

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

[2025] SGHCR 5

Suit No 577 of 2021 (Summons No 449 of 2025)

Between

Management Corporation
Strata Title Plan No. 4348

... Plaintiff

And

- (1) Hoi Hup Sunway Pasir Ris Pte Ltd
- (2) Straits Construction Singapore Private Limited
- (3) Consortium 168 Architects Pte Ltd
- (4) Rankine & Hill (Singapore) Pte Ltd
- (5) Kao Lee Aluminium Industrial Pte Ltd
- (6) Pro-Werkze (S) Pte Ltd
- (7) Cementaid (S.E.A.) Pte Ltd
- (8) Hoe Kim Tiling & Building Pte Ltd
- (9) Sin Hong Yong Pte Ltd
- (10) Propell Integrated Pte Ltd
- (11) Aquatech Products and Services Pte Ltd
- (12) Noris Engineering & Air-Conditioning Pte Ltd
- (13) Joe Green Pte Ltd
- (14) WBL Engineering & Distribution Pte Ltd t/a Welmate

(15) Tractel Singapore Private
Limited

... *Defendants*

GROUND OF DECISION

[Civil Procedure — Delay — Whether to grant an extension of time to file application for determination of a question of law]

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Management Corporation Strata Title Plan No 4348

v

Hoi Hup Sunway Pasir Ris Pte Ltd and others

[2025] SGHCR 5

General Division of the High Court — Suit No 577 of 2021 (Summons No 449 of 2025)

AR Vikram Rajaram

2, 4 April 2025

14 April 2025

AR Vikram Rajaram:

1 These are my full grounds of decision on two issues that arose in the 3rd Defendant's application in HC/SUM 449/2025 ("**SUM 449**") for summary determination of a question relating to whether some of the Plaintiff's claims in HC/S 577/2021 ("**Suit 577**") against the 3rd Defendant are time-barred. The issues were whether the 3rd Defendant should be granted an extension of time to make its application for summary determination, and whether the proposed question is suitable for summary determination.

2 After hearing the parties, I decided that the 3rd Defendant should not be granted an extension of time to make its application for a summary determination. As a consequence, I dismissed SUM 449. My full reasons are as follows.

Facts

3 The key parties for the purposes of SUM 449 are as follows.

4 The Plaintiff in Suit 577 is the management corporation of a sub-divided condominium development known as “*Sea Esta*” (the “**Development**”).¹

5 The 1st Defendant was the developer of the Development.²

6 The 2nd Defendant was engaged by the 1st Defendant as the main contractor for the Development.³

7 The 3rd Defendant provided architectural services in relation to the Development.⁴

8 The former 15th Defendant is a company known as Tractel Singapore Pte Ltd (“**Tractel**”). The 1st Defendant engaged Tractel as a sub-contractor to design and construct a gondola system for the Development (the “**Gondola System**”).⁵ On 25 July 2023, in HC/SUM 1778/2023 (“**SUM 1778**”), another Assistant Registrar decided to strike out the action against Tractel on the ground that the Plaintiff’s claims against Tractel were time-barred under s 24A(3) of

¹ Statement of Claim (Amendment No. 4) filed on 16 February 2023 (“**Statement of Claim (Amendment No. 4)**”) at para 1.

² Statement of Claim (Amendment No. 4) at para 2.

³ Statement of Claim (Amendment No. 4) at para 3.

⁴ Statement of Claim (Amendment No. 4) at para 4.

⁵ Statement of Claim (Amendment No. 4) at para 6 and the 3rd Defendant’s Tan Jer Kiat’s 4th Affidavit filed on 19 February 2025 in support of SUM 449 (“**Tan’s 4th Affidavit**”) at para 12.

the Limitation Act 1959 (2020 Rev Ed) (the “**Limitation Act**”).⁶ The Plaintiff’s appeal against that decision in HC/RA 159/2023 (“**RA 159**”) was dismissed by a Judge on 10 November 2023.⁷

9 The Plaintiff’s claims in Suit 577 concern alleged defects in the Development. To decide SUM 449, it is sufficient to focus on the alleged defects concerning the design of the Gondola System.

10 The Gondola System consists of movable components (including davit arms, suspended scaffold and wire ropes) that are affixed to gondola installation points (the “**Gondola Fixing Points**”).⁸ The Gondola Fixing Points are situated in the balconies of the penthouse units located at the uppermost floors of the Development (the “**Penthouse Unit(s)**”).⁹

11 The Plaintiff made the following allegations against the 3rd Defendant in relation to the Gondola System:

- (a) The 3rd Defendant owed the Plaintiff a duty of care which included a duty to:
 - (i) “[e]nsure that proper systems of maintenance and repair to the highrise Development would be provided within the Development, including the provision of a gondola system”;¹⁰

⁶ Tan’s 4th Affidavit at para 13.

⁷ Tan’s 4th Affidavit at para 13.

⁸ Tan’s 4th Affidavit at para 14.

⁹ Tan’s 4th Affidavit at para 15.

¹⁰ Statement of Claim (Amendment No. 4) at para 47i.

(ii) “[e]nsure that gondola fixing points and operation of the gondola system would be provided as part of the common property of the Development without encumbrance”;¹¹ and

(iii) “[e]nsure that all gondola fixing points and gondola system for the Development would be safe for use and/or accessible without encumbrance for operation and maintenance by the Plaintiff”.¹²

(b) The 3rd Defendant breached its duty of care when it “failed to provide adequate gondola fixing points or a usable gondola system which could be accessed without encumbrance *as part of the common property* of the Development” [emphasis added]. Instead, the Gondola Fixing Points for the Development were located *within* the Penthouse Units (as mentioned above at [10]). The Plaintiff is unable to access the Gondola Fixing Points because of their location within the private residences of the Penthouse Units. Consequently, the Plaintiff is unable to operate the Gondola System (due to the location of the Gondola Fixing Points within the Penthouse Units).¹³

(c) As a result of the breach of the duty of care, the 3rd Defendant contributed to the existence of various defects in the Development which has, in turn, caused loss and damage to the Plaintiff, such as rectification costs, increased maintenance expenses and additional utilities charges.¹⁴

¹¹ Statement of Claim (Amendment No. 4) at para 47j.

¹² Statement of Claim (Amendment No. 4) at para 47k.

¹³ Statement of Claim (Amendment No. 4) at para 50.

¹⁴ Statement of Claim (Amendment No. 4) at para 52.

12 The 3rd Defendant’s pleaded defences to the claims relating to the Gondola System include the following:

(a) The 3rd Defendant did not owe a duty of care to the Plaintiff in the manner pleaded in the Statement of Claim.¹⁵ The design and construction of the Gondola System and the Gondola Fixing Points were under the purview of the 2nd Defendant (as the main contractor) and/or Tractel (being the main contractor’s specialist sub-contractor).¹⁶

(b) The 3rd Defendant denies breaching any duty of care.¹⁷

(c) In any event, the Plaintiff’s claims in respect of the Gondola System are time-barred pursuant to s 6(1)(a) and/or s 24A(3)(a) of the Limitation Act (the “**Limitation Defence**”).¹⁸

13 The 3rd Defendant filed SUM 449 on 19 February 2025 seeking the following:

(a) an extension of time pursuant to O 14 r 14 of the Rules of Court 2014 (“**ROC**”) to file SUM 449 for a determination of a purported question of law (the “**Extension of Time Prayer**”);

(b) the Court’s determination of the following question pursuant to O 14 r 12 of the ROC (the “**Question**”): “Whether the Plaintiff’s [c]laim [a]gainst the 3rd Defendant for the Gondola System, which was

¹⁵ 3rd Defendant’s Defence (Amendment No. 4) filed on 22 January 2025 (“**3rd Defendant’s Defence (Amendment No. 4)**”) at para 16.

¹⁶ 3rd Defendant’s Defence (Amendment No. 4) at para 20a.

¹⁷ 3rd Defendant’s Defence (Amendment No. 4) at para 20.

¹⁸ 3rd Defendant’s Defence (Amendment No. 4) at para 20f.

commenced on 3 July 2021, is time-barred under [s] 6(1)(a) and/or [s] 24A(3) of the Limitation Act 1959.”

(c) if the Question is determined in the affirmative, the Plaintiff’s claim against the 3rd Defendant in respect of the Gondola System is to be dismissed; conversely, if the Question is determined in the negative, the Limitation Defence is to be dismissed.

14 The 3rd Defendant also states in SUM 449 that two specific sub-questions are to be answered:

(a) “[w]hether the 6-year limitation period in [s] 6(1)(a) and/or [s] 24A(3)(a) of the Limitation Act 1959 started to run at the earliest from” one of five specific dates (ranging from the date on which construction of the Gondola System and the Gondola Fixing Points was completed to the date on which the Plaintiff was constituted with legal capacity to sue) (the “**Cause of Action Accrual Question**”); and

(b) “if [s] 24A(3)(b) of the Limitation Act 1959 is applicable, whether the 3-year limitation period had expired by the time [Suit 577] was commenced on 3 July 2021 by reason of the Plaintiff, or any person in whom the cause of action was vested before the Plaintiff, first had, for more than 3 years prior to 3 July 2021, both the knowledge required under [s] 24A(3)(b) of the Limitation Act 1959 for bringing an action for damages in respect of the Plaintiff’s [c]laim [a]gainst the 3rd Defendant for the Gondola System and a right to bring such an action” (the “**Latent Damage Question**”).

15 At a pre-trial conference (“PTC”) on 28 February 2025, a Senior Assistant Registrar directed that SUM 449 be decided in two stages, with the first stage being the determination of the Extension of Time Prayer and the issue of whether it is suitable to determine the Question (the “**Suitability Issue**”). The second stage will be to answer the Question itself. The present grounds of decision are concerned with only the first stage.

16 The key dates relating to the Extension of Time Prayer were as follows:

(a) Under O 14 r 14 of the ROC, no application under O 14 (which would include an application for determination of a question of law under O 14 r 12) may be filed more than 28 days after the pleadings are deemed closed unless the Court otherwise orders.

(b) It is common ground between the parties that the deadline for the 3rd Defendant to make any application under O 14 r 12 of the ROC expired on 24 September 2021.¹⁹

(c) SUM 449 was filed on 19 February 2025.

Issues to be determined

17 There were two issues before me: (a) whether the Extension of Time Prayer should be granted; and (b) if so, whether the Question is suitable for summary determination (*ie*, the Suitability Issue). The Suitability Issue only needed to be considered if the Extension of Time Prayer was allowed.

¹⁹ Plaintiff’s Written Submissions filed on 21 March 2025 at para 15 and the 3rd Defendant’s Written Submissions filed on 21 March 2025 at para 5.

Applicable principles

18 The principles that the Court will apply when considering an application for extension of time to make an application under O 14 were set out by the Court of Appeal in *Obegi Melissa and others v Vestwin Trading Pte Ltd and another* [2008] 2 SLR(R) 540 (“*Obegi Melissa*”). The relevant principles are as follows:

- (a) The time limit for making an application under O 14 may be extended if “good cause” is shown: see *Obegi Melissa* at [35].
- (b) To show “good cause”, the applicant must provide a satisfactory explanation for the delay. It is not sufficient to simply show strong merits in the proposed application: see *Obegi Melissa* at [35].
- (c) To “maintain litigation discipline and to ensure the efficient implementation of the court’s case management processes”, the longer the delay, the less likely it will be that the court will allow the extension unless there are “good grounds” for the delay: see *Obegi Melissa* at [36] and [37]. The applicant will need to “demonstrate that it has proceeded diligently in its conduct of the action”: see *Obegi Melissa* at [37].
- (d) An amendment to the pleadings may warrant a revival of a party’s right to make an application under O 14: see *Obegi Melissa* at [39].

19 As regards the Suitability Issue, the relevant principles are as follows:

(a) Three requirements must be established for a question to be found suitable for summary determination: see *Aries Telecoms (M) Sdn Bhd v ViewQwest Pte Ltd* [2018] 1 SLR 108 at [6]:

- (i) The question must be a question of law.
- (ii) The question must be suitable for determination.
- (iii) Answering the question must fully determine either the whole cause or matter, or at least one claim or issue within it.

(b) To elaborate on the second requirement, a question will not be suitable for summary determination if the question “can only be answered with reference to disputed facts”. Relatedly, the court in *The Chem Orchid and other appeals and another matter* [2016] 2 SLR 50 at [60] opined that “the process under O 14 r 12 could only be invoked if there were no factual disputes relating to the point of law in question”. Further, a summary determination will not be appropriate for a “mixed question of law and fact”: see *ANB v ANF* [2011] 2 SLR 1 at [32].

(c) It is not sufficient for a party resisting a summary determination application to “merely assert that factual issues would arise”. The resisting party must place sufficient material before the court to allow the court to assess whether evidence is really required to resolve the issue, and that the need for “factual weighing is real and not merely illusory”: see *Manas Kumar Ghosh v MSI Ship Management Pte Ltd and others* [2021] 4 SLR 935 at [22].

Analysis and decision on the Extension of Time Prayer

20 The 3rd Defendant submitted that it had shown good cause for an extension of time for the following reasons:

(a) The 3rd Defendant was not able to assess the viability of a limitation defence before the deadline of 24 September 2021 for filing an application under O 14 r 12 of the ROC. As at 24 September 2021, the 3rd Defendant did not know the date on which the Gondola System was completed. On the 3rd Defendant's case, the date on which the Plaintiff's alleged cause of action (if any) accrued was the date on which the Gondola Fixing Points were installed and the Gondola System completed.²⁰

(b) The earliest date on which the 3rd Defendant could have known when the Gondola System was completed was when Tractel, the specialist sub-contractor which allegedly designed and constructed the Gondola System, filed and served its defence on 21 June 2022. In that defence, Tractel pleaded that it completed the relevant works between December 2013 and May 2015. However, the precise date of completion was not pleaded.²¹ Tractel only provided the relevant documents relating to the completion and handover of the Gondola System to the 3rd Defendant on 5 April 2023.²²

(c) The date of completion of the Gondola System was not undisputed even when Tractel filed its defence. This was because the

²⁰ 3rd Defendant's Written Submissions at para 42.

²¹ 3rd Defendant's Written Submissions at para 43(c) and Tan's 4th Affidavit at para 40(a).

²² 3rd Defendant's Written Submissions at para 43(d) and Tan's 4th Affidavit at para 40(c).

relevant facts pleaded by Tractel were deemed disputed by the implied joinder of issue in Tractel's defence.²³

(d) The date on which the Gondola System was completed was only admitted by the Plaintiff when it filed its affidavit in reply to SUM 1778, namely the 2nd Affidavit of Ting Lik Ho ("**Ting's 2nd Affidavit**") on 7 July 2023. In Ting's 2nd Affidavit, the Plaintiff took the position that it was not contesting the relevant dates cited by Tractel in support of its striking out application in SUM 1778. This included the date of contractual determination of the Gondola Fixing Points, the date of completion of the Gondola System and the date on which the Gondola System was handed over to the 2nd Defendant.²⁴

(e) Five days after Mr Ting's 2nd Affidavit was filed, the 3rd Defendant sought directions at a PTC on 11 July 2023 for the 3rd Defendant to amend its Defence to include a limitation defence, with a striking out application to follow thereafter.²⁵ At the PTC, the Court set timelines for the 3rd Defendant to circulate its proposed amendments to its Defence to the Plaintiff, and for the Plaintiff to state its position.²⁶

(f) As the Plaintiff objected to the amendments relating to the limitation defence, the 3rd Defendant eventually filed HC/SUM

²³ 3rd Defendant's Written Submissions at para 45.

²⁴ 3rd Defendant's Written Submissions at paras 45 to 48.

²⁵ 3rd Defendant's Written Submissions at para 50 and Tan's 4th Affidavit at para 43.

²⁶ Tan's 4th Affidavit at para 43.

2431/2023 (“**SUM 2431**”) on 11 August 2023 for leave to amend the Defence to include the Limitation Defence.²⁷

(g) According to the 3rd Defendant, it could not have filed a summary determination application under O 14 r 12 of the ROC until it was granted permission in SUM 2431 to amend its Defence to include the Limitation Defence. The 3rd Defendant highlights that under O 18 r 8(1) of the ROC, a reliance on a statute of limitation must be specifically pleaded. Further, a party in an O 14 application cannot rely on a defence that is not pleaded unless the case is an exceptional one: see *Olivine Capital Pte Ltd and another v Chia Chin Yan and another matter* [2014] 2 SLR 1371 at [43].²⁸

(h) SUM 2431 was eventually fixed for a hearing on 3 September 2024, with a decision issued at first instance (by me) on 19 September 2024. Extended time was taken to fix SUM 2431 for a hearing because of the directions made by the Court on the order in which the various applications and interlocutory appeals in Suit 577 were to be heard as a matter of case management:

(i) At a PTC on 14 August 2023, the Court directed that the various applications and appeals which were pending at the time, or which were planned to be filed, be heard and decided in the following order:²⁹

²⁷ Tan’s 4th Affidavit at paras 44 to 46.

²⁸ 3rd Defendant’s Written Submissions at para 51.

²⁹ 3rd Defendant’s Written Submissions at para 52(b) and Tan’s 4th Affidavit at para 47.

(A) RA 159 (*ie*, the Plaintiff’s appeal against the decision in SUM 1778 to strike out the claim against Tractel);

(B) HC/SUM 3797/2023 (“**SUM 3797**”), which was an application by 12 Penthouse Unit owners to join Suit 577 as interested non-parties to file affidavits and make submissions on the Gondola System;

(C) the 3rd Defendant’s application in SUM 2431; and

(D) finally, the 3rd Defendant’s intended striking out application (if the Limitation Defence was allowed to be added to the 3rd Defendant’s Defence).

(ii) RA 159 was eventually dismissed on 10 November 2023. Thereafter, SUM 3797 was filed on 15 December 2023, and I dismissed that application on 23 February 2024.³⁰

(iii) Thereafter, at a PTC on 6 March 2024, the 1st Defendant informed the Court that it intended to file an application to stay a related proceeding that had been brought by 22 Penthouse Unit owners against the Plaintiff (HC/OA 187/2023 (“**OA 187**”)) pending the determination of Suit 577. The 1st Defendant’s stay application (HC/SUM 1087/2024 (“**SUM 1087**”)) was filed on 19 April 2024 and I dismissed that application on 10 July 2024.³¹

(iv) At the next PTC on 29 July 2024, the Court issued directions for the filing of written submissions for SUM 2431

³⁰ 3rd Defendant’s Written Submissions at para 52(c).

³¹ 3rd Defendant’s Written Submissions at para 52(d).

and fixed the hearing on 3 September 2024. I heard SUM 2431 and decided on 19 September 2024 to allow the 3rd Defendant to include the Limitation Defence in its Defence. The Plaintiff's appeal in HC/RA 177/2024 ("RA 177") was then heard on 6 November 2024 by a Judge. The Judge allowed the Limitation Defence to be included in the 3rd Defendant's Defence.³²

(v) At the next PTC on 20 November 2024, the 3rd Defendant's solicitors informed the Court of the 3rd Defendant's intention to file a summary determination application, instead of a striking out application. The Court then issued directions for the parties to confer on matters relating to the intended application and the filing of the amended defences.³³ Thereafter, at a PTC on 15 January 2025, the Court issued directions for the filing and hearing of SUM 449. As mentioned above, SUM 449 was eventually filed on 19 February 2025.³⁴

21 The Plaintiff resists the Extension of Time Prayer for the following reasons:

(a) The Plaintiff submitted that the 3rd Defendant mischaracterised its state of knowledge to give the impression that it only belatedly knew of the facts necessary to mount the Limitation Defence.³⁵ The Plaintiff submitted that the contemporaneous documents and correspondence

³² 3rd Defendant's Written Submissions at para 52(e).

³³ 3rd Defendant's Written Submissions at para 52(f).

³⁴ 3rd Defendant's Written Submissions at para 52(g).

³⁵ Plaintiff's Written Submissions at para 3(a)(i).

disclosed in Suit 577 show that the 3rd Defendant knew the material facts surrounding the design and placement of the Gondola Fixing Points even before Suit 577 was commenced.³⁶ For example, the Plaintiff argued that the 3rd Defendant was aware of the Penthouse Unit owners' complaints about the Gondola Fixing Points since October 2015, as evidenced by e-mail correspondence where the 3rd Defendant was copied.³⁷

(b) The Plaintiff also submitted that any procedural delays in filing SUM 449 were caused by the 3rd Defendant's own conduct and decisions in the matter. In particular, the Plaintiff submitted that the 3rd Defendant's initial plan to file a striking out application, rather than a summary determination application, shows that SUM 449 was an afterthought.³⁸

22 I decided to dismiss the Extension of Time Prayer on the basis that the 3rd Defendant had not shown good cause for the more than three-year delay in the filing of SUM 449. I reached this conclusion for the following reasons.

23 First, the 3rd Defendant did not appear to have acted diligently to find out whether it had a viable defence that the Plaintiff's claims relating to the Gondola System were time-barred. This was despite the presence of objective evidence, known to the 3rd Defendant, that should have led the 3rd Defendant to consider whether it had a viable limitation defence. The 3rd Defendant's own documents show that it must have known that the Gondola Fixing Points had been installed by November 2015 at the latest. On 27 November 2015, the 3rd

³⁶ Plaintiff's Written Submissions at para 3(a)(ii).

³⁷ Plaintiff's Written Submissions at para 30.

³⁸ Plaintiff's Written Submissions at paras 36 to 39.

Defendant submitted an amendment to the approved building plan for the Development. The 3rd Defendant's cover letter stated that the amendment was being made solely "to *regularize* the locations / positions of the gondola mounting bracket" [emphasis added].³⁹ It would have been apparent to the 3rd Defendant from this letter that the Gondola Fixing Points had already been installed and that the 3rd Defendant was seeking to amend the approved plans in line with the final locations of those points. There is no evidence before me that the 3rd Defendant actively attempted to find out the date of installation once Suit 577 was commenced against it.

24 My view was that, even if the 3rd Defendant did not know the precise date on which the Gondola Fixing Points were installed, the 3rd Defendant could have taken steps, when it was preparing its Defence following the commencement of Suit 577, to attempt to find out the precise date of installation to ascertain whether it had a viable limitation defence. The 3rd Defendant should have been put on notice that it potentially had a limitation defence, especially since six years after November 2015 (*ie*, November 2021) was just a few months after Suit 577 was commenced on 3 July 2021.

25 However, the evidence before me suggested that the 3rd Defendant did not act diligently to ascertain the date on which the Gondola Fixing Points were installed. Instead, the 3rd Defendant appeared to have waited until the facts were expressly stated by Tractel and admissions were made by the Plaintiff before taking steps to amend its Defence. In particular, the 3rd Defendant waited until admissions were made in Ting's 2nd Affidavit before taking the position that the Limitation Defence was viable. In my view, this was not a diligent approach to

³⁹ Plaintiff's Malim Araffiz bin Jalani's 2nd Affidavit filed on 13 March 2025 to oppose SUM 449 ("**Jalani's 2nd Affidavit**") at para 16 and page 49.

conducting a defence. As highlighted at [24] above, the 3rd Defendant had notice back in 2021 that it potentially had a limitation defence. There was no need for the 3rd Defendant to wait to be presented with information before taking steps to plead a limitation defence.

26 As held in *Obegi Melissa*, it is incumbent on a party seeking an extension of time to file an application under O 14 to show that it “proceeded diligently in the conduct of the action”: see *Obegi Melissa* at [37]. My view was that the 3rd Defendant had not shown that it proceeded diligently to ascertain, for itself, whether it had a viable limitation defence. Instead, the 3rd Defendant appeared to have been passive, and waited until information was presented to it during the course of SUM 1778 before it took steps to raise the need to amend its Defence to raise the Limitation Defence.

27 Thus, I did not think that the 3rd Defendant had shown good cause for the more than three-year delay in bringing SUM 449. It would have been a different matter, if the 3rd Defendant took steps to investigate the date of installation of the Gondola Fixing Points but was unable to obtain the necessary information due to circumstances beyond its control. However, the evidence before me does not show that the 3rd Defendant proactively took steps to proceed diligently in the conduct of its defence.

28 Second, even if I took the view that the 3rd Defendant could reasonably only have found out that it had a viable limitation defence following the filing of Ting’s 2nd Affidavit, the 3rd Defendant did not promptly take steps *at that point* to expeditiously seek to include the Limitation Defence in its Defence. There was no evidence before me of the 3rd Defendant urgently seeking a disposal of SUM 2431 due to the fact that the deadline for filing an application

under O 14 r 12 of the ROC had long expired by the time SUM 2431 was filed on 11 August 2023. Instead, the 3rd Defendant appeared to have been content to wait for the various applications and appeals to be resolved before it sought directions at the PTC on 20 November 2024 (which was more than a year after the filing of Ting's 2nd Affidavit on 7 July 2023) for the filing of an application for summary determination.

29 The lack of urgency appeared to be a consequence of the 3rd Defendant's initial plan that it would file a striking out application (for which there is no deadline stipulated in the ROC). The 3rd Defendant only informed the Court at the PTC on 20 November 2024 that its intention was to file an application for summary determination, instead of a striking out application. The 3rd Defendant did not provide a good explanation for why it was not apparent to it in July 2023 (when the materials in SUM 1778 were first disclosed) that an application for summary determination was apparently the proper application to take out, instead of a striking out application, and why it only became clear to the 3rd Defendant in *November 2024* that the proper application to take out was an application for summary determination.

30 Third, I considered that allowing the Extension of Time Prayer (and consequently a substantive determination of SUM 449) might lead to significant delay to the resolution of Suit 577. The parties informed me that Suit 577 was essentially held in abeyance pending the hearing and disposal of SUM 449. The Plaintiff was not taking any steps in relation to its case against the other Defendants. Given the extended delay in bringing SUM 449, and the absence of good reasons for the delay, I did not think the Plaintiff and the other Defendants should be made to wait for the resolution of a summary determination application, and potentially any appeal that may be filed against decisions in the

summary determination application. My view was that the more efficient course was for the parties to proceed at this stage to prepare for the trial of the entire action.

31 For these reasons, my view was that the 3rd Defendant had not shown good cause for seeking an extension of time. Accordingly, I decided to dismiss the Extension of Time Prayer. As a consequence, I dismissed SUM 449 in its entirety since it was filed out of time.

Views on the Suitability Issue

32 Given my decision to dismiss the Extension of Time Prayer, it was not strictly necessary to consider the Suitability Issue. Nonetheless for completeness, I provided the parties with my brief views on the Suitability Issue.

33 First, my view was that the Cause of Action Accrual Question was potentially a mixed question of law and fact. This requires some explanation. The Cause of Action Accrual Question requires the Court to find that the six-year limitation period started to run from one of five stated dates. However, as counsel for the 3rd Defendant accepted during oral submissions, the Court is not constrained to find that the six-year limitation period started to run from one of the five stated dates. The Court may well find that the cause of action only accrued when the Plaintiff's access to the Gondola Fixing Points was impeded due to the Penthouse Unit owners' refusal to allow the Plaintiff access to the balconies of the Penthouse Units. In fact, this was the Plaintiff's view of when the damage that constitutes the cause of action occurred. The Plaintiff's position was that it suffered damage when the Gondola System *proved to be unusable*

following the Penthouse Unit owners' decision to deny the Plaintiff access to the Gondola Fixing Points.⁴⁰

34 If the Court were to take the view that the six-year limitation period started to run on the date on which the Gondola System proved to be unusable due to the denial of access to the Penthouse Units, the Court would need to make a factual finding on the date on which the Plaintiff was denied access. There was no undisputed evidence, at least in the affidavits filed in SUM 449, of the date of such denial of access.

35 Having said that, from the submissions before me, it appeared that there were two potential dates on which the Court may conclude that access to the Penthouse Units was denied:

(a) One potential date was the date of a letter from United Legal Alliance LLC (acting on behalf of the owners of 14 of the Penthouse Units) to the Plaintiff before Suit 577 was commenced. That letter is dated 11 September 2017. In that letter, United Legal Alliance LLC stated that their clients would no longer provide access to the Gondola Fixing Points.⁴¹ However, I note that the letter was not sent on behalf of all the Penthouse Unit owners.

(b) Another potential date is the date on which the Plaintiff attempted to repaint the Development using the Gondola System. During oral submissions, the 3rd Defendant referred me to the Plaintiff's Consolidated Reply at para 7(a)(iv) where the Plaintiff pleaded that it

⁴⁰ Plaintiff's Written Submissions at para 41(d) and para 43(b).

⁴¹ Tan's 4th Affidavit at page 410, para 5 of the letter.

attempted to use the Gondola System during a repainting exercise on or around 26 April 2022.

36 The Plaintiff's claims against the 3rd Defendant would not be time barred, assuming that the six-year limitation period applied, whether time starts to run from 11 September 2017 or 26 April 2022. Thus, the Cause of Action Accrual Question may well have been susceptible to a summary determination. The Court could conclude that the Limitation Defence is not made out on both potential dates.

37 Second, my view was that the Latent Damage Question is a question of fact, rather than a question of law. Accordingly, the Latent Damage Question was not suitable for summary determination. I took this view because to answer the Latent Damage Question, the Court would need to make a *factual* finding on when, on the facts of this case, the Plaintiff could reasonably have been expected to have acquired the knowledge required to bring an action in damages against the 3rd Defendant. This is a factual question, rather than a question of law.

38 In any case, the factual question posed in the Latent Damage Question was also not one that could be easily determined on the evidence before the Court. While there are two pieces of objective evidence that may potentially be helpful in reaching the factual finding, neither piece of evidence was definitive:

- (a) First, as mentioned, on 11 September 2017, United Legal Alliance LLC sent a letter on behalf of the owners of 14 of the Penthouse Units to the Plaintiff. As the Court concluded in its decision in RA 159, the 11 September 2017 letter would have put the Plaintiff on notice that “where the gondolas were located and installed had become a *legal*

problem vis-à-vis the [Plaintiff] and the subsidiary proprietors” [emphasis in original].⁴² Having been put on notice, it may well have been reasonable for the Plaintiff to have undertaken investigations to find out who was responsible for the design of the Gondola System.⁴³ However, the precise date *after* 11 September 2017 on which the Plaintiff could reasonably have acquired the requisite knowledge to bring an action in damages is unclear.

(b) Second, another piece of evidence was a letter dated 9 September 2016 sent by United Legal Alliance LLC (on behalf of the owners of 14 of the Penthouse Units) to the 3rd Defendant. In that letter, the 14 owners alleged that the 3rd Defendant breached its duty of care in relation to the design of the Gondola System and the Gondola Fixing Points.⁴⁴ The difficulty with this aspect of the evidence is that the Plaintiff itself did not send or receive this letter. While two of the 14 Penthouse Unit owners (Ms Mavis Loo and Mr Gabriel Sng) were later appointed to the Plaintiff’s council on or around 8 April 2017,⁴⁵ it was not clear that any knowledge that Ms Loo and Mr Sng had in September 2016 was attributable to the Plaintiff. The issue of whether their knowledge is attributable to the Plaintiff was itself likely to be a question of mixed law and fact.

⁴² Tan’s 4th Affidavit at page 444, lines 10 to 14.

⁴³ Tan’s 4th Affidavit at page 444, lines 15 to 20.

⁴⁴ Tan’s 4th Affidavit at pages 396 to 397.

⁴⁵ Tan’s 4th Affidavit at para 24.

Costs

39 After hearing the parties, I decided to order the 3rd Defendant to pay costs fixed at S\$13,000, all in. My reasons were as follows:

(a) Costs should follow the event. Thus, the 3rd Defendant should be ordered to pay costs.

(b) I did not think that the Court should refer to the guideline range in Appendix G of the Supreme Court Practice Directions 2013 for applications for extension of time. SUM 449 was not simply an application for an extension of time. The parties made submissions on both the Extension of Time Prayer and the Suitability Issue. While I ultimately ruled in favour of the Plaintiff on the Extension of Time Prayer and only provided my views on the Suitability Issue (for completeness), the Plaintiff should be compensated for the work done on the Suitability Issue as well. Thus, I thought it would not be appropriate to have regard to the range for applications for extension of time.

(c) While the affidavits filed for SUM 449 were relatively lengthy, and several other affidavits were referred to, I did not consider SUM 449 to be a complex application. While several cases were cited, the applicable legal principles are well settled. The submissions largely focused on an application of the established principles to the factual matrix. Having regard to these considerations, my view was that a fair quantum of costs was S\$13,000, all in.

Conclusion

40 For these reasons, I decided to dismiss the Extension of Time Prayer and, as a consequence, SUM 449 as a whole was dismissed.

41 I thank counsel for the Plaintiff and the 3rd Defendant for their helpful and concise submissions.

Vikram Rajaram
Assistant Registrar

Alexius Chew, Anthony Wee, Francis Chan and Kenneth Loh
(Titanium Law Chambers LLC) for the plaintiff;
Stuart Ralph Lim Xiu Wu and Aaron Lim Chor Yin (Dentons Rodyk
& Davidson LLP) for the third defendant
Jackie Tay (Rajah & Tann Singapore LLP) for the first defendant
(watching brief);
Michelle Choy (Christopher Chuah Law Chambers LLC) for the
second defendant (watching brief)
