

GTMS Construction Pte Ltd v Ser Kim Koi (Chan Sau Yan and Chan Sau Yan Associates,
third parties)
[2014] SGHC 232

Case Number : Suit No 50 of 2014(Registrar's Appeal No 199 of 2014)
Decision Date : 04 November 2014
Tribunal/Court : High Court
Coram : Tan Siong Thye J
Counsel Name(s) : Thulasidas s/o Rengasamy Suppramaniam (Ling Das & Partners) for the plaintiff;
Yeo Boon Tat and Danna Dolly Er (MPillay) for the defendant; Chia Ho Choon and
Wong Xunai (Khattarwong LLP) for the first and second third parties.
Parties : GTMS Construction Pte Ltd — Ser Kim Koi — Chan Sau Yan — Chan Sau Yan
Associates

Civil Procedure – Summary Judgment

[LawNet Editorial Note: The appeal to this decision in Civil Appeal No 163 of 2014 was allowed by the Court of Appeal on 4 March 2016. See [\[2016\] SGCA 7.](#)]

4 November 2014

Tan Siong Thye J:

Introduction

1 The defendant, Ser Kim Koi, employed the plaintiff, GTMS Construction Pte Ltd, as the contractor for a building project. In the course of the project, the defendant refused to pay the plaintiff under two interim payments, notwithstanding that these sums were certificated and approved for payment by the defendant’s architect.

2 The defendant alleged that the certificates issued were tainted by “fraud, improper pressure or interference” as stated in cl 31(13) of the terms under the Singapore Institute of Architects Conditions of Building Contract (Lump Sum Contract, 9th Ed, 2011 Reprint) (“the SIA conditions”). If they were, the certificates could be set aside and the plaintiff would not be entitled to payment. The plaintiff disagreed and sued for payment.

3 At the hearing below, the plaintiff applied for summary judgment under O 14 r 1 of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) (“the ROC”). His application was granted by the AR. Dissatisfied with the AR’s decision, the defendant appealed. I heard the appeal and dismissed it. He has appealed against my decision and I now give my reasons.

The facts

The Project

4 The defendant is the owner of Lot 98388L Mukim 04 at Leedon Park (Bukit Timah Planning Area). [\[note: 1\]](#) He engaged the plaintiff to build three two-storey detached houses on that plot of land (“the Project”). [\[note: 2\]](#)

5 Chan Sau Yan Associates ("the Architect") was engaged by the defendant as the architects of the Project via a Memorandum of Agreement dated 16 June 2009. [\[note: 3\]](#) The Architect is the second third party to these proceedings. The first third party to this action is the proprietor of the Architect, Chan Sau Yan.

6 The plaintiff was engaged as the Project's building contractor pursuant to an open tender. [\[note: 4\]](#) Its contract with the defendant contained the SIA conditions. [\[note: 5\]](#) The dispute concerns the interpretation of certain terms found in the SIA conditions, particularly, cl 31(13).

The dispute

7 On or about 3 September 2013 and 6 November 2013, the Architect issued Interim Certificates ("IC") No 25 and 26 (collectively known as "the Certificates") for the payment of \$390,951.96 and \$189,250.21 respectively. [\[note: 6\]](#) Pursuant to the Certificates, the Plaintiff issued Invoice No 25 and 26 for \$418,318.60 (inclusive of Goods and Services Tax ("GST") of \$27,366.64) and \$202,497.72 (inclusive of GST of \$13,247.51) respectively. [\[note: 7\]](#) In total, the claimed sum was \$620,816.30.

8 The defendant refused to pay the claimed sums and missed the 30-day period within which he was required to pay the plaintiff. [\[note: 8\]](#) He felt that the Architect and the plaintiff had been acting together so that the Certificates were issued when they should not have been.

9 The defendant alleged that the Certificates had been tainted by the plaintiff's fraud, improper pressure or interference as it had caused the Architect to issue the Certificates even though there were work defects, the Completion Certificate ("CC") was prematurely issued and unwarranted time extensions were granted, *inter alia*. [\[note: 9\]](#) Since the defendant refused to pay the plaintiff, the latter filed a writ of summons and statement of claim against him on 13 January 2014 claiming \$620,816.30. After the defendant filed his defence, the plaintiff filed for summary judgment against the defendant on 28 February 2014. [\[note: 10\]](#)

10 The plaintiff took the view that it was unjustified for the defendant to withhold payment that was certified by the Architect. It argued that cl 31 of the SIA Conditions entitled it to full payment of the claimed sum. The relevant portions of cl 31 reads as follows:

31.(1) The Contractor shall be *entitled to interim payments* for the Works carried out or supplied under this Contract by way of:

...

(b) periodic valuation of the Works or part thereof carried out by the Contractor.

...

31.(13) No certificate of the architect under this contract shall be final and binding in any dispute between the Employer and the Contractor, whether before an arbitrator or in the courts, *save only that, in the absence of fraud or improper pressure or interference by either party, full effect by way of Summary Judgment or Interim Award or otherwise shall, in the absence of express provision, be given to all decisions and certificates of the architect ... whether by payment or otherwise ...*

[emphasis added]

11 The plaintiff's view was that the issues raised by the defendant did not show fraud, improper pressure, or interference. As the third party to the action, the Architect's evidence (on behalf of both himself and the first third party) was also that the Architect had not been fraudulent or subject to any improper pressure or interference when he issued the Certificates.

The AR's decision

12 The plaintiff's summary judgment application was heard by the AR on 23 May 2014. [\[note: 11\]](#) The application was granted by the AR, who ordered that:

- (a) the defendant pay the plaintiff a total of \$620,816.32;
- (b) the defendant pay the plaintiff interest on the plaintiff's total claim at 5.33% per annum from the date of judgment to the date of final payment; and
- (c) the defendant pay the plaintiff \$10,000 for the costs of the application plus reasonable disbursements.

13 The AR held that cl 31(13) made it clear that the court should not be concerned with "shoddy, poor or unsatisfactory workmanship". [\[note: 12\]](#) Rather, the issue was whether the Certificates had been tainted by dishonesty or impropriety so that it was inequitable for them to stand.

14 The AR's view was that the evidence did not raise any question regarding the Architect's legitimate intentions in issuing the Certificates. Therefore he granted summary judgment to the plaintiff and the defendant appealed.

The issues

15 The defendant's appeal raised three issues arising from the Architect's issuance of the Certificates despite the presence of work defects, an alleged premature issuance of the CC and unwarranted timeline extensions:

- (a) whether the Certificates were tainted by fraud;
- (b) whether the Certificates were tainted by improper pressure; and
- (c) whether the Certificates were tainted by interference.

I answered all the questions in the negative.

16 O 14 r 1 of the ROC reads as follows:

1. Application by plaintiff for summary judgment (O. 14, r. 1)

Where a statement of claim has been served on a defendant and that defendant has served a defence to the statement of claim, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part except as to the amount of any damages claimed, apply to the Court for judgment against that defendant.

For a summary judgment to be granted, the plaintiff needs to show that there is plainly no defence to the claim: *Ganesan Carlose & Partners v American Home Assurance Co* [1994] 1 SLR(R) 223 and *Home and Overseas Insurance Co Ltd v Mentor Insurance Co (UK) Ltd (in liquidation)* [1990] 1 WLR 153 at 158. When the ICs were issued, the plaintiff had the benefit of “temporary finality” in that he would be entitled to payment on the basis of the ICs: *H P Construction & Engineering Pte Ltd v Chin Ivan* [2014] SGHC 137 (“*H P Construction*”) at [17]. The question was whether the defendant could show that his defence was an arguable one.

The defendant’s appeal

17 The defendant alleged that the plaintiffs were not entitled to payment as the Architect who issued interim payment certificates had been influenced by the plaintiff’s fraud, improper pressure or interference. [\[note: 13\]](#) That being the case, temporary finality should not be a shield against excesses or abuses of power by the certifier (*H P Construction & Engineering Pte Ltd v Chin Ivan*). Thus summary judgment should not be granted: *Tropicon Contractors Pte Ltd v Lojan Properties Pte Ltd* [1989] 1 SLR(R) 591 (“*Tropicon (HC)*”) at [15]. The defendant argued that he had a fair case or reasonable grounds for his defence. Thus he ought to have been given leave to defend. [\[note: 14\]](#)

The Certificates were tainted by fraud

18 The defendant submitted that the Certificates were tainted by fraud. The Court of Appeal in *Panatron Pte Ltd and another v Lee Chew Lee and another* [2001] 2 SLR(R) 435 (“*Panatron*”) at [13] held that the definition of fraud is a deliberate intention to deceive, an absence of honest belief or recklessness such as amounts to lack of honest belief. (see also *Hudson’s Building and Engineering Contracts* (Nicholas Denys, Mark Raeside and Robert Clay gen eds) (Sweet & Maxwell, 12th Ed, 2010) at para 4-046 (“*Hudson’s*”). [\[note: 15\]](#) Fraud can be inferred via circumstantial evidence: *Wu Yang Construction Group Ltd v Zhejiang Jinyi Group Co Ltd and others* [2006] 4 SLR(R) 451 (“*Wu Yang*”). [\[note: 16\]](#) The circumstances giving rise to this submission are found at [20]-[33] below.

The Certificates were tainted by improper interference or pressure

19 The defendant also alleged that the Certificates were tainted by improper interference or pressure. In his view, a certifier must act fairly, independently and professionally, without the influence of any party in the certification process: *Hiap Hong & Co Pte Ltd v Hong Huat Development Co (Pte) Ltd* [2001] 1 SLR(R) 458. [\[note: 17\]](#) The defendant basically had to cast doubt on the certifier’s independence to defect this application for a summary judgement (*Hudson’s* at para 4-053).

The circumstances giving rise to the defendant’s allegations

20 The defendant argued that the Architect had shown a “consistent pattern of reckless conduct” in his certification duties during the course of the Project. [\[note: 18\]](#) The following acts of the Architect could not have been done with honest belief, or without the influence of improper pressure or interference.

The CC was issued prematurely

21 First, the defendant submitted that cl 24(4) of the SIA conditions provided that the CC should only be issued when the Project appeared to be complete and complied with the contract in *all* respects. [\[note: 19\]](#) Conditions that had to be fulfilled under Item 72 of the Preliminaries (terms which

were part of the contract) included the following: [\[note: 20\]](#)

- (a) that the Project was ready for occupation and for use in the Architect's opinion;
- (b) that all services were to be tested, commissioned and operating satisfactorily; and
- (c) that all the works included in the Contract were performed including any rectification which was required to complete the Project to the satisfaction of the Architect.

22 The defendant submitted that the above had not been fulfilled. In his view, the Project must have reached "a state of readiness for use or occupation by the owner with the exception of trivial omissions or defects" (Chow Kok Fong, *The Singapore SIA Form of Building Contract: A Commentary on the 9th Edition of the Singapore Institute of Architects Standard Form of Building Contract* (Sweet & Maxwell, 2013) at para 22.5) for the CC to be issued. He stated that *Emden's Construction Law* (Andrew Barlett and Isabel Hitching gen eds) (LexisNexis, 2013) at paras 9.4–9.5 took a similar position. [\[note: 21\]](#) He cited the following incidents to show why the CC was issued prematurely.

(1) The Temporary Occupation Permit ("TOP") had not been issued when the CC was issued

23 First, the defendant submitted that the CC should not have been issued. The TOP was issued only after five months from the date on which the CC was issued and hence the Project was not in a state ready for occupation and use on 17 April 2013 when the CC was issued. [\[note: 22\]](#) Since the CC constitutes *prima facie* evidence that a building is suitable for occupation (s 12 of the Building Control Act (Cap 29, 1999 Rev Ed)), [\[note: 23\]](#) the Project could not have been ready for occupation and use by the defendant.

(2) The testing of the services was incomplete

24 Second, the defendant submitted that the Architect did not have an honest belief that the services had been tested, commissioned and operating satisfactorily as at 17 April 2013. [\[note: 24\]](#) The Architect was a very experienced professional in the construction industry. He also knew the contractual terms between the plaintiff and the defendant. [\[note: 25\]](#) Furthermore, the plaintiff's own evidence was that the gas supply was turned on *only* after 6 August 2013, [\[note: 26\]](#) to which the Architect's only response was "the supply of gas is not a requirement for TOP inspection". [\[note: 27\]](#) Since the testing and commissioning of *all services* was needed before the CC could be issued, it had been issued prematurely.

(3) The operating manuals were only submitted by the plaintiff sometime between September 2013 and November 2013

25 Third, it was a requirement under Item 72(b) of the Preliminaries, a term in the contract, that the operating manuals were to be handed over in April/May 2013. [\[note: 28\]](#) However, they were handed over only between September 2013 and November 2013. [\[note: 29\]](#) Therefore the conditions for the issuance of the CC had not been complied with and its issuance was premature.

26 Moreover, the CC was issued on 17 April 2013. The date was coincidentally the same date as the Project's revised completion date approved by the Architect. Therefore serious doubts arose as to whether there was undue pressure or influence, which the plaintiff exerted on the Architect. [\[note: 30\]](#)

27 Since [21] to [25] indicated that the Architect had been reckless in issuing the Certificates, the defendant submitted that they evidenced fraud, improper pressure, or interference. Summary judgment should thus be set aside.

The Project had extensive defects

28 Second, the defendant submitted that the Architect's honest belief in the condition or state of the Project was questionable since the Project had extensive defects and yet the Certificates were issued. [\[note: 31\]](#) Clause 24(5) of the SIA conditions provides that:

... [I]f any minor works are outstanding which can be completed following the removal of the Contractor's site organisation and all major plant or equipment, and without unreasonable disturbance of the Employer's full enjoyment of and occupation of the property, then upon the Contractor undertaking in writing to complete such outstanding work within such time or times as may be stipulated by the Architect, *the Architect may (but shall not be bound to) issue a Completion Certificate, which shall record such outstanding work by way of a schedule attached to the certificate ...*

[emphasis added]

29 The defendant submitted that there was significantly more outstanding work that had yet to be completed – the Architect had under-declared the amount of uncompleted work. [\[note: 32\]](#) He engaged Building Appraisal Pte Ltd ("BAPL"), an independent surveyor, to show that more extensive defects existed as compared to those that the Architect had identified and the additional defects identified were as follows: [\[note: 33\]](#)

- (a) the swimming pool, koi ponds and water features leaked;
- (b) the external walls cracked and leaked; and
- (c) the marble floor and timber flooring installations were poor.

In the defendant's view, the additional defects showed that the work was incomplete. Hence, the Project could not be fully enjoyed or occupied.

The Architect had certified payment for the landscaping and timber flooring works recklessly

30 Third, the defendant submitted that the Architect had certified payment for the landscaping works recklessly. The Architect had taken the view that loamy soil was used as per the contract. However, the defendant's landscape consultants, Landscape Konsortium, stated that based on soil samples obtained from the project site, no loamy soil had been supplied or applied in the Project. [\[note: 34\]](#) Therefore the Architect was reckless when it certified payment for the landscaping works.

31 The defendant also submitted that the Architect was reckless when it certified payment for the timber flooring works. [\[note: 35\]](#) The specification of the timber to be used was Indian Rosewood of 15mm thickness. [\[note: 36\]](#) However, on measurement, the defendant found that the thickness was only 10mm [\[note: 37\]](#) and the Architect had not adequately disproved that finding. Therefore he had certified the payment for the timber flooring works recklessly.

The Architect had granted unwarranted extensions of time

32 Fourth, the defendant alleged that the Architect had granted unwarranted extensions of time. Originally, the plaintiff was to ensure that there was permanent electricity supply to the Project by 11 August 2012. [\[note: 38\]](#) However, a connection was only made on 3 September 2012 and the delay was due to the plaintiff's fault.

33 Moreover, the electrical connection was done later than scheduled. Yet, the Architect had granted a time extension without considering whether it was the plaintiff's fault that caused this to happen. Therefore, the Architect could not have granted the time extension with honest belief [\[note: 39\]](#) or alternatively, he must have been subject to undue pressure or interference when it was granted.

The plaintiff's response

34 The plaintiff submitted that the defendant's appeal had to be totally dismissed. In its view, work defects were irrelevant as to whether payment was due under the Certificates – the only grounds that the defendant could contest their entitlement were based on fraud, undue pressure or interference. Alternatively, the work defects raised, without more, could not constitute fraud, improper pressure or interference. If the defendant truly felt aggrieved, the correct remedy was not to oppose the grant of summary judgment but to take out a separate action against the plaintiff for the defective work.

The CC was correctly issued

35 The plaintiff submitted that the CC had been correctly issued. It was not premature.

Clause 24(4) of the SIA conditions and Item 72 of the Preliminaries had been fulfilled

36 The Architect was of the opinion that cl 24(4) of the SIA conditions and Item 72 of the Preliminaries had been fulfilled. His view was that the Project was complete and in compliance with all the contractual obligations. Thus the Project was ready for occupation. [\[note: 40\]](#) Clause 24(4) of the SIA conditions read together with Item 72 of the Preliminaries are as follows:

24.(4) Subject to the provisions of Sub-Clause (3) hereof as to the effect of Termination of Delay Certificates, the liability of the Contractor to pay further liquidated damages under Sub-Clause (3) hereof shall cease, and the Contract be deemed to be completed for this purpose, upon the issue by the Architect of his certificate under this Sub-Clause that the Works have been completed. Such certificate is referred to in this Contract as a "Completion Certificate", and shall be issued by the Architect when the Works appear to be complete and to comply with the Contract in all respects.

...

72 COMPLETION CERTIFICATE

Pursuant to the provisions of the Agreement and Conditions of Contract, a Completion Certificate will not be issued until:

- a) All parts of the Works are in the Architect's opinion ready for occupation and for use.

b) All services are tested, commissioned and operating satisfactorily as specified in the Contract or the relevant Sub-Contract including handing over all test certificates, operating instructions and warranties.

c) All works included in the Contract are performed including such rectification as may be required to bring the work to the completion and standards acceptable to the Architect.

The Contract work shall be subject and evaluated under the BSCQ developed by the Building and Construction Authority (BCA) as a yardstick for measuring construction quality of completed buildings.

37 The plaintiff submitted that the CC had been issued based on the Architect's professional opinion that cl 24(2) of the SIA conditions and Item 72 of the Preliminaries had been fulfilled. Thus the defendant was bound to pay the plaintiff under cl 31(13) of the SIA conditions. Hence the plaintiff was entitled to summary judgment. [\[note: 41\]](#)

The TOP and gas supply were not prerequisites for the CC's grant

38 The plaintiff further submitted that the TOP and gas supply were not prerequisites for the issuance of the CC. The Architect confirmed that TOP is only applied for after the issuance of the CC. [\[note: 42\]](#) The building must be completed and ready for occupation and use before a TOP can be applied for. [\[note: 43\]](#) The gas supply was not required to be in place before the TOP inspection. The problems relating to gas supply were attributable to external pipes laid by Power Grid. It was not the plaintiff's fault and the plaintiff could not be held liable for it. [\[note: 44\]](#)

The CC was issued only after the Project had been substantially completed

39 The plaintiff also submitted that the CC was not issued prematurely as the Project had been substantially completed. Clause 24(4) of the SIA conditions and Item 72 of the Preliminaries had been fulfilled, evidencing the Project's substantial completion. [\[note: 45\]](#) Even if there was substantial work to be done after completion had been certified, the plaintiff submitted that the defendant was still bound by the CC according to cl 31(13) of the SIA conditions. [\[note: 46\]](#)

The time extension was correctly granted

40 The plaintiff alleged that the time extension for the electrical installations was fairly and validly granted by the Architect. This was made on the M&E Consultant's recommendations and was in full compliance with cl 23 of the SIA conditions. [\[note: 47\]](#)

41 The plaintiff submitted that the time extension had been granted because the circumstances leading to the delay were caused by events beyond the plaintiff's control. There was a delay in Singapore Power's connection of power to the meter compartments and there was a request for an OG Box (an electrical part) for incoming power supply. A further extension was also granted so that Power Grid's sub-contractors could work on electrical connector work [\[note: 48\]](#). It was only then that the plaintiff could carry out M&E testing and commissioning, light fitting installation and cleaning up.

42 Given that the situations were beyond the plaintiff's control, the events fell within the situations for which the Architect could validly grant an extension of time. [\[note: 49\]](#) Therefore the extension of time was correctly granted.

My decision

43 Before turning to the issues proper, it is important to set out the Architect's evidence which played a significant role in my deliberation.

The Architect's evidence

The tender process

44 The Architect's first point was that it was not in cahoots with the plaintiff. Its evidence was that the plaintiff had been selected after a fair and objective tender process as evidenced by the following:

(a) First, the Architect submitted that it had recommended the plaintiff to the defendant after a proper tender process had been completed. The process was fair and objective since:

(i) a pre-qualification exercise was conducted for six contractors with an additional contractor added to the exercise on the request of the defendant; [\[note: 50\]](#)

(ii) the tender interviews were conducted by the Architect, a team of consultants and the defendant was also present; [\[note: 51\]](#) and

(iii) the third parties only made a recommendation to the defendant on 4 May 2011 after three rounds of Tender Reports had been compiled by the Quantity Surveyor. [\[note: 52\]](#)

(b) Second, the Architect submitted that the plaintiff was transparent and mentioned in its Tender Submissions on 15 November 2010 that it had worked on the Mont Timah project with the plaintiff. [\[note: 53\]](#) It was only after the defendant visited the Mont Timah project and being impressed with the plaintiff's work that the defendant engaged the plaintiff as his contractor. [\[note: 54\]](#)

(c) Third, the Architect submitted that the plaintiff's quotation was the lowest among all the tenders.

Thus the defendant did not show *how* the previous working relationship between the plaintiff and the Architect compromised the latter's independence and the tender process testified that they had not been in cahoots.

The issuance of the Certificates

45 The Architect's next point was that there was no fraud, improper pressure or interference that might have influenced the enforceability of the Certificates.

(1) The Certificates were validly certified

46 First, the Architect submitted that the Certificates had been validly certified. There was no collusion or unlawful conspiracy between the plaintiff and himself. [\[note: 55\]](#) The certification process that attested to this was as follows: [\[note: 56\]](#)

(a) Once the plaintiff had submitted its monthly progress claims, the Quantity Surveyor would

visit the site to verify the progress and state of completion of the Project.

(b) The Architect would then consider the Quantity Surveyor's valuation and prepare the payment certificate.

The payment certification process was commonly used in the construction industry. It involved three parties, namely the M&E Consultant, Quantity Surveyor and the Architect. [\[note: 57\]](#) Therefore, the defendant's claim was baseless.

(2) The time extensions were justified

47 Second, the Architect submitted that the time extensions granted to the plaintiff were valid. The extensions had been in full compliance with cl 23 of the SIA conditions, which sets out the procedure for the plaintiff's application for a time extension. On 4 October 2012, 20 December 2012, 15 January 2013 and 31 January 2013, the plaintiff had written to the second third party for time extensions on the following grounds: [\[note: 58\]](#)

(a) delay on marble confirmation and changes in marble selection and cutting sizes; and

(b) delay in testing and commissioning M&E services due to Singapore Power's delay in turning on the power supply.

48 The second third defendant took the view that the first reason did not warrant any time extension as it was not critical to the Project. However, a time extension was granted on the second ground as in its view: [\[note: 59\]](#)

2) We noted that due to request of OG box by Power Grid as per letter dated 21st November 2012, the Electrical Turn-on has been affected.

3) We noted that the Testing and Commissioning of the M&E Services cannot be carried out without Electrical Turn-on (Electrical supply). And this will lead to delay in handing over the project.

49 On the evidence, the Architect was of the opinion that the plaintiff had closely monitored the situation and followed up with Singapore Power in relation to the electricity supply. [\[note: 60\]](#) In its view, it was Singapore Power's slow attendance to the matter that caused the delay. [\[note: 61\]](#) Moreover, the plaintiff would have required 25 days to test and commission the M&E services and 15 days to do the light fitting installation. The M&E Consultant also took the view that it usually took 15 days to complete the connection works. [\[note: 62\]](#) Therefore, the Architect granted the plaintiff an initial time extension of 40 days and a second time extension of 15 days on 10 April 2013. [\[note: 63\]](#)

(3) The CC was properly issued

50 The Architect's third point was that the issuance of the CC was not dependent on whether the TOP had been issued. [\[note: 64\]](#) All that was required was that the Architect be satisfied that cl 24(4) of the SIA conditions and Item 72 of the Preliminaries be fulfilled. [\[note: 65\]](#) These were done and the Architect was thus satisfied that the CC was properly issued.

(4) The defects were minor and normal

51 The Architect's fourth point was that the defects were minor and usual for newly completed projects. The defects were to be fixed during the defects liability period and apparent defects were annexed to the Schedule to CC. [\[note: 66\]](#) There were also no defects:

- (a) to the marble, which had been selected and chosen by the defendant himself; [\[note: 67\]](#)
- (b) to the swimming pool, which did not leak; [\[note: 68\]](#)
- (c) in the use of three-hole bricks which was encouraged by the BCA and these were not defective; [\[note: 69\]](#)
- (d) in the laying of the marble tiles; [\[note: 70\]](#) and
- (e) in the filling of top soil, which was in accordance with the contract specifications. [\[note: 71\]](#)

52 Therefore, in the Architect's view, the defendant had not proven his claim that the Certificates were tainted by fraud, improper pressure or interference.

Issue 1: Were the Certificates tainted by fraud?

53 Turning to the issues proper, I found that the Certificates were not tainted by fraud. [\[note: 72\]](#)

54 The defendant relied on two cases for his allegation of fraud: *Panatron* and *Wu Yang*. In *Panatron*, L P Thean JA held that in order to succeed on an allegation of fraud, the party must prove actual fraud by showing that there was a false representation made knowingly, without belief in its truth or recklessly, without caring about its truth: at [13]. On the facts of *Panatron*, no fraud was found. Similarly, in *Wu Yang*, Andrew Phang Boon Leong J (as he then was) held at [94]–[95] that:

94 An allegation of fraud entails a high requirement with respect to proof. Whilst still being based on the civil standard of a balance of probabilities, the amount of evidence required is far from trifling. ...

95 An allegation of fraud and/or conspiracy is an extremely serious one. It ought not be made lightly. It bears repeating that mere assertion is insufficient. ...

[emphasis added]

55 *Hudson's* at para 4–046 explained the concept of fraud as follows:

The essence of fraud is a deliberate intention to deceive, absence of honest belief or recklessness as to honest belief. It is submitted that collusion with the Certifier or knowledge of their fraud by the other contracting party is not necessary to avoid a certificate affected by fraud of the Certifier alone, *although such fraud may be rare in practice*.

[emphasis added]

56 In this case the defendant's evidence consisted of (a) the Architect issuing the CC prematurely; (b) the Architects issuing the Certificates despite alleged work defects; and (c) the

Architect granting unwarranted time extensions for the Project (see [20]–[34] above). They caused the defendant to suspect fraud. However having considered the explanations given by the plaintiff and the Architect, I was satisfied that the evidence, most of which was circumstantial, was insufficient to prove fraud.

57 If (and I am not suggesting that he was) the Architect was negligent in issuing the Certificates or issued the CC prematurely, that was one thing. It is another to say that he was dishonest and in cahoots with the plaintiff. In my view, the suspicion was specious and devoid of any cogent direct evidence. The reliance on circumstantial evidence and inferences was insufficient to meet the high standard required to prove fraud (see *Wu Yang* at [94]–[95]). In the circumstances, I dismissed the first ground of the defendant’s appeal.

Issue 2: Were the Certificates tainted by improper pressure?

58 I also found that the Certificates were not tainted by improper pressure applied on the Architect. In order to show improper pressure, the defendant had to show that there was some influence or interference exerted on the Certifier’s independence. As stated in *Hudson’s* at para 4-053:

The dividing line between ... representations and pressure of an improper kind may not be difficult to discern in practice, and broadly speaking any pressure or action which goes beyond representations confined to the merits of the matter in question, or which does not expressly or impliedly recognise the Certifier’s ultimate right and duty to decide the matter impartially on its merits, will be suspect ...

59 In order for the defendant to establish his case, evidence must be adduced to show that the Architect in this case had acted on the plaintiff’s orders or had been influenced by the plaintiff or his proxy in arriving at his decision. However, there was insufficient evidence to establish that the plaintiff had improperly influenced the Architect. I accepted the plaintiff’s evidence that the Architect’s decision to grant the CC had been based on his professional judgement that the Project could be enjoyed and occupied – it was consistent with the Architect’s evidence which was convincing and detailed (at [44] to [52] above). There was nothing to suggest otherwise. Therefore I also dismissed the defendant’s appeal on this ground.

Issue 3: Were the Certificates tainted by interference?

60 I also held that the Certificates were not tainted by interference. This ground covers any improper interference with the Certifier’s independence and function by either party (*Hudson’s* at para 4-053). It must be shown that the plaintiff had done something to prevent a true and unfettered exercise of the Architect’s discretion: *Hudson’s* at para 6-112–6-113. [\[note: 73\]](#) The basis for this ground is due to the implied term that both parties will not compromise the Certifier’s independence. This is seen in *Minster Trust Ltd v Traps Tractors Ltd* [1954] 1 WLR 963 at 974, where Devlin J held that:

... [The certificate] must be made independently, for independence is the essence of the arbitral function. If two parties agree to appoint an arbitrator ... *it would be I think, implied in the contract to give it business efficacy that neither side would seek to interfere with his independence.*

[emphasis added]

61 There was no evidence to indicate that the plaintiff had influenced the Architect. The defendant insinuated that they had worked together on the Mont Timah project and the Architect had approved the Certificates despite the many alleged defects in the Project. Thus they were in cahoots. However, I find that it was highly improbable given the manner in which the tender had been conducted and the involvement of other third parties in the certification process. It would have taken a lot of effort for the Architect's independence to have been interfered with. Therefore, I was of the view that there was insufficient evidence to show that the Architect's independence had been interfered with.

Conclusion

62 In conclusion, I find the following remarks by Thean J in *Tropicon (HC)* at [15] apposite (see also *H P Construction* at [18]):

... in so far as interim certificates of payment are concerned, it seems to me that the intention of this clause is tolerably clear. It is intended that the contractor be paid the amounts expressed to be payable in the interim certificates, and if no payment is made by the employer it is intended to enable the contractor in the absence of fraud, improper pressure or interference or in the absence of express provisions, to obtain quick summary judgment for the amounts certified as due. In so far as any sum claimed by the employer is concerned, only the amounts expressly deductible under the contract may be set off against the amount due under the interim certificate.

63 Indeed, as observed by Sundaresh Menon CJ in *W Y Steel Construction Pte Ltd v Osko Pte Ltd* [2013] 3 SLR 380 at [18] and [20], cash flow is the lifeblood of the construction industry. Edmund Leow JC's remarks that temporary finality is the embodiment of the "pay first, argue later" philosophy is very apt: *H P Construction* at [30]. In the circumstances, I dismissed the defendant's appeal and ordered him to pay costs of \$10,000 with reasonable disbursements to the plaintiff.

[\[note: 1\]](#) Df's bundle of affidavits ("DBOA") vol 1 Tab 1 at para 5.

[\[note: 2\]](#) DBOA vol 1 Tab 1 at para 4.

[\[note: 3\]](#) DBOA vol 1 Tab 1 at para 5.

[\[note: 4\]](#) DBOA vol 1 Tab 1 at para 6.

[\[note: 5\]](#) DBOA vol 1 Tab 1 at para 6.

[\[note: 6\]](#) DBOA vol 1 Tab 1 at para 9.

[\[note: 7\]](#) DBOA vol 1 Tab 1 at para 9.

[\[note: 8\]](#) DBOA vol 1 Tab 1 at para 12.

[\[note: 9\]](#) DBOA vol 2 Tab 2 at para 11.

[\[note: 10\]](#) Df's bundle of documents at Tab 1.

[\[note: 11\]](#) Df's bundle of documents at Tab 1.

[\[note: 12\]](#) Minute Sheet dated 23/5/2014 at p 3.

[\[note: 13\]](#) Df's affidavit dated 17/3/2014 at para 10.

[\[note: 14\]](#) Df's skeletal submissions at para 4.

[\[note: 15\]](#) Df's skeletal submissions at para 9.

[\[note: 16\]](#) Df's skeletal submissions at para 11.

[\[note: 17\]](#) Df's skeletal submissions at para 14.

[\[note: 18\]](#) Df's skeletal submissions at para 17.

[\[note: 19\]](#) Df's skeletal submissions at para 19.

[\[note: 20\]](#) Df's skeletal submissions at para 20.

[\[note: 21\]](#) Df's skeletal submissions at para 24.

[\[note: 22\]](#) Df's skeletal submissions at para 27.

[\[note: 23\]](#) Df's skeletal submissions at para 29.

[\[note: 24\]](#) Df's skeletal submissions at para 33.

[\[note: 25\]](#) Df's skeletal submissions at para 37.

[\[note: 26\]](#) Df's skeletal submissions at para 34.

[\[note: 27\]](#) Df's skeletal submissions at para 38.

[\[note: 28\]](#) Df's skeletal submissions at para 39.

[\[note: 29\]](#) Df's skeletal submissions at para 39.

[\[note: 30\]](#) Df's skeletal submissions at para 45.

[\[note: 31\]](#) Df's skeletal submissions at para 46.

[\[note: 32\]](#) Df's skeletal submissions at para 48.

[\[note: 33\]](#) Df's skeletal submissions at para 48.

[\[note: 34\]](#) Df's skeletal submissions at paras 55 – 56.

[\[note: 35\]](#) Df's skeletal submissions at para 59.

[\[note: 36\]](#) Df's skeletal submissions at para 60.

[\[note: 37\]](#) Df's skeletal submissions at para 61.

[\[note: 38\]](#) Df's skeletal submissions at para 65.

[\[note: 39\]](#) Df's skeletal submissions at para 71.

[\[note: 40\]](#) Pf's written submissions at p 12.

[\[note: 41\]](#) Pf's written submissions at p 12.

[\[note: 42\]](#)

[\[note: 43\]](#) Pf's written submissions at p 17.

[\[note: 44\]](#) Pf's written submissions at p 17.

[\[note: 45\]](#) Pf's written submissions at p 12.

[\[note: 46\]](#) Pf's written submissions at p 16.

[\[note: 47\]](#) Pf's written submissions at p 12.

[\[note: 48\]](#) Pf's written submissions at p 13.

[\[note: 49\]](#) Pf's written submissions at p 14.

[\[note: 50\]](#) DBOA vol 8 Tab 3 at para 5.

[\[note: 51\]](#) DBOA vol 8 Tab 3 at para 6.

[\[note: 52\]](#) DBOA vol 8 Tab 3 at para 7.

[\[note: 53\]](#) DBOA vol 8 Tab 3 at para 8.

[\[note: 54\]](#) DBOA vol 8 Tab 3 at para 9.

[\[note: 55\]](#) DBOA vol 8 Tab 3 at para 13.

[\[note: 56\]](#) DBOA vol 8 Tab 3 at paras 13 – 14.

[\[note: 57\]](#) DBOA vol 8 Tab 3 at para 13.

[\[note: 58\]](#) DBOA vol 8 Tab 3 at para 18.

[\[note: 59\]](#) DBOA vol 8 Tab 3 at para 20.

[\[note: 60\]](#) DBOA vol 8 Tab 3 at para 32(c).

[\[note: 61\]](#) DBOA vol 8 Tab 3 at para 32(a)

[\[note: 62\]](#) DBOA vol 8 Tab 3 at paras 21 – 23.

[\[note: 63\]](#) DBOA vol 8 Tab 3 at para 26.

[\[note: 64\]](#) DBOA vol 8 Tab 3 at para 37.

[\[note: 65\]](#) DBOA vol 8 Tab 3 at para 38.

[\[note: 66\]](#) DBOA vol 8 Tab 3 at para 43.

[\[note: 67\]](#) DBOA vol 8 Tab 3 at para 44.

[\[note: 68\]](#) DBOA vol 8 Tab 3 at para 48.

[\[note: 69\]](#) DBOA vol 8 Tab 3 at para 48.

[\[note: 70\]](#) DBOA vol 8 Tab 3 at para 48.

[\[note: 71\]](#) DBOA vol 8 Tab 3 at para 50.

[\[note: 72\]](#) Pf's written submissions at p 25.

[\[note: 73\]](#) Pf's written submissions at p 26.