

## ARCHITECTS' DUTIES

### **STATUTORY DUTIES**

An architect is expected to have a reasonable working knowledge of laws and legislation which affects him in the discharge of his duties as an architect. The following are the principle legislation governing design and building works.

#### Planning Act (Cap 232)

The Planning Act governs the development of land in Singapore. Section 10(1) provides that *"No person shall without the written permission of the competent authority, develop any land."* The competent authority for planning purposes is designated as the Chief Planner, Urban Redevelopment Authority.

#### Building Control Act (Cap 29) & Building Control Regulations

The Building Control Act ("the Act") and Regulations govern building works and imposes on the qualified person statutory duties of design and supervision. Under s.2(1) of the Act, a qualified person means a person who is registered as an architect or a professional engineer. The Regulations lay down the form and content for the design and carrying out of building works.

#### Design

By Regulation 6(1) *"All plans ... accompanying any application for approval shall be prepared and signed by an appropriate qualified person."*

The architect is under a duty to ensure that his plans comply with the Act and Regulations.

#### Supervision

By Section 8(1) of the Act *"... no person shall commence or carry out any building works except under the supervision of an appropriate QP."*

### **CONTRACTUAL DUTIES**

#### Express Terms

The architects' duties to his client depends on the express terms of his contract with the client. The contract may be a standard form contract like the SIA Conditions of Appointment and Scale of Professional Charges which sets out the terms and conditions of appointment and governs the rights duties and obligations of the architect and the client.

#### Implied Terms

Not all contracts however, are required to be in writing. Where there is no written contract, the terms of the contract will have to be implied. A term can be implied by law or from the facts.

#### Degree of Skill

An architect who offers professional architectural services warrants that he will use "reasonable care & skill". The degree of skill required is that of an ordinarily competent architect professing to have that special skill. Contracts for supply of professional architectural services do not normally give any implied warranty beyond reasonable care and skill.

The SIA Conditions of Appointment warrants that the architect “shall exercise a reasonable standard of skill and diligence normally expected of an accepted by the profession of an architect.”<sup>i</sup>

### Delegation of Duties

The appointment of an architect, as with most professional persons is personal to himself. He cannot delegate his duty to be performed by someone else. In practice however, due to the complexities of some projects an architect will usually delegate a substantial proportion of the technical aspects of design to other skilled professionals like mechanical & electrical engineers, civil & structural engineers, quantity surveyors, etc. Where an architect undertakes the design and supervision of a building project under an “umbrella” arrangement, he should let the client know that he is delegating other aspects of the design like the mechanical & electrical design work and structural design work to other professionals.

### Design responsibilities

Quite apart from the aesthetic designs of a building, the design responsibilities of an architect can extend to specifications, selection of finishes choice of construction techniques. He must exercise skill and care in the execution of his designs and in the choice and specification of materials.

### Design and Build

In traditional employer/architect relationships, an architect is only required to use reasonable care and skill in the execution of his design services. He does not normally warrant the suitability of his design for an intended purpose. In design and build contracts however, there may be an implied term that his design is suitable for the intended purpose. He has a higher duty of care to his employer to ensure that his design is suitable for the purpose made known to him where his is employed under a design and build contract.

The “employer” is the person with whom the architect has a contractual relationship. In a design and build contract, the “employer” is the builder with whom the architect has teamed up to offer his design. Although no privity of contract exists between the architect and the building owner, an architect is still under a duty of care to ensure that he acts and omissions do not cause loss or damage to the building owner.

A turnkey contractor engaged structural engineers to design the frame of a factory building, the floors of which were required to accept the weight of stacker trucks moving over them carrying oil drums. As designed, the floors were not in fact able to withstand the resonance forces set up by the movement of the trucks. The contractor sued the engineer for damages. The trial expressly stated that there was no negligence but implied a term of suitability, suggesting that a higher duty might be implied by law than that owed by professional men generally. It was held by the Court of Appeal that in general no higher duty rested on the structural engineer than that formulated, in *Bolam’s* case for professional negligence, on these particular facts, since the design and build contractor was liable to the owner without qualifications for a suitable design, the defendants were liable to the contractor under a term to be implied from the particular facts. *Greaves v. Beynham Meikle (1975)*<sup>ii</sup>.

### Who is the “Client”

It should be pointed that the “client” in the case of design and build contract is the party with whom the architect contracted. It is to be distinguished from the building owner, who may well be the employer of the contractor.

## DETAILED DUTIES

### Site Investigation

This includes preliminary observation and investigation of the site to determine if there are any obvious physical constraints which may affect the site or the building e.g. encroachments, right of way, drainage road reserves, etc. If necessary he should obtain interpretation plans to determine if there are any planning constraints. He should not rely on information given to him by others but should examine the site for himself. If he does not have the requisite skills to conduct a proper investigation of the site, he must advise the client to engage suitable professionals e.g. land surveyors, structural engineers to conduct the investigation.

In *Columbus v. Clowes (1903)*<sup>iii</sup>, an architect was employed by a company to prepare plans. The architect did not measure the site but acting on information from an unauthorized person, made the plans on the assumption that the site was smaller than it was. Errors in the plans were subsequently discovered and the architect was held liable to the company for errors in the plans.

### Feasibility Studies

An architect may be called upon to prepare feasibility studies as to the potential of the site. The architect should be careful to advise only on the physical potential of the site and not the commercial viability of a project unless he professes to have that skill as he may find himself liable to the client if the client acts on his advice and suffers a loss under the *Hedley Byrne*<sup>iv</sup> principle.

### Cost Estimates

Very often, an architect is asked to produce a design within a given budget. In such a case, an architect may be under a duty to design works capable of being carried out at a reasonable cost having regard to their scope and function. There will be an express or implied condition of employment that the project should be capable of being built within a stipulated or reasonable cost.

In *Moneypenny v. Hartland (1826)*<sup>v</sup>, Best C.J. said "A man should not estimate a work at a price at which he would not contract for it; if he does, he deceives his employer... If a surveyor delivers an estimate greatly below the sum at which the work can be done, and thereby induces a private person to undertake what he would not otherwise do, then I think he is not entitled to recover: and this doctrine is precisely applicable to public works. There are many in this metropolis which would never have been undertaken at all, had it not been for the absurd estimates of surveyors."

### Knowledge of legislation, regulations and bye-laws etc.

The present regime of the Building Control Act and Regulations makes it incumbent on the architect to provide statutory supervision and to give requisite notices and reports relating to the building works. Notwithstanding the existence of clauses in most building contracts (e.g. clause 7 of the SIA Conditions) which require contractors to comply with all written laws, some English cases have held that it is the practice in the industry (in England) for an architect to assume responsibility for the substance and formalities of compliance with bye-laws.

### Recommending builders

In recommending builders, an architect is expected to make reasonable enquiries as to the solvency and competence of the builder although he does not guarantee the solvency or capacity of the builder. An architect will be liable to his employer if he carelessly gives a positive recommendation in favour of a contractor. In *Valerie Pratt v. George J. Hill (1987)*<sup>vi</sup>, an architect

who recommended two builders as “very reliable” was held liable for negligent misrepresentation when the chosen builder proved to be very unreliable.

#### Recommending form of contract

The SIA Conditions of Contract for building works is commonly in use in private sector projects. For public sector projects, an architect may not have a choice as to what form of contract to use. Whereas an architect is at liberty to recommend the form of contract to be used, he has duty to his employer, when he recommends a particular form of contract to be used, to ensure that he is familiar with that form of contract and is able to administer that contract. While most architects are familiar with the standard form building contracts commonly in use, there are instances where the building contract used is not a standard form contract. An architect may find himself liable to his employer and even to the contractor if he is found to be negligent in the administration of the contract.

#### Administration of contract

The architect is the employer’s agent in all matters connected with the building work and the contract between the employer and the contractor and owes a duty of care to his employer to administer the contract properly.

#### Plans, drawings, specifications

An architect owes a duty to his employer and to the contractor to ensure that plans, drawings and details are issued within a reasonable time. Clause 3(2) of SIA Conditions provides that “... *the Architect shall supply such further or working drawings, specifications, details... Such information shall be given, in the case of original contract work, within a reasonable time.*” What is a reasonable will depend on the facts and circumstances of the case. Delay in issuing drawings, which is a common cause of complaint by contractors may lead to claims by contractors rendering the employer ultimately liable to the contractor.

#### Supervision

It is a part of the normal duties of an architect to supervise the building works for which he is engaged. In the course of his supervision duties, the architect has concurrent duties in contract and under the Building Control Act. Under contract, his normal duties of supervision is to ensure that the building works are carried out according to the plans, specifications and terms of the building contract. Under the Act, he has to ensure that the building works are carried out in accordance with the Act and Regulations.

His supervision duties include the prevention, detection and correction of defective work. An architect who undertakes to supervise the works must exercise due care during construction to ensure that the materials and workmanship conform to the contractual requirements. Failure to do so may render the architect liable to the employer.

In *Sim & Associates v. Tan Alfred (1994)*<sup>vii</sup>, an employer sued his architect for breach of duties in certifying defective works for payment and neglecting to call on the main contractor to rectify and complete defective works. The Singapore Court of Appeal held that in the absence of any provision in the building contract requiring a higher degree of supervision, an architect is merely required to give the buildings reasonable supervision and whether he has breached the requisite standard expected of a reasonably qualified architect. The employer’s claim against the architect for negligent supervision was dismissed on the grounds that there was insufficient evidence to prove that the architect had been negligent in supervision.

### Clerk of works

The level of supervision to be provided by the architect in each case depends on the nature of the building contract. In larger contracts, there may be several full time project architects on site, either from the architect's office or seconded to the employer. In smaller project, supervisory duties may be delegated to a clerk of works. In any case, even though the architect can delegate his supervisory functions he remains ultimately responsible for providing the level of supervision expected of him under his contract of appointment. Whether or not an architect has to provide a higher degree of supervision will depend on the facts and circumstances of each case. It has been suggested that the clerk of works is employed to see the matters of detail whereas the architect's duty is to ensure that his design is complied with.

"I think there is no difficulty in seeing what are the respective functions and duties of the architect and a clerk of works ... the clerk of works had to see to matters of detail ... the architect is not expected to do so ... the architect is responsible to see that his design is carried out. That fairly indicates what the respective duties of each are, but it leaves one in each case to say whether the matter complained of is a matter of detail or a matter of seeing whether the design is complied with ... Here the protection was devised and it was an essential part of the design. Now the architects admitted that they took no steps to find out whether that was carried out, or whether it was not. It is not a case in which they enquired even of the clerk of works, in which they pointed out to the clerk of works ... It is a very large area of building ... If in this case the architect had taken steps to see that the first block of buildings was done all right, and then in the next block he had left it to the clerks of works with instructions to see that it was done in the second block in the same way ... I should then have had some doubt whether he would have been liable ..."

*Leicester Board of Guardians v. Trollope (1911)*<sup>viii</sup>

### Certification

Almost all building contracts require the building works to be carried out to the satisfaction of the architect. Where the terms of the building contract require the architect to certify payments to the contractor, the architect has a duty to ensure that the works are carried out to his satisfaction before he can certify payment. In issuing certificates, an architect has to act fairly and impartially as between the employer and the contractor.

In *Sutcliffe v. Thackrah (1974)*<sup>ix</sup> an architect knew of defective work by the builder but gave no instructions to the quantity surveyor to make deductions from interim certificate valuations. The contractors subsequently became insolvent after the employers had honoured the certificates. In an action against the architects, the House of Lords held that the architect was not acting in an arbitral or quasi-arbitral capacity, and was in breach of his contract with his client in not giving instructions for deductions from interim valuations and certifying the unreduced sums.

### Temporary Occupation Permit

It is also part of the duties of an architect under the SIA Conditions of Appointment<sup>x</sup> to arrange for and obtain Temporary Occupation Permit (TOP) and eventually the Certificate of Statutory Completion (CSC) for a building. In traditional building contracts, the date of completion may not coincide with the issue of TOP. Completion may be achieved before TOP and vice versa as the date of issue of TOP is not within the control of the architect or the contractor. Nevertheless, an architect would be expected to apply for clearances from the relevant authorities for clearance for TOP within a suitable time so as not to cause unnecessary delay in the issue of TOP.

In design and build contracts however, the date of handover of the project to the building owner is sometimes tied to the date of issue of TOP. In other words, the builder usually promises to handover the building to the building owner ready for use and occupation. This must imply that the building can only be handed over when the TOP is issued. In such a case, an architect may, if

he is also the qualified person under the Act, become liable to the builder if there is any delay on his part in obtaining the necessary clearances for issue of TOP.

### Defects

Perhaps the most dreaded duty of an architect is the detection of defects. Under most standard form contracts, the defects liability period or maintenance period commences with the issue of the completion certificate. During this period, an architect has a duty to detect defects obviously appearing in the works or patent defects. He may be liable to the employer if he fails to detect defects and notify the contractor to rectify or make good defects, especially if the contractor becomes insolvent (See *Sim & Associates v. Tan Alfred (1994)*).

## **DUTIES INDEPENDENT OF CONTRACT**

Apart from his contractual duties and obligations, an architect may be liable in tort to third parties if his acts or omissions cause loss and damage to person or property. So there can be liability for damage to persons or property. So there can be liability for damage to persons or property resulting from building operations or negligently designed or constructed buildings. The crucial element for this liability is foreseeable physical damage negligently caused to the person or property. Pure economic loss or monetary loss not consequent upon physical damage was not recoverable unless there was a special relationship of proximity *Murphy v. Brentwood (1991)*<sup>xi</sup>. So a contractor who suffers pure economic loss as a result of an architect's act or omission may not be able to recover from the architect. However, in a recent Singapore decision, the Court of Appeal refused to follow the English position.

The management corporation of a condominium sued the developers for damages arising out of faulty construction of common property which led to spalling concrete in the ceiling of the car parks and water ponding in the area surrounding the lifts. The developers joined the architects as third parties. The developers argued that the management corporation was barred from claiming pure economic loss. The Court of Appeal found that on the facts, there was a sufficient degree of proximity between the management corporation and the developers to give rise to a duty on the part of the developers to take care to avoid causing to the management corporation the kind of damage sustained and that the management corporation was entitled to pursue a claim for pure economic loss.

*RSP Architects Planners & Engineers v. Ocean Front Pte Ltd (1996)*<sup>xii</sup>

### Duties to contractors and subcontractors

Under most building contracts, no privity of contracts exists between the architect and the contractor. However, the acts and omissions of the architect can affect the contractor directly. The architect is under a duty to act fairly and impartially as between the employer and the contractor in issuing certificates. Until recently, it was thought that an architect does not owe the contractor a duty of care in issuing certificates.

In 1975, Pacific who were contractors entered into a contract with the Ruler of Dubai for dredging work in the Persian Gulf using FIDIC conditions of contract. Halcrow were the engineers. The work was delayed because of the presence of hard materials and the Pacific made claims for extension of time and additional expenses which were rejected by Halcrow. After arbitration proceedings commenced, the Ruler agreed to pay Pacific some £10 million in full and final settlement of all claims against him. Pacific then claimed against Halcrow £45 million being the unrecovered balance. The Court of Appeal dismissed Pacific's appeal and upheld the judge's decision in holding that Halcrow owed no duty of care in certifying or in making decisions under clause 67 of the conditions. *Pacific Associates v. Baxter (1988)*<sup>xiii</sup>

However in *Hong Huat Development Co (Pte) Ltd v. Hiap Hong & Co Pte Ltd* (unreported 6.7.2000), Woo Bih Li JC (as he then was) said that “a strong argument can be made out that an architect/certifier owes a duty of care not only to the owner but also to the contractor to avoid pure economic loss. An architect must know that both intend to rely on his fairness as well as his skill and judgment as a certifier... The architect must know that if he is negligent in issuing certificates he might cause loss to one of the parties.” Although this point has to date not been tested, it remains to be seen whether this will be the law in Singapore.

### Concurrent Liability in Contract and Tort

An architect may be concurrently liable in both contract and tort. An architect will be liable in contract if he is in breach of an implied term as to the exercise of the degree of skill and care to be expected of an ordinarily competent architect. Under the Limitation Act (Cap 163), claims for breach of contract are statute barred 6 years from the date of the breach. In building cases, that date can begin to run before practical completion. The measure of damages recoverable will those losses arising naturally in the ordinary course of things from the breach and/or losses arising due to special circumstances known to the defendant at the time the contract was made. An architect can also be sued by his client for the tort of negligence for breach of the ordinary duty of care, which for all intents and purposes is identical to the duty owed in contract. In tort, the limitation period of 6 years begins from the date the damage first occurs, regardless of whether the damage was discovered. The architect’s liability in tort can therefore be longer than in contract.

### **DURATION OF ARCHITECT’S DUTIES**

In normal circumstances, an architect is employed to arrange for and supervise the building works to completion. The SIA Conditions of Appointment<sup>xiv</sup> provides for payment up to issue of the Certificate of Statutory Completion (CSC). However, the duration of an architect’s duty very often extend even beyond issue of CSC particularly when the Maintenance Period expires after the issue of CSC. It is more likely that the architect’s duty ends upon the issue of the final certificate.

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<sup>i</sup> SIA Conditions of Appointment. cl. 1.3

<sup>ii</sup> [1975]1 WLR 1095 (CA)

<sup>iii</sup> [1903] 1KB 244

<sup>iv</sup> *Hedley Byrne v. Heller* [1964] A.C. 465 where it was held that an innocent but negligent misstatement, although causing financial loss only, could give rise to liability to tort, notwithstanding the absence of any present or subsequent contractual relationship between the person suffering the loss and the representor.

<sup>v</sup> [1826]2 C&P 378

<sup>vi</sup> 38 BLR 25

<sup>vii</sup> [1994]3 SLR 169

<sup>viii</sup> [1911] 75 J.P. 197

<sup>ix</sup> 1974] A.C. 727 (H.L.)

<sup>x</sup> SIA Conditions of Appointments, s. 2.2.5

<sup>xi</sup> [1990] 3 WLR 414 (H.L.)

<sup>xii</sup> [1996] 1 SLR 113

<sup>xiii</sup> [1990] QB 993

<sup>xiv</sup> SIA Conditions of Appointment. S. 6.1.6