Construction Law Focus

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Legislation - Limitation (Amendment) Act 1992

Changes were made to the law relating to limitation of actions by the Limitation (Amendment) Act 1992 which came into force on 26 June 1992. These changes affect actions for negligence, nuisance and breach of duty. Several new provisions were added, namely, sections 24A, 24B AND 24C. A "breach of duty," by section 24A(1), means a duty that "exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision."

Where damages are claimed for personal injuries, section 24A(2) provides that no action shall be brought after expiration of 3 years from the date on which the cause of action accrued or the date of knowledge of the damage, whichever is later. In the case of other actions, section 24A(3) provides that no action shall be brought after the expiration of 6 years from the date on which the cause of action accrued or 3 years from the date of knowledge, whichever is the later. Knowledge is defined under section 24A(4) to mean knowledge:

(a) that the injury or damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;

(b) of the identity of the defendant;

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

(d) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury 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.

Section 24A(5) and (6) further describe what should be considered such knowledge. Section 24B imposes an overriding time limit of 15 years from the starting date which is defined to mean the date of the breach of duty which gives rise to the action. The transitional provisions in section 24C provides that nothing in section 24A shall:

(a) enable any action to be brought which was barred by this Act immediately before the commencement of the Limitation (Amendment) Act 1992; or

(b) affect any action commenced before the Limitation (Amendment) Act 1992 comes into force.

This amendment is important for the construction industry since in claims for defective design or construction it is often necessary to determine when the cause of action accrue in order to establish whether the claim is time barred or not. The position in Singapore is therefore now quite close to that in the United Kingdom where the Latent Damage Act 1986 was passed to amend their Limitation Act 1980 in the light of dissatisfaction arising from the decision in *Perelli v Oscar Faber & Partners* [1983] 2 A.C. 1. It had been held in that case that the date of the accrual of a cause of action in tort caused by negligent design or construction of a building was the date when the damage came into existence, and not the date when the damage was discovered or could with reasonable diligence have been discovered.

Seal Offers in Arbitration Cases

Ordinarily in cases commenced in court, a defendant who disputes only quantum but not liability would have an opportunity to make payment into court. If the plaintiff accepts the amount paid, the action will end there. However, if the Plaintiff refuses to accept the amount paid into court, the action will have to proceed to trial. The judge eventually hearing the case will not be aware of the payment in. It will only be disclosed to him at the end of the trial. At the trial, if the court eventually finds that the plaintiff is entitled to a sum that is less than the amount paid in, the defendant would be made to bear the legal costs

after the date of payment in.

Unfortunately, in the case of arbitration, there is no ready procedure whereby payment can be made by the defendant in this fashion. There is, however, available a procedure whereby the respondent can make what is known as a "sealed offer" to the claimants. A sealed offer is essentially an offer of what the respondent felt is the reasonable or indisputable sum due, sealed in an envelope. Like payment into court, if the arbitrator eventually finds that the claimants are entitled to a sum that is less than the payment in, the claimants should be made to pay the costs of the proceedings.

The problem with seal offers, however, is that the arbitrator would be aware that some kind of offer had been made but because it is "sealed" he would not be aware of the amount.

The usual fear of respondents making such sealed offers is that the arbitrator may be influenced in his final decision by the fact that such an offer was made at all as he may infer that the respondent is making the offer because his defence is weak or even bad. The case of *MF King (Holdings) Ltd v Thomas Mc Kenna Ltd* dealt with such a sealed offer and the problems that can arise.

In this case, counsel for the building owners making the sealed offer wanted the arbitrator to make an interim award and the issue of costs to be stood over for a further hearing but failed to make that clear to the arbitrator before he made his award. Because of this omission, the arbitrator made a final award ordering the costs of the reference and the parties' costs be paid by the building owners. The building owner applied to the court under the Arbitration Act for remission of the award to the arbitrator so that he could reconsider his award on costs. The court in allowing remission, offered some guidance on the procedure by suggesting that the party making the sealed offer can:

(a) give the arbitrator the sealed offer, and invite him to open and consider it only after he has decided upon his substantive award or

(b) invite the arbitrator to make an interim award on the substance of the dispute and then to hold a further hearing on costs leading to a final award disposing of that aspect.