

Obligation of Homeowners to Neighbours for Construction Works

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For any queries relating to this article, please contact:

Christopher Tan
christophertan@leenlee.com.sg

Authors:
Christopher Tan
Tan Jin Yong
Myrra Yap

Lee & Lee
50 Raffles Place, #06-00 Singapore
Land Tower, Singapore 048623
T : +65 6220 0666

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Introduction

1. In *Ng Huat Seng and another v Munib Mohammad Madni and another* [2017] SGCA 58 ("**Ng Huat Seng**"), the Court of Appeal examined the obligations of homeowners who had engaged an independent contractor (on a "turnkey" basis) to perform construction works, to neighbours.
2. The appellants and respondents were neighbours who owned neighbouring residential properties located along a slope. The respondents were laypersons who had engaged a company (the "**Main Contractor**") to be responsible for the renovation works on their house, which included demolition works. The Main Contractor in this case caused damage to the appellants' property during the course of performing the demolition works.
3. The Court of Appeal decided that:
 - a. the respondents were not vicariously liable for the negligence of their contractor,
 - b. the respondents had exercised reasonable care in selecting and appointing the contractor to undertake the demolition works (as well as other construction works) on their property, and
 - c. the respondents did not owe the appellants a non-delegable duty of care to ensure that the contractor took reasonable care in performing the demolition works.
4. The Court of Appeal also touched briefly on whether the doctrine of ultra-hazardous acts should be recognized as part of Singapore law. The question was left open as it was not necessary for the Court to determine this issue in this case, but the Court made several observations.

Facts

5. The respondents had appointed the Main Contractor on a "turnkey" basis, which was an accepted industry practice at the time, and a common choice for Singaporean homeowners. This meant that the Main Contractor assumed carriage of the entire project and was contractually responsible to the respondents for both demolishing the existing house on the property as well as designing and building the new house. The Main Contractor was to engage such subcontractors and professional consultants and apply for such approvals as might be required.

6. During the course of the demolition works, the appellants suffered damage to their property. The appellants therefore claimed against the respondents for the damage to their property.
7. The dispute was first heard by the District Court, which found that the Main Contractor had been negligent in carrying out the demolition works.
8. However, in relation to the appellants' claims against the respondents, the District Court found that:
 - a. The respondents were not vicariously liable for the negligence of the Main Contractor, who was an independent contractor;
 - b. The respondents had not been negligent in appointing the main contract to carry out the demolition works; and
 - c. The respondents did not owe the appellants a non-delegable duty of care because the demolition works were not "ultra-hazardous".
9. The appellants appealed to the High Court against the District Judge's decision on their claim against the respondents. The question as to whether the Main Contractor had been negligent in carrying out the demolition works was not in dispute. The issue was whether the respondents should also be liable for the damage. The High Court dismissed the appeal, and affirmed the District Judge's conclusions on all the three issues.
10. The appellants then brought the appeal to the Court of Appeal, raising the same three issues which were decided in the lower courts.

The Vicarious Liability Issue

11. The Court of Appeal's starting point was that it was necessary to establish the existence of a special relationship between the defendant and the tortfeasor in order to mount a claim under the doctrine of vicarious liability.
12. In addition, the respondent must in some way have created or significantly enhanced, by virtue of that relationship, the very risk that in fact materialized in order to be held vicariously liable for the tortfeasor's wrongful acts.
13. On the facts of *Ng Huat Seng*, the Court of Appeal decided that the respondents should not be held vicariously liable for the negligence of the Main Contractor for the following reasons:
 - a. The respondents had engaged the Main Contractor as an independent contractor. Among other things, the Main Contractor had concluded contracts with consultants and subcontractors in its own name, and was solely responsible for the management and supervision of the employees it had hired; and
 - b. There was nothing at all to suggest that the respondent had, pursuant to or by virtue of its relationship with the tortfeasor, either created or significantly increases the risk of the harm that ensued.

The Negligent Selection Issue

14. The Court of Appeal further decided that the respondents had not been negligent in their selection and appointment of the Main Contractor.
15. The Court of Appeal agreed with the District Judge's approach in taking into account the applicable industry practices in ascertaining what a reasonable person in the circumstances of the defendant would have done.
16. In applying the "reasonable person" standard, regard must be had to the particular circumstances of each case. While not necessarily conclusive, industry standards and common practice remain important factors in ascertaining the appropriate standard of care.
17. The "turnkey" approach which the respondents adopted was an "an accepted industry practice" and a "common choice for homeowners in Singapore". It was therefore completely appropriate for the District Judge to have regard to this industry practice in coming to his decision.
18. Furthermore, the Main Contractor was licensed to carry out the works that it had been engaged to perform. This afforded a cogent basis for finding that the respondents had exercised reasonable care in selecting the Main Contractor to do those works.
19. On the facts of the case, the respondents had demonstrated that they had not breached their duty of care by ascertaining that the Main Contractor was properly licensed by the Building Control Act (Cap 29, 1999 Rev. Ed.) before appointing it. There was no evidence presented to suggest that the Main Contractor was not in fact competent to undertake the works which it had been engaged to undertake.

The Non-Delegable Duty of Care Issue

20. The Court of Appeal applied the two-stage test for determining the existence of a non-delegable duty that they had recently formulated in *Management Corporation Strata Title Plan No 3322 v Tiong Aik Construction Pte Ltd and another* [2016] 4 SLR 521 ("**Tiong Aik**").
21. The first stage of the test required the appellant to show that either his case fell within one of the established or recognized categories of non-delegable duties, or that his case possessed all five of the defining features outlined in the UK case of *Woodland v Swimming Teachers Association and others* [2014] AC 537 ("**Woodland**").
22. The appellant did not satisfy the first stage of the test. The demolition works could not reasonably be said to be ultra-hazardous, and did not fall within an established category of non-delegable duties. Moreover, none of the five defining features outlined in *Woodland* were present in this case. There was nothing to indicate that the appellants were in any sort of relationship of special dependence on or particular vulnerability in relation to the respondents (such as that of a patient, or a child), so as to warrant the imposition of a non-delegable duty of care on the respondents.
23. As the second stage of the *Tiong Aik* framework would only be triggered upon the satisfaction of the threshold requirement at the first stage, there was no need for the Court of Appeal to apply the second stage in this case.

Court of Appeal's Observations on Ultra-Hazardous Acts

24. As the Court found that the doctrine of ultra-hazardous acts did not apply to the demolition works in this case, there was no need for the Court to determine whether ultra-hazardous acts should be recognized as an established category of non-delegable duties under Singapore law.
25. Nevertheless, the Court made some observations on this issue, while leaving the question open.
26. The Court observed that if this doctrine was recognized as part of Singapore law, it should only be invoked in expectational circumstances. Activities which carry material risks of causing exceptionally serious harm that are unpredictable and that might materialize even if there is no negligence in the way these activities are carried out may properly be regarded as "ultra-hazardous".
27. The Court was quick to clarify, however, that the doctrine of ultra-hazardous acts does not create or impose liability in the absence of negligence. The basis for liability is still negligence.
28. If the doctrine of ultra-hazardous acts were to be recognized as part of Singapore law, it can allow a claimant whose case comes within the ambit of the doctrine to be in a position to make a principal answer for the negligent acts and/or omissions of another, even if the latter is an independent contractor.

Conclusion

29. In the circumstances of this case, the Court of Appeal ruled against the appellants on all three issues, and dismissed the appeal.
30. Although the doctrine of ultra-hazardous acts has not yet been recognized in Singapore, it appears likely that where a case that falls within that narrow scope comes before the Court of Appeal, the Court is likely to recognize the doctrine.

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The following partners lead our departments:

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kwakimli@leenlee.com.sg

Quek Mong Hua
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quekmonghua@leenlee.com.sg

Owyong Thian Soo
Real Estate
owyongthiansoo@leenlee.com.sg

Tan Tee Jim, S.C.
Intellectual Property
tanteejim@leenlee.com.sg

Adrian Chan
Corporate
adrianchan@leenlee.com.sg

Louise Tan
Banking
louisetan@leenlee.com.sg