IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2019] SGCA 66

Civil Appeal No 90 of 2019

Between

Orion-One Development Pte Ltd
(in liquidation)

… *Appellant*

And

Management Corporation Strata Title
Plan No 3556 (suing on behalf of itself
and all subsidiary proprietors of
Northstar @ AMK)

… *Respondent*

Civil Appeal No 93 of 2019

Between

Management Corporation Strata Title
Plan No 3556 (suing on behalf of itself
and all subsidiary proprietors of
Northstar @ AMK)

… *Appellant*

And

Orion-One Development Pte Ltd
(in liquidation)

… *Respondent*

In the matter of Suit No 652 of 2014

Between

Management Corporation Strata Title Plan No 3556 (suing on behalf of itself and all subsidiary proprietors of Northstar @ AMK)

… *Plaintiff*

And

(1) Orion-One Development Pte Ltd (in liquidation)
(2) Sanchoon Builders Pte Ltd

… *Defendants*

JUDGMENT

[Building and construction law] — [Construction torts] — [Negligence]
[Building and construction law] — [Contractors' duties] — [Duty as to materials and workmanship]
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v
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Court of Appeal — Civil Appeals Nos 90 and 93 of 2019
Andrew Phang Boon Leong JA, Tay Yong Kwang JA and Woo Bih Li J
1 November 2019

15 November 2019 Judgment reserved.

Andrew Phang Boon Leong JA (delivering the judgment of the court):

Introduction

1 Both appeals arose from a dispute concerning a development known as Northstar @ AMK ("the Building"), a nine-storey commercial building. The management corporation of the Building ("the MCST") brought an action against both the developer of the Building ("Orion-One") and the main contractor ("Sanchoon") in respect of a number of alleged defects.

2 The claim against Orion-One was brought on behalf of the subsidiary proprietors ("SPs") of strata title lots in the Building and alleged various breaches by Orion-One of the sale and purchase agreements ("SPAs") between Orion-One and the SPs. The claim against Sanchoon was a claim in tort which

the MCST brought in its own capacity. The MCST also pursued a claim in contract against Sanchoon based on alleged breaches of various warranties given by Sanchoon to Orion-One and later assigned to the MCST ("the Warranties").

3 As the proceedings below were bifurcated, the High Court judge ("the Judge") had only to address the question of liability. The first half of his decision covered the question of whether the MCST had the requisite *locus standi* to bring its claim against Orion-One. It was common ground that the MCST did not itself have *locus standi* to sue under the SPAs and that it must be authorised by the SPs to do so. In this context, the MCST initially tendered letters of authorisation ("LOAs") signed by various SPs. However, the Judge held that the LOAs which the SPs signed were hearsay evidence because the SPs did not initially affirm or swear affidavits, nor did they give oral evidence. Nevertheless, the Judge subsequently granted the MCST leave to reopen its case and to file an affidavit of evidence-in-chief for each participating SP, some of whom gave oral evidence in court. The Judge placed great weight on the fact that, if he had not done so, the MCST's claim against Orion-One would fail entirely.

4 As for the substantive claims, it was common ground that Sanchoon owed the MCST a duty of care in tort. The Judge held that Sanchoon could also in principle be liable to the MCST in contract under the Warranties. Ultimately, having regard to the evidence, the Judge allowed the MCST's claims against both Orion-One and Sanchoon in part. Dissatisfied, both Orion-One and the MCST appealed to this court in Civil Appeals Nos 90 and 93 respectively. Sanchoon did not appeal against the Judge's decision.

5 The decision of the Judge can be found at *Management Corporation*

Strata Title Plan No 3556 (suing on behalf of itself and all subsidiary proprietors of Northstar @ AMK) v Orion-One Development Pte Ltd (in liquidation) and another [2019] SGHC 70 ("the Judgment").

The parties' submissions

6 In its appeal, Orion-One submits:

(a) The Judge ought not to have allowed the MCST to reopen its case after concluding that the LOAs were hearsay evidence.

(b) The Judge erred in finding that the standard of "good and workmanlike manner" in cl 10.1 of the SPAs ("cl 10.1") required that the common property be constructed with proper care and skill.

(c) The Judge erred in finding that Orion-One's obligations under cl 10.1 extended to defects caused by the lack of proper care and skill on the part of the architect.

(d) Contrary to what the Judge held, Orion-One had provided evidence that that the MCST had failed to mitigate its losses. In any event, mitigation issues should be conclusively determined at the later tranche on the assessment of damages. The Judge ought not to have decided against Orion-One on the issue of mitigation at this stage.

7 In its appeal, the MCST submits:

(a) The Judge erred in deciding that the LOAs were hearsay evidence.

(b) The Judge erred in deciding that the walls separating the neighbouring units and along the corridors ("Corridor Walls") as well as

the façade walls at the roof levels and basement were not common property.

(c) The Judge erred in rejecting its various claims for alleged defects.

The *locus standi* issue

8 We first deal with two preliminary issues: whether the LOAs were hearsay and whether the Judge correctly exercised his discretion in allowing the MCST to reopen its case. This is because if the first question were to be answered in the affirmative and second in the negative, the MCST's entire claim against Orion-One would fail.

Whether the LOAs were hearsay

9 The Judge held that the LOAs were hearsay evidence for the reasons given in the Judgment at [19]–[28]. In *Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430, this court endorsed the following definition of hearsay evidence (at [26]):

> [T]he assertions of persons made out of court whether orally or in documentary form or in the form of conduct tendered to prove the facts which they refer to (*ie* facts in issue and relevant facts) …

10 The LOAs were assertions of the SPs made out of court because they initially did not file any affidavit, nor did they testify in court. Further, the MCST adduced the LOAs to prove the facts that the LOAs refer to (*ie*, that the SPs had authorised the MCST to claim against Orion-One). The LOAs therefore appeared, on their face, to constitute hearsay evidence.

11 The MCST's submission that the LOAs were not hearsay because the purpose of the LOAs was to show that the MCST had the required authority to sue Orion-One in contract, not to give evidence of the main issues at trial, did not, with respect, appear to meet the objection based on hearsay. The MCST's submission that the Judge disregarded the fact that the authenticity of the LOAs was not contested is open to a similar objection (although it will, as explained below, nevertheless prove to be a crucial point with regard to the present case). Indeed, the authenticity of a document and the truth of its contents are two different things (see the decision of this court in *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another and other appeals* [2006] 3 SLR(R) 769 ("*Jet Holding*") at [44]). Further, the MCST's submission that the LOAs were not signed by the respective SPs under duress or fraud or misrepresentation is beside the point. The absence of any vitiating factors has nothing to do with the question of whether the LOAs were hearsay.

12 We also note that the Judge found (see the Judgment at [27]) that Orion-One had consistently indicated that it objected to the LOAs as being inadmissible hearsay before the MCST closed its case at trial. As far back as the time when Orion-One filed its defence (amendment no 3), Orion-One had put the MCST to "strict proof" of its authority to act for the SPs. Further, the Judge noted that Orion-One had stated in its opening statement that "[g]iven that the subsidiary proprietors have not given evidence on these LOAs, [Orion-One] will show that these LOAs are purely documentary hearsay" and that in these circumstances, Orion-One cannot be said to have waived its right to object to the admissibility of the LOAs.

13 However, whilst the Judge's finding that the LOAs were hearsay appears to be a compelling one, one cannot ignore the precise nature of the LOAs themselves. Put simply, the precise facts and circumstances as well as the need

to look to the substance (rather than the mere form) of the documents concerned (here, the LOAs) are of the first importance. Returning to the LOAs in the present appeal, whilst the authenticity of each LOA must, strictly speaking, be distinguished from its contents (see [11] above), one must also have regard to what were the precise *contents* of each of the LOAs – bearing in mind that the underlying rationale of the hearsay doctrine is concerned with the issue of the *truth* of such contents. Whilst it is generally the case that agreement by the parties as to the authenticity of a document does not *ipso facto* dispense with the proof of the *truth* of the *contents* of that document, the *sole* point of the document concerned in the present case relates to the fact that the SP concerned had in fact authorised the MCST to act on its behalf. Indeed, each LOA only states that the undersigned SP authorises the MCST to sue on its behalf. Since Orion-One had *not objected to the authenticity of the LOAs (see the index of the Agreed Bundle filed below, a sample of which can be found at para 15 of Orion-One's respondent's case for the MCST's appeal)*, it *must* ***necessarily*** *have accepted* the ***truth*** *of the* ***contents*** *of the LOAs since* ***those contents constituted the entire pith and marrow of the LOA – put simply, the substance (content) and form of each LOA coincided with each other and were two sides of the exact same coin***. Therefore, having accepted that the *form* of each LOA was *authentic* (*ie*, was *properly executed*), Orion-One would ***necessarily*** *(and simultaneously) have (despite its vigorous objections based on hearsay (see [12] above)) accepted its* ***contents*** *as well*. In the circumstances, ***no*** issue of hearsay arises.

14 We should emphasise the fact that our decision on this particular issue relates, in the final analysis, to one of ***application*** and does not in any way detract from the general legal principle stated in *Jet Holding* (see [11] above).

Much will obviously depend on the precise facts and circumstances before the court concerned.

15 Notwithstanding our decision on the issue of hearsay in the context of the particular facts and circumstances of the present case, we nevertheless also note the Judge's observations that "Orion-One's objection to the admissibility of the LOAs was a highly technical objection" and that "the objection, well-founded as it was, was not conducive to determining the real matter in controversy in this action, which is whether Orion-One breached the SPAs" (see the Judgment at [31]). Returning to the specific facts of the present case, since the LOAs indicate on their face the names of the SPs, their unit numbers in the Building and their signatures together with the statement of their authorisation, and since authenticity of the LOAs was not disputed in this case, we think it is self-evident that there would have been no need for any of the SPs to file an affidavit or to testify in court that they had in fact authorised the MCST to act on their behalf. The question of want of authority is separate and does not engage the hearsay rule.

16 It is, of course, open to a party to object to documents on the ground of hearsay in appropriate circumstances. We would, however, caution litigants against taking highly technical objections which are not conducive to the determination of the real issues in dispute. If they are held to have conducted the litigation unreasonably and the highly technical objections result in an unnecessary protraction of the trial or the incurring of disproportionate costs, the court will not hesitate to make adverse orders of costs against them and, where appropriate, against their solicitors as well.

17 Accordingly, there was no need to require fresh evidence from those who had already signed the LOAs, the authenticity of which was not disputed.

To the extent that the Judge did not allow the MCST to represent those SPs solely because of the absence of fresh evidence, we reverse that decision. Accordingly, the MCST does validly represent such persons.

18 Given our decision on the issue of hearsay, it is, strictly speaking, unnecessary to consider whether the Judge correctly exercised his discretion in allowing the MCST to reopen its case. However, as this point was also argued in some detail before us, we turn now to consider it.

Whether the Judge correctly exercised his discretion in allowing the MCST to reopen its case

19 To elaborate, two tranches of the trial took place from October 2016 to March 2017. Parties then exchanged written closing submissions in May 2017 and went before the Judge for oral closing submissions on 31 July 2017. At the end of the hearing, the Judge reserved judgment but gave the MCST one week to make an application to reopen the case if it wished to. The MCST duly filed its application in HC/SUM 3663/2017 ("SUM 3663") on 7 August 2017 to call the SPs who had signed the LOAs as witnesses. Thus, this application was made after both parties had closed their cases and the Judge had reserved judgment.

20 In allowing the application, the Judge relied on two cases for the proposition that he had a discretion to allow the MCST to adduce additional evidence even after it had closed its case (see *Prince Court Medical Centre Sdn Bhd v Germguard Technologies (M) Sdn Bhd* [2016] 4 MLJ 1 ("*Prince Court Medical Centre*") at [9] and *Sykes v Sykes* (1995) 6 BCLR (3d) 296 ("*Sykes v Sykes*") at [9]).

21 In *Sykes v Sykes*, the application to reopen the case (to take into account further submissions on the husband's financial situation) was made *after* the

trial court had delivered its decision on spousal maintenance (but before formal judgment was entered). The court, pursuant to those new arguments, varied its order on spousal maintenance. On appeal, the Court of Appeal for British Columbia recognised that "the discretion which a trial judge has to re-open before formal judgment has been entered is what is called an 'unfettered discretion', although it is one which for obvious reasons must be exercised sparingly": at [9]. The appellate court held that that the trial court ought not to have allowed the application because the husband could have easily advanced his new argument at the time of the original trial: at [11] and [12].

22 In *Prince Court Medical Centre*, the application to reopen a case to adduce further evidence was made after the conclusion of the trial, but *before* the trial court pronounced its decision. The Malaysian Court of Appeal affirmed the trial judge's decision to dismiss the application. The court relied on *Sykes v Sykes* for the proposition that the discretion to allow a party to reopen its case is a discretion that should be exercised "sparingly": at [11]. The court accepted that if the application were to be allowed, it would allow the applicant to rectify any loophole in its case after having had the benefit of evaluating the evidence of the respondent's witnesses and the respondent's submissions: at [10]. It held that the discretion to reopen the case "should only be exercised in exceptional circumstances and to prevent a miscarriage of justice": at [12].

23 In our judgment, *Sykes v Sykes* can be distinguished because the court in that case had already delivered its decision when the applicant sought to reopen his case. This is plainly different from the situation here. The Judge had not delivered his decision when SUM 3663 was filed. This is an important distinction. Once the court has delivered judgment, the parties should, in the interest of finality, not be lightly allowed to have a second bite of the cherry.

This consideration does not apply, or apply with the same force, where the court has *not* delivered judgment, which is the situation here.

24 *Prince Court Medical Centre* can also be distinguished from the facts of this case. As the Judge pointed out, allowing the MCST to reopen its case raised only a single, narrow issue relating to the MCST's authority to represent the SPs. In particular, doing so did not require the pleadings to be amended and did not require discovery to be re-visited. In other words, unlike the applicant in *Prince Court Medical Centre*, the MCST would not be in a position to tailor its case having regard to Orion-One's evidence at trial. Orion-One claims otherwise but has not explained how the MCST had amended its case in the light of the evidence.

25 Orion-One submits that the Judge was wrong to hold that dismissing the MCST's application would result in a consequence which would be out of proportion to the error: the MCST's claim against Orion-One would fail in its entirety. As Orion-One pointed out, the MCST had sought recourse against Sanchoon for the same defects. It is also clear from the Judgment that the extent of Sanchoon's liability is similar to the extent of Orion-One's liability. These are clear from Annex C of the Judgment. Notably, Sanchoon has not appealed against the Judge's decision. Thus, Orion-One argues, even if the MCST's claim against Orion-One were dismissed in its entirety, the MCST would not be out of pocket.

26 While there is some force in this submission, we think that the miscarriage of justice would lie in the fact that Orion-One would get off scot-free if the Judge had disallowed the application. This would be unjust because there was no question that most of the SPs had authorised the MCST to conduct litigation on their behalf. Like the Judge, we are of the view that letting Orion-

One off the hook completely would be a completely disproportionate consequence to the MCST's failure to recognise that the LOAs were hearsay.

27 For these reasons, we are of the view that the Judge was right to allow the MCST to reopen its case so that the SPs could give direct evidence that they had authorised the MCST to conduct proceedings on their behalf.

28 We now address the other issues raised in both appeals.

Orion-One's appeal

Definition of "good and workmanlike manner"

29 Cl 10.1 states as follows:

> The Vendor must as soon as possible build the Unit, together with all common property of the Building, in a good and workmanlike manner according to the Specifications and the plans approved by the Commissioner of Building Control and other relevant authorities.

30 As stated above, Orion-One submits that the standard of "good and workmanlike manner" in that clause did *not* require that the common property be constructed with proper care and skill. It took the view that the common property only needed to be constructed according to the "Specifications". Orion-One points out that the definition of "defect" in cl 1.1.1 is instructive: "any fault in the Unit which is due to defective workmanship or materials or to the Unit, the Building or the common property, as the case may be, not having been constructed according to the Specifications". Its argument was that the phrase "defective workmanship or materials" in the first limb applies only to the Unit but not to common property unlike the second limb in cl 1.1 in which construction "according to the Specifications" does apply to the Unit, the Building and the common property. It also points out that its interpretation is

consistent with the legislative history of the Sale of Commercial Properties Rules (Cap 281, R1, 1999 Rev Ed) (the "SCP Rules") (the SPAs are a statutorily-prescribed contract mandated under these rules) and the Housing Developers Rules (Cap 130, R1, 2008 Rev Ed) ("the HD Rules"). In particular, the definition of "defect" in the HD Rules was amended in 2012 so that "defective workmanship or materials" also applied to common property, but the same was not done for the SCP Rules.

31 However, as Orion-One acknowledged, the terms in cl 10.1 do not draw a distinction between "defective workmanship" on the one hand and constructing "according to the Specifications" on the other hand. As can be seen at [29], the developer is to build "the Unit, together with all common property of the Building, in a good and workmanlike manner according to the Specifications and the plans approved by the Commissioner of Building Control and other relevant authorities". Furthermore, it would not make sense for a developer to escape liability for poor workmanship just because it might technically have met the Specifications.

32 We also find it inappropriate for Orion-One to rely so heavily on the legal background to the SCP Rules and the HD Rules, because in interpreting legislation (the SPAs are statutorily prescribed), primacy should be accorded to the text of the provision and its statutory context over any extraneous material (see the decision of this court in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 at [43]). In addition, the logical conclusion of Orion-One's submission is that Parliament intended a lower standard to apply to the construction of commercial properties as compared to residential properties. We find this unlikely, and at the oral hearing, counsel for Orion-One, Mr Christopher Chuah, was unable to offer any plausible reason for this distinction.

Liability for design defects

33 The Judge held in the Judgment at [115], as follows:

> It is irrelevant whether the lack of flashings, projections, drainage tracks or canopies is a design issue. Orion-One is liable under the SPAs for defects caused by lack of proper care and skill in the construction of the Building. This includes lack of proper care and skill on the part of the architects in designing the Building as noted by the Court of Appeal in *Seasons Park.*

34 The Judge relied on [42] of *Management Corporation Strata Title Plan No 2297 v Seasons Park Ltd* [2005] 2 SLR(R) 613 ("*Seasons Park*") in coming to his decision:

> However, it does not thereby follow that a purchaser of a unit has no remedy against the developer for faulty design … by the architect or engineer whom the developer has appointed. The claim will be in contract and in respect of such a claim, the developer cannot plead in defence that he has engaged competent professionals to design the project … This is because the developer has, by contract, agreed to deliver a unit, or building, **in accordance with the specifications**, and **if he should fail to do so**, he is liable for breach of contract. [emphasis added in bold]

35 Orion-One submits as follows:

(a) the court in *Seasons Park* did not specifically construe the scope of duty to construct in a "good and workmanlike manner";

(b) the observations at [42] of *Seasons Park* were *obiter*; and

(c) the court in *Seasons Park* did not lay down a categorical requirement that a developer would owe design obligations to purchasers in contract, regardless of its terms.

36 The MCST, not surprisingly, adopts the Judge's reasoning, including his reliance on [42] of *Seasons Park*.

37 With respect, we agree with Orion-One that the Judge appears to have interpreted *Seasons Park* too broadly. A close perusal of [42] of *Seasons Park* reveals that the court in that case was contemplating a situation where, by reason of faulty design on the part of the engineers or architects, the unit or building ***was not delivered "in accordance with the specifications"***. Thus, applying that reasoning to the present case, Orion-One would be liable for design defects only if, as a result of those defects, the Building was not (pursuant to cl 10.1) constructed "in a good and workmanlike manner according to the Specifications and the plans" approved by the relevant authorities.

38 It is not the MCST's case that the Building was not constructed in accordance with the Specifications or the approved plans. Rather, counsel for the MCST, Mr Lim Chee San ("Mr Lim"), submitted at the oral hearing that, as a result of the defective designs, Orion-One did not construct the Building "in a good and workmanlike manner". However, as we pointed out to Mr Lim, the design defects relate to Orion-One's ***omission*** to install certain features (see the Judgment at [115]). We do not think that ***an omission to construct*** because the feature was not included in the Specifications or the approved plans (*ie*, a pure omission) can be fairly said to fall under Orion-One's ***duty to construct in a good and workmanlike manner***.

39 We also observe that the MCST's real complaint is that the Specifications or the approved plans were deficient. In our judgment, it is not clear from the face of cl 10.1 that a developer such as Orion-One is liable for deficient Specifications or plans. Instead, cl 10.1 obliges Orion-One to construct ***in accordance with those requirements***. Further, as we pointed out to Mr Lim, it is open to the SPs or the MCST to claim against the architects or engineers for any shortcomings in the preparation of the Specifications or plans. There is

therefore no reason for this court to strain the clear language of cl 10.1 and interpret it in a manner which renders developers liable for design omissions.

40 In the circumstances, we allow Orion-One's appeal on this issue. Orion-One is therefore not liable for design omissions.

Mitigation

41 However, we agree with Orion-One that the issue of mitigation should have been left to the later tranche on the assessment of damages, given that the trial was bifurcated. Mitigation is a doctrine that is applied to restrict the damages recovered in compensation for losses incurred as a result of a breach of contract (see *The Law of Contract in Singapore* (Academy Publishing, 2012) at para 22.139). The MCST also accepts in its written case that the issue of mitigation could be addressed when the court assess damages, and its counsel confirmed the same at the hearing before us. We therefore clarify that the Judge's findings on mitigation at [146], [173]–[175] of the Judgment are not final and that the parties may adduce further evidence on this point.

The MCST's appeal

42 Orion-One submits, as a preliminary point, that it has been prejudiced by the MCST's failure to serve its appeal papers on Sanchoon or to make Sanchoon a party to the appeal. It points out that if this court were to allow the MCST's appeal for any of the alleged defects, Orion-One would be prejudiced as these portions of the Judge's decision would be overturned and binding only on Orion-One and not Sanchoon. This would in turn prejudice Orion-One's ability to seek contribution against Sanchoon for these defects. Orion-One submits that this court should therefore dismiss the MCST's appeal in so far as the grounds of appeal affect Sanchoon, or, in the alternative, the

hearing should be adjourned for Sanchoon to be made a respondent to this appeal. We express no view on these submissions because, as we explain below, we find no merit in the MCST's appeal in any event.

Common Property

43 The MCST submits that the Corridor Walls as well as the façade walls at the roof levels and basement are common property. The MCST cites the High Court decision of *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2017] SGHC 57 (affirmed, *Sit Kwong Lam v Management Corporation Strata Title Plan No 2645* [2018] 1 SLR 790) for the proposition that common property must serve a common purpose. Thus, it submits that the Corridor Walls, which serve a common purpose, must be common property.

44 The MCST has however only addressed half of the definition of common property. As stated in s 2 of the Building Maintenance and Strata Management Act (Cap 30C, 2008 Rev Ed):

> "common property", subject to subsection (9), means —
>
> > (*a*) in relation to any land and building comprised or to be comprised in a strata title plan, such part of the land and building —
> >
> > > (i) not comprised in any lot or proposed lot in that strata title plan; and
> > >
> > > (ii) used or capable of being used or enjoyed by occupiers of 2 or more lots or proposed lots

45 The MCST has focused on the second limb and completely ignored the first limb. We therefore agree with the Judge that the MCST has failed to prove that the Corridor Walls are common property because it has failed to adduce the strata title plans in evidence (see the Judgment at [72]).

46 It is also not clear what "façade walls at the roof levels and basement" refers to. There were six areas of the Building which were disputed to be common property:

(a) balconies of the units;

(b) railings mounted on the air-conditioning ledges of the units;

(c) windows of the units;

(d) pipes in the units;

(e) walls dividing the units from the common corridors; and

(f) walkways between the balconies of the units

47 The MCST has not explained which of these six areas "façade walls at the roof levels and basement" fall under.

Alleged defects

48 The MCST appeals against the Judge's findings that certain alleged defects were not shown to have been caused by poor workmanship. In relation to the debonded or debonding plaster, paintwork, water ponding and floor slabs, the MCST points to the evidence showing the *existence* of defects. This does not assist the MCST because the issue is not whether those defects exist, but whether those defects were caused by poor workmanship.

49 As for the issue of diagonal cracking at the *roof area* of the Building, the MCST complains that "there was a departure from the Specifications of the [SPAs] by way of a change in material … by [Orion-One] and/or [Sanchoon]." The MCST has however not addressed the Judge's point that

"[t]he change in material referred to by the MCST was in respect of the *internal walls* of the Building's eighth and ninth storeys, and not the external walls at the roof" [emphasis added] (see the Judgment at [98]). We also note the MCST's assertion that the Building "suffered from widespread diagonal cracking at the Corridor Walls". This is a non-starter because, as pointed out above, MCST has not proven that the Corridor Walls are common property.

Conclusion

50 For the foregoing reasons, we allow Orion-One's appeal in part (see [40] and [41] above) and allow the MCST's appeal in part (see [17] above).

51 Unless the parties are able to come to an agreement on costs, they are to furnish, within 14 days from the date of this judgment, written submissions limited to five pages each, setting out their respective positions on the appropriate costs orders for the appeals in the light of the present judgment.

Andrew Phang Boon Leong Judge of Appeal	Tay Yong Kwang Judge of Appeal	Woo Bih Li Judge

Chuah Chee Kian Christopher, Low Ching Wei Justin and Mindy Yap (WongPartnership LLP) for the appellant in Civil Appeal No 90 of 2019 and the respondent in Civil Appeal No 93 of 2019;
Lim Chee San (Tan Lim Partnership) (instructed counsel), Edmond Pereira, Goh Chui Ling and Jessica Cheung (Edmond Pereira Law Corporation) for the respondent in Civil Appeal No 90 of 2019 and the appellant in Civil Appeal No 93 of 2019.