Lian Kok Hong v Ow Wah Foong and Another
[2008] SGCA 30

Case Number : CA 123/2007

Decision Date : 10 July 2008

Tribunal/Court : Court of Appeal

Coram : Chan Sek Keong CJ; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Oommen Mathew (Haq & Selvam) and Prabhakaran Nair (Ong, Tan & Nair) for the appellant; Andrew Tan and Anna Png (Andrew Tan Tiong Gee & Co) for the respondents

Parties : Lian Kok Hong — Ow Wah Foong; Ow-Tsai Ay Giok

Limitation of Actions – When time begins to run – Action in contract and tort against architects for wrongfully issuing termination certificate – Whether time began to run from date of accrual of cause of action or date house owner had knowledge of architects' negligence in issuing termination certificate – Sections 6, 24A(3) Limitation Act (Cap 163, 1996 Rev Ed)

10 July 2008

V K Rajah JA (delivering the grounds of decision of the court):

Introduction

1 This appeal raised interesting issues about the commencement of the limitation period in relation to a claim for breach of contract that purportedly resulted in latent damage. This in turn necessarily posed the questions: What is latent damage? When does the limitation period for actions associated with such damage (if accepted as constituting a distinct type of damage) commence? In addition, these proceedings also featured the very real conundrum of how best a claimant ought to protect itself in a multi-party contractual matrix if there is a difference in views in relation to which party it might successfully recover damages from.

2 It would perhaps be apposite to preface these grounds of decision by reproducing the incisive observations of Lord Scott of Foscote in *Haward v Fawcetts* [2006] 1 WLR 682 ("*Haward*") at [32]:

> [I]n prescribing the conditions for the barring of an action on account of the lapse of time before its commencement, Parliament has had to strike a balance between the interests of claimants and the interests of defendants. It is a hardship, and in a sense an injustice, to a claimant with a good cause of action for damages to which, let it be assumed, there is no defence on the merits to be barred from prosecuting the cause of action on account simply of the lapse of time since the occurrence of the injury for which redress is sought. But it is also a hardship to a defendant to have a cause of action hanging over him, like the sword of Damocles, for an indefinite period. Lapse of time may lead to the loss of vital evidence; it is very likely to lead to a blurring of the memories of witnesses and to the litigation becoming even more of a lottery than would anyway be the case; and uncertainty as to whether an action will or will not be prosecuted may make a sensible and rational arrangement by the defendant of his affairs very difficult and sometimes impossible. Each of the various statutes of limitation that over the years Parliament has enacted, starting with the Limitation Act 1623 and coming down to the 1980 Act, represents Parliament's attempt to strike a balance between these irreconcilable interests, both legitimate. It is the task

of the judiciary to identify from the statutory language and the purpose of each amending enactment the balance that that enactment has endeavoured to strike and to apply the enactment accordingly. *It is emphatically not the function of the judges to try to strike their own balance, whether as a response to the apparent merits of a particular case or otherwise*. In *A'Court v Cross* (1825) 3 Bing 329 Best CJ, commenting on the 1623 Act, said at p 331, that he was "sorry to be obliged to admit that the courts of justice [had] been deservedly censured for their vacillating decisions" and went on:

> "When by distinctions and refinements, which, Lord Mansfield says, the common sense of mankind cannot keep face with, any branch of the law is brought into a state of uncertainty, the evil is only to be remedied by going back to the statute ..."

[emphasis added]

Judges would do well to heed this salutary reminder when they have to assess the competing tensions between justice and certainty and finality invariably present in cases where statutory limitation defences are raised.

3 This was an appeal against the decision of the High Court Judge ("the Judge") who dismissed the appellant's claims in contract and negligence against the respondents on the preliminary issue that such claims were time-barred under s 24A(3)(*b*) of the Limitation Act (Cap 163, 1996 Rev Ed). The Judge's decision is reported as *Lian Kok Hong v Ow Wah Foong* [2007] 4 SLR 742 ("the Judgment"). After hearing counsel, we dismissed the appeal. We now set out our detailed reasons for having so decided.

4 At the outset, it should perhaps also be mentioned that an application by the respondents to have the appellant's amended writ of summons and statement of claim struck out (on the basis that the actions contained therein were time-barred) had been initially allowed by an assistant registrar. Surprisingly, that decision was subsequently reversed by a different High Court judge on the basis that the appellant's level and degree of knowledge could only be ascertained after a full trial. For reasons that follow, we unhesitatingly came to the view that the present action ought to have ended with the assistant registrar's decision. The Judge, quite correctly, decided to resolve the time-bar issue before a full trial thus indirectly affirming the position taken earlier by the assistant registrar. We now set out the material facts.

The facts

Events prior to the present proceedings against the respondents

5 The appellant had engaged Sin Kian Contractors ("the Contractor") to build a house for him ("the Project") on the terms of a contract dated 29 August 1997 ("the Contract"). On 3 March 1999, the appellant complained of various defects and asked the Contractor to rectify them. The Contractor refused to carry out the requisite rectification works, whereupon the appellant called for a meeting with his consultants, including the respondents, who were his architects for the Project. As a result of this meeting, the appellant indicated to the respondents that he had decided to terminate the Contractor as the main contractor for the building project. The respondents then issued a termination certificate dated 17 March 1999 ("the Termination Certificate") to the Contractor, certifying that the appellant was entitled to terminate the Contractor's employment on the grounds stated in paras (d), (e) and (h) of cl 32(3) of the Contract. Following this, the appellant terminated the Contractor's employment by way of a letter dated 19 March 1999 ("the Notice of Termination").

6 By a letter dated 22 March 1999, the Contractor disputed the validity of the Termination Certificate issued by the respondents as well as the Notice of Termination written by the appellant. The Contractor concurrently notified the appellant of its intention to initiate arbitration proceedings. The respondents conferred with the appellant on 23 April 1999, affirming that the Termination Certificate was properly issued. However, the respondents went on to inject a note of caution that the Termination Certificate might be challenged on the ground that it did not comply with cll 32(3)(d), (e) and (h) of the Contract. The matter proceeded to arbitration, where the arbitrator ultimately ruled against the appellant, making an interim award on 7 April 2003 and issuing the final award on 21 July 2006. *The arbitrator found that the Termination Certificate was procedurally incorrect and in breach of cll 32(3)(e) and 32(3)(h) of the Contract*.

Present proceedings against the respondents

7 The appellant commenced the present proceedings against the respondents by filing a writ of summons on 17 March 2006. According to the amended writ of summons and statement of claim filed on 21 March 2006 ("the Amended Statement of Claim"), the appellant alleged (at para 7) that the respondents were "guilty of a breach of [their] contract of employment and the … terms, conditions, and warranties thereof and were guilty of negligence in the performance of their … services". In greater detail, the Amended Statement of Claim[note: 1] (at para 7) particularised the alleged breaches in contract and negligence on the part of the respondents as follows:

> (a) They failed to exercise closer supervision and more frequent inspection of the finishing works at the [Project] in the course of such work given that there was no architectural clerk-of-works employed to be full time on site to ensure that the standard was maintained for all architectural work including the tiling works. As a result, unsatisfactory and unacceptable work carried out by the Contractors was not addressed earlier in the course of the works;
>
> (b) They certified that the wall and ceiling finishes were 96.8% completed and the floor finishes 98.15% [completed] as at the end of December 1998 without taking into consideration the quality of tiling works carried out by the Contractors. They should not certify payment for such work based only on physical completion of such work. If work has not been properly done and carried out, they should not have certified payment for such work.
>
> (c) They issued the Termination Certificate against the said Contractors without exercising due care and diligence to ensure that there were valid grounds to do [so]. They insisted
>
> > (i) that the Contractors submit a defects rectification schedule when in fact it was not necessary for the Contractors to do so since the [respondents] had issued an extension of time to the Contractors to complete all work including rectification works by 28 April 1999;
> >
> > (ii) on an unreasonable standard of tiling work of the Contractors without taking into consideration industrial standards for such work. The [respondents] are therefore not justified in issuing the said Termination Certificate based on this ground; and
> >
> > (iii) that the Contractors were in breach of contract for failing to comply with the [respondents'] direction or instruction despite being given the requisite one month's written notice to do so. The [respondents] wrongfully insisted that the Contractors submit a schedule of rectification works within one (1) month of 5 February 1999 and when the latter failed to do so, the [respondents] wrongly justified issuing the Termination Certificate on this ground. This is also notwithstanding that the [respondents] had given the extension of time stated in (i) above.

(d) They issued the said Termination Certificate without exercising due care and diligence to ensure the requisite procedural requirements in particular the requisite notices under clause[s] 32(3)(e) and (h) of [the Contract], have been complied with.

8 As mentioned earlier, the respondents applied to strike out the appellant's claim on the basis that the present proceedings were time-barred. Against this backdrop, the appellant, while conceding the time bar under s 6 of the Limitation Act, attempted to bring his case under s 24A(3)(*b*) of the Act. Pursuant to s 24A(3)(*b*), time does not run until the date at which the plaintiff knows or ought reasonably to know that he has a cause of action ("the date of discoverability"). An action is time-barred under this particular section only if it is commenced three years after the date when such requisite knowledge was first acquired. The appellant argued that, by virtue of this section, time did not run against the appellant until he had knowledge that the respondents were negligent in issuing the Termination Certificate, and that knowledge became certain only when the arbitrator issued his interim award on 7 April 2003 (as the Judge put it at [5] of the Judgment). Thus, the present proceeding, having been commenced on 17 March 2006, was just within the three-year limitation period prescribed by the Limitation Act.

The Judge's decision

9 The trial before the Judge closed with the cross-examination of the appellant's first witness in the first half of Day 1 (12 September 2007). The Judge thereafter on 13 September 2007 heard submissions in chambers from both counsel on the issue of the time bar.

10 The Judge decided that time began to run when the Contractor notified the appellant that it was challenging the Notice of Termination on the ground that the Termination Certificate was invalid. According to the Judge, the act of being sued by the Contractor on account of the Termination Certificate was a detriment that counted as damage to found a cause of action against the respondents (see the Judgment at [8]). Ultimately, the Judge held that this was not a latent damage case at all; this was a case in which the appellant had knowledge that the respondents had put him at risk, and instead of taking the appropriate action to ensure that the respondents indemnify him in the event that he was found liable, the appellant chose to accept the respondents' assertion that the Termination Certificate was valid. The appellant was not entitled to wait for the arbitrator to find that the Termination Certificate was invalid before commencing an action against the respondents (see the Judgment at [9]).

The statutory regime

11 From the foregoing discussion, it is evident that two sections have played a prominent role in the present appeal. These sections, *viz*, ss 6 and 24A(3) of the Limitation Act, are now set out for ease of reference:

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;

…

Time limits for negligence, nuisance and breach of duty actions in respect of latent

injuries and damage.

24A.—(1) This section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).

(2) An action to which this section applies, where the damages claimed consist of or include damages in respect of personal injuries to the plaintiff or any other person, shall not be brought after the expiration of —

(*a*) 3 years from the date on which the cause of action accrued; or

(*b*) 3 years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (*a*).

(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 —

(*a*) 6 years from the date on which the cause of action accrued; or

(*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).

(6) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire —

(*a*) from facts observable or ascertainable by him; or

(*b*) from facts ascertainable by him with the help of appropriate expert advice which it

is reasonable for him to seek.

(7) A person shall not be taken by virtue of sub-section (6) to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

12 Before applying the law to the facts of the case, two preliminary legal issues deserve elaboration. The two legal issues are: (a) the relationship between s 6(1)(*a*) and s 24A(3) of the Limitation Act; and (b) the applicability of s 24A(3) to latent damage. We now consider each issue in turn.

The relationship between section 6(1)(a) and section 24A(3) of the Limitation Act

13 A threshold issue which arose in the proceedings below was the applicability of s 6(1)(*a*) of the Limitation Act. It appeared that all parties concerned accepted that s 6(1)(*a*) operated on a parallel basis with s 24A. In fact, the appellant's former solicitor conceded that s 6(1)(*a*) applied to bar his action in the present proceedings. It is not difficult to understand why this concession was made. As the Law Reform Committee, Singapore Academy of Law, has noted in *Report of the Law Reform Committee on the Review of the Limitation Act (Cap 163)* (February 2007) (Chairman: Charles Lim Aeng Cheng) ("the LRC Report") at para 140:

> An "action for damages for negligence, nuisance or breach of duty", to which the special limitation regime under s 24A applies, is also at the same time an "[action] founded on a contract or on tort", to which s 6(1)(a) applies. … In such an action (that is, one for damages for negligence, nuisance or breach of duty [which can arise from contract and this is different from the English regime]), does one provision apply to the exclusion of the other …?

It appears that the parties in the present case have accepted without question that the two provisions in fact exist and apply concurrently.

14 In our view, however, the statutory regime of the Limitation Act clearly provides that s 24A operates subject to s 6(1)(*a*) in respect of actions for damages for negligence, nuisance or breach of duty, save as expressly provided. Section 6(1) states that the time limits in that section are "subject to this Act". Moreover, s 24A is in Pt III of the Limitation Act and s 5 makes it clear that the time limits of Pt II of the Act (which s 6 is in) have effect subject to Pt III:

> **Part II to be subject to Part III.**
>
> **5.** The provisions of this Part shall have effect subject to the provisions of Part III.

The true position, as implicitly suggested by the LRC Report at para 147, is that under the Limitation Act, an action for damages for negligence, nuisance or breach of duty is *subject* to s 24A. In other words, s 24A carves out certain exceptions to s 6(1)(*a*) and, as such, the two cannot apply concurrently.

15 For present purposes, the effect of the appellant's former solicitor's concession that s 6(1)(*a*) applied is more academic than real since s 24A(3)(*a*) coincides with s 6(1)(*a*) and so the effect of the latter section is the same as that of the former. Thus, the appellant's concession is still relevant to the extent that the appellant's actions are *prima facie* time-barred under s 24A(3)(*a*).

The applicability of section 24A(3) to latent damage

16 A second legal issue in relation to the Limitation Act concerns the applicability of s 24A(3) to latent damage. The appellant contended that s 24A(3) applied to damage other than latent damage, but the respondent argued that it applied only to latent damage. However, is this the true position to be taken of s 24A(3)? Can it conceivably also apply to damage which is not latent in nature? To answer these questions, we have to ask a further question: What is "latent" damage? If we do not know what "latent" damage is, then how do we know whether s 24A applies to such damage? To this, counsel for the respondent stated before the Judge that this is damage which is hidden. But this response only begs the further questions: *When* is damage "hidden"? From what perspective is one to assess whether damage is hidden? Indeed, the word "hidden" is but another way to express "latent" and this, in reality, adds no content to its substantive meaning at all.

17 In our view, "latent" damage can only be defined by reference to the terms of s 24A of the Limitation Act itself. *Prima facie*, s 24A(3) does not merely apply only to either latent or non-latent damage; it potentially applies to both. Let us further elaborate on this proposition. First, the confusing aspect of s 24A is actually its caption: "Time limits for negligence, nuisance and breach of duty actions in respect of *latent injuries and damage*" [emphasis added]. However, once one acknowledges that this heading does not actually assist in determining when damage is latent or patent, it must be the case that it ought to be the content of s 24A itself that must determine whether damage is latent or patent. The tail cannot be allowed to wag the dog. Indeed, it is pertinent to note that the LRC Report ([13] *supra*) recommends (at para 153) deleting the words "in respect of latent injuries and damage" from the heading.

18 Following from the above, we think that damage is only patent when the date of accrual coincides with the date of discoverability. This is because when the date of accrual (that is, the time when damage is suffered) coincides with the date of discoverability, there is no question of the damage being hidden (or latent), as the plaintiff is in a position to commence an action as soon as the damage accrues. Damage is latent when its discoverability occurs or can only occur at a date *later than* the date of accrual. This reasoning is, *inter alia*, supported by the caption to s 14A of the UK Limitation Act 1980 (c 58) ("the UK Act") as amended by the Latent Damage Act 1986 (c 37) (UK). Our s 24A is derived substantially from s 14A and the caption to s 14A reads: "Special time limit for negligence actions *where facts relevant to cause of action are not known at date of accrual*". Since the entirety of the sections introduced by the Latent Damage Act is to deal with latent damage, and s 14A deals with the applicable time limit, it must follow that a latent damage is one which surfaces *after* the date it occurs.

19 Thus, on further reflection, it can be said that it is rather meaningless to ask whether s 24A(3) of the Limitation Act *per se* applies only to patent or latent damage. The truth is that s 24A(3) is a statutory construct engineered to answer this very question. To answer this question, both ss 24A(3)(*a*) and 24A(3)(*b*) must be considered and applied. If the dates in both sections do not coincide, the damage in question is latent damage. The enquiry thus does not proceed with a determination of whether a damage is latent or patent *followed by* efforts to fit it into either s 24A(3)(*a*) or s 24A(3)(*b*). In any event, on the analysis above, such an enquiry is impossible because one does not know whether damage is latent or patent until one puts it through the statutory crucible under s 24A(3). Indeed, the LRC Report notes at para 151 that the plain words of s 24A(1) indicate that its scope of application goes beyond latent damage. Moreover, ss 24A(2)(*a*) and 24A(3)(*a*) would be rendered quite meaningless if s 24A were purely confined to latent damage cases. These subsections will then never bite because all latent damage cases would then theoretically fall to be considered under ss 24A(2)(*b*) and 24A(3)(*b*) respectively. Thus, the issue earlier posed of whether s 24A(3) applies only to latent or patent damage was really a red herring that failed to address the crux of the matter. Broadly speaking, it should be acknowledged that s 24A(3) applies to *both* latent and non-latent damage, notwithstanding its quite confusing and apparently contradictory caption.

20 In summary, as we mentioned earlier (at [14]), s 24A carves out the exceptions to s 6(*a*). Sections 24A(4) to 24A(7) specify the kind of knowledge that a claimant must lack if he asserts that his claim does not fall within s 24A(3). Section 24B provides an overriding period of 15 years in respect of any action falling under s 24A. In other words, the excluded actions are those which the claimant could have discovered by applying the criteria in ss 24A(4) to 24(7). Section 24A(3) applies to cases of all types of injuries and damage (save for personal injuries which are covered by s 24A(2), and these expressions might have different meanings, depending on whether they arise from negligence, nuisance and breach of duty, and whether they are engendered by a breach of contract or tort). Having resolved these preliminary legal issues in relation to the statutory regime, we now consider the actual substantive legal issues.

Whether the appellant's actions are time-barred under section 24A(3)(*a*) of the Limitation Act

21 The first question is whether the appellant's causes of action are time-barred under s 24A(3)(*a*) of the Limitation Act as six years have elapsed since they accrued. While the appellant has conceded this to be the case (with respect to s 6(1)(*a*)), it is trite law that a concession of law which turns out to be wrong cannot be held against the conceding party. We therefore also considered this point. Indeed, while ss 6 and 24A are not identical in the sense that s 6 can cover causes of action not covered by s 24A, they may conceptually overlap. This means that the concession could be correct to the extent that the cause of action based on contract is the same in both sections.

The appellant's actions framed in contract

22 In our view, it is clear that the appellant's actions framed in breach of contract accrued when the alleged breaches occurred sometime in 1999: see *Lim Check Meng v Orchard Credit (Pte) Ltd* [1997] 3 SLR 795, approved by this court in *Spandeck Engineering (S) Pte Ltd v China Construction (South Pacific) Development Co Pte Ltd* [2005] SGCA 59. More particularly, the alleged breach of supervision duties, as detailed in para 7(a) of the Amended Statement of Claim (see [7] above), occurred when the respondents allegedly failed to supervise the Contractor or supervise adequately. This would have been, at the very latest, on 19 March 1999 when the Contractor's engagement was terminated. This is even assuming that the breach was a continuing one until the Contractor's services were actually legally terminated. As for the alleged breach of certification duties mentioned in para 7(b) of the Amended Statement of Claim (see [7] above), this was in respect of the issuance of an interim certificate of payment (No 15) dated 31 December 1998 ("the Interim Payment Certificate"), which breach allegedly occurred when the certificate was prepared on or around 31 December 1998, the date of certification. Finally, as for the alleged breach of certification duties in respect of the Termination Certificate, outlined in paras 7(c) and 7(d) of the Amended Statement of Claim, this breach occurred at the latest on 17 March 1999, when the Termination Certificate was in fact issued. All of these breaches occurred in 1999.

23 Therefore, as the appellant's former counsel rightly conceded, albeit under the wrong section (it should be s 24A(3)(*a*) and not s 6(1)(*a*)), the appellant's actions framed in contract were time-barred under s 24A(3)(*a*) for having been brought more than six years (on 17 March 2006) after the actions first accrued in 1999.

The appellant's actions framed in tort

24 As for the actions framed in tort, it is settled law that causes of action for single torts,

requiring proof of damage, accrue when the damage occurs: see, for example, *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1 and *People's Parkway Development Pte Ltd v Akitek Tenggara* [1993] 1 SLR 704. Accordingly, first, in respect of the alleged breach of supervision duties (see para 7(a) of the Amended Statement of Claim at [7] above), the alleged negligent act was that the respondents "failed to exercise closer supervision and more frequent inspection". The damage happened when the Contractor carried out the alleged unsatisfactory and unacceptable works, which must have been on or before 19 March 1999, when the Contract was terminated. As for the alleged breach of certification duties in respect of the Interim Payment Certificate (see [22] above), the act complained against was the negligent preparation and issuance of the said certificate. The damage caused by such negligent certification occurred when the Contractor first claimed against the appellant based on this certificate on or after 31 December 1998 and certainly before the Contract was terminated on 19 March 1999. Finally, as for the alleged breach of certification duties in respect of the Termination Certificate (see paras 7(c) and 7(d) of the Amended Statement of Claim at [7] above), the alleged negligent acts were the respondents' failure to comply with requisite procedural requirements and the respondents' negligent preparation and issuance of the Termination Certificate.

25 It is plain that the actual damage caused by such negligent acts *occurred when* the appellant relied on the Termination Certificate and terminated the Contract on 19 March 1999. In reality, it did not matter whether the termination was done negligently or not. The appellant suffered injury immediately. Thus, the damage to the appellant cannot be said to be the arbitral award eventually made against him; the damage occurred before or around the time when the appellant acted in reliance on the respondents' allegedly defective advice by issuing the Notice of Termination to the Contractor. This was again sometime in 1999 and thus the appellant's actions in negligence must be time-barred under s 24A(3)(*a*) of the Limitation Act.

26 This quite shortly disposes of the appellant's claims in contract and/or negligence in so far as s 24A(3)(*a*) of the Limitation Act is concerned. The crux of the appellant's case thus rests on s 24A(3)(*b*).

Whether the appellant's actions are time-barred under s 24A(3)(*b*) of the Limitation Act

The law: The requisite knowledge

27 In relation to the broad issue of whether the appellant's actions are time-barred under s 24A(3)(*b*) of the Limitation Act, the first question is the requisite knowledge under s 24A(3)(*b*) which defines the date of discoverability and therefore the starting point of the three-year limitation period. Section 24A(4) defines what is meant by the requisite knowledge in ss 24A(2) and 24A(3). This convoluted definition is actually a rather awkward condensation of ss 14A(6) to 14A(8) of the UK Act ([18] *supra*), which provides as follows:

> **14A Special time limit for negligence actions where facts relevant to cause of action are not known at date of accrual**
>
> …
>
> (6) In subsection (5) above "the knowledge required for bringing an action for damages in respect of the relevant damage" means knowledge both—
>
> (*a*) of the material facts about the damage in respect of which damages are claimed; and

(*b*) of the other facts relevant to the current action mentioned in subsection (8) below.

(7) For the purposes of subsection (6)(*a*) above, the material facts about the damage are such facts about the damage as would lead a reasonable person who had suffered such 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.

(8) The other facts referred to in subsection (6)(*b*) above are—

(*a*) that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence; and

(*b*) the identity of the defendant; and

(*c*) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant.

28 This particular provision merits careful and close scrutiny. The requisite knowledge is knowledge of the following:

(a) the fact that the 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 of the defendant;

(c) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant; and

(d) such material facts about the damage as would lead a reasonable person, who had suffered such 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.

At the outset it is helpful to reiterate the salutary warning that Sir Thomas Bingham MR gave in *Spencer-Ward v Humberts* [1995] 1 EGLR 123 at 126:

> It is, I think, necessary that issues on this section [s 14A of the UK Act, which is *in pari materia* with s 24A of our Limitation Act] should be approached in a broad common-sense way, bearing in mind the object of the section and the injustice it was intended to mitigate. *There is a danger of being too clever and it would usually be possible to find some fact of which a plaintiff did not become sure until later. It would be a pity if a desire to be indulgent to plaintiffs led the court to be unfair to defendants*. [emphasis added]

We turn now to consider some of the salient requirements of s 24A(3)(*b*).

Attributability

(1) The House of Lords' decision in Haward

(A) THE FACTS AND ISSUES AS DEFINED BY THE HOUSE OF LORDS

29 The first element of the requisite knowledge is attributability (see s 24A(4)(*a*) of the Limitation Act and [11] above). There are two relevant House of Lords decisions which discussed this issue recently: *Haward* ([2] *supra*) and *A v Hoare* [2008] 2 WLR 311. However, the latter decision is really about limitation of actions for personal injury claims and does not shed light on the issues at hand. We propose therefore to examine *Haward* instead, which we think is particularly instructive on the element of attributability. Janet O'Sullivan notes this to be the first decision in which the House had the opportunity to consider in detail the meaning and application of s 14A of the UK Act: see Janet O'Sullivan, "Limitation Act 1980 section 14A, and negligent professional advice" (2006) 22 PN 127.

30 In *Haward*, as O'Sullivan recounts, the claimant invested £60,000 in an agricultural machinery company in December 1994, thereby acquiring a controlling shareholding in it. He was advised on the acquisition (and subsequent procedure) by the defendant (a firm of accountants), whose advice was that he would need to inject approximately a further £100,000 into the company to make it profitable. However, the company's financial prospects turned out to be much worse than anticipated. Between 1995 and 1998 the claimant invested further sums totalling over £1.2m. The claimant realised by the end of 1998 that the financial position of the company was parlous and that the sums he had invested were lost. However, he did not begin to question the soundness of the defendant's professional advice until May 1999. He eventually commenced proceedings for damages in December 2001. The defendant pleaded that, in so far as the claim related to money invested before December 1995 was concerned, it was statute-barred. In reply, the claimant relied on the secondary limitation period in s 14A, alleging that he did not have the requisite knowledge until May 1999, less than three years before the issue of proceedings in December 2001.

31 The main issue in *Haward* was the degree of knowledge necessary to ascertain the date of discoverability as defined by statute. Specifically, as O'Sullivan notes, the precise issue was how to reconcile the requirement of attributability with the wording in s 14A(9) (corresponding to s 24A(5) of our Limitation Act) rendering irrelevant "knowledge that, as a matter of law, an act or omission did or did not amount to negligence" (see O'Sullivan at 128). After all, the claimant in *Haward* clearly knew long before December 1998 that he had relied on the defendant's advice, and invested money in what turned out to be a hopelessly loss-making company. But he did not appreciate until later that the defendant might be responsible, or what the defendant should have done differently. How ought the courts to isolate the specific knowledge required? When the matter reached the House of Lords, Lord Mance succinctly summarised the problem at [94] as follows:

> What is involved in knowledge that damage was "attributable" to an act or omission alleged to constitute negligence? How and at what level of particularity is such an act or omission to be described? And at what point does it become a (statutorily irrelevant) matter of law whether such an act or omission involved negligence?

(B) ANALYSIS BY THE HOUSE OF LORDS

32 The judicial task of ascertaining something as abstract, unquantifiable and fluid as knowledge is not always simple. Knowledge baffles precise description as it is paradoxically easier to describe what it is not than what it is. As Lord Mance's quoted speech aptly demonstrates, knowledge is not a subject capable of precise definition; this in turn sometimes makes a definitive ascertainment at a precise point of time difficult. While it might be easy to state in a few words the requisite knowledge, as the Limitation Act has ambitiously attempted, it can be a complex challenge as well as a painstaking task to examine and demarcate the various layers of knowledge which are likely to have existed in reality. That said, often, however, the task is not unduly challenging. In *Haward*, the prosaic approach adopted by the judge, at first instance, only involved ascertaining, as Lord Nicholls

of Birkenhead approvingly observed at [17]:

> … that [the claimant] knew all the material facts as they occurred. He knew the terms of [the defendant's] retainer, he knew the advice [the defendant] gave him, and he relied on that advice, with the consequence that he lost his money. The causal connection between the advice and the damage was patent and obvious. The only thing [the claimant] did not know was that [the defendant's] firm was (allegedly) negligent, or that he had a cause of action against the firm; but those matters are irrelevant.

As can be seen, the judge at first instance in *Haward* had analysed the facts required by s 14A(8) (corresponding to our s 24A(4)) stripped of any hint of "fault" language, lest he should stray into territory forbidden by s 14A(9) (corresponding to our s 24A(5)). In doing so, he was following the approach of the English Court of Appeal in previous cases, which, as Lord Walker of Gestingthorpe explained in *Haward* (at [67]), "has firmly rejected any language which suggests, even in the least technical terms, that some fault or mishap has occurred" (see also, for example, the comments of Sir Thomas Bingham MR and Steyn LJ in *Dobbie v Medway Health Authority* [1994] 1 WLR 1234 ("*Dobbie*")).

33 However, in statements which insist on practical realities over fine legal distinctions, this rigid separation of "fact" from "fault" was rejected by the majority of the House of Lords in *Haward*, with Lord Walker expressing doubt as to "whether the insistence on extremely non-judgmental language [as required in *Dobbie*] is required by s 14A(9)" (at [67]), and his Lordship thought that "it may in some cases ignore the realities of the situation" (*ibid*). So on the facts in *Haward*, the defendant's conduct alleged to constitute negligence was the giving of "flawed advice" (at [19]), not just the giving of advice; and the law lords referred to the need for knowledge that the advice was "defective" (at [23]) or that the defendant had "slipped up" (at [24]).

34 In so deciding, the House of Lords expressly applied the test adopted by Hoffmann LJ in *Hallam-Eames v Merrett Syndicates Ltd* [1996] 5 Re LR 110 at 114 that "the act or omission of which the plaintiff must have knowledge must be that which is causally relevant for the purposes of an allegation of negligence", a notion expressed by Purchas LJ in *Nash v Eli Lilly & Co* [1993] 1 WLR 782 at 799 ("*Nash*") (referring to the equivalent wording for personal injury claims in s 14 of the UK Act) as knowledge of "the essence of the act or omission to which the injury is attributable". In other words, the expression "attributable" in s 14A(8)(*a*) (corresponding to our s 24A(4)(*a*)) means that time does not begin to run against a claimant until he knows there is a *real* possibility that his damage was caused by the act or omission in question. Mere knowledge of circumstances without a real appreciation of what these mean in the context of a potential damage is not sufficient. As O'Sullivan ([29] *supra* at 129) explains, the question as formulated by the House of Lords in *Haward* is essentially linguistic: How would you most naturally describe what the claimant is complaining about? So 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 knows the factual essence of his complaint*.

35 Adopting this approach in *Haward*, the House of Lords decided against the claimant. This was because the claimant did not discharge the burden of proving that he did not know of deficiencies in the defendant's advice until less than three years before commencing proceedings. Lord Nicholls explained as follows (at [24]):

> After all, the disparity between [the defendant's] advice and the company's disastrous losses stared [the claimant] in the face long before December 1998.

In the final analysis, as O'Sullivan incisively observes (at 130), there are sound policy reasons not to delay the running of time until the date when the claimant knew precisely why the defendant was negligent, or what the defendant should have done differently. This would unjustifiably extend the scope of the discoverability regime, assist dilatory claimants to the detriment of defendants and expand s 14A to "cover cases that had nothing whatever to do with latent damage or losses" (*Haward* at [54]). What is required is a practical and workable solution which resolves the tension we have noted earlier at [2] of these grounds of decision.

(2) Local exposition on the requirement of attributability

36 Not surprisingly, the broad principles endorsed in *Dobbie* ([32] *supra*), and *Nash* (as later accepted by the House of Lords in *Haward*), have been accepted by the High Court in *Tan Yang Chai v Kandang Kerbau Hospital Pte Ltd* [1997] 3 SLR 399, albeit without any in-depth analysis. We respectfully agree with the House of Lords' exposition of the law and hold that, for the requirement of "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 knows of the factual essence of his complaint*. Knowledge in this sense is to be interpreted in broad terms of the facts on which the plaintiff's claim is based and of the defendant's acts or omissions and knowing that there is a real possibility that those acts or omissions have been a cause of the damage. It also must be emphasised that a person's knowledge includes (according to s 24A(6) of the Limitation Act):

> … knowledge which he *might reasonably have been expected to acquire* —
>
> (*a*) from facts observable or ascertainable by him; or
>
> (*b*) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek.
>
> [emphasis added]

Material facts to consider it sufficiently serious to justify instituting proceedings

37 We now consider the requirement in s 24A(4)(*d*), which alludes to knowledge:

> … 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.

From the above citation, there are clearly two sub-elements which deserve some elaboration.

38 First, as to material facts, the High Court in *Prosperland Pte Ltd v Civic Construction Pte Ltd* [2004] 4 SLR 129 ("*Prosperland*"), the High Court correctly held that for time to start running under s 24A of the Limitation Act, an injured party was not required to know that he had a possible cause of action. If it were otherwise, it would seriously undermine the stipulation in s 24A(5) that 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 ss 24A(2) and 24A(3).

39 Second, in relation to the further requirement of "sufficient seriousness", Andrew McGee notes in *Limitation Periods* (Sweet & Maxwell, 5th Ed, 2006) at p 122 that, with respect to s 14A of

the UK Act, it is not at first sight easy to understand why a claimant would consider any damage not "sufficiently serious" to justify the bringing of an action "if the (frequently unrealistic and counterfactual) assumption is made that the defendant does not deny liability and has the money to meet a judgment". Thus in *Joan Horbury v Craig Hall & Rutley* (1991) 7 PN 206 at 212, Judge Bowsher QC said that damage costing only £132 to repair was "sufficiently serious" as defined under the UK Act, although the judge expressly admitted that a claimant might well not have been prepared to sue a defendant who disputed liability. In our view, while "sufficient seriousness" could have been better defined in the Limitation Act, it is not a moot requirement as implicitly suggested by McGee. It simply means that the action considered must not be frivolous or wholly without merit, taking into account the effort required in instituting a court action. Were it otherwise, there would not be an effective control mechanism to limit the knowledge required under s 24A(4) of the Limitation Act.

Degree of knowledge

40 Finally, we think that the courts appear to have quite uniformly read into the provision the requirement that the degree of knowledge be reasonable rather than absolute or certain. Thus, while s 24A(4) defines the *type* of knowledge required, the courts have read into the provision the *degree* of knowledge required. This is where the analysis in cases fades in and out of the express statutory requirements of s 24A (or the equivalent UK provisions) and extra-statutory references to the requirement that knowledge need not be absolute but reasonable emerge. In saying this, we are aware that the distinction between the *type* and *degree* of knowledge required is often fine, but it is important to distinguish the two conceptually. The former defines the *content* of the knowledge required, *viz*, how, for example, the knowledge must be linked to the defendant's act. The latter defines the *extent and certainty* of the knowledge and, to use the analogy from the former sentence, how *strong* the link is. However, surprisingly, the above distinction between type and degree of knowledge does not appear to have been always carefully made both in the statute and case law.

41 What then is the degree of knowledge required? In *Haward* ([2] *supra*), the House of Lords held that knowledge does not mean knowing for certain and beyond possibility of contradiction (see, for example, *Haward* at [9]). The same position has been adopted locally. It suffices to refer to only one of such cases. In *Prosperland* ([38] *supra*), the High Court approvingly referred to *Halford v Brookes* [1991] 1 WLR 428, where Lord Donaldson of Lymington MR noted at 443 as follows:

> The word ["knowledge"] has to be construed in the context of the purpose of the section, which is to determine a period of time within which a plaintiff can be required to start any proceedings. In this context "knowledge" clearly does not mean "know for certain and beyond possibility of contradiction." It does, however, mean "know with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking legal and other advice and collecting evidence." *Suspicion, particularly if it is vague and unsupported, will indeed not be enough, but reasonable belief will normally suffice*. [emphasis added]

Thus, reasonable belief rather than absolute knowledge is enough to start time running. This has also been accepted by the House of Lords in *Haward*. We respectfully concur with this measured approach. At the risk of stating the obvious, rigid rules in this area will not conduce towards clarity. Each case will turn on its facts.

Summary of the applicable law

42 Thus, to summarise the applicable principles as to the requisite knowledge under s 24A(4) of the Limitation Act:

(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.

We now explain the application of these principles to the facts at hand.

Application of the law to the present case

A preliminary objection: Facts taken into account when considering knowledge

43 A preliminary objection on the part of the appellant must first be dealt with. The appellant's present counsel has made much of the allegedly unsatisfactory manner in which the Judge dealt with the time-bar issue. He implied that, because the transcript of the proceedings stopped at 12.37pm on 12 September 2007 and resumed again on 13 September 2007 with both counsel making submissions on the time-bar issue, the Judge exercised his discretion to decide the time-bar issue as a preliminary issue incorrectly. He further alleged that the Judge ought to have heard both parties in full rather than confine himself to a statement of agreed facts filed by both parties on 13 September 2007.[note: 2]

44 However, it is clear from the documentary evidence that the appellant's former counsel and the respondents' counsel must have agreed to have the time-bar issue decided as a preliminary issue by the Judge. Why else would they have participated in tendering a statement of agreed facts on 13 September 2007 together with a document setting out the preliminary issues to be determined by the Judge dated 12 September 2007?[note: 3] This must surely mean that both parties agreed to have the time-bar issue determined as a preliminary issue by the Judge and thereafter worked together to formulate these precise issues and also to compile the statement of agreed facts. Although the appellant has changed his counsel for the present appeal, he was nevertheless still bound by this agreement.

45 In any event, as will be seen, no injustice has been occasioned to the appellant even if we confined ourselves (which we did) to the facts as set out in the statement of agreed facts and the documents annexed thereto. These materials more than adequately show that the appellant had the requisite knowledge (and more) under s 24A(3)(*b*) more than three years before the date on which he commenced the present proceedings against the respondents.

Whether the appellant had requisite knowledge prior to 17 March 2003

46 Before us, counsel for the appellant rehearsed the same arguments made before the Judge on this point. However, it was additionally urged upon us that there was nothing more the appellant could have done since he had relied on advice given by the respondents and/or his own solicitors, who had not given him any advice on seeking redress from the respondents. Therefore, he could not be imputed with the requisite knowledge as he had relied on professional advice which he had reasonably then viewed as being correct.

47 From *Haward* ([2] *supra*), it is clear that the requisite knowledge on the part of the appellant for the element of attributability is the knowledge that something was amiss with the respondents' level of supervision and certification process. It is enough that the appellant knew of the nature of the dispute. The evidence shows clearly that this knowledge was acquired well before three years prior to 17 March 2006, *ie*, before 17 March 2003. In our view, the appellant had knowledge of this fact: (a) during the course of the Project, including sometime after the termination of the Contract; and/or (b) at the very latest, at the time of the service of the notice of arbitration when the allegations made against the respondents by the Contractor surfaced; and (c) certainly when the claim documents were exchanged in the course of the arbitration. Bearing in mind that only *reasonable* suspicion and *not* absolute certainty is required, the requisite knowledge was acquired at the very latest when the arbitration commenced in 2000 and 2001 but definitely well before the interim award was made on 7 April 2003 (which made such knowledge absolutely *certain*), *notwithstanding the absence of advice from the respondents and/or the appellant's own solicitors*. The relevant documents, which were at least cited, if not reproduced in arguments presented before the Judge as part of the statement of agreed facts, will now be discussed.

(1) Knowledge acquired during the course of the Project

48 In our judgment, two documents clearly demonstrated that the appellant reasonably knew during the course of the Project, including sometime after the termination of the Contract, that his damage suffered could be attributable to the respondents.

(A) MINUTES OF MEETING DATED 12 MARCH 1999

49 At a meeting on 11 March 1999 between the appellant and his consultants, including the respondents, the respondents advised the appellant of the consequences of terminating the Contract. In the minutes of meeting dated 12 March 1999,[note: 4] it was recorded (at para 2.3) that "PIAI [the firm of architects to which the respondents belonged] had highlighted to the Client [the appellant] on the consequences of the termination of the Contract". It was stated that:

> On the final judgment, should the issuance of Termination Certificate be shown to have been unjustified in the verdict, the Contractor shall be entitled to compensation from the Employer [the appellant] for all damage and loss suffered by him as a consequence of the termination of his employment.

It was further recorded at para 2.4 the reasons why the respondents regarded the Contractor to be in default of the Contract, thus setting out the advised grounds for its termination.

50 Thus, the appellant, in eventually terminating the Contract on 19 March 1999, knew by that time that he was relying on the grounds provided by the respondents for terminating the Contractor and that if such grounds were faulty, he would be liable to compensate the Contract. This is still not enough for the purposes of attributability in s 24A(3)(*b*) because the appellant still did not know that the respondents' advice was perhaps faulty (as required by *Haward*), but it provides the backdrop from which reasonable suspicion can be inferred from further evidence.

(B) THE CONTRACTOR'S NOTICE OF ARBITRATION DATED 22 MARCH 1999

51 By a letter dated 22 March 1999 to the appellant, the Contractor disputed the validity of the Termination Certificate and gave notice of arbitration.[note: 5] The significance of this document is that the appellant knew by this time that, in reliance upon the respondents' advice, he had terminated the Contractor's employment and the Contractor was disputing this termination. The appellant also knew, as the respondents told him, of the adverse consequences if the arbitration process found that the termination was not in order. These cumulative facts ought to have precipitated a reasonable suspicion that the respondents' advice could be faulty (although negligence as a matter of law is not needed), as required by *Haward*. This was in fact what the Judge surmised, and with good reason too, we may add. The Judge held that time began to run when the Contractor notified the appellant that it was challenging the Notice of Termination on the ground that the Termination Certificate was invalid. This reasonably is the requisite knowledge, including attributability, under s 24A(4) for the purposes of s 24A(3)(*b*) of the Limitation Act. By 22 March 1999, the appellant reasonably should have suspected that the respondents' advice could be faulty.

52 However, taking the appellant's case further and assuming *arguendo* that such knowledge did not materialise at this time because the appellant could not know that the respondent's advice was faulty, further documentary evidence showed that, before 17 March 2003 (which was when the time-bar guillotine fell), a reasonable degree of knowledge was acquired by the appellant in the course of the arbitration proceedings.

(2) Knowledge acquired during arbitration

53 In the re-amended points of claim dated 19 July 2001 ("the Re-Amended Points of Claim") filed by the Contractor in arbitration proceedings[note: 6] against the appellant, the Contractor made certain allegations against the respondents for failing in their duties as architect. These now plainly constituted the core of the appellant's case of alleged breaches against the respondents.

54 First, the Contractor alleged (at para 17 of the Re-Amended Points of Claim) that the respondents had not issued any properly constituted notices against them in respect of any other possible default in the Project works or the Contract. Secondly, the Contractor stated (at para 20 of the Re-Amended Points of Claim) that from the timing and purport of the Termination Certificate and, subsequently, of the Notice of Termination, it appeared that these were an afterthought conceived by the appellant and the respondents to exclude the Contractor from further involvement in the Project. All of these ought to have drawn the appellant's attention to the fact that something could be wrong with respect of the respondents' duties.

55 More particularly, with respect to the appellant's claim against the respondents for failing to supervise, the Contractor noted at para 48 of the Re-Amended Points of Claim that there was a "severe lack of finality on the part of the [appellant] and/or the [respondents] in the localising and identification of alleged defective tilework". This at least constituted a part of the claim under para 7(a) of the Amended Statement of Claim in the present proceedings (see [7] above). This meant that the appellant was alive to the possibility in March 2000 that the respondents failed to exercise adequate supervision.

56 As for the appellant's claim under para 7(b) of the Amended Statement of Claim (see [7] above), the Contractor at para 44 of the Re-Amended Points of Claim, in reference to the Interim Payment Certificate (which now forms the subject of a claim by the appellant against the respondents) (see [22] and [24] above), averred that "it is purely a case of bad faith and

unconscionable conduct on the part of the [appellant] and/or … [the respondents] … that they should, jointly or individually, repeatedly obstruct the [Contractor's] works". This should have raised at least reasonable suspicion on the part of the appellant that the respondents' issuance of the Interim Payment Certificate was wrong.

57 Finally, as for the appellants' claim under paras 7(c) and 7(d) of the Amended Statement of Claim (see [7] above), the Contractor at para 59 of the Re-Amended Points of Claim made detailed allegations that the respondents breached certain procedural requirements in issuing the Termination Certificate. These are further elaborated from paras 60 to 63 of the Re-Amended Points of Claim. In particular, the Contractor pointed out at para 62 that "the abovecited correspondence from the [respondents] … fail to satisfy the procedural requirements of Clauses 32(3)(d), 32(3)(e) and 32(3)(h) of the [Contract] either in part or at all". These allegations ought to have raised reasonable suspicions on the part of the appellant in or about 2000 that the respondents had breached their duties in respect of issuing the Termination Certificate.

58 Of course, the appellant claimed in the present appeal that the respondents had repeatedly reassured him that their advice was sound and that the Contractor would not succeed in its arbitration claim against the appellant (see also the same assertion made in the appellant's re-amended points of defence and counterclaim dated 30 August 2001[note: 7] at para 40). However, it should be remembered that what is required is not absolute certainty that the respondents were in breach and/or negligent but a reasonable suspicion. The issue of the interim award in 2003 would have made this knowledge a near certainty. However, the facts hitherto cited would have at least raised more than a reasonable suspicion. Coupled with the knowledge acquired prior to the arbitration, in particular the connection between the respondents' advice and the consequences of wrongful termination, it would require a complete suspension of disbelief to think that the appellant had not, way back in 1999 or, at the very latest, in July 2001 when the Re-Amended Points of Claim were filed by the Contractor, at least reasonably suspected that the injury or damage he suffered was attributable in whole or in part to the act or omission which was alleged to constitute negligence, nuisance or breach of duty on the part of the respondents. The appellant was entitled to choose to rely on the correctness of the respondents' advice; however, that did not stop time from running from 2001, when the requisite knowledge was acquired.

Conclusion in relation to requisite knowledge under section 24A(3)(b)

59 In the final analysis, from the voluminous sets of documents, affidavits, *etc*, submitted at the arbitration, issues and doubts relating to the Interim Payment Certificate, the Termination Certificate, and various other aspects of the respondents' supervision had plainly crystallised more than three years prior to 17 March 2006. The appellant would have been reasonably suspicious (though not absolutely certain) that the injury or damage he suffered was attributable in whole or in part to the act or omission of the respondents. The requirement of "sufficient seriousness" must also have been fulfilled as the appellant was actually being sued by the Contractor. In short, this is factually more than the requisite knowledge under s 24A(3)(*b*) and the appellant would thus have had the knowledge required for bringing an action for damages against the respondents at the latest from about July 2001 (see [58] above).

60 As to the overarching *degree* of knowledge required, the appellant may have ignored or suppressed his reasonable suspicions, but this is legally irrelevant. The law cannot bend over backwards to accommodate an ill-conceived course of action on the unprincipled basis of sympathy. The period of limitation continued to progressively run out. The appellant need not have known for certain. The test is one of reasonable belief in the context of having knowledge of objective facts. Applying this test, there is no doubt he would have had the requisite *degree* of knowledge.

61 In conclusion, therefore, three years from July 2001 is July 2004 – unfortunately, the present proceedings were only commenced in March 2006. Accordingly, the present proceedings are time-barred even under s 24A(3)(*b*) of the Limitation Act.

What should the appellant have done?

62 Given the practical importance of the procedural conundrum often raised in similar situations, we think it will be helpful to provide some guidance on what claimants ought to do so as not to fall foul of the limitation legislation in similar situations. In our view, on the facts of the present case, the appellant ought to have taken out protective proceedings in relation to the respondents once the difference of views on liability for the defective works surfaced. Alternatively, he could, at the very least, have initiated proceedings soon after the interim arbitration award was issued. Or he could even have reached an understanding with the respondents to defer initiating a claim against the latter until the dispute with the Contractor was resolved and expressly preserved his rights failing a satisfactory resolution. This is not a case where the law and available remedies have failed the appellant (see also s 15(1) of the Civil Law Act (Cap 43, 1999 Rev Ed) read with s 15(3) which entitle to appellant to seek contribution from any other person liable in respect of the same damage unless he is time-barred from doing so). Rather, it seems that he was indolent and/or took an imprudent view of how best to enforce his remedy.

63 Here, the appellant appears to have opted to entirely rely on the advice of the respondents and/or his solicitors that nothing further had to be done apropos the termination of the Contract until after the outcome of the arbitration proceedings. This was of course not a wholly untenable or inappropriate course of action, but if the appellant chose to have implicit trust in his solicitors' and/or the respondents' advice, then he has to take the *legal* consequences of an unhappy sequel.

Conclusion

64 For the reasons above, we dismissed the appeal with costs and the usual consequential orders.

[note: 1]See Record of Appeal, vol II at p 28

[note: 2]See Appellant's Core Bundle, vol II at p 53; *Record of Appeal*, vol II at p 69

[note: 3]See Appellant's Core Bundle, vol II at p 51; *Record of Appeal*, vol III-E at p 1628

[note: 4]See *Record of Appeal*, vol III-B at p 528

[note: 5]*Record of Appeal*, vol III-B at p 548

[note: 6]See *Record of Appeal*, vol III-B at p 553

[note: 7]See *Record of Appeal*, vol III-B at p 597