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Case Comment

NAVIGATING LIMITATION PERIODS IN CONSTRUCTION CONTRACTS

Management Corporation Strata Title Plan No 4099 v KTP Consultants Pte Ltd [2024] 1 SLR 1226

[2025] SAL Prac 6

The law on limitation periods in Singapore is well understood but still prone to much dispute in its application. This is especially so when dealing with when the "knowledge" required for commencing an action arises in the context of a construction dispute. This article examines some of the principles laid out in the case of *Management Corporation Strata Title Plan No 4099 v KTP Consultants Pte Ltd* [2024] 1 SLR 1226 and seeks to set out several key take-aways from the seminal decision of the Appellate Division.

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I. Introduction

1 The limitation period in law circumscribes when a party can bring about a legal action against another. In Singapore, this is governed by the Limitation Act 1959[1] ("Act"). As with most cases involving issues of time bar, the crux of the matter often turns on when the time starts to run.

1 2020 Rev Ed.

2 Whether it is in the case of contract or the tort of negligence, s 24A(3)(*a*) of the Act provides, in the normal course, that the time to bring the claim runs from the time the "cause of action accrued". In a case of an action in tort, the cause of action will accrue when the plaintiff suffers damage arising from the breach of the relevant duty of care,[2] whereas in a case of an action in contract, the cause of action would have accrued at the time of the breach.[3] Therein lies a typical variance in when the limitation period expires, since the time to bring a claim will typically start later if the claim is in tort.

3 Another common point of contention arises from the fact that the breach in question (even in the case of a contractual claim) is sometimes not immediately ascertainable. This is especially so in construction projects which often involve multiple workstreams coming together, in the form of design elements from consultants, workmanship of contractors and subcontractors, materials, and so on. Thus, depending on the actual breach which resulted in the damage being sued for, the time for commencement of the limitation period would differ. An obvious example would be a breach of contract caused by a faulty design, which will invariably occur earlier in the construction process than one caused by poor workmanship. In a construction project which can span years in the making, the eventual limitation period can vary significantly.[4]

4 Finally, the Act also contemplates scenarios which are, in the construction context, dealing with latent defects that do not manifest immediately and sometimes beyond the six-year limitation period. In that case, s 24A(3)(*b*) of the Act provides that an action may be brought within "3 years from the earliest date on which the claimant or any person in whom the cause

2 *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1 at 16G; *People's Parkway Development Pte Ltd v Akitek Tenggara* [1992] 2 SLR(R) 469 at [5]–[8].

3 *Lim Check Meng v Orchard Credit Pte Ltd* [1997] 3 SLR 795 at [18].

4 See, *eg*, *Millenia Pte Ltd v Dragages Singapore Pte Ltd* [2019] 4 SLR 1075. For the claims against the main contractor in that case, the limitation period started to run from the date of practical completion (at [462]), whereas for the claim against the inspector of the panels, the limitation period started to run from the date of the subsequent contract (at [626]).

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". This is subject to an overriding time bar of 15 years.

5 Section 24A(4) sets out the criteria for the "knowledge" required to bring the action. The Appellate Division of the High Court ("Appellate Division") contended with this question in the case of *Management Corporation Strata Title Plan No 4099 v KTP Consultants Pte Ltd* ("*MCST v KTP*"). The court in *MCST v KTP* framed the issue best (at [3]):

> In the context of construction claims, it may be the case that when damage first occurs its cause is ascribed to one party, say on the basis of defective workmanship. It may only be much later when the damage recurs elsewhere or becomes more serious that a different cause is identified, such as a design failure, for which a different party may be potentially liable. When this only happens more than six years after the first occurrence of damage, the availability of the remedy against the newly identified potential defendant will often turn on whether the claimant ought to have undertaken a more thorough investigation earlier and whether, if it had done so, the potential new defendant would have been identified.

6 The significance of this case is that it sheds light on another important area of contention especially as it relates to construction cases. As described above, the question for a claimant when faced with a defect on its property is how thorough an investigation it needs to undertake at the first instance in order to mitigate the risk of wrongly ascribing the responsibility to one party and potentially being out of time to take action against the correct party due to the time bar.

II. Brief facts of *MCST v KTP*

7 The dispute arose out of various defects discovered in a residential development sometime in 2015 and the Management Corporation Strata Title ("MCST") of that development engaged a firm of building surveyors from Bruce James Building Surveyors Pte Ltd ("Bruce James") to conduct a visual inspection around March and April 2016. This, as the name suggests, is typically

an inspection of the development with the naked eye without further investigation or the use of equipment (like a borescope, for example). It is not uncommon for an MCST to require this level of inspection to be undertaken at least at the initial stages of inquiry.

8 In the report by Bruce James, the relevant observation was that there was "[e]xcessive accelerated deterioration to the timber cladding around bay windows including warping / deterioration" and the suggested remedy was for there to be "[f]urther investigation … to the composite timber cladding *to determine whether the system is of external quality*" [emphasis added].[5] The specific wording of the report was relevant to the court's determination, as will be addressed below.

9 In or around March 2017, rectification works were carried out by the main contractor in the project and duly certified by Bruce James on 14 June 2017. However, those defects subsequently recurred and the MCST commenced a lawsuit against the main contractor on 21 February 2022.

10 After the commencement of the lawsuit, the MCST engaged a consultant, Meinhardt Façade (S) Pte Ltd ("Meinhardt"), to investigate the defects in the suit, one of which concerned the cladding issue which had been previously observed by Bruce James. Meinhardt issued a report on 3 August 2022 which identified that there were deficiencies in the design of the cladding façade, the choice of material and the method of installation. All these led to the conclusion that there was more than one party responsible for the issues to the cladding. As such, the MCST applied to add three parties to the suit, namely, Polydeck Composites Pte Ltd, KTP Consultants Pte Ltd ("KTP"), and AGA Architects Pte Ltd. These were, respectively, the supplier/installer of the cladding, the structural engineer/Qualified Person (Civil & Structural Works) and the designer.

5 *Management Corporation Strata Title Plan No 4099 v KTP Consultants Pte Ltd* [2024] 1 SLR 1226 at [9] and [64].

11 On 28 August 2023, KTP applied to have the MCST's claim against it struck out on the basis that, amongst other reasons, the claim had been brought outside the limitation period under s 24A of the Act. This application was dismissed by an assistant registrar at the first instance, allowed on appeal by a judge in chambers and eventually brought before the Appellate Division in the present case.

12 Essentially, KTP's contention was that, upon the MCST's receipt of the report by Bruce James, the MCST either had knowledge that the damage was attributable to the structural design issues in which KTP may have been involved or the MCST would reasonably have been expected to acquire such knowledge with the help of advice. Given that the timing of this report was in September 2016, the MCST's inclusion of KTP in the suit in August 2023 was, according to KTP, out of time.

13 Thus arises two questions for the MCST, namely, whether it had the requisite knowledge to commence the suit against KTP at the time of the Bruce James' report and, more critically, whether it reasonably ought to have sought appropriate expert advice at that juncture.

III. Finding of the Appellate Division

14 The Appellate Division in *MCST v KTP* helpfully summarised the knowledge requirements in s 24A(4) of the Act into three groups:

> (a) the "Attributability Requirement" expressed by s 24A(4)(*a*) of the Act which requires knowledge "that the injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty";
>
> (b) the "Identity Requirement" expressed by ss 24A(4)(*b*) and 24A(4)(*c*) of the Act, concerned with the claimant's knowledge of who to sue; and
>
> (c) the "Justification Requirement" expressed by s 24A(4)(*d*) of the Act which requires knowledge of the

> "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".

15 An important feature of the knowledge requirement is that the knowledge need not be actual but can also be constructive[6] and the degree of knowledge must be "reasonable" as opposed to an absolute certainty.

16 Applying this framework, the Appellate Division first considered what the MCST would have actually known upon the receipt of the Bruce James' report. Critically, the court did not find that the MCST had the requisite knowledge from the report that there were structural issues at play. Some of the factors considered by the court were that:

> (a) The report identified deterioration in the cladding in the form of warping but did not warn of any delamination or other safety risks associated with structural issues.
>
> (b) The remedy suggested by the report was for further investigation into the system's "external quality",[7] which did not in itself implicate any structural or design issue.
>
> (c) The context of the report was that Bruce James was not explicitly engaged to check the structural integrity of the cladding and was not qualified to do so. The report was a result of a visual inspection rather than one involving the examination of fixing details either in the drawings or at the site.

17 From these observations, the Appellate Division opined that the MCST could not be said to have knowledge of the facts attributing the cladding issue to KTP's deficient design and supervision. The court went further to hold that the MCST, in these circumstances, need not have reasonably sought further expert advice to investigate the cladding after the receipt of Bruce

6 Limitation Act 1959 (2020 Rev Ed) s 24A(6).
7 *Management Corporation Strata Title Plan No 4099 v KTP Consultants Pte Ltd* [2024] 1 SLR 1226 at [66].

James' report. Amongst other things, the court reiterated the recommendations in Bruce James' report which only suggested investigation into the "external quality" of the cladding, as opposed to a direct recommendation that a further review be undertaken as to the fixing details and drawings.

18 Ultimately, the Appellate Division was at pains to emphasise that this question of the state of knowledge of a claimant (whether actual or constructive) is very much dependent on the specific facts and circumstances. An important caveat to the findings in the present case is that it arose from a summary judgment application taken out by KTP and this matter has yet to go to a full trial. In fact, the court had opined that such a fact-sensitive inquiry would rarely be capable of determination on a summary basis.

19 For instance, one relevant fact which may change the eventual analysis is the full context surrounding the Bruce James' report. If it could have been established at trial that Bruce James had done more than address the external quality of the cladding and had actually investigated the fixings or other issues, the MCST would potentially have been seen to have had knowledge that there were structural questions at that time.

IV. Conclusion and practical takeaways

20 From this case, potential claimants facing a similar situation should bear in mind several considerations in order to mitigate the risk of running into an issue of limitation.

21 First and foremost, where possible, prospective claimants should engage experts or even legal counsel early on when defects start to appear. Since the question of limitation is a complicated one, timely advice would help claimants to be mindful of the steps needed to preserve the sanctity of their claims.

22 Second, when experts such as building surveyors are engaged, claimants should be mindful of the scope of the investigation undertaken by the building surveyor and the eventual recommendations. If the initial survey suggests a deeper issue,

then appropriate steps should be taken for further investigation. However, with the case of *MCST v KTP*, the modicum of comfort to claimants is that a balanced approach will be taken and it is not in every instance that the claimant would be expected to undertake the time and expense of engaging specific subject-matter experts. This is especially important given how specific the different disciplines can be in the field of construction.

23 Given that this is a case from the Appellate Division, the principles articulated therein are likely to be established law in Singapore. However, as the matter proceeds to trial and beyond, it is useful to watch for further developments, especially when the court has to grapple with more facts and circumstances surrounding the MCST's knowledge at the time of the Bruce James' report.