Ng Boo Han and another *v* Teo Boon Hiang Edward
[2014] SGHC 267

Case Number	: District Court Appeal Nos 37 and 44 of 2013 and Summons No 646 of 2014
Decision Date	: 18 December 2014
Tribunal/Court	: High Court
Coram	: Edmund Leow JC
Counsel Name(s)	: Dominic Chan and Jenna Law (Characterist LLC) for the appellants; Chia Boon Teck (Chia Wong LLP) for the respondent.
Parties	: Ng Boo Han and another — Teo Boon Hiang Edward

Building and Construction Law – Building and Construction Contracts

Building and Construction Law – Damages

18 December 2014 Judgment reserved.

Edmund Leow JC:

Introduction

1 The Appellants and the Respondent live in landed property in the same neighbourhood. After seeing the Respondent's house (which the Respondent built himself) and being impressed by it, the Appellants engaged him to demolish and rebuild their house at the price of $350,000. The Appellants were, however, not satisfied with the Respondent's work. They requested for various defects to be rectified and refused to pay the outstanding sum under the contract until the Respondent complied with their request. After unsuccessful attempts at resolving their differences, the Respondent sued the Appellants for the outstanding sum due to him as well as the cost of additional works carried out. The Appellants counterclaimed for damages due to the alleged defective works.

2 In the court below, the district judge ("the DJ") allowed the Respondent's claim in part and substantially dismissed the Appellants' counterclaim. The Appellants now appeal against his decision. They also filed Summons No 646 of 2014 ("SUM 646/2014") seeking to admit further evidence to support their case.

Facts

3 As the parties could not agree on the series of events leading up to the present dispute, I will set out each side's account in turn.

The Appellants' account

4 Sometime in October 2010, the Appellants stopped by the Respondent's house to ask him who built his house. They were looking for someone to rebuild their house and were attracted by the look of the Respondent's house. The Respondent told them that he built it himself and that, having observed their house in the neighbourhood, he had ideas and suggestions on how to rebuild their house. At the conclusion of the first meeting, the Respondent asked the Appellants to keep in touch.

5 At the Appellants' initiative, the parties met again in November 2010 at the Respondent's house. The Respondent showed them around his house and explained the building process and the structural elements to them. He represented to the Appellants that:

(a) he could build a beautiful house for them and transform their premises into a house that was "one of its kind" in the estate;

(b) he could maximise the built-in area of their house;

(c) he would arrange and manage all aspects of the project for them;

(d) the project would be a "turn-key" development and the Appellants would be able to move into the premises after the project was completed without the need for any follow-up works; and

(e) it was a convenient project for the Respondent to undertake as his house was located near the Appellants' house.

6 At this meeting, the First Appellant told the Respondent that the Appellants' budget for the project was $300,000, to which the Respondent replied that he had built his own house for $150,000 ten years ago, and that the project would cost more now. The second meeting concluded with the Appellants saying that they would consider the matter further.

7 About one week later, the Appellants had a third meeting with the Respondent where they discussed the details of the project. The parties agreed on a price of $350,000 for the project with handover to take place by August 2011. The terms of their agreement were recorded in a simple written contract dated 20 January 2011 ("the Contract") prepared by the Respondent and signed by him and the Second Appellant. It provided as follows:

An agreement between the parties stated above that [the Respondent] will undertake the project to rebuild [the Appellant's premises] into a dwelling home according to design plan submitted by Aston Consulting Engineers and Building Control stipulated guidelines.

As agreed, [the Respondent] will be given free-hand rights in the construction which includes one master bedroom with a washroom on the first floor, 2 bedrooms on the second floor with a common toilet and a grand kitchenette on the ground floor.

Construction work to be stipulated by Aston Consulting Engineers.

Joinery and carpentry work will be strictly provided by [the Respondent].

Toilets and galleys will be according to a licensed plumbing contractor.

Electrical and wiring will be according to a licensed electrical engineering company.

Ground floor marble flooring, upper floor wooden paneled floor.

A/C for 3 bedrooms, with provision for the living room on the ground floor.

Casement windows and parapet verandas to be added after approval.

Additional rooms and toilets with extended corridors also after completion.

Autogates for the front, garden and decking to be provided.

Total cost price:

SGD$ 350,000.00

Expected completion date:

Before 1st August 2011

Terms and Conditions:

Down payment of 40% total cost price upon signing.

Another 40% of total cost price upon completion of roof.

Final balance of 20% of total cost price upon moving in.

8 The Appellants made the down payment of $140,000 on 22 January 2011. The Respondent commenced work on the premises in the last week of January 2011. On 18 May 2011, upon completion of the roof, the Appellants made the second payment of $140,000.

9 By 1 August 2011, the house was still not completed. Concerned about the slow progress, the Appellants visited the construction site on 23 August 2011. There, the Respondent demanded the final 20% of the contract price, saying that the procurement of marble alone costs $40,000. The 2nd Appellant criticised the Respondent's management of costs for the project and said that the Appellants would only pay the final 20% after they moved into the premises, as stipulated in the Contract. The Respondent was offended and later phoned the Second Appellant to inform her that he had decided to discontinue the building works because of her critique of the cost overruns.

10 On 24 August 2011, the parties' neighbour, Mr Shahul Sali ("Shahul"), offered to mediate their dispute and a meeting was arranged between the parties at Shahul's home that evening. At the meeting, the Respondent promised that he would complete the project by 29 September 2011 provided that the Appellants paid him an extra $10,000 for additional works requested for the attic.

11 On 26 August 2011, the Appellants agreed to pay the Respondent $40,000 which comprised $30,000 towards the final payment and an additional sum of $10,000 for the additional works in the attic so that the Respondent would resume work on the project. After this payment, the outstanding sum under the Contract was $40,000.

12 On 25 September 2011, the Second Appellant brought to the Respondent's attention a list of uncompleted works that needed to be completed before the premises could be handed over the Appellants. The Respondent took offence and threatened to stop work. After the Appellants pacified him and pleaded with him to continue the works, the Respondent promised that the construction would be completed by 12 October 2011.

13 On 12 October 2011, the Respondent failed to properly handover the premises to the Appellants as there were too many uncompleted items and defects. The handover date was revised again to 16 October 2011. However, the Respondent yet again failed to hand over the premises on that date.

14 On 17 October 2011, the Appellants met with the Respondent's son and daughter and brought

to their attention a list of defects and uncompleted works. On 21 October 2011, the Respondent's daughter presented to the Appellants a list of the outstanding defects ("the Defects List") and asked the Second Appellant to sign it. However, the Second Appellant refused to sign it as there was no previous mention of having to sign a contract with the Respondent's daughter and the contract did not include some of the defects that were made known to the Respondent in the Appellants' aforementioned list, such as those relating to the roof and the marble flooring.

15 On 28 October 2011, the Appellants' solicitors wrote to the Respondent informing him that he had breached the Contract and gave him notice to rectify the defects in the construction works within seven days of the letter, failing which the Appellants would hire contractors to rectify the defects and claim the costs thereof from the Respondent. Despite this, the Respondent failed, refused and/or neglected to rectify the defects. The Appellants therefore hired Caesar 5 Design Pte Ltd ("Caesar 5") to rectify the defects. As a result of the delay in completion, the Appellants also incurred additional rental, removal and storage costs.

16 The Appellants' counterclaim against the Respondent is for a total sum of $193,532.01, which is broken down into the following components:

(a) Cost of rectification works: $185,850

(b) 2 months extension of lease for alternative accommodation: $6,400

(c) Removal and storage costs: $1,885

(d) Purchase of air-conditioning remote control units (which the Respondent failed to provide): $82.01

(%4) It should be noted, however, that the cost of rectification work claimed by the Appellants changed over the course of proceedings and was ultimately reduced to a claim for $150,000.

The Respondent's account

17 According to the Respondent, the parties met for the first time a few days before Christmas 2010. The Appellants rang his doorbell, introduced themselves and expressed admiration for his house. They struck up a conversation and the Respondent eventually ended up taking them on a tour of his house. During the course of their conversation, the Respondent told them that he built his house for about $300,000 in 2001. The Appellants were very impressed by his house and asked whether he could help them demolish and rebuild their 50-year-old single storey house into a house that was similar to the Respondent's. The Respondent said that he could. The Appellants asked for a cost estimate and the Respondent replied "around $350,000" without giving it much thought. The meeting concluded with the Appellants saying that they would visit him again soon. After the Appellants left, the Respondent realised that he might have underestimated the cost of rebuilding the Appellants' house as prices had increased considerably since a decade ago.

18 On 8 January 2011, the Appellants visited the Respondent a second time and informed him that they had decided to engage him to rebuild their house. The Respondent then told them that he had underestimated the cost of rebuilding their house. However, the Appellants told him that their budget was limited to $350,000 and pleaded with him to help them rebuild their house at that price. The Respondent reluctantly agreed to help them out of goodwill. He informed them that his house was built based on an "English country" concept, using mostly recycled materials, to which the Appellants agreed. Further, as the Respondent was not a qualified architect or engineer, the Appellants agreed

to engage at their own cost a firm of professional consulting engineers, Astons Consulting Engineers ("Astons"). The Respondent made it clear to the Appellants that the price of $350,000 did not include the cost of any preparation or submission of any plans to any authorities, nor were Astons' professional charges included. He also insisted that they give him a free hand to carry out the construction project and to use whatever materials, including recycled materials, that he deemed fit, and they agreed. The terms of the parties' agreement were recorded in the Contract (reproduced at [7] above).

19 The Respondent started work one week after the Contract was signed. In May 2011, the Appellants requested him to furnish the attic with wooden deck flooring and built-in cabinets. The Respondent gave them a quotation of $10,000 for this additional work and they agreed.

20 Between July and August 2011, the Appellants started making unreasonable demands of the Respondent, such as by asking for additional works and items which were never previously agreed. As the Respondent was timid by nature, he carried out the additional works requested in silent protest. Due to these additional works, the project could not be completed by 1 August 2011 as stated in the Contract.

21 In August 2011, the Respondent requested that the Appellants pay him the remaining 20% for the project, as well as the additional $10,000 for the attic works. Although the Appellants could have moved in by that time, they did not do so and used that as an excuse not to pay the outstanding balance of 20%. It was only after Shahul interceded that the Appellants paid the Respondent another $40,000 (*ie*, part of the outstanding 20% plus $10,000 for fitting out the attic).

22 The Respondent ultimately used recycled materials only for a few exterior parts of the house as follows:

(a) wooden planks for the main gate;

(b) wooden decking for the ground floor exterior yard;

(c) wooden strips supporting the polycarbonate trellis; and

(d) wooden planks for the exterior walls of the music room.

(%4) These recycled materials formed about 10% of the entire construction of the house and the Appellants were fully aware of their usage at all material times throughout the construction period. For example, the recycled timber for the decking was based on the rustic design the Appellants had requested and they had approved of the timber before it was used. The recycled timber was also chosen for its irregular joints and gaps, which were intended to give the house a natural and rustic appearance.

23 On 24 September 2011, the First Appellant and the Respondent conducted the first site inspection of the construction works before handover. To the Respondent's shock, the First Appellant embarked on a fault-finding mission and refused to pay the outstanding sum of $40,000, claiming that he did not have the money. The Respondent was offended but nonetheless attended to the items identified by the First Appellant.

24 Another site inspection was conducted on 2 October 2011, during which the Appellants continued finding faults with the works, such as the plaster works being uneven and the steel works being rough. The Respondent explained that these were deliberately done that way to give the house

a rustic and natural look, which was the same as how he built his house. However, the Appellants insisted that these were defects that needed to be rectified.

25 Over the next week, the Respondent attended to the additional items raised by the First Appellant, hoping that they would pay him the outstanding $40,000 after that. On 15 October 2011, the 1st Appellant phoned the Respondent and informed him that the 2nd Appellant wanted a particular "La Germania" brand oven and that if he bought this oven for them, they would no longer require him to rectify the remaining defects. The Respondent agreed and bought the specified oven for them at a cost of $3,000. However, on 16 October 2011, before the Respondent could deliver the oven to the Appellants, the First Appellant reneged on his promise and continued with his campaign of fault-finding during a site inspection. This escalated into a shouting match which resulted in the Respondent breaking down and storming out of the Appellants' house in distress.

26 The next day, the Respondent's son and daughter visited the Appellants to ask for the outstanding $40,000 that they owed him. Instead of paying up, the Appellants asked the Respondent to change the four glass panels in the study room from 6mm glass to 8mm glass, and to install a tempered glass door for the toilet in the children's bedroom. The Appellants then took the Respondent's children around the house and came up with a list of 26 more items that they wanted the Respondent to change or provide. In the course of the week, the list was increased to 35 items. Of the 35 items, about 30 items were unreasonable demands in that they had never been agreed upon between the parties.

27 The Respondent's children attended to the 35 items and completed almost all of them. They then tried to tie down the Appellants in writing by preparing a list of all the items demanded by the Appellants and getting them to sign on it. However, the Appellants refused to sign the document. The Respondent and his children then concluded that the Appellants were just taking him for a ride and commenced proceedings for:

(a) the agreed sum of $10,000 for the attic works;

(b) a total sum of $49,000 for the additional works and items demanded by the Appellants; and

(c) the outstanding balance of $30,000.

28 It should be noted that there is an error in the itemisation of the Respondent's claim as it is undisputed that the sum of $10,000 for the attic works had been already paid (see [21] above). The Respondent's claim should therefore be for an outstanding balance of $40,000 under the Contract plus the total sum of $49,000 for additional works.

Decision Below

29 The DJ substantially found in favour of the Respondent. He considered that the Appellants must have engaged the Respondent to build their house as they wanted to replicate his house. They had agreed to give him a free hand to build a rustic, English-country type house, and could not complain that the Respondent's work and the materials used were not up to industry standards, insofar as these reflected the parties' agreed "rustic" style. Thus, the DJ ignored the expert evidence adduced by the Appellants stating that various aspects of the Respondent's work were defective.

30 The DJ also found that the Appellants had failed to prove their claim for alleged rectification works. This was because their counterclaim was based on a quotation rather than actual invoices,

and their joint affidavit was completely silent on any work having been carried out. Further, although one of the Appellants' witnesses (Mr Mah of Caesar 5) claimed that the rectification works cost $150,000 in total, only three invoices totalling $90,000 were exhibited in the affidavit of evidence-in-chief ("AEIC") of Mr Loggie, a surveyor engaged by the Appellants to give expert evidence on the defects in the Respondent's work. Finally, the Appellants' electrical expert, who was hired to rectify defects, mentioned that the Appellants had asked for an electrical "upgrade", which suggested that the scope of work ordered by the Appellants extended beyond the mere rectification of defects.

31 Consequently, the DJ disallowed the Appellants' claim for rectification costs save for the replacement of the zinc roof, which was specified in Aston's design to be made of clay tiles. He also rejected the Appellants' claim for rental, storage and moving costs, as he took the view that the Appellants' refusal to sign the defects list offered by the Respondent's daughter was unreasonable and prevented the Respondent from rectifying the defects.

32 As for the Respondent's claim, the DJ allowed the claim for the unpaid balance sum but rejected the claim for payment for additional works on the basis that these additional works had been incorporated into the Contract when the Respondent acceded to the Appellants' requests without asking for payment.

Grounds of Appeal

33 On appeal, the Appellants contend that the DJ had erred in:

(a) finding that the parties had agreed on building a rustic country-type house like the Respondent's;

(b) dismissing expert evidence on what constituted a defect;

(c) finding that the Appellants had substantially failed to prove that the rectification works were carried out;

(d) finding that the rectification works may have been more than rectification;

(e) holding that the Appellants, by refusing the sign the defects list, had unreasonably prevented the Respondent from rectifying the defects; and

(f) finding that the Appellants were unreliable witnesses.

34 The Appellants also applied for leave to adduce further evidence in the form of an affidavit by the Second Appellant ("the Further Affidavit") seeking to explain the inconsistency in the Appellants' evidence regarding the cost of rectification works, which was the main reason why the DJ rejected their claim for rectification costs (see [30] above).

My decision

Should SUM 646/2014 be allowed?

35 Although there is nothing in the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) or the Rules of Court (Cap 322, R 5, 2014 Rev Ed) which restricts the High Court's discretion to admit further evidence in an appeal, it has been held that for appeals to the High Court where the decision below was made after a full trial, the conditions in *Ladd v Marshall* [1954] 1 WLR 1489 ("*Ladd v Marshall*") would still apply: *WBG Network (S) Pte Ltd v Sunny Daisy Ltd* [2007] 1 SLR(R) 1133 at [13]. The *Ladd*

v Marshall conditions are as follows:

(a) the evidence could not have been obtained with reasonable diligence for use in the trial;

(b) the evidence must be such that, if given, would probably have an important influence on the result of the case, though it need not be decisive; and

(c) the evidence must be such as is presumably to be believed or apparently credible.

36 In the Further Affidavit, the Second Appellant seeks to clarify the facts and circumstances concerning the Appellants' claim for the cost of rectification works. She says that when the Appellants' joint AEIC was filed on 15 August 2012, five invoices evidencing the payment of $150,000 were already handed over to their former solicitors, but their solicitors had considered it unnecessary to include the invoices in their joint AEIC. The five invoices were instead enclosed in Mr Loggie's expert report dated 18 August 2012, which was in turn exhibited in his AEIC dated 21 August 2012. However, due to "inadvertence" or an "administrative lapse", the copy of Mr Loggie's expert report tendered in court only included *three* of the five invoices (for a total sum of $90,000). This gave rise to the apparent inconsistency between Mr Mah's evidence and the evidence given by Mr Loggie.

37 It is important to note here that although Mr Loggie's AEIC only included three invoices, all five invoices were in evidence at trial below: they were exhibited in Mr Mah's AEIC dated 3 June 2013. Therefore the issue before me is not whether the five invoices should now be admitted into evidence but whether the 2nd Appellant's *explanation* for the apparent inconsistencies in the Appellants' case ought to be admitted.

38 In this regard, I find that the first condition in *Ladd v Marshall* is not satisfied. This is because during the proceedings below, the DJ had expressly asked the Appellants whether they wished to put in a further AEIC explaining the various inconsistencies in their case:

> Court:… Does your---your client need to explain in-Chief as opposed to Cross-examination. Mr. Chia has already indicated he wants to cross-examine further that's---that's one aspect. The other aspect is do they even need to come back with a further AE---AEIC to explain inconsistencies all the various substantive inconsistencies are very---that are very apparent, you know, being based on the review of the records over 5 minutes. *You need your clients file a further AEIC to explain all the inconsistencies* why 193,000, why earlier on there was no mention that the works were done when according to Daniel Mah now he---he says works were completed as of April 2012? Why as of August 2012 when he filed the affidavits they only mentioned about how there was a quotation? And yet how come Daniel---and then the Counterclaim is 193,000 how come Daniel Mah only talks about $150,000 now? And why does Bruce Loggie talk about a different set of figures 90,000? …
>
> [emphasis added]

39 However, the Appellants declined to do so and decided to let their case stand on the strength of Mr Mah's AEIC and their evidence under cross-examination. Having chosen that path, it is not open to them to now seek to admit the Further Affidavit which could have been tendered at trial below. As the Court of Appeal noted in *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* [2004] 2 SLR(R) 392 at [24], the first condition under *Ladd v Marshall* is a very stringent one – any sort of judgmental error would not be sufficient to meet this condition. Nor is it tenable for the Appellants to say that these were lapses on the part of their former solicitors and not due to any fault of their own – the Appellants' former solicitors were their legal representatives and the Appellants would naturally

have to bear the consequences of any acts or omissions committed by them.

40 Therefore, the application in SUM 646/2014 is dismissed. Nonetheless, for reasons I will explain below (see [61]–[62]), it ultimately does not affect the Appellants' claim for the cost of rectifying defects.

Did the Appellants contract for a "rustic" house?

41 A key issue in this appeal is whether the Appellants had in fact contracted for a "rustic" house like the Respondent's. The DJ reasoned that this must have been the case given that the Appellants had engaged the Respondent to rebuild their house precisely because they were impressed with his house. The natural inference was that they must have wanted the Respondent's house replicated, together with all its "rustic" features.

42 However, the Appellants' evidence was that they were impressed not so much by the rusticity of the Respondent's house but by its unique façade and its efficient use of space. As the First Appellant explained on the stand:

> Q: So what was it about the [Respondent's] house that attracted you and your wife?
>
> A: I would say it's something different. From the outside it is appeared---it's not a 2-storey. Appeared to be 1 ½---just something different, not the typical 3-storeys, extensive or single storey is used. Some thing that is different.
>
> Q: Different in what sense? Rustic?
>
> A: Not rustic but as I said 1 ½ storeys, it's not a 2-storey concrete house or---or---it is different from what I see in other---other, uh, in the suburb where---where you have a 2---a house storey typical, um, design built. This is something that is different, um that attracted us are the greeneries on the side of the house, the front of the house. And we---we don't see the houses where it have plenty of plants, trees, um, 1 ½ storey and it's---it's kind of different.
>
> …
>
> Q: Did you like the [Respondent's] house when he showed you around?
>
> A: We like how he optimised the space. How he optimised the space with 1 ½ storeys to put in rooms in the attic areas. His sparse open court. He mentioned the word, I mean, he coined the term inside out, outside in. Something that he using the outdoor as a---like a living area, it's all covered up. So we---we like the---we are amazed, we are---we are---that---that kind of creativity that's---that he can maximise the space. That---that---that attracted us.

43 I am conscious of the fact that the DJ had considered the Appellants to be unsatisfactory witnesses and therefore might have discounted their evidence on this score as being unreliable. The DJ's assessment of the Appellants' credibility is of course not something that I am in a position to question. However, I am of view that the Appellants' evidence is corroborated by other objective facts. First, the Contract made no mention of the fact that the Appellants' house was to be built in a "rustic" manner. Since it was drafted by the Respondent, he could have included this important point in the Contract if it was indeed part of the parties' agreement. Second, the Respondent's argument that the Appellants desired the house to be built in a "rustic" manner was only raised belatedly after

his lawyers came into the picture. If the parties had indeed agreed to build a rustic house, one would have expected the Respondent to immediately point this out when the Appellants found fault with his work during the site inspections. But there is no evidence that he did so; instead, he appeared to have accepted the Appellants' criticisms and attempted to rectify the defects they pointed out.

44 That said, the Contract *did* give the Respondent a "free hand" in designing and building the Appellants' house. Thus, even if this was not expressly stipulated, it was open to the Respondent to build the house in a rustic manner if he so wished. However, I am of the view that the argument in relation to rusticity cannot be used to whitewash every flaw in the Respondent's work. Items which were in breach of building regulations, were flawed on a *functional* level or which were a result of poor workmanship rather than a conscious aesthetic decision would clearly constitute defects which should have been rectified.

Which of the items claimed by the Appellants constituted defects?

45 With the above principle in mind, I will now go through the list of items which the Appellants claim were defects and consider whether the allegation is made out for each item. In considering this issue, it bears noting that the Respondent failed to call his own expert witnesses to rebut the Appellants' experts. Nor was the credibility of the Appellants' experts seriously challenged under cross-examination. I must therefore accept their evidence unless they are "obviously lacking in defensibility": *Saeng-Un Udom v Public Prosecutor* [2001] 2 SLR(R) 1 at [27].

Ground floor marble flooring

46 The marble tiles on the ground floor of the house were laid with the polished side down and unpolished backing side up as the floor finish. Mr Loggie opined that this was contrary to recognised building practice because, with the polished surface facing downwards, it was "very difficult to get adhesion … to the floor substrate". [note: 1] However, when counsel for the Respondent asked Mr Loggie whether it would be acceptable to use unpolished finishing for the marble tiles if this was deliberately done to achieve a rustic effect as part of the parties' agreement, Mr Loggie answered in the affirmative.

47 In my view, since Mr Loggie's evidence was equivocal on this point, it would not be safe to regard the unpolished marble flooring as a defect. Further, the marble flooring was something that the Appellants would have seen being laid during their frequent site visits, and there is no evidence that they objected to the unpolished side being used as the floor finish. Had they voiced their concerns at an earlier stage and asked the Respondent to put the polished side up, they could have saved a lot of costs. I am therefore not minded to allow the claim for this item.

Second floor flooring

48 A timber laminate floor finish was used for the flooring of the second storey. The Respondent admitted on the stand that the laminate floor materials were damaged and needed to be rectified:

> Q: Then there was a complaint of damage laminate floor materials used for 2 bedrooms at 2nd storey, is that correct?
>
> A: Your Honour, as in the picture you can see 1 room is a complete and the other room has got sending [*sic*] to be done. Then when we tried to go back and do the rectification again we are not able to do so.

Q: So that you agree that there was a fault with needs to be re---rectify.

A: Yes.

49 I therefore find that this was a defect.

Roofing

50 As the DJ had found, the Respondent had provided a zinc roof even though the Contract provided for ceramic tile roofing. Further, the polycarbonate roofing used for the external area was incomplete at the time of Mr Loggie's inspection and was not watertight. These were clearly defects that went beyond matters of taste and needed to be rectified.

Timber deck

51 The Appellants' timber expert, Mr Lo, stated in his report that the woods used for the patio deck were not recommended for external usage as they had "moderate durability" when exposed to the elements. However, I did not read his report as going so far as to say that the Respondent's choice of wood was so unreasonable that it constituted a *defect*. In my view, if the Appellants wanted a superior quality of wood to be used, they should have specifically provided for it in the Contract, and the contract price might then have to be adjusted to account for the necessarily higher cost of such wood. As it stood, the Respondent had already told the Appellant that he might use "recycled materials" to keep the construction costs within the Appellants' modest budget, and the Appellants agreed. I therefore see no reason to allow the Appellants' claim for this item.

Rough plaster works and poor painting of walls

52 There was no evidence that the uneven plaster works or poor painting of the walls would result in any functional (and not merely aesthetic) problems. In my view this fell within the "free hand" allowance that the Respondent was given and did not constitute a defect.

Glass panel for study room

53 Mr Loggie noted that the 4mm glass used for the study room glass panel was too thin and considered it to be unsafe as the glass was liable to crack easily under impact. He pointed to industry specifications which stipulated a minimum thickness of 10mm. Since the Respondent's deviation from industrial standards raised safety issues, I find that this constituted a defect.

Staircase railings

54 According to Mr Loggie, the staircase railings provided by the Respondent contained large gaps which were inconsistent with building regulations requiring the gaps in staircase railings to be no more than 150mm wide. The Respondent's response was that this was part of his rustic design. In my view, pursuing a rustic design cannot justify breaching building regulations, which are imposed to ensure the safety of users. I therefore find that this was a defect.

Door and window handles

55 The Appellants' claim for rectification costs includes an item for the replacement of defective door and window handles. However, there was no mention in Mr Loggie's report of these allegedly defective handles. The Respondent's evidence was that hollows had been carved out in the wooden

windows to act as embedded handles as part of the rustic design. As this appears to be a matter of aesthetic preference, I do not find it to be a defect.

Boundary wall

56 Mr Loggie stated that the boundary wall was incorrectly constructed. The hollow section railing posts were not capped and susceptible to water ingress, saturation and premature aging and weathering. Further, the front driveway and boundary wall/gate protruded onto state land and needed to be pushed back. As these were clearly defects, I allow the Appellants' claim for replacing the boundary wall.

Electrical works

57 The Appellants produced an expert report by a licensed electrical worker ("Mr Tang") stating that the electrical works for the house failed to comply with industrial standards in numerous respects. His evidence on this score was not seriously challenged. I therefore find that this constituted a defect as well.

58 In relation to the electrical works, the DJ had raised concerns as to whether the Appellants were in fact seeking to "upgrade" the electrical works at their house. This issue arose because Mr Tang mentioned on the stand that an electrician called Lesman had told him that "his customer wanted to apply … to upgrade to 60amp 3-phase" and "the house was at number 1". However, Mr Tang's evidence on this score was rather garbled and clearly constituted hearsay. Furthermore, when counsel for the Respondent asked him whether the upgrade was ultimately carried out, Mr Tang said that "[i]t was not done" and that the owners "did not pay". I therefore see no basis for the DJ's finding that the electrical works carried out by the Appellants might have included an "upgrade".

Others

59 The Appellants have also claimed the cost of rectifying alleged defects in following items:

(a) False ceiling at living room and study room

(b) Kitchen hood

(c) Gate and gate motor

(d) Planter area

(e) Sink drain pipes

60 These defects were not pleaded by the Appellants in their counterclaim, nor were they mentioned in Mr Loggie's expert report. I therefore find that they have not been proven and disallow the Appellants' claim for costs incurred in rectifying them.

Are the Appellants entitled to damages for the defective work?

61 In my judgment, the DJ had erred in dismissing the Appellants' counterclaim for rectification costs (save for the costs of replacing the zinc roof) merely because there were inconsistencies in the Appellants' evidence on whether repairs had been carried out and how much was spent. Even assuming that no repair works had been carried out, the fact still remains that there were defects in the Respondent's work that required rectification. It is trite that in the case of defective construction

works, the normal measure of damages is the cost of rectifying or completing the work: *Mahtani and others v Kiaw Aik Hang Land Pte Ltd* [1994] 2 SLR(R) 996 at [25]. In cases where the cost of rectification is wholly disproportionate to the end to be attained, the diminution in the value of the property might be adopted as the measure of damages instead: *Ruxley Electronics and Construction Ltd v Forsyth* [1996] 1 AC 344 at 369 (there is no allegation that this is the case here). But there has never been any rule that damages for defective work may only be awarded if the claimant proves that rectification works had in fact been carried out and paid for. Therefore, it was not essential that the Appellants had carried out the rectification works, and even if the DJ disbelieved them on that score, he could still have gone on to award them damages based on the estimated cost of rectification.

62 In any event, I saw no reason to disbelieve the evidence of Mr Mah that he had *did* carry out the rectification works and was paid $150,000 by the Appellants. The discrepancy between this sum of $150,000 and the Appellants' initial claim for $185,850 was clearly explained in Mr Mah's AEIC dated 31 May 2013 – the sum of $185,850 was based on the original quotation provided by Mr Mah to the Appellants, but the Appellants ultimately chose not to carry out certain work items in the quotation, while others (relating to the replacement and revarnishment of outdoor timber elements) were only partially carried out. This is a perfectly plausible explanation and I have no difficulty in accepting it even without considering the Second Appellant's explanation in the Further Affidavit (which I have disallowed).

63 However, since I have found that certain defects have not been proven by the Appellants, the following items should be deducted from the sum of $150,000:

(a) Replacement of timber deck and revarnishment of outdoor timber members – $21,400 (this sum takes into account the deduction of $13,850 from the quoted price because the Appellants chose not to redo the timber deck outside the music room, the staircase and the wall panel)

(b) Replacement and polishing of marble tiles – $9,150

(c) Rectification of uneven walls with plastering compound – $3,500

(d) Repainting of inner walls – $3,000

(e) Replacement of door and window handles – $3,500

(f) Reinstallation of kitchen hood – $200

(g) Replacement of gate – $3,800

(h) Replacement of gate motor – $4,500

(i) Rectification of planter area – $1,200

(j) Replacement of sink drain pipes – $500

After these deductions, the total cost of rectification amounts to $99,250, and represents the damages that the Appellants are entitled to claim in respect of the defects.

The Appellants' claim for rental, moving and storage costs, and purchase of air-con remote control units

64 As mentioned, the DJ dismissed the Appellants' claim for rental, moving and storage costs on the basis that the Appellants had prevented the Respondent from rectifying the defects by unreasonably refusing to sign the Defects List. As a result, parties have made submissions before me on the reasonableness of the Appellants' refusal to sign the Defects List.

65 However, I have difficulty seeing the relevance of this issue to the Appellants' claim for rental costs. The reason why the Appellants had to extend their lease of alternative accommodation was because the Respondent failed to complete the construction works by 1 August 2011 (as stipulated in the Contract). The Appellants are therefore claiming the cost of extending their lease from 6 August 2011 to 5 October 2011. This extension predated the date on which the Defects List was presented to the Appellants (21 October 2011), so their failure to sign the Defects List clearly could not have anything to do with whether this claim should be allowed.

66 As for the moving and storage costs, these were incurred for the period of 14 October 2011 to 24 December 2011. Therefore, it might be argued that if the Appellants had signed the Defects List, the defects could have been rectified earlier and these costs could have been minimised. However, the fact is that the Appellants refused to sign the Defects List because they considered it to be incomplete and did not want to bind themselves to an incomplete list of defects. The DJ's observation that the Appellants could have asked to amend the Defects List before signing it flies in the face of the Respondent's own evidence that he wanted to "tie down" the Appellants to the defects listed. Indeed, when the Appellants subsequently sent the Respondent a new defects list, the Respondent's son replied stating that they were not willing to proceed with any additional works outside those listed in the original Defects List. [note: 2] In my view, therefore, the Appellants did not act unreasonably in not signing the defects list. In any event, even if the Appellants had signed the list, the rectification of the defects would still have taken more time, such that the rectification would only be completed after 24 December 2011, and they would still have had to incur the moving and storage costs.

67 Consequently, I allow the Appellants claim for rental costs and moving and storage costs. As for the cost of purchasing remote control units, the Contract did stipulate for air-conditioning units to be provided and remote control units must obviously be considered part of the package. I therefore allow the Appellants' claim for these as well.

Conclusion

68 For the foregoing reasons, I allow the Appellants' appeal in part and award them damages as follows:

Item	Award
Rectification of defects	$99,250
Lease extension for alternative accommodation	$6,400
Removal and storage costs	$1,885
Purchase of air-conditioning remote control units	$82.01
Total	**$107,617.01**

69 After setting off the $40,000 owed by the Appellants to the Respondent (which the Appellants

does not dispute in this appeal), the Respondent is to pay the Appellants $67,617.01 with interest thereon at the rate of 5.33% per annum from the date of the Appellants' counterclaim to the date of payment. As for costs, since the Appellants did not succeed on SUM 646/2014 and also failed to establish a substantial number of the defects claimed, I award them 50% of the costs here and below to be taxed if not agreed.

70 In concluding, I also wish to note that some of the critical remarks made by the DJ in respect of the Appellants appeared, with respect, to be rather excessive and unnecessary. He accused them of "flim-flamming the [Respondent] and squeezing him for more", trying to extract their "pound of flesh" when they were not even entitled to a "jot of blood". He even quoted four lines from William Blake's poem *Auguries of Innocence* to describe what he perceived to be the Appellants' unreasonable behaviour. In my view, although the Appellants might be criticised for having unduly high expectations given the price they were paying for the Respondent's work, there was no evidence of bad faith or unconscionable behaviour on their part, and the DJ's remarks were not necessary. Such remarks are, in my view, best avoided as they simply serve to compound the losing party's sense of grievance, and might compel them to lodge appeals to vindicate themselves even though the cost of appealing is out of proportion to the sums at stake.

[note: 1] RA VI/100.

[note: 2] RA IV/57.