

Seaview condo defects: Residents hit snag

Management Corporation Strata Title Plan No. 3322 v Mer Vue Developments Pte Ltd and others (King Wan Construction Pte Ltd and others, third parties)



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Residents of The Seaview condominium, who sued four parties involved in the development over numerous alleged defects, have hit a snag in their fight for \$32 million in damages.

Three defendants - the developer, the architect and the main contractor - are largely off the hook for negligence claims following a landmark ruling on construction liability by the High Court.

In a written judgment on Wednesday, Justice Chan Seng Onn ruled that Mer Vue Developments, a subsidiary of Wheelock Properties; main contractor Tiong Aik Construction; and RSP Architects Planners & Engineers can rely on the independent-contractor defence.

In other words, they can put up a defence against negligence claims on grounds that they are not vicariously liable for the negligent acts of the independent contractors to whom they had delegated work.

Developers have been able to use this defence to absolve themselves of blame for building defects since a seminal ruling in 2005, but this is the first time a court has clarified that the main contractor and architect can also rely on this defence.

However, Tiong Aik and RSP can still be held liable for work not delegated to independent contractors.

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The implication is that if the management corporation (MC) of the Amber Road condominium wins its lawsuit, which is due to be heard in July, the amount of damages that the homeowners can get will be limited.

To pursue the negligence claims, the MC will have to go down the chain to sue the sub-contractors responsible for the design or construction of the development.

The fourth defendant, mechanical and electrical engineer Squire Mech, did not rely on this defence.

The ruling does not establish negligence and it has no implications for contractual liabilities.

Besides suing all four parties for negligence, the MC had also sued Mer Vue for breach of contract.

But only those who bought units directly from the developer can sue for this. In the current case, original buyers make up a small minority of the residents represented by the MC.

The Seaview, which was completed in 2008, comprises six blocks with a total of 546 units. In a suit filed on behalf of homeowners in 2011, the MC alleged many defects in the common areas, including foul odours, falling concrete and popping swimming pool tiles.

Last July, a hearing started on the preliminary issue of whether Mer Vue, Tiong Aik and RSP could rely on the independent-contractor defence, which is based on the principle that the employer should not be vicariously liable for the negligence of an independent contractor.

In 2005, the Court of Appeal applied this in the context of a developer delegating the duties of design and construction to independent competent contractors.