

# UNDERSTANDING, PREPARATION & HANDLING OF CLAIMS FOR DEFECTS BY MANAGEMENT CORPORATIONS

*presented by*

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# Types of Claims for Defects by MCST

- SPs vs Third Parties

# Claims against SPs

- The previous regime in respect of disputes arising out of defects remains unchanged
- Where the Strata Title Board does not have jurisdiction, parties have the option of going to court



# Powers of Strata Titles Board

## Section 101 of BMSMA

- (1) Subject to subsections (4), (6) and (7), a Board may, pursuant to an application by a management corporation or subsidiary management corporation, a subsidiary proprietor, mortgagee in possession, lessee or occupier of a lot in a subdivided building, make an order for the settlement of a dispute, or the rectification of a complaint, with respect to —
- (a) any defect in a lot, a subdivided building or its common property or limited common property;

Some extension / clarification of existing powers for the Board under the Act – more akin to powers of a court

- Security for costs
- Discovery of documents/interrogatories
- Giving of evidence by affidavit
- Preservation and interim custody of any evidence
- Samples to be taken from any lot or common property



# Claims against Third Parties

- Developers, designer, contractors
- Claims founded in tort

- *RSP Architects & Engineers v Ocean Front Pte Ltd & Anor appeal* [1996] 1 SLR 113, CA – developer
- *RSP Architects Planners & Engineers (Raglan Squire & Partners F.E.) v The MCST Plan No. 1075 & Ors* [1999] 2 SLR 449, CA – architect – design & supervision



**24(2) A management corporation for a strata title plan may —**

- (a) sue and be sued on any contract made by it;**
- (b) sue and be sued in respect of any matter affecting the common property;**
- (c) sue in respect of any loss or damage suffered by the management corporation arising out of a contract or otherwise; and**
- (d) be sued in respect of any matter connected with the parcel for which the subsidiary proprietors are jointly liable.**



**24(3) A management corporation constituted in respect of a strata title plan shall have the powers, duties and functions conferred or imposed on it by or under this Act, or by the by-laws in respect of the parcel comprised in that strata title plan and, subject to this Act, shall have the control, management and administration of the common property comprised in that strata title plan.**

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**29. —(1) Except as otherwise provided in subsection (3), it shall be the duty of a management corporation —**

**(a) to control, manage and administer the common property for the benefit of all the subsidiary proprietors constituting the management corporation;**

**(b) to properly maintain and keep in a state of good and serviceable repair (including, where reasonably necessary, renew or replace the whole or part thereof) —**

**(i) the common property; ...**





# Experts

- Identify the defects & location – photos, plans, sketch
- Identify the causes of the defect – design? construction? - cf. maintenance issue
- Recommendation for repairs
- Estimation of the repair costs
- Calling of tender
- Qualification & experience

# Finance

- Costs of repair
- Costs of litigation
- Financial viability of party to claim from



# Mandate

- Convince yourself, Convince Council, Convince General Meeting
- Resolution – authorising MC to bring claim in its own name & on behalf of all SPs
- Authorisation from SPs – for claims in contract

## *MCST 2297 v Seasons Park Ltd* [2005] SGCA 16

- Section 116 of the previous Land Titles (Strata) Act – retained in BMSMA, s 85



Management corporation, etc., may represent subsidiary proprietors in proceedings

85. —(1) Where all or some of the subsidiary proprietors of the lots in a parcel comprised in a strata title plan are jointly entitled to take —

(a) proceedings for or with respect to the common property in that parcel against any person or are liable to have such proceedings taken against them jointly; or

(b) proceedings for or with respect to any limited common property in that parcel against any person or are liable to have such proceedings taken against them jointly,

the proceedings may be taken by or against the management corporation in the case of paragraph (a), or the subsidiary management corporation constituted for that limited common property in the case of paragraph (b), as if it were the subsidiary proprietors of the lots concerned.

85. —(2) Any judgment or order given or made in favour of or against the management corporation or subsidiary management corporation in any such proceedings shall have effect as if it were a judgment or an order given or made in favour of or against the subsidiary proprietors.



85. (3) Where a subsidiary proprietor is liable to make a contribution to another subsidiary proprietor in respect of a judgment debt arising under a judgment referred to in subsection (2), the amount of that contribution shall bear to the judgment debt —
- (a) the same proportion as the share value of the lot of the first-mentioned subsidiary proprietor bears to the aggregate share value, in the case of a judgment or an order for or against a management corporation; or
  - (b) the same proportion as calculated in accordance with section 81, in the case of a judgment or an order for or against a subsidiary management corporation.

# Claim in Tort vs Contract

- Time bar
- Defence of independent contractors
- Specifications
- Non-common property defects
- Costs



# Documents

- MCST documents - plans, manuals, strata rolls, developer's marketing brochure
- Project documents – minutes, directions, defects list
- Reports - developer's reports & photographs and MCST's reports & photographs
- Correspondence

# Options

- Settlement
- Mediation
- Rectification vs monetary compensation



# Speed

- Problem of evidence
- Problem of time bar

# Limitation of action

- Limitation Act (Cap 163)
- Generally, all claims for breach of contract, negligence and nuisance must be brought within 6 years from the date on which the cause of action accrued [s 6(1)]



# Limitation of action

- When does a cause of action accrue ?
  - ✓ Contract – date of breach
  - ✓ Tort - date of damage (c.f. date of discovery of damage)

# Limitation of action

- Case of latent damage - limitation period extended
- 3 years from the earliest date on which the plaintiff 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 [s 24A(3)]



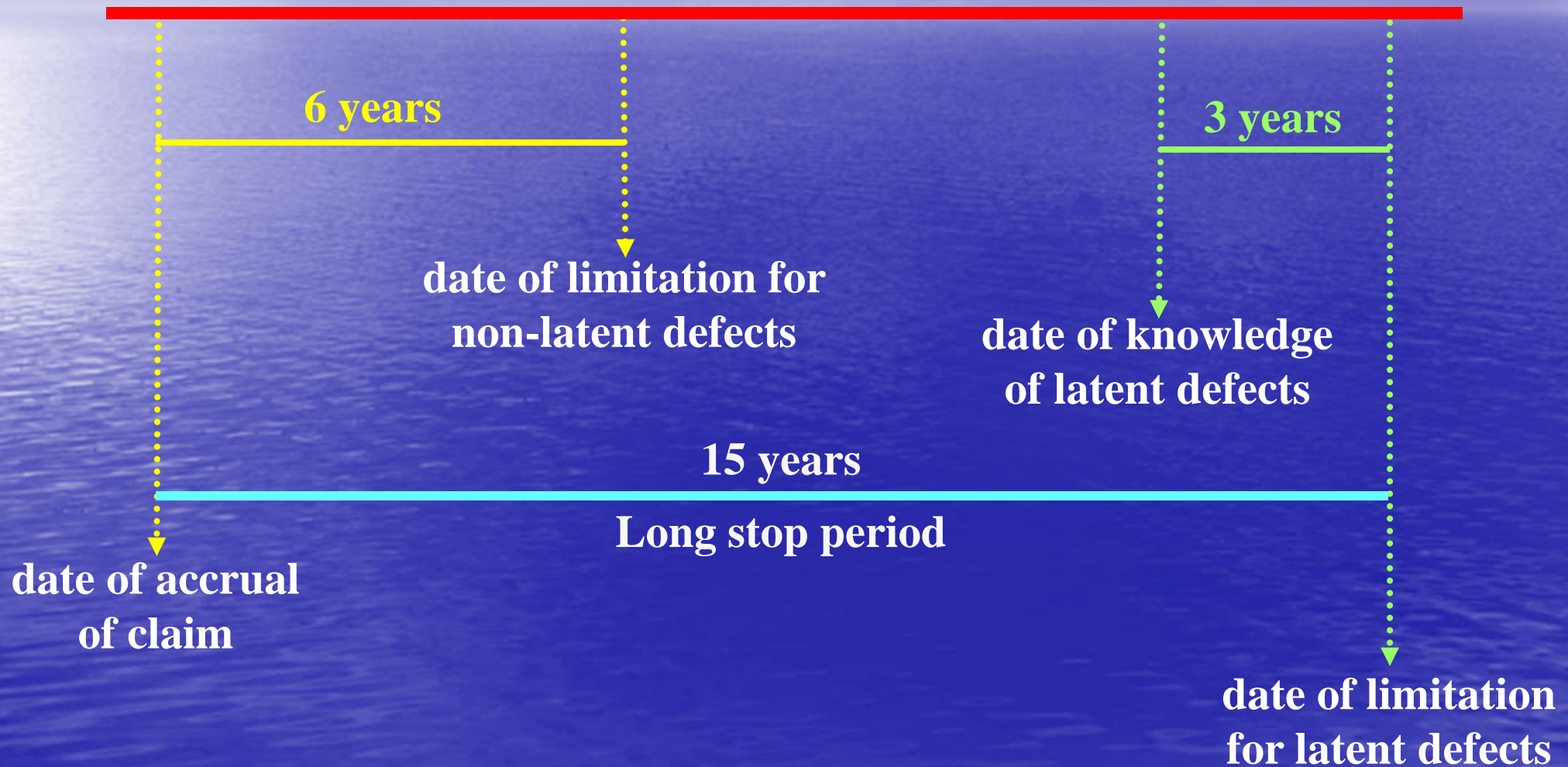
# Limitation of action

- NOTE - The extended limitation period of 3 years is, however, subject to the long stop of 15 years from the starting date [s 24B(1)]

*“starting date”* means the date on which there occurred any act or omission which is alleged to constitute negligence, nuisance or breach of duty, and to which the damage in respect of which damages are claimed is alleged to be attributable (in whole or in part) [s 24B(2)]



# Limitation of action



**THE END**



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"The Singapore Standard Form of Building Contract – An Annotation"  
"Construction Defects: Your Rights and Remedies" title of the Sweet & Maxwell's Law for Layman Series  
Singapore Civil Procedure 2003 (White Book)  
Real Estate Developers' Association of Singapore's (REDAS) Design and Build Standard form contract  
Chapter on "Construction Contracts" in Law Relating to Specific Contracts in Singapore (2008)