# Wong Jin Fah (suing by his next friend Ho Chia Hao) v L & M Prestressing Pte Ltd and Others (Liberty Citystate Insurance Pte Ltd (formerly known as Citystate Insurance Pte Ltd) and Another, Third Parties)
[2001] SGHC 249

**Case Number** : Suit 474/2000

**Decision Date** : 31 August 2001

**Tribunal/Court** : High Court

**Coram** : Lai Siu Chiu J

**Counsel Name(s)** : Vinodh Coomaraswamy and Dylan Lee (Shook Lin & Bok) for the plaintiff; K Anparasan (William Chai & Rama) for the first defendants and first third party; Lim Yong (Lim Hua Yong & Co) for the second defendants; Tan Hong Seng (Joseph Tan Jude Benny Anne Choo) for the third defendants; Fazal Mohamed (B Rao & KS Rajah) for the second third party; Dylan Lee and Stanley Lim (Shook Lin & Bok) for the plaintiff; K Anparasan (William Chai & Rama) for the first defendants and first third party; James Yu (Yu & Co) for the second defendants; Fazal Mohamed (B Rao & KS Rajah) for the third defendants and second third party; Tan Ken Siong (in person) for the fourth defendants

**Parties** : Wong Jin Fah (suing by his next friend Ho Chia Hao) — L & M Prestressing Pte Ltd — Liberty Citystate Insurance Pte Ltd (formerly known as Citystate Insurance Pte Ltd); Another

*Building and Construction Law – Contractors' duties – Breach of statutory duty – Building under construction – Failure to make and keep safe place of work – Absence of overhead protection along periphery of building – Inadequate safety netting – Joint and several liability – Whether one judgment sum against all defendants – s 33(3), 88(1, 88(2)) &88(3) Factories Act (Cap 104, 1998 Ed) – regs 5(1) & 100 Factories (Building Operations and Works of Engineering Construction) Regulations (Cap 104, Rg 8, 1999 Ed)*

*Building and Construction Law – Construction torts – Building under construction – Accident caused by inexperienced and unqualified workers – Occupier's liability – Degree of control – Duty to use reasonable care not to create trap or allow concealed danger of which occupier knows or ought to know about – Concealed danger along perimeter of building at ground level due to falling objects – Absence of overhead protection – Inadequate warning of concealed danger – Unsafe work practices – Negligence – Contributory negligence – Liability for breach of duty – Joint and several liability – Whether one judgment sum against all defendants*

*Civil Procedure – Costs – Plaintiff persisting in claim against second defendants despite absence of blame against them by other defendants – Whether 'Sanderson' or 'Bullock' order appropriate*

*Employment Law – Contract of service – Contract for service – Distinction – Master and servant*

*Evidence – Admissibility of evidence – First defendants pleading guilty to offence under Factories Act – Whether fact of conviction admissible in evidence to prove commission of offence – s 45A(1) Evidence Act (Cap 97, 1997 Ed) – ss 33(3), 88(1) & 89(2) Factories Act (Cap 104, 1998 Ed) – regs 5(1) &5(3) Factories (Building Operations and Works of Engineering Construction) Regulations (Cap 104, Rg 8, 1999 Ed)*

*Insurance – Policyholders – Extent of policy's coverage*

:

***Introduction***

This action arose out of an accident on a construction site at No 19 Lok Yang Way (`the site`). On 2

September 1999, Wong Jin Fah (`the plaintiff`), a Malaysian with permanent resident status in Singapore, was working at the site when a piece of metal formwork fell from the partly constructed building and struck him on the head.

The heavy piece of metal pierced and cracked the plaintiff`s safety helmet and caused him to sustain serious injuries; the medical report produced in court opined that the plaintiff was likely to suffer permanent disabilities.

The plaintiff`s claim was based on negligence, breach of occupier`s liability and breach of statutory duty on the part of the defendants.

***The parties involved***

Stamford Tyres International Pte Ltd (`the developers`), through its architects, RG Architects, awarded L & M Prestressing Pte Ltd (`the first defendants`), a building contract in October 1998 for the construction of a four-storey warehouse building with ancillary office and showroom on the site.

The first defendants as the main contractor sub-contracted the structural works to Wei Sin Construction Pte Ltd (`the third defendants`). The third defendants in turn sub-contracted to Sin Chynta Construction Pte Ltd (`the fourth defendants`) fabrication and erection of the formwork as well as its dismantling after use. The first defendants also sub-contracted installation of the roof trusses to Hoe Hoe Engineering Pte Ltd (`the second defendants`) who sub-contracted the work in turn to the plaintiff. Liberty Citystate Insurance Pte Ltd (`the first third party`) are the insurers of the first defendants while Cosmic Insurance Corp Ltd (`the second third party`) are the insurers of the third defendants. The diagram below shows the relationship of the parties:

Please refer to the pdf file or hard copy of this issue to view the diagam.

As a sub-contractor of the first defendants to manufacture and install roof trusses, the second defendants also provided the requisite materials for such installation.

The third defendants` scope of works included the construction of columns to support the roof, which work was sub-contracted to the fourth defendants.

***The accident***

On 2 September 1999 at about 10.45am, the plaintiff was informed of the arrival at the site of a trailer carrying roof trusses; he proceeded to supervise the delivery and unloading. According to the senior safety supervisor of the first defendants, K Suberamaniam (`Suberamaniam`), the plaintiff had his safety helmet on.

Just before the accident, the plaintiff had commenced laying timber planks over some potholes on the ground along the vehicle washing bay access area at the site`s entrance. The timber planks provided a pathway for the loaded trailer to cross the washing bay area.

At that time, two Thai workers of the fourth defendants, Changkwian Thawee (`Changkwian`) and Wongcharee Dewit (`Wongcharee`) were dismantling metal formworks at the fourth storey of the building. The roof beam area in which they were working was directly above the washing bay area.

After unlocking each piece of metal formwork, Changkwian and Wongcharee would lower it manually to the ground. Whilst lowering down one (1) of these pieces, Changkwian lost his grip. Although Wongcharee was holding the other end of the formwork, it proved too heavy for him to bear the weight alone. He released the metal formwork, it fell and hit a platform at the second storey before tearing through the safety net surrounding the second storey platform and hitting the plaintiff on the ground.

The metal formwork was about 300mm wide, 1,500mm long and weighed some 17.4kg. Falling from a height of some 18m, its force was strong enough to crack the plaintiff`s safety helmet. Suberamaniam (1DW1) who was then at the nearby guardroom some 10m away from the spot, saw the plaintiff lying on the ground. He ran to the plaintiff and found him unconscious with some bleeding on his left forehead. He immediately carried the plaintiff to the guardroom and performed first-aid procedure on the plaintiff. Suberamaniam then informed his project manager, Leong Chee Soon, who called for an ambulance to take the plaintiff to hospital.

***The injury***

The plaintiff was sent to National University Hospital. CT scans showed the plaintiff had suffered open fractures (and bruises) on his forehead and right frontal sinus and extradural haematoma. He was operated on for his forehead fracture, his blood clot was evacuated, his torn dura repaired and, he was subsequently transferred to the Department of Rehabilitation Medicine at Tan Tock Seng Hospital (on 22 September 1999).

The plaintiff`s injuries were serious. While he was mentally alert, he had severely reduced attention span and initiation; he was disoriented as to place, time and person. This suit was commenced by his next friend who is his brother-in-law.

The plaintiff`s rehabilitation process was also complicated by disrupted sleep-wake cycles and recurrent post-traumatic seizures. Even after comprehensive rehabilitation, he could only manage attention spans of 20 minutes, and was capable of performing only basic self-care skills. With his reduced safety awareness, he required supervision when he was outdoors. After a whole month of rehabilitation at Tan Tock Seng Hospital, he was discharged into the care of his wife on 22 October 1999.

Due to his severe traumatic brain injury, the plaintiff was certified to be at risk of seizures, dementia and side effects from medication, etc. He was also very likely to have permanent and severe cognitive deficits and disability. Prolonged follow-up and medical and neurosurgical review were recommended by his doctors.

***The plaintiff`s case***

The plaintiff alleged that the accident was caused or contributed to, by the negligence of all the four defendants or any one or more of them in that they had, in the main:

(1) failed to provide any or any adequate cover so that persons, including the plaintiff, would not be exposed to falling objects from the building works;

(2) failed to provide and/or maintain a safe or proper system of work at the building; and

(3) exposed him to a risk of damage or injury of which they knew or ought to have known.

On occupier`s liability, the plaintiff alleged that all the four defendants, or any one or more of them, having a sufficient degree of control over the site, were occupiers of the site.

The plaintiff also alleged that all the four defendants or any one or more of them, breached their statutory duty under the Factories Act (Cap 104, 1998 Ed) (`the Act`) in that they:

(1) failed to make and keep safe the place at which the plaintiff was working, contrary to s 33(3) of the Act;

(2) failed to erect any or any adequate overhead protection along the periphery of the building contrary to reg 5(1) of the Factories (Building Operations and Works of Engineering Construction) Regulations (Cap 104, Rg 8, 1999 Ed) (`the Regulations`); and

(3) failed to use any or any sufficient overlay or screening nets contrary to reg 100 of the Regulations.

***The first defendants` case***

The first defendants` defence was, that it had no knowledge of the presence of the fourth defendants at the site and that the fourth defendants were the sub- contractors of the third defendants. They contended that the injury was caused by the fourth defendants` workers and attempted to shift liability to the third and fourth defendants.

***Occupier`s liability***

The law in respect of an occupier`s liability is based on the common law (see **Industrial Commercial Bank v Tan Swa Eng** [1995] 2 SLR 716 at 719). The test of who is an occupier in law is generally accepted as being based on the degree of control exercised by such person over a particular site or building. The person who is an occupier in law is not required to be in exclusive physical occupation of the premises. In the House of Lords case of **Wheat v E Lacon & Co** [1966] AC 552[1966] 1 All ER 582 at 593-594, Lord Denning opined that:

> *wherever a person has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an `occupier` and the person coming lawfully there is his `visitor`: and the `occupier` is under a duty to his `visitor` to use reasonable care. In order to be an `occupier` it is not necessary for a person to have entire control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share the control with others. Two or more may be `occupiers`. And whenever this happens, each is under a duty to use care towards persons coming lawfully on to the premises, dependent on his degree of control. If each fails in his duty, each is liable to a visitor who is injured in consequence of his failure, but each may have a claim to contribution from the other.*

The above passage is significant, when I later deal with the third and fourth defendants` duty and liability as occupiers. There is no question that under the law, it is possible to have more than one

occupier liable to a visitor injured at the premises, in circumstances where the duty to use reasonable care is found to have been breached.

***The plea of guilt***

The first defendants were originally charged by the Ministry of Manpower (`MOM`) as the `occupier` of a building operations worksite at the site; they were said to have contravened reg 5(1) of the Regulations, thereby committing an offence under s 88(1) of the Act, namely, a contravention which was likely to cause the death of, or bodily injury to a person.

In the statement of facts for the charge, the first defendants were referred to as the `occupier` of the site. The relevant portions of ***PP v L & M Prestressing*** (Summons No MOM 4458/99) read as follows:

> *The defendant, which was the occupier and main contractor of the worksite, was carrying out the construction of a 4-storey warehouse building with ancillary office and showroom at the said worksite.*

In the subsequent amended charge, as well as the accompanying statement of facts, the first defendants were similarly referred to as the `occupier` of the site. Further, in the first defendants` plea in mitigation dated 28 June 2000, submitted by their counsel, they pleaded guilty to the amended charge under s 88(1) of the Act. The plea, as phrased by their counsel, stated as follows:

> *The Defendants, L & M Prestressing Pte Ltd, have pleaded guilty to an Amended Charge under section 88(1) of the Factories Act (Cap 104) and punishable under section 89(2) of the said Act. They have also admitted without reservations to the facts of the case as tendered by the Prosecution.*

The first defendants were eventually fined (in August 2000) for contravening reg 5(3) of the Regulations, in relation to the accident.

Consequently, the plaintiff was entitled to assert that under s 45A(1) of the Evidence Act (Cap 97, 1997 Ed), the first defendants` conviction of an offence under the Act and the Regulations thereunder, should be admissible in evidence for the purpose of proving that the company had committed the offence.

***The issue of trespass***

I shall next deal with the issue of trespass. The first defendants alleged the plaintiff was a trespasser. They cited his refusal to produce his identification card in exchange for a security pass and the inability of Suberamaniam and the security guard (at the main entrance) to recognise the plaintiff, as evidence of such alleged trespass. Suberamaniam also told the court that there was constant security on the site. The security guard took instructions from the first defendants` project manager, Leong Chee Soon. As the security guard controlled access to the site under the instructions of Leong Chee Soon, it also meant that the security guard had the power to prevent unauthorised persons from entering the site.

However, the evidence pointed the other way. Several witnesses had seen the plaintiff working on the site prior to the accident. The plaintiff`s partner, Neo Ah Guan (`Neo`), was at the site at the material time overseeing the installation works undertaken by the plaintiff`s firm, U Chian Ironworks (`U Chian`). Another of the plaintiff`s witnesses, Tee Tar Foh (PW3), who was a freelance worker employed by U Chian at the time, also said that the plaintiff was at the site from July 1999 (when work commenced at the site), until the day of the accident. The second defendants` witness, Sik Hing (2DW1), their director, also said that he had met the plaintiff at the site before the day of the accident. Chan Wai Keong (2DW2), the project co-ordinator of the second defendants, also said that he had seen the plaintiff on one or two occasions before the day of the accident, doing supervision. Aaron Soh Eng Siong (`Soh`), a director of the third defendants, told the court that he had met the plaintiff at the site before the day of the accident. Changkwian (the Thai worker of the fourth defendants who dropped the metal formwork) also testified he had seen the plaintiff at the site before the day of the accident. The testimony of these witnesses was not challenged by the first defendants.

A significant fact which emerged from the evidence was that there was no consistent practice (on the part of the first defendants) requiring persons entering the site to exchange their identification cards for security passes. Consequently, the plaintiff was an invitee or a business visitor.

More significantly, U Chian was engaged by the second defendants as a sub-contractor and the plaintiff was/is a partner of U Chian. Therefore, he had every right to be at the site with the implied if not express, consent, of the first defendants. The fact that the first defendants were unaware of U Chian`s engagement by the second defendants, contrary to the standard sub-contract terms applicable to the letter of award between the first and second defendants dated 30 March 1999 (see cl 14A.1 at AB97) does not change the plaintiff`s position vis-.-vis the first defendants nor render him a trespasser.

***Breach of duty to use reasonable care***

The first defendants, as `occupiers` of the site, owed a duty to a business visitor such as the plaintiff, not to create a trap or to allow a concealed danger to exist upon the premises, of which the first defendants knew or ought to have known. In **Indermaur v Dames** [1866] LR 1 CP 274 (see also **Industrial Commercial Bank v Tan Swa Eng** [1995] 2 SLR 716 at 719 and **Awang bin Dollah v Shun Shing Construction & Engineering Co** [1997] 3 SLR 677 at [para ]30), Willes J said:

> *... with respect to such a visitor at least, we consider it settled law, that he, using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger which he knows or ought to know; and that, where there is evidence of neglect, the question whether such reasonable care has been taken ... and whether there was contributory negligence in the sufferer, must be determined ... as a matter of fact ...*

The first defendants relied on **Mohd bin Sapri v Soil-Build** [1996] 2 SLR 505 at 505-506 to argue that the duty of an occupier to use reasonable care to prevent unusual dangers which the occupier knew or ought to have known about, only relates to the physical condition of the premises, as opposed to current operations at the site. The accident to the plaintiff arose from current operations at the site carried out by the fourth defendants. The current operation was carried out in an unsafe manner over which the first defendants had no control (see **Mohd Sainudin bin Ahmad v**

**Consolidated Hotels** [1987] SLR 556 [1989] 1 MLJ 297 ).

However, it is to be noted that in ***Mohd bin Sapri*** (supra), the Chief Justice also quoted with approval the case of **Ferguson v Welsh** [1987] 3 All ER 777 at 783:

> *It would not ordinarily be reasonable to expect an occupier of premises having engaged a contractor whom he has reasonable grounds for regarding as competent, to supervise the contractor`s activities in order to ensure that he was discharging his duty to his employees to observe a safe system of work.* ***In special circumstances, on the other hand, where the occupier knows or has reason to suspect that the contractor is using an unsafe system of work, it might well be reasonable for the occupier to take steps to see that the system was made safe****. [Emphasis is added.]*

Suberamaniam admitted that he was fully aware that workers were dismantling formworks on the fourth storey of the building at the material time and, that there was inadequate overhead protection. Suberamaniam also admitted that the overhead protection had not been erected, rather, it was in the process of being erected.

The plaintiff`s partner Neo (PW2) had testified that the green netting was about three (3) storeys high. After the accident, he noticed that the netting was put up to the fourth level. Someone had obviously noticed the inadequate safety netting and rectified the omission immediately after the accident. Tee Tar Foh (the plaintiff`s freelance worker) had also testified that the area where the accident occurred was not cordoned off at the ground level.

It was clear that there was a concealed danger along the perimeter of the building at ground level, due to the dangers posed by falling objects. Such danger would not be immediately apparent to anyone walking at the ground level below.

In the circumstances, the first defendants had failed to give adequate notice of such concealed danger. There was no warning whatsoever to workers on the site of the danger of falling objects, in the absence of the overhead shelter. Suberamaniam was a full-time senior safety supervisor of the first defendants. He agreed that it was essential for the overhead shelter/protection to have been completed before any dismantling of the formworks was carried out. He also admitted that the overhead shelter had not been erected along the periphery of the building under construction. He also admitted that there was a breach of reg 5(1) of the Regulations.

Even accepting that the first defendants could rely on the third defendants to dismantle the formworks, the evidence clearly showed that the first defendants were fully aware of the unsafe work practice adopted by workers of the fourth defendants, with the absence of the safety netting. There is little doubt that the first defendants breached their duty to use reasonable care. As such, the accident and the injury to the plaintiff were caused (or contributed to) by the breaches of the first defendants` duty as occupiers of the site.

Consequently, I agree with counsel for the plaintiff that the first defendants had:

(1) exposed the plaintiff to a risk of injury from a hazard or an unusual or concealed danger, of which the first defendants knew or ought to have known;

(2) failed to warn the plaintiff sufficiently or at all that there were works carried out on the formwork which would pose a hazard or an unusual or concealed danger of which they knew or ought to have

known; and

(3) caused or permitted the building or the place where the plaintiff was standing to become or remain a hazardous place to work or a place with unusual or concealed danger.

***Negligence***

The first defendants argued that they ought not to be made liable, as the work had been sub-contracted to the third defendants. However, in ***Mohd bin Sapri v Soil-Build*** (supra) the Court of Appeal made it clear (at p 514) that:

> *A person who appoints independent contractors does not, ipso facto, absolve himself of any liability in negligence to the employees of his independent contractors. He may still be liable where the working conditions were inherently dangerous, thereby requiring the exercise of significant degree of supervision and control over persons with whom he has no contractual relationship. Alternatively, ...* ***he may have to observe such a duty if he had taken it upon himself to exercise a degree of control and actively co-ordinate the independent contractor`s activities, given that the work environment itself involved inherent risks or danger. Thus, both elements of `danger` and `control` will have to be considered.*** *[Emphasis is added.]*

The first defendants as the main contractor, were in overall charge of safety on the site with Suberamaniam as their senior safety supervisor. There had been previous occasions where the first defendants had fined the third defendants for carrying out unsafe work practices at the site. That being the case, the first defendants should not have left the matter and method of dismantling formworks, to their sub-contractors and the third defendants in particular, without making certain that the latter had taken adequate safety precautions.

It should have been reasonably foreseeable that someone coming onto the site would be injured if the first defendants failed to discharge their duty. There was also sufficient proximity between the first defendants and the plaintiff. In ***Awang bin Dollah v Shun Shing Construction & Engineering Co*** (supra at [para ]20), the Court of Appeal made it clear that a main contractor owed a duty of care to a workman as if he was the workman`s `employer`, notwithstanding that the workman was not employed by him but by a sub-contractor, if he (the main contractor) exercised or had the right of control over the workman in respect of the work which the workman was engaged to perform.

The first defendants had been convicted for breach of reg 5(1) under the Act, to which they pleaded guilty. They had then penalised the third defendants by charging to the latter, (more than) the fine they had paid to the MOM. At the very least, there was a failure on the part of the first defendants, through Suberamaniam, to ensure that workers at the site were qualified to carry out their work.

Changkwian (4DW2) who dropped the metal formwork, confirmed that he only started working with metal formwork two (2) months prior to the accident. He testified that his fellow worker Wongcharee, was even less experienced in handling metal formwork. Changkwian admitted that the first time he actually dismantled metal formwork was whilst working at the site; it was also the first time for Wongcharee, a fact unknown to Suberamaniam.

Suberamaniam was aware that the third defendants and/or their sub-contractors had consistently failed to comply with safety regulations. In fact, there were warning notices issued by the first to the

third, defendants. Although there were informal meetings to brief workers on ongoing unsafe practices at the site, there were no specific briefings pertaining to safety when dismantling metal formwork. Taking these factors into account, I am of the view that the first defendants owed a duty of care to all invitees, as they had taken upon themselves the task of exercising a degree of control and had actively co-ordinated the various sub-contractors` activities, given that the work environment itself involved inherent risks or dangers.

It is noteworthy that unknown to the MOM (according to their factory inspector, Januri Jaafar), Suberamaniam himself did not have the requisite minimum two (2) years` experience as a site foreman before taking up his appointment as a site safety supervisor, as required under reg 25(3) of the Regulations. Indeed, it appeared that he was unfamiliar with the safe handling of metal formwork. He was not in a position to give instructions on how to dismantle metal formworks safely, even if he had wanted to do so.

Under reg 5(1) of the Regulations, overhead protection must be erected along the periphery of every building which is under construction. The only exception is when the building is less than 15m in height. It was confirmed by Suberamaniam that no overhead protection had been erected along the periphery of the building. Januri Jaafar (PW7), of the MOM confirmed there was no periphery overhead protection around the building, when he visited the site to conduct investigations, shortly after the accident. This resulted in the first defendants being charged, convicted and fined under s 89(3) of the Act.

Under reg 100 of the Regulations, where a scaffold is erected in an area where construction activities may pose hazards to pedestrian or vehicular traffic in the form of falling objects, overlay or screening nets shall be used to envelope the scaffold. The first defendants failed to comply with this regulation. Suberamaniam confirmed that the safety net was only `going up gradually from the third to the fourth storeys` whilst work was already being carried out at the fourth storey.

***Causation***

On the question of causation, the accident would not have happened had a proper system of supervision been in place. Had the overhead protection been up to the third storey on the day of the accident, the plaintiff would not have suffered head and other injuries. The impact of the force of the free-falling metal formwork would undoubtedly have been reduced by the overhead protection, thereby minimising if not, avoiding the accident. Further, had the safety net been raised to the level of the fourth storey, the path of the free-falling metal formworks could have been diverted, thereby preventing the accident altogether. There was also a lack of warning signs in the area immediately below where the dismantling works were being carried out; added to that is the fact that the area was not cordoned off.

***The Factories Act and breach of statutory duties***

In ***Awang bin Dollah v Shun Shing Construction & Engineering Co*** (supra at 679), the Court of Appeal made it clear that the object and purpose of the (Factories) Act deemed it incumbent on the `occupier` of the premises to show that he has taken all reasonable steps to make and keep the place of work safe for anyone working there. The rationale, as explained, is that only the `occupier` has the requisite knowledge and expertise in respect of such matters, and is in a position to ensure compliance with the Act.

Reading s 88(1) with s 88(2) and (3) of the Act, the duty on the first defendants as occupier and main contractor is non-delegable. In **Lim Chin Yok Co v Malayan Insurance Co Inc** [1975] 1 MLJ 101 , Choor Singh J said (at p 103I):

> *A statutory duty is absolute in the sense that whatever the statute prescribes must be strictly performed. If the Act, according to its true construction, has not been complied with, liability is automatic. In this sense the defendants had failed to perform their duty and this breach of duty had resulted in harm to the plaintiff. He was therefore entitled to succeed in his claim for damages against the defendants.*

In the circumstances, the first defendants breached their statutory duty, as they had failed to make and keep safe, the place at which the plaintiff was working, contrary to s 33(3) of the Act. They also failed to erect any or any adequate overhead protection along the periphery of the building, contrary to reg 5(1) of the Regulations. Their site supervisor (Suberamaniam) did not even have the requisite qualification under reg 25(3)(c).

Two names which cropped up frequently during the cross-examination of Suberamaniam were the project manager Leong Chee Soon and the safety officer Daniel Teo. The impression Suberamaniam gave was that Leong Chee Soon and Daniel Teo played important roles in ensuring safety on the site. However, neither of them were called to testify and no reasons were offered for their absence from court. I can only surmise that if called, their evidence would not have been favourable to the first defendants.

I would therefore allow the claim by the plaintiff against the first defendants as claimed.

***The second defendants***

The second defendants were sub-contractors of the first defendants. In turn, they sub-contracted to the plaintiff the work of fabricating the roof trusses to the building. The plaintiff raised the same causes of action against the second defendants. However, it is difficult to see how the second defendants can be liable.

U Chian was engaged by the second defendants by way of a letter dated 18 June 1999 (`the letter`). The second defendants did not have direct control and supervision over the manner of performance of work by the plaintiff`s firm. Under cl 5 of the letter (see AB115), the plaintiff himself was to employ a skilled and competent supervisor to supervise and co-ordinate the works at the site.

The plaintiff`s partner Neo confirmed in re-examination (N/E 14) that the second defendants did not supervise the plaintiff or him in their work. Neo confirmed that both he and the plaintiff were skilled in the installation of roof trusses and they mainly supervised their own workers. This included taking delivery of the materials at the site.

The second defendants had no control over the installation and dismantling of the metal formworks. Neither were they responsible for the erection of safety netting where the metal formworks were constructed. It was clear from the evidence that the construction of overhead protection and safety netting around the periphery of the building at the site was outside the second defendants` scope of work and responsibility. Neither were the second defendants responsible as regards entry of visitors and workers, and the overall safety regulations at the site. There was no evidence to conclude that

the second defendants had sufficient or any control of the site so as to be deemed an `occupier`.

The accident was caused by two Thai workers of the fourth defendants. Even if it can be said that the second defendants owed a duty of care to the plaintiff as an employee, there was no evidence to suggest that the second defendants or their workers caused or contributed to the accident.

Consequently, the plaintiff`s claim against the second defendants is dismissed with costs.

***The third defendants***

The third defendants` scope of work, as a sub-contractor of the first defendants included, inter alia, structural works at the site. The third defendants were also required to erect the columns supporting the roof of the building; they sub-contracted part of their work to the fourth defendants.

The third defendants` contention was simply that their relationship with the fourth defendants was not one of master and servant, but that the latter was employed as an independent contractor. Hence, they were not responsible for any harm caused by the fourth defendants` Thai workers to the plaintiff.

However, that was not the evidence adduced in court. At the material time, there was indeed a relationship of master and servant between the third and fourth defendants.

An employee is a servant if he is `subject to the command of his master as to the manner in which he shall do his work` (see **Yewens v Noakes** [1880] 6 QBD 530 at 532-533). In **Queensland Stations v Federal Commissioner of Taxation** [1945] 70 CLR 539 Latham CJ (at p 545) defined it thus:

> *If the work to be done by one person for another is subject to the control and direction of the latter person in the manner of doing it, the person doing the work is a servant and not an independent contractor, and prima facie his reward would be wages. An independent contractor undertakes to produce a given result, but is not, in the actual execution of the work, under the order or control of the person for whom he does it.*

The conventional test is as stated by Denning LJ in **Stevenson Jordan & Harrison v Macdonald & Evans** [1952] 1 TLR 101 at 111 where he established the `organisation` or `enterprise control` test. The question to be answered appears to be whether the person`s work was subjected to co-ordinational control as to `where` and `when`, rather than the `how`:

> *under a contract of service, a man is employed as part of the business, and his work is done as an integral part of the business; whereas, under a contract for services, his work, although done for the business, is not integrated into it but only accessory to it.*

That much is clear.

The third defendants sub-contracted labour from the fourth defendants. On the day of the accident, the fourth defendants` two Thai workers were continuing to dismantle formworks based on instructions given to them the previous day, by the third defendants` foreman.

The evidence was that the fourth defendants` workers received instructions directly from the third defendants. Changkwian maintained that the instructions to dismantle the metal formworks came from the third defendants. It was revealed by Tan Ken Siong (`Tan`), a director of the fourth defendants, that his workers took instructions from the third defendants` representatives at the site. Tan (4DW1) testified that a foreman and a supervisor on the site gave instructions to dismantle the metal formworks.

The third defendants` director, Soh, had contracted workers from the fourth defendants after his company ran into problems with their initial sub-contractor. Soh said he did not take any steps to verify whether the fourth defendants` workers were skilled or qualified to carry out dismantling of metal formworks. He was under great pressure to complete the third defendants` scope of works as the original sub-contractor his company hired failed to carry out the work expeditiously. I very much doubt that Soh was at all concerned with whether the fourth defendants` workers were skilled. He hardly dealt with the fourth defendants` workers and left it to his site supervisor, Lim Che Leng (`Lim`), to take care of the operations at the site.

Lim (3DW2) on his part did not perform his duties satisfactorily. He was not even aware when the project was scheduled to be completed. In fact, when asked if he occasionally checked on the works, his answer was in the negative. Pressed further on the point, Lim countered that the site engineer of the first defendants was supposed to check on the progress of the work relating to metal formworks - that it was not his, but the engineer`s, responsibility. It turned out that Lim did not check on the fourth defendants` workers on the day of the accident. Neither did he brief them regarding safety procedures for the dismantling. In fact, Lim was aware of the dismantling work on the day of the accident. He saw the fourth defendants` workers working at the edge of the building; he acknowledged that there was a risk of falling objects. Lim was also aware that there was no overhead protection and that the safety net was not up to the level where the fourth defendants` Thai workers were working. Not only did Lim fail to supervise and fail to instruct the fourth defendants` workers to take extra care (because there was no overhead protection), he also failed to inform Suberamaniam about these unsafe work practices.

It turned out that the fourth defendants` workers who carried out the dismantling work were neither skilled, qualified nor sufficiently experienced to carry out the dismantling work.

The evidence revealed that the third defendants were unable to complete their work in accordance with the contractual deadline stipulated by the first defendants. Indeed, Soh confirmed that the project was already behind schedule between July and August 1999. In consequence, the third defendants received a claim for liquidated damages from the first defendants.

As a result of the delay in completion and the threat of liquidated damages, the third defendants rushed their work and cut corners in terms of safety and safe work practices. No one supervised the fourth defendants` workers who turned out to be inexperienced and unqualified. Had there been supervision by Lim or anyone else, the accident may not have happened.

The evidence suggests a lack of chain of command between the third and fourth defendants. The fourth defendants` workers received no proper instructions, were not supervised and had to improvise their own methods of work.

***Occupier`s liability***

Consequently, the third defendants had a sufficient degree of control over the site. In **China Insurance Co v Woh Hup** [1975-1977] SLR 583 [1977] 2 MLJ 57 at 59A, the court accepted the definition of an `occupier` as `he who has the immediate supervision and control and the power of permitting or prohibiting the entry of other persons`. The third defendants can justifiably be regarded as an `occupier`. In consequence of the failure to supervise the fourth defendants` workers, the third defendants rendered the site an unsafe place of work.

In the circumstances, I allow the plaintiff`s claims against the third defendants.

***The fourth defendants***

By an oral agreement entered in early August 1999, between the third and fourth defendants, the former agreed to engage the latter as a sub-contractor to supply workers to install and dismantle the metal formworks at the site. The fourth defendants charged a lump sum of $45,000 for the sub-contract.

As stated earlier, the Thai workers of the fourth defendants were inexperienced; they also had no proper supervision. The fourth defendants vicariously owed a duty of care to the plaintiff to provide a safe and proper system of work. In **Dobb & Co v Hecla** [1972-1974] SLR 522 [1973] 2 MLJ 128 at 129, the court said:

> *A person who, though not an occupier of premises, actually creates a danger and has reason to expect that other persons will be lawfully on the premises during the existence of that danger owes them a duty to take reasonable care. This duty `arises quite independently of the occupation of premises. It does not arise out of any invitation or licence`.*

Changkwian told the court (NE 230) that the first time he had dismantled metal formworks was when he was employed by the fourth defendants. Although Changkwian had attended a carpentry course (conducted by a Singapore institute) in Singapore, that only taught him how to assemble metal formworks (NE 232); he was never taught how to dismantle metal formworks. To make matters worse, the worker who was paired with Changkwian on the day of the accident, Wongcharee, had even less experience than Changkwian in handling metal formworks. It was the first time Wongcharee dismantled metal formworks while working at the site.

The Thai workers adopted unsafe work practices; Changkwian told the court that whenever a metal formwork was stuck, he would shake the formwork to loosen it. Changkwian admitted that such methods he and Wongcharee employed were an unsafe method of dismantling metal formworks. He further conceded that if he had adopted a safe method, the accident would not have occurred. Changkwian was also fully aware that the area below the dismantling works was not cordoned off and lacked overhead protection. The evidence also revealed that Changkwian did not shout any warning when the metal formwork fell.

There was ample evidence of a failure to ensure and put in place, a system of proper supervision. Tan told the court that no one was employed by the fourth defendants to supervise the dismantling of the metal formworks, the reason being that the job was only for 2[half ] months. During that period, Tan did not visit the site. Apparently he would meet Soh outside the site (NE 215). Tan`s son Tan Yew Keng (4DW4) testified (NE 283-284) that he only went to the site to pass tools to the fourth defendants` workers but did not supervise the works or visit the site although he was a site

supervisor himself. Tan consistently maintained that the third defendants were contractually bound to supervise his workers and implement safe working practices. Tan admitted that he had been shown warning notices by the third defendants pertaining to breaches of safety at the site. These warning notices had been issued by the first defendants concerning the danger of falling roof materials. Although Tan claimed he had asked Soh to send a foreman to instruct and supervise his workers on how to remove the roof materials, Tan did not follow-up to check whether this was done.

The evidence also revealed that the fourth defendants` workers had to work more than 90 hours a week at the site; they would have been tired out from the long hours and their physical condition and alertness must have been affected.

The fourth defendants would or should have known that their Thai workers were not qualified or experienced to dismantle the metal formworks. Changkwian knew that the safe way to dismantle metal formworks was by means of ropes, but this was never put into practice. There was a lack of supervision of the workers coupled with the omission to cordon off the area below the dismantling works. Further, the fourth defendants failed to stop all dismantling works, despite being aware of the lack of overhead protection.

Consequently, I also allow the plaintiff`s claims against the fourth defendants.

***Contributory negligence***

Was there contributory negligence on the plaintiff`s part as all the defendants contended? They alleged that he was aware of the dismantling works and thus the danger, yet the plaintiff went ahead to lay the wooden planks at a place that was so near to the building.

A reference to the House of Lords decision in **AC Billings & Sons v Riden** [1958] AC 240[1957] 3 All ER 1 would be helpful at this stage. Their Lordships made it clear that the contractors in the case owed a duty to all persons who might be expected lawfully to visit the house to take such care as was, in all the circumstances, reasonable to ensure that they were not exposed to danger. Where the plaintiff ***was aware of the danger*** , but in all the circumstances, a reasonable person would have risked incurring it, the contractors were not absolved from liability either by giving a warning or by reliance on the plaintiff`s knowledge. In considering what a reasonable person would realise or would do in a particular situation, regard must be had to human nature, and if in that situation, the great majority of people would behave in one way, it is not right to say that a reasonable person would have behaved in another. Lord Reid put it very succinctly ([1958] AC 240 at 255; [1957] 3 All ER 1 at 8) as follows:

> *I agree with Hallett J that the question is not whether she realised the danger but whether the facts which she knew would have caused a reasonable person in her position to realise the danger. But in considering what a reasonable person would realise or would do in a particular situation we must have regard to human nature as we know it, and, if one thinks that in a particular situation the great majority of people would have behaved in one way, it would not be right to say that a reasonable man would or should have behaved in a different way.* ***A `reasonable man` does not mean a paragon of circumspection****. [Emphasis is added.]*

To say from the outset that the plaintiff was aware of the danger of falling metal formwork would be premature. One must first consider whether the plaintiff ***was indeed aware of the danger*** from

falling metal formwork. The case **The Heranger** [1939] AC 94 established that the burden of proving contributory negligence on the plaintiff rests on the defendant(s). This may be inferred from the plaintiff`s own evidence ( **Baker v E Longhurst & Sons** [1933] 2 KB 461) or, on a balance of probabilities from the facts ( **Gibby v East Grinstead Gas and Water Co** [1944] 1 All ER 358).

The defendants tried to convince the court that the plaintiff should not have been working at the area below the dismantling works. Their counsel tried to show that the area was an obvious danger zone given the dismantling works that was going on above. The plaintiff`s partner (Neo) had however testified that he did not think that a piece of formwork might be allowed to fall from the building. Indeed, Suberamaniam said he did not expect objects to fall into the washing bay. Lim Che Leng of the third defendants said that he did not expect that formwork would fly off. Wong Kock Keong (4DW3), the fourth defendants` foreman, maintained that it was unexpected for flying objects to fall out of the safety net. Such consistent evidence confirmed that a reasonable person would not perceive the area below the dismantling works as a danger zone.

The defendants sought to argue that the area was out of bounds to people working at the site - that it was only for vehicles to move in and out of the site. However, this was not borne out by the evidence from Chan Wai Kheong (2DW2) of the second defendants; the dismantling works on the upper levels were not that obvious, particularly to onlookers from below. There was no indication that the area was out of bounds as no warning signs were placed around the area; neither was it cordoned off. Januri Jaafar had opined that there was no reason for the plaintiff not to be there, unless the area was cordoned off.

Consequently, there was insufficient evidence to conclude that the plaintiff was aware of the danger of falling metal formwork. In any case, in view of the distance of the washing bay area from the edge of the building, it could not be regarded that a reasonable man would or should have behaved in a different manner. The plaintiff was wearing a safety helmet at the time of the accident. Suberamaniam had also confirmed that the plaintiff was not in breach of any safety practices. To accept the defendants` contention would be to put an onerous burden on the plaintiff to behave with exceptional caution.

***The issue of joint and several liability***

Counsel for the plaintiff submitted one (1) judgment sum should be awarded against all four (4) defendants, citing **Dingle v Associated Newspapers** [1961] 2 QB 162[1961] 1 All ER 897 in support. In that case, Devlin LJ said ([1961] 2 QB 162 at 188-189; [1961] 1 All ER 897 at 916):

> *Where injury has been done to the plaintiff and the injury is indivisible, any tortfeasor whose act has been a proximate cause of the injury must compensate for the whole of it. As between the plaintiff and the defendant it is immaterial that there are others whose acts also have been a cause of the injury and it does not matter whether those others have or have not a good defence. These factors would be relevant in a claim between tortfeasors for contribution, but the plaintiff is not concerned with that; he can obtain judgment for total compensation from anyone whose acts has been a cause of his injury. If there are more than one of such persons, it is immaterial to the plaintiff whether they are joint tortfeasors or not. If four men, acting severally and not in concert, strike the plaintiff one after another and as a result of his injuries he suffers shock and is detained in hospital and loses a month`s wages, each wrongdoer is liable to compensate for the whole loss of earnings. If there were four distinct physical injuries, each man would be liable only for the consequences peculiar to the injury he inflicted, but in the example I have given the loss of earnings is one injury caused in part by all four defendants.*

In the local case of **Oli Mohamed v Murphy** [1969-1971] SLR 270 [1969] 2 MLJ 244 at 245, Choor Singh J said:

> *Counsel for the second defendant submitted that if the court holds that both defendants were equally negligent, then the judgment against the second defendant should be only for 50% of the total sum assessed as damages in this case. In my opinion this submission also fails. It is clear law that if each of several persons, not acting in concert, commits a tort against another person substantially contemporaneously and causing the same or indivisible damage, each tortfeasor is liable for the whole damage.*

And he cited with approval Devlin LJ`s decision on this point in ***Dingle v Associated Newspapers*** (supra).

In **Chuang Uming v Setron** [2000] 1 SLR 166 the Court of Appeal held (at p 168):

> *Where the damage or injury was occasioned by more than one party, the question whether there should be joint or separate liability depended essentially on the facts and in particular the damage caused. If the damage caused could be identified and isolated as attributable to the negligent act or the breach of contract of each party, then a separate judgment in respect of that damage could be entered against each of [the parties]. If, however, the damage caused by the parties could not be so identified and isolated, but form indivisible parts of the entire damage, it would not be possible to enter separate judgments against each of them. On the facts, both the defective workmanship and the defective design contributed to the tile debonding. The contractors` and the architects` defaults indisputably overlapped and contributed to the same damage. A joint judgment was therefore the natural result.*

I had found that the first, third and fourth defendants were each a proximate cause of the injury inflicted on the plaintiff. Although they were not acting in concert when the accident happened, their contemporaneous acts of omission caused the indivisible damage to the plaintiff. The defendants left it to the others to take the necessary precautions and, cumulatively, they did nothing at all. Each turned a blind eye to safe working practices and relied on the others. Their faults and breaches indisputably overlapped such that each of them must be held liable to the plaintiff for the whole damage.

***The first and second third parties***

By an All Risks Insurance Policy dated 11 December 1998, the first third party agreed to indemnify the first defendants, the first defendants` sub-contractors, nominated sub-contractors and their contractor, against certain liabilities, for the period 8 November 1998 to 7 September 2000.

The first third party in the main sought to convince the court that it was not liable to indemnify the third and the fourth defendants, for their liability to the plaintiff. The relevant portions of the insurance policy stated as follows:

> *Name of Insured*

*L & M Prestressing Pte Ltd as main contractor & their subcontractors, nominated subcontractors and their contractors and Stamford Tyres International Pte Ltd as principle FTRR&I 11 Third Chin Bee Road Singapore 618687.*

*Period of Insurance*

*From 8th November 1998 to 7th September 2000.*

*Contract Title*

*Proposed erection of a 4-storey single-user, single occupier warehouse Building with ancillary office and showroom on Lot 2864W (Plot A2932) MK 6 at 19 Lok Yang Way Singapore.*

*Endorsements, Warranties and/or Clauses Printed in this Policy or attached hereto*

*Employer`s Representatives, Government and Statutory Board Employees as Third Party - It is hereby declared and noted that employer, consultants and their authorised representative and employees, Government and Statutory Board Employees shall be regarded as Third Parties.*

The third defendants joined the second third party to the proceedings. The third defendants claimed a declaration that the Public Liability Policy issued by the second third party covered the third defendants` legal liability. The second third party`s policy was a general policy. The relevant clauses are as follows:

*Name of Insured*

*Wei Sin Construction Pte Ltd*

*Period of Insurance*

*From 1st January 1999 to 31st December 1999 (both dates inclusive)*

*Place to which Policy applies*

*Anywhere in Singapore*

*Description of risk*

*General third party indemnity in respect of legal liability caused by the fault or negligence of the insured in connection with the business.*

*Warranty*

*Warranted that if the Insured is covered under any other policy for Public Liability Insurance the Corporation will not indemnify the insured nor be called upon to contribute under this policy.*

The second third party`s defence was that the warranty in the policy has the effect of excluding its liability. The third defendants` policy with the second third party avoided liability if there was any other policy covering third party liability. The first defendants` policy with the first third party was a Contractors` All Risks Policy with a much wider scope of coverage.

The second third party argued that the third defendants were covered by the first third party that is, the specific Contractor`s All Risks Policy issued to cover any liability to third parties under the project. The third defendants` insurance policy with the second third party covered all their building projects in Singapore for a one-year period of 1999. On the other hand, the first defendants` insurance policy with the first third party was specifically for the Lok Yang Way project covering the period 8 November 1998 to 7 September 1999.

As a matter of interpretation, the first third party`s policy did cover the third defendants. In the circumstances, the second third party`s warranty clause came into operation, excluding coverage of indemnity for the third defendants. Hence, the first third party`s insurance policy should indemnify the third defendants in respect of their liability to the plaintiff.

The fourth defendants also sought to rely on the first third party`s Contractor`s All Risks Policy. They pleaded that they were the sub-contractor of the third defendants; even so, the fourth defendants were not the insured under the policy schedule. The policy only covered main contractors, their appointed sub-contractors and nominated sub-contractors. The fourth defendants did not fit into any of these categories. In ***Awang bin Dollah v Shun Shing Construction & Engineering Co*** , the Court of Appeal (supra at [para ]58), held that the term `sub-contractors` did not include sub-sub-contractors. Such an interpretation was also in line with the intention of the parties. As stated earlier, there was a specific clause, namely cl 14A.1(e), in the first defendants` sub-contract with sub-contractors (including the third defendants) which prohibited further sub-contracting by the third defendants, without prior written consent.

***Conclusion***

In summary, I find that the first, third and fourth defendants are liable for the accident and I award one interlocutory judgment against them in favour of the plaintiff. Damages to the plaintiff will be assessed/awarded by the Registrar at a later stage and the costs of such assessment shall be reserved to the Registrar. The plaintiff`s claim against the second defendant is dismissed with costs. The first third party shall indemnify the first and third defendants for their liability to the plaintiff. However, the fourth defendants` claim against the first third party is dismissed with costs.

Having given the matter due consideration, I am not inclined to make either a ` ***Bullock*** order` or a ` ***Sanderson*** order` for costs in this case, as neither is appropriate even though the plaintiff`s claims against the four defendants were in the alternative.

(delivering the supplemental judgment):

After I had released my judgment dated 31 August 2001, counsel for the plaintiff wrote in for further submissions on the issue of costs, in particular with reference to the last paragraph of my judgment; I had declined to make either a ***Bullock*** or a ***Sanderson*** order for costs in favour of the plaintiff.

Counsel for the plaintiff sought to persuade me to make one of these two orders for costs. The ***Bullock*** order for costs is derived from the case **Bullock v London General Omnibus Co** [1907] 1 KB 264. In essence it means that the plaintiff pays the costs of the successful defendant. Once he has paid, he is allowed to recover these costs from the unsuccessful defendant (on the same issues) in addition to his own costs incurred in respect of the claim against the unsuccessful defendant.

The ***Sanderson*** order for costs comes from the case **Sanderson v Blyth Theatre Co** [1903] 2 KB 533. When such an order is made, it means that the unsuccessful defendant has to pay direct to the successful defendant, the latter`s costs, in addition to paying the costs of the plaintiff incurred in respect of the claim against the unsuccessful defendant.

Counsel for the plaintiff submitted that his client should not be made to pay the costs of the successful second defendant as such costs were reasonably and properly incurred, that being the test propounded in both cases.

Elaborating on the above submission, counsel for the plaintiff pointed out that when the plaintiff commenced these proceedings (on 11 July 2000), he was not in a position to know which party/parties had caused the accident. The investigations by MOM had also not been completed. Consequently, the plaintiff had no alternative but to sue all the defendants. It was only in the course of trial that evidence emerged as to the parties who were actually responsible for the plaintiff`s injuries.

Counsel submitted that reasonableness must be measured at the time when the plaintiff brought the action - the court will look at all the facts which the plaintiff knew. He cited **Besterman v British Motor Cab Co** [1914] 3 KB 181 which headnotes read:

> *A plaintiff who was injured in a collision between a motor cab and an omnibus joined the owners of both vehicles as defendants in an action to recover damages for injuries sustained. He obtained a verdict with damages against the motor cab company, but the omnibus company obtained a verdict in their favour. The judge made an order for payment to the plaintiff by the motor cab company of the plaintiff`s costs against the omnibus company and of the costs which the omnibus company recovered against the plaintiff:-*
>
> ***Held**, that the judge had a discretion to make the order, although before the issue of the writ the motor cab company had not intimated to the plaintiff their intention to throw the responsibility for the accident on the other defendants.*
>
> *There is no rule to the effect that, in order to justify an order on an unsuccessful defendant to pay the successful co-defendant`s costs, the unsuccessful defendant must, before the issue of the writ, have given notice to the plaintiff that he is going to throw the blame on the other defendant; it is a question in all cases whether it was a reasonable and proper course for the plaintiff to join both the defendants in the action.*

Applying ***Besterman*** `s reasoning to our case, counsel for the plaintiff said:

(1) (long) after the accident, the plaintiff`s medical condition was such that he was in no position to provide any useful information on the accident so as to enable his counsel to identify all the tortfeasors with reasonable certainty;

(2) at the time the writ was filed, it was reasonable to include the first, second and third defendants in the action. Neither he nor his solicitors knew: (a) the identity of the person(s) who dropped the metal formwork or who the latter`s employer was, (b) how the accident occurred, (c) who was responsible for the accident or the circumstances leading to the accident. That was why the plaintiff initially pleaded res ipsa loquitur in the statement of claim. It was reasonable to sue the first defendants because they were the main contractors. It was also reasonable and appropriate to include the second defendants since they were the ones who appointed the plaintiff to manufacture and install roof trusses. It also appeared to be reasonable to include the third defendants in the action because the plaintiff`s next friend (Ho Chia Hao) had found the third defendants` signs around the site;

(3) it was only on 8 August 2000 that the plaintiff`s solicitors received a copy of the MOM investigation report (`the MOM report`) dated 12 July 2000 (AB156-162). Upon their receipt of the same, the plaintiff`s solicitors decided it was necessary to include the fourth defendants in the action, the person responsible for dropping the metal formwork being their employee. The MOM report did not even mention the third defendants as a responsible party; the third defendants` role only emerged during the trial.

Counsel for the first defendant on the other hand urged me not to change my decision on costs. He noted that the plaintiff did not make any allegation against the second defendants in their pleadings or submissions; neither did the other defendants. Indeed, throughout the course of the (lengthy) trial, no attempt was made to shift blame onto the second defendants; neither were they cross-examined on the issue. He pointed out that the plaintiff served the writ of summons on the second defendants even before the first defendants had filed their defence (on 6 October 2000). When the first and third defendants filed their defences, neither made any allegation against the second defendants. Under such circumstances, the plaintiff should have discontinued these proceedings against the second defendants. As for the evidence adduced at the trial, the facts which emerged pertained to liability of the first and/or the third defendants only.

As for the late issuance of the MOM report, counsel pointed out that as the accident took place on 2 September 1999, the claim would only have been time-barred on 2 September 2002. Why were the plaintiff`s solicitors in such a hurry to issue the writ of summons on 11 July 2000 instead of waiting for the report? Even if they were anxious to issue the writ quickly, the plaintiff`s solicitors need not have served it immediately on the second defendants. They should have delayed service until ***after*** they had received the MOM report and seen the defences filed by the first and third defendants. Had they done so, they would/should not have pursued the claim against the second defendants. Instead, counsel for the plaintiff vigorously cross-examined the second defendants` witnesses (2) unlike him whilst counsel for the third defendants did not cross-examine them at all. There were many stages where the plaintiff could have discontinued the action against the second defendants - after the writ/defences were filed, after the affidavits of evidence-in-chief were exchanged, during the course of the trial. Since his solicitors chose to continue the claim against the second defendants, it was only right that the plaintiff should bear the consequential costs, not the other three (3) defendants.

Counsel for the first defendants cited two (2) cases in support of his arguments. The first was ***Mohd bin Sapri v Soil-Build*** (supra), which I have referred to earlier on the issue of liability. In that case, the appellant/plaintiff had appealed against the dismissal of his claim against the fourth defendant

(Soil-Build) to the action; Soil-Build (`SB`) were the main contractors in the construction of a warehouse which belonged to the third defendants CMB Packaging Singapore; SB had employed Sprinkler Engineering Pte Ltd (`SE`) as specialist sub-contractors for the installation of a fire-fighting or sprinkler system for the warehouse. SE appealed against the trial court`s finding that they were one-third ([frac13]) liable to the plaintiff for his injuries and also on the issue of costs (on which the trial judge had ordered SE to bear 50% of SB`s costs payable by the plaintiff for the period after 16 November 1994, that being the date when SB had made to the plaintiff a very generous offer to settle); SE had disclaimed any responsibility whatsoever for the plaintiff`s injuries. On the issue of costs, the appellate court said (at p 521):

> *The effect of SE`s denial of liability was not ineluctably to compel the plaintiff to sue SB. It was not as if SE, in defending the claim, was attempting to pin liability on SB. It is apparent from our perusal of SE`s defence that by its denial of liability, it was putting the blame on the plaintiff himself. There was no suggestion that SB should be the proper party to answer for the plaintiff`s injuries. These were important considerations which the Court of Appeal took into account in* ***Mulready****`s case in deciding that a `Bullock` order would not be appropriate.*
>
> *If the plaintiff includes an additional defendant because of his uncertainty of the law rather than the facts, the court will not make either a `Bullock` or `Sanderson` order (* ***Poulton v Moore*** *[1913] WN 349) ...*
>
> *These observations are apposite in the present case. In any event, the plaintiff`s decision to sue SB has been questionable. The pleaded causes of action alleging SB`s liability qua employer and occupier were clearly unsustainable. As counsel for SE has pointed out, the plaintiff must have known that his own negligence caused the accident. The facts surrounding the accident were matters which were wholly within the plaintiff`s knowledge ...*

The second case counsel relied on was Chao J`s decision in **Virco Metal Industries v Carltech Trading and Industries** [2000] 2 SLR 201 . In that case, the plaintiffs who were tenants of two (2) units of an industrial building sued the landlord Carltech (the first defendant) and Kee and Ah Cheong as the second and third defendants respectively; Kee and Ah Cheong were two (2) other tenants. The plaintiffs claimed for damage to their premises arising from a fire which broke out near the entrance of Kee`s premises, ignited by a defective power switch located there. The fire spread from Kee`s premises to Ah Cheong`s premises. The plaintiffs claimed that Ah Cheong was liable on the basis that the contents of Ah Cheong`s premises had aggravated and increased the combustion, enhanced the heat and spread the fire. The plaintiffs` claim against the first and second defendants was allowed but his claim against Ah Cheong was dismissed. Chao J refused to make a ***Bullock*** or ***Sanderson*** order for costs in the plaintiffs` favour. He said (at [para ]55):

> *The plaintiffs` claim against the third defendant is dismissed with costs which shall be borne equally by the first and second plaintiffs. I do not think this is a case where I ought to make a `Bullock` or `Sanderson` order. The facts do not warrant the bringing in of Ah Cheong as a party, and, especially, for continuing with the action against Ah Cheong after the plaintiffs were in possession of the report of Capt Lee [from the Singapore Civil Defence Force]. Neither Carltech nor Kee sought in their pleadings to shift any part of the liability for the damages suffered by Virco and GJ [the plaintiffs] onto Ah Cheong.*

Counsel for the second and third defendants aligned themselves with the submission of counsel for the first defendants. Mr Yu for the second defendants said if the plaintiff had offered to discontinue this action against his clients before trial commenced, the second defendants would have agreed, with minimum costs to the plaintiff. Mr Fazal Mohd for the third defendants expressed similar sentiments, pointing out that his clients never blamed the second defendants, they only alleged negligence on the part of the first and fourth defendants. He noted that even after trial concluded (5 May 2001), the plaintiff, in his counsel`s final submissions (see para 3 pp 52-62) still maintained that the second defendants were liable.

In his reply to the defendants` submissions, counsel for the plaintiff defended his client`s decision to sue the second defendants and to pursue that claim to its finality. He pointed out that the fact the first and third defendants did not shift blame onto the second defendants should not be conclusive as the first defendants also did not shift liability onto the third defendants who were ultimately found to be liable. He explained that the plaintiff was in need of urgent funds for medical and hospitalisation expenses and, the only way to obtain funding was to issue the writ quickly and thereafter, apply to court for interim payment (under O 29 r 10 of the Rules of Court) and which was done and granted, the amount being contributed by the first, third and fourth defendants. Counsel further sought to distinguish the case of ***Mohd bin Sapri*** (supra) on its facts. Unlike the plaintiff in that case, the plaintiff here was not in full possession of the facts surrounding the accident. If indeed the pleadings were to be the yardstick for his continuing proceedings against the various defendants, the plaintiff would have had to discontinue action against the third defendants since no one (including the MOM) blamed the third defendants, yet they were held to be liable. I note, however, that this submission is not quite correct; as was pointed out by counsel for the first defendants, the fourth defendants did attempt to shift blame onto the third defendants in their defence (para 5) filed on 13 October 2000.

***The decision***

Having heard counsel`s further submissions on behalf of the plaintiff and three (3) of the four (4) defendants, I am not inclined to change my original order for costs. Accordingly, I confirm my earlier decision not to grant the plaintiff either a ***Sanderson*** or ***Bullock*** order for costs; the facts do not warrant either order being made.

Whilst the submission of counsel for the plaintiff was persuasive, in particular that the plaintiff was not in full possession of the circumstances/facts surrounding the accident and a suit had to be issued quickly and interim payment then applied for, to ease the plaintiff`s financial hardships, there are other factors which negate these consideration. I refer in particular to the Rules of Court governing conduct of trials; they have changed dramatically since the 1914 case of ***Besterman v British Motor Cab Co*** (supra). We now have O 38 r 2(1) under our Rules of Court, it introduced the concept of written evidence-in-chief for all witnesses (save for those subpoenaed).

Even if the plaintiff can be excused for his earlier acts, first in instituting proceedings so quickly against the second defendants and, his later omission in not discontinuing those proceedings up to the stage of close of pleadings (despite the absence of any blame levelled against the second defendants by any of the other defendants), his omission thereafter to discontinue the action against the second defendants cannot be overlooked. I note that the affidavits of evidence-in-chief were exchanged on 29 January 2001 whereas trial before me only commenced a week later (on 5 February 2001). There was ample opportunity for the plaintiff`s solicitors to review the written testimony of Sik Hing (2DW1), the managing director of the second defendants, filed on 11 January 2001 and to decide whether it was feasible to pursue the plaintiff`s claim. The extracts from the cases ***Mohd bin Sapri***

and ***Virco Metal Industries*** set out in [para ]110-111 above would aptly apply to the plaintiff. Having chosen to continue his action to the bitter end against the second defendants (against whom no order for interim payment was made), I do not think it is fair that the other defendants should be mulcted in costs for the plaintiff`s unsuccessful action. Accordingly, my previous order for costs stands.

In the course of the trial, counsel for the first and second third parties informed me that they had resolved the issue of apportionment of liability between themselves amicably. I have now been informed that the two third parties will share liability on 50:50 basis and I record the consent order accordingly. As between the three (3) defendants, I confirm that the first, third and fourth defendants will each be liable for one-third ([frac13]) of the damages to be assessed in favour of the plaintiff.

## Outcome:

Order accordingly.