Construction Law Focus
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Claim for pure economic loss - management corporations

Whilst there are abundant cases in other jurisdictions on whether pure economic loss is recoverable in tort, there was no Singapore cases on this issue until, at least in respect of the management corporation-developer relationships, the recent Singapore Court of Appeal decision in *RSP Architects & Engineers v Ocean Front Pte Ltd* [1996] 1 SLR 113.

In this case, the plaintiffs, who were the management corporation of a condominium known as "Bayshore Park Condominium", commenced an action against the developers of the condominium, Ocean Front Pte Ltd, for damages arising out of the negligent and defective construction of certain common property. Such alleged negligent and defective construction resulted in problems of spalling concrete in the ceilings of the carparks of various blocks and waterponding near several lift lobbies. The developers in turn joined Messrs RSP Architects Planners & Engineers as the architects involved in the development of the condominium, Ssangyong Engineering & Construction Co Ltd as the building contractors and Messrs Lau Downie & Partners as the engineers as third parties to the action. The developer defendants applied to the High Court for a determination of certain preliminary issues of law which include, inter alia, whether the management corporation is barred from claiming pure economic loss in the form of the cost of repair of the said defects. Justice Warren Khoo, sitting as the court of first instance, ruled in favour of the management corporation and held that the management corporation could claim for the cost of repair of the said defects. On appeal by the developers and the architects against this decision, the Singapore Court of Appeal dismissed the appeal and upheld the decision of Justice Warren Khoo. In arriving at its conclusion, the Singapore Court of Appeal reviewed in some details a string of English decisions (*Dutton v Bogner Regis Urban District Council* [1972] 1 AB 373, *Anns & Ors v London Borough Council of Merton* [1978] AC 728; *Junior Books Ltd v Veitchi Co Ltd* [1983] 1 AC 520; *D&F Estates Ltd & Ors v Church Commissioners for England & Ors* [1989] AC 177; and *Murphy v Brentwood* [1990] 2 All ER 908.) as well as other commonwealth jurisdictions (*Sutherland Shire C ouncil v Heyman & Anor* [1984-1985] 157 CLR 424; *Bryan v Maloney* [1995] 128 ALR 163; *Bowen & Anor v Paramount Huildrs (Hamilton) Ltd & Anor* [1977] 1 NZLR 394; *Lester v White* [1992] 2 NZLR 483; *Invercargill City Council v Hamlin* [1994] 3 NZLR 513; and *Winnipeg Condominium Corp No. 36 v Bird Construction Co* [1995] 121 DLR (4th) 1993) on claims for economic loss arising from building defects. It declined to follow the decisions of *Murphy v Brentwood* and *D&F Estates* and preferred the decisions of the High Court of Austrialia in *Bryan v Maloney* and the Supreme Court of Canada in *Winnipeg*. At p. 139, the Singapore Court of Appeal said:

> "But the approach of the court has been to examine a particular circumstance to determine whether there exists that degree of proximity between the plaintiff and the defendant as would give rise to a duty of care by the latter to the former with respect to the damage sustained by the former."

Having said that, the Singapore Court of Appeal proceeded to find that there existed a sufficiently close proximity of relationship ("as close as it could be short of actual privity of contract") between the developers and the management corporation such as to give rise to a duty on the part of the developers to take reasonable care in the construction of the common property to avoid the kind of damage sustained by the management corporation. The Singapore Court of Appeal based their findings on the following facts, namely:

(a) the management corporation was an entity conceived and created by the developers;
(b) the developers were the party who built and developed the condominium including the common property, and undertook the obligations to construct it in a good and workmanlike manner and were alone responsible for such construction;
(c) after completion of the condominium, the developers were the party solely responsible for the maintenance and upkeep of the common property;
(d) the management corporation as the successor of the developers took over the control, management and administration of the common property and has the obligation of upkeeping and maintaining the common property;
(e) the performance of these obligations is very much dependent on the developers having exercised

reasonable care in the construction of the common property; and

(f) the developers obviously knew or ought to have known that if they were negligent in their cosntruction of the common property, the resulting defects would have to be made good by the management corporation.

Turning to the question of whether there is any policy consideration in negativing such a duty of care, the Singapore Court of Appeal held that:

(a) the amount recoverable is the cost of repair and making good the defects in the common property could be ascertained;
(b) the class of persons entitled to claim was restricted to the management corporation; and
(c) the time span was limited by the provisions of the Limitation Act (Cap 163).

EDITORIAL COMMENT

It is to be noted that in the *Ocean Front case*, the Singapore Court of Appeal has not expressly rejected *Murphy v Brentwood* thereby leaving room for future attempts to pursuade the Courts in Singapore that the principles in *Murphy v Brentwood* ought to apply to cases not involving developers' liability to mangement corporations. The Singapore Court of Appeal said at p. 139:

> "From our examination of all these authorities, it seems to us that there is no single rule or set of rules for determining, first, whether a duty of care arise in a particular circumstance and second, the scope of that duty."

The approach taken by the Singapore Court of Appeal in the *Ocean Front case* was to examine the facts of the case before it, and to determine if on those facts, there exists that degree of proximity between the plaintiff and the defendant as to give rise to a duty of care with respect to the type of loss sustained. On that approach, it will be very difficult to predict with any real certainty, the future direction of the law governing tortious liability for economic loss in situations other than that protrayed in the *Ocean Front case*. Thus, it remains to be seen the position of the Singapore Courts on claims relating to economic loss in cases falling outside the developer-management corporation relationships.

Publications of interest

Readers may be interested to know that Volume 2 of the Asia Pacific Building & Construction Management Journal has been published. This issue includes the following papers:

"Project Management: The Key to Procuring Fast Buildings" by Peter Love and Sherif Mohamed

"Assessing Safety Performance by Fuzzy Reasoning" by C M Tam and Ivan Fung

"Construction Waste Minimization for Australian Residential Development" by Peter Graham and Guinevere Smithers

"Falsework and Bridge Failures" by S W Poon and A D F Price

"Construction Firms and Clients' Attitudes towards Advertising in the Hong Kong Construction Industry" by Frank Yung and Richard Fellows

In the case studies and practice section, the following papers are includes:

"The Efficient Management of Construction Claims in Hong Kong" by John Luk and W T Wong

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