water in the pipes let alone a leak/spray. He hazarded a guess that the leakage could be due to a hollow behind the wall, that the hole could have been made or could also have been caused by water pressure coming from the back of the tile. Cross-examined, the first defendant revealed (V/N 988) he had chiselled about 15 inches away from the hole Chin Cheong had pointed out and, he (with Casimir) found two (2) copper pipes. He then did a *volte face* and denied there was any hole! Chin Cheong (V/N 411-412) was of the view that someone had drilled a hole in the grouting in the wall tiles and in the process accidentally drilled into the pipe, thereby causing the rupture and the spray. That seems to be the only logical explanation. For reasons which will be set out later, I believe it was the first defendant who did the drilling, just as I believe he applied corrosive substances to the railings, amongst other questionable acts.

(xvi) failing to use main roof rafters of the specified dimensions and correct fasteners

50. There appeared to be a miscommunication between Soh and Portwood in relation to this complaint. It was Hos testimony that he noted a discrepancy between the architectural and structural drawings which he drew to Sohs attention. According to Soh (N/E 130), he instructed Ho to follow the structural drawings whereas Portwood testified that he understood from Ho, that the plaintiffs were asked by Soh to follow the architectural drawings. Portwood's inquiry of Soh in August 1999 on the matter drew no response. Even so, it was Portwoods testimony that the as-built rafters were/are structurally sound and acceptable. This complaint is therefore frivolous, bearing in mind that the rafters cannot be seen as they are concealed inside the roof.

(xvii) the as-built drawings differed from the actual roof structure

51. This is a follow-up on the above complaint. Portwood acted properly by re-submitting as-built plans to the BCA to reflect the actual roof constructed once he discovered the discrepancy; the plans having been accepted, there is no cause for the defendants to complain.

(xviii) failure to install mirror polished stainless steel railings to all low windows

52. Soh confirmed (N/E 115) that he did instruct Ho not to install the railings, as the defendants intended to extend the living room area at a later stage and it would be pointless to incur the cost of this item. This was denied by the first defendant (V/N 980) even though his counsel's earlier cross-examination of Soh (N/E 203) was premised on, the suggestion for the living room extension having been initiated by the plaintiffs. I prefer the testimony of Ho and Soh in this regard.

(xix) failing to install two (2) toilet doors

53. According to Soh and Ho, the missing toilet doors prompted the inspector to refuse to issue TOP on 5 July 1999. Soh testified that the defendants only selected the toilet doors in question on 29 June 1999 (N/E 114); the plaintiffs told him their supplier did not have the stock and proposed an alternative. Counsel for the plaintiffs submitted his clients were not obliged to obtain the doors from other suppliers, as was suggested by counsel for the defendants, for reasons of cost, this being a lump sum contract. As an aside, it was Doreen's testimony (N/E 253) that when she spoke to the inspector, she was told TOP was not issued because the first defendant had told the inspector no doors needed to be installed, because the toilets were meant to be used by ladies. Granted this is hearsay evidence but, Soh did say (N/E 112) he overheard the inspector's comment *'But the neighbours can see'* on 5 July 1999, although he did not hear the first defendant's remark which drew that response. Whether the first defendant's statement was said in jest or otherwise, it would appear that he was directly responsible for the BCA's refusal to issue TOP. That being the case, I am of the view that the plaintiffs should have been entitled to an extension of time after 6 July 1999, to install the two (2) toilet doors and the railings, for which they were awaiting the issuance of Soh's Instruction.

(xx) installing inferior windows with poor paint work

54. In order to rebut this allegation, the plaintiffs called their window subcontractor Tan Kiat Kwang (TKK) of AP Trading to confirm Soh's evidence (N/E 123) that, the quality of the window frames was satisfactory and installation was acceptable. TKK (PW6) was shown the defendants' window frame and said it was not the sample he had produced for the plaintiffs (N/E 259). He explained he had fabricated the window frames using aluminium supplied by other parties; powder-coating was subcontracted out. Thereafter, the window frames were delivered to site and installed together with the glass panels. While he did not have test results to confirm the quality of the aluminium supplied to him, TKK said what was supplied to him was what was commonly used in Singapore for windows.

55. TKK was referred to p 113 of Casimir's affidavit which exhibited a photograph (605/2) taken on 10 February 2000 which showed powder-coating peeling off from a window frame. He acknowledged that sometimes there could be some scratches on the window frames (which if very fine can be removed by polishing). He would also check for dents and unpainted surfaces when the window frames were returned to him after powder-coating but, he had never seen that sort of peeling before; it looked like

someone had used a sharp object to scratch it (N/E 265); it could not be due to normal wear and tear. TKK dismissed counsel's suggestion that powder-coating could have been done improperly; powder coating was only one process and did not involve applying a number of coats. As for the rust marks also shown on photograph 605/2, TKK testified he had provided stainless steel hinges; hence they should not rust unless some acid or chemical was used to wash the hinges.

56. When Chin Cheong was cross-examined by the first defendant, he too said (V/N 567) he noticed that the powder-coating had been scratched or scraped although the cause was unclear. Chin Cheong opined that the damage could have been caused by others; the damage occurred at only two (2) specific locations. The rest of the paint work around the window frame was sound; other windows did not suffer the same defect.

57. There only remains for me to refer to the first defendant's cross-examination of Ho (upon recall). The first defendant changed tack, suggesting to Ho that the paint work had been damaged before the window frames were delivered to site! When the court inquired whether he could prove this new allegation, the preposterous response from the first defendant was, it was 'normal'.

58. It is noteworthy that Soh and the plaintiffs' window subcontractor independently raised the possibility of acid or chemicals having been applied, the former to handrails and, the latter to the steel hinges of window frames. In any case, I find it hard to believe let alone accept, that only two (2) of the newly installed windows can deteriorate (apart from dents/scratches) to the extent shown in Casimir's photograph, over a span of only seven (7) months (6 July 1999 to 10 February 2000). I therefore rule out wear and tear and can only conclude that the window frames had been deliberately damaged.

(xxi) other miscellaneous complaints

59. Under this heading, I propose to deal with other allegations raised by the defendants starting with:

a) ponding on the floors

According to the plaintiffs (Ho), they did not have an opportunity to verify let alone rectify, this complaint, because of the first defendant's conduct on 11 July 1999. Chin Cheong's inspection in March 2001 confirmed some ponding on terrace at first storey and external areas at second and third storeys. The plaintiffs did not deny this allegation.

b) installation of defective timber doors and door frames

Soh testified that the main door was unacceptable because the panels were not properly lined while other doors had mouldy stains. The remedy is either to adjust the panels of the main door and stain the doors darker in colour or, replace all the doors.

c)

failing to plaster and paint the interior of the letter and meter boxes

I agree with the plaintiffs' submission that these are minor defects which would have been touched-up/rectified had they been give an opportunity by the defendants to do so, instead of being ejected

from the site.

d) using second hand wooden boards for the meter box

Since not one iota of evidence was produced by the defendants to substantiate this allegation, I dismiss it as baseless.

e) failing to plaster the walls and ceiling evenly

In his written testimony (para 80), Ho asserted he had rectified this defect prior to the plaintiffs' ejection from site. As his evidence was not challenged in cross-examination, this allegation has been refuted.

f) failing to provide a 10 year warranty for the solar heater system

In the course of giving evidence, Ho indicated the plaintiffs were willing to obtain the warranty from his supplier.

g) failing to install wall light points and switches according to plans

(i) In his written testimony (para 92), Ho had testified that in the course of construction, the first defendant made various changes vis a vis electrical fittings/switches, in consultation with Soh, giving instructions direct to the plaintiffs' electrical subcontractor Toh Kim San (Toh); this was confirmed by both Soh and Toh (V/N 338). Consequently, Ho was unable to verify the defendants' complaint save for one aspect, which he did not deny. When Toh testified, he said he had misread the symbol in a drawing (1AB417) to mean single socket outlet when what the defendants wanted was twin sockets. When Ho pointed out his mistake, Toh said he spoke to the first defendant pointing out that as he (Toh) had already installed many socket outlets they should be enough, he was willing to make a deduction for the missing twin sockets but, he wanted the defendants to pay for the extra work he had done. He testified that the first defendant replied "*I did not ask you. Who asked you to do the extras?*" When Toh said the extra work was done on Sohs instructions, the first defendant suggested Toh make his claim on Soh. Although he refused to pay for the extra work Toh had done, the first defendant insisted that Toh make good the missing twin outlets. Unhappy with the first defendants attitude, Toh refused to do the work. However, the first defendant kept pestering him so Toh eventually agreed to change the single to twin sockets by, hacking out the wall where single sockets had been installed and replacing them with double sockets. This was done in the presence of the first defendant who said nothing.

(ii) Toh confirmed all the parapet lights requested by the first defendant had been installed. He denied the first defendants allegation that the lights had been installed at the wrong height; no height was specified in the drawings or told to Toh. The height at which the lights were fixed was selected by Toh, for safety reasons.

(iii) Like a number of his other complaints, this allegation reflects the character of the first defendant. He was not willing to pay for additional work done, he insisted on what was due to him under the contract and yet, when the work was done as per his request, he complained.

h) failing to provide 5 coats of paint and 10 years warranty on paint work

Like the plastering works, the defendants produced no evidence to contradict Hos testimony that five (5) coats of paint were applied. In his (first) affidavit filed on 16 April 2001, the first defendant complained that he wanted samples of the paint used by the plaintiffs to be sent for laboratory analysis but, was refused. Ho however testified that, all the remaining paint had been left at the site so the defendants should have the samples; he pointed to a photograph (1AB1012) which showed tins of paint left at the property. In the midst of cross-examining Chin Cheong, the first defendant made the startling comment (V/N 630) that the tins had been removed by Doreen on 12 July 1999, although no such evidence was adduced nor was this suggestion put to Doreen when she testified. One can only conclude that this is yet another of the first defendant's unfounded complaints.

i) staining of floors and walls

This complaint was never raised before the defence was filed and was not listed by the defendants earlier as a defect; they had relied on three (3) photographs (1AB975) to support their allegation. I do not propose to comment other than to refer to Soh's (and Ho's) testimony, that they were not aware of any stains before 10 September and 11 July 1999, respectively. In the light of Soh's evidence (N/E 127) that there were slight stains coming through the wall where the first defendant had flooded the gutter and, bearing in mind Soh's warning to the first defendant in September 1999 that such flooding would damage the granite floor finishes, I am of the view that any staining was caused by the first defendant's own conduct, save for one piece of granite which Soh had requested the plaintiffs to replace due to tonality differences, not staining. In regard to granite, it was also the evidence of Ho and Soh that HMK protective coating would only have been applied after TOP had been obtained, prior to actual occupation.

j) failing to provide adequate rainwater downpipes to gutters

This complaint is again unfounded in the light of Soh's testimony that the plaintiffs had constructed concealed not exposed downpipes (3) and took the initiative to install a rainwater spout without extra charge, even though Soh had not provided for it in his drawings.

k) failing to install proper Singapore Cable Vision (SCV) connection

Toh, the plaintiffs' electrician, disagreed he had not done the cable television installation (V/N 366-367). After he had completed his work, Toh said he, the architect and the first defendant (who denied it) checked his work against the drawings, going through the electrical points; the first defendant requested amendments/rectification to some of the points. Hence, the plaintiffs could not understand the defendants' complaint. The first defendant revealed in cross-examination (V/N 1012) that he had actually tapped the SCV connection for the property from the second property, drawing a rebuke from the court. Apart from his bare allegation, there was no evidence to support this omission. Consequently, it is to be disregarded.

l) failing to properly secure copper pipes.

Based on Soh's testimony the plaintiffs were prepared to abide by the court's decision on the lack of

fasteners/clips to secure the pipes to the walls.

m) failing to anchor water pipes in the attic

The plaintiffs were prepared to abide by the court's decision and Chin Cheong's affidavit (p 24 item gg) where he had observed that the water pipes in the attic were not properly anchored.

n) failing to install the auto-gate control switch at the living room and to ensure that the gate worked

Soh had testified (N/E 129) this was done; Toh positioned the switch besides the kitchen door, which Soh accepted. The plaintiffs submitted that the first defendant was confused between an auto-gate power point and the switch. Since the switch was installed by Toh and accepted by Soh, this complaint is without merit. As for the second complaint, Ho had testified that up to 11 July 1999, the auto-gate was working properly; I have no reason to doubt his word, especially when no evidence to prove otherwise was adduced by the defendants.

o) failing to provide hot-dip galvanised protection for the main gate

The plaintiffs indicated they were prepared to abide by the court's decision, in the light of Soh's evidence (N/E 130) that what was required was, for the main gate to be dismantled and sent for hot-dip galvanising by a factory.

p) failing to provide the agreed type of taps

It was common ground that on 12 July 1999, the plaintiffs' plumber could not gain access to the property to install sanitary fittings, so there is no question that the plaintiffs were not willing to do what needed to be done. However, on the issue of not supplying the correct type of mixers, it was the evidence of Soh (N/E 197) that Ho proposed and which the defendants accepted, a brand of mixers which was the equivalent of Aquasolux. In his written (para 88) and oral testimony (N/E 45), Ho had maintained that the contract did not specify the type of taps to be supplied, only mixers; that is correct. Ho had deposed that the plaintiffs had in fact installed chrome-plated bib taps and on one of the first defendant's many inspections of the property, the latter had requested a change of some bib to, lever taps; Ho acceded to the first defendant's request and now he had done a *volte face*. This complaint is not only unreasonable but dishonest.

q) failing to use clear varnish for timber and door frames

Ho had testified (and which Soh confirmed) that the first defendant himself instructed and supervised the plaintiffs' sub-contractor on the varnishing works; the defendants therefore have no cause to complain. The defendants did not produce any evidence to contradict Hos and Sohs testimony.

(*xxii) failing to provide 10 years' warranty for water-tightness to all joints*

60. The plaintiffs submitted that their contractual obligation (see 1AB120-121) did not amount to a

blanket guarantee as the first defendant contended and put to Portwood (V/N 162). Apparently, the first defendant seemed to have misunderstood his rights in this respect. Portwood pointed out that the clause relied on by the defendants refers to permanent movement joints; since the project does not have a permanent joint, the clause was not applicable.

(xxiii) failing to excavate and construct the basement to a depth of 5m and failing to use sheet piles to shore-up the grounds while excavating the basement

61. I shall deal with these two (2) more serious complaints together. It was the common testimony of Ho, Soh and Portwood that site conditions were precarious. They testified it was agreed between them with the second defendant's concurrence, that no further excavations would be done when the plaintiffs took over the site. This was denied by the second defendant when she testified (V/N 1036). However, neither the defendants' former counsel nor the first defendant himself challenged Ho, Soh or Portwood on this aspect of their testimony. At the outset (para 5), I had also pointed out that Rock Create, not the plaintiffs, did the excavation and piling works. Consequently, both complaints are devoid of any merit.

(*xxiv) failing to build the entrance culvert in accordance with engineer's specifications*

62. Portwood had testified that the plaintiffs failed to comply with his original specifications and in their final submissions the plaintiffs indicated that they would abide by the court's decision. It was Selkey's testimony (V/N 283) that the plaintiffs' culvert needed to be rectified (there was some ponding on it) to comply with the requirements of the Land Transport Authority, who was the ultimate approving authority, not Portwood.

Tapping of water and electricity supplies from the second property

63. Having addressed most if not all, of the defendants' complaints, I now need to deal with three (3) other outstanding issues before I give my decision, starting with the complaint that the plaintiffs tapped from the second property, water and electricity for their own use.

64(i). It was the common testimony of Soh and Portwood that Rock Create tapped the utilities initially (with the defendants' agreement) and that the plaintiffs continued the practice (agreed at a meeting on or about 30 July 1998) although Portwood's version was, that it was meant to be a temporary measure. Ho testified that (N/E 72) he had offered (and which the second defendant accepted) to reimburse the defendants in full their PUB charges, for the duration of the project. However, despite his repeated requests of the second defendant, she never gave him the PUB bills. Eventually, Soh issued a Variation Order certifying $10,000 omission for this item, which the plaintiffs accepted.

(ii) In her written testimony however (para 12), the second defendant claimed to be unaware of this arrangement and alleged that the plaintiffs had surreptitiously tapped the supplies from the second property. She relied on the minutes of three (3) site meetings to support her accusation. However, in his testimony (N/E 72), Ho pointed out that those minutes had nothing to do with tapping of PUB supplies he was assisting the second defendant to ascertain why she had no water supply to the second property. Eventually (in April 1999), the plaintiffs' plumber traced the leak which had caused the problem. Prior thereto, the plumber constructed a temporary by-pass for the water.

(iii) My only comment is, that $10,000 was a very generous provision on the part of Soh and the plaintiffs; it is highly unlikely that the plaintiffs' consumption of power and or water could ever reach

such a high figure, throughout their period of construction. Presumably, that could be the reason why the second defendant never handed her PUB bills to the plaintiffs. This allegation is baseless.

Damage to neighbouring property at No. 9, Belimbing Avenue

65(i). It was reprehensible of the defendants to raise this complaint against the plaintiffs when they well knew that Rock Create caused the damage. I need only refer to the letter from the neighbour's solicitors (M/s Peter Low, Tang & Belinda Ang) dated 12 August 1998 (1AB494) addressed to the second defendant, enclosing therewith a report done by Executive Decisions Inc & Partners dated 2 July 1998. In essence, the said report stated that the damage caused by excavations/basement works at the property pre-dated the plaintiffs' appointment and possession of the site. This was reinforced by the defendants' own letter dated 14 August 1998 (1AB504) to their then solicitors Toh Tan & Partners wherein they said:

> Please note that M/S Rock Create Pte Ltd was still the contractor of the project when the said structural defects and cracks were inspected on 18th and 19th June 1998.

(ii) If indeed the plaintiffs were the culprits, I wonder why the defendants did not join the plaintiffs as a third party to the proceedings instituted by the neighbour against them in DC Suit 5114 of 1999.

Payment of Goods & Services Tax (GST) on the plaintiffs' invoices

66(i). The first defendant refused to pay GST on the plaintiffs' progress claim no. 9, contending that the contract sum was a lump sum, even though the second defendant's payments in full on the plaintiffs' previous invoices, included the element of GST. In support of their stand, the defendants relied on these conditions (1AB27) in the tender documents:

> A. Notwithstanding that the Goods and Services Tax (GST) has been imposed in Singapore from 1 April 1994, any reference in the Conditions of Contract to 'The Tender Price' including adjustments to the Tender Price shall be regarded as such sum exclusive of any tax on the supply of goods and services that may be recoverable by the Contractor from the Employer under this Contract
>
> B. The Contractor is deemed to have included in the Tender Price for all costs and expenses arising out of or in relation to the administration of the GST payable by him on the goods and services purchased for the carrying out and bringing to completion of the Works. Such costs and expenses shall include but not limited to all administrative costs, financial charges etc relating to the GST payable by him.

To reinforce their argument, the defendants contended that the letters **INCL** meaning 'included' had been drawn against the value column for the above conditions; they added that Rock Create did not charge GST. In his closing submissions on the counterclaim (p 146 para 109) filed on 14 September 2001, the first defendant again made reference to the above provisions, reiterating his interpretation.

(ii) The plaintiffs on the other hand submitted that the defendants' interpretation was grossly erroneous; item A above in fact specified that the contract sum ie $729,000 was exclusive of GST and the plaintiffs could recover the same from the defendants whilst item B meant that the plaintiffs

could not claim the administrative costs and expenses relating to GST. Hence, the plaintiffs used the word INCL to denote that the plaintiffs understood they could not claim such expenses. The fact that Rock Create did not charge GST is irrelevant.

(iii) It is my view that the defendants' interpretation of provisions A and B is clearly wrong and they are liable to pay GST on the plaintiffs' progress claims.

The plaintiffs' alleged refusal to allow the defendants to bring prospective buyers to view the property

67. Ho had testified (N/E 69-70) that he did not refuse entry but he asked the visitors to be careful; in fact the prospective buyers were subcontractors, one of whom he recognised as his roofer. The first defendant on the other hand said (V/N 686-688) they were a Taiwanese man, the man's girlfriend and a property agent. The plaintiffs in their closing submissions derided this explanation why would prospective buyers go round the property inspecting only specific areas, with measuring tapes and clipboards? I prefer the plaintiffs' version in this regard.

The submissions

68(i) Whilst on the subject of the defendants' closing submissions, I would like to make some general observations on the closing submissions of both parties. The first defendant's submissions on the plaintiffs' claim (filed on 24 August 2001) comprised 1017 pages in two (2) volumes; his submissions on the defendants' counterclaim totalled 685 pages, again in two (2) volumes. In both sets of submissions, the first defendant made copious reference to my notes of evidence as well as to the verbatim notes mechanically recorded.

(ii) The plaintiffs' closing submissions totalled 126 pages. In para 213 of the plaintiffs' submissions, they complained that although the first defendant referred to extracts from the notes of evidence/verbatim notes to support his allegations, the passages he relied on in fact disproved the defendants' allegations. They labelled the defendants' arguments as convoluted, confusing, illogical and nonsensical; I agree. It would serve no purpose to refer to specific examples to support this criticism as the comment would apply to the first defendant's entire submissions which, to a large extent, were incomprehensible.

The witnesses

69. I turn now to the issue of the veracity of the witnesses who testified for both parties. Apart from Ho (PW1), Chin Cheong (PW11) and the plaintiffs' quantity surveyor Oh Joo Huat (PW5), the plaintiffs' other eight (8) witnesses were all subpoenaed to attend court. The first defendant accused Soh, Portwood and his own architect (Selkey) of lying (V/N 896) and asserted without any basis at all that Casimir (DW4) was a hostile witness. He alleged that Chin Cheong (PW11) had a grudge against him from their days of working for Shell (V/N 568), which allegation Chin Cheong denied. The first defendant's wild allegations went to the extent of accusing the court of preventing him (V/N 907) from pursuing a point until he was stopped by a threat of being charged with contempt of court. Having observed the demeanour of the various witnesses, I find the first defendant's accusations to be totally unfounded. Although Soh, Portwood and Selkey were unwilling to testify unless compelled to do so by subpoenas, they spoke the truth when they went into the witness box especially Soh who, by all accounts, was a most reluctant witness.

70. As for Ho, I found him to be candid and forthright in his testimony. He willingly admitted to defects in the plaintiffs' works which needed to be rectified. He came across as a reasonable person who was willing to abide by the findings/observations of Soh, Portwood, Chin Cheong and the court's decision on defects, deviations and omissions. He was prepared to accede to Soh's request, notwithstanding that the plaintiffs had been ejected from the site, to finish the outstanding works, to enable the property to secure TOP, even though the refusal to issue TOP by BCA on 5 July 1999, was not due to any fault on his/the plaintiffs' part; it was directly caused by the unfortunate remarks made by the first defendant, who may have alarmed the inspector by what appeared to be his voyeuristic tendencies.

71. I also had the benefit of observing the demeanour of the defendants in particular the first defendant's, who was in the witness box for more than 1 days. Referring first to the second defendant whose evidence was considerably shorter, she struck me as a quiet and submissive woman who was completely dominated by the first defendant. I very much doubt that the statements made in her affidavit evidence-in-chief expressed her views at all, they were the first defendant's opinions entirely. Whether by force of circumstances or otherwise, she was not a truthful witness; her testimony was contradicted largely by the documents produced in court.

72. As for the first defendant, I need say no more than to refer to the plaintiffs' closing submissions (paras 32-38, 217-224) for a reasonably accurate appraisal of his performance. It is difficult if not well nigh impossible, to highlight the instances where the first defendant was caught lying whereupon he shifted his stance (almost continuously) or did a *volte face*; there are just too many to enumerate. He was a man who was capable of tapping power supply and water for use at the property (which he admitted [V/N 1012]), after he apparently closed the PUB accounts for both the property and the second property on 27 September and 11 June 1999, respectively (see Power Supply's letter dated 20 May 2000 at 1AB836). Otherwise, why would there be obvious signs of habitation at the property, as was reported back to me and I asked of the first defendant (V/N 1012), after the site visit on 26 April 2001? The first defendant had also done an obviously unauthorised SCV connection to the property from the second property. He had deliberately flooded the RC roof and the basement of the property, causing leaks and consequential damage. He had deliberately left the same basement window open during very heavy rain, according to Portwood (V/N 67), who produced a photograph and report (**P7**) of a site inspection done on 17 March 2000, to substantiate this statement. Indeed, the rainwater ingress was also confirmed in Casimir's first report dated 21 February 2000. He deliberately applied acid/corrosive substances to the handrails. Consequently, the damage arising from such acts cannot be attributed to the plaintiffs' workmanship.

73. The first defendant was also unreasonable to the extreme, confirming when questioned by the court (V/N 139) that he would charge Portwood $1,000 per meeting (of not more than one hour's duration) as stated in his letter dated 29 March 2000 (1AB812), in order for Portwood to verify whether the basement had been filled with water exceeding 150mm. As I said to the first defendant, this was done obviously to deter Portwood from visiting the property and finding out that the first defendant had deliberately flooded the basement to create his own indoor swimming pool. His unreasonable conduct in connection with the various episodes in July 1999, when he persisted in repeatedly cutting the plaintiffs' locks used to secure the property, have been set out in earlier paragraphs. Whilst I would not call him a pathological liar (as the plaintiffs did in para 34 of their closing submissions), I would most certainly be understating it when I say that the first defendant greatly economised on the truth, throughout his entire testimony. For the foregoing reasons, it would be unsafe to accept the testimony of the first defendant or that of his wife.

74. As for the defendants' two (2) witnesses, I had indicated to Casimir (DW4) that whatever the present state of the property may be, I was only concerned with its condition as at 6 July 1999, the

day after the TOP inspection and which condition (shown in the photographs produced in court by the plaintiffs/Soh) was confirmed by Soh's own inspection in the presence of the first defendant, in September 1999. The reason was quite simple Casimir's inspection and reports (3) were made in February/May 2000 and in March 2001. Even for his first report, an interval of five (5) months at least had lapsed from the time of Soh's inspection. In that time, the first defendant (as I have found) had gone out of his way to aggravate whatever defects there were, and which the plaintiffs did not have an opportunity to rectify, during the defects liability period applicable to the contract. In this regard, Soh had said (N/E 138) that while he was not 100% satisfied with the plaintiffs' work, he was at least 90% satisfied, adding (N/E 150) that usually there are defects in a construction project which would be taken care of during the defects liability period or, they may be deducted as omissions from the cost items.

75. I would emphasise that I do not doubt that what Casimir and Hatfield (DW3) saw at the site is accurately reflected in their respective reports. However, what they cannot testify to, not having seen the property either on 6 July 1999 or in September 1999 is, who was responsible for the present deteriorated state of the property? The plaintiffs had proven, on a balance of probabilities, that the condition of the property on 6 July 1999 was pristine (save for touch-ups and minor rectification works being required), as shown in the photographs at 1AB996-1013, before they were summarily ejected from the site on 11 July 1999. I can only conclude from the preponderance of evidence adduced, including the photographs taken by the defendants themselves, that the first defendant deliberately went out of his way to cause damage, which was quite substantial, to his own property.

76. It is also interesting to note that Selkey when cross-examined (V/N 283), had indicated that only minor works were required between January 2000 (when he was appointed) and 10 November 2000 (date of obtaining CSC for the property); essentially the minor works related to the culvert and railings. This is to be contrasted with the estimate of $550,000 which Casimir said was needed in order to rectify the defects in the property and, which figure formed part of the defendants' counterclaim (see para 32 thereof) for damages. In this regard, it is significant that Oh Joo Huat the plaintiffs' quantity surveyor, testified (N/E 258) that he had never in his professional experience, come across a situation where the total construction cost of a house is about $735,000 and the costs of rectification exceeds $500,000 or 70% thereof.

The decision

77. I find on the evidence that the plaintiffs have satisfactorily proven their claim on a balance of probabilities. Accordingly, there shall be final judgment for the plaintiffs in the sums of $50,453.55 (on certificate no. 9) and $100,813.73 ($111,264.23 $10,450.50). The plaintiffs' second item of claim for $111,264.23 included variations totalling $10,450.50. As I am only determining liability not quantum, the variation item (unless agreed by the defendants to be valued at $10,450.50) shall go for assessment, in which regard, Oh Joo Huat (PW5) will need to be recalled to testify further on quantum. The plaintiffs are also awarded interest at 6% from the date of the writ on both judgment sums (and on the variation amount when assessed or agreed) and costs.

78. In the light of the plaintiffs' closing submission and the indication from Ho that the plaintiffs were/are willing to abide by the findings of their own surveyor (Chin Cheong) as well as those of Soh and Portwood, there shall be proportionate adjustment for the following items either for omissions or for the estimated cost of rectification:-

(i) omission of anti-termite treatment, either the sum of $920 or to be assessed;

(ii) the cost of battening/nailing down the roof tiles;

(iii) omission for the bi-fold back door not installed on Soh's direction;

(iv) 4 spots of roof leakage;

(v) omission for RC 9 and 10 beams;

(vi) omission for the 2 toilet doors not installed;

(vii) ponding on the floors of terrace and external areas of second /third storeys

(viii) defective main door and other mouldy doors due to poor staining;

(ix) omission for twin sockets not installed or poor installation of twin sockets;

(x) omission of HMK protective coating not applied to granite flooring;

(xi) replacement of one piece of granite due to poor tonality;

(xii) clips/fasteners needed to secure copper pipes to walls;

(xiii) fasteners needed to secure/anchor water pipes in the attic;

(xiv) omission for hot-dip galvanising not done to main gate;

(xv) culvert not done in accordance with Portwood's specifications.

(xvi) Omission of one piece of granite panel not replaced.

Items (i) to (xvi) when quantified or assessed, shall be set off and deducted from the judgment sum of $100,813.73, pending which there shall be a stay of execution on this amount.

79. I also find that the defendants were not justified in calling on the performance bond on 18 August 1999; the plaintiffs were/are entitled to restrain the defendants from calling for payment thereon. Further, the Delay Certificate should not have been issued by Soh on 7 July 1999 as the delay in completion (measured against the date of obtaining TOP) was due to no fault of the plaintiffs.

80. Needless to say, I find no merit in the defendants counterclaim which is accordingly dismissed with costs to the plaintiffs.

Sgd:

LAI SIU CHIU
JUDGE

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