Steelcrete Construction & Engineering Pte Ltd v James Low Yao Chang (Klay Associates, Third Party)
[2002] SGHC 18

Case Number	: Suit 139/2001/S, Suit 564/2000/M
Decision Date	: 31 January 2002
Tribunal/Court	: High Court
Coram	: Lai Siu Chiu J
Counsel Name(s)	: V Aridas (Aridas & Associates) for the plaintiffs; Leong Wai Nam (as counsel) with Peter Chan (JYP Chia & Co) for the defendant; Eric Chew with Raymond Lam (Raymond Lam & Lim Partnership) for the third party
Parties	: Steelcrete Construction & Engineering Pte Ltd — James Low Yao Chang — Klay Associates

Judgment

GROUNDS OF DECISION

Introduction

1. Steelcrete Construction & Engineering Pte Ltd (the plaintiffs) were incorporated in Singapore in 1992 and are building contractors. James Low (the defendant) is a businessman dealing in pet foods and is the regional wholesale distributor for certain pet products (including dog/bird foods, accessories and shampoo) while his wife is a professional pet groomer. The defendant had also operated a pet shop for more than 15 years. In that regard, he owned/owns a company Pets 'N' Pedigree Pte Ltd (previously known as Pet Resorts Pte Ltd). The third party is a sole-proprietorship of one Chan Yew Fai (Chan) who is a professional engineer by training and qualification.

The facts

2. In 1996, the defendant decided to build/develop a farm for the purposes of breeding, training and boarding dogs (the project). To that end and purpose, he applied for and obtained, under an agreement dated 2 May 1996 (the lease) a piece of leasehold land at Pasir Ris Drive 12 (the site) from the Primary Production Department (PPD) which is now known as the Agri-Food & Veterinary Authority of Singapore (AVA); the site was part of Loyang Agrotechnology Park. Having secured the site, the defendant then called for tenders for the project in November 1996. Nine (9) contractors (including the plaintiffs and the defendant's own brother Low Teck Soon using his firm's name Plus Factor Builder) tendered for construction of the project. However, none were awarded the contract for the project when the tender closed on 27 November 1996 and, the plaintiffs were refunded the deposit for their tender price of $1,613,289; the project was held in abeyance.

3. In January-February 1997, the plaintiffs' director Teo Hock Lee (Teo) was contacted by the defendant and, following what Teo described as 'heavy negotiations' between them which continued until May 1997, the plaintiffs were awarded a contract for the project at the lump sum price of $1,270,000 (the contract sum). Strangely enough, the plaintiffs and the defendant signed two (2) contracts, prepared by Chan (on the defendant's instructions), based on the Singapore Institute of Architects' (SIA) Building Contract (Lump Sum) both dated 28 May 1997, one in the contract sum (the contract) and the other for $1,613,289 (the second contract). Equally perplexing was the fact that before the two (2) contracts were signed, Chan issued identical letters (2) of award to the plaintiffs one dated 20 May and the other dated 26 May, 1997 (the letters of award), the first in the

sum of $1,270,000 and the other in the sum of $1,613,289. The defendant appointed Chan as the 'Qualified Person' for the project (for both 'structural' and 'architectural' works), as required under s 6(3) of the Building Control Act Cap 29, by a letter dated 2 July 1996 (the letter of appointment) wherein he agreed to engage Chan as the principal consultant, at a lump sum fee of $52,000.

4. The plaintiffs' scope of works comprised the following:-

a. one indoor training ground building;
b. one office building;
c. one utility room building;
d. one residence;
e. two catteries;
f. four kennels;
g. internal driveway drain;
h. sanitary lines including chambers and sewerage treatment plant;
i. entrance culvert.

which (according to the plaintiffs but not told to Chan until later) was agreed to be constructed in three (3) phases with the third and final phase to be completed by 31 December 1999, as required by PPD/AVA. According to Teo, the following items were also discussed and agreed between the parties (but denied by the defendant):-

i. there would be no retention sums;
ii. there would be no performance bond (amounting to 10% of the contract sum);
iii. all progress claims would be submitted to the defendant for payment;
iv. the third party would not issue interim certificates of payment;
v. items in the second contract would be substituted/varied.

I should add that the above items contradicted the terms of the two (2) contracts signed by the parties as well as the letters of award as in the latter, Chan had requested the plaintiffs to furnish a performance bond, insurance and workmen's compensation policies to his office as soon as possible. Teo prepared a hand-written work schedule (see AB280) which he said the defendant agreed to as, subsequently he typed and faxed it to the defendant who signed and faxed it back to him. Teo did procure insurance policies for third-party liability (in the sum of $1,270,000) and workmen's compensation (in the sum of $254,000) for the project.

5. The plaintiffs commenced construction on the project on or about 1 October 1997, after receipt of the Building Plan Approval dated 29 September 1997. Earlier, they had also received a Notice of Permit to Commence Works dated 7 June 1997. It was only when construction of the project was well underway, namely on 16 July 1999, that Chan was requested by the defendant to administer the contract. Prior thereto, up to 12 July 1999, the plaintiffs claimed (but which the defendant denied) that the defendant himself administered the contract. Chan's office however did supervise the plaintiffs' construction. Whenever Teo or the defendant requested for inspection, Chan or his assistant Chua Kay Soon Raymond (Chua) would visit the site. By July 1999, the plaintiffs had submitted their 5th progress claim and had received part-payments totalling $400,000 on their previous four (4) progress claims (inclusive of GST amounting to $12,000). The balance of $411,224.91 outstanding on the earlier progress claims was not and never paid by the defendant. The first three (3) progress claims of the plaintiffs were addressed to Pet Resorts Pte Ltd while the 4th was addressed to Pets 'N' Pedigree Pte Ltd; Teo testified this was at the defendant's request (which

was denied). The 5th progress payment was forwarded to Chan and was addressed to the defendant. Because of the defendant's refusal/inability to pay the balance on the plaintiffs' first four (4) progress payments, Teo alleged that it caused the plaintiffs in turn to suffer cash flow problems.

6. A meeting was held on 9 July 1999 (the first meeting) attended by Teo, the defendant, the defendant's brother Low Teck Soon (Low), an architect Anthony Lim Meng Siah (Anthony Lim) and Chua from Chan's office. At the meeting (as minuted by Low), the defendant expressed concern over the works being behind schedule; he requested a catch-up programme from the plaintiffs. The plaintiffs did not agree with the minutes of the meeting because (according to Teo) a number of items Teo brought up at the discussion were not recorded. He denied that the plaintiffs were behind schedule or, that the defendant had requested a work schedule from him in March 1998. Consequently, there was no reason for him to provide a 'catch-up' programme as minuted. The first meeting was followed by a second meeting on 12 July 1999 which Teo did not attend because (he said) he was neither informed nor invited.

7. By July 1999, the plaintiffs had completed the office block, utility room, pet shop, kennels 3 and 4, main entrance fencing as well as the electrical works. Teo claimed that as work progressed, the defendant made various changes to the building plans (the indoor training ground was changed to a pet shop) and postponed work on phases 2 and 3 due to lack of funds. Further, the defendant revised the works to be done under the three (3) phases while sometimes, changes were required by the relevant authorities, such as that from sliding windows to adjustable louvre windows. The plaintiffs' solicitors had written to Chan on 20 July 1999 (AB327) to record the substantial variations to the original contract.

8. Teo explained that the plaintiffs did not build the sewerage plant (under the revised phase 1) because the (approved) building plans of Chan provided for a 10- persons treatment plant; however, the PPD/AVA required the defendant to provide a 30-persons treatment plant. The defendant was still considering the cost of constructing the plant (for which Teo had given an estimate of $100,000-$120,000) when the plaintiffs' services were terminated. I should point out however, that the plaintiffs did not have any communication with the PPD/AVA at any time. What they understood of PPD/AVA's requirements were conveyed to them by the defendant and or Chan. Neither were they aware of the terms of the lease awarded to the defendant (although Teo knew the deadline from PPD for completion of the project was 31 December 1999). Consequently, the plaintiffs were unaware whether their work schedule in 3 phases was accepted by the PPD.

9. The plaintiffs continued working (solely according to Teo) on the project until 4 September 1999; they then received a certificate of termination dated 15 September 1999 from Anthony Lim, who had been appointed by the defendant to take over from Chan as the 'Qualified Person' for the project. After some delay (allegedly because the defendant denied them access), the plaintiffs finally removed their equipment from the site on 3 November 1999. Unfortunately by then (Teo said), the plaintiffs' charts and work programmes could no longer be found. Chan's appointment was terminated by a letter from the defendant's solicitors dated 4 September 1999.

10. Notwithstanding that the project was uncompleted, the plaintiffs alleged that the defendant used the completed structures without first obtaining a temporary occupation permit (TOP), despite a written warning from Chan (in 1998) that it was illegal to do so. The defendant had stored his pet food materials at the site since end 1997/early 1998 and, had leased out kennels for dogs to third parties in 1998, including Alpha Dog Patrol Pte Ltd, even before a proper sanitary and sewerage system was installed. Further, the defendant visited the site at least 3-4 days every week. On those visits, Teo would accompany the defendant as he went round the site to verify the work for which the plaintiffs had submitted their progress claims.

The claim

11. In February 2001, the plaintiffs commenced Suit 139 of 2001 claiming the sum of $411,224.91 outstanding on progress claims nos. 1 to 4, the sum of $42,660.54 on progress claim no. 5 and $5,000 (excluding GST of $1,429.81) for additional works (relating to alteration of discharge canals). There was also a claim for loss of profits amounting to $356,096.75 thereby bringing the plaintiffs' total claim to $816,412.01. The plaintiffs had a third additional claim for damages. The plaintiffs further averred that the termination certificate issued by Anthony Lim was wrongful and invalid.

12. In the (lengthy) defence and counterclaim the defendant:

a. denied the oral agreement set out in para 4(i) to (v) above;
b. contended there was no variation from the contract that the plaintiffs would build a 10-persons treatment plant at the sum of $20,470;
c. denied there was a second contract in the amount of $1,613,289 or any other sum;
d. denied there was a variation in the commencement date, that the project was to be completed in phases or that there was any change in the timeframe for completion namely, 18 months from the Permit/Notice of Commencement of Works, by 6 December 1998;
e. contended that the plaintiffs failed to apply for an extension of time by 21 July 1999 as required by Chan;
f. alleged that the plaintiffs failed in various material aspects to comply with all requirements relating to quality and workmanship (which he particularised);
g. denied he visited the site on diverse dates to inspect the quality of materials and goods as alleged or at all;
h. professed he had no knowledge of technical matters as a layman and relied on the integrity and expertise of the plaintiffs and Chan;
i. alleged that the plaintiffs took advantage of his ignorance and misled him into making payment although interim certificates were never issued:
j. averred he had no recollection of having requested for works outside the contract and denied he was liable for such works, for which no certificates were issued;
k. denied he gave instructions to deviate from the approved plans;
l. contended he was entitled to occupy some of the buildings with the consent of the plaintiffs. The plaintiffs and Chan should have but failed to inform him that, a TOP had not been issued and they were to be blamed for any breach of the Building Control Act;
m. denied Anthony Lim was not a Qualified Person. In any case, the plaintiffs had waived any objections to such an appointment by their solicitors' letter of consent dated 11 September 1999;
n. alleged it was the plaintiffs not he, who had repudiated the contract as they were not willing and able to continue with the contract;
o. contended that the works completed by the plaintiffs were worthless or worth no more than the sum of $400,000 he had paid.

13. Initially (April 2000), the plaintiffs commenced arbitration proceedings against the defendant, pursuant to clause 37 of the conditions of the contract. However, as Chan was not a party to either contract, he could not be forced into arbitration with the parties. Arbitration proceedings were therefore discontinued by order of court on 15 January 2001 (on the defendant's application in Originating Summons No. 1876 of 2000 against the plaintiffs and Chan under s 3 of the Arbitration Act [Cap 10] that it would otherwise result in a multiplicity of proceedings) even though dates had already been given after 9 months' of arbitration between the parties. Clearly, the defendant was dragging his feet. The order of court went further to direct that the plaintiffs commence fresh proceedings in the High Court and set timeframes for the filing of pleadings; Suit 139 of 2001 was commenced as a result. I should also mention that in another (earlier) set of proceedings, (Originating Summons No. 1500 of 1999) the defendant applied for possession of the site from the plaintiffs who then applied for a stay under s 7 of the Arbitration Act, by reason of the arbitration clause in the contract. The plaintiffs eventually withdrew their application while Originating Summons No. 1500 of 1999 was discontinued by the defendant.

14. The defendant had separately sued Chan earlier in August 2000 in Suit No. 564 of 2000 alleging that the latter had failed to exercise all due professional skill and care in the performance of his duties as the defendant's principal consultant. I shall return to the defendant's allegations against Chan in the course of my findings. On his part, Chan filed not only a (lengthy) defence to the defendant's statement of claim but also a counterclaim for the outstanding balance ($22,575) of his fees.

15. On 15 March 2001, the court ordered Suits Nos. 564 of 2000 and 139 of 2001 to be consolidated, with the earlier suit being the primary action and, that Chan be joined as the Third Party to the later action.

The plaintiffs' case

16. The plaintiffs called two (2) witnesses. I have in fact outlined the plaintiffs' case generally in paras 2-10 above. Consequently, I turn my attention now to the further evidence adduced from Teo (PW1) under cross-examination by counsel for the other two (2) parties. Questioned on why his company signed two(2) contracts with the defendant, Teo revealed (N/E 49) that he understood that the second contract was meant for financing reasons when the parties went to Chan's office to sign both contracts; this was however denied (N/E 75) by the defendant who claimed he was able to and financed the project, personally.

17. Although the defendant denied signing it, Teo said his letter dated 16 May 1997 (AB277) had been signed by the defendant when he delivered the document personally to the defendant, and it confirmed the following terms:

(i) the project would be in 3 phases with phase 1 to be completed in 6 months:
(ii) commencement date would be 2 weeks from receipt of permit to commence work;
(iii) phases 2 and 3 would be discussed and fixed in due time;
(iv) liquidated damages would be $200/- per day.

In turn, Teo faxed the document to Chan on 19 May 1997, according to the fax transmission on the document; however when Chan testified (N/E 222), he said he did not have the copy in his file. On 19 March 1998 the plaintiffs faxed to the defendant a work schedule (see AB467 or 2AB533) for the three (3) phases of the contract as follows:

Phase 1	Expected commencement date	Expected completion date
Construction of utility	1 Oct 1997	30 June 1998
Construction of pet shop		(wrongly dated 31 June)
Construction of Kennel 3 & 4		
Construction of external works		
Phase 2		
Construction of kennel 1 & 2	2 Jan 1999	30 June 1999
Construction of external works		
Phase 3		
Construction of catteries 1 & 2	2 July 1999	31 Dec 1999
Construction of office		
Construction of residence		
Construction of external works		

Surprisingly, counsel for the defendant (N/E 23) took the position that the defendant did not sign the above work schedule even though it was clear (from the fax transmission details) that the defendant (after appending his signature under the stamp of Pet Resorts Pte Ltd) faxed it to Chan and on the following day, Chan's assistant Chua forwarded it in turn to the PPD (at 2AB534). This stand necessitated calling a representative from PPD/AVA to testify. Under the above work schedule, the third and final phase was to be completed by 31 December 1999, which deadline was confirmed by PPD in their letter to Pet Resorts Pte Ltd dated 29 December 1998 (AB471). Teo testified that since the defendant neither objected nor wrote to him as regards the work schedule, he assumed that the commencement date for phase 1 would be 1 October 1997 and he proceeded on that basis. However, the commencement dates for phases 2 and 3 were not adhered to as the defendant held him back. I also should point out phase 1 of the work schedule agreed on 19 March 1998 differed from the earlier one dated 19 May 1997 in that the latter included an office and residence blocks, there was no pet shop whilst the kennels to be built were 1 and 3 and not 3 and 4.

18. It was Teo's evidence that when he received the letter of award with a request to furnish a performance bond, he had telephoned Chan to say no bond was required. Teo opined that Chan acted fairly and independently but the defendant put pressure on Chan to terminate the plaintiffs' contract (N/E 35); this testimony was corroborated by Chan (N/E 206) who said he was under pressure by the defendant's brother Low, to impose liquidated damages on the plaintiffs and to terminate their contract. Low had also insisted that the plaintiffs furnish a bond for 10% of the full contract value (in July 1999), against Chan’s suggestion that it should be based on the balance of the contract. When Chan indicated there were no grounds to terminate the plaintiffs’ contract, Chan’s own services were terminated. Although he was aware that Chan was stated to be the quantity surveyor in the contract, Teo said he knew Chan was not a quantity surveyor just as he knew (and so did the defendant) that Chan was not an architect.

19. Although he had agreed to commence work within 2 weeks of receipt of the permit to commence work (dated 7 June 1997), Teo testified that the plaintiffs could not do so as the building plans were approved much later (29 September 1997). In any case he contended that the permit to commence

work did not form part of the contract documents. Further, neither the defendant nor Chan wrote to the plaintiffs to request that they commence work nor was a date for commencement inserted into the contract. After signing the contract, the defendant was still uncertain on the phases for the project. Even so, while waiting for approval of the building plans, the plaintiffs mobilised their equipment, workers and carried out site organisation work. I should point out that according to the letter from the PPD dated 24 August 1998 (2AB542) to the defendant, the latter was supposed to finish 5 of the 10 approved farm structures by 29 September 1998; this the defendant failed to do as by September 1998, only three (3) structures had been erected.

20. Teo testified that amendments were made to approved drawings sometimes on Chan's instructions and at other times at the personal (verbal) request of the defendant including:-

a. dismantling the completed chain-link fence and constructing a brick wall instead with welded mesh on top;
b. dismantling the diseased animals ward and replacing with 2 rooms;
c. constructing the kennels to the edge of the internal drain instead of to the edge of the kennel boundary so as to give the animals an opportunity to exercise;
d. building a full brick wall without fence instead of a high fence with brick wall;
e. constructing a concrete finish yard in place of a sand finish yard;
f. repositioning and reducing the width of the drain running through the kennels;
g. changing the glass windows in each block to adjustable glass louvres when approval was obtained to change the indoor training ground to a pet shop;
h. changing the design of the main gate.

Questioned by counsel for Chan, Teo testified he did not inform Chan of the changes effected at the defendant's request; he felt it was the defendant's duty to do so. As far as Teo was aware, neither did the defendant inform Chan. As far as item 20(g) was concerned, he said the defendant complained of the change in windows only after the plaintiffs had commenced arbitration, well after the louvre windows had been installed and seen at site by the defendant.

21. Teo maintained that the 30-persons treatment plant was outside the plaintiffs' scope of works in any event as, the plaintiffs' contractual obligation was to build a 10- persons treatment plant. However, they were informed by Chan that the Ministry of the Environment (MOE) would only approve a 30-persons treatment plant. Teo then rendered a fresh quotation for such a plant at the defendant's request which the latter rejected as too expensive. Instead, the defendant obtained a quotation in the sum of $70,000 from another contractor (Yong Yang Construction) in June 1999 to whom he counter-offered $50,000 but, which was rejected (see AB528). Teo had then informed the defendant that the work schedule needed to be adjusted as, the plaintiffs' completion of phase 1 hinged on the 30-persons treatment plant which work the plaintiffs had to co-ordinate with the defendant's contractor. However, the defendant never raised the subject again after the first discussion on or about 18 June 1999; neither did he appoint any contractor for the revised treatment plant. Teo surmised it was because the defendant was in financial difficulties.

22. Teo disputed the defendant's claim of ignorance as a layman. On the contrary, the defendant was a shrewd and experienced businessman who visited the site regularly and was apprised on the works in progress by him and, the defendant was able to vary the contract with regards to interim certificates. Teo said the defendant was even able to provide a layout plan to Chan by a fax dated 8

January 1997 (see 2AB79-80).

23. As for the meeting on 9 July 1999, Teo said the concerns he raised were not recorded, namely the urgency of the construction of the 30 persons treatment plant and when the work under the remaining phases 2 and 3 should be done. He disagreed with the minutes on these items:

a. the plaintiffs' work schedule was very much behind schedule;
b. the plaintiffs should submit a catch-up programme on 16 July 1999;
c. that the plaintiffs had failed to furnish a banker's guarantee up to that date and were required to furnish one if they intended to continue with the contract;
d. that the plaintiffs were in delay for about 12 months and liquidated damages were $200 per day;
e. the plaintiffs were to apply to Chan for extensions of time.

Consequently, he faxed (on 20 July 1999) the plaintiffs' undated letter to the defendant to record his disagreement with the minutes.

24. As stated in para 6 above, Teo was unaware of the second meeting held on 12 July 1999. However, it was attended by Chan (and Low) who wrote to the plaintiffs on 16 July 1999 (AB291) referring to the same and requiring the plaintiffs to submit that very day, progress claims for work done, applications for extensions of time (substantiated), variations claims and a programme for completion of outstanding works. When the plaintiffs (not surprisingly) did not respond, Chan sent a reminder dated 20 July 1999 (see AB293). However, Teo said he did forward to Chan evidence of the plaintiffs' performance bond and insurance, after 19 July 1999. Teo reiterated that it was orally agreed between himself and the defendant that no performance bond was required as, if indeed it was called for, the plaintiffs would have had no difficulty in coming up with a bond for $127,000 (10% of the contract sum).

25. Questioned why the plaintiffs had contended (in their pleadings) that the notice of termination issued by Anthony Lim was invalid, Teo explained it was because the former had to be first registered with the Building Control Authority as a 'qualified person' for the project before he could issue such a notice.

26. I had earlier mentioned the plaintiffs' claim for loss of (gross) profits in passing. Cross-examined, Teo explained that his figure ($356,096.75) was based on blocks he had not yet constructed but for which he had already fabricated some trusses which he removed from the site and sold off as scrap when the plaintiffs' contract was terminated.

27. The plaintiffs' other witness was professional engineer Jonathan Portwood (Portwood). The plaintiffs' quantity surveyor John Priestley was not called to testify although he had filed his affidavit of evidence-in-chief. The reason was because I had informed the parties at the outset that I was only determining liability and quantum of the plaintiffs' claim, should I rule in their favour, would be assessed by the Registrar at a later stage, with further evidence on quantum to be adduced if necessary, from witnesses such as John Priestley. For the same reason, the defendant's quantity surveyor Lim Ang Beng Hock did not testify and neither did Chan's expert, professional engineer Shek Kam Chew.

28. Consequently, Portwood was the plaintiffs' only other witness. He was appointed by the plaintiffs to check the welding works/trusses for the buildings they had erected at the site. For the purpose, Portwood visited the site on 28 May and 20 June 2001 and, he was provided with copies of:

(i) the reports (3) of Setsco Services Pte Ltd (Setsco);
(ii) the letter dated 19 May 2000 (with report attached) to the defendant from PP Project Consultants (Project Consultants);
(iii) the (coring) test results of RAK Materials Consultants Pte Ltd (RAK)

commissioned by the defendant. The several reports cast doubt on the concrete strength and structural integrity of the buildings. In brief, Setsco had reported that the weld sizes/thickness were below those specified in the drawings, two (2) trusses were missing from the roof of the utility room while some trusses were not fully/properly welded. Project Consultants' professional engineer Looi Poh Yun (Looi) itemised eight (8) construction defects in his aforesaid letter and made five (5) recommendations.

29. In his written testimony, Portwood opined that while some welding (kennels 3 and 4) were less than what had been specified in the drawings, they were nonetheless of reasonable and consistent quality for that type of building; the defects were certainly not life-threatening. Portwood said he based his opinion on the PWD-approved structural drawings and the relevant extract from the British Standards Code of Practice (see **P2**) applicable at the time of construction. He testified he had climbed up the roof during his inspection to check the welds of the trusses there. He disagreed with Setsco's findings that the thickness was 3-5mm when the drawings called for 6mm; the thickness appeared to be more like 4-5mm for what he believed were the heaviest trusses for each building. However, he did observe that some bolts and isolated welds were missing and recommended that they should be inserted and welded respectively, save for truss number 3 in the utility room which was not in the drawing and hence, could not be said to be missing.

30. Portwood also criticised the coring tests carried out by Setsco; the location plans for the tests were inaccurate and it was hard to tell where they had carried out the coring for the tests conducted by RAK. Further, although RAK's report showed the office building contained low concrete levels, his visual inspection indicated no signs of structural distress or significant cracking in that area. The areas which indicated low concrete were the external apron slabs of the pet shop, the utility room, kennels and the office block. However, those were non-critical load bearing structures which should be hacked up and the concrete recast. Portwood recommended that load tests should first be carried out to determine whether the slabs needed to be removed or merely strengthened. In that regard, Portwood testified that the plaintiffs attempted to do a load test at the site on Saturday 30 June 2001 but could not gain entry. All other cores inside buildings showed acceptable concrete strength, including the pet shop. The rusting of the kennels was attributable to bird droppings and failure to remove the same; he produced a summary (see **P3**) of his findings.

The defendant's case

31. The plaintiffs' various allegations were all denied by the defendant as reflected in his lengthy defence. This included denying having discussions with the plaintiffs; he said his discussions were with Chan's assistant. He could not recall whether he had sent copies of the plaintiffs' first four progress payments to Chan (N/E 100). He also denied he had agreed to the change from sliding to louvre windows for the indoor training ground. He maintained that construction of the sewage treatment plant had no bearing on completion of the farm and denied (N/E 93) he was not interested to build the treatment plant as at 6 December 1998 because he lacked the funds. I should point out however, that the defendant's testimony was contradicted by that of his own expert Looi (N/E 158) who confirmed that no TOP or partial TOP, can be obtained for the project without a sewage treatment plant.

32. In the initial stages of his oral testimony, the defendant repeatedly prefaced his answer with the statement *'I don't know anything'* to questions from counsel for the other two (2) parties. Eventually, I interjected and advised the defendant that such a stock answer did little to help his case. Even then, I was prompted at a later stage (N/E 113) to remind the defendant that his answer was highly unsatisfactory. When Chan testified (N/E218) and was questioned by the court, he disagreed that the defendant *didn't know anything.*

33. I shall first set out the more significant aspects of the defendant's testimony. He alleged that his understanding that Chan was an architect as well as a professional engineer came from Chan's assistant. He had told Chua that any changes had to have written confirmation from him whereas the alleged variation work of the plaintiffs was not. He denied he instructed Teo to do additional works (which included installation of false ceilings in the pet shop/utility room) notwithstanding numerous letters to him from the plaintiffs confirming such additional works (see AB283 and 286) -- he only instructed tiling for the office block (N/E 124). The defendant claimed he knew nothing about building a pet farm let alone the training/breeding of dogs. He further alleged that he paid the plaintiffs direct on their progress claims on the advice of Chua (with whom he mainly dealt and who had told the defendant that Chan/he were not involved in payments). He paid the plaintiffs without checking that the works claimed for had been done; this was because he did not understand interim certificates at the time and was not familiar with building contracts. Yet in his fax to Chan on 9 July 1996 (see 2AB14), it was noted that the defendant required Chan to include a title-deed land survey in Chan's quotation of $52,000 to act as consultant. Questioned on this fax, the defendant said he included the requirement on the advice of a neighbour (Ericsson Pet Farm). The defendant was also able to pass drawings to Chan/Chua to help them to design the pet farm; he said he obtained them from a very famous company in the United States. He explained he was able to provide a layout plan of the utility/storage room in his letter dated 8 January 1997 (2AB79-80) to Chan because both the letter and plan were drafted by Chua.

34. The defendant said he was not told by Chan or Chua that Chan's scope of works did not include administration of the project; he denied he administered the contract himself. If it was not Chan's responsibility to administer the contract, the defendant wondered why he had to make eight (8) monthly progress payments of $1,450 each to Chan, under the letter of appointment. When asked why he had not corrected the minutes for the second meeting wherein it was recorded (item 5.1) that Chan had stated he was not administering the contract, the defendant said it was because he was more concerned with the catch-up programme (N/E 102). He gave the same answer when questioned why he did not rebut Chan's letter to him dated 16 July 1999 (2AB615) stating that Chan would henceforth take over administration of the contract. When his attention was drawn to his letter dated 6 August 1999 (AB480-481) to Chan wherein he had itemised all the plaintiffs' works which were not in compliance with drawings, the defendant said it was done on the advice of Low.

35. Queried why he had signed the second contract, the defendant professed ignorance (N/E 80-81) saying he signed many documents and did not know; the question should be directed to Chan. Although he agreed that it was strange of Chan to issue two (2) letters of award to the plaintiffs, the defendant said (N/E 113) he merely filed up the second letter of award dated 26 May 1997 (AB279) for $1,613,289 – he may have thought Chan made a mistake, or he may have overlooked it or he may have thought it related to the first letter of award, notwithstanding the vast difference of $343,289 between the figures in the two letters. Indeed, it was the defendant's evidence that most of the time, he filed up the correspondence he received from the plaintiffs/Chan without reading as *'he left the project to them'* (N/E 129).

36. Although the defendant initially claimed that he had handed a copy of the lease to Chan such that the latter knew all the terms and conditions therein, this was retracted under cross-examination.

Similarly, under cross-examination (N/E 111), the defendant agreed that construction was to be in three (3) phases. Yet in the next breadth (N/E 112), he maintained it was still wrong of Chan to allow construction in three (3) phases as alleged in his statement of claim in Suit 564 of 2000. When he was shown Chan's letter to him dated 10 August 1999 advising him that occupation without a TOP was illegal, the defendant also shifted his stand and said he was unaware of the requirement when he first occupied the buildings in 1998. He further justified his occupation by pointing to the fact that his neighbour Topbreed Trading had occupied their premises for five (5) years before they obtained TOP. In any case, Alpha Dog Patrol Pte Ltd helped him to look after the site. During cross-examination (see N/E 117-118) the defendant withdrew his allegation that he relied on the tender results in selecting the plaintiffs but he still insisted that Chan failed to award the contract to a competent contractor. Further, although counsel for Chan drew his attention to the fact that it was the Central Building Plan Unit which required the construction of a 30-persons treatment plant in June 1997 (see 2AB438), the defendant maintained his pleaded case that it was Chan who had wrongfully allowed the 10-persons plant to be varied.

37. The defendant alleged that the plaintiffs' services were terminated because they refused to provide a catch-up programme. Notwithstanding his pleaded case that the plaintiffs' works were either worthless or only worth what he had paid ($400,000) them, the defendant admitted that his only complaint as regards kennels 3 and 4 was, they were rusty. Questioned by the court, he agreed that if the rust could be rectified, he would accept the kennels, subject to what his experts had to say. He claimed that although he visited the site weekly, it was only for short periods to store his supplies.

38. Although one of his main complaints against the plaintiffs was the delay in completing the project (before he terminated their services), the defendant only requested his new consultant Looi to obtain TOP in the last quarter of 2000 although he had appointed Looi (whom he first approached in the last quarter of 1999) as early as 23 January 2000; the defendant could not explain the delay.

39. A senior officer from PPD/AVA, Lim Bock Seng (Lim), was called as a witness on the plaintiffs' work schedule. Lim (DW2) confirmed that his department did receive the work schedule on 23 March 1998 (see **D1**) from Chan but its copy did not have the defendant' signature. Consequently, his testimony did little to assist the court.

40. Looi (DW3), a professional engineer (in civil engineering) was the defendant's last witness. He was the author of the report by Project Consultants relied on by the defendant to support the contention that the buildings erected by the plaintiffs were structurally unsound. In his report (**D2**) Looi said he studied the tender specifications and approved plans when he was appointed by the defendant to take over from Chan. He then inspected the site and discovered many discrepancies between what was constructed and the specifications/plans as well as a number of defects. Consequently, he had advised the defendant to defer applying for TOP until details and other items were rectified.

41. Looi's main complaint was the inadequate welding of the joints in the steel structures and the inadequate thickness of the concrete slabs and footings, which deficiencies were addressed by Portwood in his evidence (paras 28-30 *supra*). He had relied on the tests carried out by Setsco and RAK. Looi was unyielding in his rejection of the plaintiffs' workmanship; he had recommended to the Commissioner of Buildings (by his letter dated 18 June 2001 at 2DB3) that the office block should be demolished and rebuilt and, the other structures rectified. When cross-examined, Looi agreed that rectification of weak footings may not require such a drastic measure as demolition of the entire building. He opined however, that load tests were unnecessary and irrelevant for under-strength footings.

42. Looi agreed with counsel for Chan there was nothing structurally wrong with the concrete slabs as they sat on the ground, even though their thickness was less than what was specified; admittedly, insufficient concrete in slabs would not affect the buildings' safety although it meant that the plaintiffs were short on quality. As for the concrete footings, Looi said he was prepared to consider the plaintiffs' proposals to strengthen them by way of rectification. However he refused to do the necessary calculations to determine the actual strength of the footings, saying that was not his duty. When shown the calculations (**TP5**) done by Chan, Looi did not disagree. According to Setsco's tests, 2 out of 10 footings were unacceptable.

43. Looi was prepared to accept Portwood's recommendation that missing bolts and welds should be inserted where necessary. With regard to welds, Looi agreed with Chan's counsel that SISIR's code of practice (2AB780C) provided an acceptable standard. Looi's attention was drawn to the fact that SISIR's standard for minimum thickness for welds in accordance with the approved drawings was 3mm and, Portwood's summary (**P1**) of welds done by plaintiffs based on Setsco's test results showed no welds were below 3mm; he then admitted that the welds were not defective; he said he had relied on British standards although Singapore standards were in no way inferior.

44. Another criticism by Looi pertained to the inspection chambers, the construction of which he alleged did not comply with MOE's Code of Practice for Sanitary Plumbing and Drainage System (the Code) – they were incomplete, had no proper concrete covers and there were holes in the ground. He complained that the underground pipes (beneath the driveway) were made of PVC instead of cast iron; the driveway was also not properly constructed, neither was the drain (being constructed of bricks instead of concrete). Counsel for the plaintiffs drew Looi's attention to the discrepancy between his finding and that of the defendant's quantity surveyor Lim Ang Beng Hock, who said the pipes were made of clay. That was again to be contrasted with the invoice of the plaintiffs' plumbing sub-contractors OCS-Contractors Pte Ltd (dated 26 July 1999 at AB545) which stated that UPVC pipes were laid. Looi agreed with counsel that unlike PVC, UPVC is an acceptable material for sanitary drainage system, according to the Code. He volunteered the information that UPVC is more heavy duty than PVC. When pressed by counsel for Chan (N/E 187), Looi was unable to identify any provision/section in the Code that stipulated what materials pipes must be made of.

45. Photographs were attached to Looi's report which had been taken in October 1999. Looi took new photographs in the first quarter of 2000 after his appointment; these showed the inspection chambers in worse condition than that reflected in his earlier photographs. It was revealed to Looi in cross-examination by Chan's counsel, that the plaintiffs were not furnished with plans for construction of the inspection chambers. Hence, the plaintiffs' only recourse was to follow the specifications of MOE's Code for such construction.

46. Although Looi's report had referred to trial holes he had made to check the inspection chambers, he was unable to pin-point their locations; he said he had made random checks. Neither was he on site when Setsco took concrete core samples on 29 March 2001 for tests to be carried out, although done at his request (when the defendant told him of this case). As such, Looi was unable to confirm where the samples came from. Consequently, in the midst of Looi's cross-examination and in the light of his disagreement with counsel on the exact location of the pipes/inspection chambers, I directed all parties (with their respective counsel) to visit the site.

47. After the visit on 9 July 2001, it was reported back to me that all three (3) parties agreed that the pipes between inspection chambers were made of cast iron, the dispute was whether they were made of heavy cast iron (as the plaintiffs contended) or only cast iron. Additional photographs were taken by Looi which confirmed that the pipes were indeed made of UPVC (N/E 170). I was also informed that the parties found only one (1) trial hole previously done by Looi (between inspection

chambers 2a and 2) and Looi had agreed there were no others. I was moved to comment to Looi (N/E 171) that the excavations/inspections which counsel for the defendant proposed then to carry out should have been done by Looi 1 years earlier, to determine the material used for the underground pipes. As the site inspection still did not resolve the dispute between the plaintiffs and the defendant, I ordered parties to re-visit the site after which Teo would be recalled to the witness stand. I further ordered that the costs of recalling Teo and any prolonging of the trial would be borne by the defendant in any event since no satisfactory explanation was given why such inspection/excavation could not have been done by or for Looi, 18 months earlier. In that regard, I rejected Looi's later explanation (when questioned by counsel for Chan) that his duty was to apply for TOP and he was concerned with structural parts not non-structural items like galvanising of pipes (N/E181); he had chosen to comment on non-structural items in his report, including plumbing and sewage.

48. A second site inspection was made by the parties on 10 July 2001. Both Teo and Chan confirmed the pipes were indeed made of UPVC. Teo added (when recalled to the stand) that he was willing to reduce his claim to take into account the inadequate footings; he said he had earlier offered to rectify the defect but his offer was rejected. He was also prepared to omit his claim for 6-7m in length of the sewage pipes.

49. When his attention was drawn to Chan's fee of $52,000, Looi expressed no opinion on whether it included contract administration; he said it depended on the oral agreement between the parties, as Chan's duties were clearly spelt out in the letter of appointment. Although he was aware, Looi did not know when the plaintiffs' services were actually terminated. More significant was the revelation by Looi (N/E 195) that since his appointment, the defendant had done nothing by way of rectification works, because the defendant was not prepared to spend any more money.

The third party's case

50. In his written testimony, Chan deposed it was the defendant who had approached him, based on the recommendation of Topbreed Trading Company (Topbreed) for whom Chan had also acted as the project consultant, when Topbreed built a dog farm three (3) lots away from the site. Chan had set out the terms and conditions for his services in the letter of appointment which the defendant accepted on 9 July 1996 by a letter (2AB14) written on the letterhead of Outram Marketing Services. Although the defendant's said letter stated he would instruct his solicitor to follow-up with Chan on the terms and conditions of the letter of appointment, the defendant never did. The letter of appointment did not include administration of the contract; hence Chan was not responsible for certification and control of payments to the plaintiffs until he was specifically instructed to do so on 12 July 1999. Neither did the letter of appointment cover design and installation of electrical works. Earlier, when cross-examining the defendant, Chan's counsel had drawn the defendant's attention to the letterhead used by Chan for the letter of appointment; it clearly stated at the lower left corner:

> Consulting architect: Freddie Chia Ho Kheng
> Consulting engineer: Francis Chan Yaw Fai

Consequently, the defendant could not have engaged Chan as nor thought he was, an architect; he well-knew Chan was an engineer. Further, Chan had applied to the Director-General of Public Works for a waiver of the requirement for an architect’s signature on the plans and it was granted on 26 September 1997. Plans submitted by Chan were signed by him in the capacity of professional engineer and endorsed with the defendant’s signature. Chan had also given his business card to the defendant.

51. Chan denied the defendant's allegation that he failed to award the contract to a competent

contractor, it was not he but the defendant who appointed the plaintiffs which appointment was not based on the results of the tender; even the lowest tender exceeded the defendant's budget and, the plaintiffs' tender was not the lowest. Neither was Chan privy to the negotiations between the parties which led to the plaintiffs' appointment by the defendant. Contrary to the defendant's denial, Chan said it was the defendant who telephoned him on or about 26 May 1997, and requested him to prepare the second letter of award; the defendant volunteered the information that he (the defendant) needed it to borrow money from a bank; Chan acceded to the request. It was for the same reason that Chan subsequently prepared the second contract for signature by the plaintiffs and the defendant. Despite the express terms in the contract(s), Chan said the defendant well-knew that there was never any intention to bind him to the duties of an architect and or quantity surveyor. Chan had inserted his name as architect and quantity surveyor in the contract(s) as a favour to the defendant.Chan was also never involved with architectural drawings which task he delegated to Chua.

52. Chan revealed that after his initial submission of plans to the PPD on 2 August 1996, plans were amended and re-submitted four (4) more times, between 2 August 1996 and 18 March 1997, due to the defendant's requests for changes, before approval was granted on 20 March 1997. Sometimes, changes were agreed between the plaintiffs and the defendant without Chan's knowledge, one example being the variation of material from concrete to bricks for the drains, another being the change in width of the drains and a third being the non-galvanising of the steel partitions around the kennels. In addition to the PPD, Chan made submissions to other government departments, between 20 March 1997 and 22 May 1999, for which he incurred fees of $14,430. As he had agreed with the defendant to absorb his expenses, Chan said it meant his actual fees were $37,570 ($52,000-$14,430).

53. Chan deposed he was not provided with a schedule of works for the plumbing done by the plaintiffs' subcontractor as which result he did not know and could not now determine, what type of pipes were and where they were, installed. Had the defendant alerted him that PVC pipes were being used, Chan would have instructed the plaintiffs to use the correct pipes. In any case, construction of sewage pipes and inspection chambers are not critical structural elements. As a result of the two (2) site visits I ordered and based on the testimony of Chan and Teo, it has now been established that the plaintiffs installed UPVC not PVC, pipes.

54. Apparently, Chan had consulted quantity surveyors PEB Consultants (PEB) when the defendant indicated on or about 12 July 1999 that he intended to terminate the plaintiffs' services. As Chan was unable to give PEB the reasons for such intended termination, Chan inquired of the defendant who did not respond. Similarly, the defendant did not reply to Chan's letter asking for instructions on the letter from the plaintiffs' solicitors dated 20 July 1999 (2AB618) concerning variations and changes to the contract, nor to Chan's letter dated 17 August 1999 (2AB659-661) where he had set out the full history of the project up to that date (including the reason for the second contract and that the defendant himself administered the contract up to 12 August 1999), nor to Chan's letter dated 10 August 1999 (2AB638) seeking clarification on phases 1 and 2 of the project. Chan surmised that the defendant probably obtained the idea to administer the contract himself from Topbreed for whose project Chan did not administer the contract; Topbreed merely engaged a contractor to do the work, without even calling for a tender.

55. Cross-examined on the defective footings, Chan echoed Portwood's testimony that the steel structures were perfectly safe as they showed no signs of buckling, even on 9 July 2001. Chan was also of the opinion that it was unnecessary to demolish the office block because the footings were under-strength. At an estimated cost of $10,000 and two (2) weeks' work, Chan proposed a method of rectification which included adding concrete of the desired strength to the footings; the slabs did not require rectification as they did not sit on the footings but were self-supporting.

56. Questioned by counsel for the defendant, Chan explained that the footings were constructed in February 1998; he did supervise the concreting of the office block prior to which he ordered a cube test to be done. However, he was not shown the results although he had asked Teo, who said he would furnish the same but never did. As the cube tests previously submitted to him for other blocks were good, Chan had assumed albeit wrongly, that the office block footings would also be acceptable. Chan pointed out that even if the cube tests had been satisfactory, it did not mean the core tests would be good as it still depended on how the actual concrete was poured into the footings and such factors as curing and vibration as well as the way the cube was being made. It emerged from Chan's testimony (N/E 240) that, a possible cause for the footings in the office block being under-strength was due to the plaintiffs' use of site-mix concrete instead of the ready-mix concrete used for the other four (4) blocks. Chan was told by Teo that the change was necessitated by cost-cutting as the plaintiffs had not been properly paid, at the time when Teo asked for permission to use site-mix concrete.

57. As for the driveway, Chan testified it was not completed. The plaintiffs had only put in the base/sub-base comprising of used crusher-run; they had yet to top-up the base with hard core and then asphalt or concrete to finish the job. I should point out that according to Chan (and Looi in cross-examination), the driveway appeared to have been well used by the defendant after the plaintiffs' services were terminated, notwithstanding that it was not paved; there had been containers parked on or along it. I was informed that the driveway is a private road, not a public road which needs to be handed to the Public Works Department in due course. Consequently, there are no stringent specifications on how it should be built.

58. On the other complaints raised by Looi and or the defendant, Chan acknowledged that the finish in kennel 3 was not 100% as he had said in his written testimony but, no tiles were laid in kennel 4; hence there could be no missing tiles there. This resulted from negotiations between the plaintiffs and the defendant.

59. Chan testified that the 8 monthly progress payments of $1,450 each in item (k) in the letter of appointment were for supervision by himself (as the part-time clerk-of- works) and by Chua; he had estimated that the project would take 8 months to complete. In that regard Chan said he had visited the site in October, November, December 1997, February 1998 and on 4 September 1999, when his services were terminated. When he visited on 9 July 2001, Chan found the site overgrown with grass and lacking maintenance; the place was at a standstill (N/E 238), unlike his visit on 4 September 1999 when the site was in very good condition.

60. I turn next to the testimony of the second and last witness for the Third Party namely Chua (TPW2). Chua testified he took charge of the project on 2 July 1996 after the letter of appointment was signed. He worked closely with the defendant in submission of drawings; the latter provided him with a lot of information and documents to show how other countries designed dog farms, including brochures. After the drawings were completed, Chua sent them to the defendant for signature prior to submission to the authorities. Chua revealed that simultaneous with this project, he was working on another project for the defendant – a warehouse at Bukit Batok Industrial Park; hence they met very often. Chua denied he was instructed by the defendant that any additional works required a quotation and the defendant's prior approval before commencement of work. He also denied the defendant's claim that he had directed the defendant to pay the plaintiffs direct on progress claims. On the contrary, it was the defendant who would inform him that the latter had valued the works on site after they were completed; the defendant never told him about progress claims 1 to 4.

61. Chua recalled that in February 1999, he was told by Teo and the defendant that the Diseased Animals Isolation Ward had been constructed not in accordance with the approved plans. It

necessitated Chua going to the site to take measurements and submitting amended plans. At the same time, following discussions between Teo and the defendant, he prepared a sketch of the fencing facing Pasir Ris Drive 12, which he also submitted to the authorities and which was approved.

62. Chua testified that when The Third Party received PPD's letter dated 15 October 1997 (2AB507) inquiring as to the development on the farm, he had telephoned the defendant who replied he was in Germany and would return to Singapore on 29 October 1997, after which he would contact Chua but he did not. When Chua received the first reminder from PPD dated 4 December 197 (2AB518) followed by the second dated 26 February 1989 (2AB532), he pressed the defendant. The defendant then faxed to Chua the work schedule he had earlier agreed with Teo (see 2AB533) but which Chan said he did not recall seeing, until the arbitration proceedings between the plaintiffs and the defendant. Chua then forwarded it to the PPD on 20 March 1998.

63. Chua revealed that the change of sliding doors to louvre windows was required by PPD and this was known to the defendant. Indeed, it was at the defendant's request that Chua had visited the PPD on 20 September 1996, when their Dr Lou explained the reason for the requirement. Chua followed up by submitting amended proposal plans to the department on 9 October 1996, which letter he copied to the defendant who did not object to the change, contrary to his testimony. When counsel for the defendant cross-examined Chua, he suggested (N/E 248) that the defendant wanted sliding instead of louvre, windows because if the dogs were to jump out, they would not hurt themselves. This was to be contrasted with the defendant's earlier testimony (N/E 76) that he wanted sliding windows so that when dogs were trained on rainy days, people outside could see the dogs by sliding open the windows. As I told his counsel, the defendant's shift in position spoke a lot of his credibility. Chua's response was, that the defendant never explained his requirement for sliding windows.

64. Chua revealed that although it was not the job of the Third Party to administer the contract and he so advised the defendant, the latter kept calling him to chase the plaintiffs to finish the project. When Chua spoke to Teo, he was told that the defendant had not paid the plaintiffs. However, when he reverted to the defendant, Chua was told that the plaintiffs had been overpaid and many things on the site were not what the defendant wanted. Chua then advised the defendant that as the parties had agreed on liquidated damages, if the defendant accepted the items outside the contract, then the defendant would not have to pay the plaintiffs. He suggested that the parties met to resolve the dispute but, he did not hear from either party thereafter.

The findings

65. It is quite clear to me on the evidence whose version of events is the more probable. I accept the testimony of Teo, Chan and Chua as being more credible and consistent with the documents and correspondence before the court; I cannot say the same of the defendant. He was untruthful and less than forthright, even when confronted with unassailable evidence, on which I referred to certain instances earlier.

66. I have no doubt that the following represent the true facts of this dispute:-

> (i) the defendant requested Chan to prepare two letters of award and two contracts in favour of the plaintiffs, with the second contract being used to obtain a higher loan from the bank which was financing the project for the defendant;

(ii) the defendant could not have believed that Chan was an architect as he claimed; there was no reason for either Chan or Chua to have misrepresented to him Chan's qualifications; the defendant needed a professional engineer as a 'qualified person' not an architect since the project involved minimal architectural details, to save costs;

(iii) the defendant chose to administer the contract (up to 12 July 1999) himself again to save costs; I believe he relied on his contractor brother Low to help him verify the plaintiffs' progress claims;

(iv) whatever variation works carried out by the plaintiffs were done on the defendant's oral instructions to Teo, usually without informing Chan or Chua; neither the plaintiffs nor the defendant adhered to the express terms of the contract;

(v) the defendant was not the nave layman he attempted to portray himself as; indeed, the more he repeated the refrain *'I don't know anything'* the less convincing he sounded;

(vi) Chan was not aware of the work schedule agreed between the plaintiffs and the defendant, that the project would be constructed in three (3) phases. It was Chua who forwarded the agreed work schedule to the PPD (para 62 *supra*), not Chan. Otherwise, there would be no reason for Chan to have sought clarification from the defendant on phases 1 and 2, in his letter dated 10 August 1999 (para 54 *supra*);

(vii) it was the defendant who wanted the project to be completed in three (3) phases in order to ease his financial burden; he moved forward the office block from phase 3 to phase 1 to show to his prospective Australian investor but delayed the works for the other 2 phases. The fact that PPD did not approve of the 3 phases for the work schedule did not mean that the parties did not agree to it beforehand;

(viii) the minutes of the first meeting (9 July 1999) were inaccurate – the defendant/his brother looked for an excuse to terminate the plaintiffs' contract; hence their trumped-up accusation that the plaintiffs had delayed the project and had to provide a 'catch-up' programme. That was why the defendant did not/could not furnish reasons for termination of the plaintiffs' contract to Chan, as per the latter's request in his letter dated 10 August 1999 (2AB640);

(ix) there being no valid reasons for termination of the plaintiffs' contract, the defendant is liable for such wrongful termination. Therefore there is no need for me to consider whether Anthony Lim not being a registered 'qualified person' within the provisions of the Building Control Act for this project, could have issued a notice of termination to the plaintiffs on 15 September 1999;

(x) the present sorry state of the site/the project is due to the defendant's neglect and lack of maintenance, not due to the plaintiffs' defective works, since more than two (2) years have lapsed from the time the plaintiffs' services were terminated;

(xi) the defendant's plea in his defence that the works completed by the plaintiffs are worthless or only worth $400,000 (that being the sum he actually paid to the plaintiffs) is untrue and without merit; it is an attempt to take undue and unfair advantage of the plaintiffs and to get a bargain basement price for his pet farm. Indeed, his entire defence is without merit, so is his counterclaim.

67. I turn my attention next to the testimony of the defendant's expert Looi. At one stage (N/E 186) I had told Looi that he should not shut his mind to the possibility of rectification of the plaintiffs' defective works. That remark was prompted by Looi's uncompromising refusal to consider any suggestions at all to rectify the under-strength footings in lieu of demolition, from either Portwood or Chan. As his own report was found to have shortcoming, as well as Setsco's reports upon which his findings were based, Looi did himself an injustice by not appearing to be unbiased. Looi's finding that the welds were greatly reduced in thickness was proven wrong by Portwood. His quick dismissal of the need for a load test is another example; a third example was his complaint that the surface water channels were defective only because brickwork was used instead of reinforced concrete. In terms of function, Looi had agreed with Chan's counsel that there was no difference between the two. It was due to no fault of the plaintiffs that the inspection chambers and the driveway were not completed. I am therefore of the view that Looi lacked independent judgment; I am not prepared to accept his evidence. I much prefer the testimony of Portwood and Chan. Both (and Teo) did not deny that the footings were defective and needed rectification. Their recommendations are worth considering, once the estimated costs have been verified by quotations, subject to load tests being carried out. Teo readily made concessions where the plaintiffs' work fell short of required specifications or standards, an example being his willingness to omit 6-7m length for his company's claim for the sewage pipes.

68. Consequently, there will be judgment for the plaintiffs in the amount of $453,885.45 made up as follows:

(i)	balance outstanding on progress claims nos. 1 to 4	$411,224.91
(ii)	progress claim no. 5	$ 42,660.54

together with interest at 6% per annum from the date of this writ, and costs.

69. In the light of the plaintiffs' admission of defects to the footings works, there shall be a stay of execution on $80,000/- of the judgment sum, until such time as the quantum for the cost of strengthening/reinforcing/replacing the footings has been ascertained, together with the appropriate reduction for the 6-7m of pipes for the sewage works which claim the plaintiffs have agreed to waive. Further, deductions should be made for the works necessary to complete the inspection chambers, the driveway, removal of rust from kennels 3 and 4, omission of the 10-persons sewage treatment plant not built by the plaintiffs and any other works not built or completed by the plaintiffs, in accordance with the contract. This would include a reduction for the shortfall (from 6mm) in thickness of the welds. Although I disallow the plaintiffs' claim for loss of profits of $356,096.75 (not proven), they are not precluded from adducing evidence at the assessment hearing, of the loss/damages they had suffered in disposing of the trusses they had fabricated (in readiness for construction), after their services were terminated.

70. The omissions, deductions and damages referred to earlier shall be assessed by the Registrar, with the costs of such assessment to be reserved to the Registrar. The parties are at liberty to call their quantity surveyors to testify at the assessment or, in the case of Chan, his professional engineer Lim Ang Beng Hock (Eric). Evidence adduced at this trial shall form part of the evidence for the assessment but, parties are not allowed to adduce further testimony on liability, to contradict/rebut

the evidence already presented before this court.

71. Needless to say, the defendant's counterclaim against the plaintiffs is dismissed with costs, together with his Third Party claim against Chan. Neither claim has any merit in the light of my earlier findings. There shall be judgment for the Third Party's counterclaim against the defendant in the sum of $22,575/- for the outstanding balance of Chan's agreed fees of $52,000/-, together with interest (at 6% per annum) from the date of the writ in Suit No. 564 of 2000 and costs.

Sgd:

LAI SIU SHIU
JUDGE