ARCHITECTS’ DUTIES AND LIABILITIES – RECENT DEVELOPMENTS IN CASELAW

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Outline of Seminar

• Introduction
• Overview of Architects’ Duties
• Overview of Architects’ liabilities
• Recent Caselaw on the scope of Architects’ duties and liabilities
• The Limitation of Actions
• Conclusion
Introduction

• The law imposes a duty on Architects to exercise reasonable skill and care in carrying out their practice as professionals.

• The standard of care is to exercise such skill and care which would be expected of a reasonably competent Architect carrying out the same duties as that of the Architect who is being judged.

• The importance of having adequate professional indemnity insurance coverage can only be appreciated in the context of the scope and extent of an Architect’s professional duties and the potential liabilities associated with the exercise of these duties.
Introduction

• The purpose of this presentation is to firstly provide an overview of an Architect’s duties and liabilities as we traditionally understand them.

• We will then consider recent developments in case law that seeks to extend the scope of an Architect’s duties and liabilities.

• Finally, we will consider the limitation of actions in the context of an Architect’s overall exposure for professional liability.
The Duties of an Architect

- **Statutory Duties**
  - An Architect is expected to have a reasonable working knowledge of the legislation which governs the discharge of his duties as an Architect.
  
  - The principle legislation governing building works are:-
    - The Planning Act (Chapter 232)
    - The Building Control Act (Chapter 29) & the Building Control Regulations
Statutory Duties

- Planning Act (Chapter 232)
  - The Act governs the development of land in Singapore;

- Section 10(1) states that –
  “No person shall without the written permission of the competent authority, develop any land.”

- The competent authority is the Chief Planner, URA.
Statutory Duties

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

  - The Act and Regulations governs all building works and imposes on the Architect statutory duties of design and supervision.

  - The Regulations set out the form and content for the design and the execution of the building works.
Statutory Duties

• Regulation 6(1) states that “All plans … accompanying any application for approval shall be prepared and signed by an appropriate qualified person.”

• Section 8(1) of the BCA states that “… no person shall commence or carry out any building works except under the supervision of an appropriate qualified person.”

• The Architect is, therefore, under a strict duty to ensure that his plans comply with the Act and Regulations. He is also required to adequately supervise the building works and certify the same.
The Duties of an Architect

- In addition to the statutory duties governing an Architect’s practice, there are duties arising from the particular contractual and/or legal relationship that an Architect enters into in any given project.

- These may be conveniently categorized into:
  - Contractual Duties; and,
  - Duties independent of contract
Architect’s Contractual Duties

- **Express Terms**

  - The express terms governing an Architect’s duties is set out in the contract between him and the client.

  - The contract may be a standard form contract such as the SIA Conditions of Appointment and Scale of Professional Charges or a custom drafted Architectural Services Agreement.

  - The contract will set out the terms and conditions of appointment, and, the rights and obligations of parties inter se.
Architect’s Contractual Duties

- **Implied Terms**
  - In addition to the express terms of a contract, the law implies certain terms into a contract even though these terms are not specifically provided for in the contract.
  
  - The purpose of implying these conditions is to provide business efficacy to the contract without which the respective rights and obligations of the parties may be rendered meaningless.
  
  - One such implied term is the degree of skill to be exercised by the Architect in carrying out his duties. The degree of skill required is that of an ordinarily competent architect professing to have that skill. The Architect is not required to provide any implied warranty beyond reasonable skill and care.
Architects’ Duties independent of contract

- **Liability in Tort**
  - Apart from his contractual duties, an Architect may be liable in tort to third parties if his acts or omissions cause loss and damage to person or property.

  - In the mid to late 1990s, two landmark cases were decided by the courts in Singapore with respect to an Architect’s liability to third parties who were affected by negligent design or supervision of building works –

  - RSP ARCHITECTS, PLANNERS & ENGINEERS V OCEAN FRONT PTE LTD (1996) [“The Ocean Front Case”]

  - RSP ARCHITECTS, PLANNERS & ENGINEERS V MCST PLAN NO. 1075 (1999) [“The Eastern Lagoon Case”]
Architects’ liability independent of contract

- In a nutshell, these cases extended the Architect’s duty to third parties who may be affected if the Architect was negligent in the design or supervision of the building works.

- In those cases, the third parties in question were the Management Corporations and the subsidiary proprietors.

- In the recent case of Man B&W Diesel SE Asia Pte Ltd v PT Bumi International Tankers (2004), the Court of Appeal ruled that the principle in the Ocean Front and Eastern Lagoon cases should be restricted to their own special facts and extreme caution must be exercised in extending the principle to new fact situations.
Recent Case law on the scope of Architects’ duties and liabilities

- Recent developments in case law have sought to extend the scope of an Architect’s duty to third parties.

- These developments have been in the following fields:
  
  - Architect’s liability to contractors in a traditional method of project delivery; and,
  
  - Architect’s liability in Design & Build Contracts.
Architect’s liability to Contractors

• Under traditional building contracts, there is no privity of contract between the Architect and the contractor.
• But, the acts and omissions of the Architect can adversely affect the contractor directly.
• Until recently, it was the law that an Architect does not owe any duty of care to the contractor in issuing certificates. This position was articulated by the English Court of Appeal in *Pacific Associates V Baxter (1988)*.
Architect’s liability to Contractors

- However, recently, this position has been questioned. In *Hong Huat Development Co (Pte) Ltd V Hiap Hong & Co Pte Ltd (2000)*, the High Court in Singapore made the following observation:-

  “…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.”
Architect’s liability to Contractors

• In the later case of *Yee Hong Pte Ltd V Tan Chye Hee Andrew (2005)*, a differently constituted High Court expressed reservations on whether the observation made by the court in the Hong Huat Development Case was correct.

• However, the observations in the Hong Huat Development Case was most recently applied by the District Court in *Goodwill Building Resources Pte Ltd V Yue Cheong Kuan t/a Ben Design Architects & Anor (2006)*
Architect’s liability to Contractors

- In the *Goodwill Building Resources Case*, the contractor sued the Architect in tort for failing to certify completion of the works and issue the Final Payment certificate on time. As a result, the contractor claimed that it was put to loss and damage by having to obtain loans at commercial rates to meet their financial obligations in the project.

- The issue before the Court was whether the Architect in performing his role as a certifier owed a duty of care to the contractor with whom he has no contractual relationship. The court answered this issue in the affirmative and found that the Architect did owe a duty of care to the contractor.

- It remains to be seen how the Courts will deal with this issue in the future.
Architect’s liability in Design & Build contracts

• In traditional contracts, the Architect is only required to use reasonable care and skill in the execution of his design services. He does not warrant the suitability of his design for the owner’s intended purpose.

• In a Design & Build contract, the Architect has a higher duty to his employer, the contractor, to ensure that his design is suitable for the purpose made known to him by the contractor – *Greaves V Beynham Meikle (1975)*
Architect’s liability in Design & Build contracts

• Although the Architect’s employer in a Design & Build Contract is the contractor, the Architect still owes a duty of care in tort to the project owner to ensure that his acts and omissions do not cause loss and damage to the owner.

• This is so even though there is no privity of contract between the Architect and the Project owner.
Limitation of Actions

- Limitation Act (Chapter 163)
  - Section 6 – No action founded on a breach of contract or in tort can be brought against a person after the expiry of six (6) years from the date on which the cause of action accrued.

- Accrual of cause of action in contract would be the date on which the breach of contract took place.

- Accrual of cause of action in tort would be the date on which the negligent act or omission took place.
Limitation of Actions

• Section 24A – An action for latent defects should be brought within three (3) years from the date on which the Plaintiffs had the knowledge required to bring the action for damages in respect of the latent defect.

• Section 24B – The overall limitation for bringing of actions is fifteen (15) years from the date on which the negligent act took place.
Conclusion

- There is an increasing trend towards expanding the scope of the Architect’s duty and liability.

- With the emergence of new project delivery models such as Design & Build contracts, the Architect’s duties and corresponding liabilities are no longer bound by traditional notions.

- In this changing landscape, the question the Architect must ask himself is not whether he needs Professional Indemnity Insurance but whether the insurance coverage he presently has is adequate and sufficient.
Thank You!

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