CONSTRUCTION LAW FOCUS

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Singapore : Architects' Duty of Care To Management Corporations of Condominium Developments for Economic Loss : RSP Architects Planners & Engineers (Raglan Squire & Partners F.E.) v The Management Corporation Strata Title Plan No. 1075 & Anor... Civil Appeal No 246 of 1998.[unreported]

Introduction - In this recent decision, the Singapore Court of Appeal held, inter alia, that the Architects of a condominium development owed a duty of care to the Management Corporation of the condominium development for economic loss suffered by them arising from Architects' negligent design.

Facts - Sometime in November 1992, bricks and brick tiles of the gable end wall of one of the tower blocks of the Eastern Lagoon II Condominium fell off and damaged another unit. The Management Corporation ("The MCST") instituted proceedings in the High Court against the architects of the development for, inter alia, the cost of repair and the cost of rectifying all gable end walls of both tower blocks in the development, alleging that the architects had been negligent in their design and/or their supervision of the construction of the walls. The architects joined as third parties the main contractor for the development alleging that the walls had failed because of poor workmanship by the main contractor. The learned trial judge allowed the MCST's claim and dismissed the third party action. The architects appealed against the trial judge's decision, arguing that they owed no duty of care to the MCST.

The Appeal - The learned trial judge's decision was challenged on three main grounds. Firstly that the architects owed no duty of care to the MCST in respect of the design of the condominium insofar as purely economic loss was concerned. Secondly, it was contended that even if they owed a duty of care to the MCST, they had met the standard of care demanded of them i.e they claimed that their design was sound and that their supervision of the construction was adequate. Thirdly, the appellants contested the learned trial judge's determination that no order for an indemnity or contribution should be made against the third party.

Duty of Care - Three arguments were raised in to support the first ground of Appeal i.e that the architects owed no duty of care to the MCST.

The First Argument - It was contended firstly that the Court of Appeal's earlier decision in *RSP Architects Planners & Engineers v Ocean Front Pte Ltd* [1996] 1 SLR 113 *("Ocean Front")* was wrongly decided because the Court of Appeal in Ocean Front had in effect applied the two stage test enunciated in *Anns and Ors v. Merton London Borough Council* [1978] AC 728 *("Anns v. Merton")* which had been overruled by the House of Lords in *Murphy v. Brentwood District Council* [1991] 1 AC 398. *("Murphy v. Brentwood")*

This argument was not accepted by the Court. The Court of Appeal held that the Court in Ocean Front did not follow the broad proposition laid down by Lord Wilberforce in Ann v. Mertons. The mere fact the Court in Ocean Front had examined the facts by a two stage process did not mean that it in effect was following Anns v. Mertons

The Second Argument - The second argument raised by the Architects was that the Court of Appeal in Ocean Front failed to take into account the element of reliance in determining the issue of proximity, and that the Court of Appeal had only considered the element of " foreseeability "

This argument was also rejected by the Court of Appeal. LP Thean JA held that: "The element of foreseeability was only one of the several ingredients the Court [in Ocean Front] took into account ...the Court [in Ocean Front] may not have used the word 'reliance', but there were present a very close relationship present between the parties and the also elements of 'assumption of responsibility' and 'known reliance'".

The Third Argument - Finally, it was contended that even if Ocean Front was rightly decided, it should not be applied in the present case because the relationship between the architects and the management corporation was nowhere near that close as between the developers and the management corporation and that to make the architects liable would be to make them liable for an indeterminate amount to an indeterminate class for an indeterminate time. This argument was also rejected by the Court.

It was held that, based on the following factors, there was sufficient proximity of relationship between the architects and the MCST to give rise to a duty on the part of the architects to avoid the economic loss sustained by MCST in this case: -

1. The Architects were engaged by the developers to design and supervise the construction of the condominium including the common property. The developers relied on the exercise of reasonable care and skill of their architects and they (the architects) undertook such responsibilities.

2. The Architects were aware at that time that separate subsidiary strata certificates of title would be issued for the condominium units and that upon the registration of the strata title plans the MCST would come into existence.

3. The Architects knew that the MCST would be in charge and would be managing the common property and would be relying on their exercising reasonable care and skill with respect to the common property.

4. The element of reliance was present in the relationship between the MCST and the architects. The MCST depends on the architects, amongst other things, to get the design of the building right.

5. For the same reasons as the Court gave in Ocean Front, the amount recoverable is determinate, the person to whom the Architect is liable is definable and the time span is not indeterminate.

The Court of Appeal went on to reject the two other grounds for appeal. The Court of Appeal held that they could not find anything wrong with the with the Judge's finding of fact that the design of the wall was negligent in that the Architects failed to provide for expansion joints and adequate wall ties. As for the third party action against the contractor, the Court agreed with the Judge's finding that even if the walls had been built with utmost quality, they would have collapsed because of poor design.

The architects' appeal was accordingly dismissed.

EDITORIAL COMMENT

Duty Of Care - In this case, the Court upheld the approach taken by the Court in Ocean Front in order to determine the existence of a duty of care i.e. the Court will apply a two stage test. In the first stage, the court will examine the facts of the case before it. The court will determine if 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. Next, if there is a sufficient degree of proximity, the court will then consider whether there is any policy reasons to negate the imposition of the duty of care. Applying this approach to the factual matrix, the Court held that there was sufficient proximity of relationship between the Architects of a condominium and the MCST.

If this approach is followed, it is likely that the Engineers of a condominium development may be held to owe a duty of care to the MCST for economic loss arising from their negligent design. The nature of the relationship between the Engineers and the MCST is very similar to the relationship between the Architect and the MCST.

It is also not difficult to envisage that such a duty of care may extend to the purchasers of houses and/or condominiums as well. The relationship between purchasers and architects is almost identical to the relationship between the MCST and the Architects of a condominium.

The outcome of case will however, ultimately depend on the facts and the evidence before the court.

Standard of Care - Although not a ground of appeal, it is also important to note that in the High Court Judgement, the judge applied the principle in the Privy Council case of *Edward Wong Finance Co Ltd v Johnson Stokes & Master* [1984] AC 296 which involved a negligence suit against solicitors. In *Edward Wong*, the Court held that professional negligence is to be established by objective standards. This is a departure from the subjective test of standard of reasonable care and skill first established English Cases of *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 and which was held to be applicable in the case of Architects in the Australian case of *Voli v Inglewood Shire Council* [1963] ALR 657 i.e "the reasonable skill, care and diligence of an ordinary competent and skilled architect"

To assess whether, on an objective basis, one would fall short of the standard of care required by them, the three questions, which were formulated by the Privy Council in *Edward Wong* would have to be answered. These are: (a) did the practice followed by the defendants involve a foreseeable risk? (b) if so, could that risk have been avoided? (c) if so, were the defendants negligent in failing to take avoiding action?

Based on this approach, the court will make an objective assessment of a particular practice. If the practice is negligent, the court can and will ignore the practice of the entire profession.

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