Yap Boon Keng Sonny v Pacific Prince International Pte Ltd and Another [2008] SGHC 161

Case Number : Suit 49/2007

Decision Date : 23 September 2008

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Winston Quek (B T Tan & Company) for the plaintiff; Brendon Choa (Acies Law Corporation) for the defendants

Parties : Yap Boon Keng Sonny — Pacific Prince International Pte Ltd; William Lau Hui Lay practising as a partner under the name and style of A.Alliance Architects

Contract – Breach – Contract to construct house – Defective works – Homeowner refusing to let contractor enter to conduct rectification works – Whether contractor had to bear full cost of all defective works

Damages – Measure of damages – Contract – Contract to construct house with bedrooms – Completed bedrooms not of specified size – Defective construction not preventing use of rooms as bedrooms – Whether cost of rectifying defect/reinstatement or loss of amenity should be recovered

23rd September 2008 Judgment reserved.

Judith Prakash J:

Introduction

1 The plaintiff, Sonny Yap Boon Keng, and his wife, Angela Yeoh ("Mrs Yap"), are the owners of the land and premises known as No 25 Lorong K, Telok Kurau, Singapore ("the property"). The first defendant, Pacific Prince International Pte Ltd ("PPI"), is a company incorporated in Singapore which carries on business as a design and build contractor. At all material times, the shareholders and directors of PPI were the second defendant, William Lau Hui Lay and his wife, Midori Aw ("Ms Aw"). The second defendant, a qualified architect, was an active participant in the business of PPI as he provided, amongst other things, the architectural expertise that PPI required in order to provide the full design and build services that it offered to its clients. At all material times, the second defendant also carried on practice as an architect under the name and style of A. Alliance Architects.

2 In 2004, the plaintiff and his wife were looking for a house. In about June of that year, they were introduced to the second defendant by a mutual friend. Thereafter, the second defendant went with the plaintiff to view prospective purchases and commented on the suitability of the houses viewed in the light of the plaintiff's needs. Eventually, the plaintiff and his wife decided to purchase the property which then contained a semi-detached single storey house. At the second defendant's suggestion, the plaintiff decided to demolish the existing house on the property and to build a new house in its place.

3 The second defendant introduced PPI to the plaintiff as a company that would be able to undertake the task of designing and building the new house on the property ("the project"). Some time in mid August 2004, PPI carried out initial "Design and Contract Work" for a lump sum price of $5,000 in connection with the project. The plaintiff was pleased with the proposal and thereafter he and his wife had additional discussions and meetings with the second defendant regarding the project

and their requirements for the house. A series of plans and specifications were produced by PPI.

4 On or about 7 December 2004, the plaintiff and PPI signed a memorandum of agreement ("MOA") for the design and construction of a three-storey semi-detached house on the property. Ms Aw signed the MOA on behalf of PPI. The MOA provided, *inter alia*, that:

(a) the contract sum for the design and construction of the house up to completion would be $736,400;

(b) the works would commence on 15 December 2004;

(c) the works would be completed on 15 December 2005;

(d) an extension of the contract period of two weeks *ie* up to 30 December 2005 may be required due to the lack of a sufficient mobilisation period; and

(e) the REDAS Design & Build Conditions of Contract, First edition, August 2001 ("REDAS Conditions"), would be the basis of the construction contract.

5 PPI thereafter implemented the project and carried out the design and construction of the house. The temporary occupation permit ("TOP") was granted on 12 January 2006 whilst the Certificate of Statutory Completion ("CSC") was issued by the authorities on 10 July 2006. It should be noted that the actual construction work was carried out by SE Builders Pte Ltd ("SEB") which was PPI's main sub-contractor but, of course, as between the plaintiff and PPI, it was PPI that was the builder.

6 These proceedings insofar as they concern PPI relate to the construction of the house. The main complaints relate to delay in completion, defective works and under-sized bedrooms that did not meet the plaintiff's requirements. Insofar as the second defendant is concerned, the claim is made in tort for misrepresentation and breach of duty.

The plaintiff's claim

7 The plaintiff has quantified his claim against both defendants as follows:

(a) cost of rectification	$109,000
(b) cost of reconstructing the bedrooms so that they are of the requisite size	$141,080
(c) damages for delay in completing the works for 3 months at $4,800 per month based on rental of an equivalent house in the vicinity	$14,400
(d) loss of use for 10 months up to the date of writ and still continuing at $4,800 per month	$48,000
(e) alternatively, damages to be assessed	

8 As against PPI, the plaintiff invoked two causes of action. The first was for breach of the express terms of the MOA in that PPI failed to complete the construction of the house by 15 December 2005 as specified in the MOA.

9 The second cause of action against PPI was for breach of implied terms of the MOA to wit:

(a) that PPI would carry out the work in a good and workmanlike manner; and

(b) that the design would be reasonably fit for its intended purpose.

In the alternative, the plaintiff alleged that PPI was in breach of its duty of care to see that the work was done in a workmanlike and professional manner so that the house would be fit for habitation. The plaintiff averred that PPI was liable to him both in contract and in tort in respect of the defective works and design as well as for the failure to build the bedrooms to the sizes required by the plaintiff. I should state here that in respect of the claim against PPI, I will deal with this purely on a contractual basis as all the breaches that the plaintiff alleged can be categorised as breaches of contract. As there was an existing contractual relationship between the parties which was intended to govern the legal relations between them in connection with the project, it would be wrong to consider the plaintiff's complaints on the basis of a breach of duty in tort. Whatever duties of care PPI owed the plaintiff, these would have arisen from the contract and no other theory of liability should be invoked.

10 As regards the second defendant, the plaintiff elaborated on the bases of his claim as follows:

(a) he asserted that the second defendant made fraudulent or negligent misrepresentations to him which he acted upon and thereby sustained damage;

(b) the second defendant breached his duty of care to the plaintiff in that he:

(i) acted in conflict of interest; and

(ii) failed to explain to the plaintiff the nature and risk of a design and build contract and failed to protect the interest and rights of the plaintiff when the second defendant knew that the plaintiff was completely reliant upon him for proper advice.

The defence and counterclaim

11 In addition to defending the claim, PPI put in a counterclaim for the sum of $57,958.54 which is made up as follows:

(a)	original contract sum under MOA	$736,400.00
(b)	plus total variation orders	$ 73,287.28
(c)	adjusted contract sum	$809,687.28
(d)	less payments made by plaintiff	$751,728.74

$ 57,958.54
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It should be noted that, subject to any right of set-off which the plaintiff may have with regard to his main claim, the plaintiff does not dispute that there is at least a sum of $42,572.39 due from the plaintiff to PPI in respect of the counterclaim.

12 Insofar as the second defendant is concerned, he denied that he made any fraudulent or negligent misrepresentations to the plaintiff. He also denied that he owed the plaintiff any duty of care at all. Further, even if there had been a breach of duty on his part, the second defendant denied that the plaintiff had suffered any loss or damage as a result of the alleged breach of duty.

13 PPI's stand was that it did carry out and complete the design, construction and maintenance of the house and remedy any defects therein in conformity with the MOA. The works under the MOA were practically completed on 11 January 2006 and by a letter and an e-mail dated 28 January 2006, PPI informed the plaintiff of this completion and that the property was ready to be handed over to him. Despite this handover notice, the plaintiff failed, refused or neglected to take possession of the property until 15 March 2006. Any delay in the actual handover of the property was self-induced.

14 PPI agreed that there was an implied term in the MOA that it would exercise reasonable skill and care in the performance of the works, that the works would be done in a workmanlike or a professional manner and that the design would be in accordance with "the Agreed Design and Specifications" of the MOA. PPI did not admit to all the defects asserted by the plaintiff. It also asserted that it had promptly attended to and rectified all defects notified to it by the plaintiff and his wife between 28 January 2006 and 23 May 2006. In addition, the plaintiff and his wife had during this period requested PPI to carry out certain additional works and PPI had done so in accordance with the requests.

15 PPI also asserted that even if there were outstanding defective works, the plaintiff had, in breach of the MOA, in particular Article 3(e), unreasonably refused to allow PPI and its workmen access to the property to carry out follow-up service in maintenance and repairs. This was despite repeated requests for such access made both orally and by way of letter. PPI asserted that it was not liable to the plaintiff for the alleged defects and faults since the plaintiff had prevented it from rectifying these items during the 12-month long defects maintenance period provided for in the MOA.

16 As far as the room sizes were concerned, PPI's position was that the rooms were constructed in accordance with the MOA and approved building plans.

17 As regards the allegation of delayed completion, the basic assertion made by PPI was that the late completion was due to "acts of prevention" on the part of the plaintiff which prevented PPI from completing on time. Details of these acts of prevention were set out in the defence and related essentially to variation orders issued by the plaintiff and the delayed confirmation of the nominated sub-contractor for the interior decoration of the house.

Claim against PPI

18 As stated earlier, there are three major areas of claim:

(a) delay in completion of the works;

(b) defects in the house; and

(c) failure to carry out the plaintiff's instructions in that four bedrooms were of a size that was less than 18m².

Delay

19 There are two dates that the parties agree on. These are that under the MOA, the works were to be completed by 15 December 2005 and that in fact the property was handed over to the plaintiff only on 15 March 2006. The plaintiff's case is that as from 16 December 2005, PPI was in breach of contract and must pay damages for delay. PPI, however, contends that the works under the MOA were completed on or about 28 January 2006, about 16 days after TOP was issued, and that at most if there was any delay (which PPI does not accept), that delay was from 30 December 2005 to 28 January 2006 and not from 16 December 2005 to 15 March 2006.

Extension to 30 December 2005?

20 The first sub-issue is whether the scheduled completion date was extended from 15 December 2005 to 30 December 2005 in accordance with the term in the MOA that stated "2-wk Time Extension to 30 Dec 05 may be required, due to insufficient mobilization period".

21 PPI submitted that the two weeks' extension was indeed required because the mobilisation period was insufficient. Ms Aw testified that there was an insufficient mobilisation period (bearing in mind that the MOA was signed on 7 December 2005 and the commencement date was supposed to be 15 December 2005) because certain applications had to be made to the Ministry of Manpower pursuant to the Factories Act (Cap 104 1998 Rev. Ed.) and a pre-condition survey had to be carried out before PPI could take over the property. The application to the Ministry, she testified, would take two weeks. Therefore, from the very beginning the two weeks' extension of time was necessary.

22 PPI also submitted that as the requirement of two weeks' extension due to an insufficient mobilisation period was expressly stated in the MOA, it had to follow that PPI had expressly and contractually reserved its right to such an extension thus relieving it of the need to apply for the extension later. The plaintiff must have been aware at the time of signing the MOA of this express right and there was, PPI submitted, no requirement under the MOA for it to make any formal application for such an extension. It would suffice if PPI had simply informed the plaintiff that an extension was needed. Ms Aw's evidence was that she had instructed PPI's project manager, Ms Alicia Lee, to inform the plaintiff of the need for the extension.

23 The plaintiff's response was that no evidence had been adduced by PPI that the extension was required due to insufficient time for mobilisation. Further, there was no evidence to show that PPI had asked for such an extension or given the grounds as to why it was required. In the plaintiff's submission, the clause did not provide for an automatic extension of time. It must mean that PPI had to convince the plaintiff of the facts and circumstances which would make the mobilisation period insufficient. Otherwise, the clause would be meaningless.

24 Before I analyse the clause, I think it is unlikely that Ms Aw instructed Ms Lee to inform the plaintiff of the need for the extension of time. This is because Ms Aw's evidence was that to her the need for an additional mobilisation period was evident from the beginning as she knew that the application process would take two weeks and that a pre-condition survey was also required. Also, at that stage, Ms Lee was not in charge of this project. She only came into the picture in June 2005 according to her evidence. She herself did not testify that she had received instructions to inform the

plaintiff of the extension of time. The plaintiff's position was that he had not been told about this extension and I think that that evidence must be accepted.

25 However, looking at the wording of the clause itself, I think what it meant to say was that the mobilisation period was inadequate and therefore the plaintiff was being warned that it was possible that completion would not take place by 15 December 2005 and instead if the inadequacy of the mobilisation period impacted on the works, then completion would take place on 30 December 2005. In effect therefore, the clause was saying that whilst the completion date aimed for was 15 December 2005, completion might not take place until 30 December 2005 because of the inadequacy of the mobilisation period. Therefore, the contract was itself extending the completion date to 30 December 2005 in the event that during the course of construction such an extension was required. I therefore agree with PPI's submission that the extension was more or less automatic.

Further extension and/or acts of prevention

26 The next sub-issue relates to the position between 31 December 2005 and 15 March 2006. In this respect, PPI's contention is that the plaintiff himself had agreed to extend the time for completion until 28 January 2006. In the alternative, PPI says that "acts of prevention" on the part of the plaintiff resulted in delays in PPI's performance of the works and therefore PPI cannot be held responsible for the same. Both these arguments relate to the selection of a sub-contractor to do certain interior works (the "ID works"). PPI's contention is that the plaintiff delayed his confirmation of the nominated sub-contractor for the ID works and this necessarily delayed the completion of the main MOA works.

27 The facts that PPI relied on are as follows. First, it claimed that it had selected and recommended an ID contractor to the plaintiff as early as mid September 2005. The plaintiff recognised this at the trial when he admitted meeting Jennifer Yeo of Artwood Pte Ltd ("Artwood") on 19 September 2005. Prior to this recommendation, PPI had carried out the following preparatory works. In the third week of August 2005, it had made a list of all the ID works that had to be done and had sent the plans to the proposed sub-contractor. Thereafter, there were discussions on these items with the proposed sub-contractor. Next, the proposed sub-contractor submitted its quotations and these had been studied by PPI and its comments had then been relayed to the sub-contractor for consideration and preparation of amended quotations. It was only when the amended quotation reflected, in PPI's view, the requirements of the plaintiff, that the quotation and a proposal were submitted to the plaintiff. Eventually, Artwood's revised quotations were sent to the plaintiff on 2 November 2005 and on 10 November 2005. According to Ms Lee, the reason for the lateness in the submission of the revised quotation was that on 1 November 2005, the plaintiff and his wife had passed her a set of cabinet drawings done by another ID contractor, one Sen.2 Design Consultants Pte Ltd ("Sen.2"), and told her that these showed their preferred layout. The plaintiff then instructed her to request Artwood to submit a revised quotation based on his requirements. It was because of the need to incorporate these changes that the quotation was submitted on 2 November 2005.

28 PPI also noted that the plaintiff had, on his own, approached Sen.2 and two other ID contractors between 28 October and early November 2005. It was suggested to the plaintiff at the trial that by mid November 2005 he would have consulted or obtained quotations from no less than five different contractors for his ID works. The plaintiff agreed to this suggestion. In the event, the ID contractor appointed was Rezt & Relax Mobili Pte Ltd ("R&R") and the plaintiff had admitted in court that although he had approached R&R in early November 2005, he did not engage them until almost a month later, on 4 December 2005.

29 Therefore, the plaintiff's confirmation of the ID contractor and the ID drawings were late. This

was the plaintiff's doing because:

(a) PPI had started sourcing for an ID contractor as early as August 2005;

(b) from mid September 2005 until early October 2005, Ms Lee had suggested the names of two ID contractors to the plaintiff and between end October 2005 and end November 2005, she had evaluated the quotations of at least three other ID contractors (including R&R) that the plaintiff had himself shortlisted;

(c) Ms Lee had informed the plaintiff and his wife that her target date to commence the ID works was 25 October 2005 and when the plaintiff asked her whether the ID works would delay the completion of the main works, she informed him that as long as the ID contractor was confirmed and the ID contract signed around 25 October 2005, the works could be rushed out; and

(d) on 24 November 2005, Ms Lee told the plaintiff that the ID works were far behind schedule and there was no time to do any valuation of a fifth ID contractor's quotation. Subsequently, on 4 December 2005, she informed the plaintiff that the ID works by R&R would seriously affect the last stage of the main building works because PPI could only do the final finishes to the main building works after R&R handed over the ID works and that final work would take two weeks.

30 PPI also pointed to the plaintiff's evidence in court that he had agreed on 4 December 2005 at a meeting held between himself, his wife, Ms Lee, and Jeremy Koh of R&R that R&R would have up to 15 January 2006 to complete its ID works and the commencement date of those works was amended to 20 December 2005. It argued that this meant that at the meeting of 4 December 2005, the plaintiff had agreed either expressly or impliedly to extend the time for PPI to complete the works under the MOA since the ID works formed part of PPI's works. It also pointed out that in mid December 2005, the plaintiff asked R&R to change the design of a wardrobe in one of the bedrooms and this had caused further delay.

31 Then there was a further meeting between the plaintiff and his wife, Ms Lee and Jeremy Koh at R&R's office on 24 December 2005. At that meeting, Jeremy Koh had requested five extra days to complete the ID works (*ie* by January 2006). The plaintiff agreed to that request. He explained in court that he had no choice but to agree since R&R needed the extra five days. Ms Lee testified that she told the plaintiff at the same meeting that PPI would need an extra week or so after the completion of the ID works to complete the main building works. The plaintiff did not object to this request. When asked about this meeting in court, the plaintiff replied that he was very disappointed that the works could not be completed earlier "due to unforeseen circumstances … changes which [are] necessary".

32 PPI submitted that taking into account the extensions of time which the plaintiff had agreed to give to R&R to complete the ID works and the fact that he clearly acknowledged that PPI would need an extra week or so after the completion of the ID works to complete the main building works, there could be no question of delay attributable to PPI if it was able to complete and handover the property on or about 28 January 2006.

33 Further, PPI said, the plaintiff's late nomination or selection of R&R as the ID contractor (on 4 December 2005), his agreement at the same time to R&R completing the ID works by 15 January 2006 and his subsequent agreement on 24 December 2005 to allow R&R five extra days to complete the ID works, all amounted to "acts of prevention" resulting in delays in PPI's performance of the works under the MOA. By reason of such acts of prevention, PPI submitted that:

(a) time for completion of the works had been set at large and the scheduled completion date under the MOA had ceased to apply; and

(b) PPI was therefore only obliged to complete the works and handover the property to the plaintiff within a reasonable time and it did fulfil this obligation in that the works were ready for handover within a reasonable time, *ie* by 28 January 2006.

34 It should be noted that the above submission is based on the legal principle that a contractor's obligation to complete the works under a construction contract within a prescribed period of time is premised on the requirement that he is not delayed by reason of any "acts of prevention" committed by either the employer or his agent. As *Law and Practice of Construction Contracts* by Chow Kok Fong (Sweet & Maxwell Asia, 3rd Ed, 2004) states at 401:

> An act of prevention operates to prevent, impede or otherwise make it more difficult for a contractor to complete the works by the date stipulated in the contract.

As the same text also states, the legal consequence of an act of prevention is that the date for completion originally stipulated in the contract ceases to be the operating date for the completion of the works. Additionally, the employer's right to claim or deduct liquidated damages is lost since there is no longer a valid date for completion from which such damages can be calculated. (See *Kwang In Tong Chinese Temple v Fong Choon Hung Construction Pte Ltd* [1997] 3 SLR 876)

35 The plaintiff did not accept that he was at fault or that acts of prevention committed by him had led to PPI being unable to complete on schedule. He said that for a start, there had been a one to one and a half month's delay by PPI in its recommendation of the ID contractor. PPI had assumed that when it made the recommendation in September and October 2005 that the plaintiff would accept that recommendation and the job would be completed within the original time limit. When the parties met, however, in mid September 2005 to discuss the first quotation from Artwood, the plaintiff and his wife were not happy because they did not like Artwood's design and Artwood's price exceeded the provisional sum stated in the MOA for the ID works. The plaintiff and his wife gave Ms Lee an idea of design preference shortly after the meeting and instructed her to request Artwood to submit a revised quotation based on their requirements.

36 In cross-examination, Ms Lee admitted that she compiled a list of what she thought were the design requirements of the plaintiff in or around the end of September or the beginning of October 2005. Not only did she take quite a while to complete that list but Artwood's revised quotation did not arrive until 2 November 2005. Hence, even if the plaintiff had accepted Artwood's revised quotation, the delay would have been inevitable since Ms Lee had admitted that in order for PPI to meet the contractual deadline, everything had to be confirmed in October 2005.

37 Whilst waiting for Artwood's quotation, the plaintiff and his wife were actively looking for alternative ID contractors. It was not fair to blame the plaintiff for assisting PPI in looking for alternative ID contractors so as to provide a basis for comparison with the prices and designs submitted by Artwood. Ms Lee herself had admitted that it was reasonable for the plaintiff, as the owner, to be given time to consider Artwood's design and price.

38 In the event, the plaintiff managed to secure the services of R&R. Ms Lee had testified that the plaintiff had agreed to confirm R&R's appointment on 28 November 2005 but the contract with R&R was signed on 4 December 2005. Quite clearly that delay had nothing to do with the plaintiff. The R&R contract stated that the original commencement date of the ID works would be 13 December 2005 and the date of completion would be 9 January 2006. As regards R&R's request for an additional five

days to complete ID works, the plaintiff had no choice but to be reasonable since R&R needed extra time in view of the changes to the design of the wardrobe in bedroom 3 and the fact that the festive period fell during the contractual period. At no time, however, had the plaintiff agreed to extend the handover of the building by PPI to 28 January 2006.

39 As for the modification of wardrobe, the plaintiff submitted that this did not result from a request by him to effect the change in design. The L-shaped extension to the wardrobe was necessitated by site constraints: the parties had realised that the full height wardrobe originally provided for was not possible given the presence of air-conditioning trunking on the wall of bedroom 3. It was clear from the evidence that Ms Lee knew about the presence of the trunking but did not bring the same to the notice of Jeremy Koh of R&R. Ms Lee had admitted that if she had brought this matter to Jeremy Koh's attention earlier, he would not have provided for a full height wardrobe in bedroom 3. Jeremy Koh had also testified that if Ms Lee had told him of the trunking, he would have pointed out the difficulties of a full height wardrobe and the change in design could have been affected earlier. Parties need not have waited till the site inspection to discover that it was not possible to install a full height wardrobe. The plaintiff submitted that the delay caused by the change in the design was clearly the fault of PPI.

40 The issue here is whether it was the plaintiff's actions that prevented the works under the MOA from being completed by 30 December 2005 (the extended contractual completion date). After considering the evidence as a whole, I have come to the conclusion that the plaintiff's decision not to work with the sub-contractor recommended by PPI and the amount of time that it took to find a substitute sub-contractor was the main cause of the inability of PPI to complete by 30 December 2005. I agree that the plaintiff was not bound to accept the sub-contractor suggested by PPI but when he made the decision to reject that sub-contractor and to look for another one, he must have realised that this decision had time implications for the project. The plaintiff and his wife met Artwood on 19 September 2005 and there was sufficient time between then and the end of October 2005 for the plaintiff to work with Artwood, if he had been so inclined, so as to get a revised design and a revised quotation that would be more to his liking. As it turned out, the plaintiff went looking for other contractors and only sent PPI his ideas for revision based on Sen.2's quotation on 1 November 2005. Then, Artwood put in two revised quotations on 2 and 10 November 2005 but the plaintiff was not willing to accept either of these and continued to search for an alternative. He was entitled to do so but there was a consequence in terms of completion of the works since, as he had been informed by PPI, PPI required an additional two weeks after completion of the ID works in order to complete its own main contract works. In the event, the selection of R&R meant that the ID works could not be completed until 15 January 2006 at the earliest and that meant that there was no way that either the original deadline of 15 December 2006 or even the extended deadline of 30 December 2006 could be met.

41 I accept that the plaintiff's decisions in relation to the ID works had the effect of preventing completion of the main works in accordance with the MOA and therefore set time at large. PPI therefore had a reasonable time after 30 December 2005 in which to complete the works and handover the property. It is PPI's position that in the circumstances of the case, a reasonable time would be up to 28 January 2006. I accept that position since PPI had said that it needed only two weeks after completion of the ID works to complete its own works and the original date of completion of the ID works was 15 January 2006. Two weeks thereafter takes us to 29 January 2006. I am not inclined to grant PPI a further extension of time by reason of R&R's request for an extra five days. This request was necessitated by PPI's failure to tell R&R earlier that its design for bedroom 3 could not be fully effected due to the presence of the air-conditioning trunking.

Was the property ready for handover on 28 January 2006?

42 The next issue is whether PPI had in fact completed the main works and was ready to hand over the property on 28 January 2006. The plaintiff said no for various reasons.

43 First, as at 28 January 2006, the landscaping and the water harvesting system were not complete. The plaintiff noted that Ms Lee had tried to attribute the delay in the landscaping to the plaintiff by saying that he had asked for a change in design. In her affidavit Ms Lee had stated that the plaintiff had confirmed the landscaping work and the types of plants required in early November 2005 but, in early January 2006, when the landscaping sub-contractor was about to start work, the plaintiff and his wife had spoken to the landscaper (Mrs Christine Neo) and requested her to review the design and the plants and therefore the work could not start. The plaintiff contested this. First he noted the implied admission that until January 2006 the landscaping work was yet to start. Then he alleged that in January 2006 during a site visit, the landscape sub-contractor observed that site conditions made it impossible to implement a portion of the original plans. Mrs Neo subsequently suggested changes in the plans in order to overcome the site constraints. The plaintiff asserted that not only was this documented in an e-mail which Ms Lee had sent the plaintiff on 8 February 2006 but that also during cross-examination, Ms Lee had admitted that the changes in the landscaping works were the result of site constraints rather than the plaintiff's doing.

44 The plaintiff also asserted that there was a delay in the installation of the water harvesting system. Work on this system only commenced on 7 February 2006. He contended that the second defendant had admitted that the delay in this system had contributed to delay in the landscaping work.

45 It is the plaintiff's case that as at 28 January 2006, PPI had not completed the works. On that day, PPI wrote to the plaintiff stating that the main works had been completed and asking for arrangements for handover of the property to be made. On 6 February 2006, the plaintiff replied saying that he did not agree that the work had been completed as there was still work outstanding. He also pointed out that the water harvesting system and the landscape work were not miscellaneous works but were part of the main building works. Then, three days later, Mrs Yap wrote a letter to PPI giving a detailed list of the outstanding works.

46 The defendants' response was that the plaintiff should have taken possession of the property as soon as practicable after 28 January 2006. By virtue of the fact that TOP was granted on 12 January 2006, there was a presumption that the property was fit for habitation after that date. PPI also asserted that the plaintiff himself agreed and recognised in court that the presence of defects in the property did not necessarily mean that the house was not completed and/or fit for habitation as at 28 January 2006 because PPI had a contractual right of repair *ie* to come back and rectify the defects during the maintenance period of one year after completion. The plaintiff had also agreed that he could still move into the house even though some cracks and stains were present.

47 PPI also did not accept that the landscaping work and water harvesting system had contributed to any delay in completion. It did not agree that Ms Lee had tried to attribute the delay in landscaping work to the plaintiff by saying that the plaintiff had asked for a change of design. This submission was not correct because Ms Lee's statement had been taken out of context. She was not trying to justify any delay in completion since, as of 28 January 2006, TOP for the building had already been obtained and the property was ready to be handed over. Ms Lee was merely explaining what had transpired post completion of the main building works.

48 In my view the above interpretation of Ms Lee's evidence was not quite correct. Paragraphs 30 and 31 of her affidavit dealt with what had happened at a meeting in early January between the plaintiff, Mrs Yap and Ms Christine Neo. In paragraph 31 she stated:

> "I reminded Sonny, Angela and Christine that the scheduled handover of the building was on 28 January 2006 and I was concerned whether Christine could finish the landscaping works by then, in view of the last minute changes requested. On hearing this, Christine then highlighted to Sonny, Angela and me that she would need more time to review the landscaping design and also said that in view of the last minute changes requested (by Sonny), the timing given to complete the landscaping works before 28 January 2006 was too short. They may not be able to deliver a good job within such a short time frame. She then proposed to commence the landscaping works after the Chinese New Year festive period, when their workers return to work. Sonny agreed to her request to complete the landscaping works after the Chinese New Year festive period, which meant that the landscaping works would only be completed after the handover of the building. Therefore it was clearly understood between Sonny, Angela, Christine and I that the builder (i.e. PPI) would proceed according to plan to handover the building on 28 January 2006, with the exception of the landscaping works, which would be handed only after the Chinese New Year festive period."

It can be seen that in the quoted paragraph Ms Lee was giving evidence about what had happened before 28 January 2006 and was not dealing with the events that occurred after that date.

49 PPI's submission was that on 28 January 2006, only the landscaping work remained outstanding and this was because it was the plaintiff and his wife who had specifically instructed PPI to commence the landscaping work only after the Chinese New Year as shown by Ms Lee's testimony. PPI noted that the plaintiff had taken the position that he could not go ahead with the landscaping work earlier because the rainwater harvesting system had not been completed. It did not consider this to be a valid position. PPI pointed out that, at the trial, the plaintiff had conceded that the plants could have been watered by hand although it might have been inconvenient to do so. Therefore, it submitted, the reason for the plaintiff's instruction on the commencement date was his own convenience and not the sequence of construction or any building prerequisite. In any case, most of the rainwater harvesting system had been completed by 28 January 2006 in that the internal pipe-work linking the water tank to the gutter and the W.C. and the underground pipe-work in the garden had been completed in November 2005 and what was outstanding as at 28 January 2006 was only the external water tank and the sprinklers in the landscaping area. The plaintiff had not disputed this.

50 As for the plaintiff's allegations that certain work remained outstanding as of 9 February 2006 thus preventing him from moving into the house, the submission was that the items complained of were relatively minor in that they were either in the nature of defects which could be rectified during the maintenance period or they were items that did not affect his ability to move into his property. As far as PPI was concerned, the house was in all respects fit for habitation on 28 January 2006.

51 On the submissions and the evidence therefore, I have to decide whether the works were complete on 28 January 2006 so as to entitle PPI to apply, pursuant to condition 11.1 of the REDAS Conditions for a Handing Over Certificate. It is noteworthy that under condition 11.1.1.1, one of the requirements that the contractor must meet before making such application is that he must consider that the whole of the works are suitable for beneficial use and occupation. It is also significant that the MOA was expressly stated to be in respect of a Design and Build Contract. Under this contract, the obligation of PPI was to design and build a home for the plaintiff and his family that was complete in practically every respect. PPI was not simply a builder carrying out instructions from an architect. It was responsible for the whole concept of the home. In its brochure, PPI stated that its "design and build methodology provides total and complete control over your home project from concept to blueprints to construction and final occupancy …. PPI is a true design and build organisation that has an integrated approach to design and construction, from beginning to end, bringing value and quality

to each project." In its brochure, PPI further boasted: "We build optimally functioning homes which truly reflect your preferred style and needs."

52 Thus, what PPI was promising to provide to the plaintiff was not simply the shell of a house but a complete and functioning home. As part of the contractual documents signed on 7 December 2004, PPI provided the plaintiff with a schedule of the specifications of the proposed home and also the costing of the same. This document was entitled "4.0 Development Cost: Revision 3". Among the items listed were the ID works and also "VI. LANDSCAPE WORK – Elegant Landscape Planting". Accordingly from the outset, the landscape works were intended to be part and parcel of the home being designed and built by PPI for the plaintiff. Completion of the works must, thus, have included not only completion of the structure of the house and the internal ID works but also completion of the landscape works. That PPI recognised this can be seen from Ms Lee's testimony that in early January 2006, she was concerned whether the landscape works could be finished in time for the scheduled handover on 28 January 2006. In my opinion, therefore, unless it was the plaintiff's fault that the landscaping was not ready on 28 January 2006 or the plaintiff had agreed to waive the requirement that the landscape works be finished at the time of handover, PPI was not entitled to apply for a Handover Certificate on that date.

53 Why were the landscape works not completed by 28 January 2006? It is PPI that has the onus of showing that the non completion was either the plaintiff's fault or agreed to by him. This is because PPI has accepted that 28 January 2006 was the reasonable date by which it should have completed the works. In my judgment, PPI has not discharged this onus. First, although the plaintiff had confirmed the selection of plants in November 2005, landscaping works had not started by the beginning of 2006. The landscaping contractor only appears to have discovered the necessity for changes in the plans due to the site constraints when she visited the site in early January 2006. It was PPI's responsibility to liaise with the landscaping contractor to ensure that all plans put up by the latter were suitable in view of the site constraints. Obviously, it did not do that early enough as otherwise the proposed changes would have been brought to the plaintiff's attention much earlier and could also have been implemented earlier so that the works could have been finished by the targeted date. The correspondence tendered by the plaintiff showed the changes that had to be carried out because of site constraints. PPI has contended that the plaintiff himself wanted many changes to be made in the selection of the plants and this delayed matters. PPI has not proved this allegation however. It did not call evidence to show how the changes the plaintiff wanted, if any, were responsible for more delays than the changes necessitated by the site constraints. As far as the plaintiff was concerned, he was presented with a *fait accompli* in early January 2006 and therefore had little option but to agree to the landscape contractor's proposal to commence work after Chinese New Year. That agreement did not mean that he also agreed that the house could be handed over on 28 January 2006 in its incomplete state. As far as the rainwater harvesting system was concerned, the fact that all the internal pipe-work had been laid did not mean that the system was finished. This system was an integral part of the landscaping works and the house and had to be completed in order for handover to take place. PPI has given no reason why this system was still unfinished on 28 January 2006.

54 The next question that I have to consider is whether the various matters which Mrs Yap brought to PPI's attention on 9 February 2006 were substantial enough to render the house incomplete or whether they were minor matters that could be rectified after handover. I will take these in turn:

a. Missing drawers: in evidence, the plaintiff confirmed that only one drawer was missing. In my view this was a minor matter.

b. Coffee maker machine: the plaintiff complained that this machine had not been installed. In court however, he agreed that this item had no impact on the delay.

c. Patches of paint and cracks in the plaster: the complaint was that the paint work was not completed in most areas, that there were many patches of paint and many cracks in the plaster work. In court, the plaintiff agreed that the repair of cracks constituted rectification work that could be carried out after completion.

d. Taps in toilet: the complaint here was that the taps were situated too far away from the edge of the basin and this affected the proper use of the taps. Whilst the plaintiff agreed in court that he could still wash his hands in these wash basins, he asserted that contortions were required to prevent water from spilling out of the basins and causing a mess. I agree that this is a matter that had to be sorted out before handover as functional wash basins are a necessity for a home.

e. Vanity top in the bathroom of the master bedroom: the complaint here was that the vanity top had been placed at the wrong level and since rectifying it would mean the removal of the whole top, the plaintiff would not have been able to use his bathroom while the rectification work was going on. I agree that this is a matter that had to be sorted out before handover.

f. Brown stains on toilet bowls: the plaintiff complained of staining in the toilet bowls. I accept PPI's submission that this was a maintenance issue to be dealt with during the defects' maintenance period and did not affect the plaintiff's ability to move into the property.

g. Handles on kitchen drawers and cupboard doors: the plaintiff complained that the kitchen drawers and cupboard doors did not have handles and therefore he could not use them. The handles apparently arrived only on 6 March 2006. PPI submitted that the absence of the handles constituted defects that could be rectified during the maintenance period and did not affect the plaintiff's ability to move in. I disagree. PPI had undertaken to provide a home for the use of the plaintiff and his family and such use would have been severely limited by the difficulties the plaintiff and his family would have encountered in trying to open and use drawers and cupboards in the kitchen.

h. Protruding pipe: the plaintiff complained that there was a protruding pipe in the dining room. I accept PPI's submission that boxing up this pipe would be rectification work to be carried out during the maintenance period especially as the plaintiff confirmed in court that this item did not affect his ability to move in.

55 Looking at the above list, although many of the complaints that the plaintiff had made related to building defects that PPI was entitled to rectify during the defects liability period, there were also inadequacies and defects (as identified above) which affected the state of completion of the works. For this reason and for the reason the landscaping work was not ready on 28 January 2006, I hold that PPI was not entitled to apply for a Handover Certificate on that date. On 28 January 2006, the main contract works were not complete and since the handover only took place on 15 March 2006, PPI is liable for delay for the period between 29 January 2006 and 15 March 2006. I will deal with the issue of damages later.

Shortfall in the sizes of the bedrooms

56 Apart from the master bedroom, the specifications provided for five other bedrooms to be built in the house. In the course of pre-contractual discussions with the second defendant, the plaintiff informed the second defendant's employee that the bedrooms should be between 18m² and 19m² in

size. This was in August 2004. When the construction of the house was completed, the plaintiff realised that four of the bedrooms were too small. As survey of these bedrooms revealed that the area of guest room 1 on the ground floor was 14.1m², the area of bedroom 3 on the second storey was 16.8m², the area of bedroom 4 on the third storey was 12.4 m², and the area of bedroom 5 on the third storey was 15.1m². Only bedroom 6 on the third storey, which had an area of 18m², met the plaintiff's requirements.

57 The plaintiff alleged that the shortfall in the sizes of four bedrooms was a breach of contract. He noted that on 13 August 2004, the second defendant's employee, Ashley Wong, had sent him an email to confirm the revised layout plans and sizes of the rooms as being at least between 18m² and 19m². The plaintiff said that, subsequently, he did not give any further instructions on the room sizes to either PPI or the second defendant.

58 The plaintiff did not accept PPI's position that the rooms had been constructed according to the building plans annexed to the MOA ("the final plans") and therefore he had no basis on which to make a complaint. In court the plaintiff had said that the second defendant did not explain the final plans to him at the time they were signed. The second defendant had asked him to sign the final plans without explaining any details. All that the second defendant said was that the final plans were necessary for submission to the relevant authorities. Secondly, the plaintiff submitted, if one were to look at the final plans (in particular the floor plans) one would notice that the areas of the rooms were not stated on the same. No lay person reading the final plans would understand or know the exact areas of the bedrooms. This was in contrast with the revised layout plans dated 13 August 2004 which had been sent to the plaintiff together with Ashley Wong's email. In the layout plans, the size of each room was clearly indicated on the relevant drawing.

59 The plaintiff pointed out that in cross examination the second defendant had admitted that he had not explained to the plaintiff the change in the size of the bedrooms on the final plans. The second defendant had tried to justify the final plans by saying that sometime towards the end of September or the beginning of October 2004, he had prepared a final draft that was quite close to the final plans and that he had shown this draft to the plaintiff. The submission was that this was not true as the draft mentioned by the second defendant was not produced in court. The plaintiff argued that if there was any truth in the second defendant's evidence he would surely have produced the draft plans to show the change in the plaintiff's instructions.

60 The plaintiff also noted that during cross examination, the second defendant had mentioned that there had been many changes in the plans in order to accommodate requests made by the plaintiff and his wife. The second defendant was asked whether when his office acceded to these requests it had informed the plaintiff that to do so might result in a reduction in the sizes of the bedrooms. The second defendant had to concede that probably this aspect was not mentioned to the plaintiff.

61 The stand taken by PPI in response to this claim was both legal and factual. First, it asserted that there was no term in the MOA at all that required the bedrooms to be between 18m² and 19m² in area. The e-mail sent out on 13 August 2004 was evidence only of pre-contractual negotiations and did not form part of the agreement between the plaintiff and PPI since the terms of such agreement were contained in the MOA. As such, PPI argued that the e-mail was inadmissible in evidence pursuant to s 93 of the Evidence Act (Cap 97, 1997 Rev Ed) which states:

> When the terms of a contract or of a grant or of any other disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in

proof of the terms of such contract, grant or other disposition of property or such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.

62 PPI submitted that its overriding contractual obligation under the MOA was to construct the house in accordance with the "Agreed Design and Specifications" and plans that had been signed and approved by the plaintiff and which plans were attached to, and formed part of, the MOA. The various rooms and areas in the building, in particular, had to comply with the total "Built-In Area" specified for each of the floors, as stipulated in section "3.0 AREA CALCULATION" of the MOA. PPI asserted that it had complied with both those obligations. It further pointed out that the plaintiff did not dispute that the bedrooms in the house had been constructed according to the plans annexed to the MOA.

63 Looking at the MOA, Article 3(d) states that:

d) CONSTRUCTION WORK

The Construction of Project is based on the Agreed Design and Specifications, and using competent labor and methods to achieve the completion of work, within the agreed time frame.

There is no document attached to the MOA which is entitled "Agreed Design and Specifications". Instead, the documents attached are described as being: "1.0 Architectural & ME Layout Plan", "2.0 Articles of Agreement" (this in fact refers to what parties call the MOU), "3.0 Area Calculation", "4.0 Development Cost", "5.0 Schedule of Payments" and "6.0 Electrical Work". General specifications of the house to be constructed are contained in item 4, "Development Cost", but there are no details there and no indication of the design. The design is only indicated in the plans attached under item 1 "Architectural and M&E Layout Plan". These plans include the layout of the first, second and third storeys of the proposed house. None of these plans indicate expressly what the area of the various rooms in the various storeys of the house is. In order to find out the area of each room, a person studying the plans would have to look at the scale stated on them and then take measurements of the drawings and make the necessary calculations based on this scale. The document entitled "Area Calculation" to which PPI referred is attached as item 3 of the MOA and although this does give an indication of the built-up areas of each floor of the house, it does not give a breakdown of the area of each room. For example, in relation to the third storey where the three of the bedrooms in question are located, the document simply states:

3RD STOREY

* Bedroom 4	)	
* Bath 4	)	
* Bedrooms 5 & 6	)	
* Bath 5	)	1,030 ft 2
* Play Area / Library	)	

* Stairway & Corridor)

* Apron Ledges 70 ft 2

64 The parties conducted discussions and negotiations regarding the design of the house and the cost of the project over several months. It was in the course of these discussions and negotiations that the plaintiff indicated to PPI and the second defendant what his requirements for the house were. The plaintiff relied on the defendants to translate his requirements into the plans and specifications. The defendants not only drew up the plans but they also drafted the MOU and all the attachments to that document. The defendants therefore were in a position to set out an elaborate account of the design and the specifications which would be accepted by both parties as a total account of what was to be provided by PPI under the MOU. The MOU and the documents attached to it did not, however, set out every detail of the design and the specifications. Only some of the main specifications were given. There was no document that expressly stated the areas of the bedrooms. In these circumstances, I do not think that PPI can invoke s 93 of the Evidence Act in order to keep the email of 13 August 2004 out of the evidence since the written contract documents were incomplete. In any event, as the contract did not contain any document entitled "Agreed Design and Specifications", PPI, the drafter of the contract, cannot now say that its obligations were restricted to fulfilling the design and specifications set out in that document.

65 I am also not impressed by the argument that the plaintiff, having known about the changes to the third storey layout made between mid August 2004 and early December 2004 (an extra room was added and the play area was renamed the library) did not object to such changes and should have known that implementing them meant a reduction in the size of the bedrooms. It was argued that it would have been reasonably obvious to any reasonable reader juxtaposing the two plans (ie the August 2004 plan sent with the email and the plan of the third storey attached to the MOU) that with the addition of an extra room on the third storey, the size of the bedrooms would have to be reduced.

66 I do not accept that argument because the plaintiff was a layman who did not know how to read plans. Whilst the second defendant stated in court that he always taught his clients how to read drawings, he did not assert that he had so educated the plaintiff. Further as the plaintiff asked rhetorically, why would he have needed to take the trouble to educate the plaintiff on how to hold the scale and read dimensions when a simple explanation of the room sizes and plans would have been sufficient to give the necessary information to the plaintiff and discharge PPI's duty in relation to the plaintiff's instructions. It was clear from the plaintiff's evidence that when he undertook the reconstruction of the house on the property, this was the first time he had been involved in a building project and therefore he relied heavily on the expertise and advice of the second defendant. The second defendant knew too that this was the plaintiff's first building project and that he needed advice on how it was to be carried out. That was one of the reasons that the design and build concept put forward by the second defendant in his initial discussion with the plaintiff was so attractive to the plaintiff: he would have only one entity to deal with and that entity would take care of liaising and managing all professionals and other parties involved in the construction. Having clearly indicated his requirements to the second defendant, the plaintiff left it to the second defendant and PPI to incorporate those requirements in the design. They should not have assumed that the plaintiff realised that the addition of the extra room would mean a reduction in the size of the bedrooms. PPI and the second defendant were the designers and planners and the plaintiff naturally had confidence in them not to make any suggestions or changes that would adversely affect his basic requirements or, at the least, if they were going to do this, that they would advise him on the impact of the changes and make quite sure that he understood the same so as to get his consent to them. The second defendant admitted in court that he had not explained the changes in the room sizes to the

plaintiff.

67 I have therefore concluded that PPI was in breach of contract when it provided bedrooms that had an area of less than 18 m². I will deal with the issue of the damages for this breach later.

Defects

68 It is not in dispute that there were defects in the finished house. What is in dispute is whether all the defects that the plaintiff complained of are in fact defects (ie the extent of the defects), how much it would cost to rectify those defects and whether PPI is discharged from liability for those defects because the plaintiff was in breach of contract in that he refused unreasonably to allow PPI to remedy the defects.

Analysis of the defects

69 The plaintiff adduced evidence from Francis Teo Teng Siu, the sole proprietor of Francis Teo & Associates, a registered firm of chartered quantity surveyors. Mr Teo was instructed by the plaintiff to provide expert testimony regarding the cost of rectifying the defects in the house. Mr Teo invited three contractors to give quotations for the rectification works and the lowest quotation received was in the sum of $109,000 submitted by a company called Blendwell Builder and Interior Pte Ltd ("Blendwell"). Mr Teo considered that based on the material and facts provided by the plaintiff and his own visual inspection at the site, the quotation of $109,000 for the rectification works was competitive and fair. Mr Teo stated in his report that the defects complained of by the plaintiff and in respect of which the quotations were asked for were those set out in a document drawn up by him entitled "Schedule of Rectification Works" ("the Schedule"). The Schedule was based on the "Architect's Assessment" issued by the second defendant in August 2006 as modified in accordance with new complaints made by the plaintiff and the latter's agreement to the deletion of certain items from the Architect's Assessment. The Schedule was compiled between 25 October 2006 and 20 November 2006.

70 PPI submitted that there were problems in the evidence given by Mr Teo. First, it was argued, it had to be borne in mind that he is primarily a quantity surveyor and that he has no qualifications as a building surveyor. He had also confirmed in court that he received no formal training in the field of building survey although he did claim that he had the experience to comment on the quality of design and construction works. In my view, the lack of formal qualifications in building survey would not necessarily prevent Mr Teo, as someone with training in assessing rates and quantities for construction work, from giving evidence on the defects as long as he had had sufficient relevant experience to support what he said. The second criticism was more substantial. This was that Mr Teo had failed to conduct any proper quality assessment of the various alleged defects and had conceded at the trial that he had not been able to go into the quality issues because he was not given enough documents to do so and, further, had not been instructed to do so. Mr Teo said that in compiling his "Schedule of Rectification Works", the only criterion he observed was to look for obvious defects on the site. I accept this as a valid criticism of Mr Teo's report. Since he did not do any analysis of the validity of the complaints, I consider that the report of Roger Goshawk, the defendants' expert to which I will refer below, is preferable in this regard.

71 PPI submitted that another major flaw of the Schedule was that it did not specify the method which the contractor should adopt to rectify the defects found. Mr Teo explained that he omitted the method of rectification because he considered that it was the contractor's job to choose the appropriate method of rectification since different contractors had different methods. Mr Goshawk's opinion was that because no method of rectification was specified, the quotations obtained by Mr Teo

were flawed. He explained that if you do not specify the works that have to be done when asking for quotations, the contractor will allow for significant work that is not necessary. In order to get a proper quotation you have to tell the contractor exactly how the work is to be done. PPI submitted that as a result of Mr Teo's omission to specify the method, the quotations that he received were inflated. I think that there is substance in this submission and I accept Mr Goshawk's evidence that because of the omission to tell the contractors exactly how to do the work, in pricing their works they may have included estimates for extra work that were not necessary. This means that the ultimate figures quoted could have been inflated.

72 Further, the plaintiff was present each time Mr Teo showed the contractors the site and he explained to each of them his complaints about PPI's work. Mr Teo candidly admitted that the reason for the plaintiff's presence was that if each individual contractor was given a chance to talk to the plaintiff "he will know how to price it and he will know what kind of client he is dealing with". Mr Teo thought that that way the plaintiff would get a better price than if all the contractors were shown around together as it prevented the contractors from being influenced by each other's questions. However, it cannot be denied that the presence of the plaintiff would have reduced the objectivity of the exercise and that the contractors in drawing up their quotations would have been influenced by the plaintiff's subjective requirements rather than only by the objective work that was needed.

73 I agree with the submission that another drawback of the quotations obtained by Mr Teo was that the three contractors he invited for the site show rounds had used lump sum figures for each of the category of work and did not give breakdowns. For example, for the category "painting and plastering work", the first contractor gave a lump sum figure of $20,000, the second contractor quoted $23,000 and the third contractor quoted $24,000. Mr Teo testified that contractors always price painting rectification works on a lump sum basis because the colour of the paint would be different if only a small area was touched up in view of the fact that the original paint colour would have changed after application. So, he said, normally, the contractor would do all the touching up necessary and then price it as painting for the whole house. A similar problem related to the "as-built quantities" given to the three contractors in relation to the finishes that needed to be replaced. This did not state the dimensions of the relevant parts of the areas where finishes needed to be replaced but had set out the total as-built areas. Mr Goshawk thought that because of this, the contractors would take it that the total as-built areas would require rectification and therefore it appeared to him that in their quotations the contractors had allowed for replacing all the finishes inside the house instead of simply replacing the smaller areas where the finishes were defective.

74 All in all, I agree that there are difficulties with Mr Teo's Schedule and the quotations that were given to him in relation to the same. It is not possible to accept the figures quoted, even the lowest one, as fairly reflecting the cost of carrying out the requisite rectification works.

75 PPI appointed Mr Roger Goshawk of RG Building Surveyors Pte Ltd to carry out an inspection and prepare a report on alleged building defects in the house. He qualified as a building surveyor in 1992, and has worked in the construction industry in Singapore since June 2000. He was asked to, *inter alia*, carry out a detailed visual survey of the subject areas, make an independent assessment of the alleged defects, advise on the remedial works required to rectify the alleged defects and provide budget cost estimates for rectifying any defects found. Mr Goshawk inspected the house on 26 February 2007 and 3 March 2007. Thereafter, he prepared a table of the complaints and gave his comments and suggestions as to whether and if so what remedial works had to be effected in respect of these complaints. He then gave an estimate of the cost of the remedial works that he found necessary. His calculation was that in total, the remedial works would not cost more than $16,815 (excluding GST). He noted that this costing was for budget purposes only and actual rates would have to be confirmed by obtaining competitive quotations from contractors. This was a difficulty with

Mr Goshawk's assessment, as the plaintiff pointed out.

76 Moving away from the figures for the moment and dealing with the actual defects, it appears to me from a perusal of Mr Goshawk's assessment of the plaintiff's claims that the main difference between the parties is whether certain defective work required rectification. Mr Goshawk did not disagree with many of the complaints that the plaintiff had made as to the condition of the works. His view was, however, that these defects were too minor to require rectification. The issue therefore may be one of degree and of whether the plaintiff is being reasonable in asking for these items to be remedied.

77 In the plaintiff's submissions, he dealt with the major items in dispute rather than belabouring each and every item. The purpose of this was to show that Mr Goshawk's estimated cost of rectification was not a fair and reasonable figure. Taking the items as they appear in Mr Goshawk's assessment, I will set out the plaintiff's submissions, the defendant's response and my decision.

Item 1.3 Rough and Uneven Plaster

78 This item dealt with the plaintiff's complaints that there were areas of rough and uneven plaster at the front boundary wall, the master bedroom wall, the walk-in wardrobe and bedroom 4 wall. Mr Goshawk was unable to locate any unevenness at the front boundary wall but he recommended that the uneven areas in the master bedroom wall and bedroom 4 wall be filled and the entire section of the wall be repainted. In respect of the walk-in wardrobe however, Mr Goshawk noted "very minor uneven plaster … above the skirting" and said that no remedial works were required. Mr Goshawk did not, however, give the dimensions of the defective area so as to enable an assessment of what he meant by "very minor".

79 The plaintiff argued that the point here was that unevenness was noted to be present and that any unevenness must be corrected. The defendant pointed out that Mr Goshawk's opinion had been that such minor unevenness was acceptable by local standards. Mr Goshawk did not, however, explain whose local standards he was referring to. He did not say that in his experience individual homeowners found such defects acceptable. Whilst I accept that certain defects may be so small as to be *de minimis* and so as to render it unreasonable to require rectification, in this case since the dimensions of the defective area were not given and this defect was of a kind that appeared in other areas of the house and those are the areas were going to be rectified, it was not unreasonable for the plaintiff to require rectification of the uneven plaster above the skirting of the walk-in wardrobe. I should also state that generally, in my judgment, defects have to be rectified and the onus is on the builder to show that it would be unreasonable to require them to carry out such work. The onus is not on the employer to show he is being reasonable in asking for rectification.

Item 1.5 Hollow Plaster

80 Mr Goshawk detected small areas of hollow plaster in one wall of guest room 1 and in one wall of the dining room. He stated that the hollow areas found were very small (may be 100 millimetres by 100 millimetres) and were therefore considered to be stable and not to warrant any repair. Generally, hollowness above 300 by 300 millimetres would be repaired. He was unable to detect any hollow plaster in the wall of the dry kitchen although the plaintiff had complained of this defect. The plaintiff put the point that since hollowness was found in two areas, those areas had to be rectified. In this regard, I would defer to Mr Goshawk's opinion as a building expert. Such hollowness is not something that is visually detectable and since Mr Goshawk gave his professional view that the relevant areas of plaster were stable and did not need rectification, I accept that no work needs to be done in this connection.

Item 2.2 Hollow Sounding Marble and Granite

81 Mr Goshawk observed localised hollowness in the narrow strip of polished tiles located between the marble and the granite tiles of the living room floor, the tiles were narrow and were laterally restrained on both side by larger fully bonded tiles. He considered that these tiles were stable and highly unlikely to detach or cause any future maintenance liability. He also observed that the corner of one wall tile located below the window in the master bathroom was hollow. He found that less than 50% of the tile was hollow and it was therefore unlikely to detach or cause any future maintenance liability. The plaintiff's argument again was that that since hollowness had been observed, the work was defective and had to be corrected. Again I accept Mr Goshawk's expert opinion that it is highly unlikely that these tiles will detach in the future and agree therefore that no rectification work is required.

Item 2.3 Marble Colour Variation

82 One of the plaintiff's major complaints was in relation to the colouring of the dining room floor and the floor of the master bedroom walk-in wardrobe. He complained that these floors were ugly because the colouring of the marble tiles laid varied too greatly from one tile to another. Mr Goshawk noted that there was colour variation in the marble floor tiles in both rooms. His view was that no remedial works were required and he gave the following reasons for this view:

(a) in the contract documents a footnote had stated that natural stones such as marble would show "variances in colour tones and shades". Therefore, Mr Goshawk opined that the plaintiff was made aware at the time of signing the contract that colour variation would be present in the tiles;

(b) the plaintiff had failed to advise the designer of his need for the floors to be of even colour tonality. If he had done so, then provision could have been made for the marble tiles to be dried laid in the factory to enable the plaintiff to select the stone and then dry laid again on site to make minor adjustments to the layout prior to installation;

(c) the provisional cost supply rate for the marble indicated in the contract was $7.50 per square foot. This was an economical price for the supply of marble and would not have allowed for dry laying; and

(d) the acceptability of colour variation is subjective and each client's tolerance would be different. The presence of natural tonal variations does not necessarily mean that the marble floor is defective.

83 The document "Good Industry Practices – Marble & Granite Finishes" is part of the Building and Construction Authority's Construction Quality Assessment System ("CONQUAS 21") and, according to the Building and Construction Authority ("BCA"), CONQUAS 21 has been widely adopted as the *de facto* yardstick for measuring the quality of building projects. In the document on Marble and Granite Finishes, it is stated that as far as stone tiles are concerned, a consistent tonality, meaning that "pattern and shade are well blended" is to be aimed for and that inconsistent tonality would not meet the necessary standards. It is clear from the evidence that inconsistent tonality was found in the dining room and the walk-in wardrobe floors. I do not accept Mr Goshawk's reasons for recommending that no remedial work is required. Whilst the plaintiff's attention might have been drawn to the fact that the colouring of natural material is not consistent, he would have expected PPI to ensure that the tonality was as even as possible. It was not for the plaintiff to tell PPI that he required a consistent tonality – as the contractor building the house, it was for PPI to make sure that the

plaintiff realised what the differences in tonality could be and to advise him on the cost of having more evenly coloured flooring. As the plaintiff submitted, it was the responsibility of PPI to ensure even tonality when it laid the tiles in accordance with good industry practice instead of shifting the burden to the plaintiff to advise them of this requirement. If PPI could not meet good industry standards with the rate of $7.50 per square foot, then it should have quoted the plaintiff a higher rate or obtained his consent that industry standards would not be met since he was only willing to pay the lower rate. In my judgment, PPI must rectify the flooring.

Item 2.6 Chipped Corner – Marble & Granite

84 The plaintiff complained about chipped tiles on the dining room floor. In Mr Goshawk's report, he said that he could not locate the alleged marble chip and that the chips on the granite tiles were very minor and hardly noticeable. In court, he was shown a photograph of the chipped marble tile and he then took issue with it stating that the photograph had been taken "at macro mode", he estimated about six inches away from the tile. He explained that the photograph should have been taken from 1.5 metres above the floor as set out in CONQUAS 21. If one goes into macro mode on one's camera or goes close to the floor, one could find many blemishes. As Mr Goshawk stated, the same document on Marble & Granite Finishes does provide that from a distance of 1.5 metres, there should be no visible chips, cracks and other damages. Thus, insofar as the chipped marble tile could not be seen on Mr Goshawk's inspection made from this distance, I accept that it was too minor a defect to be rectified. However, insofar as he could see chips in the granite tiles from that distance, those defects must be rectified and the tiles replaced.

Item 2.7 Slanted Plaster Wall and Marble Tiles

85 In relation to the master bedroom walk-in wardrobe area, Mr Goshawk found that the wall and tile joints were noted to be out of alignment by 12mm over a 2550mm length. This was hardly noticeable and was not considered by him to be of any visible significance. He found that the wall to the right of the wall to the master bathroom was 5mm out of alignment with the tile joints over a 600mm length. Again this was hardly noticeable. In Mr Goshawk's view, the misalignment was minor and did not warrant any repairs. The plaintiff made no particular submissions on this point and I infer that he brought it up simply to show that the defect was acknowledged by Mr Goshawk. Since the plaintiff did not challenge the assertion that the misalignment was hardly noticeable, I find that it would not be reasonable to require it to be rectified.

Item 3.1 Hollowness

86 The plaintiff complained of hollowness in various areas. Mr Goshawk tap tested the areas and found hollow wall tiles in the guest bathroom and in bathroom 4. He recommended that these tiles be hacked off and replaced. As regards the floor of the guest bathroom, he found only isolated hollowness and the hollowness extended to a maximum of 20% of each tile surface which contrasted with the situation in the wall where entire tiles were found to be hollow. He considered that the hollowness in the floor tiles was very minor and would not affect the use of the floor. Therefore, he considered that no remedial work was required. He was not able to detect the alleged hollowness in the floors of the dry kitchen, of bathroom 3, of bathroom 4, of the wet kitchen and of bathroom 5. Similarly, no hollowness could be detected in the skirting tiles in the laundry area. As regards the hollowness complained of at the slide and hide door panel wall area in bathroom 3, Mr Goshawk found that the tiled plaster board side of the wall emitted a hollow sound when tapped. He considered this was to be expected and not a defect because the plaster board panel was not solid masonry construction. He had similar comments on hollow sounds found in the wall of bathroom 5 and in the wall of the maid's bathroom. In all these cases, the areas concerned were tiled plaster board and not

solid masonry. I accept Mr Goshawk's evidence on these points and agree that no remedial work is required for the areas of very minor hollowness and where plaster boards were used.

Item 3.3 Chipped Tiles

87 Mr Goshawk observed that there were small chips on the tiles of the wall in the maid's bathroom at approximately 1.8m above floor level. The chips were noticeably aligned along a horizontal tile joint.

88 The evidence was that originally the wall tiles had been installed to a height of three quarters of the bathroom wall, the remaining area of the wall being painted plaster. The joint between the tiling and the wall plaster had been covered with a timber moulding and when this moulding was removed, the chips in the tiles became visible. The chips had been caused by the affixing of the moulding. Mr Goshawk considered that no remedial works were necessary because he had been informed by PPI that the chips resulted from the plaintiff's instructions to remove the timber moulding. The plaintiff's position was that the timber moulding itself had been damaged and chipped. PPI had attempted to rectify the damaged timber PPI but the damage was still visible. Hence, the plaintiff had instructed PPI to remove the timber skirting and cover the whole wall with tiles. He therefore contended that had it not been for the poor workmanship of the timber moulding, it would not have been necessary to remove it and reveal the chipping in the tiles. PPI therefore had the responsibility of rectifying the tiles.

89 PPI contended that the plaintiff had asked for the timber moulding to be removed because he did not like the look of it. PPI accepted that the moulding had been damaged but asserted that this damage could have been repaired at a small cost by taking down the timber strip, replacing the chipped portion and then reinstalling the timber skirting. This submission was based on evidence given by Ms Lee. She disagreed with the suggestion that the plaintiff had had no choice but to request SEB to retile the walls to their full height. On further cross-examination, however, Ms Lee had to agree that SEB had tried to rectify the damage to the timber skirting by applying some putty and that she was not in a position to dispute that the plaintiff had been willing to accept the rectification work if it was properly done.

90 It should be noted, however, that although only the timber moulding in the maid's bathroom was damaged, the plaintiff had requested that the wall tiles be extended right to the ceiling for all bathrooms apart from the master bathroom and bathroom 5. It would seem therefore that the minor damage to the timber moulding was not the main reason why it was removed. The main reason was an aesthetic one on the part of the plaintiff. That being the case, I find that PPI should not be made responsible for replacing the chipped tiles in the maid's bathroom.

Item 6.1 Floor and Skirting – Hollow Sound

91 The plaintiff had complained of hollowness in the floor and skirting of the master bedroom, bedrooms 3, 4, 5 and 6, the family hall and the library. Mr Goshawk tested these areas and did not find hollowness of any significance in any of the floors. In some areas, the skirting was noted to emit a hollow sound when tapped. This, however, he considered was to be expected. He said there was no evidence that the skirting boards were loose or detaching from the walls and no gaps were visible between the skirting boards and the wall. In Mr Goshawk's opinion, no remedial works were required.

92 The plaintiff submitted that Mr Goshawk was biased in not recommending remedial work. The fact of the matter was that he had found hollowness in each of the rooms. His reason for not recommending remedial work was that the hollowness was not significant. In the plaintiff's view, however, the fact was that hollowness existed and PPI therefore had to remedy the defects. PPI's

response was that the law recognised the *de minimis* principle and therefore it was not obliged to remedy defects that were not significant. In this respect, I accept Mr Goshawk's opinion and since the hollowness is neither significant nor visible, I agree that it need not be remedied.

Item 13.2 Bamboo Screen

93 The plaintiff had complained that the bamboo screens installed in the master bathroom were not of full height but only partially covered the openings. Mr Goshawk's evidence substantiated this complaint. He noted that extension pieces had been installed at the base of the openings to cover the gaps but that the contract drawings had indicated that the screen should have been installed to full height within the opening. He therefore recommended that full height screens be provided. In his Architect's Assessment, the second defendant had stated that full height screens were not available in the market. Mr Goshawk had given an estimated cost of $800 per screen but he had to admit in court that there was no basis for this estimate. This defect was established and must be remedied.

Item 14.2 Neighbour's Incoming Cable Access

94 This is not really an issue of a defect but a question of the best way to deal with a particular site problem. In his affidavit of evidence-in-chief, the plaintiff stated that hidden on the staircase landing was an access power cable which belonged to the neighbouring property. The original semi-detached house on the property had shared this access cable with the adjoining house and this was discovered after the project began. According to the plaintiff, the second defendant informed him that this cable could not be removed unless the neighbours rebuilt their house. He therefore agreed that an opening in the wall behind the staircase should be provided so that access could be obtained to the cable. A wooden board covers the access hole. When the plaintiff complained that this was very unsightly, Ms Lee suggested using carved wooden panels to cover the hole. The plaintiff subsequently discovered from an electrician that the cable could be removed but doing so would mean incurring a cost of $2,500. The plaintiff was shocked by this revelation as it meant the second defendant had given him the wrong advice.

95 The second defendant disagreed that PPI had failed to give the plaintiff the correct advice. His evidence was that PPI had given the plaintiff two options: to remove the cable access or to retain it. The plaintiff had chosen the second option because he did not want to incur additional costs. On cross-examination, however, it turned out that the second defendant himself had not spoken to the plaintiff to convey the two options and that he understood from Ms Lee that she had done so. In the event, no evidence was elicited from Ms Lee on this issue and therefore the plaintiff's assertion that the only advice that he was given was that he had no choice but to retain the access cable has not been rebutted. I therefore accept the plaintiff's case on this issue and find that since PPI did not give the plaintiff the opportunity to choose what to do, it shall bear the cost of removing the access cable and bricking up the hole in the staircase wall.

Item 18(e) Aluminium Cladding

96 The design of the house incorporated an open frontage at the staircase covered by an aluminium cladding containing ventilation openings. The plaintiff's complaint was that this cladding allowed rainwater to enter the house and wet the staircase and the hall. He was concerned about water damage and also the danger that slippery surfaces would present to persons using the staircase, especially his young children. The plaintiff complained that this was a very bad design by the second defendant.

97 Mr Goshawk's opinion was that no remedial works were required because this arrangement was

part of the original design of the house and was documented in the contract drawings. He also understood that a roller blind had been installed to prevent water penetrating onto the staircase landings.

98 PPI did not agree that this was an issue of bad design. It noted that Mr Goshawk had stated that the aluminium cladding was not designed to be watertight as it contained ventilation openings. Further, the plaintiff had requested that the house be well ventilated and he agreed that the aluminium cladding with ventilation openings satisfied his ventilation requirements. Mr Goshawk did not think that the design was bad or poor because he believed that it had been designed as a semi-open staircase with the screen having gaps so as to allow air to travel through and also for it to be aesthetically pleasing in appearance. His opinion was that the design was bold rather than bad. In any case, the addition of the roller blind had rectified the problem of water entry. The second defendant explained that the house was essentially a "tropical building design" and it was part of the architectural features to have "a more porous rather than solid enclosure". He asserted that the plaintiff was fully aware that the house would be a tropical house with "porosity".

99 PPI further submitted that the plaintiff had not led any expert evidence to show that the architect or designers of PPI had breached the standard of the ordinary skilled man exercising and professing to have the special skill of architecture by designing a semi-open staircase screened by an aluminium cladding fitted with ventilation openings. Further, even if such a design was defective, the problem had been rectified with the installation of blinds. Blendwell, the contractor that had provided the lowest quote to Mr Teo, had quoted the sum of $10,000 to "rectify aluminium cladding" but it had not specified how and what kind of rectification works would be carried out. As such, there was uncertainty as to whether Blendwell intended to replace the aluminium cladding with something else quite different and if so what that proposed new design would be and whether it would provide the amount of ventilation that the plaintiff required.

100 There is no doubt from the evidence that the design of the aluminium cladding permitted water ingress onto the staircase. PPI tried to convince me that this was an acceptable consequence of providing a well ventilated tropical house. The second defendant maintained that he had told Mr and Mrs Yap on more than one occasion that there could be some infiltration of water into the staircase and he vividly remembered them saying that was all right. The second defendant conceded that at that time they had probably not understood the intensity of the rainwater entering the house. Whilst asserting that during most of the year not much water entered – only drips, the second defendant admitted that when there is very heavy monsoon rain, because of the windshield effect, more water would be forced through the aluminium cladding and there would be puddles of water on the staircase floor. He also admitted that he had not expected that result.

101 This is a difficult issue but on balance, I consider that the design of the staircase was inadequate. PPI gave insufficient weight to the fact that the staircase itself was made of wood and could be damaged by water ingress and also that it was in a home that was going to be used by people of all ages including young children and water puddles on the staircase could well present a danger to them. Further, the second defendant failed to give enough consideration to the strength of the rain and wind forces that are experienced in Singapore. The plaintiff has not put forward any particular plan for rectification of the aluminium cladding. It was Mr Goshawk's opinion that the presence of the roller blind had solved the problem and the plaintiff did not bring any evidence to contest that. I therefore find that although the aluminium cladding was a bad design for a home and particularly as a barrier between a staircase and the outside, since the roller blind now prevents water ingress, the problem has been solved and nothing further needs to be done.

Conclusion on defects

102 I have found that there are some areas where Mr Goshawk's views cannot be accepted. This is particularly in relation to his opinion that areas of flooring where the colour tonality varies do not need rectification. In my view, the tonality of all flooring must be consistent whether the flooring comprises granite tiles, marble tiles or wood. Apart from this and from the other items that I have specifically mentioned above and ones that are of a similar nature, I consider that Mr Goshawk gave a fair and balanced report and that the rectification works to be done should be in accordance with his recommendations. However, his costing is inadequate especially since he did not get competitive quotations. On the other hand, the quotations obtained by Mr Teo are open to criticism as noted above and I do not consider that even the lowest quotation accurately reflects the cost of doing all the repairs.

103 There is an additional complication to awarding the plaintiff the amount quoted by Blendwell and that is the argument that he is precluded from recovering the cost of employing a new contractor to do the work because, in breach of contract, he refused to allow PPI to do the rectification itself. I must therefore deal with this issue before coming to any conclusion on any amount to be paid by PPI to the plaintiff in relation to the defects.

Was the plaintiff in breach of contract?

104 Article 3(e) of the MOA provides as follows:

> MAINTENANCE PERIOD 12 Months
>
> Follow-up service in maintenance and repairs, after the handover to Employer for this period of time.

PPI maintained that the meaning of this clause was that if rectification works were required after handover, PPI should be able to enter the property to carry these out ie that under the MOA, the contractor had a right of repair for 12 months after completion. It pointed out that in court the plaintiff had recognised this right.

105 PPI asserted that it had made repeated requests for access to the property during the maintenance period (after May 2006) to carry out rectification works, but all these requests had been denied by the plaintiff. It pointed to letters to the plaintiff's former solicitors dated 15 August 2006 and 30 August 2006 and also to correspondence to the plaintiff himself on 15 September 2006, 3 October 2006, 5 October 2006, 23 October 2006 and 7 November 2006. In the 23 October 2006 e-mail, the second defendant indicated that PPI was "prepared and ready (now on standby, as per PPI's last letter to you) to start carry out all necessary rectification works. May I ask that you give our team a chance to carry out these works …". The plaintiff had admitted at trial that he understood from this letter that PPI was requesting him to give it a last chance to do the rectification work. Mrs Yap also agreed that this statement meant that PPI was prepared to carry out the rectification works and not merely "touch up works".

106 Despite PPI's requests, the plaintiff still failed to give it access to carry out the rectification works during the maintenance period. PPI argued that even if the plaintiff did not agree with the extent and the scope of the rectification works that it was prepared to carry out, it would have been reasonable of the plaintiff to at least have allowed PPI access during the maintenance period, to do whatever rectification work it wanted to do whilst at the same time reserving his right to claim against PPI for outstanding defects. The fact that the plaintiff did not do this showed that he was more interested in litigation and monetary compensation rather than in rectification. Contractually, the plaintiff was not entitled to take this stance.

107 The law, PPI submitted, is that it is mandatory for the employer to provide access to do remedial work and an employer's right to have defects remedied within a stipulated period after completion is in substitution for his right to a claim in damages in respect of the cost of remedial work done by another contractor. *Construction Law in Singapore and Malaysia* by Nigel M Robinson, Anthony P Lavers, George KH Tan and Raymond Chan, (2nd Ed, 1996, Butterworths Asia) explains (at p 170) that a defects liability period is:

> a period defined in the construction contract during which the appearance of defects is at the contractor's risk in that he may be called upon to return to site to correct them as necessary. This was traditionally a period of six months but is now commonly specified as 12 months. …
>
> In all cases [*ie* where a defects liability or maintenance period is provided for in the construction contract], the strict entirety of the contract is modified and provision is made for the making good of defects by the contractor subsequent to handing over possession. The employer's right to have defects remedied within a stipulated period after completion *is in substitution for* his rights to a damages claim in respect of the cost of remedial work done by another contractor, ie the provision for the making good of defects by the contractor is mandatory on both parties and gives the contract the right to make good defects notified to him rather than be sued for breach. [Emphasis added]

108 The submission was that the plaintiff had no good or valid reason to justify his refusal to grant PPI access to the property to carry out rectification works pursuant to a contractual right of repair. His claim to have "lost confidence" in PPI was not a valid reason for denying access since there was at all times a reasonable option available to the plaintiff. It was the plaintiff's own unreasonable action which prevented PPI from carrying out the follow-up service of maintenance and repairs. Therefore, PPI should not be held liable for such defects and faults insofar as they could have been rectified had the access been given. Alternatively, PPI should not be made to bear the profit element which another contractor would normally charge for carrying out such remedial works.

109 The plaintiff denied that he was in breach of contract. He noted that as early as February 2006, he had already complained about the defects to the defendants. These defects were not rectified to his satisfaction and his solicitors wrote to PPI on 28 July 2006 to complain about the defective and poor workmanship as well as the shortfall in the sizes of the bedrooms. The plaintiff requested that a joint inspection be carried out on the matters complained of. A list of defects was drawn up by the plaintiff and given to PPI and the joint inspection took place on 2 and 3 August 2006.

110 On 30 August 2006, PPI sent to the plaintiff a document entitled "Architect's Assessment" which had been prepared by the second defendant in respect of the issues raised during the joint inspection. This document contained a list of all the items which the plaintiff had complained about. It also set out the second defendant's reaction to the complaints. In respect of many of the items, the second defendant recognised them as being defective and set out a description of the remedial work to be carried out. In respect of other items on the list, however, the assessment was that they did not present any "issue of concern" or were cosmetic only and therefore no work needed to be done. The plaintiff did not agree with the second defendant's assessment of defects or with the remedial actions proposed.

111 Thereafter, correspondence was exchanged between the parties on the differences in opinion regarding the seriousness and extent of rectification required. The plaintiff submitted that it was clear that PPI was only willing to do touch up work whilst in the plaintiff's view the rectification works required were more than just touch up work. The plaintiff felt that PPI did not intend to do rectification works in accordance with his complaints. He therefore lost confidence in PPI and the

second defendant and proceeded to engage M/s Francis Teo & Associates to prepare a cost rectification report in relation to the defects.

112 The plaintiff submitted that his view on the extent of rectification required as opposed to that espoused by PPI had been substantiated by the document entitled "Table of Responses" subsequently produced by SEB, the sub-contractor who constructed the property, and the assessment of the defects prepared by PPI's expert, Mr Roger Goshawk. He asserted that the cross-examination of the second defendant on the differences between the second defendant's Architect's Assessment and the lists made by SEB and Mr Goshawk revealed that the second defendant's assessment was partial and lacking in detail as to the remedial work required. Most of the items that the second defendant had dismissed as being issues of no concern were items in respect of which remedial work had been recommended by both SEB and Mr Goshawk. The same went for the items in respect of which the second defendant said only touch up work was required. Even the second defendant himself had admitted during cross-examination that he could understand why the plaintiff could not accept his assessment and had lost confidence in him.

113 The plaintiff accordingly submitted that there was no basis for PPI to allege that he had unreasonably prevented it from carrying out the rectification works. The plaintiff was not able to accept the second defendant's assessment as to the basis of such work and the evidence adduced had established why he was justified in rejecting the Architect's Assessment.

114 The evidence produced before me showed that there had been major areas of disagreement between the defendants and the plaintiff as to the nature and extent of the works that should be considered to be defective. The plaintiff had many complaints which, initially at least, the defendants did not accept as being justified or as requiring any remedial action. Between August and November 2006, however, the defendants did make attempts to try and narrow the areas of difference between the parties. They were also eager to carry out what they described as "touch up works", a term that the plaintiff thought was totally inadequate to describe what was wrong. The fact remains, however, that there were two joint inspections and subsequently PPI revised its assessment of the work that needed to be done. In his e-mail of 7 November 2006, the second defendant attached a "Revised Rectification and Touchup List" and stated that the sub-contractors were ready and standing by to carry out that work for the plaintiff. In my judgment, the plaintiff should have accepted that offer even though he did not agree that the revised list contained all the work that needed to be done. He would have protected himself if he had told PPI that he was agreeable to it doing that work on the basis that he maintained his claim against PPI for the other items which he considered should be done. Then at least part of the work could have been done and the parties would have had a much shorter list of items to fight about.

115 I find that under the MOA, the plaintiff was obliged to allow PPI to rectify defective works during the maintenance period. This obligation was not an absolute one, in my view. PPI could only insist on compliance with it by the plaintiff as long as its works did not interfere with the plaintiff's enjoyment and occupation of the property. In this case, since the plaintiff had not moved in, had no plans to move in imminently and the rectification works were scheduled to take only a few weeks, there would not have been any interference with his enjoyment of the property had he allowed PPI back in to carry out the remedial work. The plaintiff was entitled to employ his own expert to survey the works and advise him on what rectification works needed to be done but once that had been carried out, there was no reason not to allow PPI back in. The plaintiff did not assert that he did not give PPI access to the property in November 2006 or thereafter because his expert was still surveying it. Nor did he assert that the carrying out of the works would interfere with his enjoyment of the property. His sole reason for not allowing PPI and SEB in was that he had lost confidence in them. Whilst one can appreciate the plaintiff's frustration, he had to act reasonably and in accordance with the

contract. Therefore, to the extent that the plaintiff prevented PPI from rectifying the defects, the plaintiff was in breach of contract. Such breach, however, applied only to those defects which PPI was intending to rectify and in respect of which PPI's remedial works would have been adequate. There would have been no breach in respect of items which PPI did not recognise as defects or in respect of which its intentions were to do only minor touch ups which would not have properly rectified the defects.

Damages

116 I have made various findings in favour of the plaintiff in relation to his claim and I now have to consider what damages should be awarded to the plaintiff in respect of those findings.

117 The first issue here relates to the damages payable to the plaintiff for the delay in completion between 28 January 2006 and 15 March 2006. The plaintiff, noting that there was no provision in the MOA for the payment of liquidated damages, claimed general damages. He submitted that the measure of these damages would be the rental payable for an equivalent house in the vicinity. He made enquiries with a property agent and was informed that such rental would be approximately $4,800 a month. The plaintiff attached as an exhibit to his affidavit a copy of rental statistics provided to him in December 2006 for houses in the East Coast area. This showed that the owners of two properties in Lorong K were asking for $4,500 and $4,800 respectively as monthly rental for 6-bedroomed houses which were partially furnished and had air-conditioners.

118 The defendants submitted that it was not correct for the plaintiff to use market rental value as a means to measure his loss of use of the property. In this connection, dicta in the case of *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming* [2006] 1 SLR 853 was relied on. Andrew Phang J, observed at 903-904:

> 143 … The market rental value as a means to measure the loss of use to the owner, although convenient, is flawed. The market rental value reflects components of interest costs, depreciation, maintenance and property taxes. Given that the plaintiff was not able to shift to the subject property which was not completed on time, the full costs of certain components embedded within the market rental value such as depreciation and maintenance cost of the building and property taxes would have not been incurred whilst the plaintiff remained at its former premises …
>
> 144 There are, in fact, three main scenarios that could have possibly resulted in (as well as justified) the use of market rental to estimate loss of use.
>
> 145 The first is if the plaintiff was waiting to commence its business in the subject premises and as a result of the delay had to incur the expenses of renting *alternative premises* …
>
> 146 A second possible scenario is if the plaintiff had required the subject premises *in addition to* its former premises …
>
> …
>
> 148 A remaining scenario is where the plaintiff had decided to retain its former premises and desired the subject premises as an *investment*. If so, then the delay in the completion of the subject premises would have resulted in the loss of rent that could have been obtained from these premises …

119 PPI submitted that in the present case, there was no evidence that the plaintiff incurred the expense of renting alternative premises, or that he required the property in addition to his former premises or that he desired to use it as an investment. PPI did not, however, suggest any alternative method by which the plaintiff's damages could be measured. I infer that PPI considered that the plaintiff was not entitled to damages for delay.

120 I agree that in this case it would not be correct to measure the loss caused to the plaintiff by the delay in completion by having reference to the cost of renting similar premises in the vicinity. This is for two reasons. First, the plaintiff did not rent similar premises in the vicinity and did not incur that rental expense. Second, it was clear from the plaintiff's evidence that he and his wife had purchased the property and undertaken the project with the sole aim of making the completed house the family home. At the time of the purchase, the plaintiff, his wife, their four children, the plaintiff's mother-in-law and a maid were all residing in a maisonette flat in Tampines. This was a squeeze and the plaintiff wanted to obtain more living space for his family. This intention on the part of the plaintiff continued throughout the project as manifested by the amount of time and care that the plaintiff and his wife devoted to the construction and the furnishing of the interior of the house. Thus, it was the plaintiff's intention throughout to move his family into the house upon completion. At that stage, his maisonette in Tampines would have been vacant and available for rent. The delay in the completion of the house deprived the plaintiff of the opportunity of earning income from the maisonette for about one and half months. I consider therefore that the loss to the plaintiff has to be calculated with reference to what he could have made from renting out the flat in Tampines rather than to what he could have made from renting out the property since he did not have any intention of earning an income from the property.

121 Unfortunately there was no direct evidence of what the plaintiff could have expected to earn if he had rented out his flat. I therefore cannot compensate him in full for the loss of income. In the circumstances, I can only make an award for nominal damages of $1,000 under this head.

122 The next sub-issue in this category relates to the damages payable for the shortfall in the areas of the bedrooms. The plaintiff gave evidence that he had obtained a quotation dated 12 January 2007 from a company called Osmosis Home Pte Ltd ("Osmosis") of what it would cost to reconstruct the affected rooms. The amount quoted by Osmosis was $141,080 and the plaintiff claimed this amount as his damages for this breach.

123 PPI submitted that the plaintiff had no basis in law to claim the cost of reconstructing the rooms as the expenditure involved would be out of all proportion to the benefit to be obtained. The rooms, it was submitted, were still reasonably usable and spacious and therefore the plaintiff's remedy ought to be limited to the diminution in value (if any) of the property or of the works done. The authority cited to support this submission was the decision of the House of Lords in *Ruxley Electronics and Construction Ltd v Forsyth* [1995] 3 WLR 118 ("*Ruxley*").

124 In the *Ruxley* case, the plaintiff had contracted to build a swimming pool in the defendant's garden. The contract specified that this pool should have a diving area that was seven feet and five inches deep. On completion the pool was suitable for diving but the diving area was only six feet deep. This shortfall did not adversely affect the value of the property. The estimated cost of reconstructing the pool to the specified depth was £21,560. The House of Lords disallowed the defendant's counterclaim for this cost of reinstatement on the basis that it would be wholly disproportionate to the non-monetary loss suffered by the defendant.

125 PPI submitted that *Ruxley* was on all fours with the present case and that the holding there should be applied. It argued that since the bedrooms could still be used it did not matter that they

were smaller than the 18m² to 19m² that the plaintiff had required. It would be wholly disproportionate to the loss suffered by the plaintiff by reason of the smaller size of the rooms to allow him to recover the cost of reconstructing the rooms. The plaintiff on the other hand responded that *Ruxley* was not on all fours with this case because the shortfall in the diving area there was insubstantial and the pool as constructed was perfectly safe to dive into. In this case, the shortfall in the area was not insubstantial being 6.6% (from the minimum of 18m²) in the case of bedroom 3, 16% in the case of bedroom 5, 21% in the case of guest room 1 and 31% in the case of bedroom 4. The sizes of the rooms as constructed did not meet the needs of the plaintiff and his family and therefore it was not disproportionate to spend the amount required to rebuild them.

126 It should be noted that in *Ruxley's* case, the judge of first instance had, except for awarding the defendant £2,500 for loss of amenity, dismissed the defendant's counterclaim for breach of contract, holding that the cost of reinstatement was an unreasonable claim in the circumstances. On appeal by the defendant, the Court of Appeal, by a majority, allowed the appeal holding that the defendant's loss as a result of the breach of contract was the amount required to place him in the same position as he would have been in if the contract had been performed, which in the circumstances was the cost of rebuilding the pool. The House of Lords heard the case on an appeal by the plaintiff builders and, basically, decided that since damages were designed to compensate for an established loss and not to provide a gratuitous benefit to the aggrieved party, the reasonableness of an award of damages had to be linked to the loss sustained (per Lord Jauncey of Tullichettle at p 124). In the same passage, Lord Jauncey stated that if it was "unreasonable in a particular case to award the cost of reinstatement it must be because the loss sustained does not extend to the need to reinstate". In developing the concept of reasonableness in the context of building works that did not meet the contractual specification, Lord Jauncey said (at p 124-125):

> A man contracts for the building of a house and specifies that one of the lower courses of brick should be blue. The builder uses yellow brick instead. In all other respects the house conforms to the contractual specification. To replace the yellow bricks with blue would involve extensive demolition and reconstruction at a very large cost. It would clearly be unreasonable to award to the owner the cost of reconstructing because his loss was not the necessary cost of reconstruction of his house, which was entirely adequate for its design purpose, but merely the lack of aesthetic pleasure which he might have derived from the sight of blue bricks. Thus in the present appeal the respondent has acquired a perfectly serviceable swimming pool, albeit one lacking the specified depth. His loss is thus not the lack of a useable pool with consequent need to construct a new one. Indeed were he to receive the cost of building a new one and retain the existing one he would have recovered not compensation for loss but a very substantial gratuitous benefit, something which damages are not intended to provide.
>
> What constitutes the aggrieved party's loss is in every case a question of fact and degree. Where the contract breaker has entirely failed to achieve the contractual objective it may not be difficult to conclude that the loss is the necessary cost of achieving that objective. Thus if a building is constructed so defectively that it is of no use for its designed purpose the owner may have little difficulty in establishing that his loss is the necessary cost of reconstructing.

127 In this case, one must look at the entire contractual objective and not just the objective of the individual specifications. The entire objective was to construct a house that was suitable for the plaintiff's family to occupy. This objective has been achieved albeit three of the bedrooms are somewhat smaller than the plaintiff desired. The only bedroom that is substantially smaller is bedroom 4 but even this reduction in size does not make the room unusable as a bedroom. There was no evidence that would establish that bedroom 4 or any of the other rooms could not be used as sleeping areas. The plaintiff complained that they were cramped but that does not make them unfit

for their purpose. No doubt the plaintiff who was experiencing cramped conditions in his flat had wanted to provide a more spacious environment for his children in the new home. Unfortunately, the space that he wanted to give them in terms of bedroom sizes did not materialise. There has been a loss of amenity but I cannot conclude that the contractual objective has not been achieved to such a substantial extent that it would be reasonable to reconstruct the bedrooms in question. Reconstruction would involve the demolition of rooms on the ground floor, second storey and third storey of the house and would render the house uninhabitable for the period of construction. The cost of reconstruction would be substantial. The original cost of building the whole house was fixed in the MOA (subject to adjustments for provisional sums) at $736,400 and in relation to this figure it would be excessive to spend $141,080 to reconstruct four bedrooms. I therefore accept the submission that the plaintiff is not entitled to recover damages based on the cost of reinstatement of these bedrooms as this would be unreasonable since his loss is not the lack of usable bedrooms but the lack of some additional space in the bedrooms.

128 The next question is on what basis the plaintiff's loss for this breach of contract on the part of PPI should be calculated. PPI's submission was that the loss was purely nominal because the plaintiff had not proved that there was a diminution in the value of the work occasioned by the breach. I agree there was no proof that the value of the house had been adversely affected by the smaller size of the bedrooms. That, however, is not the end of the matter. In *Ruxley*, Lord Bridge of Harwich rejected the submission that damages in a building contract case could only be assessed by reference to diminution in value or cost of reinstatement (at p 121). He agreed with Lord Mustill that there was no reasonable in principle why the court should not have the power to award damages for loss of amenity and that indeed in some circumstances such power would be essential to enable the court to do justice. Lord Mustill expressed himself as follows (at p 127):

> In my opinion there would indeed be something wrong if, on the hypothesis that cost of reinstatement and the depreciation in value were the only available measures of recovery, the rejection of the former necessarily entailed the adoption of the latter; and the court might be driven to opt for the cost of reinstatement, absurd as the consequence might often be, simply to escape from the conclusion that the promisor can please himself whether or not to comply with the wishes of the promisee which, as embodied in the contract, formed part of the consideration for the price. Having taken on the job the contractor is morally as well as legally obliged to give the employer what he stipulated to obtain, and this obligation ought not to be devalued. In my opinion however the hypothesis is not correct. *There are not two alternative measures of damage, at opposite poles, but only one; namely, the loss truly suffered by the promisee.* In some cases the loss cannot be fairly measured except by reference to the full cost of repairing the deficiency in performance. In others, and in particular those where the contract is designed to fulfil a purely commercial purpose, the loss will very often consist only of the monetary detriment brought about by the breach of contract. But *these remedies are not exhaustive, for the law must cater for those occasions where the value of the promise to the promisee exceeds the financial enhancement of his position which full performance will secure.* This excess, often referred to in the literature as the "consumer surplus" (see for example the valuable discussion by Harris, Ogus and Philips (1979) 95 L.Q.R. 581) is usually incapable of precise valuation in terms of money, exactly because it represents a personal, subjective and non-monetary gain. Nevertheless where it exists the law should recognise it and compensate the promisee if the misperformance takes it away. The lurid bathroom tiles, or the grotesque folly instanced in argument by my noble and learned friend, Lord Keith of Kinkel, may be so discordant with general taste that in purely economic terms the builder may be said to do the employer a favour by failing to install them. But this is too narrow and materialistic a view of the transaction. Neither the contractor nor the court has the right to substitute for the employer's individual expectation of performance a criterion derived from what ordinary people would regard as sensible. As my Lords

> have shown, the test of reasonableness plays a central part in determining the basis of recovery, and will indeed be decisive in a case such as the present when the cost of reinstatement would be wholly disproportionate to the non-monetary loss suffered by the employer. But it would be equally unreasonable to deny all recovery for such a loss. The amount may be small, and since it cannot be quantified directly there may be room for difference of opinion about what it should be. But in several fields the judges are well accustomed to putting figures to intangibles, and I see no reason why the imprecision of the exercise should be a barrier, if that is what fairness demands. [Emphasis added]

It should also be noted that Lord Jauncey expressed no opinion on this point as he considered it unnecessary to do so.

129 I conclude that the law does not require me to refuse to make any award in favour of the plaintiff merely because the two measures of damages adverted to by PPI are inapplicable in this case. I am entitled to make an award to compensate the plaintiff for the loss of amenity sustained by the shortfall in the sizes of the bedroom. In this case, I consider, bearing in mind the differing degrees to which the sizes of the various rooms fell short of the contractual requirement, that the sum of $50,000 would be sufficient to compensate the plaintiff for the inconvenience to be experienced from the shortfall over the years.

130 The next point is, perhaps, the most difficult. It relates to the damages payable for the rectification of the defects. I have found that the plaintiff was unreasonable in not permitting PPI to have access to remedy those defects that PPI recognised. The consequence of this finding must be that the plaintiff cannot now recover the cost of rectifying those defects from PPI. There were, however, other defects which PPI did not recognise as defects and was not willing to rectify and which I have now found to be defects. The cost of rectifying those defects must be borne by PPI but the difficulty here is that either PPI put forward estimates that were not substantiated or did not furnish estimates because it considered the work need not be done. On the other hand, the plaintiff's figures also appeared to be unsubstantiated. In the circumstances, I think that the best course of action is to award the plaintiff damages to be assessed on the basis that the assessment shall take place after the plaintiff has carried out the rectification works and provided the details of the cost to PPI so that if the cost is in its view too high and should be reduced, PPI would be able to adduce evidence at the assessment to support its arguments.

Claim against the second defendant

131 The plaintiff's claim against the second defendant was for damages for loss arising out of fraudulent or negligent misstatements as well as what he termed as "breach of duty of care owed to the plaintiff for economic loss". The first claim arises out of the tort of deceit whereas the other two arise out of the tort of negligence.

Fraudulent misrepresentation

132 The tort of deceit was defined in *Kea Holdings Pte Ltd v. Gan Boon Hock* [2000] 3 SLR 129 as being the wilful making of a false statement with the intention that the plaintiff shall act in reliance upon it and with the result that he does so act and suffers damages as a consequence. The plaintiff alleged that the second defendant made the following representations to him and that these representations were false:

(a) that PPI was a reliable and competent building contractor;

(b) that PPI would be able to build the plaintiff's house according to his requirements and to his satisfaction; and

(c) that PPI had been in business in Singapore since 1999.

The second defendant did not dispute that he had made these statements to the plaintiff. What he disputed was that they were untrue. He submitted that the burden was on the plaintiff to prove that the statements were untrue and that the plaintiff had failed to discharge this burden.

133 Dealing with the first representation, the plaintiff submitted that the facts had shown that PPI was not a reliable or competent building contractor. The defects in the house were numerous and substantial, its design was poor and completion was delayed. PPI's workmanship was shoddy and therefore it had been far from reliable and competent. As regards the second representation, it was clear from the evidence that PPI did not build a house according to the plaintiff's specific instructions since the sizes of the bedrooms fell short of the sizes that he had specified.

134 I cannot accept the plaintiff's submission in respect of the first representation. The presence of defects in a newly constructed building does not necessarily imply that the contractors who constructed the building were unreliable and incompetent. What is important is the nature and the extent of the defects. In this case, there were no major structural defects: no criticism was made of the essential stability and safety of the building structure. The defects identified by the plaintiff were largely superficial in nature and related to the appearance of the house rather than to its structure. Mr Goshawk opined that many of the defects complained of were extremely minor and did not justify the undertaking of any repairs. Whilst I did not agree with his view that no repair was required in respect of minor defects that were visually obvious, I accept his categorisation of the nature of the defects. In the construction industry, it is accepted that there are likely to be minor defects found in a newly completed building and that is why construction contracts generally provide for a defects maintenance period during which the contractor can touch up the works. In this case, as I have found, PPI was willing to carry out remedial works during the defects maintenance period and the only reason why this was not done was the plaintiff's refusal to give PPI access to the premises.

135 It is true that the completion of the house was delayed. It should have been completed, as I have found, by 28 January 2006. Handover did not however take place until some six weeks later. The delay as noted above was due to matters that had no connection with the structural integrity of the house or its fitness for general human occupation. The house, as built, met the requirements of the BCA and the temporary occupation licence was granted on 12 January 2006, ie before the completion date. This is an indicator of the competence of PPI as a building contractor and I think that the problems that caused the delay in handover, ie the non-completion of the landscaping works and the inadequacies of the final fitting out works, though annoying from the plaintiff's point of view (and justifiably so), do not merit PPI being called unreliable and incompetent. The extent of the delay was not significant given that it was of six weeks' duration whilst the total construction period (excluding the period of delay) was of about thirteen months' duration. Considering all the circumstances I find that it was not a misrepresentation for the second defendant to state that PPI was reliable and competent.

136 As regards the second representation, I have found that PPI was in breach of its contractual obligation to provide bedrooms of a certain minimum size. The breach arose because PPI altered the design of the house and did not get the plaintiff's consent to reduce the size of the bedrooms when the design was altered. On the literal meaning of the statement therefore, the plaintiff is correct: the statement that PPI would be able to build a house that would satisfy his requirements turned out to be incorrect. Does that finding make the representation fraudulent? I deal with this below.

137 The third representation is the one that was most obviously untrue. PPI was incorporated on 27 June 2001. As a separate legal entity it was not in business in Singapore until that date and therefore it was not correct for the second defendant to say that it had been in business in Singapore since 1999.

138 Having considered the truth of the statements, I go on to consider whether the other elements of deceit are present. First, as the defendant submitted, where a party alleges any "fraudulent intention" particulars of the fact on which the party relies must be provided: see Rules of Court, O18 r 12(1). The plaintiff has failed to provide any particulars of the facts on which he relies in support of his allegation of "fraudulent intention".

139 Secondly, *Halsbury's Laws of Singapore*, Vol. 18, para 240.399 explains that for a misrepresentation to be fraudulent it must be known or believed by the representor to be false when made and, further, mere non-belief in the truth of the statement is also indicative of fraud. *Halsbury's* goes on to say in the same paragraph:

> Proof of absence of actual and honest belief is all that is necessary to satisfy the requirements of the law, whether the representation has been made recklessly or deliberately; indifference or recklessness on the part of the representor as to the truth or falsity of the representation affords merely an instance of absence of such a belief.
>
> A representor will not, however, be fraudulent if he believed the statement to be true in the sense in which he understood it, provided that was a meaning which might reasonably be attached to it, even though the court later holds that the statement objectively bears another meaning, which the representor did not believe.

140 In my judgment, the plaintiff has not been able to show that the second defendant did not honestly believe in what he said. First, as to the statement that PPI was a reliable and competent contractor, the second defendant as a director and shareholder of PPI was aware of its track record in the building industry. He must have based his statement not only on PPI's track record but also on its intention to continue to be reliable and competent. In this connection, it is relevant that the business that PPI the corporate entity carried on was taken over from the partnership business run from 1999 by the second defendant and Ms Aw. In talking about PPI therefore, the second defendant would have been considering its track record since May 1999. The plaintiff has not given evidence of building projects in which PPI was involved and where it was found incompetent or unreliable. He did not tender any evidence of PPI's previous track record in the building industry that would indicate that the second defendant had no grounds on which to make his assertion. The plaintiff's only evidence to support the assertion that the second defendant had made the statement fraudulently or negligently was what had happened in his own case. As stated above, however, the circumstances of this case do not establish incompetence or unreliability on the part of PPI.

141 Secondly, as to the statement that the house would be built to the satisfaction of the plaintiff and in accordance with his requirements, it may be argued that this was not a representation at all. Halsbury's at para 240.362 states that mere praise by a person of his own goods or undertakings etc, if confined to indiscriminate pushing and puffing, and not related to particulars, is not representation. A statement declaring that a house will be built to someone else's satisfaction is a very general and unspecific assertion especially since it relates to someone's subjective satisfaction and therefore appears more of a puff than something intended to be made a contractual promise. At the time when the second defendant made the statement, he was trying to get the plaintiff's business for his company PPI and therefore I incline to the position that it was a puff in the sense of being a general sales pitch and the plaintiff should have recognised it as such. Even if I am wrong in that finding, I

think in that in making the statement, the second defendant had every intention of ensuring that PPI would provide a house which would satisfy the plaintiff and meet his requirements and honestly believed, on the basis of his experience, that PPI would be able to do this. The plaintiff has not been able to establish the lack of actual and honest belief on the part of the second defendant when he made the statement. It is noteworthy in this connection that although there was a breach of contract in relation to the size of the bedrooms, the plaintiff had signed the plans which indicated the intended size of the rooms (though the plaintiff as a lay person was not able to read the plans) and it was carelessness in not explaining the change in the dimensions of the rooms necessitated by the change in the layout (a new layout that the plaintiff was happy with) that resulted in the breach rather than a deliberate intention on the part of PPI not to meet the plaintiff's requirements or recklessness in not caring whether or not it did so.

142 Thirdly, in relation to the statement that PPI had been in business since 1999, it is also my finding that the second defendant was not dishonest in making it. The second defendant is an architect not a lawyer. He knew that he and his wife had been carrying on the design and build business in Singapore in partnership under the style "Pacific Prince International" between mid 1999 and mid 2001. As far as he was concerned, the incorporation of the company Pacific Prince International Pte Ltd to take over the practice of the partnership "Pacific Prince International" did not affect any material change in the business. He and his wife continued to run it as directors and shareholders in the same way as they had run it as partners and the name of the business disregarding the suffix "Pte Ltd" that the law requires, was the same. Lay people often do not place the same importance on the distinctions between corporate entities and partnerships and sole proprietorships as lawyers do. Nor do they realise all the legal consequences of incorporation in particular the significance of a corporation's independent legal personality. In saying that PPI had been in business since 1999, the second defendant was making a statement as to the *de facto* position rather than to the *de jure* one. What he wanted to impress upon the plaintiff when he made the remark was the length of experience that the business had had. In so far as the business of PPI started in May 1999, had been conducted from the very beginning by the second defendant and his wife and continued to be so conducted and was business of the same type, the statement was not untrue in its essentials. As *Halsbury's* stated, a representor is not fraudulent if he believes the statement to be true in the sense in which he understood it, provided that that was a meaning that might be reasonably be attached to it. In my judgment, the second defendant believed his statement to be true because he knew that PPI's business had been carried on since mid 1999 even though at that time it had been effected through a partnership rather than through a corporate entity and I also find that the meaning that the second defendant gave to his statement can reasonably be attached to it in the circumstances.

143 There is one more aspect that I must consider in this connection. The plaintiff submitted that in order to induce him to sign the MOA with PPI, the second defendant had concealed the following facts from him:

(a) that the second defendant was a shareholder holding a 50% share in PPI; and

(b) that PPI only had a paid up capital of $100,000.

The plaintiff recognised that mere silence or non disclosure of material fact is not misrepresentation when there is no fiduciary duty or contract requiring *uberimae fides* which would compel disclosure. A mere silence cannot by itself constitute wilful conduct designed to deceive or mislead. The misrepresentation of statements would come from a wilful suppression of material and important facts thereby rendering the statements untrue. See *Trans World (Aluminium) Ltd v Cornelder China* (*Singapore*) [2003] 3 SLR 501 at 518 per Belinda Ang J.

144 The plaintiff considered that the concealment of the facts in question rendered the statements made to him untrue. Leaving aside the issue of whether the facts were concealed (the second defendant's position is that he did tell the plaintiff that he was an owner of PPI), I do not accept that in this case there was any misrepresentation by silence. Whether or not the second defendant was a shareholder in PPI or that it only had a paid up capital of $100,000 are not matters that would affect the truth of the statements that the second defendant made to the plaintiff.

145 It is clear that there was no fraudulent misrepresentation on the part of the second defendant.

Negligent misrepresentation

146 In my judgment, the plaintiff has no cause of action for negligent misrepresentation in respect of any of the alleged misrepresentations on which he relies. As far as the first misrepresentation goes, I have already found that the statement was not untrue. Accordingly, no action lies. In respect of the second statement, I have already expressed doubts as to whether it was a representation or a mere puff. My conclusion is that the generality of the statement (ie the reference to meeting the plaintiff's requirements and building to his satisfaction) tilts the balance in favour of a puff. As a businessman, the plaintiff would be aware that in doing business one must be confident of being able to meet one's customer's expectations and that no business will accrue to a person who expresses doubts about his ability to deliver. The second defendant in talking about the ability of PPI to meet the plaintiff's requirements was promoting his company in the normal manner of businessmen or salesmen and was making the general statement that PPI could design and build a house that would meet the plaintiff's general requirements for a home. He was not saying that the house would be in every detail the plaintiff's dream home. The plaintiff, an experienced businessman himself, surely must have realised this.

147 Turning to the third statement, that about the length of time that PPI had been doing business, I cannot hold it to be a negligent misrepresentation because it was untrue only in the most technical sense as I have explained in [142] above. As a layman, the second defendant would not have had it in the forefront of his mind that PPI, the company, was an entirely separate and distinct legal entity from himself and his wife and thus could not be said to have been in operation since 1999. In saying that PPI had been in business since 1999, he was to his mind telling the truth.

148 One other interesting point that arises in connection with negligent misrepresentation although it was not directly canvassed by the defendants is whether in making the statements in question the second defendant was acting as a principal or as an agent of PPI. The purpose of the statements was to persuade the plaintiff to enter into a contract with PPI. The second defendant was a director and shareholder of PPI and in telling the plaintiff that it would be better for him to have a design and build contract with PPI rather than engage the second defendant's services as an architect and then have to invite tenders from contractors and also engage other professionals, the second defendant was acting in the interest of PPI, rather than solely in his personal interest. It would therefore be a reasonable inference that he was acting as PPI's agent. In that case, it would be PPI that would be the party responsible for any actionable misrepresentation made by the second defendant to the plaintiff. The plaintiff would have no claim against the second defendant personally for such misrepresentation. This conclusion is also supported by s 2(1) of the Misrepresentation Act (Cap 390, Rev Ed 1994) which is the section which provides the remedy of damages for negligent misrepresentation. That section provides:

> **2.** — (1) *Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto* and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the

misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true. [Emphasis added]

Spencer Bower, Turner and Handley's Actionable Misrepresentation (4th edition by the Honourable Justice KR Handley, Butterworths, 2000) commenting on the same section in the English Misrepresentation Act states at para 229:

"This section does not confer a general right to bring an action for damages for innocent misrepresentation. The representation must have *induced the representee to contract with the representor.* The MA 1967, s 2(1) only imposes liability on a representor who is a party to the contract, so that an agent making the representation does not incur personal liability to the representee." [Emphasis added]

Accordingly, it appears to me that on the facts of this case, even if the misrepresentations had been established as negligent misrepresentations, the plaintiff's cause of action would have lain against PPI rather than against the second defendant.

Breach of duty of care

149 The plaintiff had an alternative case against the second defendant for loss arising from breach of duty of care to avoid causing the plaintiff economic loss. The allegation was that the second defendant had breached his duty of care owed to the plaintiff by:

(a) acting in conflict of interest in advising the plaintiff to enter into the MOA with PPI without disclosing his interest in PPI to the plaintiff; and

(b) failing to explain to the plaintiff the nature and risk of a design and build contract and failing to properly advise and/or protect the interest and rights of the plaintiff under the MOA when he knew that the plaintiff was completely reliant on him for proper advice.

150 It is the plaintiff's case that there was a relationship of sufficient proximity between him and the second defendant to give rise to a duty of care. At their first meeting, one that was arranged in contemplation of a future business or professional relationship if all went well, the second defendant had introduced himself to the plaintiff as a professional architect. During the first few meetings, he gave advice to the plaintiff on architectural services and design and knew that the plaintiff was desirous of building a house as a residence for himself and his family. He went with the plaintiff to see prospective houses and advised the plaintiff on the suitability of the same for the plaintiff's purposes. The second defendant agreed that as a result he and the plaintiff had established a very good relationship. He also acknowledged that he was aware that the plaintiff was not familiar with construction and that it was necessary for him to give full assistance on the project to the plaintiff. In fact, he had hoped that the plaintiff would rely on him. He admitted in court that the plaintiff would have believed that he was acting independently and fairly. He also agreed that the plaintiff expected him to be honest and forthcoming and that the plaintiff would have expected him to disclose all material information to the plaintiff to enable the latter to make an informed decision. The second defendant was a man possessed of special skills in the field of architecture, as he himself agreed and, he accepted that the plaintiff would trust him to exercise due care in particular in relation to advice given by him.

151 The above submissions by the plaintiff were aimed at establishing the existence of a relationship

of proximity between the second defendant and the plaintiff such that in the reasonable contemplation of the second defendant, any carelessness on his part would be likely to cause the plaintiff to suffer damage. The plaintiff was relying on *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR 100 ("*Spandeck*") where the Court of Appeal laid down the test for the courts to apply when determining whether one person owes a duty of care to another. That test is a two-stage test comprising first, proximity and second, policy considerations, which are together preceded by the special question of factual foreseeability. It has further been explained that the two-stage test is to be applied incrementally with reference to the facts of decided cases.

152 The second defendant stressed that the plaintiff had never appointed him personally to act as an architect nor had the plaintiff entered into any direct contractual professional relationship with him. This, however, does not preclude a duty of care being imposed on the second defendant with regard to the plaintiff if there was sufficient legal proximity between them. As the Court of Appeal stated in *Spandeck* the focus would be on the closeness of the relationship between the parties, including physical circumstantial and causal proximity, supported by the twin criteria of voluntary assumption of responsibility and reliance.

153 The second defendant contended that there was insufficient proximity between him and the plaintiff to give rise to a duty. In this respect, he relied on the case of *Sunny Metal & Engineering Pte Ltd v Ng Khim Meng Eric* [2007] 3 SLR 782 ("*Sunny Metal*") a decision of the Court of Appeal that was delivered less than a month before the *Spandeck* decision.

154 In *Sunny Metal*, the defendant, Eric Ng, was engaged as an architect by the main contractor, PMC, who entered into a Design and Build contract with the plaintiff, SME. At the same time Eric Ng also entered into a deed of indemnity with SME (apparently for the performance of his duties as a "Qualified Person"). One of the main questions was whether, apart from the deed of indemnity, Eric Ng owed additional *duties in tort* (such as contract administration, supervision of the main contractor's building works and certifying payments) to SME, to the extent that Eric Ng would be responsible for the numerous delays to the construction project caused by the failure of PMC to fulfil its contractual obligations under the Design and Build contract.

155 The Court of Appeal held that Eric Ng (the architect) did *not owe* such (additional) *duties in tort* to SME (the employer), notwithstanding the deed of indemnity (between Eric Ng and SME) for the performance of his duties as "Qualified Person". The Court of Appeal said (at p 800 at [44]):

> Adopting the approach that there must be sufficient proximity between the parties and bearing in mind that the trial judge's finding of proximity was very much premised on his interpretation of the Deed (which we have, with respect, rejected), we were of the view that there was insufficient proximity between SME and Eric Ng for a duty of care to be imposed tortiously. Furthermore, apart from the effect of the Deed, we were also satisfied from the evidence that there was very little, if any, reliance by SME on Eric Ng to fulfil his alleged additional duties to SME.

156 The second defendant argued that the finding of "insufficient proximity" between SME and Eric Ng to found a duty of care in tort was based on policy grounds, the policy being that extreme caution must be exercised in extending the tortious duty of care principles to new situations, particularly to one which was essentially contractual. In the second defendant's view, the policy rationale was that if SME had wanted Eric Ng to be personally responsible for any part of the work that was contracted to PMC, the parties should have expressed it clearly and unambiguously by way of a contract between SME and Eric Ng and nothing short of that would do in a situation in which the relationship was essentially contractual. This was because, at the end of the day, the additional obligations to be

imposed on a particular party could well be the subject of the price to be agreed between the parties and therefore the courts should be loathe to disturb the contractual arrangements. For the same policy reason, it was submitted that the court was unwilling to extend the duty of care principles in tort to fill up the gaps in the contract between SME and Eric Ng.

157 With respect, I think that the second defendant's submission is a misreading of the *Sunny Metal* decision. In relation to the question of whether Eric Ng owed SME tortious duties, the Court of Appeal stated that "the crux of any imposition of any duty of care must be premised on there being sufficient proximity between the parties" (at [43]). It then went on to hold that there was insufficient proximity in the circumstances of the case and additionally, that there was very little, if any, reliance by SME on Eric Ng to fulfil his alleged additional duties to SME. Having found that the necessary proximity was absent, the court did not go on to consider any policy reasons that might militate against imposing the requisite duty of care. In my view, therefore, *Sunny Metal* is not of assistance to the second defendant.

158 The facts of *Sunny Metal* are indeed very far from the facts of this case. There was no suggestion there that Eric Ng had any sort of relationship with SME prior to conclusion of the contract between SME and PMC. In this case, the plaintiff's first contact was with the second defendant and it was only through him that PPI entered the picture at all. In my view, the factual matrix here relating to the dealings that the plaintiff had with the second defendant before the conclusion of the MOA, as detailed in [150] above, are sufficient to establish the necessary proximity between them which is needed for the duty of care to arise. Their meetings were not casual or social contacts. It bears repeating that the plaintiff approached the second defendant in his professional capacity and the second defendant was well aware of this and was also well aware that the plaintiff relied on him in that capacity as the plaintiff had no previous experience at all in construction. From the first, the plaintiff looked to the second defendant for expert advice. This is, in my view, a classic case of voluntary assumption of responsibility (on the part of the second defendant) and reliance (on the part of the plaintiff). It was also factually foreseeable at the time that the second defendant gave advice to the plaintiff that if he was careless in giving that advice, the plaintiff was likely to suffer financial loss. This was because the advice requested by the plaintiff and given by the second defendant was in relation to the proposed construction of the house on the property, an undertaking which would involve the plaintiff in considerable financial outlay.

159 There are no policy considerations that, in my view, militate against imposing a duty of care on the second defendant in this case. The situation before me is not one that is unknown to the law. Indeed it is one that has been familiar since *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, a case that has often been applied in the Singapore courts, most recently in *Trans World (Aluminium) Ltd v Cornelder China* (Singapore) [2003] 3 SLR 501 ("*Cornelder China*"). Those cases explained the situations in which a special relationship in tort could arise between two parties so as to impose a duty on one to avoid making negligent misstatements to the other. The difference (a slight one) between those cases and the present is that here what is being asserted is not only did the second defendant have a duty to avoid being careless in what he said but he also had a positive duty to give full and complete advice. The most important ingredients of the "special relationship" discussed in "*Cornelder China*" are the voluntary tendering of skilled advice by one party and the presence of circumstances where that party knows that the plaintiff will rely on his answers or advice. Both these factors were present in the case before me as the evidence I have adverted to above shows.

160 Having found that the second defendant did owe the plaintiff a duty to avoid negligently causing him to sustain economic loss, I move on to consider whether the second defendant was in breach of that duty.

161 The first allegation of breach of duty relates to the alleged failure of the second defendant to disclose his interest in PPI to the Plaintiff. The second defendant asserted that he told the plaintiff and Mrs Yap that he had another company run by his wife, Ms Aw, and that company would be able to undertake the entire design and build project. In this connection, he noted that Mrs Yap had admitted in court that both she and the plaintiff were introduced by the second defendant to Ms Aw and told she was his wife before the MOA was signed.

162 I think it is more likely than not that the second defendant informed the plaintiff of his interest in PPI as the second defendant maintained. This is because from the beginning, the second defendant was promoting the idea of design and build to the plaintiff. He gave the plaintiff the PPI brochure and made the various statements about PPI that I have referred to earlier. The plaintiff who had been seeking advice from the second defendant as an architect would, if he had not been informed of the second defendant's interest in PPI, surely have wondered why an architect should be so keen for him to employ a design and build contractor since that would mean putting that architect out of a job. The plaintiff stated in court that when he read PPI's brochure, he understood that PPI had a team of people who would look into, *inter alia*, the design of his house and also that it could provide architectural work. As an intelligent and successful businessman, albeit a novice in building construction, the plaintiff must have realised that employing PPI meant that no architectural services could be provided directly to him by the second defendant. Whilst the plaintiff did try at one point to assert that the brochure did not make it clear to him that in a design and build contract, the architect would come under the "umbrella" of the contractor, I think he was being disingenuous on this point. After all he admitted that he did not ask the second defendant to explain to him the aspects of the brochure that he found to be unclear.

163 The next allegation of breach of duty is a stronger one. It is that the second defendant failed to explain to the plaintiff the nature and risk of a design and build contract. In particular, the second defendant failed to point out that in such a contract, the second defendant and PPI would be on the same side and the second defendant would not be acting as the plaintiff's agent and contract in the performance of the contract. In his submissions, the plaintiff also asserted that the second defendant did not give him a copy of the REDAS Conditions even though these formed the basis of the MOA. Nor did the second defendant advise the plaintiff of the salient terms of the REDAS Conditions that would have afforded the plaintiff a measure of protection against PPI such as those requiring the provision of a performance bond, the fixing of liquidated damages and the appointment of an owner's representative to administer and supervise the project. Unfortunately, these allegations regarding the REDAS Conditions were not pleaded by the plaintiff and therefore I cannot address them. I will deal below, therefore, only with the allegation that the second defendant failed to give the plaintiff complete advice in relation to the design and build option in that he concentrated on putting forward the advantages and omitted to explain the possible disadvantages or limitations of this arrangement.

164 That the second defendant's main interest was in selling the design and build concept appears from his own pleadings. In his defence he stated the following as the position: that at the outset, in June 2004, when the plaintiff and Mrs Yap approached him to enquire how they should go about building their new house, he had advised them that two options were open to them. In the first option, the second defendant could be engaged as a "consultant architect". He would then help the plaintiff assemble a team of consultants including structural engineers and quantity surveyors, prepare the necessary plans and documents, and then arrange for the plaintiff to call for an open quotation in order to get bid for the project from various contractors. After that, the second defendant would supervise the selected contractor during the construction process. The second defendant pleaded that he told the plaintiff that if the latter chose this option, the process was likely to be longer and more participation and decision-making from the plaintiff would be required throughout the process. The alternative was that the second defendant could offer a design and build package and in this

case, the second defendant and his team would undertake the entire process of construction and work with their regular team of building consultants and contractors to construct the plaintiff's new house. It was in this connection that the second defendant told the plaintiff and Mrs Yap about PPI and that it would be able to carry out this comprehensive range of services at a competitive market price. In this way, the second defendant would help speed up the construction process and minimize tedious involvement by the plaintiff in the process. The second defendant went on to aver that upon hearing his explanation of the two options, the plaintiff immediately agreed to this second option.

165 It is obvious from a quick scan of that pleading (and it was a pleading that was supported by the second defendant's testimony) that whilst the second defendant may have technically offered the plaintiff the alternative course of appointing him as the architect for the project, he was in fact steering the plaintiff in the direction of appointing design and build contractors. He emphasised the convenience of that choice while simultaneously stressing the inconvenience of the other. Whilst the second defendant insisted that he had clearly laid out both options for the plaintiff, he also had to concede in court that he had not advised the plaintiff of potential pitfalls in the design and build concept. When he was asked if he had advised the plaintiff whether there were any pitfalls in that option, his evasive reply was "If I had been asked or further questioned, I would have advised". The exchange following that is enlightening. It goes as follows:

> Q: So in other words, you didn't tell them that or you didn't tell the plaintiff that you and the contractor will be in the same team in the design-and-build contract?
>
> A: Your Honour, to me it is clear --- clearly implying that I am part of a contractor team and that we are together, my wife is running the contracting company, we are able to build the house, so therefore, my role is number one, as an architect, number two, as a builder, er, so that we can integratively come up with a best solution for my customers.
>
> Q: And so, in other words, Mr Lau, you also didn't tell Mr Yap that you will no longer be his agent in the supervision and administration of the contract, right?
>
> A: That is not true, your Honour: More so, I have to --- I have a because my team --- in my team I have double responsibility.
>
> Court: Question is: What did you tell Mr Yap? Did you tell him that "If you go for design and build, I am not your agent"?
>
> Witness: Er, no, er, your Honour, I did not say that, neither was I asked this question, your Honour.

166 The duty that the second defendant owed the plaintiff was not only not to give him negligent advice, but also to be careful to ensure that he gave the plaintiff complete advice. The plaintiff was a neophyte in building and did not realise that by choosing the design and build option over the other one he would be depriving himself of the usual services that an architect renders his client ie to supervise the works and be the plaintiff's agent and certifier. He was not informed, as he should have been, that to minimize the disadvantages of the design and build option, he was entitled to appoint his own representative to safeguard his interests. In my judgment, the second defendant did breach his duty of care to the plaintiff by not giving him a complete picture of what each option entailed and by therefore preventing him from making an informed decision or from choosing to adopt practices that would make up for the absence of the architect in his role of supervisor, certifier and arbiter.

167 The plaintiff also pleaded that the second defendant was in breach of duty because he was in a

conflict of interest situation. In this connection, the plaintiff alleged that the second defendant had acted in breach of Rules 13 and 14 of the Board of Architects' Code of Professional Conduct and Ethics ("CPC Rules"). Under Rule 13, an architect is prohibited from holding, assuming or consciously accepting a position in which his interests is in conflict with his professional duty to his client without previously informing his client of the same. He is also obliged to inform his client of the possibility of any conflict between his own interest and that of his client. Under Rule 14, which deals with design and build projects, an architect (not being a licensed corporation) is prohibited from rendering architectural services in respect of any project in which he is acting as builder (Rule 14(2)) and, further, a licensed corporation cannot render architectural services together with building services to any client except in designated circumstances (Rule 14(3)).

168 The response of the second defendant was that the plaintiff had misinterpreted the relevant Rules. Under Rule 3(3) of the CPC Rules which came into effect in January 2004, the requirement that an architect has to invite tenders for all contracts unless his client otherwise directs, does not apply to an architect in respect of any project in which he is providing both architectural services and building services. Further Rule 14 of the CPC Rules had been amended with effect from 1 January 2004 by the deletion of sub-rules 14(2) and 14(3). The second defendant submitted that it was therefore permissible and acceptable for an architect to provide both architectural and building services either on his own or together with any other person. The policy objective behind the amendment to the Rule was to allow a practising architect to enter into design and build contracts with owners or developers.

169 Whilst it is correct that from January 2004, architects have been permitted to offer both architectural and building services, their actions in this regard are still subject to the duty encompassed in Rule 13(1) which is to advise their client of the possibility of any conflict between their own interests and the interests of their client. In this respect, from the beginning the second defendant regarded the plaintiff as, if not an actual client, then at least as a potential client and treated him accordingly. He therefore had a duty to disclose his interest in PPI to the plaintiff. This duty he fulfilled. However, he also had the additional duty to explain to the plaintiff very clearly what his position would be if the plaintiff chose the design and build option. This was because there would be a conflict between his own interest as a builder and the plaintiff's interest in having a skilled person as his agent and intermediary in the construction process. In the normal case, the architect would protect the owner's interests in relation to payment to the contractor and also in relation to the standard of work and defect rectification. Once the design and build option was selected, the second defendant would only have to provide his services to PPI. He would have no responsibility to the plaintiff for the other roles that I have mentioned. I find that the second defendant did not clearly advise the plaintiff of the existence of his conflict of interest and certainly did not take sufficient steps to ensure that the plaintiff was not prejudiced by such conflict.

170 The next issue is whether the plaintiff had suffered damage by reason of the second defendant's breach of contract. The plaintiff's evidence was that if he had been made aware of the shortcomings of the design and build option, he would not have appointed PPI as his design and build contractor. I accept that evidence. The plaintiff has suffered loss by reason of that contract and the second defendant is therefore liable, together with PPI, for such loss. The plaintiff confirmed in court that in respect of damages, his claim against the second defendant was identical to that against PPI so the amount of damages to be awarded against the second defendant must be the same as that awarded against PPI.

PPI's counterclaim

171 PPI put forward a counterclaim for the sum of $57,958.54 due under the MOA inclusive of

Variation Orders, short particulars of which are as follows:

– Original Contract Sum under MOA	$736,400.00
– Plus Total Variation Orders ("VO")	$ 73,287.28
– Adjusted Contract Sum (incl. VO)	$809,687,28
– Less payments made by Plaintiff	($751,728.74)
BALANCE DUE & OWING FROM PLAINTIFF	$57,958.54

Of the balance claimed, there was no dispute in respect of $42,572.39 and PPI is entitled to payment of this sum subject to any right of set-off which the Plaintiff may have as a result of this judgment.

172 What the plaintiff disputed at the trial was the balance sum of $15,386.15 which is made up of three different sums. The first, an amount of $12,850 was derived from item 4 of PPI's Development Cost Summary report issued on 28 September 2006. There were several separate charges for additional work done under Item 4 and the heading of the item read as follows: "Construction Work & Professional Fee: WAIVED". Ms Aw explained in her affidavit that initially PPI had intended to waive this sum purely as a goodwill gesture on account of the good working relationship at that time between the plaintiff and PPI and on the understanding that the relationship would remain that way. Subsequently, however, the relationship deteriorated to the point where the plaintiff became hostile to PPI's team and unreasonably denied their requests for access to his property to carry out rectification works. Then he threatened to sue PPI. PPI therefore wanted to reinstate these charges. The plaintiff did not deal in his closing submissions with these amounts and did not explain on what legal basis the waiver could not be withdrawn by PPI. Accordingly, I allow this claim.

173 The next item was for the sum of $935 under Variation Order No 7 and was charged in respect of a computer network cable. Ms Lee testified that this was an additional item that had been carried out by PPI at the plaintiff's request and that he had signed on PPI's quotation for this work to signify his acceptance of the Variation Order. The plaintiff has not put forward any acceptable basis for refusing to pay this bill and I allow this claim.

174 The final sum is the amount of $1,601.15 which is claimed for "Various Additions/Omissions" under Variation Order No 18. Ms Lee substantiated this claim on the basis that due to changes requested by the plaintiff, there had been various additions and omissions to the work and the net result of these changes was that there was an additional amount due in the sum of $1,601.15. The plaintiff has not put forward any acceptable basis for refusing to pay this bill and I allow this claim.

Conclusion

175 In the result, there will be judgment for the plaintiff against both defendants for the following:

(a) nominal damages of $1,000 in respect of the delay claim;

(b) damages assessed at $50,000 in respect of the plaintiff's loss of amenity in relation to the bedrooms; and

(c) damages to be assessed (if not agreed) in respect of the defects which I have found have to be rectified and which the defendants were not prepared to rectify.

176 On the counterclaim, there will be judgment for PPI against the plaintiff for the sum of $57,958.54 which shall be offset against the total amount recoverable by the plaintiff.

177 I will hear the parties on costs.