

## SCL(S) Annual Construction Law Update 2015 (20 January 2015)

The Society held its annual construction law update on the 20<sup>th</sup> January 2015 at the NTUC Centre in Singapore. Now in its fifth year, the Society was privileged to host Mr Chow Kok Fong and Mr Ho Chien Mien as guest speakers to present their views on key developments arising in 2014 related to local construction law.

The seminar was chaired by Society council member, Kash Quddus, and was kicked-off by Mr Chow Kok Fong.

Mr Chow, a widely published and respected adjudicator and arbitrator, presented his views on a number of judgments recently handed down by the Singapore courts on the statutory framework established by the Security of Payment Act ("SoPA") for the processing of payments under construction contracts, and the adjudication process for resolving payment disputes. In particular, Mr Chow commented on the judgment from *L H Aluminium Industries Pte Ltd v Newcon Builders (2014)* which provided guidance on ascertaining the correct point in time at which the right to statutory adjudication arises, by reference to the date on which payment responses are to be served under section 11 of the SoPA. Mr Chow also highlighted the issue of the admissibility of repeat claims under the SoPA, an issue that was considered in the same judgment.

Referring to this year's judgment in *Quanta Industries Pte Ltd v Strategic Construction Pte Ltd (2015)*, Mr Chow discussed the court's finding that adjudicators are powerless to determine payments to respondents, confirming that the adjudication process is very much intended for the resolution of disputes concerning payments to vendors only.

As well as reiterating the anti-avoidance provisions of the SoPA, Mr Chow also highlighted the judiciary's powers of supervision over the adjudication process following the judgment in *Citiwall Safety Glass Pte Ltd v Manusource Interior Pte Ltd (2014)*, particularly over matters concerning an adjudicator's jurisdiction, natural justice and compliance with the SoPA, and the court's reluctance to be ousted from its supervisory role merely on technical grounds.

The second half of the session was delivered by Mr Ho Chien Mien, partner at Allen & Gledhill and an accomplished construction litigator. Mr Ho brought our attention to the case of *H P Construction & Engineering Pte Ltd v Chin Ivan (2014)* which concerned allegations of fraud in the issue of architect certificates, and whether such fraud has an effect on the temporary finality of such certificates and, consequently, whether proceedings concerning the enforcement of such certificates can be stayed (in whole or in part) on account of such fraud.



Mr Ho also referred to the case of *Poh Cheng Chew v K P Koh & Partners Pte Ltd and another (2014)* and discussed the court's finding that contractual obligations not to make complaints to a professional governing body regarding a party's professional conduct were, as a matter of policy, unenforceable.

For good reason, the enforceability of performance bonds and restraints against parties attempting to enforce them, particularly on the ground of unconscionability, has always been a matter of judicial interest. Not least in *Tech-System Design & Contract (S) Pte Ltd v WYWY Investments Pte Ltd (2014)* which Mr Ho raised in order to highlight the heavy evidential burden that applicants must discharge before courts will restrain calls on performance bonds, and that applicants must show unconscionability in the context of the beneficiary's conduct, as opposed to the context of the applicant's financial hardship.

Mr Ho completed his delivery with commentary on *PT Perusahaan Gas Negara (Persero) TBK v CRW Joint Operation (Indonesia) and Another Matter (2014)* which concerned the binding nature of an arbitral award that gave effect to a decision of the Dispute Adjudication Board under a FIDIC Red Book contract.

The session concluded with the audience comprising more than a hundred professionals from all segments of the local construction industry being invited to put questions to the speakers, followed by closing remarks from Kash Quddus. The evening ended with networking amongst our guests over drinks and food.

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