

**IN THE MATTER OF  
THE BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT  
ACT 2004**

**AND**

**IN THE MATTER OF AN ADJUDICATION**

**BETWEEN**

***L PRACTISING UNDER THE NAME OF  
Company AW***

.... Claimant

**AND**

***Company AX***

.... Respondent

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**ADJUDICATION DETERMINATION**

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**The Claimant:**

***L practising as Company AW  
YYY, Singapore***

**The Respondent :**

***Company AX  
YYY, Singapore***

21<sup>st</sup> August 2006

This is the Adjudication Determination of JOHN CHUNG, who was appointed by the Singapore Mediation Centre (“SMC”) on 11 August 2006 as Adjudicator pursuant to the Building and Construction Industry Security of Payment Act 2004 (“the Act”) in Adjudication Application No: SOP/AA08/2006.

## **BACKGROUND**

- 1) The Claimant is Mr *L*, an architect practising under the name and style of *Company AW*.
- 2) By an exchange of letters and emails between the Claimant and the Respondent, the Claimant was appointed by the Respondent as the architect for a proposed *AY* Complex at *YYY*, Singapore (“the project”). The project comprised addition and alteration works to an existing swimming complex and conversion to an ice skating complex, a shopping complex and meditation centre. The landowner is *AZ*.
- 3) The terms and conditions of appointment were set out in a letter from the Claimant to the Respondent dated 11 July 2005, which pegged the architect’s fees at a maximum of 4% of the total construction cost of the proposal. It was also agreed that the terms and conditions of the Claimant’s appointment will be in accordance with the standard SIA Conditions of Appointment and Architect’s Services and Mode of Payment.
- 4) Apparently, the Respondent also instructed the Claimants to prepare a proposal for a hotel at the same site. Although plans for the hotel were prepared by the Claimant and given to the Respondent, these were never submitted to URA for approval.
- 5) Plans for the *AY* Complex were submitted to URA for planning approval on 18 November 2005 and Provisional Permission was granted by the URA on 20 December 2005.

- 6) On 18 May 2006, the Claimants' services were terminated by the Respondent.

### **Payment Claim**

- 7) On 17 July 2006, the Claimant submitted a Payment Claim to the Respondent claiming the sum of \$26,380.00 being his fees due under invoices Nos. 1XXX, 2XXX, 3XXX, 4XXX & 5XXX.

### **Payment Response**

- 8) By an email to the Claimant dated 26 July 2006 entitled "Payment Response", the Respondent provided their replies to the Claimant's claims.

### **Notice of Intention to Apply for Adjudication**

- 9) No payment having been made by the Respondents to the Claimants, on 1 August 2006, the Claimants gave Notice of Intention to Apply for Adjudication pursuant to section 13(2) of the Act.

### **Adjudication Application**

- 10) On 4 August 2006, the Claimant lodged an Adjudication Application with the SMC pursuant to section 13(1) of the Act. The Adjudication Application was served on the Respondent on 7 August 2006.

### **Appointment**

- 11) On 11 August 2006, I was appointed by the SMC as the Adjudicator in these proceedings. I wrote to the parties on 11 August 2006 and reminded the Respondent to lodge his Adjudication Response by 14 August 2006. I also called for a conference with the parties on 15 August 2006.

## **Adjudication Response**

- 12) The Respondent lodged their Adjudication Response with the SMC on 14 August 2006. In the Adjudication Response, the Respondent stated that they did not agree to abide by the Adjudication Procedure Rules.
- 13) Pursuant to section 16(1) of the Act, the adjudication was deemed to have commenced on 14 August 2006.
- 14) I met the parties on 15 August 2006 in my office. The Claimant appeared in person while the Respondent was represented by Mr *M*, their managing director. I heard submissions from the parties.

## **REASONS**

- 15) Despite their stated refusal to abide by the Adjudication Procedure Rules and Mr *M*'s insistence that he attended the conference to 'observe' the adjudication proceedings, Mr *M* nevertheless made a spirited defence of the Respondent's position at the conference on 15 August 2006.
- 16) In their Adjudication Response, the Respondent claimed that they had lost all documents relating to the project and hence were not able to ascertain the Claimants' claims. The Respondent alluded to the absence of any signed service agreement with the Claimant and questioned the "completeness, professionalism and fairness of work done to the stage of URA submission." The Respondent claimed that they had not been advised on the terms and conditions of the service agreement and the SIA act and the BCA (which I took to mean the Building Control Act).
- 17) I reject these contentions. Despite the absence of a signed contract between both parties, there was no doubt that the Claimant was appointed by the Respondent as

the architect for the project. I am satisfied that there is sufficient evidence to show that the Claimant had been appointed on the terms and conditions set out in the Claimant's letter dated 11 July 2005, which. This was further reinforced by the fact that the plans had been endorsed by the Respondent before submission to URA. The appointment was subsequently confirmed by the Respondent in their letter to the Claimant dated 17 October 2005 whereby the Respondent expressly authorised the Claimant to act as their agent to submit plans to the competent authorities for written permission to develop the project.

18) I am also satisfied that the Claimant's letter dated 11 July 2005 incorporated the SIA Conditions of Appointment and Architect's Services and Mode of Payment, Third Edition 2002 ("the SIA Conditions of Appointment"). Accordingly, I find that the Claimant's fees was payable in accordance with the SIA Conditions of Appointment.

**Invoice 1XXX dated 16 December 2005 (\$10,800.00)**

19) It was not in dispute that the Claimant had prepared plans and submitted these to URA for planning approval on 18 November 2005 after having obtained the endorsement of the plans by AZ as landowner and the Respondent as developer. On 16 December 2005, the Claimants then submitted a progress claim (revised) No. AA/XXX to the Respondents for \$32,800.00. This was in accordance with clause 2.2 of the SIA Conditions of Appointment which provides that up to 20% of the total fees was payable on completion of application documents and drawings sufficient for submission to the relevant authorities for planning approval.

20) Having already paid \$22,000.00 to the Claimant, the balance due from the Respondent under invoice No. 1XXX was therefore \$32,000.00 - \$22,000.00 or \$10,800.00.

21) In their Payment and Adjudication Responses, the Respondent blamed the Claimant's failure to provide copies of all architectural drawings as the root of this dispute. The Respondent maintained they had the right to request a third party to review the "quantity and quality of works/services and professionalism rendered vs. the fairness of services/works charged" by the Claimant. At the conference on 15 August 2006, the Respondent's Mr M again repeated his assertions that he had the right to demand a set of drawings from the Claimant to enable him to obtain a third party's assessment of the quality, completeness and professionalism of the services rendered.

22) In my view, there is no merit to the Respondents' arguments. The quantum of fees payable is not dependent on the "quantity and quality of the services provided". The "completeness and professionalism" of the Claimant's service were also not an issue since the plans had been endorsed by the Respondent as developer before these could be submitted to the URA. I accept the Claimant's submission that if the plans were not complete, they would have been rejected by the URA. The SIA Conditions of Appointment are clear and provides that up to 20% of the total fees was payable upon submission of plans for planning approval. While the Respondent may have the right to request a third party to review the services rendered by the Claimant, it does not detract from the fact that the fees are payable and are calculated based on the estimated construction cost of the project.

23) The only issue then would have been the construction cost of the project, for the purpose of computation of the fees payable. Article 13.3(3) of the SIA Conditions provides that "*the total construction cost for the purpose of calculating the fees ... shall be arrived at in accordance with the priority as follows :-*

(a) *For completed works, the total construction costs of all works including variations and additional work.*

(b) *For works contracted, the lowest bona fide tender received by the Architect."*

24) According to the Claimant's letter dated 16 August 2006, the construction cost was based on the estimate given by the Respondent's Mr N's contractor friend who had quoted \$4,100,000.00 for the ice skating rink complex and \$2,100,000.00 for the BA Centre. According to the Claimant, this was the lowest of three quotations obtained for the project. This estimate was not challenged by the Respondent in their Payment and Adjudication Responses. In the absence of any evidence to the contrary, I accept the Claimant's cost estimates and the computation of his fees.

25) I therefore allow the Claimant's claim under invoice No.1XXX for \$10,800.00.

**Invoice 2XXX dated 22 December 2005 (\$6,200.00)**

26) Provisional Permission having been granted by URA on 20 December 2005, the Claimant rendered another invoice No. 2XXX for 2.5% of the total fees of \$248,000.00 based on 4% of the estimated construction cost of \$6,200,000.00. By his letter dated 22 December 2005, the Claimant explained that another 2.5% of the agreed fees was payable upon grant of Provisional Permission pursuant to clause 2.2(d) of the SIA Conditions of Appointment. The Claimant also explained that his architectural fees was based on an estimate of the construction cost of \$4,100,000.000 for the ice skating rink complex and \$2,100,000.00 for the BA Centre provided by one of the Respondent's contractors. These estimates were again not disputed by the Respondent.

27) In their Payment and Adjudication Responses, the Respondent again attributed the "root of the dispute" to the Claimant's failure to provide the Respondent with copies of drawings. I am unable to accept the Respondent's reasons for refusal to pay on the grounds that because they did not have copies of the drawings, and accordingly they were unable to obtain a third party evaluation of the value of services rendered by the Claimant. Clause 2.2 of the SIA Conditions of Appointment sets out the Mandatory Mode of Payment for Basic Services in Stages. This means that fees are payable when a specified staged has been reached

and which is not dependent on the quality, completeness or professionalism of the services rendered.

28) Clause 2.2(d) of the SIA Conditions of Appointment makes it clear that 2.5% of the total fees is payable upon obtaining Provisional Planning Approval and since Provisional Permission had been granted, the Claimant was entitled to his fees pursuant to clause 2.2(d) of the SIA Conditions of Appointment.

29) I therefore allow the Claimant's claim under invoice No.3 for \$6,200.00.

**Invoice No.3XXX dated 22 May 2006 (\$7,200.00)**

30) As mentioned above, the Claimant's services were terminated by the Respondent on 18 May 2006. On 22 May 2006, the Claimant rendered invoice No.3XXX for work done in respect of the hotel, which they had not billed previously. According to the Claimant's letter dated 22 May 2006, the Claimant had been instructed by the Respondent's Mr *N* some in July 2005 to design a hotel at the second storey of the proposed *BB* Centre under Phase Two of the project, to be built by one Mr *O*. The Claimant also exhibited a transmittal dated 21 July 2005 showing that the hotel layout plans and room plans had been given and received by the Respondent's Mr *N* on 30 July 2005. The Claimant estimated that the cost of the hotel was \$1,200,000.00 and based on the previous agreed fee of 4%, the total fees for the hotel would come up to 4% x \$1,200,000.00 or \$48,000.00.

31) In their Payment and Adjudication Responses, the Respondent denied that they had instructed the Claimant to prepare the schematic design for the hotel. The Respondent also alluded to the absence of any service agreement between them relating to the hotel.

32) I am unable to accept the Respondent's arguments. If the Claimant had not been instructed to design the hotel, why would they have prepared the layout and room

plans and submitted these to the Respondent in July 2005. I am satisfied that despite the absence of any signed agreement, the Claimant had been instructed by the Respondent to prepare the schematics for the hotel. I am also satisfied that work had been done for which the Claimant ought to be paid. I accept that the Claimants are entitled to 15% of the total fees for having completed the schematic designs pursuant to clause 2.2(a) and (b) of the SIA Conditions of Appointment and that these are to be computed on the basis of the cost estimate of \$1,200,000.00 for the hotel.

33) I therefore allow the Claimant's claim under invoice No.3XXX for \$7,200.00.

**Invoice No.4XXX dated 26 May 2006 (\$780.00)**

34) The Claimant also submitted an invoice No.4XXX for disbursements and expenses incurred.

35) In their Payment and Adjudication Responses, the Respondent requested for copies of receipts and invoices to audit the accuracy of all the disbursements and expenses incurred.

36) Clause 2.3(6) of the SIA Conditions of Appointment provides that professional fees excluded disbursements incurred by the architect. I accept the fact that printing, copying charges and other charges were incurred by the Claimants in the course of providing their services. I also do not think that the amount claimed by the Claimant for disbursements was exorbitant or unreasonable. Accordingly, I am prepared to accept the amount claimed by the Claimant.

37) I therefore allow the Claimant's claim under invoice No.4XXX for \$780.00.

**Invoice No.5XXX dated 30 May 2006 (\$1,400.00)**

38) On 30 May 2006, the Claimant submitted an invoice No.5XXX for “Fees for Perusal of Project Files, Photocopying of Relevant Documents and Previous Correspondences, and Attended at Meeting” with the Respondent’s Development Manager. This claim was apparently for time spent by the Claimant at a meeting with the Respondent’s representatives on 29 May 2006 and making copies of documents and drawings requested by the Respondent.

39) I do not consider this to be within the scope of services agreed upon between the parties, and also since by then the Claimant’s services had already been terminated by the Respondent and there is no basis for charging for time spent at the meeting and making copies of documents and drawings. The meeting was held to resolve outstanding matters between the parties and were not professional services performed by the Claimants.

40) I therefore disallow the Claimant’s claim in respect of this invoice.

## **ADJUDICATION DETERMINATION**

NOW I, JOHN CHUNG, the Adjudicator appointed in these adjudication proceedings, having taken into account the provisions of the Act, the provisions of the contract to which the adjudication application relates, the payment claim, the adjudication application and the accompanying documents thereto, the payment response and the adjudication response and the accompanying documents thereto, the submissions and responses of the parties to the adjudication, and for the reasons set out above,

HEREBY FIND AND DETERMINE as follows:

1. The Respondent is to pay the Claimant the sum of \$24,980.00 within seven (7) days from date hereof and interest on the said sum of \$24,980.00 at the rate of 6% per annum from 4 August 2006 to date of payment; and
2. The Respondent is to pay the Claimant the costs of the Adjudication Application, namely the fees paid to SMC and my fees and expenses.

Dated this 21<sup>st</sup> day of August 2006

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**John Chung**  
*Adjudicator*