

Chai Yong Construction Co Pte Ltd v Chan Hock Seng
[2003] SGHC 309

Case Number : Suit 600276/2000
Decision Date : 19 December 2003
Tribunal/Court : High Court
Coram : Ho Su Ching AR
Counsel Name(s) : Raymond Wong (Wong Thomas & Leong) for the plaintiffs; 1st defendant in person; Salem Ibrahim (Salem Ibrahim & Partners) for the 2nd defendant
Parties : Chai Yong Construction Co Pte Ltd — Chan Hock Seng

This assessment of damages arose out of the judgment of Lai Siu Chiu J dated 5 December 2001. Pursuant to that judgment, the defendants were ordered, inter alia, to pay the plaintiffs the sum of \$100,813.73 and a further sum, to be agreed or assessed, in respect of variation works carried out by the plaintiffs. The payment of the sum of \$100,813.73 was subject to such sum as may be assessed in respect of omissions or the estimated costs of rectification of the following items:

- (i) omission of anti-termite treatment, either the sum of \$920 or to be assessed;
- (ii) the costs 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 of RC 9 and 10 beams;
- (vi) omission of the 2 toilet doors not installed;
- (viii) ponding on the floors of terrace and external areas of second/third storey;
- (ix) defective main door and other mouldy doors due to poor staining;
- (x) omission of twin sockets that were not installed or poor installation of twin sockets;
- (xi) omission of HMK protective coating that was not applied to granite flooring;
- (xii) replacement of one piece of granite due to poor tonality;
- (xiii) clips/fasteners needed to secure copper pipes to walls;
- (xiv) fasteners needed to secure/anchor water pipes to the attic
- (xv) omission for hot-dip galvanising not done to main gate;
- (xv) culvert that was not done in accordance with Portwood's specifications; and
- (xvi) Omission of one piece of granite panel that was not replaced

the assessment hearing), Lee JC, as he then was, ruled by way of clarification that:

- (i) Item(xvi) be deleted as it was the same as item (xi);
- (ii) Items (iii),(v), (vi), (ix) and (x) were to be assessed as 'omissions' to be deducted from the contract price; and
- (iii) the remaining items were to be assessed on the basis of cost of rectification.

The Witnesses

3 The plaintiffs' called a total of seven witnesses, namely:

- (i) Mr Ho Bock Hee, Managing Director of Chai Yong Construction Co Pte Ltd;
- (ii) Mr Oh Joo Huat, Quantity Surveyor and Principal Consultant of JH and Lim, a firm of Quantity Surveyors;
- (iii) Mr Soh Chip Leong, the architect of the Project;
- (iv) Mr Harry Singh, Managing Director of Killem Pest Pte Ltd;
- (v) Mr Simon Teh, Project Manager of SITA Pest Control Pte Ltd;
- (vi) Mr Tan Hui Say, Director of Lee Heng Engineering works Pte Ltd; and
- (vii) Mr Yee Kek On, Director of Khoo Engineering Pte Ltd

4 Mr Oh Joo Huat ("Mr Oh") and Mr Soh Chip Leong ("Mr Soh") were the only two witnesses who gave evidence that touched upon all 15 items for which damages were to be assessed. Mr Harry Singh and Mr Simon Teh gave evidence specific to termite treatment, while the evidence of Mr Tan Hui Say and Mr Yee Kek On related to the cost of hot-dip galvanisation.

5 The defendants called three witnesses. They were the first defendant, Mr Carl Baptisa, Head of Research and Development with Origin Exterminators Pte Ltd, and Mr Bransten Tan, the principal of Kenzo Interior Design.

The Credibility of the Witnesses

6 Having heard the witnesses and having had the opportunity to observe their individual demeanour, I had every reason to doubt the reliability of Mr Bransten Tan's evidence. Under cross-examination, it transpired that he had little or no knowledge of the items of work that he had given a quotation for. Taking his quote for the rectification of the roof as an example, he admitted unequivocally to having no personal knowledge of the quantity or rate employed in arriving at the quote as it was prepared entirely by his quantity surveyor. Be that as it may, when confronted with the actual drawings of the roof, he had little choice but to acknowledge that his quantity surveyor had used the wrong quantities in arriving at the final quote. He also agreed that he was unable to comment on the rates employed by his quantity surveyor as the units used were entirely wrong and he did not know if the rates used were priced per square feet or per square metre.

7 Mr Bransten Tan's lack of knowledge of the items of work he gave quotations for was also evident in his quotation for item (x) i.e. the cost of rectification for the omission of the HMK

protective coating not applied to the granite floor. In his statement, Mr Tan estimated the plaintiffs' savings in the cost of not carrying out the HMK protective coating to be \$6,600. He arrived at this figure based on following formula: Material cost of \$3000 (20 tins x \$150 per tin of HMK protective coating) plus labour cost of \$3,600 (6 days x 3 workers x \$200 per day). Under cross-examination, he was unable to explain how he arrived at the cost of \$150 per tin of HMK protective coating. He also admitted that he had come up with an estimate of 20 tins notwithstanding that he had completely no idea how much paint each tin contained. Furthermore, he had overestimated the floor area to which the HMK paint was to be applied by nearly 85%.

8 Yet another example of the unreliability of Mr Bransten Tan's evidence was his estimate of the cost of hot-dip galvanising the gate. According to Mr Bransten Tan, there is no facility in Singapore that has a vat big enough to hot-dip galvanise the defendants' main gate that measured 1.8 m by 4m. Hence, his quote of \$7,200 would include the cost of transporting the gate to a factory in Malaysia for the galvanisation process to be carried out. This aspect of his evidence was flatly contradicted by that of Mr Tan and Mr Yee who are both working in the hot-dip galvanising industry. They not only confirmed that there is a facility located at Tuas that has the capability of hot-dip galvanising a gate measuring up to 3 m by 12 m, they also agreed that it can be done for not more than \$2,500.

9 On the whole, I found Mr Bransten Tan's demeanour to suggest a lack of confidence in the evidence that he was giving in court. He was hesitant in giving his answers, shifty and often refused to comment on the questions posed or gave vague replies. To my mind, it would have been unsafe to rely on his evidence and hence, I accorded little or no weight to it.

10 By contrast, Mr Oh was not only able to demonstrate to the court the basis on which he arrived at his quantification, his evidence also withstood intense cross-examination. By and large, I found Mr Oh to be forthright and honest, if not a bit defensive at times under cross-examination. Nonetheless, I did not doubt Mr Oh's ability to assess the costs of the items to be assessed on an independent basis and accepted that his quantification of the costs was based on a fair valuation. As for Mr Soh, I saw no reason to doubt the veracity of his evidence. He gave straightforward answers and struck me as truthful witness.

11 I therefore relied largely upon the evidence and quantification given by the plaintiffs' two main witnesses, Mr Oh and Mr Soh, in arriving at the quantum of damages to be awarded.

Omissions

12 Based on the evidence given by Mr Oh and Mr Soh, I made the following awards for the items that Lee JC ruled to be assessed as an omission to be deducted from the contract price:

Item

Award

Item (iii) : Omission for the bi-fold back door not installed on

Soh's directions

Item (v) : Omission for RC 9 and 10 Beams **\$ 279**

Item (vi) : Omission for the 2 toilet doors not installed **\$ 800**

Item (ix) : Omission for twin sockets not installed or poor **\$ 75**

installation of twin sockets

Item (x) : HMK coating **\$ 1,521**

Defects for assessment on costs of rectification

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

13 The plaintiffs submitted that the cost of rectification for carrying out post-construction anti-termite treatment with a ten-year warranty should be in the region \$4,000 to \$5,000. According to them, this was a generous amount to compensate the defendants as the plaintiffs' tender price for pre-construction termite treatment, which could not be carried out at the site because of the high water table area, was only \$920.

14 The defendants disagreed. Mr Carl Baptista, who gave evidence for the defendants, recommended the use of slab injection (\$18,721.86) together with a termite baiting system (\$20,800) as the best substitute for the lack of pre-construction termite treatment. According to him, slab injection would alleviate the termite problem immediately without necessarily eliminating the termite colony. However, the termite baiting system, which is a slower process, would eliminate the colony in the long-term. Hence, the combination of both systems would eliminate the termites immediately as well as the termite colony in the long run.

15 Termite baiting involves the use of stations that are placed at 3m intervals around the property. A cellulose matrix with an insect growth regulator is introduced. Termites foraging in the soil will consume the matrix and transfer the insect growth regulator throughout the colony, thereby eliminating the entire colony in the long run. Slab injection on the other hand involves the drilling of holes of about 600mm spacing around the external and internal perimeter of the house. The holes must be drilled so that they pass through the concrete slab and come into contact with the soil beneath. From these holes, an injection rod is introduced and the chemical of choice is introduced directly into the soil.

16 According to plaintiffs' expert witness Mr Simon Teh, slab injection would not be effective in

treating against termites for this property because the entire superstructure of the house sits almost directly on top of the basement, which in turn covers nearly the entire plot area. The presence of a basement is significant because the basement sits below the water-table level and since termite treatment starts from the lowest level, no treatment can be carried out in the basement. In the circumstances, Mr Simon Teh testified that he was only prepared to treat the apron and external area on the ground level that does not sit perpendicularly above the basement.

17 Based on the foregoing, I was of the view that the baiting system in and of itself would be a reasonable substitute for the lack of pre-construction treatment. Accordingly, I awarded the sum of **\$20,800**, being the cost of the baiting system, under this item.

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

Item (iv): Four spots of roof leakage

18 The costs of rectification of the four spots roof leakage arose because Lai J accepted the evidence of the building surveyor, Mr Chin Cheong, that he saw "four spots of roof leakage" in March 2001. At the trial, Mr Chin Cheong recommended that the problem could be rectified by realigning and resetting the tiles to ensure that they were watertight over "those areas". As for the cost of battening/nailing down of the roof tiles, this item arose because Lai J found that the roof tiles had not been properly secured in place by nailing them onto the roof battens.

19 Mr Chin Cheong was not called as a witness at the assessment hearing.

20 The defendants were quick to point out that while Mr Chin Cheong testified at the trial to seeing four spots of roof leakage, he did not give any evidence as where they were located. According to the defendants, since the exact location of the 'four spots of roof leakage' had not been identified, the only way in which the 'four spots of roof leakage' could be meaningfully rectified was to tear away the foil and the insulation from the underside of the roof to observe where these four spots of leakage were located. Once the cause of the leaks had been isolated and repaired, the only way in which the foil and roof insulation can be reinstalled is by removing all the roof tiles. In so doing, the cost of battening or nailing down the roof tiles to secure them in place would be included in the cost of re-roofing as the work would be subsumed when the roof tiles are replaced after the foil and insulation had been re-laid. In other words, the defendants' proposed that the cost of rectification for these two items was the cost of replacing the entire roof i.e \$118,000.

21 It would clearly be wrong to make an award for the replacement of the entire roof as it would amount to overcompensating the defendants. In any event, the fact that the exact location of these four spots of roof leakage had not been identified did not mean that Mr Chin Cheong's method of rectification, which method was not disputed by the defendants' experts at the trial, was not workable. In my view, this simply meant that the recommended method of rectification ought to be carried out to the entire roof. Indeed, this was exactly what Mr Oh and Mr Soh had assumed to be the case viz. the realignment and resetting of the roof tiles, which will be done during the battening/nailing down process, would be carried out to the *entire* roof.

22 I agreed with Mr Soh's estimate for this item and accordingly awarded the sum of **\$550** under these two items.

Item (vi) : Ponding on the floors of terrace and external areas of second/third storey

23 The parties were in agreement that the entire external areas of the second and third storey

should be re-screed. At the assessment hearing, Mr Soh gave evidence that the entire terrace area should be re-screed to achieve the best results. To this end, the defendants tried to establish that Lai J had intended the 'terrace' to mean the entire ground floor area which would include the apron and car porch.

24 I agreed with the plaintiffs that the 'terrace', which was clearly marked out in the architectural drawings, only covered an area of 27.6 square metres. Based on Mr Oh's quantification, I awarded the sum of **\$2,972** under this item for the cost of re-screeding the entire external area of the second and third storey as well as entire terrace area.

Item (viii) : Defective main door and other mouldy door due to poor staining

25 Lai J had left the option open to this court whether to award the cost for adjusting the panels of the main door and staining the other doors, or the cost of replacing all the doors.

26 I decided to award the cost of replacing all the doors as the plaintiffs' own witness, Mr Soh, had testified that this would be the preferred method to achieve the specifications of the contract which called for light coloured doors with clear coats of varnish. Consequently, I awarded the sum of **\$3,900** under this item. This included the cost of the main door at \$400 and the cost of 14 other doors at \$250 each.

27 For avoidance of doubt, my assessment of this item and item (vi) (above) did not include the cost of the doorframes. Based on paragraph 59 (b), 59(q) and paragraph 78 (viii) of her written grounds, I was of the view that Lai J had addressed her mind to this issue and had specifically ruled that this item related only to the doors.

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

28 The defendants' claim under this item was by far the most incredulous. According to the defendants, it would be exceedingly difficult to find a piece of granite that will match the tonality of the existing granite flooring exactly. Therefore, to achieve the same tonality in the flooring, all the existing tiles should be hacked up and replaced. This was notwithstanding the fact that the piece of granite to be replaced was located at the attic landing. Mr Bransten Tan had even offered that in the alternative, he will travel to all the various quarries in the world to find a matching piece of granite and would charge for the cost of his travels and cost of time.

29 Both Mr Oh and Mr Soh gave evidence that, having regard to the type of granite used in the property, it would be possible to find a matching piece of granite. They also testified that it would be possible to replace the one piece of granite without damaging the adjoining tiles. I accepted their evidence and I awarded the sum of **\$75** (\$100 (labour) + \$75 (material)) under this item.

Item (xii) : Clips/fasteners needed to secure copper pipes to walls

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

30 The defendants have agreed that both of these items are the same and should therefore be assessed as one item. I accepted the Mr Oh's quantification of these two items and awarded the sum of **\$105**.

Item (xiv) : Omission for hot-dip galvanising not done to main gate

31 Given that Mr Tan Hui Say had agreed under oath to fabricate and hot-dip galvanise a gate according to the specifications of the defendants' existing main gate and install it at the premises for \$2,300, I accordingly awarded the said sum for this item.

Item (xv) : culvert entrance not done in accordance to Portwood's specification

32 Mr Portwood was not called to give evidence at the assessment hearing. According to the plaintiffs, the culvert was not done in accordance to Portwood's specification in that the plaintiffs had not constructed two low parapet walls on the sides of the culvert. The defendants disagreed. They claimed that the plaintiffs had failed to construct a 6m long culvert under the slab for pedestrian access as specified by Portwood's drawings. Therefore, they claimed the cost of breaking the ramp and re-constructing the culvert for access to the pedestrian gate. This amounted to \$62,000.

33 The plaintiffs were quick to point out that the defendants were raising this issue about a 6 m long culvert for the first time at the assessment hearing. Upon perusal of the Amended Defence and Counterclaim and the Notes of Evidence from the trial in relation to the evidence of Mr Portwood, the structural engineer of the project, I found this to be indeed the case.

34 In their Amended Defence and Counterclaim, the defendants alleged, that the plaintiffs had failed to construct the culvert according to Portwood's specifications. No particulars were given of the non-conformity. At the trial, the main issue raised by the defendants regarding the culvert was that as a result of the plaintiffs' failure to build the culvert in accordance to Portwood's specification, the Land Transport Authority ("LTA") refused to give their approval for the culvert and the defendants had to engage another contractor to carry out the necessary works to obtain LTA's approval.

35 Mr Portwood refuted this allegation. He testified that even if the plaintiffs had constructed the culvert fully in accordance with his drawings and specifications, the LTA would still require the additional works to be carried out before it gave its approval to the entrance culvert. These additional works were not originally provided for in his drawings and specifications. He did however state that "[a] certain amount of items were waiting. Like there's a railing missing or the railing was in the wrong position but that's normal for an engine's [sic] culvert. They are not hundred per cent when you go for inspections but it was not constructed 100 per cent in accordance". Lai J accepted his evidence on this point. She therefore ordered that this item be assessed as the defendants' costs of making good the culvert entrance that was not done in accordance to Portwood's specification.

36 From the Notes of Evidence at the trial, it is also apparent that, apart from disagreeing with the defendants' assertion that his design called for two parapet walls to be built next to the culvert (See page 274 of the Notes of Evidence dated 31 July 2001), Mr Portwood did not elaborate on what these items in 'waiting' were.

37 The defendants based their assertion of a 6m long culvert entirely on their interpretation of Mr Portwood's plans that were tendered at the trial. Mr Soh who was asked to comment on the same drawing, disagreed with the defendants' interpretation. He maintained that, in his professional opinion, the Mr Portwood's drawing only called for a 3.5m long culvert. He also testified that he had submitted a set of drawings to the LTA for their approval of the culvert, and that his drawings similarly specified a 3.5m long culvert. Mr Soh, who did not physically measure the existing culvert, was unable to confirm the exact length of the culvert. However, in his opinion, the existing culvert was unlikely to be less than 3m and he would estimate the length of the culvert to be about 3.5m.

38 Based on the foregoing, I found that the defendants had failed prove their case under this

item and therefore made no award under this head.

Variation Works

39 In light of the fact that the defendants did not dispute the plaintiffs' valuations of the variation works, I awarded the sum of **\$10,450** to the plaintiffs and interest thereon at the rate of 6% per annum from the date of writ to the date of judgment.

Conclusion

40 In conclusion, I awarded total sum of **\$33,977** for the 15 items. I also awarded interest on the said sum at the rate of 6% per annum from the date of writ to the date of judgment.

41 The costs of this assessment hearing are to be agreed or taxed and paid by the defendants to the plaintiffs.

Copyright © Government of Singapore.