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

[2024] SGHC 149

Suit No 143 of 2022

Between

(1) 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*

GROUNDS OF DECISION

[Civil Procedure — Pleadings — Striking out]
[Limitation of Actions — When time begins to run]
[Civil Procedure — Further arguments]

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Management Corporation Strata Title Plan No 4099
v
TPS Construction Pte Ltd and others

[2024] SGHC 149

General Division of the High Court — Suit No 143 of 2022 (Registrar's Appeal No 258 of 2023)
Wong Li Kok, Alex JC
24 January, 28 February, 13 March 2024

10 June 2024

Wong Li Kok, Alex JC:

Introduction

1 The third defendant ("KTP") had appealed against the decision of the learned Assistant Registrar ("AR") to dismiss KTP's application in HC/SUM 2609/2023 ("SUM 2609") to strike out the plaintiff's case against KTP in HC/S 143/2022 (the "Suit"). KTP had argued, amongst other things, that the plaintiff's case against KTP was time-barred.

2 I heard arguments on the appeal on two occasions. After the first hearing, I decided to allow KTP's appeal on the question of time bar. The plaintiff requested for further arguments. After hearing further arguments, I affirmed my earlier decision to allow KTP's appeal on the question of time bar. The plaintiff appealed against this decision. Striking out a plaintiff's case prior to trial is a draconian remedy and one that should be exercised with caution.

That said, the court should not be shy to exercise the power to strike out where a clear case has been made to strike out and the plaintiff has no chance of success at trial.

Facts

The parties

3 The plaintiff is the Management Corporation Strata Title Plan No 4099 known as "Este Villa" (the "Development"),[1] comprising 121 units of cluster terraced housing.[2]

4 The first defendant was engaged by a developer, Kedron Investments Pte Ltd, as the main contractor of the Development.[3]

5 KTP was engaged by the developer as the structural engineer and Qualified Person ("QP") (Structural) responsible for the structural works of the Development.[4] KTP was also engaged by the first defendant to provide professional consulting services for the Development, which included services relating to the external cladding façade.[5]

6 The second and fourth defendants were also involved in the Development. The second defendant supplied and installed the composite engineered timber alike panel ("CETP") for the cladding façade for the

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1 2nd affidavit of Zachary Tan Lian Chye dated 12 September 2023 ("2ZT") at para 1.

2 2ZT at para 5.

3 2ZT at para 6.

4 2ZT at para 6.

5 1st affidavit of Foong Kit Kuen dated 6 October 2023 ("1FKK") at p 427.

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Development.[6] The fourth defendant was the architect that designed the Development.[7]

Background to the dispute

7 In or around June 2015, the plaintiff discovered numerous defects in the Development.[8] This was after the Temporary Occupation Permit for the Development and the Certificate of Statutory Completion had been issued.[9]

8 To determine the nature of these defects, from March to April 2016, the plaintiff engaged a firm of building surveyors, Bruce James Building Surveyors Pte Ltd ("Bruce James"), to conduct a visual inspection of the Development.[10] Bruce James then produced a report for the plaintiff dated 22 September 2016 (the "Bruce James Report").[11] It highlighted several defects including a cladding defect in relation to 14 units. One of the defects discovered was the "[e]xcessive accelerated deterioration to the timber cladding around bay windows including warping / deterioration".[12]

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6 Statement of Claim (Amendment No 2) dated 28 August 2023 ("SOC (Amd No 2)") at para 4A.

7 SOC (Amd No 2) at para 4C.

8 2ZT at para 8.

9 2ZT at para 7.

10 2ZT at para 9.

11 SOC at paras 7–10; 1st affidavit of Foong Kit Kuen dated 6 October 2023 at p 470.

12 Further and Better Particulars pursuant to request dated 9 March 2022 ("F&BP") at paras 1, 2, 3 and 6 and p 44 at S/N 3.2(3).

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9 In or around March 2017, the first defendant carried out rectification works in relation to the defects identified in the Bruce James Report. The rectification works were completed on 14 June 2017.[13]

10 However, in or after March 2017, the plaintiff discovered that certain defects had recurred, as set out in the defects list in Annex A (the "Defects List") of the Statement of Claim (Amendment No 2) dated 28 August 2023 ("SOC (Amd No 2)").[14] One of the defects was a damaged and detached timber panels on the external cladding façade of 49 units, including eight units identified in the Bruce James Report (the "Cladding Defect"). This was described in the Defects List in the same terms as the Bruce James Report (see [7]–[8] above).[15]

11 On 21 February 2022, the plaintiff commenced the Suit against the first defendant.[16] The Suit concerns, amongst other things, the Cladding Defect.

12 In or around July 2022, the plaintiff engaged Meinhardt Façade (S) Pte Ltd ("Meinhardt") to investigate the defects listed in the Defects List.[17] After conducting inspections of the Development, Meinhardt issued a report on 29 July 2022, setting out its opinion on the cause of the defects in the Defects List.[18] On or around 3 August 2022, Meinhardt issued a further report on the Cladding Defect (the "Meinhardt Report").[19]

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13 2ZT at para 10.

14 2ZT at para 11.

15 SOC (Amd No 2) at p 59, Annex A, S/N 1 of the Defects List.

16 2ZT at para 12.

17 2ZT at para 13.

18 2ZT at para 13.

19 2ZT at paras 15 and 16.

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13 The plaintiff's case is that, only through the Meinhardt Report, did the plaintiff find out that KTP was one of the parties responsible for the Cladding Defect.[20]

Procedural history and the decision below

14 On 8 February 2023, the plaintiff filed a consent summons in HC/SUM 326/2023 to join KTP to the Suit. This was allowed by the court on 13 February 2023.[21] The Suit was commenced against KTP on 17 February 2023, when the original statement of claim was amended to include KTP as a defendant by way of a Statement of Claim (Amendment No 1) dated 17 February 2023.[22]

15 In the Suit, the plaintiff alleged that KTP was in breach of its statutory duties under the Building Control Act 1989 (2020 Rev Ed) and its common law duty in tort, for failing to exercise reasonable care in, amongst others, designing and supervising the construction of the cladding façade.[23]

16 On 28 August 2023, KTP commenced SUM 2609 to strike out the Suit on the basis that (a) it disclosed no cause of action against KTP; (b) it was a frivolous and/or vexatious claim against KTP; and/or (c) it was an abuse of process.

17 The learned AR dismissed SUM 2609 in its entirety. As to KTP's argument that the action was time-barred, the learned AR found that the Cladding Defect was different in nature from the defect identified in the Bruce

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20 2ZT at para 18.

21 2ZT at para 19.

22 Statement of Claim (Amendment No 1) dated 17 February 2023.

23 2ZT at para 20.

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James Report – the latter was more aesthetic than structural in nature.[24] Hence, the plaintiff's action was brought within the relevant limitation period. As to KTP's argument that it was not involved in the design of the cladding façade, the learned AR found that KTP, as the structural engineer, still owed a duty to the plaintiff in relation to the designing of the cladding façade.[25] Hence, the Suit was not frivolous or vexatious.

18 On 30 November 2023, KTP commenced HC/RA 258/2023 ("RA 258") to appeal against the learned AR's decision.

The parties' cases

19 As a preliminary point, KTP did not appeal my decision to dismiss their appeal on its other arguments raised for striking out. For the sake of brevity, I confine these grounds of decision to the time bar issue that the plaintiff has appealed.

20 KTP argued that the damage first arose in June 2015, which was when the six-year limitation period prescribed under s 24A(3)(*a*) of the Limitation Act 1959 (2020 Rev Ed) (the "Limitation Act") started to run. Since the plaintiff only commenced action against KTP in February 2023, the claim was said to be time-barred.[26]

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24 Notes of Evidence for HC/SUM 2609/2023 dated 23 November 2023 ("NE for SUM 2609") at p 3, lines 14–17.

25 NE for SUM 2609 at p 3, lines 22–26.

26 3rd Defendant's Written Submissions dated 22 January 2024 ("DWS") at paras 55 and 56.

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21 KTP also argued that s 24A(3)(*b*) of the Limitation Act – which provides that the three-year limitation period starts to run only from the date on which a claimant had the requisite knowledge – did not assist the plaintiff. According to KTP, the plaintiff had the necessary knowledge to bring an action in respect of the Cladding Defect by 22 September 2016, the date of the Bruce James Report.[27] As the three-year period under s 24A(3)(*b*) of the Limitation Act would have expired on 22 September 2019, the action against KTP was still said to be time-barred.

22 In response, the plaintiff argued that the learned AR was correct in finding that the defects identified in the Bruce James Report were different from the Cladding Defect.[28] The Cladding Defect was only identified in March 2017, so the Suit was brought within the six-year limitation period under s 24A(3)(*a*) of the Limitation Act.[29]

23 The plaintiff further argued that even if the Cladding Defect was discovered in September 2016 (as argued by KTP), the action was not time-barred under s 24A(3)(*b*) of the Limitation Act. This was because the plaintiff only discovered that KTP was a responsible party after reading the Meinhardt Report issued on 3 August 2022.[30] Hence, the action was brought within the three-year limitation period under s 24A(3)(*b*) of the Limitation Act.[31]

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27 DWS at para 68.

28 Plaintiff's Written Submissions dated 22 January 2024 ("PWS") at para 30.

29 PWS at para 31.

30 PWS at para 41.

31 PWS at para 43.

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Issues to be determined

24 The main issue for determination was whether the case made against KTP was time-barred and should be struck out under O 18 r 19(1)(*b*) of the Rules of Court (2014 Rev Ed) (the "ROC 2014").

Preliminary issue on when further arguments may be heard

25 KTP's appeal had been allowed following the first hearing of the appeal. The appeal had been allowed as KTP had convinced me that the plaintiff's case should be struck out as it was time-barred. The plaintiff wrote to court requesting for further arguments on the issue of time bar. The key dispute over the time bar issue was whether the cladding defect identified in the Bruce James Report and the Cladding Defect covered the same defect. In that regard, the plaintiff raised the following further arguments:

(a) There was no evidence to show that the defect observed in the Bruce James Report was structural in nature. Whether the report contemplated any structural issues with the cladding façade could only be determined through a cross-examination of Bruce James' representatives who had observed the defect.

(b) There was no evidence that the defect observed by Bruce James would or could lead to delamination, or put the plaintiff on notice that further investigation was required. This could only be determined through expert evidence.

(c) The case was still at an early stage of the proceedings. The cases relating to striking out in similar contexts had mostly been decided after all the evidence had been heard at trial, and not at such an early stage.

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The discovery process had yet to start and there was no evidence from Bruce James' representatives or the experts.

26 As a preliminary point, KTP objected to the plaintiff's request for further arguments. KTP argued that this court no longer had jurisdiction to hear further arguments. KTP referred to the Court of Appeal decision of *Thomson Plaza (Pte) Ltd v Liquidators of Yaohan Department Store Singapore Pte Ltd (in liquidation)* [2001] 2 SLR(R) 246 ("*Thomson Plaza*") for the proposition that a court may hear further arguments even in respect of a final order, "so long as the order is not yet perfected" (at [6]). In the present case, the order of court arising out of the decision for RA 258 (the "Order") had been extracted and was already perfected. This court had not decided at the time the Order was extracted whether or not to hear further arguments following the plaintiff's request. It was thus too late to hear further arguments.

27 The plaintiff disagreed and submitted that the request was brought within the time limit set out in s 29B(2)(*a*) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA"). Section 29B(2)(*a*) of the SCJA provides as follows:

> (2) Before any notice of appeal is filed against a decision to which this section applies, the Judge who made the decision may hear further arguments in respect of the decision if any party to the hearing, or the Judge, requests for further arguments *before the earlier of the following*:
>
> (a) *the time at which the judgment or order relating to the decision is extracted*;
>
> (b) the 15th day after the date on which the decision is made.
>
> [emphasis added]

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28 The plaintiff argued that the plain wording of s 29B(2) of the SCJA allows further arguments to be heard so long as the request had been made before the time that the order of court was extracted. This was the case even if the court had not decided on whether to hear further arguments by the time the order of court was extracted. In this case, the request for further arguments was filed 30 minutes before the Order was extracted.

29 I disagreed with KTP's position. The applicable statute at the time of *Thomson Plaza* was the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed), which did not contain any provision for the High Court's jurisdiction to hear further arguments (*TG Master Pte Ltd v Tung Kee Development (Singapore) Pte Ltd and another* [2023] SGHC 64 ("*TG Master*") at [38]). I hence agreed with the plaintiff that *Thomson Plaza* was a case decided on the basis of a court's inherent jurisdiction to hear further arguments (see also *TG Master* at [26] and [38]). It was only in 2010 that s 28B of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed), which is the predecessor provision of the current s 29B of the SCJA (*TG Master* at [27]–[28]), was introduced (*Singapore Civil Procedure 2021* vol 1 (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 32/5/2). The implication is that the current SCJA has superseded the previous position at the time *Thomson Plaza* was decided. KTP's reliance on *Thomson Plaza* was hence misplaced.

30 Further, KTP's position would result in an absurd conclusion. In order to comply with both s 29B(2) of the SCJA and the common law position in *Thomson Plaza* (which KTP argued remained relevant), in this case, I would have had 30 minutes to decide on whether to hear further arguments. Taking this argument to the extreme, in future cases, the court could be left with only seconds to decide whether to hear further arguments taking into account the

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timing difference between when a request for further arguments is filed and when an order is extracted. This would be inconsistent with Parliament's intention to provide flexibility in computing the time for filing further arguments. In the second reading of the Supreme Court of Judicature (Amendment) Bill dated 5 November 2019, the Senior Minister of State for Law, Mr Edwin Tong, explained the significance of using the word "time" in s 29B(2)(*a*) of the SCJA as follows (Singapore Parl Debates; Vol 94, Sitting No 114; 5 November 2019 (Edwin Tong, Senior Minister of State for Law)):

> … [I]f you look at the proposed provision 29B(2a), the word that is being used here is "date". The old provision uses the word "time". So, the date by which one has to make the further arguments, versus the time by which one has to make the further arguments. And we propose, at Committee stage, with Mr Speaker and Chairman's leave, to seek to make that amendment. It is a change that was not intended, an error carried through from the drafting. So, we propose to make that to reflect the position better. And I think the lawyers in this House will appreciate that *the use of the word "time" will give a greater degree of flexibility in terms of when one starts the computation of time for filing the further arguments*. … [emphasis added]

31 Section 29B(2) of the SCJA is clear in its application and purpose. So long as the request for further arguments is made before the order of court is extracted, the court has the discretion to decide whether or not to hear further arguments, even if an order of court is extracted following that request.

32 KTP made one further objection with respect to the request for further arguments. KTP argued that the court maintained a discretion not to hear further arguments if the arguments that the plaintiff was intending to raise were the same arguments raised at the earlier hearing on 24 January 2024. I preferred and agreed with the plaintiff's position that so long as the court was willing to change its mind, further arguments could be heard. As the Court of Appeal held

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in *Singapore Press Holdings Ltd v Brown Noel Trading Pte Ltd and others* [1994] 3 SLR(R) 114 at [41], the test for whether further arguments should be allowed is that the judge must be "prepared to change his mind on the order he had made [earlier] or at least to alter his thinking on some of the issues he had to decide in coming to his conclusion which might have had some bearing on the order he made". Further, as stated in *Comptroller of Income Tax v ARW and another (Attorney-General, intervener*) [2017] SGHC 180, "the party making further arguments is not confined to points that have already been raised" (at [70]). This makes clear that contrary to KTP's position, further arguments are not confined to only new arguments. I thus decided that I would hear the plaintiff's further arguments.

The plaintiff's case against KTP was time-barred

33 Having considered the plaintiff's further arguments and KTP's responses to the same, my earlier decision was affirmed and remained unchanged. Before I turn to my reasons, I set out the relevant law briefly.

The law

34 The applicable ground for striking out was O 18 r 19(1)(*b*) of the ROC 2014, which provides that the court may strike out a pleading on the ground that it is scandalous, frivolous or vexatious. In particular, this applies to an action that is legally unsustainable – *ie*, it is "clear as a matter of law at the outset that even if a party were to succeed in proving all the facts that he offers to prove he will not be entitled to the remedy that he seeks" (*The "Bunga Melati 5"* [2012] 4 SLR 546 at [39(a)]). A claim that is time-barred is legally unsustainable, and will be struck out for being frivolous and vexatious; the defence of limitation

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would defeat the claim even if all the facts alleged by the plaintiff are proved (*United Petroleum Trading Ltd v Trafigura Pte Ltd* [2021] 2 SLR 1232 at [4]).

35 I turn to the limitation periods provided in the Limitation Act. Section 24A(1) of the Limitation Act applies to "any action for damages for negligence … or breach of duty". This was the applicable provision, as the plaintiff's action against KTP was for breach of statutory duty and negligence (see [15] above). The relevant limitation period for such actions is stated in s 24A(3) of the Limitation Act, which I reproduce below:

> (3) An action to which this section applies, other than [where the damages claimed consist of or include damages in respect of personal injuries], 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*).

I will address the time bar positions under each of s 24A(3)(*a*) and s 24A(3)(*b*) separately.

The six-year time bar in s 24A(3)(a) of the Limitation Act had lapsed

36 In relation to s 24A(3)(*a*) of the Limitation Act, a plaintiff's cause of action in tort accrues when the damage occurs (*Lian Kok Hong v Ow Wah Foong and another* [2008] 4 SLR(R) 165 ("*Lian Kok Hong*") at [24]). In the specific context of construction defects, a plaintiff "suffers damage for the purpose of a claim in tort for defects in a building when the defects manifest themselves in

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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 ("*Millenia*") at [480]).

37 In *Millenia*, a stone panel (the "1st Panel") fell off the façade of an office building clad in granite stone panels (the "Panels") in 2004. A professional engineer ("Arup") was engaged by the owner to inspect the Panels, leading to a report on 28 October 2004 (the "1st Report") and another on 28 December 2004 (the "2nd Report", collectively the "Reports"). Pursuant to the Reports, rectification works were undertaken in 2007. Despite this, a second stone panel (the "2nd Panel") fell off the façade in 2011. The owner brought a suit against, amongst others, the main contractor ("Dragages") and its subcontractor ("Builders Shop"). The issue was whether the owner's claims against Dragages and Builders Shop in tort for negligent performance of the works were time-barred (*Millenia* at [462]).

38 This court found that the defects to the Panels manifested themselves in the form of physical damage by October or December 2004, when they were noted in the Reports (*Millenia* at [481]). For instance, the 1st Report noted the spalling of stone panels near pin areas and cracks on panels; the 2nd Report noted the beginning of corrosion for some washers (*Millenia* at [481]). As this physical damage was reasonably discoverable by October or December 2004, and would have been discovered by the owner through the Reports in 2004, the owner's tortious claims were time-barred under s 24A(3)(*a*) of the Limitation Act (*Millenia* at [481]).

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39 In the present case, the plaintiff argued that the Cladding Defect first arose on or after March 2017, which was when time purportedly started to run. The plaintiff relied on the following:

(a) At paragraph 11C(b)(ii) of SOC (Amd No 2), the plaintiff described the Cladding Defect in the following terms: "there was excessive accelerated deterioration to the CETP cladding around the bay windows, which has warped or deteriorated. There were random cases, with disengaged panels, that partially failed and disengaged. Obvious cases of panels starting to delaminate or pop up exhibiting unevenness".[32] According to the plaintiff, this was significantly different from the defect identified in the Bruce James Report – "[e]xcessive accelerated deterioration to the timber cladding around bay windows including warping/deterioration" – which was aesthetic in nature and was rectified by June 2017.[33]

(b) At paragraph 11 of SOC (Amd No 2), the plaintiff expressly pleaded that the Cladding Defect was only discovered "on or after March 2017".[34] In the Further and Better Particulars served pursuant to KTP's request dated 25 May 2023, the plaintiff further specified that the Cladding Defect was discovered "sometime between March 2017 and 21 September 2017".[35] In the Reply (Amendment No 1) dated 25 April

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32 PWS at para 33.

33 PWS at para 34.

34 PWS at para 31(a).

35 PWS at para 31(b).

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2023 ("Reply (Amd No 1)"), the plaintiff reiterated that the Cladding Defect was "subsequently discovered on or after March 2017.[36]

40 I was not persuaded by the plaintiff's arguments. Similar to Arup's Reports in *Millenia*, the Bruce James Report clearly noted on 22 September 2016 that physical damage had manifested on the cladding façade. In my judgment, it would have been reasonably discoverable by the plaintiff on this date. This defect was of the same nature as the Cladding Defect. I make a preliminary point that I disagreed with the plaintiff's further argument ([25(a)] above) that expert evidence was necessary to determine if the physical damage observed in the Bruce James Report was the same as the Cladding Defect (see [63]–[65] below). I also considered the plaintiff's further argument ([25(c)] above) that claims in similar contexts were only struck out after a full trial. However, for reasons elaborated at [67]–[69] below, I decided that it was appropriate to strike out the plaintiff's claims at an interlocutory stage.

41 Turning to the interpretation of the Bruce James Report, the wording of the report was broad. It pointed to a general issue of "[e]xcessive accelerated deterioration to the timber cladding around bay windows *including* warping / deterioration" [emphasis added] for 14 units out of 121. It used inclusive language ("including") that suggested widely encompassing systemic issues with the cladding façade.[37] The recommended action was to carry out "[f]urther investigation … to determine whether the *system* is of external quality" [emphasis added].[38] The reference to "system" suggested to me that there were

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36 PWS at para 31(c).

37 F&BP at p 44 at S/N 3.2(3).

38 F&BP at p 44 at S/N 3.2(3).

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issues not just with the panels themselves but also the overall structure including their installation and support. In other words, the Bruce James Report identified a non-exhaustive list of issues with the cladding façade, and the issues were symptomatic of systemic issues that should be investigated, including whether the system was one suitable to be used outdoors. Hence, the defects identified in the Bruce James Report raised issues of substance beyond those of mere cosmetics.

42 This conclusion was supported by the plaintiff's own pleading:

(a) As KTP's counsel pointed out during the hearing on 24 January 2024,[39] in the Further and Better Particulars served pursuant to the fourth defendant's request on 12 April 2023, the plaintiff confirmed at paragraph 2(a) that the defects identified in the Bruce James Report were the *same* defects that were the subject of the claim against KTP in SOC (Amd No 2). The pleadings plead facts. The plaintiff had explicitly confirmed the fact that its case was that the defects identified in the Bruce James Report and the Cladding Defect were the same. Unless the plaintiff was challenging the facts of its own case, the connection between the defects identified in the Bruce James Report and the current Cladding Defect could not be clearer.

(b) When pressed on this point at the hearing, the plaintiff's counsel made the case that the reference to "same defect" meant "same location, same feature",[40] not that the defects were the same in nature. I disagreed. Even the ordinary meaning of "defect" contemplates some sort of error

[39] Notes of Evidence dated 24 January 2024 at p 3, lines 26–32.

[40] Notes of Evidence dated 28 February 2024 at p 10, lines 5–6.

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> or failure. It has an even clearer legal meaning when used in the context of a construction claim. When the plaintiff explicitly conceded that the defects identified in the Bruce James Report and the Cladding Defect were the same, the former had to be read in the context of the "same defect" that the plaintiff was claiming in its SOC (Amd No 2), and not based on some more nuanced reading that the plaintiff was now alleging. The plaintiff could not escape this.

43 For the above reasons, I found that the Cladding Defect was of the same nature as that identified in the Bruce James Report. The cause of action had thus accrued by the date of the Bruce James Report on 22 September 2016. As the Suit was brought against KTP only in February 2023, past the six-year limitation period which started running from 22 September 2016, the action was time-barred. The Bruce James Report was a report from an expert building surveyor. As an expert report, the Bruce James Report took on additional significance both to the plaintiff as Bruce James' client and to this court as a recipient of that information. The words in the Bruce James Report must convey their intended meaning as presented and the court will take guidance from those words. It cannot be the case that further evidence is needed to interpret the report (see [65] and [66] below). This renders no end to the amount of evidence the court must receive to make a determination based on an expert's findings. It also condones expert findings that are inconclusive and open to wide interpretation. This should not be encouraged.

*The three-year time bar in s 24A(3)(**b**) of the Limitation Act had lapsed*

44 I turn now to s 24A(3)(*b*) of the Limitation Act which was the focus of the parties' submissions. Though I had found that the limitation period expired on 22 September 2022 under s 24A(3)(*a*) of the Limitation Act, s 24A(3)(*b*) was

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relevant as it provides that the limitation period would be extended to three years from the date the plaintiff had the requisite knowledge, if that three-year period expires later than the six-year period provided under s 24A(3)(*a*) (see [35] above).

45 In relation to s 24A(3)(*b*) of the Limitation Act, the knowledge required for bringing an action for damages is set out in the following sub-sections reproduced below:

> (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;
>
> …
>
> (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.
>
> (5) Knowledge that any act or omission did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant for the purposes of subsections (2) and (3).
>
> (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.
>
> …

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46 One of the key reasons for a time bar to exist is to ensure that parties, armed with the knowledge to take action on a particular matter, do not just sit on their hands and do nothing. They have to take that action in a timely manner. The principles relating to the requisite knowledge under s 24A(4) of the Limitation Act have been summarised in *Lian Kok Hong* (at [42]):

> (a) First, in respect of s 24A(4)(*a*) read with s 24A(5), *viz*, attributability, ***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 knew or might reasonably have known of the factual essence of his complaint***.
>
> …
>
> (c) Third, in relation to s 24A(4)(*d*), the material facts referred to need not relate to the specific cause of action, and the assumptions as to the defendant not disputing his liability and his ability to satisfy a judgment, coupled with the requirement of "sufficient seriousness", must be read to mean that ***the case must be one sufficiently serious for someone to actually invoke the court process given these assumptions***.
>
> (d) Finally, conditioning the above is the *degree* of knowledge required under paras (a) to (c), and this does not mean knowing for certain and beyond the possibility of contradiction.
>
> [emphasis in original in italics; emphasis added in italics and bold italics]

47 Before turning to the facts of this case, it is helpful to review the key cases that the parties had relied on. The cases illustrate that the limitation clock is not reset for new appearances of the same type of defect, if the plaintiff had reasonable notice, at the time the earlier defect emerged, that the issue was not an isolated one.

48 In *Chia Kok Leong and another v Prosperland Pte Ltd* [2005] 2 SLR(R) 484 ("*Prosperland*"), a wall tile on the condominium façade was becoming de-

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bonded in August 1997. Subsequently, in August 1999, more tiles were found de-bonded in the sixth and seventh storeys. A month later, two tiles fell from the 20th storey (*Prosperland* at [60]). The Court of Appeal agreed with the trial judge that the de-bonding of one tile in August 1997 was an isolated incident which was insufficient to impute the requisite knowledge on the developer (*Prosperland* at [68]). However, the Court of Appeal found that the de-bonding of more tiles in August 1999 "should have sounded the alarm and alerted [the developer] that there was something seriously amiss with regard to the wall tiles" (*Prosperland* at [68]). Hence, the developer had acquired the requisite knowledge to sue the architects in negligence in August 1999 (*Prosperland* at [68] and [71]).

49 In *Millenia*, the developer argued that it was only aware of the full extent of the defects in the Panels either (a) after Arup had issued another report in 2011 in relation to the 2nd Panel or (b) after Arup had inspected the entirety of the Panels (at [483(a)]). This court rejected this argument. The developer was found to have had the requisite knowledge to sue Dragages and Builder Shops for negligence by 28 December 2004, the date of Arup's 2nd Report (*Millenia* at [484]). This was because by that date, the developer would have known that multiple defects were found on the Panels, several of which were of "high severity" (*Millenia* at [484]). Even though the 2nd Report was based on an inspection of only eight drops (*Millenia* at [54]), the report stated that other portions of the Panels that had not been inspected might also contain similar defects (*Millenia* at [484]). As the developer "knew the *factual essence* of its complaint by that date [*ie*, the date of the 2nd Report]" [emphasis in original], its tortious claims were time-barred under s 24A(3)(*b*) of the Limitation Act (*Millenia* at [484]–[485]).

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50 Finally in *New Islington and Hackney Housing Association Ltd v Pollard Thomas & Edwards Ltd* [2000] Lloyd's Reports PN 243 ("*New Islington*"), the housing association alleged that the soundproofing for six buildings was inadequate due to the architects' flawed design. The issue was whether the association had the requisite knowledge under s 14A of the UK Limitation Act 1980 (which is *in pari materia* with s 24A of the Limitation Act) by 1 May 1995, such that the claims were time-barred. The association was held to have had the requisite knowledge in relation to one of the buildings by October 1994 – when the association had received the consultancy firm's report on that building's sound insulation performance (*New Islington* at [66]). For the remaining five buildings, the English High Court held that "if [the association] had applied their minds to the point, the Association would have known that it was extremely likely that the design and construction methods adopted at each of the six properties was the same" (*New Islington* at [69]). The association was thus found to have acquired the requisite knowledge in respect of the five buildings before 1 May 1995 (*New Islington* at [73]).

The plaintiff had the requisite knowledge by 17 February 2020

51 The issue was whether the plaintiff had brought the Suit within three years from the earliest date on which it had the requisite knowledge to sue in tort. If the plaintiff had the requisite knowledge by 17 February 2020 (see [14] above), s 24A(3)(*b*) of the Limitation Act would not assist the plaintiff.

52 I address the following elements of knowledge under s 24A(4) of the Limitation Act in turn:

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(a) first, whether the plaintiff had knowledge, by 17 February 2020, that the Cladding Defect was attributable to KTP's alleged negligent design and supervision of the construction of the cladding façade;

(b) second, whether the plaintiff had knowledge, by 17 February 2020, of material facts about the Cladding Defect which would lead a reasonable person to consider it sufficiently serious to justify instituting proceedings against KTP; and

(c) third, whether the plaintiff had knowledge, by 17 February 2020, of KTP's identity.

53 On the first issue, I found that the plaintiff knew the factual essence of the complaint against KTP by 22 September 2016, or latest by 17 February 2020.

54 By 22 September 2016, the plaintiff was aware that the Cladding Defect had appeared in at least 14 units in the Development. This was unlike the isolated incident in *Prosperland* when the 1st Panel fell off the building. As mentioned above (see [41] and [43]), the wording of the Bruce James Report alluded to wider systemic issues, not merely aesthetic ones. This was not a case of a layman looking up at the warping of an isolated group of timbers on the exterior of a structure and wondering what was wrong with it. The plaintiff had gone beyond that and engaged an expert surveyor to conduct a visual inspection and make a finding on the defect that had been found to appear across 14 units in the Development. That expert surveyor had produced a report that should have rung alarm bells for any reasonable person in the plaintiff's position.

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55 Put another way, even if I took the plaintiff's case at its highest (*ie*, that the particular defect of "inadequate fixing leading to delamination"[41] and KTP's breach of its duties were only discovered later in the Meinhardt Report),[42] for the purposes of time bar, time does not start to run only when the actual defect is discovered. A plaintiff need not know "for certain and beyond the possibility of contradiction" what precisely the defect was (*Lian Kok Hong* at [42(d)]). In the present case, the plaintiff ought reasonably to have known from the Bruce James Report that there was a substantive defective issue with the cladding façade, even if it did not know for certain the *specific* details of inadequate fixing. In turn, the plaintiff 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.

56 I also took into account the plaintiff's pleaded position that the Cladding Defect was the same as the defect identified in the Bruce James Report (see [42] above). In *Millenia*, this court emphasised the fact that the developer had commenced proceedings against Dragages and Builders Shop "based on the defects identified in the 2004 Reports" (at [475(c)]). This went towards showing that the developer had the requisite knowledge by the time of the Reports. Similarly, it was significant that the plaintiff's case in this Suit against KTP was premised on the same defect that the plaintiff already had actual knowledge of, by 22 September 2016.

57 The plaintiff's counsel submitted during the hearing on 28 February 2024 that Bruce James' recommendation did not go so far as to require the

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41 Notes of Evidence dated 28 February 2024 at p 11, lines 1–4.

42 PWS at para 41.

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plaintiff to investigate the entire system including the fixing issues.[43] The reference to "external quality" could mean issues of outward appearance only.[44] As such, it was argued that there was insufficient basis to impute knowledge on the plaintiff as of 22 September 2016. My interpretation of the Bruce James Report has already been set out above (see [41] and [43]). However, even if I am wrong in my interpretation that the report alluded to systemic issues and the relevance of KTP's role, the plaintiff still had the requisite knowledge by 17 February 2020.

58 Knowledge for the purposes of s 24A(4) of the Limitation Act includes constructive knowledge (see [44]–[46] above). In that regard, it was the plaintiff's case that the Cladding Defect had surfaced "sometime between March 2017 and 21 September 2017".[45] The plaintiff should have commissioned an expert to carry out further inspections around that period (see *New Islington* at [72]). If this had been done, the plaintiff would have received that expert's opinion before 17 February 2020. But instead, the plaintiff only chose to engage Meinhardt in 2022. The systemic issue with the cladding façade (and KTP's role in it) was thus something that the plaintiff was reasonably expected to acquire from facts observable or ascertainable by it by 17 February 2020 (s 24A(6) Limitation Act). I thus concluded that it was "reasonable to hold that [the plaintiff] knew or ought to have known that there was a widespread problem" to the cladding façade by 17 February 2020 (*Prosperland* at [69]).

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43 Notes of Evidence dated 28 February 2024 at p 12, lines 29–32.

44 Notes of Evidence dated 24 January 2024 at p 10, lines 4–7.

45 PWS at para 31(b).

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59 I turn to the second issue on knowledge of material facts sufficiently serious to justify the commencement of proceedings. Considering the above, when the plaintiff saw the Bruce James Report in September 2016, or when the defects recurred between March 2017 and September 2017, was it something serious enough to say objectively and without the benefit of hindsight that the plaintiff should have known with confidence that it needed to start thinking about issuing a writ, telling and considering potential defendants, collecting evidence and getting further experts? Bearing in mind that the plaintiff had already taken the step to appoint Bruce James to produce the Bruce James Report, the plaintiff was one step further in the knowledge process for considering any claims. It had already sought the views of an expert, and despite the rectification works, the Cladding Defect re-emerged. In light of these, I found that by latest September 2017, the plaintiff had knowledge of material facts which rendered the case "sufficiently serious for [the plaintiff] to actually invoke the court process" (*Lian Kok Hong* at [42(c)]).

60 I turn to the final issue on knowledge of KTP's identity. The plaintiff argued that it only ascertained KTP's identity as QP (Structural) after purchasing the structural plans for the Development around 28 July 2022, and ascertained KTP as a party to blame after reading the Meinhardt Report issued on 3 August 2022.[46] The plaintiff further argued that it was unreasonable to expect the plaintiff to carry out further investigations in September 2016 to identify more parties who might be responsible.[47] This was because the first defendant had already agreed to rectify the defects identified in the Bruce James

46 PWS at paras 40 and 41.

47 PWS at para 42.

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Report, and the plaintiff believed that it had amicably resolved the matter with the first defendant at that time.[48]

61 I dismissed the above argument. As already mentioned above at [58], the Cladding Defect emerged *again* between March 2017 and September 2017, despite the rectification works undertaken by the first defendant. Whilst the main contractors (the first defendant in this case) are typically one of the first defendants to be considered (together with the developer), KTP was the structural engineer on record responsible for the structural design and supervision of the construction of the Development. The plaintiff made the case when opposing KTP's striking out application on how critical KTP was to the whole construction process,[49] so KTP was not an obscure consultant whom the plaintiff may not reasonably have considered. The plaintiff was reasonably expected to seek from the first defendant the identity of the designer (*ie*, KTP), or purchase the structural plans, after having read the Bruce James Report in September 2016 or, latest, upon discovering the Cladding Defect in September 2017. It followed that knowledge of KTP's identity was something the plaintiff "might reasonably have been expected to acquire" by 17 February 2020 (s 24A(6) Limitation Act).

The plaintiff's further arguments were rejected

62 A key issue I had to consider further was whether additional evidence in this case could impact the decision on whether the plaintiff's action was time-barred such that the action should proceed to trial.

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48 PWS at para 42.

49 PWS at paras 22 and 48–51.

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63 I first turn to the plaintiff's further argument that evidence of Bruce James' representatives was necessary to determine if the Bruce James Report contemplated any structural issues (see [25(a)] above). Looking at the plaintiff's case holistically, this further argument appeared to be an after-thought.

64 During the hearing on 28 February 2024, the plaintiff argued that the court would need the evidence of, amongst others, "[w]hat Bruce James observed [and] what was advised to the [plaintiff] by Bruce James" after the Bruce James Report,[50] so as to determine if the plaintiff's interpretation of the Bruce James Report was reasonable. To the extent that such advice by Bruce James supplemented or qualified the observations in the Bruce James Report, it was a material fact that ought to have been pleaded. However, this was not pleaded anywhere.

(a) At paragraph 7 of SOC (Amd No 2), the plaintiff only pleaded that Bruce James had "carried out a visual inspection of the Development and advised the [plaintiff] to rectify a number of defects". At paragraph 8, "[t]he observations of Bruce James [were] summarised", and at paragraph 9, "[t]he defects identified by Bruce James" in the Bruce James Report were listed.

(b) Similarly, the plaintiff's affidavit filed to resist the striking out application below made no reference to any communications from Bruce James to the plaintiff that went beyond what was already contained in the Bruce James Report.

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50 Notes of Evidence dated 28 February 2024 at p 12, lines 21–25.

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(c) I also noted that during the hearing below, the plaintiff was asked by the learned AR whether it intended to amend the statement of claim further but refused the opportunity to do so.[51]

It was only at the hearing on 28 February 2024 that the plaintiff raised the argument that Bruce James' evidence was required to ascertain whether there was a reasonable basis for the plaintiff to interpret the Bruce James Report in a certain way. This was a belated argument, and I was not persuaded by it.

65 Evidence from Bruce James was not necessary to determine whether knowledge was affixed at the time of the Bruce James Report. Bruce James' representatives had already put down their observations in the Bruce James Report (see [43] above). It was for this court to determine objectively whether a reasonable person reading the Bruce James Report would be put on notice of the issues identified in that report. This was not a matter for further expert opinion.

66 For similar reasons, I also rejected the plaintiff's second further argument that expert evidence was necessary to determine if the defects observed in the Bruce James Report could lead to delamination or put the plaintiff on notice that further investigation was required ([25(b)] above). The interpretation of the Bruce James Report was something this court was able to undertake without the input of, as the plaintiff argued, "what someone with relevant experience [in the construction industry] would understand from the Bruce James Report".[52] In any event, I was not convinced that any expert

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51 Notes of Evidence dated 23 November 2023 at p 2, lines 6–22.

52 Notes of Evidence dated 28 February 2024 at p 12, lines 23–24.

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evidence could shed further light on a reasonable person's interpretation of the Bruce James Report. It was unnecessary to go into whether the defect observed in the Bruce James Report could lead to delamination – as mentioned at [46] above, the plaintiff need not know the details of what went wrong. It was also unnecessary to ask the experts to opine on whether the plaintiff was put on notice that further investigation was required – the Bruce James Report explicitly recommended a further investigation.

67 I turn to the plaintiff's final further argument that the courts have generally struck out a claim for being time-barred only after all the factual and expert evidence had been considered at trial, and not at an interlocutory stage ([25(c)] above). The starting point is that striking out an action at the interlocutory stage is a severe remedy. Care must be taken and striking out should not be permitted unless a clear case has been made out. At the same time, the court should not be shy to strike out an action at the interlocutory stage (including for time bar reasons) where a clear case was established for doing so (*Lian Kok Hong* at [4]). It is a question of fact based on each case whether that should happen. There are no fixed rules on when striking out for time bar may occur at an interlocutory stage of an action.

68 The plaintiff referred me to *Millenia*, where the owner's tortious claims were struck out after a full trial. However, looking at the analysis on time bar, this court did not rely on expert evidence to determine whether the owner knew the factual essence of its complaint. Instead, the court summarised the contents of Arup's 2nd Report, namely that (a) it contained a list of 16 noted deviations from the design condition observed by Arup, five of which were assessed to be of high severity (*Millenia* at [54(a)]), and that (b) it cautioned the owner that similar defects may be present on other drops which Arup had not inspected

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(*Millenia* at [56]). Based on these observations, this court determined that the owner knew there were deviations from the design by the date of Arup's 2nd Report (*Millenia* at [475] and [484]). Neither Arup nor other experts were cross-examined on the interpretation of this report. Similarly, the present case did not warrant additional expert and factual evidence to determine whether the plaintiff knew the factual essence of its complaint against KTP.

69 The plaintiff also referred me to *Prosperland*, which was distinguishable from the present case. To briefly restate the relevant facts, one tile had de-bonded in 1997, followed by more tiles in 1999. The owner then engaged a surveyor, whose report in May 2000 indicated that the de-bonding was due to poor workmanship. Experts were called at trial, and the trial judge accepted the experts' evidence that the de-bonding of one tile in 1997 was insufficient to impute knowledge of a systemic defect. The Court of Appeal also noted that based on the experts' evidence at trial, the owner should have known that there was a defect in the bonding of the tiles as a whole when more than one tile had become de-bonded (*Prosperland* at [65] and [68]).

70 Expert evidence was necessary and rightly consulted in that context. As the surveyor was only engaged after further tiles fell off in 1999, there remained a technical issue as to whether the de-bonding of one tile in 1997 was an isolated incident or suggested a systemic defect. However, in the present case, Bruce James was engaged when the defects *first* appeared in the Development. Bruce James' representatives then inspected and put down their observations in relation to those defects in the Bruce James Report. In other words, the issue before me was one of interpretation. It was unnecessary to engage an expert to opine on the same matter.

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71 For the above reasons, I found that the plaintiff had the requisite knowledge to sue KTP by 17 February 2020. The three-year limitation period under s 24A(3)(*b*) had expired, and the plaintiff's action was time-barred.

Conclusion

72 KTP's case for striking out on the basis of time bar was made out and the appeal was thus allowed in part.

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73 I ordered costs in favour of KTP in the amount of $15,000.00 all in for the cost of SUM 2609 below and for the cost of RA 258, and $12,000.00 all in for the cost of the entire action thus far. Though KTP argued that costs generally follow the event (regardless of which argument worked and failed), I considered it fair to look at the matter issue-by-issue in this case. KTP could have chosen not to appeal on its argument that it was an unrelated party, which KTP also admitted was a relatively weak point. I thus looked at the costs of both SUM 2609 and RA 258 holistically. As for the hearing on further arguments, I ordered costs in the amount of $4,000.00 in favour of KTP.

Wong Li Kok, Alex
Judicial Commissioner

Nicholas Poon Guokun, Kishan Pillay s/o Rajagopal Pillay and Chan Michael Karfai (Breakpoint LLC) for the plaintiff;
Daniel Chia Hsiung Wen, Ker Yanguang and Charlene Wee Swee Ting (Prolegis LLC) for the third defendant;
Yew Wei Li Avery (Allen & Gledhill LLP) for the fourth defendant (watching brief).

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