Prosperland Pte Ltd v Civic Construction Pte Ltd and Others
[2004] SGHC 157

Case Number : Suit 514/2002

Decision Date : 29 July 2004

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Thio Shen Yi, Derek Loh and Adrian Tan (TSMP Law Corporation) for plaintiff; Kelvin Chia (Balkenende Chew and Chia) for first defendant; Tan Liam Beng and Lek Yi Siang (Drew and Napier LLC) for second and third defendants

Parties : Prosperland Pte Ltd — Civic Construction Pte Ltd; Chia Kok Leong; D. Exodus Architects & Planners Pte

Building and Construction Law – Building and construction contracts – Defects in condominium development – Property transferred to management corporation – Whether plaintiff developer was right party to sue under contract

Building and Construction Law – Building and construction contracts – General rule that plaintiff may only recover substantial damages for breach of contract if plaintiff suffered loss – Whether any exception to rule for building and construction contracts

Civil Procedure – Limitation – Meaning of "knowledge" under s 24A(2)(b) Limitation Act – Whether plaintiff's claims against defendants time-barred – Section 24A(2)(b) Limitation Act (Cap 163, 1999 Rev Ed)

Civil Procedure – Limitation – Plaintiff having two separate causes of action against defendants – Whether barring of one claim rendered other claim time-barred – Section 24A(2)(b) Limitation Act (Cap 163, 1999 Rev Ed)

29 July 2004 Judgment reserved.

Judith Prakash J:

Introduction

1 On 22 August 2003, an order was made providing for certain preliminary issues arising in this action to be tried. Those preliminary issues fall into two categories, *viz*, whether the plaintiff's claims against the defendants or any of such claims are time-barred and, secondly, whether the plaintiff is the proper party to bring these claims.

2 The plaintiff, Prosperland Pte Ltd ("Prosperland"), was the developer of a condominium at 7 Claymore Road ("the condominium" or "the building"). The condominium comprises an apartment block approximately 20 storeys high. Its external facades are tiled with ceramic tiles. Extensive use is made of glass block walls at staircase areas and lift lobbies. Construction of the building was completed in August 1993. On 13 May 1998, Management Corporation Strata Title Plan No 2201 ("the MCST") was constituted as a body corporate and it then became the proprietor of the common property of the condominium. Prosperland issued the writ in this action on 2 May 2002.

3 The defendants were the persons involved in the construction of the condominium. The first defendant, Civic Construction Pte Ltd ("Civic"), was the main contractor whilst the second and third defendants were the architects employed to design and plan the building and to inspect and supervise

its construction. The second defendant, Mr Chia Kok Leong, was the person that the third defendant, D. Exodus Architects & Planners Pte Ltd ("DEA"), designated to carry out its responsibilities. Two third parties have been brought into the proceedings but they played no part in the hearing on the preliminary issues.

4 Prosperland's claim against Civic is for breach of the building contract and/or negligence arising out of the defective construction of the condominium. Its claims against DEA and Mr Chia are for inadequate supervision and design. Prosperland also has a claim against Civic for breach of a document dated 6 August 1993 known as the "Joint Guarantee for Tile Adhesives" ("the guarantee"). Prosperland's claims involve two aspects of the construction works:

(a) the external facades – Prosperland alleges that the external wall tiles of these facades are defective and as a result many of them have de-bonded and some of them have been dislodged; and

(b) the glass blocks installed in the lobbies and stairways – many of these are damaged.

DEA and Mr Chia have filed a joint defence and where it is not necessary to distinguish between them, I will refer to them jointly as "the architect".

The preliminary issues

5 Two sets of preliminary issues were formulated. Amalgamating them, for brevity, the issues are:

(a) whether Prosperland had the requisite knowledge, under s 24A(3)(b) of the Limitation Act (Cap 163, 1999 Rev Ed) ("the Act"), to bring an action for damages against Civic in respect of the alleged damage to the external tiles and/or glass blocks at the condominium ("the alleged damage") based on the alleged breach of the building contract between Prosperland and Civic, and knowledge of their right to bring such an action, within the period of three years prior to the date of commencement of this action ("the relevant period");

(b) whether Prosperland had the knowledge required, under s 24A(3)(b) of the Act, to bring an action in respect of the alleged damage against the architect based on alleged negligence and/or breach of contract, and knowledge of their right to bring such an action, within the relevant period;

(c) whether Prosperland's claims against Civic and the architect for the alleged damage were brought within six years from the date on which the respective causes of action accrued;

(d) based on the answers to issues (a) and (b), whether Prosperland's claims against Civic and the architect for the alleged damages were time barred under ss 6(1)(a) and 24A(3) of the Act;

(e) whether the guarantee was in the nature of a deed of indemnity or warranty;

(f) whether Prosperland has suffered any loss in respect of the alleged damages pursuant to the alleged negligence and/or breach of contract and/or breach of guarantee;

(g) whether the MCST, rather than Prosperland, is the proper party to sue Civic and the architect in respect of the alleged damages; and

(h) based on the answers to (f) and/or (g), whether Prosperland may claim more than nominal damages against Civic and the architect.

The first four issues are in respect of the limitation point whilst the last three relate to the proper party point.

6 In its closing submissions, Prosperland dealt with the limitation point solely in relation to s 24A(3) of the Act. It made no submissions on s 6 of the Act. Prosperland has, therefore, accepted that its claims against the defendants were not brought within the normal six-year limitation period from the date of accrual of the relevant cause of action. Thus, I need not comment further on this point. As for the fifth issue dealing with the guarantee, in his final submissions counsel for Civic conceded that it made no difference to Civic's liability under the guarantee whether the document was in its true nature a guarantee or a warranty. So, this issue need not detain me either.

The law relating to s 24A(3) of the Act

7 Under s 6(1)(a) of the Act, an action based on contract or tort must be commenced within six years of the date on which the cause of action arose. Section 24A, however, extends the time limits for contractual or tortious actions in respect of latent injuries and damage caused by latent defects. In such cases, the time bar only sets in three years from the date on which the prospective plaintiff acquired the two types of knowledge that the section describes. The actual wording of s 24A, so far as relevant, is:

(1) This section shall apply to any action for damages for negligence, nuisance or breach of duty …

(2) …

(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) …

(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 that 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 subsection (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.

8 The equivalent of this section in the UK is ss 11 and 14 of the UK Limitation Act 1980 (c 58) ("the UK Act"). Those sections have been considered in various English authorities and the parties before me accepted that the cases of *Nash v Eli Lilly & Co* [1993] 1 WLR 782, *Heathcote v David Marks & Co* [1996] 3 EG 128, *Higgins v Hatch & Fielding* [1996] 1 EGLR 133 and *Halford v Brookes* [1991] 1 WLR 428 contained principles that should apply to the issues here. As the principles are not in dispute, I will state them shortly.

9 First, if the writ is not issued within the prescribed period from the date when the cause of action arose, the onus is on the plaintiff to plead and prove that the date on which it had the requisite knowledge was a date within the prescribed period preceding the date of issue of the writ: see *Nash v Eli Lilly & Co,* [8] *supra*, at 796. Applying that principle to this case, since the action was started on 2 May 2002, it is for Prosperland to prove that before 2 May 1999 it did not have the knowledge prescribed by s 24A. I note here that in further and better particulars furnished by Prosperland it has pleaded that it only acquired the necessary knowledge from May 1999 onwards.

10 Second, for time to start running under s 24A, an injured party is not required to know that he has a possible cause of action. What he must know are the material facts founding that cause of action: see *Higgins v Hatch & Fielding*, [8] *supra*, at 137. In this case, the material facts founding the causes of action against Civic and the architect would be the existence of defects in the tiled façade and in the glass blocks that were sufficiently serious to justify starting an action for damages and the fact that the defects were attributable to acts or omissions of those parties.

11 Third, as *Nash v Eli Lilly* expressed it at 796, "knowledge" for the purposes of s 24A is a state of mind experienced by a plaintiff which actually existed or which might have existed had the plaintiff, acting reasonably, acquired knowledge from the facts ascertainable by him or which he could have acquired with the help of such expert advice which it was reasonable for him to obtain. By s 24A(6), "knowledge" for the purposes of s 24A(4) includes knowledge reasonably expected to be acquired. A firm belief held by the plaintiff that the damage was attributable to the acts or omission of the defendant, but in respect of which he thought it necessary to obtain reassurance or confirmation from experts, would not be regarded as knowledge until the result of his inquiries was known to him or, if he delayed in obtaining that confirmation, until the time when it was reasonable for him to have got it. If the plaintiff held a firm belief, which was of sufficient certainty to justify the taking of the preliminary steps for proceedings by obtaining advice about making a claim for compensation, then such belief would be knowledge and the limitation period would begin to run.

12 In *Halford v Brookes*, [8] *supra*, at 443, Lord Donaldson of Lymington MR said that:

> ["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 the 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.

Thus, reasonable belief rather than absolute knowledge is enough to start time running.

13 Bearing the above principles in mind, I turn to consider the facts relating to the discovery by Prosperland of the damage to the external tiled façade and the glass blocks with a view to determining the point of time at which Prosperland had the "knowledge" required by s 24A so that the extended time started to run against it for the purpose of starting proceedings.

The external tiled façade

14 The main witness for Prosperland was Mr Ng Chee Kheng, its property manager. Until November 2000, Mr Ng also served as property manager of Goldvein Trading Pte Ltd, the company that acted as the managing agent of the MCST from its incorporation in May 1998 up till 1 January 2001. Evidence was also given by Mr Law Pui Sang, the building supervisor of the condominium from 1994 onwards. Mr Law reported directly to the property manager of the managing agents of the building. When Goldvein Trading Pte Ltd was the managing agent, Mr Law had reported to Mr Ng. Prosperland's position was that the de-bonding and falling tile problem comprised two separate events. The first involved the de-bonding of a single tile whilst the second event consisted of a number of tiles falling off and the discovery that many other tiles on the external façade had de-bonded.

15 As part of Mr Law's duties, he would carry out a visual inspection on the building about once a month to check its façade. In order to check whether there was any unevenness in the tile façade, he would stand as close to the wall as possible and look upwards. Unevenness in the façade would indicate that a tile was no longer adhering properly. In August 1997, Mr Law noticed a de-bonded wall tile on the fourth storey of the building. He reported his findings to Mr Ng.

16 At the time Mr Ng thought that this was an isolated incident and that the de-bonding was due to the tile having been improperly installed. As the building has approximately 100,000 tiles on its façade, he did not think that one de-bonded tile called into question the integrity of the entire façade. At the time, too, the single de-bonded tile did not constitute a hazard. Nevertheless, Prosperland notified Civic of the loose tile. Civic carried out an inspection of the tile and then informed Prosperland that the "loose" tile was not due to de-bonding. It stated that the tile had not in fact become loose but the build up of some stress had caused it to crack. Civic denied responsibility for the crack and told Prosperland to take its own measures to replace the cracked tile. Subsequently, the tile was replaced. There is some dispute as to whether the remedial measures were taken by Civic or Prosperland itself but there is no doubt that the defect was rectified.

17 After this incident, Mr Law was given instructions to conduct more regular inspections of the external façade. He then instituted a practice of weekly visual inspections. He did not notice any other de-bonding tiles for a considerable period thereafter. It was only in August 1999 that Mr Law noticed that some tiles at the sixth and seventh storeys of the building had de-bonded. He reported

the damage to Mr Ng. In September 1999, two tiles fell from the 20th storey of the building. Mr Ng and Mr Law then conducted another visual inspection of the building and they found that there were de-bonded and uneven tiles on the 12th storey and between the fourth and fifth storeys. Notice of all these incidents and discoveries was given to Civic.

18 Civic denied that it was liable for the de-bonded and uneven tiles. However, it assured Prosperland that it would investigate the cause of the problem. One of Civic's directors, Mr Steven Koh Tian Seng, owned a flat in another development constructed by Prosperland and, as a result, the relationship between Prosperland and Civic was cordial at that time. Prosperland was therefore happy to permit Civic time and opportunity to investigate the problem.

19 After carrying out an inspection, Civic wrote to Prosperland on 5 October 1999 denying liability. It claimed that the wall tile problem was a maintenance problem but it did offer to attend to the problem and to continue investigations as to what had caused two tiles to fall off the façade. Mr Ng did not accept this claim. He suspected that the cause of the de-bonding and unevenness of the wall tiles was poor construction.

20 As the cause of the problem had still not been determined, Civic suggested that the parties conduct a joint inspection with the tile adhesive supplier. This inspection took place in January 2000. Thereafter, Civic continued to deny liability on behalf of itself and the adhesive supplier but did offer to rectify the defective tiles. In March 2000, Civic replaced the tiles that had fallen off. It did nothing about the uneven surface. Prosperland and the MCST were not happy and engaged a building surveyor to determine the cause of the problem. In May 2000, the surveyor's report was issued and it indicated that the problem with the wall tiles was due to poor workmanship and missing or incomplete movement joints.

21 On the above evidence, Prosperland's position is that the earliest that it could have had knowledge of the seriousness of the defects in the external façade was in September 1999 when it discovered that two tiles had fallen off. This was when it might have suspected that the problem was not isolated. However, Prosperland asserts that it only acquired sufficient actual knowledge for the purposes of limitation in May 2000 when it obtained the building surveyor's report. Civic's position is that Prosperland had the requisite knowledge in August 1997 whilst the architect's position is that Prosperland had this degree of knowledge as early as September 1997, alternatively as early as January 1999.

22 Both Civic and the architect rely heavily on the evidence of one Mr Bay Lin Pin. Mr Bay joined Prosperland as its property and project manager in 1980. In 1990, while remaining head of its property and project division, he also became a director of the company. He was the director of Prosperland who was in charge of the condominium from the time of inception of the project until he left the company in August 2000. In his affidavit, Mr Bay stated that before the wall tiles for the façade of the project were ordered, he had instructed one of his subordinates to write a memorandum to Mr Henry Ngo, the managing director of the group of companies of which Prosperland is a member, advising him against using homogeneous tiles for the project as Mr Bay anticipated that there would be problems of the same nature as had been experienced in other buildings with external wall tiling.

23 Mr Bay stated that the first residential development undertaken by Mr Ngo's group to use tiles as the finish for its external walls was 18 Anderson Road. After 18 Anderson Road was completed, it had problems with widespread efflorescence and some de-bonding of tiles. The external wall tiles used for 18 Anderson Road were the same as those used for the condominium. Mr Bay recalled that, in respect of the condominium, there was de-bonding of a tile at the fourth storey some time in 1997. He instructed one Mr Chia Cheong Foo ("CF Chia") to monitor the situation and follow up

with Civic regarding rectification. Some time thereafter, in 1997 or 1998, Mr Law informed Mr Bay that there had been some more de-bonding of tiles at two or three other different locations on the building. Mr Law showed Mr Bay and CF Chia these tiles on site. Some time in 1999, Mr Bay was informed that two tiles had fallen off the external façade.

24 When Mr Bay was cross-examined, he elaborated on his first inspection of the de-bonded tiles. He said that he and CF Chia had looked at the whole building in the company of Mr Law. Mr Law had pointed to other areas where he suspected tile de-bonding had taken place. This inspection had taken place a short while after Mr Bay was informed of the first de-bonded tile either in 1996 or 1997. By way of qualification, Mr Bay explained that the other areas where tile de-bonding had taken place were not in as serious a state as the first de-bonded tile. Mr Bay also said that when he saw these other de-bonded tiles he was concerned about there being a more widespread problem.

25 Civic submitted that de-bonding of tile façade was clearly a construction defect and not a maintenance issue. Mr Bay had testified that the matter of de-bonded wall tiles related to defects and not to maintenance. He was a chartered quantity surveyor and his views therefore carried more weight than those of Mr Ng who had had hardly any construction experience as his expertise was in valuation. Civic pointed out that even Mr Ng had agreed that in August 1997 he had believed that Civic was possibly liable for the de-bonded tile and that one of the possible causes of the de-bonding was the lack of sufficient adhesion. Civic argued that Mr Bay's evidence about there being other de-bonded tiles in 1997 (besides the de-bonded and cracked tile at the fourth storey) was true. It submitted Mr Bay appreciated the problem surrounding the wall tiles and he had thought that the de-bonded tile at the fourth storey warranted an investigation into the surrounding tiles, although no investigation was carried out in 1997 as Mr Bay was trying to convince Civic to rectify the defective work. Clearly, in 1997, Prosperland had attributed the de-bonding of the tiles to the workmanship of Civic.

26 The defendants submitted that Mr Bay knew of the de-bonded tiles in 1997 and knew that this incident justified an investigation into the state of the surrounding tiles. Further, the adhesive supplier had informed Prosperland to check the area surrounding the damaged tile. This alone was sufficient to start time running in August 1997. The fact that such an investigation – apart from visual inspections and monitoring – was not carried out at that time, did not mean that Prosperland did not have the requisite knowledge. If Prosperland's knowledge was sufficiently certain to justify it taking the steps preliminary to issuing a writ such as making a claim on the prospective defendant and taking expert advice and collecting evidence, then in terms of the *Nash v Eli Lilly* decision, it had the requisite knowledge. It did not need to act on such knowledge for time to start running. In any case, the visual inspection method adopted by Prosperland was wholly inadequate and it should have engaged a surveyor to conduct tests and to investigate the integrity of the tiled façade in 1997. Had this been done, Prosperland would have acquired sufficient knowledge in 1997.

27 I have difficulties with the above submissions. First, although Prosperland could not, strictly, be termed a lay person in relation to the construction industry since it was part of a group of companies which had carried out many developments, it was not itself a builder or architect. Simply knowing that tiled facades can present a problem from time to time does not mean that any manifestation of a problem with one tile is an unmistakable sign of problems with an entire façade. According to Mr Bay, during the course of construction, he had had conversations with Mr Koh on the difficulties that might be encountered if a tiled façade was constructed. Mr Koh himself professed that he was aware from the beginning that tiled facades may present problems. He was an experienced builder and he went down to the site to inspect the de-bonded tile after it was discovered in August 1997.

28 Despite this knowledge and experience, Mr Koh agreed in court that his recommendation then to Prosperland was that steps should be taken to replace the crack and de-bonded tile. He agreed further that he had not advised Prosperland to check the entire façade for de-bonding tiles. The inspection that Mr Koh carried out in August or September 1997 was a visual inspection. He did not think it was necessary to do a close-up inspection using a gondola because of the costs involved and because his adhesive supplier had explained that the tile de-bonded due to stress build-up at the expansion joints. Mr Koh agreed that he had not suggested to Prosperland that the stress build-up was affecting the entire building and putting the entire tiled façade at risk. So, although Mr Koh would have me believe now that he was always concerned about problems posed by tiled facades, his actions in 1997 did not reflect such concern. He was happy then to accept his adhesive supplier's explanation of a localised problem. He did not think it necessary to incur the cost of a more widespread and close-up investigation. He did not think it necessary to suggest to Prosperland that it carry out such an investigation. He did not even remember that his company had replaced the defective tile. He thought Prosperland had done it. That also shows the level of his concern. If an experienced builder like Mr Koh, who said he always had in mind the difficulties posed by tiled facades, took such a low-key attitude to the discovery of the de-bonded tile in August 1997, it would not be reasonable to insist that the less knowledgeable developer, Prosperland, should have known that this one tile was the harbinger of inevitable disaster to come. It is worth emphasising that under s 24A(4)(d) the requisite knowledge is that the damage suffered is "sufficiently serious" to justify starting legal proceedings. No one who knew only that one tile had debonded would think this damage sufficiently serious either to sue or to take any of the steps that are preliminary to an action.

29 Second, whether Prosperland acted reasonably in simply stepping up the visual inspections of the tiled façade after the August 1997 discovery instead of instigating a full-scale investigation also depends on exactly what was discovered then. Prosperland's position was that only one tile de-bonded. The only evidence that more than one tile de-bonded was that which came from Mr Bay. The problem is that, as Prosperland submitted, Mr Bay's evidence was unsatisfactory. He admitted during cross-examination that his affidavit of evidence-in-chief was not accurate and that he had given untruthful evidence under oath. Next, when he filed his affidavit in October 2003, he had not been able to refresh his memory on six-year-old events as he had no access to Prosperland's records or to the building itself. When he attempted to obtain access to the site to refresh his memory, he walked straight to the swimming pool area, even though there had been no report of de-bonded tiles on that portion of the façade. There is a strong probability that his memory was faulty.

30 Further, Mr Bay's evidence in cross-examination that there were two more de-bonded tiles in 1997 was inconsistent with his own affidavit, and the documentary record and the evidence of the other witnesses. Mr Ng, Mr Law and Mr Koh testified that in August 1997 there was one cracked and de-bonded tile. Civic's letters to Prosperland in September 1997 dealt specifically with the one tile that had cracked and de-bonded. This was after Mr Koh's inspection of the façade. There was no indication of any other tile having de-bonded or even being in danger of de-bonding. Mr Bay saw copies of these letters. He did not take issue then with the assertion that there was only one damaged tile. It was not suggested to Mr Law during cross-examination that in August 1997 there was more than one de-bonded tile and that he had shown both Mr Bay and CF Chia two additional de-bonded tiles. Finally, despite the fact that Mr Bay testified that it would be prudent to inform Civic about the other two tiles, he did not give Civic such information nor ask it to rectify those tiles. He gave the excuse that he was not sure whether the tiles were actually de-bonded or whether they stuck out due to poor workmanship. He said that since he was not able to convince Mr Koh to rectify the one de-bonded tile found at the fourth storey, it was no point asking him to look at other locations. Whilst he agreed that any de-bonded tile was potentially dangerous and should be fixed as soon as possible, Mr Bay said it was not important to fix the two other tiles because these had "not reached the stage of causing danger". There were other inconsistencies in Mr Bay's evidence on this

point but it is not necessary to go into them in detail. All in all, Mr Bay's evidence on the existence of additional damaged tiles was unconvincing.

31 Going on, therefore, on the basis that only one damaged tile was found in 1997, as the case of *Higgins v Hatch & Fielding* indicates, the test to be applied is what a reasonable person in the position of Prosperland (not an expert) would have done when he became aware of that single damaged tile. In this regard, the expert witnesses produced by Civic and DEA, Mr Julian Collins and Mr Bruce Loggie (both of whom are building surveyors), agreed that it was reasonable for Prosperland as a developer to first contact the main contractor, Civic, and discuss the problem of the tile with it. That is what Prosperland did. Having done so, all it was told was that the adhesive supplier considered the problem due to stress build-up and that it should check other tiles in the vicinity of the de-bonded tile. Prosperland was not told that it should check for de-bonding tiles on the entire façade. Prosperland submitted, on the basis of evidence given by Mr Loggie, that it would be reasonable for a developer to expect a responsible main contractor to warn him if there was imminent danger to the integrity of the tiled façade. Mr Koh agreed that Prosperland considered Civic to be a responsible contractor. He had no quarrel with that. On this evidence, I agree that since no such warning was given by Civic, it would not be unreasonable for Prosperland to conclude that there was no cause for immediate alarm.

32 Further, Prosperland's expert, Mr Mills, was quite firm that the de-bonding of one tile out of 100,000 tiles installed would not be indicative of a widespread problem. This view was supported by Civic's expert. In the report he prepared after he inspected the building in September 2003, Mr Collins went so far as to state that the external tiling of the building appeared to be in acceptable order and that his information was that two tiles had become detached in 1997. He added that that de-bonding was a minor fault which had since been made good. Mr Collins, therefore, would not have been concerned about widespread damage in August 1997 when one tile was found to be de-bonded.

33 It was submitted that instead of simply notifying the contractor of the damage, repairing it, and thereafter increasing the frequency of inspections, Prosperland should have engaged an expert to conduct an investigation as to the cause of the damage. This submission was not supported by the evidence as I have indicated above. Further, Mr Collins testified that a preliminary report involving an investigation of the damaged tile and others in its vicinity would cost $8,000. Obviously, an inspection of the whole façade would have been more expensive. One way of doing this would have been to follow Mr Loggie's recommendation of carrying out a full tap test using abseilers. According to Mr Loggie, that was the cheapest way of inspecting the whole façade and it would have cost about $20,000. In 1997, however, the use of abseilers was not common and a full inspection generally involved gondolas and scaffolding which would cost a lot more. I agree with Prosperland's submission that since only a single cracked and de-bonded tile was observed at that stage, it was a minor defect and, reasonably, all that was necessary to do was to fix it and monitor the situation visually. It would not be reasonable to require Prosperland to spend thousands of dollars pursuing an investigation that might very well turn out to be unnecessary. At the time there was no reason to believe that the de-bonded tile was anything more than an isolated incident. Mr Koh himself considered that a visual inspection of the situation was sufficient. He was accompanied by his adhesive supplier who did not, it would appear, offer any opinion to the contrary. Further, Mr Mills' opinion was to call on a consultant every time there was a problem with the building would be foolhardy. I therefore agree with Prosperland's submission that the allegation that instituting more frequent visual inspections was an inadequate response is based on *ex post facto* reasoning even though the evidence was that the early stages of de-bonding could not be observed by visual inspection.

34 Civic also submitted that Prosperland should have been alerted to the possibility of problems in the tiled façade by the reappearance of efflorescence in or around January 1999. All the experts

agreed that efflorescence indicated the existence of voids and gaps between the tiles and the wall. Mr Mills testified that the appearance of efflorescence is indicative of rainwater being able to penetrate behind the tiles. It was the symptom of a defect that had occurred in the tiles that might be due to poor workmanship. Mr Collins stated that efflorescence is caused by water entering the external wall. External walls are not designed to allow penetration of rainwater and therefore, if efflorescence appears, it is due to a defect in the wall caused either by bad workmanship or bad design.

35 There was, however, also evidence that efflorescence is a common occurrence in buildings in Singapore. Prosperland submitted that the presence of efflorescence, without more, is not indicative of a widespread problem with the entire tiled façade. It cited, in this regard, Mr Mills' evidence that efflorescence is a commonly occurring maintenance issue for buildings in Singapore. Mr Mills also said that he would not have recommended a full-scale investigation of the tiled façade simply because efflorescence had occurred in January 1999, about a year and a half after one tile had de-bonded. Prosperland also cited Mr Loggie's report that said if efflorescent staining occurs on a tiled façade it should be removed, and if it should reappear a further cleaning cycle should be undertaken. If the defect reappeared after two cleaning cycles, it would be clear that there was water ingress or egress through the structure. During cross-examination, however, Mr Loggie opined that the presence of efflorescence by itself would show that water had penetrated behind the tiles. Prosperland said that in view of the contradiction in his evidence, the considered evidence in his report should be preferred.

36 Prosperland's submission was that, based on the evidence of the expert witnesses of all the parties, the presence of efflorescence in and of itself would not suggest a problem with the tiled façade. I agree that Mr Mills' evidence supports this submission. Also, Mr Loggie's report indicated that it is only persistent efflorescence that indicates the presence of a problem. Mr Collins was the witness who was most robust on the connection between efflorescence and defective adhesion. Whilst there is evidence to suggest that efflorescence is a warning sign of tile de-bonding, there is much force in Prosperland's submission that since the experts' views differ on this point, it would not be reasonable to expect Prosperland to believe that there was any problem with the integrity of the entire tiled façade simply from the appearance of efflorescence. I accept this submission. I cannot hold that the appearance of efflorescence in January 1999 should have alerted Prosperland to the defects in the tiles.

37 The architect submitted that even if Prosperland had not actual knowledge of the widespread de-bonding of tiles in 1997, the architect could rely on the constructive knowledge of Prosperland that Prosperland might reasonably have been expected to acquire from facts ascertainable by it with the help of appropriate expert advice which it was reasonable for Prosperland to seek as provided under ss 24A(6)(b) and 24A(7) of the Act. The architect relied on the evidence of Mr Bay that the de-bonded tile at the fourth storey warranted an investigation into the surrounding tiles and that he was concerned about there being a more widespread problem when he saw the other tiles. This evidence was not, however, in my view, reliable. If Mr Bay had actually thought the de-bonded tile warranted an investigation into the surrounding tiles, there was nothing to stop him from carrying it out. He was the head of the department and his excuses about Mr Ngo being reluctant to spend money were contrived and unconvincing. In any case, there was only one de-bonded tile.

38 The architect also relied on two other pieces of evidence. First, there was Mr Bay's assertion that before the wall tiles for the façade were ordered, he had instructed CF Chia to write a memorandum to Mr Ngo advising him against using tiles for the project as he anticipated these would cause problems. Secondly, there were Mr Koh's statements in cross-examination that, in 1990 or 1991, he had asked Mr Bay and Mr Chia not to use tiles because of the incident in which tiles had fallen off the façade of the Ministry of Environment Building. Here again, the evidence is not

convincing. The memorandum was not produced. Mr Koh did not give evidence of these conversations in his affidavit but only during cross-examination. In any case, Mr Koh never saw it fit to put his objections to the use of wall tiles in writing. Further, there is no evidence that either Mr Chia himself or anyone else from DEA advised that, from a professional architectural point of view, problems could be encountered with wall tiles and it would be best not to use them. I do not think that reputable architects, building contractors and developers would deliberately have used a particular material for the condominium if there was reason to believe from the very beginning that that material was unsuitable and likely to fall off thus endangering both person and property. I do not accept that there is any basis to hold that Prosperland had constructive knowledge of the defects.

39 In my view, the first time that Prosperland had knowledge that the problem with the wall tiles was not an isolated one was in September 1999 when two tiles de-bonded and fell off. This has been established on the balance of probabilities and the defendants have not convinced me that Prosperland had the requisite knowledge of the defects before May 1999. Before May 1999, Prosperland did not know and could not be imputed with constructive knowledge that there was a widespread problem with the adhesion of the tiles to the external wall. It therefore did not have the necessary knowledge to take action against either the contractor or the designer of the condominium. Of course once it became aware that there was not just isolated tile de-bonding, it also became aware that the damage could be attributed to defaults on the part of either or both the contractor and the architect since these were the persons who had the responsibility of designing and building a safe and sound structure. Prosperland has argued that it only knew that the problem with the tiles could be attributed to the architect after it received its surveyor's report in May 2000. I do not need to consider that submission in detail since my finding is that Prosperland did not have the requisite knowledge of the damage until September 1999. Therefore, since the action was started within three years of that date, it is not significant whether Prosperland recognised in September 1999 or only later that the damage could possibly be attributed to the architect.

The glass blocks

40 Mr Ng's evidence was that he first found out about the problem with the glass blocks in December 1998 from the building supervisor. Wearing his hat as property manager of the MCST, Mr Ng then wrote to Prosperland. He stated that many of the glass blocks fronting the lift lobbies and within individual premises had cracked. Also a number of glass blocks had been found to contain water even though they did not have any visible cracks or defects. Mr Ng stated that the MCST considered this damage to be due to latent defects and required Prosperland to carry out appropriate rectification work. Prosperland forwarded this letter to Civic, asking the latter to fix the problem.

41 In early January 1999, Civic denied liability. It claimed that the problems with the glass blocks were caused by weather conditions. Prosperland rejected this explanation as it considered that the glass blocks should be able to withstand basic weather conditions. Subsequently, on 21 January 1999 and again on 8 February 1999, Prosperland forwarded lists of the damaged glass blocks to Civic.

42 Mr Ng stated that, despite Civic's denial of liability, whenever he met Mr Koh, Mr Koh would assure him that Civic was investigating the cause of the damage. He suggested that the problem could have been due to fair wear and tear, poor maintenance or damage by a third party. Mr Ng considered that these were possible causes and decided to await the outcome of Civic's investigation into the root cause of the problem. I note here that, in cross-examination, Mr Koh conceded that after he had found out about the damaged glass blocks he had assured Prosperland that he would carry out investigations into the cause of the damage.

43 Nothing further happened until September 1999 when Prosperland asked Civic to carry out

rectification and investigation works in respect of the tiles and glass blocks immediately. A month later Prosperland gave Civic up to 15 November 1999 to revert on the manner in which the latter intended to repair the glass blocks and wall tiles. Civic did not respond. The MCST then engaged lawyers who wrote to Civic on 15 February 2000 giving it notice that the MCST intended to rectify the damaged blocks and claim the cost of doing so from Civic. Civic's reply was that the alleged defects were the result of fair wear and tear but it would seek an explanation from the Japanese manufacturer of the glass blocks as the cracks were internal and could not be due to workmanship. As Civic appeared to be investigating the problem and as the cause of it was not clear, Prosperland decided to give Civic more time.

44 In August 2000 Mr Ng and Mr Law had a meeting with Mr Koh to discuss the damaged glass blocks. Mr Koh said that he would ask the manufacturer to replace all the defective blocks. It was only at this time, Mr Ng said, that Prosperland became aware that the problem with the glass blocks had not been caused by third party damage, fair wear and tear or lack of maintenance. On 20 November 2000, Civic told Prosperland to write directly to the supplier of the glass blocks on the matter of the cracks. Mr Ng replied, stating that Prosperland would look to Civic for settlement of any claim in respect of these blocks.

45 Although Mr Ng maintained that until August 2000 Prosperland did not know that Civic was liable for the problem with the glass blocks, Prosperland did not rely on this date in its closing submissions. This was because in May 2000 a building surveyor employed by the MCST to look into the defects in the tiles and blocks issued a report in which he stated that the blocks had failed either as a result of rain water ingress *via* their slightly open joints, or because some of the blocks were of low quality, or because of restraint from the surrounding structure. His opinion indicated therefore that the damage was due to bad workmanship, inferior materials and bad design. Those were matters for which the contractor and the architect could possibly be liable. Prosperland was of course fully aware of the contents of the report.

46 In its closing submissions in relation to its claim against Civic, Prosperland contended that time only started to run against it from May 2000 when the report was issued. Before that it had not known the cause of the damage to the blocks and whether that damage was attributable to Civic. The cause of the defects was not obvious and, it was submitted, in these circumstances any "knowledge" of who was liable for the defect would be mere suspicion at best and could not be reasonable belief. Prosperland pointed out that neither Mr Loggie nor Mr Collins was able to determine the actual cause of the damage to the glass blocks from a visual inspection of them. Its own expert, Mr Mills, had testified that he would not be able to determine whether the damage was due to lack of maintenance or bad workmanship without carrying out a breakout examination of the blocks to determine the construction method. Mr Koh had said that it would not be fair to blame the main contractor for bad workmanship on the sole basis of a visual inspection. He himself had not known the cause of the defects in 1999 because the cracks had occurred in different areas and at different heights. He thought that they could not have been caused by only one or two factors. Whilst he knew the possible causes he could not identify the actual causes.

47 In this situation, Prosperland submitted that it had acted responsibly by approaching the contractor instead of jumping to conclusions. It had then acted in good faith in accepting Mr Koh's assurance that Civic would carry out the necessary investigations. It did not know exactly what investigations were being undertaken and it was entirely reasonable for Prosperland to assume that Civic was actually investigating the cause of the damage. Prosperland had not got its own expert to investigate the cause of the damage because of its reliance on Civic's assurances. It was submitted that it was reasonable for Prosperland to defer an expert investigation until Civic had concluded its investigation and that Prosperland should not be penalised for acting this way. In all the

circumstances, Prosperland could not be imputed with the requisite knowledge in the period between December 1998 and February 1999, notwithstanding that during that period it had discovered more than 100 damaged glass blocks.

48 The difficulty with the above submissions is that Prosperland's purported ignorance of the actual situation and its possible rights and remedies, at least in respect of Civic, in late 1998 or early 1999 is belied by the contemporaneous correspondence. There was, first, the MCST's letter of 31 December 1998 to Prosperland complaining that many glass blocks were cracked and a number of glass blocks contained water. The MCST said all that damage was due to latent defects and required Prosperland to carry out the appropriate rectification works. On 6 January 1999, Prosperland sent Civic a copy of the MCST's letter, stated that it considered the damage referred to in the letter to be due to "latent defects", and required Civic to investigate and carry out the appropriate rectification works as well. Prosperland had, presumably upon consideration, adopted the MCST's assertion as to the cause of the damage and used that to put responsibility for repairs squarely onto Civic. On 14 January 1999, Prosperland wrote to Civic again in respect of the glass blocks. It stated that the widespread cracking observed in the glass blocks had occurred only recently and was a form of latent defect. Prosperland then stated quite categorically that "glass blocks should be able to withstand weather conditions without cracks or distortions" and asked Civic to confirm whether it was going to make good the defects. Subsequently, Prosperland received a survey of the damaged glass blocks from the MCST. It sent this survey on to Civic on 6 February 1999 and asked Civic to revert on its proposed course of action within the following two weeks. This correspondence indicates that Prosperland had a very good idea of the possible causes of the damage to the glass blocks and of the person most likely to be responsible for that damage. Of course, at that stage, Prosperland could not know whether the damage was actually due to bad workmanship or latent defects but it had sufficient information for it to rule out mechanical force from third parties as having caused such widespread damage. It thus had sufficient information for it to take the necessary steps preliminary to issuing a writ like obtaining an expert opinion. In fact, as submitted by Civic, Prosperland had already embarked on the preliminaries to the issue of a writ when it collected evidence on the extent of the damage to the glass blocks in January and February 1999 and made demands in respect of the rectification of the latent defects in the same period.

49 The evidence given by Mr Ng in the trial also supports the above conclusion. He admitted in cross-examination that Prosperland had always held Civic liable for the defects in the glass blocks. He agreed that when the MCST wrote to Prosperland in December 1998, the MCST had taken the view that the defects were not due to a lack of maintenance for which it was responsible but that there was something wrong with the blocks themselves. He also confirmed that from January 1999 when Prosperland had sent out its first letter to Civic, it had held Civic responsible for the defects and had not entertained any notion that the damage was due to a problem with maintenance.

50 Prosperland's alternative submission was that even if it had suspected in January 1999 that the damage to glass blocks was attributable to the contractor, such suspicion would not be reasonable belief and it could not be imputed with sufficient knowledge to attribute the damage to any party until it obtained the advice of an expert. Further, it was reasonable to rely on the contractor's assurances that it would investigate the problem. Therefore, time would not start to run until the contractor had been given a reasonable time to investigate. If the contractor had been unable to complete his investigations within three or four months, then Prosperland would have had to appoint an expert and time would have run only after his report had been received. It would have taken at least two to three weeks to appoint an expert as Prosperland would have needed to obtain quotes, check for conflicts of interest, determine the expert's scope of works and approve the expert's terms of engagement. As a visual inspection would not have been sufficient to indicate cause, a procedure such as a breakout test would have had to be carried out and, as testified by

Mr Mills, such a breakout test would have taken six to eight weeks to complete. The expert would then have needed time, about two or three weeks, to prepare and finalise his report. Therefore, the earliest reasonable time for Prosperland to be imputed with the requisite knowledge was June or July 1999 which was within the three-year time period immediately preceding the date on which Prosperland issued the writ.

51 Whilst it might be reasonable for Prosperland to give the contractor a few months to investigate the problem before starting proceedings against it, I do not think that any such time given to the contractor can be taken into account for the purposes of time starting to run. Section 24A does not allow a postponement of the time bar on such grounds. What is important is whether the potential litigant had the requisite knowledge. For time bar purposes, time given to the potential defendant to rectify the situation is not relevant. I also find it hard to accept the argument that in January and February 1999 Prosperland only had a suspicion that the contractor was the party to whom the damage could be attributed. Prosperland certainly did not act as if it only suspected Civic to be the responsible party. In fact, it lay the blame for the damage squarely on Civic's shoulders. It was quite clear on why it thought Civic was responsible, and that was because glass blocks should have been able to withstand normal weather conditions in Singapore without cracking. It robustly rebutted Civic's denial of responsibility. Even if at that time Prosperland had thought it necessary to obtain the assurance of an expert, if it had acted on that thought shortly after 6 January 1999 (that was the date on which Civic denied responsibility and attributed the damage to weather conditions), then using its own time lines, it would have obtained the expert's report by mid-April 1999 at the latest and time would then have started to run. In fact, it might not have taken quite so long for Prosperland to receive an expert's report. Mr Loggie's evidence was that he would recommend a breakout test involving the removal of a number of glass blocks and that as long as he had all available information, such as contract documentation, specifications and drawings, he could come to a conclusion on the cause of the damage within a matter of days. In my judgment, Prosperland did have the requisite knowledge in relation to the glass blocks and Civic more than three years before 2 May 1999. Therefore, its claim against Civic in this respect is time-barred.

52 In relation to the architect, Prosperland submitted that even if it had suspected in early 1999 that the damage to the glass blocks could be due to the contractor, there was insufficient information at that time to attribute any responsibility to the architect. In this respect, it relied on Mr Ng's agreement in cross-examination that Prosperland's preliminary view was that the defects in the glass blocks had been caused by Civic. Further, both Mr Collins and Mr Loggie had testified that on a plain visual inspection it would not be possible to conclude that the damage to the glass blocks was attributable to the architect. Mr Loggie had even said that on such a visual inspection it would be unreasonable to attribute the damage to an act or omission of the architect. Thus, the earliest date at which knowledge that the damage might be attributable to the architect could have been imputed would have been the date when Prosperland received Mr Casimir's report. Actual knowledge, however, that the damage to the glass blocks could be attributable to the architect was acquired in April 2002 during a meeting with Civic when Civic suggested that the damage might be caused by the architect.

53 I agree that there was insufficient information in January 1999 for Prosperland to attribute the damage to the architect. The question is whether, at that stage, it was reasonable for Prosperland to simply focus its attention on Civic which was the most likely contender for the post of responsible party or whether it should have taken expert advice which would have disclosed Mr Chia and DEA as other possible defendants. Prosperland made much of the fact that the visual inspections that it had carried out in January 1999 could not have told it the actual cause or causes of the damage. If it was really in doubt at that stage as to what had caused the damage and who was responsible for the same, the obvious course would have been to obtain an expert's report. That

would also have been the reasonable thing to do in order to justify taking steps against one defendant or another. If it had employed an expert at that time, it would have had the expert's report by mid-April at the latest, as I have pointed out above. It would have known in mid-April that some of the damage might be attributable to the architect. Whilst I accept that in January 1999 Prosperland could not attribute responsibility to the architect, it had enough information to realise that an expert opinion would be helpful and could indicate whether anyone apart from the contractor could possibly be liable. It should have taken an expert's report then. If it had, it would have had the requisite knowledge by mid-April 1999. Accordingly, its action against the architect in respect of the glass blocks is also time-barred.

Separate cause of action

54 I have found that Prosperland is time-barred in respect of its claim for damage to the glass blocks and I have also found that Prosperland is not time-barred in respect of its claim for damage to the external tiled façade. Civic made a submission that once I found one of the claims to be time-barred, I would have to find that the other claim was time-barred as well. It relied on the case of *Hamlin v Edwin Evans* [1996] 2 EGLR 106 for the proposition that although Prosperland had commenced proceedings for two sets of defects, Prosperland had only one cause of action which was the alleged failure to construct the project in accordance with the building contract. Accordingly, the entire cause of action would be time-barred once it was shown that the date of discovery of one of the claims was outside the limitation period.

55 Mr Hamlin and his wife, the plaintiffs in the cited case, had employed the defendant surveyors in 1986 to provide them with a house buyer's report and valuation in respect of a house they were purchasing. In 1987, after completion of the purchase, the plaintiffs discovered dry rot in the house and claimed the cost of eradicating it from the defendants. The defendants settled this claim. Five years later, the plaintiffs discovered substantial structural damage to the house caused by subsidence. They sued the defendants for negligence in 1994. It was held that the writ had been issued outside the limitation period prescribed by s 14A of the UK Act (the equivalent of our s 24A) and that the plaintiffs were precluded by the terms of the compromise from pursuing any complaint against the defendants. The plaintiffs appealed, contending that the references in s 14A(2) to "damages in respect of the relevant damage", to knowledge of "the material facts in respect of which damages are claimed", and to the requirement that such knowledge must be judged qualitatively by the objective test of sufficient seriousness laid down by sub-s (7), all pointed to a preoccupation on the part of the draughtsman with a particular head of injury to his property which the plaintiff was for the time being complaining of. These were liable to emerge at different times and dates and the intention of s 14A was to apply a separate starting date for each. Thus, for the plaintiffs' claim for damages arising from the subsidence, time had only started to run in 1992 and not in 1987 when they had first discovered that the defendants' report was negligent in that it had not identified the dry rot. This argument was rejected by the Court of Appeal. It held that there was one single and indivisible cause of action in one negligent act: the making of a single report. For the purpose of s 14A of the UK Act, the cause of action accrued when damage was suffered for the first time and the proceedings had been issued after the expiration of the limitation period.

56 Whilst the *Hamlin* case appears to support Civic's submission, a more detailed study of the case shows that it does not apply to the situation before me. In *Hamlin* there was only one cause of action which was the surveyors' negligence in the preparation of the survey report. In this case, Prosperland's claims against Civic are in respect of the defective construction of the external tiled façade and the defective construction of glass blocks. These are two discrete breaches. Secondly, Waite LJ who gave the judgment of the court in *Hamlin* specifically distinguished the situation there from a case which involved those with responsibility for defective building work. He said at 109:

> The present case is to be contrasted with cases involving claims against those with responsibility for defective building work, where there may well be different causes of action against different contractors and in respect of different categories of damage to the same building (as in *Steamship Mutual Underwriting Association v Trollope & Colls (City) Ltd* (1986) 33 BLR 77). Here there is but one single and indivisible cause of action arising out of one negligent act, the making of a single report. Section 14A is expressed to apply (subsection (1)) to cases where the (knowledge-related) starting date introduced by the section occurs at a date subsequent to that on which "the cause of action accrued". There was only one such cause of action, namely the negligent making of the report; and it accrued when damage (great or small) was suffered for the first time. The reference in subsection (5) to "relevant damage" can only sensibly be construed as referring to damage relevant to that same cause of action.

57 The case of *Steamship Mutual Underwriting Association Ltd v Trollope & Colls (City) Ltd* (1986) 33 BLR 77 was a case originally brought by a building owner against the contractor, architect and structural engineer for damage arising from defects in the air-conditioning pipes of the building. Subsequently, the plaintiff applied to amend its statement of claim to advance additional claims in respect of cracks and displacement of the walls which had recently been discovered. This application was disallowed. It was held that the claim for the defectively constructed wall was a separate cause of action which was time-barred. In the English Court of Appeal, May LJ endorsed the definition of "a cause of action" given by Diplock LJ in *Letang v Cooper* [1965] 1 QB 232 to the effect that this is a factual situation the existence of which entitles one person to obtain from the court a remedy against another person and then said, at 98–99, that in determining whether each breach of contract gives rise to a separate cause of action one cannot look only to the duty on a party,

> but one must look also to the nature and extent of the breach relied upon, as well as to the nature and extent of the damage complained of in deciding whether, as a matter of degree, a new cause of action is sought to be relied upon. The mere fact that one is considering what are, as it is said, after all only different defects to the same building, does not necessarily mean in any way that they are constituents of one and the same cause of action.

In the same case, Lloyd LJ observed at 101 that "[i]n general, justice between the parties to a building contract will best be served by allowing that there may be separate causes of action in relation to the same building".

58 In the present case, the defective construction of the tiled façade and the defective glass blocks gave rise, in my view, to separate causes of action. Whilst the façade and the glass blocks are constituent parts of the same structure, they are distinct parts which called for separate designs and separate construction. Any breach of the contractor's duty in respect of either of these parts of the structure would not have an impact on any other part of the structure. These breaches would have taken place at different times and were independent of each other. This is a different case from that of a building surveyor who goes on site to survey the condition of a building and issues a report on that survey as such a survey is one whole and indivisible act, notwithstanding that the surveyor may have been negligent in failing to observe more than one defect present in the building that he was surveying. I therefore reject Civic's submission that the claim in respect of the tiled façade is time-barred because the claim in respect of the glass blocks is time-barred.

The proper party to sue

59 Prosperland is the party who contracted with the architect and the contractor for the design and construction of the condominium. It therefore has the contractual right to commence proceedings for breach of contract. At the time these proceedings were started, however, Prosperland no longer

owned the condominium, nor had it spent any money in rectifying the defects in respect of which the suit was brought. There is a general principle that a party is only entitled to recover substantial damages arising from a breach of contract if he himself has suffered that loss. Whilst there was for many years academic debate as to whether this principle existed and, if it did, whether it should be abolished, it was reaffirmed by a majority comprising three of the Law Lords who decided the case of *Alfred McAlpine Construction Ltd v Panatown Ltd* [2001] 1 AC 518. There is no dispute that Prosperland has not incurred the costs of rectifying the defects in the condominium in respect of which this claim has been brought. Neither has it been sued by the MCST for the rectification costs. As Prosperland has suffered no loss and is no longer the owner of the property damaged, all the defendants have submitted that it is not the proper plaintiff to maintain this action.

60 There are exceptions to the general principle that a plaintiff may only recover damages for a loss which he has himself suffered. The exception that Prosperland relies on is that based on the rule in *Dunlop v Lambert* (1839) 6 Cl & F 600; 7 ER 824 and further developed by Lord Diplock in the case of *The Albazero* [1977] AC 774. Lord Diplock said at 847:

> The only way in which I find it possible to rationalise the rule in *Dunlop v Lambert* so that it may fit into the pattern of the English law is to treat it as an application of the principle, accepted also in relation to policies of insurance upon goods, that in a commercial contract concerning goods where it is in the contemplation of the parties that the proprietary interests in the goods may be transferred from one owner to another after the contract has been entered into and before the breach which causes loss or damage to the goods, an original party to the contract, if such be the intention of them both, is to be treated in law as having entered into the contract for the benefit of all persons who have or may acquire an interest in the goods before they are lost or damaged, and is entitled to recover by way of damages for breach of contract the actual loss sustained by those for whose benefit the contract is entered into.

The rule in *Dunlop v Lambert* is that a consignor of goods who has parted with the property in the goods before the date of the breach can even so recover substantial damages for the failure to deliver the goods. Lord Diplock noted in *The Albazero* that while the rule no longer applied to the goods assigned in a bill of lading because both the property and the goods and the cause of action for breach of the contract of carriage would pass to the consignee or endorsee by reason of the consignment or endorsement, the rule would still extend to all forms of carriage where no bill of lading had been issued and there would still be occasional cases "in which the rule would provide a remedy where no other would be available to a person sustaining loss which under a rational legal system ought to be compensated by the person who has caused it": see *The Albazero* at 847.

61 Lord Diplock's discussion of the right of a party to recover substantial damages for breach of contract even though he has not suffered the loss was made in the context of the carriage of goods. The principle he established in *The Albazero* was, however, extended to the case of a building contract by the House of Lords in *Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd*, *St Martins Property Corporation Ltd v Sir Robert McAlpine Ltd* [1994] 1 AC 85 ("the *St Martins* case"). In that case, St Martins Property Corporation ("Corporation") had contracted with McAlpine, the builder, for the multi-purpose development of a certain site. The contract contained a clause prohibiting the assignment of the contract by Corporation without the consent of McAlpine. Corporation subsequently assigned its whole interest in the property to another company within the same group for value. Consent of McAlpine to the assignment was not sought. After the practical completion of the works a serious defect was discovered which was remedied at a substantial cost paid for initially by Corporation who was later reimbursed by the assignee company. Corporation sued McAlpine who maintained that since Corporation had suffered no loss it was only entitled to nominal damages. The House of Lords unanimously agreed that Corporation was entitled to recover substantial damages but

on two different bases. The first basis was elucidated by Lord Browne-Wilkinson as follows, at 114–115:

> In my judgment the present case falls within the rationale of the exceptions to the general rule that a plaintiff can only recover damages for his own loss. The contract was for a large development of property which, to the knowledge of both Corporation and McAlpine, was going to be occupied, and possibly purchased, by third parties and not by Corporation itself. Therefore it could be foreseen that damage caused by a breach would cause loss to a later owner and not merely to the original contracting party, Corporation. As in contracts for the carriage of goods by land, there would be no automatic vesting in the occupier or owners of the property for the time being who sustained the loss of any right of suit against McAlpine. On the contrary, McAlpine had specifically contracted that the rights of action under the building contract could not without McAlpine's consent be transferred to third parties who became owners or occupiers and might suffer loss. In such a case, it seems to me proper, as in the case of the carriage of goods by land, to treat the parties as having entered into the contract on the footing that Corporation would be entitled to enforce contractual rights for the benefit of those who suffered from defective performance but who, under the terms of the contract, could not acquire any right to hold McAlpine liable for breach. It is truly a case in which the rule provides "a remedy where no other would be available to a person sustaining loss which under a rational legal system ought to be compensated by the person who has caused it."

As appears from the above passage, Lord Browne-Wilkinson found the rationale of *The Albazero* exception to be that if it did not exist there would be what has been described as a "legal black hole" allowing a person who had undertaken contractual obligations and who had been defective in performing those obligations to escape from accounting for such defective performance because the other party to the contract had not suffered the loss so caused and the person who had suffered the loss was not a party to the contract and could not sue on it. Lord Keith of Kinkel, Lord Bridge of Harwich and Lord Ackner agreed with Lord Browne-Wilkinson's grounds.

62 The fifth member of the bench in the *St Martins* case was Lord Griffiths. His Lordship also found in favour of the Corporation but his basis for doing so was much broader than that of Lord Browne-Wilkinson. He did not agree that where damage to property resulted out of a breach in the proper performance of a contract and the non-defaulting party did not have a proprietary interest in the property concerned, he could invariably be said to have suffered no loss. Lord Griffiths considered that in such a situation the injured party could, depending on the circumstances, suffer substantial loss because he had been deprived of the benefit of the bargain for which he had contracted. Lord Griffiths expressed his views as follows, at 96–97:

> I cannot accept that in a contract of this nature, namely for work, labour and the supply of materials, the recovery of more than nominal damages for breach of contract is dependent upon the plaintiff having a proprietary interest in the subject matter of the contract at the date of breach. In everyday life contracts for work and labour are constantly being placed by those who have no proprietary interest in the subject matter of the contract. To take a common example, the matrimonial home is owned by the wife and the couple's remaining assets are owned by the husband and he is the sole earner. The house requires a new roof and the husband places a contract with a builder to carry out the work. The husband is not acting as agent for his wife, he makes the contract as principal because only he can pay for it. The builder fails to replace the roof properly and the husband has to call in and pay another builder to complete the work. Is it to be said that the husband has suffered no damage because he does not own the property? Such a result would in my view be absurd and the answer is that the husband has suffered loss because he did not receive the bargain for which he had contracted with the first builder and the

> measure of damages is the cost of securing the performance of that bargain by completing the roof repairs properly by the second builder. To put this simple example closer to the facts of this appeal – at the time the husband employs the builder he owns the house but just after the builder starts work the couple are advised to divide their assets so the husband transfers the house to his wife. This is no concern of the builder whose bargain is with the husband. If the roof turns out to be defective the husband can recover from the builder the cost of putting it right and thus obtain the benefit of the bargain that the builder had promised to deliver. It was suggested in argument that the answer to the example I have given is that the husband could assign the benefit of the contract to the wife. But what if, as in this case, the builder has a clause in the contract forbidding assignment without his consent and refuses to give consent as McAlpine has done. It is then said that neither husband nor wife can recover damages; this seems to me to be so unjust a result that the law cannot tolerate it.

63 The judgments delivered in the *St Martins* case were subject to detailed scrutiny by the Law Lords who heard the *Panatown* case. The plaintiffs in that case also sought to use *The Albazero* exception to permit them to sue the contractor they had employed to build an office block on a site belonging to a third party. However, in addition to the contract with the plaintiff-employers, the building contractor had entered into a duty of care deed with the owner of the site. The majority (Lord Clyde, Lord Jauncey of Tullichettle and Lord Browne-Wilkinson) held that the plaintiffs were not permitted to recover anything more than nominal damages and that *The Albazero* exception did not apply to them since the duty of care deed provided the owner with a direct remedy against the contractor for the losses resulting from the contractor's defective performance of the contract with the plaintiffs. The majority were strongly of the opinion that *The Albazero* exception only applied when there was a legal black hole. They held that an express provision of a direct remedy for the third party who was the owner of the property concerned was fatal to the application of that exception. Lord Goff of Chievely and Lord Millett dissented. Unlike the majority, Lord Goff found persuasive the reasoning and conclusion of Lord Griffiths in the *St Martins* case that the employer under a building contract may in principle recover substantial damages because he has not received the performance which he was entitled to receive from the contractor under the contract, notwithstanding that the property in the building site was vested in a third party: see *Panatown*, at 547. Lord Millett also endorsed the approach of Lord Griffiths. He considered, at 587, that:

> Lord Griffiths was not proposing to depart from the general rule that a plaintiff can only recover compensatory damages for breach of contract in respect of loss which he has himself sustained. He was insisting that, in certain kinds of contract at least, the right to performance has a value which is capable of being measured by the cost of obtaining it from a third party. … The rule in *Dunlop v Lambert* is an (incidental) exception to the general rule that a plaintiff can only recover damages for his own loss. Lord Griffiths's broader principle treats the plaintiff as recovering for his own loss, and is thus is an application of the general rule and not an exception to it.

In the course of his judgment, Lord Millett reviewed various academic comments on Lord Griffiths' broad principle and found that it had not been rejected outright or suggested to be heterodox. Further, no one had suggested that the adoption of the broad ground would have any very adverse consequences on commercial arrangements.

64 The position in Singapore on the correct principle is still open. For myself, I prefer the reasoning and conclusions of Lord Millett and Lord Goff in the *Panatown* decision in support of Lord Griffiths' broad principle to that of the majority. It is not, in my view, consistent with logic or principle that a contractor under a building contract, who is fully aware that his acts or defaults can have long-term consequences that only manifest themselves well after the employer has divested himself of his interest in the building project (as all anticipate he will), should be able to avoid his

responsibility to fulfil the contractual specifications and to deliver to the employer the performance that the latter has paid for and that the contractor has assured the employer he will be able to undertake and deliver. Applying the broad principle, Prosperland is able to recover substantial damages from Civic and the architect (always assuming it proves its case on the facts) as it had the right to full and proper performance of the respective contracts that it had made with these parties and the value of that performance is eminently capable of measurement by the cost of the rectification works that need to be done. In the alternative, I also think that, as submitted by Prosperland, its situation does fall within the narrow ground enunciated by Lord Brownel Wilkinson in *St Martins* and the majority in *Panatown*. The defendants argued that because of the decisions of our Court of Appeal in *RSP Architects Planners & Engineers v The Ocean Front Pte Ltd* [1996] 1 SLR 113 and *RSP Architects Planners & Engineers (Raglan Squire & Partners FE) v MCST Plan No 1075* [1999] 2 SLR 449 (*Eastern Lagoon*) and the powers vested in it by s 33(2) of the Land Titles (Strata) Act (Cap 158, 1999 Rev Ed), the MCST could maintain an action in tort against Civic and the architect. Thus, there was no legal black hole that required the application of *The Albazero* exception to prevent injustice. I would point out, however, that unlike the situation in *St Martins* case, the remedy which the defendants here are relying on is not a remedy which they themselves had provided to the MCST by way of a bond or other enforceable undertaking. They are relying on a tortious remedy which requires the establishment of negligence and this is something which may limit recovery as not all breaches of contract are negligent. Further, the tortious remedy may be defeated by defences (for instance, that the defective tiling was the work of an independent sub-contractor, or that the glass blocks were supplied by a reputable manufacturer and met specifications except for the existence of latent defects that were not discoverable at the time of installation) that are not available to a party who defends an action for breach of specified contractual obligations. If Prosperland is not permitted to sue Civic and the architect for their respective breaches of contract, the latter may very well escape having to make compensation for loss which they have caused.

65 In my judgment, *The Albazero* exception applies in this case to permit Prosperland to sue the contractor and the architect for substantial damages. As pointed out by Prosperland, when the parties entered into the contracts relating to the construction of the condominium, they were all aware that Prosperland would subsequently sell the units in the condominium to third parties and that a strata title plan would be registered in respect of the condominium. It was clearly contemplated that ownership of the condominium would be transferred from Prosperland either partially or in full and, therefore, any breach of contract that resulted in a latent defect might only come to light after Prosperland no longer had any proprietary interest in the condominium. At the time when the contract was entered into, the *Eastern Lagoon* and *Ocean Front* cases had not been heard and the parties would have had no reason to believe that any tortious remedy for economic loss would be available to the MCST or any subsidiary proprietor of the condominium. Civic and the architect could have foreseen that damage caused by a breach of their respective contracts would cause loss to the subsidiary proprietors and the MCST and not merely to Prosperland. They would also have known that under the standard form of sale and purchase agreement to be entered into between the developer and the purchasers of the units in the condominium there would be no provision for assignment of the developer's contractual rights against the architect and the builder. Thus, there would be no transfer of the developer's rights of suit to any third party. The situation here was quite different from that which pertained in the *St Martins* case.

The answer to the preliminary issues

The claim against Civic

66 The preliminary issues directed and my answers to them are set out below:

(a) Whether the plaintiff had the requisite knowledge, under s 24A(3)(b) of the Limitation Act, for bringing an action for damages against the first defendant in respect of the alleged damage to the external tiles and/or glass blocks ("the Alleged Damages") at the condominium at 7 Claymore Road ("the Building") based on alleged breach of the main contract between the plaintiff and the first defendant made on or about 24 July 1990 ("the Main Contract"), and knowledge of their right to bring such an action, within the period of three years prior to the date of commencement of this action, *ie*, 2 May 2002.

Answer:

(i) In respect of the alleged damage to the external tiles, no.

(ii) In respect of the alleged damage to the glass blocks, yes.

(b) Whether the plaintiff's claim against the first defendant for the Alleged Damages based on alleged breach of the Main Contract was brought within six years from the date on which the cause(s) of action accrued.

Answer: No.

(c) Based on the answers to issues (a) and/or (b), whether the plaintiff's claim for the Alleged Damages based on alleged breach of the Main Contract was statute-barred under s 6(1) and s 24A(3) of the Act.

Answer: The plaintiff's claim for the alleged damages in respect of the alleged breach of contract in relation to the external tiles was not statute-barred under s 6(1) and s 24A(3) of the Act but its claim for the alleged damages in respect of the alleged breach of contract in relation to the glass blocks was so statute-barred.

(d) Whether the joint guarantee issued by the first defendant and the third party in favour of the plaintiff dated 6 August 1993 in respect of the external tiles at the Building ("the Joint Guarantee") was in the nature of a deed of indemnity or warranty.

Answer: This issue was dropped and I do not have to decide it.

(e) Whether the plaintiff has suffered any loss in respect of the Alleged Damages which it is entitled to claim against the first defendant pursuant to the Main Contract and/or the Joint Guarantee.

Answer: Yes.

(f) Whether the management corporation of the Building rather than the plaintiff is the proper party to sue, or claim against, the first defendant in respect of the Alleged Damages.

Answer: No.

(g) Based on the answers to issues (d), (e) and/or (f), whether the plaintiff may claim more than nominal damages against the first defendant under the Main Contract and/or the Joint Guarantee.

Answer: Yes, in respect of the Main Contract. I do not have to consider the position in

relation to the Joint Guarantee.

The claim against Mr Chia and DEA

67 The preliminary issues directed and my answers to them are set out below:

(a) Whether the plaintiff had the requisite knowledge, under s 24A(3)(b) of the Limitation Act, required for bringing an action for damages in respect of the alleged damage to the external tiles and/or glass blocks ("the Alleged Damages") at the condominium at the project at 7 Claymore Road ("the Building") against the second and third defendants based on alleged negligence and/or breach of contract, and a right to bring such an action, within the period of three years prior to the date of commencement of this action, *ie*, 2 May 2002.

Answer:

(i) In respect of the alleged damage to the external tiles, no.

(ii) In respect of the alleged damage to the glass blocks, yes.

(b) Whether the plaintiff's claim against the second and third defendants for the Alleged Damages based on alleged negligence and/or alleged breach of contract, was brought within six years from the date on which the cause(s) of action accrued.

Answer: No.

(c) Based on the answers to issues (a) and/or (b), whether the plaintiff's claim against the second and third defendants for the Alleged Damages based on alleged negligence and/or breach of contract was statute-barred under s 6(1)(a) and s 24A(3) of the Act.

Answer: The plaintiff's claim for the alleged damages in respect of the alleged breach of contract in relation to the external tiles was not statute-barred under s 6(1)(a) and s 24A(3) of the Act but its claim for the alleged damages in respect of the alleged breach of contract in relation to the glass blocks was so statute-barred.

(d) Whether the plaintiff has suffered any loss in respect of the Alleged Damages pursuant to the alleged negligence and/or breach of contract.

Answer: Yes.

(e) Whether the management corporation of the Building, rather than the plaintiff, is the proper party to sue the second and third defendants in respect of the Alleged Damages.

Answer: No.

(f) Based on the answers to (d) and/or (e), whether the plaintiff may claim more than nominal damages against the second and third defendants.

Answer: Yes.

68 I will hear the parties on costs.