Management Corporation Strata Title Plan No 3322
v
Mer Vue Developments Pte Ltd and others
(King Wan Construction Pte Ltd and others, third parties)

[2016] SGHC 28

High Court — Suit No 563 of 2011/L (Registrar's Appeal No 238 of 2015)
Chan Seng Onn J
19 October 2015

Civil procedure — Pleadings — Amendment

Civil procedure — Limitation

Limitation of actions — Particular causes of action — Contract

2 March 2016

Chan Seng Onn J:

Introduction

1 This was an appeal by the Plaintiff against the dismissal of its application to amend its pleadings.

2 The Plaintiff, the management corporation ("MCST") of the property known as "The Seaview Condominium" at 29 to 41 Amber Road ("the Development"), brought an action against, among others, the 1st Defendant, Mer Vue Developments Pte Ltd (hereinafter referred to as "Mer Vue"), the developer of the Development. The action was made on behalf of certain subsidiary

proprietors in respect of building defects, relying on Section 85(1) of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed) ("BMSMA"). The construction of the Development commenced sometime in 2005 and was completed in 2008. The Temporary Occupation Permit ("TOP") for the Development was issued in two stages—on 22 April 2008 and 28 May 2008—and the Certificate of Statutory Completion ("CSC") was issued on or about 24 December 2008.[1]

3 Against Mer Vue, the Plaintiff brought claims for alleged defects in the Development:

(a) in contract, for breach of the sale and purchase agreements with the subsidiary proprietors who were the original purchasers ("Sale and Purchase Agreements");

(b) in tort, for failing to ensure proper design and construction of the Development; and

(c) for breach of statutory duty under the BMSMA.

4 The issue at hand arose from the Plaintiff's proposed amendments in Summons No 3193 of 2015 ("SUM 3193"). In this summons, the Plaintiff sought to amend its "Further and Better Particulars of the Statement of Claim filed pursuant to the 1st Defendants' letter dated 12 October 2011" ("F&BPs") filed on 31 October 2011 to include the names of an additional 113 subsidiary proprietors (to the initial list of 30 names) in Schedule 1 of its F&BPs. The Plaintiff's application was dismissed by Assistant Registrar Chong Chin Chin ("AR Chong") on 31 July 2015. I heard the Plaintiff's appeal against AR

[1] Statement of Claim (Amd 3) ("SOC") at paras 6-8

Chong's decision on 19 October 2015 on this matter and dismissed the appeal. I found that the Plaintiff's proposed amendments were time-barred and were thus not permitted. I granted the Plaintiff's application in Summons No 5228 of 2015 for leave to appeal to the Court of Appeal on 16 November 2015.

Representative capacity of MCST as the Plaintiff

5 This issue dealt with the characterisation of the Plaintiff's application under the rules of civil procedure in light of the Plaintiff pursuing the suit in a representative capacity as a management corporation, on behalf of subsidiary proprietors, under Section 85(1) of the BMSMA. Section 85 of the BMSMA was ported from and based on the since-repealed Section 116 of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed) ("LTSA").

6 For the ease of reference, I reproduce Section 85 of the BMSMA (which is for our purposes largely *in pari materia* with Section 116 of the LTSA with the exception of edits to incorporate the two-tier management corporation scheme):

> **Management corporation, etc., may represent subsidiary proprietors in proceedings**
>
> 85.—(1) Where all or some of the subsidiary proprietors of the lots in a parcel comprised in a strata title plan are jointly entitled to take—
>
> > (a) proceedings for or with respect to the common property in that parcel against any person or are liable to have such proceedings taken against them jointly; or
> >
> > (b) proceedings for or with respect to any limited common property in that parcel against any person or are liable to have such proceedings taken against them jointly,
>
> the proceedings may be taken by or against the management corporation in the case of paragraph (a), or the subsidiary management corporation constituted for that limited common

> property in the case of paragraph (b), as if it were the subsidiary proprietors of the lots concerned.
>
> (2) Any judgment or order given or made in favour of or against the management corporation or subsidiary management corporation in any such proceedings shall have effect as if it were a judgment or an order given or made in favour of or against the subsidiary proprietors.
>
> (3) Where a subsidiary proprietor is liable to make a contribution to another subsidiary proprietor in respect of a judgment debt arising under a judgment referred to in subsection (2), the amount of that contribution shall bear to the judgment debt —
>
> > (a) the same proportion as the share value of the lot of the first-mentioned subsidiary proprietor bears to the aggregate share value, in the case of a judgment or an order for or against a management corporation; or
> >
> > (b) the same proportion as calculated in accordance with section 81, in the case of a judgment or an order for or against a subsidiary management corporation.

7 A line of local cases have authoritatively held that Section 116(1) of the LTSA, which was taken with amendments made from Section 147 of the New South Wales Strata Titles Act 1973, procedurally facilitates the institution of actions by or against subsidiary proprietors by allowing management corporations to institute or defend actions on their behalf. This is done in a representative capacity, and the statutory provision does not confer a separate right or cause of action on the management corporation. Management corporations relying on this procedural provision would still have to demonstrate an *underlying substantive cause of action* on the part of the subsidiary proprietors they represent: see *MCST Plan No 2297 v Seasons Park Ltd* [2005] 2 SLR(R) 613 ("*Seasons Park*") at [14]–[18] where the Court of Appeal also referred to relevant observations by G P Selvam J and Lai Siu Chiu J in *MCST Plan No 1279 v Khong Guan Realty Pte Ltd* [1994] 3 SLR(R) 527 and *MCST Plan No 1938 v Goodview Properties Pte Ltd* [2000] 1 SLR(R) 861 ("*Goodview Properties*") respectively.

8 Thus, where the underlying cause of action is a *contractual* claim, a management corporation bringing a claim on behalf of its subsidiary proprietors must specify "on which of the subsidiary proprietors' behalf is the action in contract instituted [as] [t]he substantive party is not the management corporation but the specific subsidiary proprietors" (*Seasons Park* at [18]). Another important reason for this (other than to enable the defendant to know which subsidiary proprietors authorised the management corporation to bring the action and to know as to whom the eventual judgment would bind) is the rule of abatement as enunciated by the Court of Appeal in the appeal decision of *Goodview Properties* in [2000] 3 SLR(R) 350 at [32] and applied again in *Seasons Park* (at [29]–[32]).

9 This rule of abatement flows from the principle of privity of contract as well as the fact that each subsidiary proprietor is only a tenant-in-common of the common property to the extent of his share value in the development. Thus, under Section 85(1) of the BMSMA, a management corporation can only sue in contract on behalf of its subsidiary proprietors who have had direct sale and purchase contracts with the developer and claim only a *proportionate* part of the damages suffered in respect of defects to common property. Damages awarded to the management corporation would thus "abate corresponding to the ratio that the collective share value of the units owned by subsidiary proprietors of the units on whose behalf the action was taken bore against the total share value of all the units in the development" (*Seasons Park* at [29]).

10 In the present case, it is thus not surprising that the Plaintiff sought to include more subsidiary proprietors in its F&BPs. By its own estimation, this

would increase the potential damages awarded for a successful contractual claim from 5% to 25% of the eventual damages assessed.[2]

11 For completeness, I should state that management corporations do not need to rely on Section 85(1) of the BMSMA for tortious claims as they are entitled in their own right to sue in tort with respect to the common property of developments (see Section 24(2)(*b*) of the BMSMA and *Seasons Park* at [19]).

Nature of application

Only subsidiary proprietors with causes of action can be included

12 Before deciding on the characterisation of the Plaintiff's application, a preliminary point must be made. Out of the 113 additional subsidiary proprietors proposed by the Plaintiff to be included in its F&BPs, 33 were not original purchasers of their apartment units and thus had no direct Sale and Purchase Agreements with Mer Vue.[3] These 33 subsidiary proprietors therefore had no causes of action in contract against Mer Vue; the Plaintiff clearly could not bring a contractual action on their behalf in the first place. The Plaintiff themselves accepted this point.[4] In addition, I did not find that the original purchasers' agreements with Mer Vue conferred upon subsequent purchasers any right to sue in contract pursuant to Section 2(1) of Contracts (Rights of Third Parties) Act (Cap 53B, 2002 Rev Ed).

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[2] Plaintiff's Written Submissions at p 10

[3] Tan Suat Nee Mary's ("Tan's") Affidavit at para 7 and Annex A

[4] Chua Boon Kiat's ("Chua's") 2nd Affidavit at para 5

Application did not amount to adding new parties for the purposes of O 15 r 6

13 Mer Vue contended that the Plaintiff's application to represent additional subsidiary proprietors was an attempt to add new parties to the existing action, akin to an application for joinder of parties under O 15 r 6 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the ROC"). Here, Mer Vue essentially argued that the Plaintiff was asking the court to intervene to make the additional 113 subsidiary proprietors parties to the action, in which case the Plaintiff should have proceeded under O 15 r 6 and not under O 20. However, I found that this interpretation of the application was misconceived and that it did not comport with the nature of representative proceedings.

14 Who are "parties" to an action? At least under the scheme of O 15 r 6, "parties" are envisaged as those whose names are reflected on the Writ of Summons (or Originating Summons). Thus, O 15 r 8(4)(*a*) of the ROC requires the writ (or any other originating process) to be amended to include the new party's name for orders made under O 15 r 6 to join any person as a party to the action. In contrast, the names of subsidiary proprietors that management corporations sue on behalf of are not reflected on Writs or Originating Summonses as plaintiffs, but are specifically identified in, for example, an annex to the Statement of Claim (as the Court of Appeal in *Seasons Park* at [18] indicated) or in this case, in the Plaintiff's F&BPs.

15 The non-applicability of O 15 r 6 is also apparent when one considers the nature and capacity of persons representing and represented in such actions. When management corporations bring actions on behalf of subsidiary proprietors, the former are the named plaintiffs and the latter as represented persons are not deemed to be "parties" before the court. This can be analogised to the nature of represented persons in representative proceedings under O 15 r

12, where represented persons are similarly not "parties" before the court (as the Court of Appeal opined in *Koh Chong Chiah and others v Treasure Resort Pte Ltd* [2013] 4 SLR 1204 at [36]).

16 Even if I were to be wrong on this and the Plaintiff's application should have been characterised as a joinder of parties under O 15 r 6, the right to apply for joinder of parties under O 15 r 6 is still subject to the law of limitation (see *Abdul Gaffer bin Fathil v Chua Kwang Yong* [1994] 3 SLR(R) 1056 ("*Abdul Gaffer*") at [16] and *Ketteman v Hansel Properties Ltd* [1987] AC 189). As the relevant time period for limitation had already expired by the time the application was made (see below at [25]–[41]), the Plaintiff's application would still not succeed under O 15 r 6 of the ROC.

Application essentially made to amend pleadings

17 Essentially, the Plaintiff's application to amend its F&BPs was an application to amend pleadings under O 20 r 5 of the ROC. It is instructive that the Court of Appeal in *Seasons Park* (at [27]–[28]) had referred to the motion seeking leave to include names of subsidiary proprietors who had authorised the appellant-management corporation to pursue a contractual claim as one that sought to "amend the pleadings".

18 It has been settled that O 20 r 5 sets out "two distinct schemes of practice" for the amendment of writs and pleadings, dependent on whether the relevant limitation period has expired or not (see *Lim Yong Swan v Lim Jee Tee and another* [1992] 3 SLR(R) 940 ("*Lim Yong Swan*") at [12]–[19]). Where limitation has not set in, amendments may be made under O 20 r 5(1) generally. On the other hand, the court can only grant leave to amend after the limitation period has expired if the amendments fall *strictly* under any of the three situations in O 20 rr 5(3), 5(4) or 5(5) read with r 5(2). Outside of the three

situations, the court has no general power to amend when the defence of limitation would be available to the defendant. In the first place, these three situations are instances where the court merely corrects and makes "explicit what is implicit" on the matters of "identity, capacity or cause of action" that were already asserted or implied from the inception of the writ or the filing of the pleading (*Lim Yong Swan* at [19]), and hence they do not prejudice the substantive rights of parties under the Limitation Act (Cap 163, 1996 Rev Ed) ("LA").

Application did not amount to adding new causes of action under O 20 r 5(5)

19 The Plaintiff's arguments hinged on whether its application amounted to adding new causes of action. It was submitted that the relevant governing provision for amending pleadings not amounting to adding causes of action was O 20 r 5(1) (since the question of limitation would not even arise) while that for the converse was O 20 r 5(5). The Plaintiff relied on the reasoning as expressed by Coomaraswamy J in *Geocon Piling & Engineering Pte Ltd v Multistar Holdings Ltd and another* [2015] 3 SLR 1215 ("*Geocon Piling*"), where these four questions were set out at [115]:

> (a) Does the plaintiff's proposed amendment add or substitute a new cause of action?
>
> (b) Has the period of limitation applicable to that new cause of action expired?
>
> (c) If so, does that new cause of action arise out of the same facts or substantially the same facts as a cause of action in respect of which the plaintiff has already claimed relief in the action?

(d) If so, is it just to grant the plaintiff leave to make the proposed amendment?

20 The Plaintiff thus submitted that the question of whether new causes of action were being added (*ie*, by merely including the additional 113 subsidiary proprietors with *no* change to the nature of the claim and the facts in support of the claim) should be answered *before* the question of limitation. However, the situation in the present case should be distinguished from that in *Geocon Piling*, where the court was embarking on the inquiry of whether new causes of action were being introduced by one *existing plaintiff* to whom O 20 r 5(5) might apply even if limitation had set in for the proposed new causes of action.

21 O 20 r 5(5) of the ROC reads as follows:

> (5) An amendment may be allowed under paragraph (2) notwithstanding that the effect of the amendment will be to add or substitute a new cause of action if the new cause of action arises out of the same facts or substantially the same facts as a cause of action in respect of which *relief has already been claimed* in the action by *the party* applying for leave to make the amendment. [emphasis added]

22 O 20 r 5(5) covers situations where an *existing* plaintiff adds or substitutes new causes of action, and does not cover situations where a plaintiff seeks to represent more persons. In the present case, the existing "party" in the action would be the Plaintiff representing the already-named 30 subsidiary proprietors. An amendment to add 113 new subsidiary proprietors to be represented by the Plaintiff does not fall within the scope of O 20 r 5(5); such an amendment does not demonstrate the addition or substitution of new causes of action on behalf of the presently represented 30 subsidiary proprietors. The Court of Appeal held in *Abdul Gaffer* at [14] that O 20 r 5(5) only applies to where a new cause of action is proposed by an existing plaintiff against an existing defendant, and not where a new defendant is proposed to be added to

an existing action. Similarly, adding more represented persons is something quite different from what is contemplated in O 20 r 5(5).

23 In any case, allowing such an amendment under O 20 r 5(5) would defeat the purpose of limiting the instances where the court (seemingly) circumvents the limitation defence. Adding more represented persons is not "merely a matter of correction to make explicit what is implicit", but it affects substantively the potential damages to be awarded (see [9]–[10] above). It was definitely not implicit from the original F&BPs that more subsidiary proprietors beyond the listed 30 had authorised the Plaintiff to pursue their contractual claims. Allowing the amendment would amount to unjustly depriving Mer Vue of its accrued statutory defence of limitation, if available, against these 113 new subsidiary proprietors who at this very late stage, well beyond the period of limitation, want to join in the representative action by the Plaintiff. Each of the 113 new subsidiary proprietors added to the existing pool of represented persons by virtue of the amendment would in substance enlarge the size of the claim and the reliefs sought in the present suit against Mer Vue. Mer Vue would be seriously prejudiced by being denied a defence of limitation, which would have been available to Mer Vue had the MCST started a second representative action to represent these 113 subsidiary proprietors pursuant to Section 85(1) of the BMSMA.

24 Thus, unlike what the Plaintiff contended, the analytical framework applicable should not be the one laid out in *Geocon Piling* (see [19] above), as the matter here fell outside the scope of O 20 r 5(5) and did not involve a determination of whether the four factors or questions in O 20 r 5(2) read with r 5(5) were made out.

Underlying contractual claims time-barred

25 As the Plaintiff was seeking to amend pleadings to represent more subsidiary proprietors under Section 85(1) of the BMSMA in relation to their claims in contract, the Plaintiff had to "point to [the] underlying substantive cause[s] of action" against Mer Vue (*Goodview Properties* at [16], as approved in *Seasons Park* at [17]) with respect to these additional proposed represented persons. Thus, the limitation period with respect to the contractual claims of these additional 113—or 80 to be accurate, after taking into account 33 non-original purchasers with no contractual relation with Mer Vue (see [12] above)—subsidiary proprietors would be relevant in deciding if the court could allow the proposed amendments under O 20 r 5(1) of the ROC.

Applicable provisions

26 It was argued by the counsel for Mer Vue that the relevant provision under the LA was Section 6(1)(*a*), which reads as follows:

> **Limitation of actions of contract and tort and certain other actions**
>
> 6.—(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:
>
> (a) actions founded on a contract or on tort;

27 However, I was of the view that Section 24A(3) of the LA applied instead, as the contractual claim here was an action for damages for breach of duty under the Sale and Purchase Agreements between the original purchasers and Mer Vue. The Court of Appeal in *Lian Kok Hong v Ow Wah Foong and another* [2008] 4 SLR(R) 165 ("*Lian Kok Hong*") at [13]–[15] clarified the relationship between Section 6(1)(*a*) and Section 24A of the LA: Section 24A carves out certain exceptions to Section 6(1)(*a*) and, as such, the two cannot

apply concurrently. In *Lian Kok Hong*, the appellant's actions framed in breach of contract alleged, among others, breaches of supervision and certification duties by the respondent-architect. Here, the Plaintiff similarly alleged breaches of supervision duties, in addition to breaches of design, maintenance and construction duties by Mer Vue.[5]

Section 24A(3)(a) of the LA: accrual of cause of action in contract taken as date of breach

28 Under Section 24A(3)(*a*) of the LA, an action shall not be brought after the expiration of the period of six years from the date on which the cause of action accrued. It is trite law that the date of accrual of contractual actions is the date of the alleged breach; for actions based on contract, time runs from the breach, even when the damage may not have been suffered by the claimant at that point: see *Lian Kok Hong* at [22]–[23], *Lim Check Meng v Orchard Credit Pte Ltd* [1997] 2 SLR(R) 709 at [18] and Andrew McGee, *Limitation Periods* (Sweet & Maxwell, 7th Ed, 2014) at para 10.002. This stands in contrast to the case for actions framed in tort, where the cause of action accrues when the damage occurs instead: see *Lian Kok Hong* at [24].

29 It is crucial, then, to determine when the alleged contractual breaches occurred in order to calculate from when time for the purposes of limitation should run.

30 Mer Vue had submitted that, for building defect claims, time runs from the date of completion of the building, relying on *Chia Kok Leong and another v Prosperland Pte Ltd* [2005] 2 SLR(R) 484 at [62] and [64]. In the current

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[5] SOC, at para 29 where the alleged contractual breaches are particularised

situation, Mer Vue had proffered the dates of the issuance of the two Notices of Vacant Possession ("NVP") to the subsidiary proprietors as the relevant dates of the alleged breaches from when time had started to run, as an approximation of the dates of issuance of the TOP for the Development.

31 On the other hand, the Plaintiff contended that the time had run only from the date its expert had conducted his initial site inspections from 29 October 2009 to 5 November 2009,[6] relying on Woo Bih Li J's decision in *MCST Plan No 2827 v GBI Realty Pte Ltd* [2014] 3 SLR 229. However, Woo J's remarks at [27] and [28] on the date of site inspections being the latest date the *damage would have come into existence* were made in the context of deciding when an action in *tort* had accrued. The Plaintiff's position was clearly untenable when the relevant date to be determined here was the date of breach for an action framed in *contract*, which would not be based on the date when the damage occurred but on the date of the breach itself.

32 In the present case, several possible dates could be taken as the *latest* date of accrual of the additional subsidiary proprietors' actions in contract for building defects:

(a) the date of issuance of the TOP by the Commissioner of Building Control ("Commissioner");

(b) the date of service of the NVP by Mer Vue to the original purchasers; or

(c) the date of issuance of the CSC by the Commissioner, i.e. the date of legal completion.

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[6] Chua's 2nd Affidavit at para 6

33 Clearly, the alleged contractual breaches of design and construction duties would necessarily have occurred during the design and construction phases of the development process, *before* the issuance of TOP, NVP or CSC. The performance of the contractual duties of supervision of the design and construction by Mer Vue, including the performance of the contractual obligations of the design and construction by Mer Vue's own contractors would have been over by the time the TOP, NVP or CSC was obtained. However, the date that the TOP was granted would probably be the last conceivable date of the alleged contractual breaches by Mer Vue and thus could be taken as the *latest* possible date of accrual of the contractual actions by the additional subsidiary proprietors. NVPs are issued by developers after TOPs are granted, and are usually close to, but still possibly *after*, the TOP date.

34 Here, the TOP for the Development was issued in two stages on or about the same dates the NVPs were issued to the original purchasers by Mer Vue: on 22 April 2008 and 28 May 2008.[7] These were clearly more than six years before 30 June 2015 (the date on which the Plaintiff filed its application to amend the F&BPs in SUM 3193). Even if I were to take the Plaintiff's case at its highest and considered either the date of legal completion on 24 December 2008 or the date of the expiry of the 12 months defects liability period (that began after the issuance of NVP and would have ended by April and May 2009) as relevant, the limitation period would still have expired before the date of the Plaintiff's application on 30 June 2015.

35 Thus, the additional subsidiary proprietors' actions framed in contract were time-barred under Section 24A(3)(*a*) of the LA, as it had been more than

[7] Tan's Affidavit at para 16

six years (on 30 June 2015) after the alleged contractual causes of actions first accrued.

*Section 24A(3)(**b**) of the LA: requisite knowledge present when alleged defects were identified*

36 Under Section 24A(3)(*b*) of the LA, the proposed additional subsidiary proprietors' actions in contract were still time-barred as it had been more than three years from when I found requisite knowledge to be present. Sections 24A(3)(*b*), (4) and (5) read as follows:

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

> (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).

37 The Court of Appeal in *Lian Kok Hong* at [42] summarised the applicable principles as to the requisite knowledge under Section 24A(4), and I can do no better than to reproduce them as follows:

> (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.
>
> (b) Second, the requirements under ss 24A(4)(*b*) and 24A(4)(*c*) as to the identity of the defendant or otherwise, which we have not elaborated on above because of their relative simplicity, should be addressed when appropriate.
>
> (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.

38 According to the Plaintiff's Statement of Claim, it was admitted that the majority of the alleged defects that they had pleaded were identified "almost immediately" after their 1st Annual General Meeting on 12 July 2009, with the alleged defects "photographed and verified within approximately three months", *ie*, by 11 October 2009.[8] Clearly, the subsidiary proprietors would know by then the "factual essence of their complaint". It was irrelevant whether they had appreciated that what went wrong amounted to a breach of Mer Vue's

[8] SOC at para 4

duties as a matter of law. Identifying and claiming alleged defects—what more, photographing and recording them—certainly constituted the requisite knowledge under Section 24A(3)(*b*) in relation to the *type* and *content* of knowledge required. As for the *degree* of knowledge, I was satisfied that, by mid-October 2009, the extent of knowledge the subsidiary proprietors had was more than reasonable to start time running.

39 Even if I were to take the requisite knowledge to only vest in the subsidiary proprietors after the Plaintiff's expert completed his Inspection Report on 19 November 2009 (for which site inspections were undertaken from 29 October 2009 to 5 November 2009), much more than three years had since passed (by 30 June 2015) and the actions in contract would still be time-barred under Section 24A(3)(*b*) of the LA.

Implications of claims being time-barred

40 Thus, I disallowed the Plaintiff's application to amend under O 20 r 5(1) of the ROC since the limitation with respect to the underlying contractual claims had already set in for the additional subsidiary proprietors. This also comported with what the Court of Appeal in *Seasons Park* (at [27]) had envisaged in relation to applications to amend pleadings to reflect the names of subsidiary proprietors on whose behalf a management corporation sues:

> Accordingly, it seems to us that *unless limitation has set in*, there is much to be said in favour of the court granting leave to the appellant to amend the pleadings to properly set out the basis of its claim in contract [by identifying the subsidiary proprietors on whose behalf the appellant was suing], so that the trial of both causes, in contract, as well as in tort, can proceed together as the evidence will be common to both causes. It would not make much sense, *if limitation has not set in*, to compel the appellant, or the individual subsidiary proprietors with a claim in contract, to institute a fresh action. It would clearly be inexpedient to try the remaining portion of the present action, which is in tort, separately from the new

> action in contract to be instituted, as the evidence will be common to both. [emphasis added]

41 Once the limitation period for the contractual claims had expired, I would have no power and discretion to allow an amendment under O 20 r 5(1) unless it can be brought under O 20 rr 5(3), 5(4) or (5) read with 5(2). I also noted, for completeness, that the proposed amendments did not fall under any of the three exclusive situations in O 20 rr 5(3), 5(4) or 5(5) read with r 5(2).

42 Lastly, I found the explanation (or the lack thereof) provided by the Plaintiff for its delay in filing the application highly unsatisfactory. Among the letters of authorisation signed by the additional subsidiary proprietors that were dated, the earliest were obtained in 2010, with the majority signed by March or April in 2014 and the latest signed on 23 June 2014.[9] There were no convincing reasons offered to explain why it had taken the Plaintiff one whole year to make its application to reflect these additional subsidiary proprietors. It was also very curious that more than 80 of the additional letters of authorisation were *undated*. Further, three letters of authorisation included were actually signed by subsidiary proprietors that had already been listed in the Plaintiff's F&BPs filed earlier on 31 October 2011, with their letters of authorisations dated *after* the fact in 2014. Specific authorisation was required from each original purchaser that had a cause of action in contract, as it cannot be assumed that original purchasers would *ipso facto* wish to sue in contract just because they have the right to: see *Seasons Park* at [20]. Thus, authorisation should be obtained from each original purchaser *before* management corporations can claim and demonstrate that they are representing and suing on behalf of these subsidiary proprietors pursuant to Section 85(1) of the BMSMA.

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[9] Chua's 1st Affidavit at p 47

Conclusion

43 The appeal against AR Chong's decision in SUM 3193 was thus dismissed, with costs fixed at $3,500 (inclusive of disbursements) awarded to the 1st Defendant.

Postscript

44 I note that the decision in *Geocon Piling* has since been affirmed on appeal in *Multistar Holdings Ltd v Geocon Piling & Engineering Pte Ltd* [2016] SGCA 1, with the Court of Appeal issuing grounds of decision to clarify certain aspects of the trial judge's reasoning. For the avoidance of doubt, I did not consider the reasoning in these grounds in reaching my decision on the matter. The principles explored by the Court of Appeal on what constitutes a "cause of action" were not in play in this case. Nonetheless, I note that the Court of Appeal's remarks at [61]–[68] in relation to the absence of unfettered discretion under O 20 r 5(1) of the ROC in circumstances where limitation has set in is in line with its previous holding in

Lim Yong Swan which I have followed here.

Chan Seng Onn
Judge

Samuel Seow, Kelvin Chia and Jolene Lim (Samuel Seow Law Corporation) for the plaintiff;
Christopher Chuah, Nikki Ngiam, Ng Pei Yin and Jasmine Low (WongPartnership LLP) for the first defendant.