

Lim Guan Cheng v JSD Construction Pte Ltd and Another
[2003] SGHC 293

Case Number : Suit 1615/2001, RA 187/2003
Decision Date : 26 November 2003
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Thomas Lei (Lawrence Chua and Partners) for appellants/defendants; Ronald Choo and Sim Chee Siong (Rajah and Tann) for respondent/plaintiff
Parties : Lim Guan Cheng — JSD Construction Pte Ltd; Food Drinks and Allied Workers Union

Evidence – Admissibility of evidence – Hearsay – Quotations relied on by building surveyor to support his expert evidence as to reasonable amount for rectification works – Whether amounted to hearsay evidence.

Evidence – Admissibility of evidence – Opinion and belief – Building surveyor not quantity surveyor – Whether competent to give expert evidence on costs of rectification works

Introduction

1 The plaintiff is the owner of 281 River Valley Road, Singapore ('the property'), which is a two-storey residential 'peranakan' house. The property is under conservation. The second defendants are the owners of the adjoining building known as 279 River Valley Road, Singapore ('the Union House'). The first defendants are the contractors of the second defendants and they were engaged to pull down and rebuild the Union House. In the course of construction, they negligently caused cracks to the walls of the property. The soil and foundation of the property were also affected.

2 The damage to the property was so severe that on 7 August 2000, the Building Control Authority issued a Closure Order under section 24 of the Building Control Act, Cap 29 after a joint inspection with the first defendants. The plaintiff and her family were evicted from the property as it was declared unsafe for human habitation. The plaintiff had to live in a rented property.

3 Liability for the damages was admitted by both defendants and damages were ordered by the High Court to be assessed by the Registrar of the Supreme Court. When interlocutory judgment was entered, the high Court also awarded damages for rental from December 2000 to December 2001. Assessment of damages in relation to the cost of renting alternative premises was for the period from August 2000 to November 2000 and for the remaining period from January 2002 to the date of restoration of the property to its fitness for human habitation.

4 The damages suffered by the plaintiff were therefore (1) the costs of rectification works to be carried out on the property and (2) costs of rental of alternative premises.

5 On 18 June 2003 the Assistant Registrar awarded to the plaintiff the following sums: (1) the sum of \$360,000.00 for the rectification works; (2) pre-trial rental at \$66,586.67; and (3) post-trial rental at \$21,413.33. Interest was awarded at 6% p.a. from the date of the Writ of Summons to the date of interim payment for the sum of \$66,586.67 and at 6% p.a. from the date of interim payment to the date of judgment for \$22,586.67. Costs were awarded against both defendants.

6 Both defendants appealed to the High Court against the awards made by the Assistant Registrar. At the conclusion of the hearing of the appeal before me, I dismissed the appeal with costs. They were unable to show that the Assistant Registrar was wrong. Being dissatisfied with my

decisions, the defendants have filed their notice of appeal to the Court of Appeal. I now set out my reasons.

Basic Facts

7 The property was constructed in 1910 or thereabouts. It was constructed using traditional strip foundations and reinforced concrete structural framework. Steel I beams were included to the central atrium and rear out kitchen areas. The infill panels were constructed using brick which have been plastered and painted over throughout. The second storey consists of a timber joint framework incorporating timber strip boarding over. The roof consists of a main pitched roof incorporating rafter/purlin framework with clay tiles over, a corrugated translucent sheeting roofing system to the central atrium and a mono pitched roof incorporating steel profiled sheeting to the rear area.

8 The excavation work carried out in the Union House by the first defendants in March/April 2000 caused extensive damage. There was cracking to the front, side gable end and rear walls and further cracking to the concrete/substrate flooring throughout the property. The internal walls, ceilings and roofs also suffered cracks.

9 It was not in dispute before the Assistant Registrar that substantial movement of the property had occurred. The developmental works, including the excavation, in the Union House caused ground settlement under and adjacent to the gable end and front elevation of the walls of the property. In August 2000 further ground movement had occurred to the property. They were serious cracks, which are fully described in the Final Report of Mr Bruce Loggie Jamieson ('Mr Loggie').

10 Mr Loggie recommended that the repairs and replacement works should reinstate the property to its original condition in relation to both the internal and external areas. Such rectifications include demolition and excavation works; there would also be reinstatement of the main structural brick walls. Internally, the floors at Level 1, including the front porch and rear out-kitchen area, have to be hacked up. A damp proof membrane system is provided and the system has to dress all walls to minimum height of 200 mm throughout. All internal and external floor areas have to be re-screed, ready to receive tiled floor finish throughout. The staircase has to be repaired with replacement timber (teak) to match the existing staircase. New timber (teak) rafters and floorboards to match the existing items have to be provided and installed.

11 In relation to the walls of the first and second storey, the rectifications consist of the re-construction of the internal atrium plasterboard partition walls. The timber flooring has to be raised. All internal bedroom partition walls have to be reconstructed to match the existing construction. The cracked brick walls, notably the gable end, front and rear walls, have to be removed and 're-stitched' to receive plaster finish.

12 The rectifications of the main roof consist of removing all roof tiles and setting them aside for reuse. After matching timber structural framework is installed, the roof require the supply and installation of new insulation foil, timber battens and the re-fixing of the new roof tiles, using galvanised nails at 400 mm centres. As for the central atrium roof, after the existing structural framework and roof sheets have been re-positioned and installed, matching replacements of some framework and roof sheets would have to be supplied and installed.

13 The rectifications also entail plumbing and drainage works and electrical works. All damaged plumbing/drainage works occasioned by the movement and reinstatement works are to be replaced as necessary.

14 The rectification works also include a complete overhaul, and installation, of the existing doors, windows, frames and architraves. New windows and doors, as indicated in the schedule of works, have to be supplied and installed. The finishes involve the re-plastering of all internal and external walls, the front porch and the south boundary walls. As for the floor tiles at Level 1 it is specified that new, matching 'original antique' floor tiles to external front and internal areas are to be supplied and installed. Last but not least, a provision has to be made for the payment of professional fees in respect of the design details, site supervision and submissions to the relevant authorities. The rate of 10% of the rectification costs was provided.

Plaintiff's case for rectification

15 The rectification works comprise the rectifications to the foundations and rectifications other than foundation works. The plaintiff relied on the expert evidence of Mr Raymond Hatfield ('Mr Hatfield') from Messrs PR Consultants Offshore in relation to the proposed method of rectification of the foundation. In relation to the rectification of other works, the plaintiff led the evidence of Mr Loggie of Messrs. Bruce James Building Surveyors Pte Ltd. Mr Loggie testified that he had organised and received competitive tenders from contractors for the entire rectification works. He gave evidence on the costs of rectifications.

16 In his two reports, Mr Hatfield noted that the soil beneath the existing boundary wall, which abuts the Union House, has been significantly disturbed. The soil had suffered reduction in strength due to loosening by disturbance. Mr Hatfield opined that "it is imperative to base any remedial foundation measures at or below the level of the No. 279 basement." This would be approximately 1.0m below the level that any likely alternative proposal for underpinning or parallel support might be installed.

17 Since micropiling was no longer available after the construction of the Union House, Mr Hatfield recommended replacement of the boundary wall by a new wall erected upon a reinforced concrete strip footing based at the level of the No. 279 basement. This would properly reinstate the boundary wall upon a dependable, undisturbed base. It was recognised that the installation of underpinning, or of a parallel support scheme based at sufficient depth, would require much tedious hand excavation and certainly cause further settlement damage to the wall. The boundary wall was at that time based upon an unreinforced masonry foundation. It had already dropped in the order of 200mm, and had been severely cracked. In Mr Hatfield's view, grouting could never fully penetrate the fine cracks to reinstate the integrity of the wall. He also stressed that replacement of the wall upon a strip footing lower down would not be more expensive and offered far greater assurance than the alternative of underpinning or parallel support with their attendant risk of further damage to the wall.

18 This was the evidence led by the plaintiff on the foundation works and, prominently from the start, it was noted openly that this was a substantial item of costs.

19 According to both Mr Hatfield and Mr Loggie, the main specifications should entail the following items of rectifications:-

"1 Remove all second storey timber floors, staircase, windows and doors and/or set aside/protect as necessary for re-use.

2 Demolish South side boundary wall and approximately 3 metres to all lateral walls, including front elevation wall, internal lounge brick partition wall and plasterboard partition walls to central atrium area and rear elevation wall to facilitate access to underside of gable end wall and for reinstatement works in general.

3 Hack up concrete floor slab, including front porch tiles and screed and rear out kitchen tiles and screed areas throughout, including the removal of the existing unreinforced masonry foundations.

4 Hack off all other cracked, hollow sounding/debonded plaster walls and the like to both internal and external areas.

5 Excavate to approximate level 117.2M and install a strip footing foundation.

6 Lay 330mm brick to approximate level 118.5M.

7 Install lateral wall footings stepped up to join with the existing footings.

8 Reinstate all walls to beneath level 1, including South side boundary and all lateral walls, including front elevation wall, internal lounge brick partition and rear elevation.

9 Replace level 1 RC Slab-Suspended approximately 2M over backfilled soil along the new boundary wall.

10 Reinstate all walls above level 1, including South side boundary and porch wall and all lateral walls, including front elevation wall, internal lounge brick partition wall and rear elevation including all other partition wall and rear elevation including all other partition walls and the like."

20 Mr Loggie testified that based on the works as set out in his Schedule of Works, which I have summarised above, he had invited and received tenders from Acolite Construction Pte Ltd, Bun Sze Kar General Contractor Pte Ltd and Mun Siong Construction & Renovation Pte Ltd. All three tenderers attended a site show round of the property. On 22 October 2002 the 3 tenderers submitted their tenders. Acolite's tender price was \$386,000.00, Bun Sze Kar's was \$389,000.00 and Mun Siong's was \$474,000.00. It should be noted that the priced tender excluded GST, for which 5% has to be provided.

21 Each of the 2 tenders comprised of 26 items in which the works were described in considerable details. The item which attracted the highest quote was the foundation works. Mun Siong, whose tender was accepted by the Assistant Registrar as reasonable, put down the sum of \$121,000 in relation to the foundations works. The Schedule of Works on which the tenders were based was also accompanied by sketch plan drawing of the property and drawings of the 'proposed footing for boundary wall'. Bun Sze, which quoted \$389,000 for the entire contract, took care to qualify their tender by additional terms set out in their letter of 24 October 2002 to Mr Loggie. They wanted to be paid for any addition or alteration and they made it clear that any requirement for any item not mentioned in the quote would be deemed 'as extra and chargeable accordingly'.

Plaintiff's claim for costs of alternative accommodation

22 The plaintiff, aged 82, had to vacate the property following the Closure Order on 7 August 2000. The plaintiff and her family moved out and stayed with the eldest daughter on a temporary basis until 10 December 2000. The scope of the assessment for damages was defined by the Order of Court of 3 June 2002. It was suggested that she could have stayed with the two elder daughters. It was not practicable to live with the eldest daughter. She had a 3 room flat in Jurong and there were already 4 occupiers. The plaintiff had to stay with the maid if that was the only accommodation available. The house of the 2nd elder daughter was too far away. Access by car was the only practical way. The plaintiff has to undergo medical check-up monthly. She also has to visit the

Chinese physician. It was therefore not surprising that it was the first defendant who had suggested that she rented pending restoration of the property.

23 The alternative accommodation at 257 River Valley Road, #02-00, Valley Lodge, River Valley Road, Singapore, is smaller in area and amenities than the property. It is in a less expensive area. The rental of \$2,200 per month was regarded as reasonable.

24 In relation to the period of the rental, it was common ground that the rectification works could take 8 months, at least. Mr Loggie thought it could take 10 months. The plaintiff claimed that the rental from 8 August 2000, the date of the Closure Order, to 18 June 2003 @ \$2,200.00 per month would be \$75,680. The rental for 9.5 months covering the period for processing, approval and completion of the works would be \$20,900.

Defendants' case for rectification

25 The defendants' expert and professional engineer, Mr Tay Aik Jiun ('Mr Tay'), noted that the gable wall had tilted by 14mm for a 9m high wall. He observed that this would be less than the allowable 18mm based on the deflection limit of H/500 allowed for in the design code of buildings.

26 Both parties agreed that the foundation had to be re-done. How it was to be done was the dispute. In view of the stabilization of the gable wall, and there was no further settlement, Mr Tay opined that the cracks in the gable wall could be pressure grouted with high-strength non-shrink grout. He described the rectification works as follows:-

- (a) The foundation shall be reconstructed on a well-compacted ground condition.
- (b) The footing could be strip-footing or large isolated pad-footings to be constructed adjacent to the existing gable wall's foundations.
- (c) Reinforced Concrete Ground beams should be constructed on the new footings and cantilevered out to support the existing gable walls. This would reduce the loads on the existing gable wall's foundations, thus eliminating any future settlement problems. Mr Tay thought that micropiling was inappropriate. The proposed re-construction of the footings would be the more appropriate solution.
- (d) After the reconstruction of the foundations, the R.C. Columns could be erected. The R.C. Columns must be dowelled together with the existing party and gable walls and could be terminated at the 2nd storey level. Mr Tay specified that the dowels must be at least of diameter 13mm High Tensile Steel Bars provided at 600mm c/c with an embedment depth of 150mm using a specified adhesive.
- (e) R.C. Beams at 2nd storey level could then be constructed with proper dowels being provided between the new R.C. Beams and the existing party walls. The dowells shall be at least of diameter 13mm High Tensile Bars provided at 600mm c/c staggered with an embedment depth of 150mm using a specified adhesive or equivalent. (In this way, the columns and the beams would form a very strong framework to support the walls and the 2nd storey timber beams. I was told that there would be 16 columns and 12 beams. Those columns with dimensions of 200mm x 200mm would be across the whole house on both sides of the walls. The floor area would be reduced by the total area of the 16 columns. The increased number of beams would be under the ceiling. (The Assistant Registrar noted that if Mr Tay's method of rectification were adopted, "the property would look very different from its original state, as conceded by Mr Tay himself.").

(f) The 2nd storey timber beams could then be put back in place. Mr Tay also noted that timber beams would be re-used and that roof timbers could also be adjusted. He added that new flashings could be provided to prevent leakages of rainwater.

27 Mr Tay indicated that area affected by the structural foundations is approximately 400 sq.m. He estimated the costs of structural works to be at a price of \$30 per sq. foot. He estimated the costs to be (400 x 10.76 x 30) at \$129,120.

28 Mr E. S. Tang, a Chartered Quantity Surveyor, testified, as stated in his report that the estimated costs of repair was say \$156,000. Details of his estimates were attached to his report.

29 By way of an overview and for the purposes of a comparison, I set out below the estimates worked out as one way to estimate the costs of rectification as compared to Mun Siong's quote:-

Defendants' 3rd alternative reasonable costs of rectification				
		ES Tang's Costing	Defendants' adjusted quotations	Mun Siong's quotations
	Foundation works	\$ 70,837.80		\$121,000.00*
	Termite treatment & damp proof membrane	\$ 4,000.00	\$ 4,000.00	
Other works				
(1)	Adjustment of 2 nd storey & roof timber	\$ 12,560.00	\$ 12,560.00	\$ 45,200.00
(2)	Repair of roof/re-alignment of existing roof tiles	\$ 3,460.00	\$ 3,460.00	\$ 20,700.00 \$ 2,000.00
(3)	Re-construct defective brickwalls	\$ 1,100.00	\$ 1,100.00	\$ 4,000.00 \$ 8,000.00

(4)	Take down existing doors, re-align frames, re-install & repaint (4 pairs doubt leaved doors & 1 no. single leaved door	\$ 1,800.00	\$ 2,000.00	\$ 2,000.00
(5)	Tiles (at PC rate of \$90/m²)	\$12,560.00	\$ 14,130.00	\$ 27,300.00
(6)	Wall finishes Plaster to new concrete works Make good existing cracks (50m) Plainting	\$ 4,280.00 \$ 2,500.00 \$ 3,960.00	\$ 10,500.00 \$ 3,960.00	\$ 10,500.00 \$ 6,300.00
(7)	General repair works (New staircase) (Plumbing works) (Electrical works) (Doors & Windows)	\$ 10,000.00	\$ 10,000.00	\$ 12,000.00 \$ 9,000.00 \$ 12,000.00 \$ 26,000.00
(8)	Preliminaries	\$ 10,000.00	\$ 10,000.00	\$ 30,000.00
	Add Consultant's fees (3.9%)			

* Bun Sze's quotation was \$94,600.00.

30 Mr Loggie had reviewed the defendants' quotations for the rectification works. He said they were deficient in many aspects and they were unreliable. He explained that GRT's quotation dated 7 June 2002 did not include a number of items. Omitted were the damp proof membrane to first storey level, plastering repairs, including over walls, repairs or replacement to windows, timber staircase and floor tiles. Also omitted were repairs and replacement to electric and sanitary installations. There was no provision for repainting to the internal and external areas throughout.

31 The defendants' proposal for rectification not only lacked detail but was subject to change. Mr Tay in cross examination admitted that his proposal might change. Further, the proposed contractors of the defendants admitted that there would be costs implications if there were any change in the design. It was submitted on behalf of the plaintiff that this was not at all satisfactory as the plaintiff might have to be out of pocket after judgment. Another point was that the defendants' engineer, Mr AJ Ingenieurs, was relying on the "arching effect" of the brick wall to support the property after the 1st floor slab was demolished for the excavation works. Mr Tay indicated that the dimension of the excavation should be 2.5m by 6m. In view of the size of the excavation, there arose, as Mr Hatfield pointed out, issues of safety for the property. Whilst small excavation for footing could be carried out without collapse of the building, provided the soil beneath the arch could provide an effective support, the limit of 1.2m for such excavation was set out in the British Standard. But Mr Hatfield pointed out that this limit of 1.2m did not apply to aged and fractured bricks which were found in the property. Mr Tay disagreed and maintained that he had done excavation of 3m without shoring and that the solid could stand on its own up to a depth of 8.4m. On any view, that depth is way above what is prescribed by the British Standard. Mr Tay in cross examination agreed that in making his proposal, which would involve excavation of 6m, he was 'hoping' that the wall would not collapse. I read this piece of evidence with some discomfiture, bearing in mind that the gable wall, as a matter of fact, was already tilting in the direction of 279 River Valley Road, Singapore and was resting on the wall of the Union House. The proposal advocated by the plaintiff would demolish the wall and build a new wall.

Defendants' case on costs of alternative accommodation

32 The defendants are dissatisfied over the award of 40 months rental which they contended was excessive. They submitted that the award should be limited to 8 or 12 months from December 2000. The defendants asserted that rectification works could have been commenced by the plaintiff 6 months after the settlement of the ground had stopped, which was detected in February 2001. I shall return to this complaint when I recount the grounds of decision of the Assistant Registrar.

Grounds of appeal

33 The Assistant Registrar addressed several issues in her grounds of decision. The question which was the appropriate method of rectification was considered. She had considered both recommendations. She found that "neither party (had) shown on the balance of probabilities that the method proposed by the other party (was) inherently unworkable or unfeasible in restoring the structural integrity of the (property)." The Assistant Registrar further noted that the defendants' quotes did not include variation works that would arise from further damage to the property to the rectification works. No reasonable allowance was made for these works. There was also 'considerable doubt whether the quotes (were) comprehensive given that some items of work were not spelt out', obviously referring to the items I had spelt out in this judgment.

34 The Assistant Registrar took the view, however, that costs should not be the only determining factor. The plaintiff was entitled as a matter of law to be put back in a position as if the defendants' negligence never took place. This meant the adoption of a method that would put the property as nearly as possible to its original state, 'both structurally and aesthetically'. The additional columns and beams to be erected under the proposal of the defendants would not make restoration as nearly possible as the proposal of Mr Hatfield would.

35 It was contended that to demolish the gable wall was a 'legal impossibility' because the Urban Renewal Authority, as the competent authority, would not approve the demolition of the gable wall. Ms Lucy Long, who gave evidence that URA general guidelines on properties under conservation require the end gable wall of such a property to be retained unless a professional engineer confirms that it is "structurally unsound", did not in her evidence go so far as to say that approval for the demolition of the wall would not be granted. Given the competing considerations, I was of the view that the reasonable approach to take in the assessment was to proceed on the basis that the demolition of the wall would be granted, in view of the merits. If no approval was forthcoming, and the defendants' proposals had to be resorted to, there was a satisfactory margin in the difference between the two quotes to take care of the omissions and concerns of the defendants; proposal which had been set out earlier. In this connection, I did not understand the Assistant Registrar's remark that "it would be premature to shut out the plaintiff's proposed method of works". I did not think that the matter had anything to do in terms of time, whether it was premature or otherwise. It had to do with balancing what would be reasonable and fair to both parties and, in particular, what would restore the plaintiff's property but for the negligence was the primary consideration.

36 The Assistant Registrar dealt with the submissions of the defendants that the court should not rely on Mr Loggie's evidence on the costs of rectification. First, it was argued that Mr Loggie was not competent to give evidence on the costs of the rectification because he is a building surveyor and not a quantity surveyor. The Assistant Registrar did not entertain this ground because the credentials of Mr Loggie was not questioned by the defendants. Courts had relied on the evidence of building surveyors, as the court did in *Great Eastern Hotel Pte Ltd v Ng Yew Seng & Ors* (Suit No. 21 of 2001, unreported).

37 The second ground was that the contractors who gave the 3 quotes to Mr Loggie, who called for the tenders on behalf of the plaintiff, were not called to give evidence and their quotes were therefore hearsay evidence. The quotes were admitted into evidence as they were part and parcel of the affidavit evidence in chief of Mr Loggie. I agreed with the Assistant Registrar who held that Mr Loggie was a competent expert witness and that the quotes were not hearsay evidence. The quotes represented a range of reasonable costs of rectification of the plaintiff's property based on the schedule of works set out by Mr Loggie. At the heart of the rule against hearsay evidence is the reliability of the evidence; there was no concern on this score. The 3 contractors had genuinely lodged the tenders with Mr Loggie, offering to execute the schedule of works for the price they quoted and, in the case of the two of them, on the other terms and conditions which they spelt out in their letters accompanying their tenders.

38 The purpose for which the 3 potential contractors lodged their tenders was to win the contract for carrying out the schedule of works. More importantly, the purpose for which the admission of the 3 tenders was sought was to demonstrate the reasonableness of the estimated costs for the rectification. The test was used by the Court in *Sega Foodstuffs Manufacturing (Pte) Ltd v Best Food Pte Ltd* [1995] 1 SLR 739. In that case, the plaintiffs sought to restrain the defendants from passing off the defendants' goods as the plaintiffs' by the use of the get-up similar to that of the plaintiffs. To prove the level of awareness of the product, the parties separately commissioned market survey reports. These reports contained the answers of various shop owners

and cooked food hawkers given in response to questions posed by the interviewers. The reports were included in the agreed bundle of documents. On the day of trial, counsel for the defendants applied to exclude this evidence on the basis that the respondents gave their answers out of court and none of interviewees nor the interviewers were called as witness. The defendants argued that the reports were hearsay upon hearsay.

39 The court held that the market survey reports did not offend the rule against hearsay and was evidence of the fact in issue and its admission fell within the general provision of section 5 of the Evidence Act for the admission of the evidence. The learned Judge quoted Mahon J in *Customglass Boats Ltd v Salthouse Brothers Ltd* [1976] RPC 589 as saying what was reported at p 744H-I in the following terms:-

"The evidence obtained by research survey is in my view legitimate proof of the fact the opinions obtained had in fact existed, whether rightly held or not, and on that view of the matter it is in my opinion that such evidence is not hearsay at all and that, even if it did fall within the technical concept of hearsay or representing a collation of individual statements made out of court, then the evidence would still be admissible by way of exception to the hearsay rule because it exhibits the existence of a state of mind shared in common by a designated class of persons."

40 The tender sums are evidence of the results of a competitive tender and show the prices which contractors generally were prepared to charge for restoring the property to its original condition according to the Schedule of Works set by Mr Loggie. They were produced to show that Mr Loggie had received the quotes in the region of \$374,000.00 to \$386,000.00 for the rectification works. It should be emphasized that Mr Loggie had himself given expert evidence that the quotations represented a fair and reasonable level of costs of the rectifications. Mr Loggie was entitled to have regard to the three quotes which reasonably appeared to him to be reliable information: see *Abbey National Mortgage plc v Key Surveyors Nationwide Ltd & Ors* [1996] 3 All ER 184.

41 The defendants relied on *Sim & Associates (sued as a firm) v Tan Alfred* [1994] 3 SLR 169 and *Vaynar Suppiah & Sons v KMA Abdul Rahim & Anor* [1974] 2 MLJ 183. In both cases, the reports were sought to be admitted to prove the existence of defects or damage, which was a fact in issue, without the production of the maker of the report who had surveyed or detected the defects or damage. The purpose of the admission of the 3 quotes from the 3 contractors was fundamentally different; it was to provide material, the accuracy of which the expert, Mr Loggie, reasonably believed to be accurate, upon which Mr Loggie could base his opinion that the costs of rectifications as claimed by the plaintiff were fair and reasonable.

42 I was further of the view that the defendants had waived their right to object to the admission of the 3 quotes on the ground of hearsay. The quotes were disclosed in the plaintiff's List of Documents. The copies of the quotes were also referred and annexed to Mr Loggie's affidavit evidence. Though the defendants had filed Notice of Objection, at the hearing on 10 February 2003, the defendants' counsel informed the Assistant Registrar that they would waive their objections in their Notice of Objection save for the objection concerning the emails between Mr Loggie and the tiles supplier. In any case, the plaintiff's counsel offered to the defendants the 3 contractors for cross examination but the offer was not accepted. Counsel for the defendants indicated that he was not challenging the authenticity of the 3 quotes and would be cross examining Mr Loggie on the costs of rectification, which counsel proceeded to do at length. Further, it was not the defendants' case that the quotes were unreliable until the appeal before me. I therefore agreed with the submission that the defendants had dispensed with formal proof of the 3 quotes.

43 I turn to the costs estimates of the defendants and their witnesses. I agreed with the conclusions and findings of the Assistant Registrar that they were unreliable for a number of reasons. First, they did not address the items of work but quoted only for items that they were instructed to provide. Secondly, the Quantity Surveyor who had notice of the quotes from the defendants' potential contractors submitted nevertheless an even lower estimate. Thirdly, the defendants' engineer initially submitted a quote of \$120,000.00. That quote was revised and increased to \$200,000.00. He admitted in cross examination that it would be even higher. It was noteworthy that Mr ES Tang's estimated costs of the rectification was significantly lower than their own engineer's estimate for the rectification works. The Assistant Registrar was perfectly entitled to reject the estimate of Mr ES Tang in the sum of \$155,837.80 and his views that allowances must be made for pre-existing defects and enhancement benefit. Those items did not have any reasonable basis to make any conceivably reliable estimate.

44 Mr ES Tang laid emphasis on the fact that at \$360,000.00, one could pull down the property and build a new house of equivalent size at that price. He cited the fact that he was about to award a project of the size similar to that of the property at \$360,000.00. In my view, the Assistant Registrar was entitled on the weight of the evidence to reject this rough, thumbnail comparison in favour of the views of Mr Hatfield and Mr Loggie.

45 As an appellate court, I could not see any reason to interfere with the findings of fact of the Assistant Registrar. Accordingly, I refused to disturb those findings and dismissed the appeal with costs.

Appeal dismissed with costs

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