

CONSTRUCTION LAW FOCUS

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ADVOCATES AND SOLICITORS

A) *Hong Huat Development Co (Pte) Ltd v. Hiap Hong & Co Pte Ltd, OM No 12 of 1999, unreported, High Court judgement.* *Appeal against Arbitrators award – whether employer is liable for interest arising from architects' late certification of interim payment – whether employer is liable for architects' negligence – liability of architects towards Contractor*

Hong Huat Development Co Pt Ltd v Hiap Hong & Co Pte Ltd OM 12 of 1999, unreported

In the recent case of *Hong Huat Development Co Pte Ltd v Hiap Hong & Co Pte Ltd (OM no 12 of 1999)*, the Court in deciding whether to allow an appeal against the award of the arbitrator had to consider the issue of the architect's duty in the administration of the building contract. One of the issues in the Appeal was whether the Contractor could claim interest on the sums due under the interim certificates against the Employer for the late issue of these certificates by the Architect.

Woo Bih Li JC held that as a certifier, the Architect is not the agent or alter ego of the Employer. He further held that although the provisions in the SIA Conditions of Contract (1979 Edition) may require the Architect to issue various certificates at various times, they do not render the Employers liable for the Architect's obligation. Even though the Architect is not a party to the Contract, the provisions make it clear as to what is expected of him. As such, the Employer was not liable for interest on the late issue of the interim payment certificates by the Architect.

On the question of whether the Architect owed a duty of care to the Contractor since the Contractor could not recover the interest claim from the Employer, the Court observed that following the Eastern Lagoon case where the Management Corporation could recover against the Architects, a strong argument could be made that the Architect/certifier does owe

a duty of care not only to the Employer but to the Contractor to avoid pure economic loss. The Architect must know that if he is negligent in issuing certificates he might cause loss to one of these parties.

The above case is presently under appeal. If the Court of Appeal affirms this decision, the SIA Conditions of Contract may have to be re-considered to expressly provide that in such circumstances, it will be the Employer and not the Architect who will be liable for the interest claim.

B) *Hong Huat Development Co (Pte) Ltd v Hiap Hong & Co Pte Ltd [2000] 2 SLR 609.* *Application for leave to appeal against Arbitration award under s 28 of the Arbitration Act – the time limit for applying and the point from which time begins to run – application of Nema Principles*

Hong Huat Development Co (Pte) Ltd v Hiap Hong & Co Pte Ltd [2000] 2 SLR 609

The Court of Appeal had the opportunity recently to give guidance on the conduct of domestic arbitrations under the Arbitration Act in the two cases of *Hong Huat Development Co (Pte) Ltd v Hiap Hong & Co Pte Ltd [2000] 2 SLR 609* and *Lum Chang Building Contractors Pte Ltd v Anderson Land Pte Ltd [2000] 2 SLR 261*.

In the case of *Hong Huat Development Co (Pte) Ltd v Hiap Hong & Co Pte Ltd*, the appellants appealed against the decision of the High Court judge who refused to grant leave to appeal against the award of the arbitrator.

The Court of Appeal ruled that the time limit of 21 days for an aggrieved party to appeal against an arbitral award under section 28 of the Arbitration Act would apply to the application for leave to appeal as well although this was not expressly provided under Order 69 Rule 4(2) of the Rules of Court. On a practical level, the Court of Appeal opined that the notice of appeal should be included in the application

for leave so that the notice of appeal itself would be filed within the requisite 21 days period as well.

On the issue of the point of time in which the 21 days period is to commence, the Court of Appeal after examining various English authorities held that the long established “notice rule” whereby an award was considered as published when the arbitrator gives notice to the parties that his award was ready for collection is still good law and would be adopted by the Court. Accordingly time shall begin to run for the purpose of filing the application for leave to appeal once the arbitrator notifies the parties that his award was ready for collection. In this regard, it was no excuse that the delay in filing the appeal may have been caused by any exorbitant charges of the arbitrator for the collection of his award.

The Court of Appeal allowed the appeal against the High Court’s decision and granted leave to appeal against the arbitrator’s award on the issue of law. In doing so it adopted the “*Nema*” guidelines and held that the issue of law in the present case concerned the extent of a term to be implied as regards the duty of an employer in relation to certifying functions of an architect in a standard form of building contract and that the appellants needed only to show a strong prima facie case that the arbitrator was wrong in his determination of this issue of law.

C) *Lum Chang Building Contractors Pte Ltd v Anderson Land Pte Ltd [2000] 2 SLR 261.*

Application for leave to appeal against Arbitrators’ award under s 23 (2) of the Arbitration Act - whether it was necessary for the High Court to adopt the arbitrator’s award after it was published - the time limit to apply for leave to set aside the award under section 23(2)

Lum Chang Building Contractors Pte Ltd v Anderson Land Pte Ltd [2000] 2 SLR 261.

In the other case of *Lum Chang Building Contractors Pte Ltd v Anderson Land Pte Ltd*, the High Court had referred a case for arbitration under section 22 of the Arbitration Act. After the arbitrator had published his award, the appellants were dissatisfied with the award and applied to the High Court for leave to set aside the award under section 23(2) of the Arbitration Act. The High Court refused to grant leave. The appellants appealed against that decision.

Two issues came up for the Court of Appeal’s consideration:

- (a) whether it was necessary for the High Court to adopt the arbitrator’s award after it was published, and
- (b) what was the time limit to apply for leave to set aside the award under section 23(2)?

On the first issue, the Court of Appeal held, upon a reading of sections 21, 22 and 23(2) of the Arbitration Act as a whole that it was not necessary for the High Court to adopt the arbitrator’s award in respect of a reference under section 22.

On the second issue, the Court of Appeal held that under Order 69 Rule 4 of the Rules of Court, it was clear that the time limit of 21 days would apply to an application under section 23(2) to set aside the arbitrator’s award. Accordingly, the appeal against the High Court’s decision refusing to grant leave was dismissed.