

Case Law:

The case of ***Choi Peng Kum and another v Tan Poh Eng Construction Pte Ltd*** [2013] SGHC 272 dealt with issues of validity of payment claim, interpretation of provisions of the SIA Conditions and the status of security deposited into court under the adjudication regime. The Court held that a payment claim was a valid payment claim although it was not supported by a valuation by a quantity surveyor and clause 32(8)(a) of the SIA Conditions (on termination of services of a contractor) did not preclude the engagement of the adjudication process. The Court further decided that monies paid into court under section 27(5) of the Building and Construction Industry Security of Payment Act (Cap. 30B) is to be held as security pending final decision of the first court and not after all avenues of appeal have been exhausted.

The High Court case of ***Qwik Built-Tech International Pte Ltd v Acmes Kings Corp Pte Ltd*** [2013] SGHC 278 involved various claims for monies due and payable arising from a building and construction project in Maldives. While the case was decided largely on the evidence, the Court considered a few contractual principles worth noting. The Court held that where a contractor fails to provide materials as required under a contract, the Court would allow for a diminution in the contract price by reference to the cost price of the omitted materials. The Court also held that where there is no agreement on the amount of payment to a contractor who is entitled to payment, a term that the contractor would be remunerated at a reasonable rate would be implied into the contract. However, the plaintiff contractor has the burden of adducing evidence to show what the reasonable rate is.

In ***Resource Piling Pte Ltd v Geospecs Pte Ltd*** [2013] SGHC 231, the High Court dealt with a tort claim for negligence by a piling contractor against a soil investigation company. The piling contractor alleged that the soil investigation company had provided inaccurate borehole logs resulting in the piling contractor incurring more costs than provided for in its original tender price. In line with the approach adopted by the Court of Appeal in ***Spandek Engineering (S) Pte Ltd v Defence Science & Technology Agency*** [2007] 4 SLR(R) 100, the Court, with reference to analogous decided cases, applied the two-stage test of duty of care premised on proximity and policy considerations, preceded by a threshold consideration of factual foreseeability. While the test of factual foreseeability was satisfied on the facts as a soil investigator would expect that inaccuracies in the borehole logs would cause economic loss to contractors, the Court did not find that the soil investigation company had, in addition to the contractual duties it owed the developer, assumed the risk of losses arising from the piling contractor's performance of the piling contract. There were also no positive policy reasons in favour of a duty of care. It was therefore held that the soil investigation company did not owe the piling company a duty of care. The Court did consider however that if there was a duty of care, the soil investigation works were carried out negligently as the borehole logs were carelessly logged and inaccurate.

The case of ***Fairview Developments Pte Ltd v Ong & Ong Pte Ltd and another appeal*** [2014] SGCA 5 arose from a dispute over architectural fees, which involved issues of novation, termination, *quantum meruit* and limitation periods. The case revolved around a 1983 contract for architectural services entered into between the developer and the Architect's predecessor. Sometime in 2001, the predecessor's business was transferred to the Architect. Subsequently, the services of the Architect were terminated by the developer. The Court of Appeal allowed the Architect's appeal on the wrongful termination issue, deciding that on the facts, the contract for architectural services was novated from the Architect's predecessor to the Architect and the Architect was therefore entitled to lost profits from the wrongful termination of the contract. In assessing the quantum of the abortive works, it was held that the payment for abortive works should have been on a percentage cost basis as per parties' agreement and not on a *quantum meruit* basis. The Court of Appeal also found that the Architect's claim was not time barred as its entitlement to fees crystallized into a right upon which a cause of action accrued only when the invoice was issued and not immediately upon completion of each stage of work. The Court went on to hold that even if the developer was able to rely on the time bar defence, there had been a valid acknowledgement of the debt by the developer such that there was a fresh accrual of action pursuant to section 26(2) of the Limitation Act.

The Court of Appeal case of ***Jurong Primewide Pte Ltd v Moh Seng Cranes Pte Ltd and others*** [2014] SCCA 6 concerned the apportionment of liability for the collapse of a crane into a concealed manhole at a worksite. Reversing the High Court's decision that a main contractor is solely liable in negligence, the Court held that while the main contractor was liable for 60%, the subcontractor was also liable for the remaining 40%. The Court found that while it remains that a main contractor is to bear the bulk of the responsibility to identify and take precautionary measures under the Work Safety and Health (WSH) Regime, a subcontractor is also under a non-delegable responsibility to ensure that the ground conditions were safe and that measures would be taken to address unsatisfactory conditions. The Court also found that the subcontractor, who was largely in charge of the works that were in the area, specifically the operation of the crane's activities, had breached the subcontract with the main contractor by not discharging its specific duties under the WSH Regime.

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