IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(A) 32

Appellate Division / Civil Appeal No 26 of 2024

Between

The Management Corporation
Strata Title Plan No 4099

… *Appellant*

And

KTP Consultants Pte Ltd

… *Respondent*

In the matter of Suit No 143 of 2022 (Registrar's Appeal No 258 of 2023)

Between

The Management Corporation
Strata Title Plan No 4099

… *Plaintiff*

And

(1) TPS Construction Pte Ltd
(2) Polydeck Composites Pte Ltd
(3) KTP Consultants Pte Ltd
(4) AGA Architects Pte Ltd

… *Defendants*

JUDGMENT

[Building and Construction Law — Architects, Engineers and Surveyors — Statutory obligations]
[Civil Procedure — Limitation]

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v
KTP Consultants Pte Ltd

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See Kee Oon JAD, Philip Jeyaretnam J
16 September 2024

9 October 2024 Judgment reserved.

Philip Jeyaretnam J (delivering the judgment of the court):

1 This appeal relates to the installation of allegedly defective cladding at various parts of a residential development. In HC/S 143/2022 (the "Suit"), the appellant (the "MCST") seeks to hold the respondent ("KTP") and three other defendants liable for those defects. KTP, on the other hand, maintains that the MCST's claims against it are time-barred by virtue of s 24A(3) of the Limitation Act 1959 (2020 Rev Ed) (the "LA").

2 KTP's application to strike out those claims failed at first instance but was allowed on appeal by the Judge below, who held that the claims were time-barred. The Judge's grounds of decision are set out in *Management Corporation Strata Title Plan No 4099 v TPS Construction Pte Ltd and others* [2024] SGHC 149 (the "GD"). This is the MCST's appeal against the Judge's decision.

3 A cause of action in the tort of negligence arises upon damage being suffered by the claimant. Time to bring the claim runs from that date and expires after six years (or three years where there is personal injury) unless the claimant can rely on the alternative limitation period of three years calculated from the date it had the knowledge required to bring an action for damages. In the context of construction claims, it may be the case that when damage first occurs its cause is ascribed to one party, say on the basis of defective workmanship. It may only be much later when the damage recurs elsewhere or becomes more serious that a different cause is identified, such as a design failure, for which a different party may be potentially liable. When this only happens more than six years after the first occurrence of damage, the availability of the remedy against the newly identified potential defendant will often turn on whether the claimant ought to have undertaken a more thorough investigation earlier and whether, if it had done so, the potential new defendant would have been identified. The question, adopting the language of the LA, would be whether the claimant would have reasonably been expected to ascertain facts which would make the damage capable of attribution in whole or in part to the allegedly negligent act or omission of the potential new defendant, including with the help of appropriate expert advice which it was reasonable for him to seek.

4 Once the question is framed in this way, it can be seen that it involves a fact-sensitive exercise, evaluating against a standard of reasonableness what, if anything, the claimant ought to have done to find out more. Such a fact-sensitive inquiry would rarely be amenable to determination on a summary basis, such as on a striking out application, and we conclude that this is not such a rare case. Accordingly, we allow the appeal for the reasons that follow.

The facts

The parties

5 The MCST is the management corporation of a residential development known as "Este Villa", which comprises 121 units of cluster terraced housing (the "Development").

6 Kedron Investments Pte Ltd ("Kedron") was the developer of the property. Kedron has since entered into liquidation and is not a party to these proceedings.

7 There are four defendants to the Suit:

(a) The first defendant, TPS Construction Pte Ltd ("TPS"), was the main contractor engaged by Kedron for the design and construction of the Development.

(b) The second defendant, Polydeck Composites Pte Ltd ("Polydeck"), supplied and installed the composite engineered timber alike panels ("CETP") for the Development's cladding façade.

(c) The third defendant, KTP, was engaged by Kedron as the structural engineer and the Qualified Person (Civil & Structural Works) ("QP(ST)") responsible for the Development's structural works. KTP was also separately engaged by TPS to provide professional consulting services in respect of the Development, which included services relating to the Development's external cladding façade, and to take on the role and responsibility of the QP(ST).

(d) The fourth defendant, AGA Architects Pte Ltd ("AGA"), was the firm of architects that designed the Development.

The events leading up to the Suit

8 In or around June 2015, the MCST discovered numerous defects in the Development. To determine the nature of those defects, the MCST engaged a firm of building surveyors, Bruce James Building Surveyors Pte Ltd ("Bruce James"), to conduct a visual inspection of the Development between March and April 2016.

9 Following its visual inspection of the Development, Bruce James produced a report for the MCST dated 22 September 2016 (the "Bruce James Report") and signed off by one Mr Bruce J Loggie ("Mr Loggie") as "chartered building surveyor". That report highlighted several matters in the Development. For present purposes, the relevant observation was the "[e]xcessive accelerated deterioration to the timber cladding around bay windows including warping / deterioration" noted at 15 of the Development's units. We shall refer to this as the "2016 Observed Defect". As "remedial action", the Bruce James Report recommended "[f]urther investigation … to the composite timber cladding to determine whether the system is of external quality", at an estimated cost of $75,000.

10 In or around March 2017, TPS carried out rectification works in relation to matters identified in the Bruce James Report (including the 2016 Observed Defect). On 14 June 2017, Bruce James certified (without comment or qualification) that the rectification works had been completed to its satisfaction.

11 However, the MCST discovered between March and September 2017 that certain defects had recurred. Those defects were set out in Annex A (the

"Defects List") to the MCST's Statement of Claim (Amendment No. 2) dated 28 August 2023 (the "SOCA2").

12 Relevant to this appeal is the first item on the Defects List, namely "[e]xcessive accelerated deterioration to the timber cladding around bay windows including warping / deterioration" (the "Cladding Defect"). This defect was stated to have been present at 49 of the Development's units, eight of which had been identified in the Bruce James Report.

13 Between 2017 and 2020, the MCST and TPS attempted to amicably resolve the dispute that had arisen over the Development's defects. Those attempts failed and the MCST thus commenced the Suit against TPS on 21 February 2022.

Joinder of KTP to the Suit

14 In or around July 2022, the MCST engaged Meinhardt Façade (S) Pte Ltd ("Meinhardt") to investigate the defects listed in the Defects List. Following its inspection of the Development, Meinhardt issued a report dated 29 July 2022 setting out its opinion on the cause of those defects. A further detailed report addressing, among other defects, the Cladding Defect, was issued on 3 August 2022 (the "Meinhardt Report").

15 According to the MCST, it was only from the Meinhardt Report that it had learned that the Cladding Defect was due to deficiencies in:

(a) the design of the Development's external cladding façade;

(b) the choice of CETP as the material for the external cladding façade; and

(c) the method used in installing the CETP system to the external cladding façade.

16 The Meinhardt Report concluded that there was more than one party that was responsible for the Cladding Defect. Thereafter, on 8 February 2023, the MCST applied by HC/SUM 326/2023 ("SUM 326") to join KTP, Polydeck, and AGA as co-defendants to the Suit. That application was allowed by the court on 13 February 2023.

17 On 17 February 2023, the MCST filed its Statement of Claim (Amendment No. 1) naming KTP, Polydeck, and AGA as co-defendants and setting out the MCST's claims against them. Further amendments were made by way of the MCST's SOCA2.

18 The MCST has brought six claims against KTP:

(a) Two of the claims relate to KTP's alleged failure to submit the Development's structural plans (the "Structural Plans") to the Building and Construction Authority (the "BCA"). It is said that KTP's failure to do so amounted to breaches of:

(i) its statutory duty under to s 5(1) of the Building Control Act 1989 (2020 Rev Ed) (the "BC Act") to ensure that the Structural Plans were submitted to the BCA;[1] and

(ii) its common law duty to exercise reasonable care and skill in ensuring that the Structural Plans were submitted to the BCA.[2]

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1 SOCA2 at para 48.

2 SOCA2 at para 56(c).

(b) The remaining four claims relate to KTP's alleged defaults in relation to the design and construction of the Development. Specifically, the MCST claims that KTP breached:

(i) its statutory duty under s 9(1)(*a*) of the BC Act to take all reasonable steps and exercise due diligence to ensure that the building works were designed in accordance with the BC Act and the Building Control Regulations 2003 (the "Building Regulations");[3]

(ii) its common law duty to exercise reasonable care in the structural design and supervision of the construction of the external cladding façade;[4]

(iii) its common law duty to exercise reasonable care and skill in including the fixing and framing details to the Structural Plans of the external cladding façade;[5] and

(iv) its common law duty to exercise reasonable care and skill in designing the external cladding façade in accordance with Objective 3 of the Fifth Schedule to the Building Regulations.[6]

KTP's application to strike out the MCST's claims against it

19 On 28 August 2023, KTP applied by HC/SUM 2609/2023 ("SUM 2609") to strike out the MCST's claims against it pursuant to O 18 r 19 of the Rules of Court (2014 Rev Ed). One of the arguments that KTP advanced

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3 SOCA2 at para 49.

4 SOCA2 at para 55.

5 SOCA2 at para 56(a).

6 SOCA2 at para 56(b).

in support of SUM 2609 was that the claims had been brought outside the limitation periods prescribed by s 24A of the LA.

20 SUM 2609 was heard on 4 October 2023 by an Assistant Registrar (the "AR"), who dismissed the application on 23 November 2023. In respect of the limitation issue, the AR took the view that the 2016 Observed Defect (having been "more aesthetic rather than structural") was different from the Cladding Defect. It was therefore not clear to the AR that the Cladding Defect had been identified in the Bruce James Report. Accordingly, it was not obvious that the MCST's claims against KTP were time-barred pursuant to s 24A of the LA.

21 On 30 November 2023, KTP took out HC/RA 258/2023 ("RA 258") to appeal against the AR's decision. The Judge agreed with KTP's position on the limitation issue and therefore struck out the MCST's claims against KTP. Further arguments from parties were heard on 28 February 2024. On 13 March 2024, the Judge informed parties that he would not be changing his decision in RA 258.

The decision below

22 As regards s 24A(3)(*a*) of the LA, the Judge held that the 2016 Observed Defect was the same as the Cladding Defect. Consequently, the six-year limitation period commenced on 22 September 2016 (*ie*, the date of the Bruce James Report). In reaching this conclusion, the Judge placed weight on the fact that:

(a) the description of the 2016 Observed Defect was sufficiently broad to include the Cladding Defect (the GD at [40]–[41]); and

(b) the MCST itself had admitted by its pleadings that the Cladding Defect was the same as the 2016 Observed Defect (the GD at [42]).

23 In the event, the Judge went on to consider if the MCST's claims had nevertheless been brought within time pursuant to s 24A(3)(*b*) of the LA. The Judge considered the answer to be "no" because the MCST had the requisite knowledge triggering that time-bar prior to 17 February 2020 (*ie*, three years before KTP was named as a co-defendant in the Suit). In particular, the Judge took the view that the MCST:

(a) knew of the factual essence of the complaint against KTP by 22 September 2016, when the Bruce James Report was prepared (the GD at [53]–[57]);

(b) should have commissioned an expert to carry out further inspections and would have received an expert's report before 17 February 2020 (the GD at [58]);

(c) should have invoked the court process when it received the Bruce James Report (the GD at [59]); and

(d) should have known of KTP's identity between March 2017 and September 2017 (the GD at [61]).

Parties' cases on appeal

The MCST's case

24 The MCST challenges the Judge's finding that ss 24(3)(*a*) and 24(3)(*b*) of the LA applied to bar its claim against KTP.

25 With respect to the Judge's findings on s 24(3)(*a*) of the LA, the MCST raises the following arguments. First, the Judge erred in his characterisation of the damage giving rise to the MCST's cause of action in tort. The 2016 Observed Defect identified in the Bruce James Report came into existence as a result of the wrong choice of material, rather than the structural design of the external cladding façade.[7] Second, the Judge erred in interpreting the Bruce James Report as referring to a structural defect.[8] Third, the Judge erred in giving undue weight to the MCST's apparent admission in its pleadings that the Cladding Defect was the same as the 2016 Observed Defect.[9]

26 With respect to the Judge's findings on s 24(3)(*b*) of the LA, the MCST argues that the Bruce James Report does not establish the factual essence of its complaint against KTP. Put differently, the knowledge gained from the Bruce James Report was insufficient for the MCST to know that it could pursue a claim against KTP.[10] Additionally, although the Judge concluded that the MCST should have engaged another expert to carry out further investigations, it is unreasonable to expect the MCST to do so when it was engaged in negotiations with TPS between 2017 and 2022 and had believed that it had resolved the matter with TPS at that time.[11] Finally, the Judge erred in dismissing the utility of expert evidence and cross-examination.[12]

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7 AWS at para 33.

8 AWS at para 34.

9 AWS at para 35.

10 AWS at paras 41–43.

11 AWS at para 47.

12 AWS at paras 49–55.

27 The MCST raises three additional arguments unrelated to ss 24A(3)(*a*) and 24A(3)(*b*) of the LA. First, the Judge erred in dismissing *all* of the MCST's claims against KTP. He should have considered KTP's alleged breach of its duties at [18(a)] and [18(b)(ii)]–[18(b)(iv)] above, which are not time-barred as they were made known to the MCST only on 28 July 2022.[13] Second, the MCST only had knowledge of the loss it suffered in complying with the Notice to Maintain issued by BCA on 20 June 2022.[14] Third, the MCST may rely on s 29(1)(*b*) of the LA for the duties [18(a)] and [18(b)(ii)]–[18(b)(iv)] above. The limitations periods for the two would run only from 22 June 2022 as the MCST's cause of action was concealed by KTP's false declaration that the construction of the external cladding façade had been completed in accordance with the relevant approved plans and/or the provisions of the BC Act and Building Regulations.[15]

KTP's case

28 KTP affirms the Judge's findings regarding ss 24A(3)(*a*) and 24A(3)(*b*) of the LA.

29 First, the Judge rightly found that the Cladding Defect was the same as 2016 Observed Defect. This conclusion was supported by the MCST's admission in its pleadings.[16] The Judge also rightly found that the 2016 Observed Defect was not merely aesthetic.[17]

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13 AWS at paras 57 and 60.

14 AWS at paras 62–64.

15 AWS at para 67.

16 RWS at para 31.

17 RWS at para 33.

30 Second, the Judge rightly found that the MCST had the requisite knowledge under s 24A(3)(*b*) of the LA. By 17 February 2020, the MCST would have known that the Cladding Defect was attributable to KTP's alleged breaches, either from: (a) the Bruce James Report; or (b) engaging an expert in 2017 after the Cladding Defect surfaced.[18] The MCST had knowledge of all the material facts to commence proceedings by 17 February 2020.[19] It should have known to include KTP as one of the potential defendants.[20]

31 Third, the Judge rightly rejected the MCST's arguments that expert evidence or a full trial was necessary to determine whether the claims were time-barred.[21]

The law

The legislative history of s 24A of the LA

32 Section 24A of the LA finds its genesis in the notorious House of Lords' decision of *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1 ("*Pirelli*") and the legislative changes it engendered in England. Before *Pirelli*, s 2(1) of the Limitation Act 1939 (c 21) (UK) (the "UK LA 1939") straightforwardly imposed a six-year limitation period for actions founded on simple contract or tort; this limitation period commenced "from the date on which the cause of action accrued". It was believed that this sufficed to cater for claims involving "latent damage" (*ie*, damage not discoverable until sometime after it accrues) because it was then considered that a cause of action

18 RWS at para 53.

19 RWS at para 54.

20 RWS at para 55.

21 RWS at paras 61–64.

only accrued for limitation purposes when the damage was discovered (or when it became discoverable with reasonable diligence): *Sparham-Souter v Town and Country Developments (Essex) Ltd* [1976] QB 858 at 868 and 881; *Anns v Merton London Borough Council* [1978] AC 728 at 760.

33 That belief was jettisoned in *Pirelli*, where their Lordships felt constrained by the earlier decision of *Cartledge v E Jopling & Sons Ltd* [1963] AC 758 ("*Cartledge*") to hold that a cause of action accrues when the relevant damage *came into existence*, and not when it was discovered (or when it became discoverable with reasonable diligence). The consequences of that decision were clearly most severe for claimants who have suffered latent damage; in *Pirelli*, Lord Scarman himself described the law as "no matter for pride" (at 19) and considered legislative reform necessary in light of their Lordships' decision.

34 Even before *Pirelli* was decided, the legislators were already aware of the difficulties that the UK LA 1939 presented for claimants afflicted with latent personal injuries (*Cartledge* having been one such case). The UK LA 1939 had therefore been amended in 1975 to include s 11, which prescribed a "special time limit for actions in respect of personal injuries". However, it was only after *Pirelli* that the legislation – which had by then been consolidated as the Limitation Act 1980 (c 58) (UK) (the "UK LA 1980") – was further amended to cater for non-personal injury latent damage cases. The new s 14A prescribed a similar "special time limit" for negligence actions not subject to s 11 (*ie*, negligence actions not involving personal injuries), whereas the new s 14B prescribed an "overriding time limit" of 15 years for such cases.

35 In Singapore, the Law Reform Committee took cognisance of the developments in England and recommended amending the Limitation Act (Cap

163, 1985 Ed), keeping in view the likelihood of the Singapore courts finding themselves constrained to follow *Pirelli*: Law Reform Committee, *Discussion Paper of the Sub-Committee on Civil Law and Civil Proceedings* (24 August 1989) at paras 2–3 (Secretary: Jeffrey Chan Teck Wah). The approach that was eventually taken was to collapse the functions of ss 11, 14A and 14B of the UK LA 1980 into a single provision, which persists today as s 24A of the LA. The language of s 24A was also largely borrowed from its English progenitors.

The structure of s 24A of the LA

36 As a starting point, s 24A of the LA applies to *any* action for damages for negligence, nuisance or breach of duty (whether contractual, statutory, or neither of the two): s 24A(1) of the LA. It has therefore been observed that the title to s 24A of the LA (*ie*, "Time limits for negligence, nuisance and breach of duty in respect of *latent* injuries and damage" [emphasis added]) is something of a misnomer, that provision being applicable to cases not involving latent damage: *Lian Kok Hong v Ow Wah Foong and another* [2008] 4 SLR(R) 165 ("*Lian Kok Hong*") at [17].

37 The teeth of s 24A of the LA are to be found in subsections (2) and (3), which prescribe a two-tiered limitation regime for personal injury and non-personal injury cases respectively. For present purposes, it suffices to focus on subsection (3):

> (3) An action to which this section applies, other than one referred to in subsection (2), shall not be brought after the expiration of the period of —
>
> (*a*) 6 years from the date on which the cause of action accrued; or
>
> (*b*) 3 years from the earliest date on which the claimant or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for

> damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (a).

Section 24A(3)(a) of the LA

38 Section 24A(3)(*a*) of the LA prescribes a basic limitation period of "6 years from the date on which the cause of action accrued". This limitation period operates on the basis of the rule established in *Pirelli*, namely that a cause of action accrues when damage occurs: *Lian Kok Hong* at [24].

39 Where construction defects are concerned, the damage occurs when "the defects manifest themselves in the form of physical damage to the building": *Millenia Pte Ltd (formerly known as Pontiac Marina Pte Ltd) v Dragages Singapore Pte Ltd (formerly known as Dragages et Travaux Publics (Singapore) Pte Ltd) and others (Arup Singapore Pte Ltd, third party)* [2019] 4 SLR 1075 at [480].

Section 24A(3)(b) of the LA

40 We turn now to s 24A(3)(*b*) of the LA which – subject to conditions that will be considered shortly – postpones the limitation period where latent damage is concerned:

> (3) An action to which this section applies, other than one referred to in subsection (2), shall not be brought after the expiration of the period of —
>
> …
>
> (*b*) 3 years from the earliest date on which the claimant or any person in whom the cause of action was vested before him first had *both* ***the knowledge required for bringing an action for damages in respect of the relevant damage*** *and* ***a right to bring such an action***,

> if that period expires later than the period mentioned in paragraph (*a*).
>
> [emphasis added in italics and bold italics]

41 The expression "knowledge required for bringing an action for damages in respect of the relevant damage" as it appears in s 24A(3)(*b*) is defined in s 24A(4) of the LA:

> (4) In subsections (2) and (3), the knowledge required for bringing an action for damages in respect of the relevant injury or damage (as the case may be) means knowledge —
>
> (*a*) that the injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;
>
> (*b*) of the identity of the defendant;
>
> (*c*) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts supporting the bringing of an action against the defendant; and
>
> (*d*) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

42 With the exception of limbs (*b*) and (*c*) (which operate as alternatives), the limbs of the definition in s 24A(4) of the LA are to be read conjunctively. This means that the claimant would not have the requisite knowledge unless and until they are possessed of the knowledge described in limb (*a*), limb (*d*), *and* limb (*b*) or (*c*). The definition set out in s 24A(4) of the LA is also *exhaustive* – nothing more than the knowledge described therein is required: *Tan Yang Chai v Kandang Kerbau Hospital Pte Ltd and others* [1997] 1 SLR(R) 654 ("*Tan Yang Chai*") at [22], citing Michael A Jones, *Medical Negligence* (Sweet &

Maxwell, 2nd Ed, 1996) at pp 499–500. *Tan Yang Chai* was referred to by the Court of Appeal in *Lian Kok Hong* at [36].

43 Before turning to consider each limb of s 24A(4) of the LA, it is worth emphasising that pursuant to s 24A(6) of the LA, "knowledge" for the purposes of s 24A as a whole includes not only actual but also *constructive* knowledge defined as follows:

> (6) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire —
>
> (*a*) from facts observable or ascertainable by him; or
>
> (*b*) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek.

The Attributability Requirement

44 We turn now to the first limb of s 24A(4) of the LA, which requires knowledge "that the injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty". We will refer to this as the "Attributability Requirement".

45 This requirement has been the subject of much judicial consideration. It will perhaps be helpful to parse the Attributability Requirement by first asking what the *content* of the requisite knowledge is, before moving on to consider the *degree* of knowledge that is needed.

46 In terms of its *content*, the Attributability Requirement comprises three things:

(a) The first is knowledge of the damage on which the claim is founded.

(b) The second is knowledge of the act or omission alleged to constitute negligence, nuisance or breach of duty.

(c) The third is knowledge that the damage was attributable (whether wholly or in part) to the act or omission complained of. The word "attributable" bears its grammatical meaning of "capable of attribution" rather than the looser usage of "in fact attributed".

47 The third component in the foregoing paragraph requires knowledge that the damage was attributable to *the act or omission complained of* and not any other act or omission. Hoffmann LJ (as he then was) observed in *Broadley v Guy Clapham & Co* [1994] 4 All ER 439 (at 448) that a claimant:

> … [would] not have reached the starting point if, in an unusual case like *Driscoll-Varley v Parkside Health Authority*, he thinks he knows the acts and omissions he should investigate but in fact he is barking up the wrong tree.

48 The case of *Driscoll-Varley v Parkside Health Authority* [1991] 2 Med LR 346 ("*Driscoll-Varley*") involved a plaintiff who, having fractured her right leg, underwent a series of treatments beginning in 1984. In the initial stages of her treatment, the plaintiff underwent surgery and her leg was thereafter immobilised by traction. The traction was removed and her leg remobilised within 12 days of her injury.

49 The plaintiff's recovery was severely prolonged and marred by complications, and so the injury for which she eventually claimed was "the failure of the damage to [her] leg to respond to the treatment in a normal and satisfactory manner": *Driscoll-Varley* at 349. The plaintiff initially believed that damage to have been a consequence of surgical negligence, but she discovered later (in 1988) that the real cause was the premature remobilisation of her leg. Hidden J found that it was not until 30 June 1988 that the plaintiff acquired

actual knowledge of how the damage she had suffered was attributable to the premature remobilisation of her leg and not any surgical negligence (at 356). The learned judge also concluded that the circumstances did not justify fixing the plaintiff with constructive knowledge of that fact at any earlier time (at 357–358). The claim had therefore been brought within the applicable limitation period.

50 Having considered the *content* of the knowledge contemplated by the Attributability Requirement, we turn to consider the requisite *degree* of that knowledge. In *Lian Kok Hong*, V K Rajah JA observed (at [40]) that "the courts appear to have quite uniformly read into the provision the requirement that the degree of knowledge be reasonable rather than absolute or certain". The following guidelines were also laid down (at [34] and [36]):

> 34 … the claimant need not know the details of what went wrong, and it is wholly irrelevant whether he appreciated that what went wrong amounted in law to negligence, *as long he knows the factual essence of his complaint.*
>
> …
>
> 36 … Knowledge in this sense is to be interpreted in broad terms of **the facts on which the plaintiff's claim is based and of the defendant's acts or omissions and knowing that there is a real possibility that those acts or omissions have been a cause of the damage.** …
>
> [emphasis in italics in original; emphasis added in bold]

The Identity Requirement

51 Broadly speaking, ss 24A(4)(*b*) and 24A(4)(*c*) of the LA are concerned with the claimant's knowledge as to *who* he or she should be suing. The former provision applies in the straightforward situation where the defendant to the claim is alleged to be the primary wrongdoer (*ie*, the person who committed the

relevant act/omission). The latter provision caters for situations in which the defendant is sought to be held liable for a *third party's* act/omission.

52 Section 24A(4)(*b*) of the LA is straightforward for the most part. Aside from the obvious cases in which this provision will be pressed into action (*eg*, hit-and-run cases), it also applies where the claimant – having commenced an action against one defendant in respect of some damage – later discovers the identity of another defendant potentially liable in respect of the same damage: *Walford and others v Richards* [1976] 1 Lloyd's Rep 526.

The Justification Requirement

53 Section 24A(4)(*d*) of the LA requires knowledge of:

> … material facts about the injury or damage which would lead a *reasonable person* who had suffered such injury or damage to consider it *sufficiently serious* to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.
>
> [emphasis added]

For ease of expression, we will refer to this as the "Justification Requirement".

54 There are two aspects of this provision that have been the subject of debate, the first of which relates to the words "reasonable person". Under English law, the prevailing approach is to first ascertain what the claimant knew about the injury he had suffered (and this includes constructive knowledge about the injury) before asking if a reasonable person armed with that knowledge would have considered it sufficiently serious to justify the institution of proceedings: *A v Hoare* [2008] 1 AC 844 ("*Hoare*") at [34]. Factors personal to the claimant (*eg*, intelligence or any disability) are irrelevant to the inquiry, although they may be material to the court's determination of whether the time-

bar should be disapplied under s 33 of the UK LA 1980: *Hoare* at [44]–[45]. *Hoare* was referred to in *Lian Kok Hong* at [29]. It remains an open question if the approach propounded in *Hoare* should be adopted in Singapore, given that the LA contains no equivalent to s 33 of the UK LA 1980.

55 The other aspect relates to the words "sufficiently serious". This "simply means that the action considered must not be frivolous or wholly without merit, taking into account the effort required in instituting a court action": *Lian Kok Hong* at [39].

Application of the Law

56 In considering the facts to which the law must be applied, it is important to keep in mind the stage of proceedings and the application before the court. The limitation issue arises upon a striking out application filed after close of pleadings. There has been no discovery of documents, nor have affidavits of evidence-in-chief been filed. Accordingly, the court must proceed on the basis that the claimant will prove all the facts that he pleads, and determine whether, on those facts, the claimant will not be entitled to his remedy against that defendant, paraphrasing *The "Bunga Melati 5"* [2012] 4 SLR 546 at [39(a)].

57 In *Tan Yang Chai*, the court was similarly faced with an application to strike out the claim on the ground of time bar. The argument was that the plaintiff in that matter had the requisite knowledge that the infection in her arm was attributable to the insertion of the needle which was then left in place for five days (a potentially negligent act or omission of the hospital), as opposed to simply being an inherent risk of chemotherapy (and so not attributable to the hospital). Due to that infection her forearm was amputated, but only much later did she receive expert advice identifying the cause of the infection as the

insertion of the needle and its having been left in place for five days. The court (at [26]) noted that what she knew and when she knew it was a question of fact. The court went on (at [28]) to conclude that at that stage of proceedings it was not clear and obvious that she did have the requisite knowledge, nor was the contrary unarguable.

58 We now turn to the MCST's case against KTP. The MCST intends to prove that KTP was contractually obliged to TPS (who was the design and build contractor) as its Civil & Structural Consultant to provide the services of the QP(ST). According to the MCST, a natural person in the employ of KTP was duly appointed as the QP(ST).

59 Further, the MCST intends to prove that the QP(ST) ought to have been involved in the submission of designs of fixings and framing of cladding to the BCA. However, there was no such submission, a failure which resulted in the BCA issuing its Notice to Maintain of 20 June 2022. The MCST incurred expense to comply with this notice: see [27] above.

60 The MCST contends that if the submission to BCA had been made then there would have to have been certification of two aspects: (a) that the design for the fixings and framing of claddings was structurally safe; and (b) that the load transfer to the main building was effective and safe. If a Qualified Person for the cladding ("QP(Cladding)") had been separately appointed (which remains a matter for evidence at trial), then that person would have had to provide the first certificate concerning the fixings and framing, while the QP(ST) would have had to provide the second certificate concerning load transfer. In the absence of a separate QP(Cladding), then the QP(ST) would have had to certify both aspects.

61 Thus, even if KTP had not been consulted concerning the cladding, it should have raised with the developer or the main contractor the absence of any submission to BCA concerning the cladding, because it was at least partly responsible for such submission. Further, a reasonable structural engineer would, upon checking, have found the design for the fixings and framings deficient and the load transfer ineffective and unsafe for reasons that included a lack of redundancy.

62 It is immediately apparent that this is both a narrow claim and one that will be dependent on the evidence, including the expert evidence, adduced at trial. The Judge declined to strike out the claim as was sought by KTP on the ground that it was not involved in the original cladding works and there is no appeal from that decision.

63 KTP's case on limitation is that upon receipt of the Bruce James Report, and the comments that report made concerning the 2016 Observed Defect, the MCST either had knowledge that the damage was attributable in whole or in part to structural design issues in which KTP might be implicated, or would reasonably have been expected to acquire such knowledge with the help of appropriate expert advice which it was reasonable to seek. These are the two limbs commonly described as actual and constructive knowledge, but when using these labels it is important to keep in mind the statutory language.

64 Bruce James noted in respect of 15 of the 121 units that they exhibited "[e]xcessive accelerated deterioration to the timber cladding around bay window including warping / deterioration" and recommended "[f]urther investigation … to the composite timber cladding to determine whether the system is of external quality".

65 We first consider what the MCST would have actually known upon receipt of the report, before going on to consider what knowledge it might have been reasonably expected to acquire with the help of appropriate expert advice. Answering these questions requires the court to interpret this part of the Bruce James Report in its context. It was the work of an expert seeking to communicate his concerns and recommendations to individuals who are not trained in his expert discipline. It must be read in that light. It is not a contract still less a statute. Those more formal legal documents are drafted within the context of conventions familiar to lawyers. Such conventions would not be relevant here.

66 In our view, upon receipt of the Bruce James Report, the MCST would have known that there had been deterioration which was excessive and accelerated and thus not merely due to ordinary weathering of external materials. This deterioration included warping. The report however did not warn of any potential delamination or other safety risks indicative of underlying structural issues. The recommendation for "remedial action" was to investigate "whether the system [was] of external quality". This would indicate to the MCST that potentially the system was not suited for outdoor use. However, something may not be suited for outdoor use simply because it fades or discolours, which would be an aesthetic issue, albeit one that potentially affects all of the cladding and not merely the parts thus far affected. The recommendation for investigation concerning the system's "external quality" would not of itself implicate any structural or design issue.

67 We agree with the Judge that what an expert has written to a lay recipient (such as the council of the MCST in this case) can generally be understood by the court without that expert or any other expert testifying to explain it: the GD at [65] and [66]. However, we do not agree that, looking at the text of the Bruce

James Report alone, it pointed to wider structural issues in the fixing rather than issues concerning the external quality of the material chosen. How it would be understood would also depend on the context to this report. There are two important aspects of context here: one is that Bruce James was engaged as a firm of building surveyors, and the other is that the inspection (presumably undertaken by Mr Loggie) was purely visual. There is no mention of the use of a borescope. A borescope is an optical tool designed to inspect areas that are difficult or impossible to look at by direct line of sight. There is no suggestion in the Bruce James Report that Bruce James – being a firm of building surveyors – was engaged to check the structural integrity of the cladding, nor that Mr Loggie (or anyone else from the firm) was qualified to do so. There is no suggestion in the report that Bruce James checked the fixing details on any drawing or dismantled any of the cladding to check the fixings *in situ* or that it had the expertise to do so. Both these aspects of context support a reading of the report as identifying only one systemic issue namely the external quality of the CETP.

68 Accordingly, on the limited material available at this stage of the proceedings, we would not agree with the Judge's finding (see the GD at [55]) that the MCST "ought reasonably to have known that the systemic issue with the cladding façade was attributable at least in part to KTP's deficient design and supervision". There are two distinct enquiries: the first concerns whether the problem is isolated or instead widespread such that it founds a system-wide concern. The second is the identification of the nature of that system-wide concern as potentially implicating the relevant defendant. Here, the system-wide concern that the Bruce James Report identified related on its face to the quality of the material chosen and its suitability for external use. This was not an issue that implicated KTP, and no claim is made against KTP for the choice of CETP.

We are not able to agree that at this point the MCST knew the damage could be attributable in whole or in part to an act or omission of KTP, such as not checking the design of the fixings and framings whether generally or for the more limited purpose of load transfer.

69 To be clear, our concern is not that the identity of KTP itself was not known to the MCST. The MCST has asserted that it only knew of KTP's involvement as QP(ST) after purchasing the structural plans for the development in July 2022. But this late identification of KTP as the QP(ST) would not matter if acts or omissions of the QP(ST) had been implicated by the Bruce James Report and to which the damage could be attributable. The potential defendant would already have been sufficiently identified by reference to the *role* played by it in the project as QP(ST). This would be so even if the claimant did not yet know who had played the role. It is completely unlike the example of a 'hit-and-run' driver, whose responsibility for the acts causing injury or damage is clear but whose identity remains unknown.

70 This brings the discussion to the next question. This is whether, upon receipt of the Bruce James Report, the MCST ought reasonably to have sought appropriate expert advice whereupon the MCST would have known that the damage was attributable in whole or in part to acts or omissions of the structural engineer or the QP(ST), whoever that might be.

71 In practical terms, it might be said that the MCST should have appointed a façade specialist or a structural engineer to investigate the cladding, including to check the fixings and framings. In short, the question is whether they ought to have done what was done only six years later in the engagement of Meinhardt, a façade specialist. Meinhardt's inspection differed from that of Bruce James not only by virtue of their specialism but also the inspection methods adopted,

which included the use of a borescope.[22] As we have observed, the Bruce James Report does not implicate structural issues or issues concerning the fixings. We are also of the view that while it recommends further investigations, such investigations appear to be directed at the question of external quality (*ie* the choice of CETP) rather than pointing to anything concerning the fixings. For example, there is no recommendation that the fixing details and drawings be reviewed.

72 We should add that, at this stage of proceedings, the full context to the Bruce James Report has not been established. At trial, there may be evidence that sheds further light on the context in which the Bruce James Report should be read. For example, there was limited evidence before us concerning what was done after the Bruce James Report. What happens after advice is received may shed light on how the advice was understood in context, if its meaning is not otherwise clear. Based on the available evidence, what happened may be stated briefly. The MCST raised the Bruce James Report with TPS, the design and build contractor, and they carried out a programme of rectification that apparently met with Bruce James' satisfaction: see [10] above. No evidence has been tendered at this stage concerning what was done, whether in terms of further investigation or rectification. Such evidence could be material, as in the ordinary course what was done should broadly match how the Bruce James Report was understood at the time. There is no evidence at this stage that TPS did anything beyond addressing the external quality of the units mentioned in the Bruce James Report. If in fact they did more than that, such as investigated the fixings generally, then this could be evidence that, in the context operating at the time, the Bruce James Report was reasonably understood to relate to

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22 Appellant's Bundle of Documents dated 13 September 2024 at p 42.

systemic structural issues. To use an analogy, if a regular patron of an Italian restaurant asks for the chicken, without specifying the style, and then when presented with chicken parmigiana eats and pays for it, this context occurring after the utterance will inform the other restaurant guests that what the patron meant to order was indeed chicken parmigiana and not chicken cacciatore. The absence of any evidence of such context which could be supplied at trial is itself a reason to defer the issue of limitation to trial.

73 At this stage of the proceedings, it would not be safe to conclude that upon receipt of the Bruce James Report in September 2016, the MCST ought reasonably to have incurred the expense (and potential inconvenience) of appointing a façade specialist or a structural engineer to investigate the cladding, including to check the fixings and framings.

74 To sum up, at this stage of proceedings it is not clear and obvious that, upon receipt of the Bruce James Report, the MCST had knowledge, actual or constructive, that the damage was attributable to acts or omissions of the structural consultant or the QP(ST). To adopt and adapt Lord Hoffman's colourful phrase (see [47] above), at that point the MCST knew only to bark up the tree which TPS might have climbed and had not yet been put on the scent of whoever had played the role of structural engineer and QP(ST).

75 Our conclusion is not changed by the point that the MCST pleaded in its Further and Better Particulars served on 12 April 2023 that the Cladding Defect was the same as the 2016 Observed Defect. This plea was relied on by the Judge in the GD at [42]. With respect, the point takes KTP no further. Knowledge of the damage is necessary for time to run under s 24A(3)(*b*) of the LA, but it is not enough – the question is whether the MCST also knew (or ought

reasonably to have known) that the damage was attributable to KTP's alleged breaches of duty: see [46(c)] above.

76 It may be the case, subject to the evidence at trial, that the 2016 Observed Defect was caused by the alleged omission of KTP in not checking the cladding for the purpose of a submission to the BCA, but that does not mean that in 2016 the MCST knew or ought to have known that it was capable of attribution to KTP in whole or in part. It appears at this stage of the proceedings and again subject to the evidence at trial, that the MCST in 2016 believed that the 2016 Observed Defect was attributable to TPS and acted on that basis. The MCST's case that it was only upon receipt of the Meinhardt Report that it knew that it was also capable of attribution to KTP is certainly an arguable and viable one that should go to trial.

Conclusion

77 We allow the appeal and set aside the striking out of KTP as a party. We set aside the costs orders made by the Judge below. In respect of the hearing before the AR, we reinstate the costs order in favour of the MCST in the amount of $10,000 all-in. For the hearing below, we award costs to the MCST in the amount of $10,000 all-in. For the appeal, we award costs to the MCST of $30,000 all-in. The usual consequential orders apply.

See Kee Oon	Philip Jeyaretnam
Judge of the Appellate Division	Judge of the High Court

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