

## Court finds architects owe a duty of care to condominium's Management Corporation...

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### 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

*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]*

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.

Three arguments were raised 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 between the parties and 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.

## **Proximity of relationship**

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.

## **Poor Design**

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 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 by Chan Tan and Partners**

**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 in 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 are 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 a 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 in 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.

*Readers with any questions or comments on the contents of this issue are welcome to write to Chan Tan and Partners or send an e-mail to their internet address at [chantan@singnet.com.sg](mailto:chantan@singnet.com.sg)*



# Some air-conditioning plant may not work in the year 2002! Why?

By Victor Leung

If you have equipment that uses CFCs you will have difficulty in finding a supply of the refrigerants in year 2002 or earlier according to local CFC distributors and dealers.

The import of CFCs into Singapore has been banned since January 1996. The existing stocks of CFCs, which were imported into Singapore before that date, are becoming scarce.

## Some CFC refrigerants:

- R-11, used in chillers ranging from 200 to 2000 RT
- R-12, used in chillers, household refrigerators, window units, etc
- R-113, used in small to medium airconditioning, food freezing and storage systems.

CFCs are substances containing chlorine, fluorine, and carbon. These substances act as a carrier of chlorine. When they are released in the atmosphere, CFCs rise to the stratosphere, which is between 10 and 15 km above sea level. CFC gases remain there for a few months or even longer and then break down slowly. The chlorine reacts with the ozone, reducing the amount of ozone present in the stratosphere.

The ozone layer acts as a shield that prevents too many of the sun's ultraviolet rays reaching the earth. Depletion of the ozone shield will cause an increase in skin cancer and other health problems.

Most of the developed countries have regulations to control the production, use and disposal of CFCs. In some countries an illegal discharge of CFCs is an offence and is subject to a fine and prison term.

## What we can do?

There are short, medium, and long term solutions.

In the short term, you want to minimize loss of the CFCs in your system by preventing and testing for leakage regularly. You could also install a recovery/recycling system, and provide proper training for your staff and technicians.

In some countries, it is mandatory to recover and/or recycle refrigerants during servicing operations to reduce emissions to the atmosphere.

A large system can be fitted with a receiver or a dump tank into which the refrigerant can be pumped and stored while the system is serviced. In a smaller capacity system it is not often feasible to provide such a tank, but a removable storage device can be considered.

Beware of contamination when recovering refrigerant for re-use. Air,

nitrogen, acid, and water are common contaminants. Any cross contamination to another system should also be avoided because it can cause damage to the second system. Warranties may be voided if contamination can be proven.

A recovery and recycling system may cost more than S\$15,000 depending on its capacity. And stores of CFCs for replenishment or replacement are still required.

In the medium term, you can retrofit or convert your system for an alternative refrigerant during major repairs. HCFC-123-using equipment can be used to replace CFC-11-using equipment and HFC-134a-using equipment to replace CFC-12 and CFC-500 equipment.

## Contact your consultant

You may want to contact your consultant or other expert to find the best solution for your case. For example, the capacity of a converted chiller likely has less output. However, if the system has spare capacity you may not need additional equipment to compensate for the loss caused by the conversion.

In the long-term, you may consider replacing the system with a new, high efficiency, environmentally friendly one.

All the above information is not exhaustive. You are advised to contact your consultant, contractor or supplier.

# The National Skills Recognition System and the Cleaning Industry

Adapted from a presentation made by Mr Michael Lim, President of the Environmental Management Association of Singapore (EMAS).

*In his presentation, Mr Lim explained the new National Skills Recognition System (NSRS) for the cleaning industry, how it came about, what it aims to achieve, and how it will influence the industry's efforts to transform cleaning into a dignified profession in a world class industry. He also explained where to go for training and the role to be played by the new Centre for Cleaning Technology.*

The government will be using NSRS, and its associated system of learning and skills acquisition, to improve Singapore's talent capital. How will it affect the cleaning industry?

About a year ago, the Ministry of Manpower, the Productivity and Standards Board (PSB) and EMAS met to discuss how to improve the cleaning industry.

We were not a small industry. But though we were worth over \$300 million a year and growing at a rate of over 20%, we had serious problems.

Prices were falling, staff turnover rates were high, productivity rates were low and many of our customers did not trust us to do a good job.

We all thought that the problem was the headcount policy and that foreign workers could give us the productivity we needed.

But foreign workers brought with them other problems. Crime, exploitation – and then, on top of it all, came the economic crisis.

## Asian economic crisis

Many neighbouring countries went into recession and a flood of illegal immigrants came to Singapore. The government went hard against the illegal workers and their employers.

That clamp-down levelled the playing field but it also left a void: there were no locals willing to take up the cleaning jobs. Wages increased and cleaning contractors had difficulty meeting their contracts.

The message was clear – we could not

depend on foreign workers for labour. We had to be able to attract, train and retain Singaporeans. And not the weak and aged Singaporeans who have nowhere else to go. They would never be able to pick up new skills and add the productivity needed.

It was a chicken and egg situation: Without proper skills, you cannot raise productivity, wages remain low and you cannot attract the right people for the job.

The NSR System, a national system of skills recognition and certification, should help us break the cycle.

It is a modular system that promotes work-based training and skills acquisition that is accessible to all. Cleaners can learn at their own pace, picking the modules relevant to their current work.

## NSR System is modular

There's no need to over-train a cleaner, or give him qualifications that he does not need. In the modular NSR System, each skill is certified, one at a time.

The NSRS calls for central testing and assessment. These tests will be administered by EMAS.

A Skills Standards Committee has been formed with the members from both public and private sectors. The first committee has members from Service Master, ISS, Campaign, Berkeley Cleaning Services, Jani King, the Ministry of Manpower and the Ministry of Environment.

The members of the committee have been trained and are equipped to be standards setters and assessors. The assessment regime is rigorous.

The PSB on behalf of the National Skills Council checks and audits the assessment of trainees under the NSRS. This is to ensure that the system is fair, credible and that the trainees meet industry-established standards.

Experience in Europe and the United States shows that once cleaning is made professional, there is more training and more specialization.

The NSRS is industry-driven. Skills standards are based on the performance standards set by customers.

From the customers' requirements the NSRS Committee determines what skills a worker needs in order to deliver the desired service. As customers' demands change with time, workers will be required to come back once every few years for reassessment and recertification.

The objectives of NSRS for the cleaning industry are to:

- identify, recognize and certify skills
  - raise the productivity of workers
  - help workers to continuously improve and upgrade themselves to stay employable
  - provide a platform for the industry to raise professional standards.
- To date six skills standards have been set at NSC 3 levels. These are :
- Clean hard floors
  - Clean carpets
  - Clean sanitary fixtures, fittings and toilet floors
  - Clean vertical surfaces, glass and ceilings
  - Clean furniture and furnishings





f) Deliver quality service.

In these skills standards the key emphasis is on underpinning knowledge, productivity indicators and industrial health and safety.

For example, in the module Clean hard floors, the skills standards specifies that the worker must know the types and characteristics of six hard floors: Ceramic, Slate, Terracotta, Concrete, Vinyl, Marble and Granite.

Workers must also know the types and uses of cleaning tools, equipment, and chemicals. Knowledge of Material Safety Data Sheets for chemicals is essential.

In their work, cleaners have a direct impact on their own safety, the safety of people in the buildings where they work – and on the environment.

### Industrial health and safety

Industrial health and safety issues are key components in the Skills Standards.

Workers must know the health and safety procedures for handling chemicals, the use of protective equipment, the display of safety signs and they must have a knowledge of basic first aid.

Productivity is another key component. In the Skills Standards in Clean Hard Floors the NSRS Committee has specified several productivity indicators – including being able to mop a floor of 100 sq meters with an 18-inch dust mop within 11 minutes or sweep 100 sq metres of floor with a 16 inch push broom within 15 minutes.

To qualify for the NSRS Certification, each worker will have to go through a series of tests. The tests may be verbal, performance based or written – depending on the element to be tested.

All tests will be conducted by qualified Assessors from EMAS. The qualifying test will focus on all elements in the skills standards.

**APFM Newsletter March 2000**

### Industry Training Centre

How are the workers going to get trained so that they can pass these tests? The good news is that the government will lend its support financially in three ways:

- A 90% grant on the funding of the industry training centre.
- All training courses will be SDF funded.
- Companies can also get access to SRP funding to help with workers' salaries during training.

The Training Centre will be at the Skills Development Centre at Bukit Merah.

The Centre will have over 12,000 sq feet of training space and will be developed at a cost of over \$1.5 million.

The founding members for this training facility are Ecolab, Nilfisk-Advance, Karcher Asia Pacific, ISS Servisystem, UMC Servicemaster and Campaign Cleaning Services.

The Training Centre will also co-opt others who can make a contribution to its success. The aim of the Centre is to make training accessible and affordable to all in the industry.

The Training Centre also plans to

conduct Supervisory and Management development programs to help the career path of workers. It will also look into developing management expertise in service measurements and audits to help our customers move to performance-based contracts.

The industry centre should be able to help reduce the costs of monitoring contracts and performance as the centre will be able to enjoy economies of scale for the various programs that will be developed for performance measurements.

In time to come, the industry centre will do much more than training. It will also undertake some R&D work to improve cleaning processes.

The expertise and resources of the founding members and others who will join the centre later will help the centre advance further.

The success of the transformation of the cleaning industry depends heavily on the success of this centre.

It also depends on the service providers and their customers. As the service providers start to train and certify their workers – customers, building owners and managers can also help.

### How customers can help

They can recognize the benefits of NSRS certification by:

- Allowing workers to go for training without penalizing the service providers;
- Recognizing the NSRS qualification and stating it as a requirement in new contracts;
- Asking their service providers who are working on existing contracts to have their workers certified;
- Once the agreed level of the workforce has been certified, the building owners should adopt a performance-based contract that allows their service providers to reduce headcount without penalty.





# Protection of building occupants during smoke haze

The Strategic Planning and Research Department of the Ministry of the Environment (ENV) prepared this paper on the health hazards of smoke haze and how to limit them indoors.

## Introduction

Smoke haze affected Southeast Asian countries during the dry seasons in 1991, 1994 and 1997. During the most recent smoke haze episode in 1997, ASEAN countries, in particular Brunei Darussalam, Indonesia, Malaysia and Singapore, were badly affected by smoke haze caused by land and forest fires. The Philippines and Thailand were affected to a lesser degree. The severity and extent of the smoke haze pollution was unprecedented and affected millions of people across the region.

## Air quality

Our air quality was affected during the smoke haze. We have a telemetric air monitoring system that monitors air quality continuously. The air quality information is disseminated to the public as a Pollutant Standards Index or PSI, identical to the index system developed by the United States Environmental Protection Agency.

The Agency developed this index system after years of careful research. The index is a health-based one and the intervals in the PSI scale are related to the potential health effects of the five major air pollutants, i.e. ozone, particulate matter, sulphur dioxide, carbon monoxide and nitrogen dioxide.

The objective of the index is to provide accurate, timely and easily understandable information about daily levels of air pollution so the public can modify their activities when air pollution

levels are high and take measures to protect themselves. At PSI below 100, the air quality is considered acceptable. At PSI between 160 and 200, air quality is considered unhealthful.

During the 1997 haze, the 24 hour PSI went into the 'unhealthful' range on 12 days. The highest reading was 138.

The pollutant responsible for the high PSI readings during the smoke haze was particulate matter less than 10 microns in size, commonly referred to as PM10.

The concentrations of the other pollutants have not shown any significant increase over their usual levels outside of the haze period.

## Health effects of smoke haze

The Ministry of Health has advised that given the intensity of the smoke haze experienced in 1997, the health effects were mainly caused by irritation of the nose, throat, airways, skin and eyes by fine dust particles.

Individual ability to tolerate air pollution varies, and persons with medical problems like asthma, chronic lung disease, chronic sinusitis and allergic skin conditions are likely to be more affected by the smoke haze and might experience more severe symptoms. Children and the elderly in general would be more susceptible.

## Regional measures

A Haze Technical Task Force has been set up to address the problem of smoke

haze in the region. It is chaired by Indonesia and comprises senior officials of all nine ASEAN member countries.

It has prepared a Regional Haze Action Plan. The Plan sets out cooperative measures needed among ASEAN member countries to address the problem of smoke haze in the region arising from land and forest fires. The Plan calls for definite, time-bound action programmes to prevent and control land and forest fires in the region.

## Domestic measures

Domestic measures are necessary to ensure the public is kept informed of the smoke haze situation, the air quality and measures they can take to protect themselves when the haze is intense.

The domestic measures that have been taken include daily dissemination of air quality information through the media, Internet and a haze info-line, advice on the use of respirators and portable air cleaners in homes, and advice on the use of air cleaning devices for buildings.

## Effects on occupants

During a prolonged haze, the indoor particle level will increase gradually and come close to the level of outside air after a day or so.

The fine particles in the air outside an enclosed air-conditioned building enter the building mainly through the fresh air intake and by infiltration (doors, windows and other openings).

Most air handling units are provided with coarse or primary filters which are not able to filter the fine particles present in smoke haze. The occupants of the buildings would therefore be exposed to high levels of particles during smoke haze if the building is unprotected.

Building owners could take measures to protect the occupants of their buildings. Protection can be achieved by installing suitable air cleaning devices that can remove fine particles and keep the particle level in the indoor air within acceptable levels during a prolonged smoke haze period.

### **Air cleaning devices**

There are two main places where air cleaning devices can be installed to keep the particle level in indoor air at an acceptable level:

- a) At the fresh air intake
- b) At the air handling unit.

The choice would depend on factors such as the design of the fresh air intake, air handling units and plant rooms, building design and indoor air quality goals.

Various types of air cleaning devices are available to filter fine particles in air. These include electrostatic precipitators, high-efficiency media filters and medium-efficiency media filters.

The next question faced by building owners is 'What efficiency of filtration is needed?' Based on calculations and measurements carried out by ENV, NUS and various suppliers of air cleaning

devices, a filtration efficiency of at least 80-85% (atmospheric dust spot) is recommended.

There may be buildings which have significant infiltration of outside air, in which case higher efficiency filters of 90-95% (atmospheric dust spot) would be needed. The higher efficiency filters are more costly and exert a greater air resistance. To accommodate them, substantial modification to the air handling system is needed.

The capital and operating costs vary from device to device, and depend on the application. Based on some assessments done by ENV, the overall annual cost of an air cleaning system can range from \$2,000 to over \$10,000 for a floor area of 1,300 m<sup>2</sup>.

These figures are for an assumed haze period of three months per year. The actual costs will depend on the specific needs of each building and will have to be ascertained with system suppliers.

### **Will it come back?**

ENV has advised building owners to look into the need to install air cleaning devices in their central air-conditioning systems. To assist building owners to find out more about available systems and costs, ENV sent out letters in March 1998 that enclosed a list of known suppliers of the different systems.

One difficult question for us is whether severe smoke haze will hit us again and, if so, to what degree and

duration. As it is difficult to make good predictions about the recurrence of smoke haze, the majority of the building owners have decided to take a 'wait and see' approach.

### **Policy and regulations**

At present there is no specific law to require building owners to provide air cleaning devices to keep indoor air at acceptable quality.

The Ministry of the Environment has published a book to provide guidelines on what constitutes good indoor air quality in office premises. ENV will continue to keep building owners informed of future smoke haze episodes and provide advice on the installation of air cleaning devices.

With this approach, the onus is placed on owners of buildings to ensure that the occupants of buildings are provided with an acceptable indoor air quality at all times, including during a smoke haze period. Building owners need to exercise due diligence and care for the health of occupants in their buildings.

The question now is how building owners will respond to this duty, and whether there is a need to do more in preparation for another smoke haze.

One area that the authority is looking at is to include recommendations on what needs to be done at the design stage of a building so that the Qualified Person responsible for the building project could incorporate or make provision for air-cleaning devices.

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# **APFM and the *Real Estate 21* study**

**A study with a vision: "to be a world-class real estate professional in a knowledge-based economy."**

**R**epresentatives from the Institute of Estate Agents, the Singapore Institute of Surveyors and Valuers and our own Association met on 14 January to launch the *Real Estate 21* study.

To arrive at a vision and role for real estate practitioners in the next century, the study will examine current practices here and benchmark them against the best standards in the world. The study will then set concrete targets for everyone to meet in order to bridge the gap between current reality and the intended vision.

The final report is to be ready by September 2000. Two interim reports are to be submitted in March and June.

The study will be conducted by sub-committees of the three associations. Our

Association has three main areas to cover.

## **1. Market opportunities**

We will analyze the current property and facility management industry and identify the strengths and weaknesses of our local companies. We will evaluate public perception of our profession and conduct a self-appraisal.

We will analyze the potential of the industry locally, regionally and globally in the medium and long term and recommend opportunities for local firms to venture overseas.

## **2. Professionalism**

We will evaluate the current level of professionalism and recommend ways to upgrade and enhance it for everyone in

our business through lifelong learning, professional bodies like our Association, or Government.

## **3. Practices**

We will study the best practices in property and facility management in the world and recommend how local firms can benchmark against these. Our study should also cover the use of information technology to improve productivity and the competitive advantage of local firms.

If you would like to contribute to the study, please contact our Secretariat. All views are welcome.

The APFM Secretariat is in the Capitol Building on Stamford Road.

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Message from  
Managing Director  
Mr Peter P K Tan

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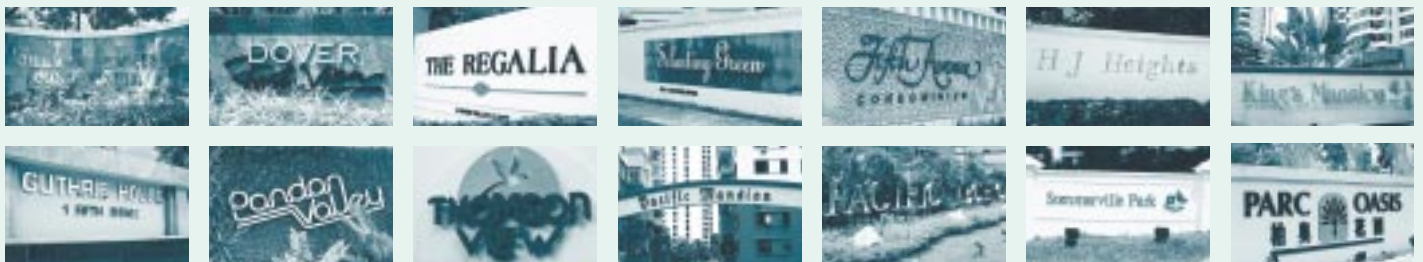
Our commitment towards service excellence lies in our corporate philosophy, which is, to maximize the potential of a development through a well-planned management strategy without compromising integral comfort and values.

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On this joyous occasion, I would like to thank all our clients and business associates for their support and co-operation. And to all our staff, this creditable achievement would not have been possible without their effort and dedication.



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