ARCHITECT LIABILITY DURING INSPECTION OF WORK

ANWAR BIN MOHD APANDI

UNIVERSITI TEKNOLOGI MALAYSIA
ARCHITECT LIABILITY DURING INSPECTION OF WORK

ANWAR BIN MOHD APANDI

A project report submitted in partial fulfillment of the requirements for the award of the degree of
Master of Science in Construction Contract Management

Faculty of Built Environment
Universiti Teknologi Malaysia

JUNE 2010
To My Father and Mother

Thank you for your support, love and encouragement.
ACKNOWLEDGEMENT

This project report was completed with the contribution of many people whom I would like to express my sincere gratitude. They have contributed towards my understanding and thought.

Firstly, I would like to convey my sincere thanks and gratitude to my supervisor, Associate Professor Dr Rosli bin Abdul Rashid for his patience, time, guidance, comments and friendship throughout the entire research.

I am also indebted to other lecturers (Master of Science in Construction Contract Management), give a comment and opinion and for their kind advice during the process of completing this master project.

My fellow postgraduate students should also be recognized for their support. My sincere appreciation also extends to all my colleagues and others who have provided assistance at various occasions. Their views and tips are useful indeed.

Finally, I am deeply grateful to my family for their unconditional love, continuous support, encouragement and care throughout my studies.
ABSTRACT

Architect is one of the professionals that involved in all the stages in the construction development. The duties of architect in the construction stage such as inspection for make sure all the works are follow on specifications and plan and advise a client for works on credible contractor to carry the construction project. The architect will require delivering his duties with reasonable skill and care. In a case law, they are many problems related with inspection of work by architect towards a client. The breach to a client under on reasonable skill and care is a failure and negligence inspection. But, in other cases they not become breach and negligence duty to inspect a work if architect can proof. This research seeks to determine liability of The Architect associate inspection during construction stage. The scope is liability to a client and under traditional procurement. The analysis was carried out by referring to relevant law cases. This study found that generally, the architect owe a duty of care to perform his duty with diligent and with reasonable skill in accordance to the standard of duties stated to a client. If he fails to make inspection he is liable for resulting damages to his client. The architect cannot be claim by a client if he inspect a work with certain degree.
# TABLE OF CONTENT

<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DECLARATION</td>
<td>ii</td>
</tr>
<tr>
<td></td>
<td>DEDICATION</td>
<td>iii</td>
</tr>
<tr>
<td></td>
<td>ACKNOWLEDGMENTS</td>
<td>iv</td>
</tr>
<tr>
<td></td>
<td>ABSTRACT</td>
<td>v</td>
</tr>
<tr>
<td></td>
<td>ABSTRAK</td>
<td>vi</td>
</tr>
<tr>
<td></td>
<td>TABLE OF CONTENT</td>
<td>vii</td>
</tr>
<tr>
<td></td>
<td>LIST OF CASES</td>
<td>xii</td>
</tr>
<tr>
<td></td>
<td>LIST OF FIGURE</td>
<td>xvi</td>
</tr>
<tr>
<td></td>
<td>LIST OF ABBREVIATION</td>
<td>xvii</td>
</tr>
</tbody>
</table>

1 **INTRODUCTION** 1

1.1 Background of the study 1

1.2 Statement of issues 3

1.3 Objective of study 5
1.4 Limitation of Study 5
1.5 The significant of research 6
1.6 Research Methodology 6

2 ARCHITECT AND LIABILITY 9

2.1 Introduction 9
2.2 Definition of Architect 11
2.3 Roles of Architect 12
2.4 Selection of Architect 14
2.5 Appointment of Architect 15
  2.5.1 Form of Appointment
2.6 Conditions of Engagement 16
2.7 Duties of Architect 17
  2.7.1 Duties under Standard Form of Contract 18
  2.7.2 Duties during Construction Stages 19
    2.7.2.1 Supervision and Inspection of Works 20
2.8 Professional Relationship 21
  2.8.1 Architect and Owner/Clients 21
    2.8.1.1 Liability Architect as an Agent 23
    2.8.1.2 Voluntary Agreements with Owners 23
    2.8.1.3 Termination of Contract between Owner and Architect 24
    2.8.1.4 Architect and Client Relation during Inspection 25
2.8.2 Architect and contractor

2.8.2.1 Architect And Contractor Relation During Inspection

2.9 Architect cannot delegate a work

2.10 Architect decision is final

2.11 Architect decision is not final

2.12 Professional liability

2.13 Professional liability in contract

2.14 The Architect Liability

2.14.1 Breach of contract

2.14.2 Negligence

2.14.2.1 Strict Liability

2.14.2.2 Vicarious Liability

2.15 Tort Liability

2.16 Standard of Care

2.17 Conclusion

3 INSPECTION OF WORK

3.1 Introduction

3.2 Definition of Inspection

3.3 Inspection of Contract Form

3.3.1 PAM Form 2006
3.3.2 P.W.D. Form 203

3.4 Inspectors

3.4.1 Inspection by the Design Professional or Architect

3.4.2 Inspection by the Contractor

3.5 Scope if Inspection

3.6 Factors on Site Visit

3.7 Rules and Proceeding on a Site

3.8 Difference Supervision and Inspection

3.8.1 Difference Monitoring and Inspection

3.9 Inspection during Practical Completion

3.10 Site Preparation for Inspection

3.11 Site Information for Inspection

3.11.1 Snagging

3.11.2 Inspection Data Must Be Recorded

3.11.3 Conformance of Plan and Specifications

3.12 Visual Inspection

3.13 Inspection by Other Parties

3.14 Conclusion

4 CASE ANALYSIS: LIABILITY ARCHITECT IN CONNECTION WITH INSPECTION

4.1 Introduction

4.2 Architect Negligence and Failure to Inspection
<table>
<thead>
<tr>
<th>Section</th>
<th>Case Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2.1</td>
<td>Brown &amp; Another v. Scott &amp; Another</td>
<td>80</td>
</tr>
<tr>
<td>4.2.2</td>
<td>Dr Abdul Hamid Abdul Rashid &amp; Anor v Jurusan Malaysia Consultants (Sued As A Firm) &amp; Ors</td>
<td>81</td>
</tr>
<tr>
<td>4.2.3</td>
<td>Chuang Uming (Pte) Ltd v Setron Ltd and another Appeal</td>
<td>82</td>
</tr>
<tr>
<td>4.2.4</td>
<td>Lim Teck Kong v Dr Abdul Hamid Abdul Rashid &amp; Anor</td>
<td>83</td>
</tr>
<tr>
<td>4.2.5</td>
<td>McGlinn v Waltham Contractors Ltd and others (No 3)</td>
<td>84</td>
</tr>
<tr>
<td>4.3</td>
<td>Architect Not Liable On Negligence And Failure To Inspection</td>
<td>85</td>
</tr>
<tr>
<td>4.3.1</td>
<td>Sim &amp; Associates v Tan Alfred</td>
<td>85</td>
</tr>
<tr>
<td>4.3.2</td>
<td>Tesco Stores Ltd v The Norman Hitchcox Partnership Ltd and others</td>
<td>86</td>
</tr>
<tr>
<td>4.3.3</td>
<td>Consarc Design Ltd v. Hutch Investments Ltd</td>
<td>87</td>
</tr>
<tr>
<td>4.3.4</td>
<td>PB Malaysia Sdn Bhd v Samudra (M) Sdn Bhd</td>
<td>88</td>
</tr>
<tr>
<td>4.4</td>
<td>Conclusion Liability of Architect</td>
<td>89</td>
</tr>
<tr>
<td>4.5</td>
<td>Degree of Inspection</td>
<td>90</td>
</tr>
<tr>
<td>4.5.1</td>
<td>Inspection Depend On Size of Projects</td>
<td>90</td>
</tr>
<tr>
<td>4.5.2</td>
<td>Reasonable Work On Inspection</td>
<td>92</td>
</tr>
<tr>
<td>4.5.3</td>
<td>Inspection Depend On Contractor Expertise</td>
<td>93</td>
</tr>
<tr>
<td>4.5.4</td>
<td>Inspection On Related Event</td>
<td>94</td>
</tr>
<tr>
<td>4.5.5</td>
<td>Inspection Depend On Nature Of The Works</td>
<td>95</td>
</tr>
<tr>
<td>4.5.6</td>
<td>Architect Must Inspect All The Works</td>
<td>97</td>
</tr>
<tr>
<td>4.6</td>
<td>Conclusion on Degree of Inspection</td>
<td>98</td>
</tr>
<tr>
<td>4.7</td>
<td>Conclusion</td>
<td>99</td>
</tr>
</tbody>
</table>
5 CONCLUSION AND RECOMMENDATION 100

5.1 Introduction 100

5.2 Research Finding 100

5.3 Study Constraint 101

5.4 Suggestion for future study 101

5.5 Conclusion 102

REFERENCES 106
**LIST OF CASES**

<table>
<thead>
<tr>
<th>CASES</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bolam v. Friern Hospital Management Committee [1957] 1 WLR 583</td>
<td>37</td>
</tr>
<tr>
<td>Blair And Patterson Ltd v. McDermott [2006] ABC.L.R. 05/01,</td>
<td>106</td>
</tr>
<tr>
<td>Brown &amp; Another v. Scott &amp; Another</td>
<td>63, 79, 80, 96</td>
</tr>
<tr>
<td>Chuang Uming (Pte) Ltd v Setron Ltd And Another Appeal [2000] 1SLR166</td>
<td>31, 82, 91, 95</td>
</tr>
<tr>
<td>Clay v. A.J. Crump &amp; Sons Ltd [1964] 1 QB 533</td>
<td>70, 74</td>
</tr>
<tr>
<td>Clayton v. Woodman &amp; Son (Builders) Ltd. [1962] 2 Q.B. 533.</td>
<td>34</td>
</tr>
<tr>
<td>Consarc Design Ltd. v Hutch Investments Ltd (2002) 84 Con LR 36</td>
<td>87, 94</td>
</tr>
<tr>
<td>Croudace Ltd v London Borough of Lambeth (1986) 6 Con LR 70</td>
<td>23</td>
</tr>
</tbody>
</table>
Davie v. New Merton Board Mills Ltd. [1959] A.C. 604

Department of National heritage v. Steensen Varming Mulcahy and others [1998] 60 ConLR 33

Donoghue v Stevenson [1932] A.C. 562

Dr Abdul Hamid Abdul Rashid & Anor v Jurusan Malaysia Consultants & Ors [1997] 3 MLJ 546

East Ham Corp v Bernard Sunley & Sons Ltd[1966] AC 406

Jameson v Simon[1899] 1 F (Ct of Sess) 1211


Kensington, Chelsea & Westminster Area Health Authority v. Wettern Composites (1984) 1 CON LR 114

Lim Teck Kong v Dr Abdul Hamid Abdul Rashid & Anor[2006] 3 MLJ 213

McGlinn v Waltham Contractors Ltd and others (No 3) [2007] EWHC 149 (TCC)

McLoughlin v. O'Brian[1982] 2 W.L.R. 982

PB Malaysia Sdn Bhd v Samudra (M) Sdn Bhd

Pembenaan Leow Tuck Chui & Sons Sdn Bhd V Dr Leela's Medical Centre Sdn Bhd[1995] 2 MLJ 57

RSP Architects Planners & Engineers v Ocean Front Pte Ltd[1996] 1 SLR 113

Rylands v. Fletcher [1868] LR 3HL 330

Scrivener & Anor v Pask (1866) LR 1 CP 715.

Sim & Associates (Sued As A Firm) V Tan Alfred[1994] 3 SLR 169

Steven Phoa Cheng Loon & Ors v Highland Properties Sdn Bhd & Ors [2000] 4 MLJ 200

Sutcliffe v Chippendale & Edmonson (1971) 18 BLR 149

Sutcliffe v. Thackrah & Ors. [1974] AC 727

Tesco Stores Ltd v The Norman Hitchcox Partnership Ltd and others

Teh Khem On & Anor V Yeoh & Wu Development Sdn Bhd & Ors[1995] 2MLJ663

Victoria University of Manchester V. Hugh Wilson and Lewis Momersley [1984] 1 Const LJ 162

Voli v Inglewood Shire Council & Anor(1963) 110 CLR 74

White & Anor v Jones & Ors[1995] 1 All ER 691.
## LIST OF FIGURE

<table>
<thead>
<tr>
<th>FIGURE NO</th>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1</td>
<td>Research Process and Methodology</td>
<td>8</td>
</tr>
<tr>
<td>2.1</td>
<td>Relation with Owner – Contractor - Architect</td>
<td>27</td>
</tr>
<tr>
<td>2.2</td>
<td>Relation with Owner – Contractor – Architect with subcontractor</td>
<td>27</td>
</tr>
<tr>
<td>2.3</td>
<td>Types of liability</td>
<td>45</td>
</tr>
<tr>
<td>3.1</td>
<td>Process on inspection during practical completion</td>
<td>66</td>
</tr>
<tr>
<td>3.2</td>
<td>Flow site preparation for inspection</td>
<td>68</td>
</tr>
<tr>
<td>3.3</td>
<td>Important information for inspection</td>
<td>71</td>
</tr>
<tr>
<td>4.1</td>
<td>Difference Negligent To Inspection and Failure to Inspection</td>
<td>89</td>
</tr>
<tr>
<td>4.2</td>
<td>Conclusion Case Analysis</td>
<td>89</td>
</tr>
<tr>
<td>4.3</td>
<td>Conclusion on Degree of Inspection</td>
<td>98</td>
</tr>
</tbody>
</table>
LIST OF ABBREVIATIONS

PAM - Pertubuhan Arkitek Malaysia
PWD - Public Works Department Malaysia
P.D - Project Director
S.O. - Superintending Officer
C.O.W - Clerk of Work
CHAPTER 1

INTRODUCTION

1.1 Background Of The Study

The architect is an important profession team in a construction project. A architect is qualified to design and administer the erection of buildings, and must possess both theoretical and practical knowledge.\(^1\) The Architects (registration) Act 1931, as amended by the Architects Registration Act 1938, made it illegal for any person to practice or carry on business under any name, style or title containing the word “architect” unless he was a person registered under Principal Act. The appeal tribunal defined “architect”\(^2\)

\[
\text{An Architect is one who possesses, with due regard to aesthetic as well as practical considerations, adequate skill and knowledge to enable him (sic) (i) to originate, (ii) to design and plan, (iii) to arrange for and supervise the erection of such building or other works calling for skill and design in planning}
\]

as he might, in the course of his business, reasonably be asked to carry out in or in respect of which he offers his services as a specialist.

The Architect should have a good, practical knowledge of building and allied trades and must have at least a working knowledge of the more specialized aspects of building, such as mechanical and electrical engineering services. Above all they must be creative and dedicated to solving the client’s problems as expressed in the brief.3

According to Shrike4, the term professional refers to a person who is skilled and specialized, holds some special qualifications derived from training or experience and conforms to high standard of performance and work ethics. This professional belongs to a regulatory body which prescribes common rules of conduct and standard practice. This professional must perform his duty under a standard of performance.

One of the duties of the architect during construction stage is to inspect and supervise the work of the contractor. Inspection should have a definite purpose. They should coincide with particular stages in the works. The architect must prepared early and highlight the important matters before inspect.5

The duties of architect to a client in a construction stages such as he must inspect and supervise a work by contractor. They can be determining the architect is liable to a client or not in a level of inspection. They are two situations in liability of inspection, whether is a poor or negligence by architect

---

4 Shrike,S (2009) 2 MLJ cl xii 2 MLJA 162 : Professional Negligence in the Construction Industry, MLJ Articles
to inspect and failure by architect to do a duty for a client that become breach of contract.

Therefore an architect may become liable in either contract for any physical injury or economic loss which any person has suffered due to his failure possess and to exercise reasonable skill and care in the performance of his professional work. Failure to exercise in the normal skill and care which circumstances demand is negligence.\(^6\)

1.2 Statement Of Issues

The Architect is a person always open to any action because of failure and negligence. He under their duty to make sure all work completed and followed a specification in a contract. Many questions and issues have been arising especially when a building collapse or construction fails. Consequences of that the architect was after blamed for failure of inspect a works.

Many Architect claims that supervision and inspection are similar and same responsible to a contractor. Inspection involves looking and noting, possibly even carrying out tests. Supervision, however, not only covers inspection but also the issuing of detailed directions regarding the execution of the works. Supervision can only be carried out by someone with the requisite authority to ensure that the work is carried out in a particular way. Inspection is not something to be carried out lightly. Some architects simply wander onto the

site with no clear idea of what they expect to find or indeed what they should be looking for.  

Several cases have pointed out where architect has not performed his duty of inspection accordingly, it should still be remembered that the architect has a duty under his conditions of engagement, to take due care in making inspections and is still responsible to the client to exercise skill in observing any departure from the contract documents that may be seen at the time of the inspection.  

The architect can be sue by client in negligence or failure on inspection, in a refer case of McGlinn v Waltham Contractors Ltd and others (No 3)  

It can sometimes be the case that an employer with a claim for bad workmanship against a contractor makes the same claim automatically against the inspecting officer, on the assumption that, if there is a defect, then the inspector must have been negligent or in breach of contract for missing the defect during construction. That seems to me to be a misconceived approach. The architect does not guarantee that his inspection will reveal or prevent all defective work.  

From the cases, they have been highlighted whether inspector must have been negligent or in breach of contract when defects happen in constructions. This is liability that been issue by many case whether architect

---

9 [2007] EWHC 149 (TCC)
is under negligence or failure to inspect. The judge also stated that architect does not guarantee that his inspection will prevent all defective works. The statement is conflict with duties stated in a professional rules and construction contract that an architect must perform duties to client with a skill and care as an agent to client.

Therefore the architect must be determining whether he is liable for any loss, damage or injury which the employer suffers due to his negligence in inspection. In a statement by Robert Beaton, architect is not liable merely because his client suffers some loss or damage, but only if he himself has committed some act or omission which, in the eyes of the law, constitutes negligence. In other cases negligence cannot be claimed by a client because of poor inspection by architect in a difference failure of duties.

1.3 Objective Of Study

The objective of this study is to determine liability of The Architect in connection with inspection during construction stage.

1.4 Limitation Of Study

The scope of this study will be confined to the following areas:

---

• 20 years duration of cases fall under conventional system because this method still is the common method used.

• This study will be limited to contractual liability between the client and the Architect.

• Rules and regulations related with inspection of the site in Malaysia and other countries.

1.5 The Significant Of Research

From the research finding, the future research on corrective measures can be carried out later to overcome or decrease the number of actions towards the professionals liability with the intention that the professionals are remain trustable and reliable into an inspections of the site.

1.6 Research Methodology

Below are several approaches that will be taken to achieve the objectives.

Firstly, initial literature review was done in order to obtain the overview of the concept of this topic. Discussions with supervisor, lecturers, as well as course mates, were held so that more ideas and knowledge relating to the topic could be collected. The issues and problem statement of this research will be
collected through books, journal, cases, articles and magazines. The objective of this research will be formed after the issue and problems had been identified.

The next stage is the data collection stage. After the research issue and objectives have been identified, various documentation and literature review regarding to the research field will be collected to achieve the research objectives.

Generally, primary data is collected from Malayan Law Journals and other law journals via UTM library electronic database, namely Lexis-Nexis Legal Database and other Legal Database. The secondary sources include books, articles, seminar papers, newspaper as well as information from electronic media database on the construction contract law. These sources are important to complete the literature review chapter.

After the data collection stage, the author will analyse all the collected cases, information, data, ideas, opinions and comments. This is started with the case studies on the related legal court cases. The analysis will be conducted by reviewing and clarifying all the facts and issues of the case.

The final stage of the research process mainly involved the writing up and presenting the research findings. The author will review the whole process of the research with the intention to identify whether the research objectives have been achieved. Conclusion and recommendations will be made based on the findings during the stage of analysis.
Initial Study

Approach 1: Literature review
- Books, journals, internet sources

Approach 2: Discussion

Fix the research topic

Fix the research objective, scope and prepare the research outline

Identify type of data needed and data sources

Data Collection

Approach: Documentary Analysis
- Books
- Other Journals

Data Recording

Data analysis & interpretation

Data arrangement

Writing

Checking

Diagram 1.1 Research Process and Methodology
REFERENCES

Architects Act 1967 (Act 117) (incorporating amendments up to April 2007)
issued by Board of Architects Malaysia

Architects Rules 1996 (incorporating amendments up to December 2005)
issued by Board of Architects Malaysia

Architects (Scale of Minimum Fees) Rules 1986 issued by Board of Architects Malaysia.

Arnold Aiken Macfarlane (1954), Site supervision: a handbook for architects and assistants

Arnold Aiken Macfarlane (1973), Architectural supervision on site, Applied Science Publisher


Bernard Tomson (1967), Architectural and engineering law, Reinhold Co.


David Chappel & Andrew Willis (2006) the Architect in Practice: Blackwell Publishing: Britain


E.J. Rimmer (1952), Rimmers Law Relating To The Architect: London Sweet & Maxwell

Enden and Gill’s Building Contracts and Practise. Seventh Edition


Grace Xavier (1998), Article: Dr Abdul Hamid Abdul Rashid & Anor V Jurusan Malaysia Consultants (Sued As A Firm) & Ors [1997] 3 MLJ 546: Breakthrough for Recovery in Pure Economic Loss?

Howard (2000), Professional Ethics and Rules of Conduct for the Royal Institution of Chartered Surveyors (RICS), United Kingdom: College of Estate Management

Inspection, http://www.businessdictionary.com/definition/inspection.html

Jon Holyoak (1992), Negligence in building law: cases and commentary, Wiley-Blackwell Publishing: Britain


John M. Challis (1977), The architect and engineer and their professional liabilities, RIAI Practise decision


R.I.B.A Conditions of arrangement (1962)


Shrike, S (2009) 2 MLJ cl xii 2 MLJA 162 : Professional Negligence in the Construction Industry, MLJ Articles

Smith, Currie & Hancock (2009) - common sense construction law, John Wiley & sons

The Housing Developers (Control and Licensing) Regulations 1989 by Legal Research Board, International Law Book Services, 1989