SH Cogent Logistics Pte Ltd and another *v* Singapore Agro Agricultural Pte Ltd and others [2014] SGHC 203

Case Number	: Suit No 51 of 2012
Decision Date	: 15 October 2014
Tribunal/Court	: High Court
Coram	: Woo Bih Li J
Counsel Name(s)	: Alvin Yeo SC, Koh Swee Yen, Sim Hui Shan, Chang Qi-Yang and Tang Shang Wei (WongPartnership LLP) for the plaintiffs; Andre Yeap SC, Adrian Wong and Alywin Goh (Rajah & Tann LLP) for the defendants.
Parties	: SH Cogent Logistics Pte Ltd and another — Singapore Agro Agricultural Pte Ltd and others

Tort – Conspiracy

Injunctions – Interlocutory injunction

15 October 2014 Judgment reserved.

Woo Bih Li J:

Introduction

1 This dispute is between the current and previous master tenants of a state-owned plot of land at the former Bukit Timah Turf Club at 200 Turf Club Road Singapore 287994 ("the Site"). The current master tenant of the Site alleges that the previous master tenant conspired with others to injure it in the period leading up to the handover of the Site.

The Site

2 The landlord of the Site is the Government of the Republic of Singapore ("the Government"). The Government was, at the relevant time, acting through the Singapore Land Authority ("SLA"). It is not necessary for present purposes to draw a distinction between the Government and SLA. I will henceforth make reference only to SLA.

3 The Site is one of the subdivided plots that make up the former Bukit Timah Turf Club. The approximate area of the Site is 178,762m^2 (about 1,923,837ft^2). [note: 1] It comprises a two-storey car park and a grandstand. The car park was converted for use as a car mart. It was made up of 137 showroom units with attached offices. [note: 2] The units were sub-tenanted or licensed to second-hand car dealers. The grandstand was converted for use as a retail block. It was made up of about 94 retail units. [note: 3] The units were sub-tenanted or licensed to shops, restaurants and other businesses.

The parties

4 There are various parties and witnesses. To minimise confusion, I will abbreviate the names of corporations and refer to the names of persons in full.

5 The plaintiffs are part of the Cogent group. The second plaintiff, Cogent Land Capital Pte Ltd ("Cogent Land") is, and has been, the master tenant of the Site since 1 March 2012. It is responsible for the management and maintenance of the Site. The first plaintiff, SH Cogent Logistics Pte Ltd ("SH Cogent"), was the entity that bid for the tenancy which Cogent Land currently holds. When the tenancy was awarded to SH Cogent, Cogent Land was incorporated for the purpose of entering into the tenancy with SLA. Cogent Land is wholly-owned by SH Cogent.

6 The first defendant, Singapore Agro Agricultural Pte Ltd ("SAA") was the previous master tenant of the former Turf Club plot. It became the master tenant in 2001. During SAA's term as master tenant, the former Bukit Timah Turf Club plot was subdivided into smaller plots, one of which is the Site (the other plots are not material for present purposes). SAA's tenancy expired on 29 February 2012, the day before Cogent Land's tenancy commenced. The third defendant, Turf City Management Pte Ltd ("TCM") was responsible for the management and maintenance of the Site. The second defendant, Tan Chee Beng, said he was the "real decision-maker" in SAA [note: 4]. Tan Chee Beng was a majority shareholder and one of two directors of SAA (the other, Tan Bee Bee, was his sister) at the material time. [note: 5] He was also a shareholder and a director of TCM at the material time. The fourth defendant, Koh Khong Meng, also known as Roger Koh, was a shareholder and a director of TCM at the material time.

7 Assuming that there was a conspiracy, Cogent Land, the current master tenant, would presumably have been the entity that suffered the loss, if any, caused by the conspiracy. TCM would presumably have been the entity which executed the acts pursuant to the conspiracy. SAA and TCM would also presumably have been acting in accordance with the instructions and the intention of Tan Chee Beng, Roger Koh, or both. They were directors of one or both companies at the material time.

8 The parties, however, have not attempted to distinguish the various entities and persons in their pleadings and submissions. Further, none of the defendants sought to distance himself or itself from the intention or conduct of any of the others. Therefore, for the sake of convenience, I will make reference to "the Plaintiffs" and "the Defendants" instead of the individual entities and persons, unless it is appropriate to refer to an individual entity or person.

The cases of the parties

9 The Plaintiffs allege that the Defendants conspired to injure the Plaintiffs by damaging their business of sub-tenanting and licensing the units as the subsequent master tenant of the Site. The Defendants did so by preventing the Plaintiffs from hitting the ground running when the Plaintiffs took over the Site from the Defendants. The Defendants did this in two ways.

10 First, the Defendants removed electrical fittings, utilities equipment and structures while carrying out reinstatement work at the Site prior to the handover. The Plaintiffs complain, in particular, of the Defendants' deliberate removal of 18 items (these items are listed in the annexure to this judgment, and I shall refer to them collectively as "the 18 Items"). [note: 6] The Defendants accept that they removed five of the 18 Items, but dispute having removed the rest. The Plaintiffs allege that they had to incur expense and time to replace these removed items.

11 Second, the Defendants obstructed existing sub-tenants and licensees at the Site from continuing with their sub-tenancies and licences under the Plaintiffs. This obstruction was the cumulative result of two acts of the Defendants:

(a) The Defendants created an air of uncertainty and anxiety which caused then-existing sub-

tenants and licensees to leave the Site. The Defendants sent letters to the sub-tenants and licensees insisting that all of them (even those that were prepared to consider entering into new agreements with the Plaintiffs) vacate their units by 31 January 2012. This was disruptive to the businesses of those sub-tenants and licensees who intended to continue under the Plaintiffs as they would have to vacate their units for a month or more before returning when the Plaintiffs' tenancy commenced on 1 March 2012.

(b) The Defendants deliberately stopped supplying utilities and waste-disposal services at the Site between 31 January 2012 and 29 February 2012, even though there were sub-tenants and licensees still occupying units at the Site.

According to the Plaintiffs, many sub-tenants and licensees left because of the Defendants' acts. The Defendants' acts foiled the Plaintiffs' attempts at persuading these sub-tenants and licensees to continue under the Plaintiffs, leading to loss of income from rent and licence fees.

12 The Defendants deny intending to cause damage to the Plaintiffs. The Defendants say that their position and actions were motivated by their desire to comply with obligations owed to SLA under their tenancy, and the Urban Redevelopment Authority ("URA") under certain regulations.

13 On 20 January 2012, the Plaintiffs obtained an injunction ("the Injunction") restraining the Defendants from carrying out reinstatement work at the Site and from acting in a manner prejudicial to the sub-tenants and licensees who remained at the Site. The Defendants applied to discharge the Injunction on 20 February 2012, and it was discharged on 24 February 2012. In the present action, the Defendants counterclaim for damages against the Plaintiffs for obtaining the Injunction wrongly.

The law on conspiracy

14 I will touch on the law on conspiracy in brief before stating the issues that arise in this case. As a preliminary point, the Singapore Court of Appeal in *EFT Holdings, Inc and another v Marineteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 at [90] questioned whether the tort of conspiracy should even continue to be part of the law of Singapore. The Court of Appeal eventually refrained from deciding the point.

15 I recognise the force in the argument that the tort of conspiracy appears to be an aberration in the common law. It is difficult to explain why an act, when committed pursuant to an agreement between a number of persons triggers liability, while the very same act, when committed by one person alone does not. However, I do not think that it is for the High Court to say that the tort of conspiracy should no longer apply.

16 In *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173 at 188, Lord Diplock (whose speech the rest of the House of Lords agreed with) expressed dissatisfaction at the rationale underlying the tort of conspiracy. Lord Diplock nonetheless held that the tort was too well-established for it to be discarded. If the tort of conspiracy is abolished, the lacuna could possibly be filled by a widening of the unlawful interference tort coupled with joint tortfeasorship. But as these issues do not arise for consideration, I shall say no more.

17 I turn now to the law on conspiracy proper. The essence of conspiracy is an agreement between two or more persons to act in a manner that is intended to, and does injure another. There are two branches to the tort of conspiracy. The first, where the acts committed pursuant to the conspiracy are lawful. The second, where the acts committed pursuant to the conspiracy are unlawful. I will refer to the former as "lawful means conspiracy" and the latter as "unlawful means

conspiracy".

18 The elements of the tort of conspiracy were set out in *Nagase Singapore Pte Ltd v Ching Kai Huat and others* [2008] 1 SLR(R) 80 at [23]:

(a) an agreement between two or more persons to do certain acts;

(b) if the conspiracy involves:

(i) *unlawful* means, the conspirators must have *intended* to cause damage to the claimant;

(ii) *lawful* means, then the conspirators must additionally have had the *predominant purpose* of causing damage to the claimant;

(c) the acts must have actually been performed in furtherance of the agreement; and

(d) damage must have been suffered by the claimant.

19 The elements of the two forms of conspiracy are therefore similar, save for one distinction: the mental element is less stringent where unlawful means, as opposed to lawful means, are employed pursuant to the conspiracy.

The issues

20 The Plaintiffs' claim in conspiracy raises four issues:

(a) whether the Defendants committed acts pursuant to an agreement between themselves;

(b) whether the Defendants' predominant purpose (or intention) was to cause damage to the Plaintiffs;

(c) whether the Defendants employed unlawful means; and

(d) whether the Plaintiffs suffered damage.

If it is found that the Defendants' predominant purpose was to cause damage to the Plaintiffs, then the issue of unlawful means becomes academic.

21 The Defendants' counterclaim raises a single issue: whether the Injunction was wrongly obtained such that the Defendants should be entitled to damages.

The facts

The Extension Tenancy

22 SAA became the master tenant of the site in 2001. Its tenancy of the Site was due to expire on 31 August 2011. In a letter dated 12 March 2011, SAA wrote to SLA requesting an extension of the tenancy to 29 February 2012. [note: 7]

23 The thrust of SAA's proposal to SLA was that the extension would be *beneficial for the sub-tenants and licensees*. SAA stated that the sub-tenants and licensees would prefer to move out after

the Chinese New Year of 2012, which fell on 23 and 24 January 2012. An extension of the tenancy to 29 February 2012 would give the sub-tenants and licensees three to four weeks to reinstate their units after Chinese New Year, before returning the units to SAA. [note: 8] Further, the expiry date of the then-existing tenancy (31 August 2011) coincided with the seventh month of the lunar calendar. The seventh month was an inauspicious period for the sub-tenants and licensees to vacate their units. SAA also stated that the children's education vendors which occupied the Site would benefit from being able to conduct classes till the end of the calendar year in 2011.

24 In a letter dated 3 June 2011, SLA wrote to SAA agreeing to the extension. SAA's final tenancy with SLA, extended up to 29 February 2012, will be referred to as "the Extension Tenancy". In the letter, SLA stressed that the purpose of the Extension Tenancy was to "facilitate the relocation of businesses to alternative premises" and to allow more time for SAA "to complete all the requisite reinstatement works in a satisfactory manner prior to handing over". [note: 9]

The tender for the new tenancy of the Site

25 In June and July 2011, SLA launched a tender for the new tenancy of the Site. This tenancy was to commence on 1 March 2012, immediately after the Extension Tenancy expired on 29 February 2012. 12 bids were received. SH Cogent and SAA were among the bidders. SH Cogent's bid was the highest, at a monthly rental rate of $1,065,678 per month. SAA's bid was the fourth-highest, at $718,888 per month. [note: 10]

26 SLA disclosed the identity of the bidders and their respective bids to the public shortly after the bidding had closed in July 2011. [note: 11] SLA did not, however, award the new tenancy to any of the bidders at that point in time. The award of the new tenancy by SLA was only to be done on 10 October 2011. There was therefore a period of approximately four months between the date the bidders and their bid amounts became public information, and SLA's eventual award of the new tenancy. Tan Chee Beng said he knew that SAA did not have a realistic chance of being awarded the tenancy once the identity of the bidders and their respective bids were disclosed, because SAA was only the fourth-highest bidder. [note: 12]

27 In August 2011, SAA entered into extension agreements with the sub-tenants and licensees at the Site. This was because the then-existing agreements were made on the basis that SAA's own tenancy would expire on 31 August 2011. The sub-tenancies and licences were extended up to 31 January 2012, with an option for a further extension to 29 February 2012, conditional on SAA being awarded the new tenancy which commenced 1 March 2012.

28 On 10 October 2011, SLA awarded the new tenancy of the Site to SH Cogent. [note: 13]

The Defendants' reinstatement work and letters to sub-tenants and licensees

29 On 1 November 2011, SAA sent a letter to its sub-tenants and licensees. SAA stated that their sub-tenancies and licences would expire on 31 January 2012, and that the reinstatement work for their respective units was to be completed by that date. [note: 14]

30 On 3 November 2011, Benson Tan and Yap Chee Sing conducted an inspection of the Site. At the material time, Benson Tan was the deputy chief executive officer of SH Cogent and a director of Cogent Land. Yap Chee Sing was the general manager of SH Cogent and a director of Cogent Land. Both were involved in the preparation for the taking-over of the Site on behalf the Plaintiffs. They

were also the Plaintiffs' principal witnesses at the trial. At this inspection, Benson Tan and Yap Chee Sing were accompanied by two SLA officers. Benson Tan and Yap Chee Sing claimed that they noticed parts of the main grandstand being removed by workers. [note: 15]

31 Benson Tan and Yap Chee Sing met with Ong Ah Sui, TCM's chief security officer, after the inspection was completed. Benson Tan and Yap Chee Sing alleged that Ong Ah Sui told them that Roger Koh wanted to meet with them. Ong Ah Sui also purportedly informed them that Roger Koh had threatened to dismantle all the fixtures and fittings at the Site unless the Plaintiffs paid the Defendants $3m. [note: 16]

32 On 8 November 2011, Yap Chee Sing emailed SLA. He raised concerns about SAA's reinstatement work. [note: 17] He also stated that the sub-tenants and licensees who wanted to continue under the Plaintiffs were concerned about having to vacate their premises on 31 January 2012 and to return only on 1 March 2012. This would result in the sub-tenants having to stop their businesses for effectively two to three months. Yap Chee Sing stated that unless the continuity of these sub-tenants' and licensees' businesses was preserved, most of them would look for alternative locations and not continue under the Plaintiffs.

33 On 29 November 2011, SLA sent a letter to SAA. The letter stressed that the very basis for the extension of SAA's tenancy to 29 February 2012 was to "minimise the disruption to existing businesses". SLA stated that sub-tenants and licensees had given feedback that they were being required to vacate the Site on or before 31 January 2012, even though they were negotiating with the next master tenant to remain on-site. SLA indicated that SAA was to take necessary steps to facilitate the continued stay of interested sub-tenants and occupants beyond 31 January 2012. [note: 18]

34 Benson Tan conducted another inspection of the Site on 30 November 2011. He stated that he witnessed workers using a blowtorch to dismantle the metal deck flooring on the fifth level of the grandstand ("the Metal Deck Flooring"). [note: 19] The Metal Deck Flooring was a structure which increased the useable floor area on the fifth level of the grandstand. Yap Chee Sing wrote an email to SLA on the same day complaining of this incident. [note: 20]

35 On 1 December 2011, Benson Tan and Yap Chee Sing met up with Tan Chee Beng and Roger Koh. The meeting concerned the Defendants' reinstatement work and their requirement that the sub-tenants and licensees to vacate their units by 31 January 2012. Benson Tan and Yap Chee Sing made a concealed audio recording of this meeting. There was disagreement as to the effect or implication of what was said at this meeting. The Plaintiffs claim that the Defendants were extorting or seeking a corrupt payment from the Plaintiffs so that the Defendants would stop their disruptive conduct. The Defendants claim that they were merely seeking a "commercial resolution" to the problem.

36 On the same day, SAA sent out another letter to the sub-tenants and licensees. This was the second letter that SAA had addressed to the sub-tenants and licensees (the first is mentioned at [29] above). SAA reminded them of the obligation to hand over their units to SAA by 31 January 2012. [note: 21]

37 On the other hand, SLA reiterated its position to SAA that business continuity was of paramount importance. In letters dated 2, 6 and 16 December 2011, and 4 January 2012, SLA requested that SAA assist sub-tenants and licensees who had arrangements with the incoming master tenant, so as to minimise business disruption, and also stated that reinstatement work need not be

carried out at certain areas at the Site. I refer to the five letters from SLA to SAA—dated 29 November 2011 (at [33] above), 2, 6 and 16 December 2011, and 4 January 2012—collectively as "the Five SLA Letters".

38 SAA, however, wrote a third, more aggressively-worded letter to the sub-tenants and licensees on 4 January 2012. [note: 22] The letter reminded the sub-tenants and licensees that their agreements with SAA would expire on 31 January 2012. It also stated the consequences that would follow if their units were not vacated by then.

39 On 9 January 2012, SAA wrote to SLA. In that letter, it mentioned for the first time that it was carrying out reinstatement work at the Site pursuant to regulatory requirements imposed by URA. [note: 23]

The undertaking from SLA to SAA and continued reinstatement work

40 On 11 January 2012, SLA held a press conference concerning the problems at the Site. SLA also wrote to SAA on the same day, reiterating that SAA was not required to carry out reinstatement work on units where sub-tenants or licensees would continue operating beyond 29 February 2012. SLA further undertook not to hold SAA "liable for loss or damage which may be caused by the retention of the Works on [the Site]". [note: 24] SLA granted the undertaking to SAA only because SH Cogent had agreed to grant a cross-undertaking to SLA. In the cross-undertaking, SH Cogent undertook a number of obligations, one of which was to indemnify SLA against any liability or loss arising from a breach of SH Cogent's undertakings to SLA. [note: 25]

41 Notwithstanding SLA's undertaking, SAA wrote to URA on 16 January 2012 stating that it was removing temporary structures in compliance with URA's directions and in reliance on SAA's consultants' advice. [note: 26]

42 In an email to SLA dated 17 January 2012, Yap Chee Sing stated that SAA was still engaging in reinstatement work. [note: 27] He appended pictures which he had taken of such work being carried out at the Site.

43 SLA wrote to SAA on 20 January 2012. [note: 28] The letter appended a list of reinstatement work that SLA required SAA to perform. This list revised a previous list that SLA had sent to SAA on 20 June 2011 by reducing the scope of reinstatement work which SLA required SAA to perform.

The Injunction

44 The Plaintiffs sought and obtained the Injunction on 20 January 2012. The Injunction restrained the Defendants from: carrying out reinstatement work; demanding that present sub-tenants or licensees carry out reinstatement work; and evicting any of the sub-tenants or licensees, or impeding the sub-tenants' or licensees' access to, use and enjoyment of the Site. The Injunction also specifically prohibited the Defendants from ceasing the supply of utilities at the Site, such as power, water and communication lines, up till and including 29 February 2012.

45 Despite the Injunction, SLA officers observed that items had been removed from the main grandstand building and car park at site inspections conducted on 25 January 2012 and 31 January 2012. The removed items included partitions, glass enclosures, air-conditioning diffusers, lighting and floor, wall and ceiling finishes. Electrical wires had also been cut.

46 SLA wrote to SAA on 1 February 2012 placing on record these observations. The letter stated that SAA's reinstatement work amounted to a failure to comply with SLA's instructions. [note: 29]

47 SLA also wrote another letter to SAA on 1 February 2012 stating that the lighting in the common areas had been switched off, and that there was improper disposal of waste at the Site. SLA stressed that this created health and safety concerns. [note: 30] SLA wrote again on 2 February 2012 stating that their officers had inspected the site on the afternoon of 1 February 2012, and observed that the lighting remained switched off and that the waste was still not properly disposed of. [note: 31]

48 On 10 February 2012, URA replied to SAA's letter of 16 January 2012 (see [41] above). URA stated that it "will not require … existing additions and alterations erected to be demolished at this juncture". [note: 32]

49 The Defendants subsequently applied to discharge the Injunction. They succeeded in doing so. The Injunction was discharged on 24 February 2012. SLA wrote to SAA on that day acknowledging the discharge of the Injunction. SLA nonetheless urged SAA to take a reasonable approach, and to facilitate a smooth transition for businesses continuing to operate at the Site. [note: 33] The letter also reiterated SAA's obligations under the Extension Tenancy.

50 The Defendants returned possession of the Site to SLA on 29 February 2012. The Plaintiffs took over possession of the Site the following day, on 1 March 2012.

Whether the Defendants committed acts pursuant to an agreement between themselves

51 Conspiracies are usually conceived of in private. The agreement between the conspirators is usually tacit. Courts have thus inferred the existence of an agreement from the conspirators' acts (*OCM Opportunities Fund II, LP v Burhan Uray* [2004] SGHC 115 at [47]). It has also been held that a company can, together with its controlling director, be liable for the tort of conspiracy (*Visionhealthone Corp Pte Ltd v HD Holdings Pte Ltd and others and another appeal* [2013] SGCA 47 at [39]).

52 On the facts before me, this was not just a case of SAA acting only through its controlling director, Tan Chee Beng. The Defendants did not dispute that TCM and Roger Koh were parties to what SAA and Tan Chee Beng were trying to do.

53 The first issue is whether Tan Chee Beng, Roger Koh, SAA and TCM had agreed to, and actually did, carry out reinstatement work at the Site and cause the sub-tenants and licensees to vacate their units by 31 January 2012.

54 Tan Chee Beng was a majority shareholder and director in both SAA and TCM. Roger Koh was a shareholder and director in TCM. SAA was the master tenant; it had signed the sub-tenancies and licences with the occupants of the various units at the Site. TCM was in charge of managing the Site. In the light of the relationship between the parties and the undisputed facts, it is clear that the Defendants had agreed to implement reinstatement work at the Site and to cause the sub-tenants and licensees to leave by 31 January 2012. It is also clear that the Defendants had carried out acts pursuant to this agreement. Indeed, the Defendants did not seriously dispute these allegations.

55 The crux of the dispute was whether the Defendants' predominant purpose (or intention) was to injure the Plaintiffs. The Defendants also disputed the extent of the acts which the Plaintiffs allege

were carried out pursuant to the conspiracy, if any. I will address the second point later on. I turn first to the crucial question of the mental element behind the Defendants' agreement and the acts committed pursuant to that agreement.

Whether the Defendants' predominant purpose (or intention) was to injure the Plaintiffs

56 In most cases of conspiracy, it is difficult to prove that the conspirators intended to cause damage to a claimant because the acts committed pursuant to the conspiracy usually also benefit the conspirators. One shades into the other. It is often not clear where to draw the line between when the conspirators intended to benefit themselves and when they intended to cause damage to the claimant.

57 That difficulty does not arise here. Rather, it is quite the opposite. It would not have been in the Defendants' commercial interest to require sub-tenants and licensees who wanted to continue under the Plaintiffs to vacate their units by 31 January 2012. The Defendants would have earned an additional month's rent for February 2012 if they were prepared to allow those sub-tenants and licensees to continue till 29 February 2012.

58 It would also not have been in the Defendants' commercial interest to engage in reinstatement work which SLA had informed them was unnecessary. The Defendants would have incurred expense in doing so. The Defendants would also have put themselves at risk of legal liability to SLA for breach of contract.

59 Clause 9.1.1 of the Extension Tenancy stated that "all renovations, repairs and authorised alterations, additions and structural changes shall remain the property of the Landlord". [note: 34] Further, cll 7.3 and 9.5.2 of the Extension Tenancy stipulated that SAA was to carry out reinstatement work only "if so required by [SLA]". [note: 35] Clause 9 of Appendix A-1 to the Extension Tenancy stated that SAA was not allowed to demolish existing structures at the Site without the written consent of SLA.

60 The scope of reinstatement work that SAA was required, or indeed, *permitted* to undertake under the Extension Tenancy was subject to the instructions of SLA. This was not a situation where the Defendants were entitled to deal freely with the additions and alterations on the Site because they had renovated the grandstand and the car park and converted them to retail use. The Defendants were contractually constrained to comply with SLA's instructions on what, if any, and how much was to be removed.

61 SLA's instructions to SAA in letters dated 20 June 2011, [note: 36] 2 December 2011, [note: 37] 4 January 2012 [note: 38] and 20 January 2012 [note: 39] had significantly reduced the scope of reinstatement work that SLA required of SAA. The Defendants did not contest the Plaintiffs' allegation that the five of the 18 Items (which the Defendants agreed that they had removed) were removed in contravention of SLA's instructions. In fact, Tan Chee Beng admitted in cross-examination that by removing electrical cables, pipes, fittings, the fire safety system and the fire protection system, SAA did not comply with SLA's instructions, and accordingly, with SAA's obligations under the Extension Tenancy. [note: 40]

62 Yet the Defendants were unrelenting in both requiring sub-tenants and licensees to vacate by 31 January 2012, and the reinstatement work.

63 The Defendants' explanation for requiring sub-tenants and licensees to vacate by 31 January

2012 was that they wanted a one-month buffer between the handover of the units from the sub-tenants and licensees to SAA, and the handover of the Site from SAA to SLA on 29 February 2012.

64 The Defendants' explanation for engaging in reinstatement work was that they believed that they were obliged to do so because of the lapse of a written permission dated 19 August 2010 ("the 2010 WP") issued by URA. They maintain that the obligations under the 2010 WP existed independently from the any contractual obligations which SAA may have owed to SLA under the Extension Tenancy.

65 I do not accept these explanations. In my view, the Defendants' acts were motivated by a predominant purpose to cause damage to the Plaintiffs. I make this finding for three reasons.

66 First, the transcripts of the meeting of 1 December 2011 (see [35] above) showed that the Defendants threatened to injure the Plaintiffs *unless* the Plaintiffs were willing to provide the Defendants with adequate compensation. Second, the Defendants' persistent pressure on sub-tenants and licensees to vacate by 31 January 2012 was done against SLA's express requests to facilitate a smooth transition for those persons. Third, the Defendants did not genuinely believe that they were legally obliged to carry out reinstatement work under the 2010 WP.

67 Proof of conspiracy and the requisite mental element will normally be inferred from objective facts (*Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901 at [19]). The three reasons mentioned above are derived from objective facts which, in my view, lead to the inexorable conclusion that the Defendants' predominant purpose was to cause damage to the Plaintiffs.

The meeting of 1 December 2011

68 The meeting of 1 December 2011 was between Benson Tan and Yap Chee Sing of the Plaintiffs, and Tan Chee Beng and Roger Koh of the Defendants. It was secretly recorded by Benson Tan and Yap Chee Sing, and subsequently translated into English (the conversation was a mixture of Mandarin and Hokkien interspersed with English) and transcribed by the Plaintiffs. Parties agreed to the accuracy of the transcript, save for some minor amendments made by Tan Chee Beng. [note: 41] The amendments are immaterial, and any reference to or excerpts from the transcript are from the amended version.

69 In my view, what transpired at the meeting cast the Defendants' intentions into sharp relief. The message Tan Chee Beng and Roger Koh conveyed to Benson Tan and Yap Chee Sing at that meeting was a straightforward one: pay the Defendants a sum of money or the Defendants will continue with their systematic reinstatement of the Site and eviction of the sub-tenants and licensees. While none of the statements were phrased in explicit terms, it is clear from the entire conversation on 1 December 2011 that the Defendants were making thinly-veiled threats.

70 Below are extracts quoted *verbatim* from the transcript of the meeting which illustrate the point. In the portions of the conversation quoted, Benson Tan was expressing his concern about the reinstatement work and the letter dated 1 November 2011 which SAA had sent to the sub-tenants and licensees. This was the first letter SAA sent to remind these occupants of their obligation to vacate their units by 31 January 2012. In the meeting, Tan Chee Beng was warning the Plaintiffs that unless the Defendants were compensated, the Defendants would follow up with a second and a third letter to the sub-tenants and licensees along similar lines as the first letter. Tan Chee Beng alluded to a three-month fitting-out period which SLA gave to the incoming master tenant. Tan Chee Beng's point was that if the Plaintiffs hit the ground running, they would be able to earn rent for that three-

month fitting-out period. The quantum of compensation which the Defendants wanted was based on this three-month fitting-out period.

Tan Chee Beng: If you want to (indecipherable) our contract with SLA, then we have to see how we satisfy our contractual agreement with SLA, hor? … ***If you want to*** (indecipherable) ***our contract, then we have to discuss it in private. Discuss privately.*** Otherwise we don't have the need to talk at all. Because I also know what your intentions are. You wish to continue collecting rental as usual from the existing tenants during the 3 months … during the fitting out period. We built up this business 10 years ago. We used the tangible and intangible assets … ***So if you want to have the tangible and intangible, to get rental during the 3 month fitting out period, I think from a commercial point of view, a reasonable resolution should be given*** … You get what I'm trying to say? If your purpose in coming today is to tell me about SLA, then let's not waste time … We are very clear about what SLA can and cannot ask us to do. …

…

Benson Tan: So the key thing is, uh, we know we, I think, we are not stupid lah. ***We know what you mean lah. But the thing is ah, we are actually a listed company.***

Tan Chee Beng: I know.

Benson Tan: So as a listed company ah, you also are a director of a listed company.

…

Tan Chee Beng: So it is how you do it lah. You can get a independent valuer to value certain things lah. Like I told you, I just give you the hint lah. Tangible intangible. You just get a independent financial, you know, advisor advise you, they'll probably give you something lah.

…

I'm a listed company also lah. There are a lot of ways to skin a cat. End of the day … whether you have 3 months or 6 months of renovation, and we lose two, we lose two, two um, two ways. We got to renovate and we got a loss of income, or you continue right from day one, first of March. Get income.

…

The answer is very clear. You know it's, it's very obvious. It is it's your, it's your choice. Ok? As for how you do, how you skin the cat, I think you are listed ah so I don't …

…

Benson Tan:	We heard lah, Roger refers to you lah, ***we heard that Roger has told some people. See what kind of arrangement Cogent can make with you. Otherwise, you will demolish everything. Tear everything down.*** So when everyone heard about it, this is what they told us. Otherwise you all will tear everything down. SLA, we know we can come in and expect everything in order. You know you can't take over something torn down and empty.
Roger Koh:	Oh, you are wrong. When we take over, we didn't have anything. We don't have anything. We used to build Turf City.
…	
Benson Tan:	But as I said, we have to answer to the shareholders. Because they will say that in the contract, we have our rights, SAA is not allowed to tear things down. But let me tell you, the very first thing is, ***your letter made … a lot of people who received the letter, say that SAA will not be extending with them under any circumstances.***
Tan Chee Beng:	***Actually, there is a second and a third one coming.*** I told you already. ***The system is in place. So, unless we find some quick solution lah. If not the system is going to drag until January.***
…	
Tan Chee Beng:	But, but I think today is the only first time we really engage on this topic lah, hor. ***That can be stopped quite easily.*** Because I already told you. In fact, during our dinner. ***There are certain things in place, right until the very last day we hand over to SLA. So unless you are engaging in a talk with us, the system will keep on going lah. Including with the second letter and the third letter.***
…	
Tan Chee Beng:	It is very simple. ***You have 3 months free fitting period*** , you go check.
Benson Tan:	***But if three months are free, and we give you the three months, then … what is the point?***
Tan Chee Beng:	I told you already. It's what you are comfortable with.
…	

[emphasis in bold italics]

71 It is clear to me that Tan Chee Beng wanted compensation to stop doing what was not in the *bona fide* interest of the Defendants to do in the first place. If no such compensation was forthcoming, the Defendants would continue "the system" of reinstatement work and eviction of the sub-tenants and licensees.

72 The Defendants were aware that continuing with "the system" would derail the Plaintiffs' plans

to replace the Defendants as master tenants with minimal interruption to the business of sub-tenanting and licensing the units. The Plaintiffs would be forced to expend time and money replacing what had been removed and sourcing for new occupants. The Defendants wanted to be compensated for not making things difficult for the Plaintiffs. The Defendants were, in substance, engaging in commercial blackmail or extortion, or were attempting to do so.

73 The Defendants' counsel, Mr Andre Yeap SC, raised two points in an attempt to explain the conversation at the meeting. Mr Yeap stated that the meeting was "more akin to an amicable business discussion", and that if the price was right, the Plaintiffs would have agreed. [note: 42] Mr Yeap also accused the Plaintiffs of "baiting" Tan Chee Beng at the meeting. [note: 43] Mr Yeap emphasised, in particular, the "surreptitious" manner in which the meeting was recorded.

74 I do not accept these two points. First, they are inconsistent positions that cannot be credibly advanced together. To suggest that Tan Chee Beng was baited necessarily assumes that his statements were improper. The assumption of impropriety contradicts the point that the meeting was really a *bona fide* business discussion. The Defendants' suggestion of baiting actually *supports* the Plaintiffs' case that they had been the subject of threats to pay. There would have been no need for the Plaintiffs to bait the Defendants unless the former genuinely believed that the latter wanted such compensation.

75 Second, even if the Plaintiffs would have been willing to pay the Defendants if the price was right, that would not make the transaction a *bona fide* commercial resolution of matters. It would merely have meant that the Plaintiffs had yielded to the blackmail or extortion. Whether or not the Plaintiffs yielded to the blackmail or extortion would not affect the true nature of the transaction.

76 The evidence on the reason why the 1 December 2011 meeting was arranged fortifies my conclusion drawn from the conversation at the meeting. Benson Tan's evidence was that prior to the 1 December 2011 meeting, he and Yap Chee Sing met with Ong Ah Sui at the Site (see [30] and [31] above). Ong Ah Sui told them that Roger Koh wanted to meet with them. Ong Ah Sui said Roger Koh wanted the Plaintiffs to pay the Defendants $3m, if not the Defendants would "dismantle all fixtures and fittings found [at the Site]". [note: 44] Benson Tan's evidence was that this formed the basis of the meeting on 1 December 2011. [note: 45] A similar account was given by Yap Chee Sing. [note: 46]

77 The Defendants dispute that such instructions had emanated from Roger Koh. The Defendants assert that even if Ong Ah Sui had threatened the Plaintiffs to pay $3m, he had done so without authority from either Tan Chee Beng or Roger Koh.

78 Neither Roger Koh nor Ong Ah Sui was called to give evidence. The fact that Ong Ah Sui made the statement to Benson Tan and Yap Chee Sing therefore cannot be relied on to prove the *truth of the content* of Ong Ah Sui's statement (*ie*, that Roger Koh had issued the threat). That would violate the rule against hearsay evidence.

79 I nonetheless accept Benson Tan's and Yap Chee Sing's evidence that Ong Ah Sui had made such a statement to them on 3 November 2011, and that that statement was the reason the meeting was arranged. Benson Tan was a steady and credible witness. It was not put to Benson Tan in cross-examination that Ong Ah Sui did not say what Benson Tan was alleging. Also, such an explanation for the 1 December 2011 meeting is consistent with Benson Tan's and Yap Chee Sing's eventual decision to record it. They would not have done so unless they sensed something was amiss.

80 The reason the meeting was arranged, coupled with what was said at the meeting further

confirms the role that Roger Koh played in the Defendants' scheme. At the meeting Benson Tan said that "Roger [Koh] has told some people … [s]ee what kind of arrangement Cogent can make with you. Otherwise, you will demolish everything" (see [70] above). Benson Tan went on to say, "[y]ou know you can't take over something torn down and empty". Although Roger Koh did say in response, "you are wrong", I am of the view from the rest of his response that this was not a denial of his threat. Rather, it was to make the point that the Defendants did not have the benefit of taking over something from an existing master tenant (unlike what the Plaintiffs wanted), and that the Defendants had to convert the Site from scratch so that it could be used for retail purposes.

81 It was open to the Defendants to call Roger Koh and Ong Ah Sui to give evidence to dispute the allegation of the Plaintiffs or support those of the Defendants. This was not done.

82 The Defendants argue that an adverse inference should not be drawn against them for their failure to call Roger Koh and Ong Ah Sui. In respect of Roger Koh, the Defendants say that they offered him to the Plaintiffs for cross-examination. The Plaintiffs chose not to do so. [note: 47] In respect of Ong Ah Sui, they argue that they had subpoenaed him, but he refused to attend court in breach of the subpoena. [note: 48] They therefore say that there was a good reason for Ong Ah Sui's absence.

83 I do not accept these arguments. Benson Tan and Yap Chee Sing had given damning evidence of what Ong Ah Sui had said about Roger Koh's purported instructions, and also what Tan Chee Beng and Roger Koh had said at the meeting. Since Ong Ah Sui was not attending court as a witness in violation of the subpoena, then *all the more* the Defendants should have called Roger Koh to give evidence to rebut the Plaintiffs' allegations. I do not think it is a sufficient answer for the Defendants to say that they offered Roger Koh to the Plaintiffs for cross-examination.

84 There was no suggestion that Roger Koh was unable or unwilling to give evidence for the Defendants. He was present in court in the course of the trial, if not throughout the entire trial. Roger Koh chose not to give evidence to dispute what the Plaintiffs said at the meeting, *ie*, that they had heard that Roger Koh wanted to see what arrangement the Plaintiffs could make, otherwise everything would be demolished. Neither did he give evidence to disclaim his involvement in "the system" that the Defendants had in place, which Tan Chee Beng had made so many references to. I draw an adverse inference against all the Defendants for not calling Roger Koh as a witness.

85 I therefore conclude that the Defendants were making implicit threats for the Plaintiffs to pay them compensation at the 1 December 2011 meeting. The threats emanated from and were communicated through both Tan Chee Beng and Roger Koh.

The obligations to SLA under the Extension Tenancy

86 The Defendants argue that the reason they were insistent on the sub-tenants and licensees vacating their respective units by 31 January 2012 was to create a one-month buffer before handing the Site back to SLA. The Defendants rely on provisions in the Extension Tenancy which stipulated that SAA was responsible to SLA for the sub-tenants' and licensees' compliance with the relevant obligations under the Extension Tenancy.

87 As a precursor, the argument about a buffer does not sit well with SAA's original reason for seeking the extension of their tenancy up till 29 February 2012 from SLA. SAA's proposal was made on the basis that it would be beneficial for the sub-tenants and licensees to be able to enjoy the Chinese New Year Holiday (see [23] above). By requiring the sub-tenants and licensees to vacate their units by 31 January 2012, the Defendants were effectively preventing them from enjoying

Chinese New Year (which fell on 23 and 24 January 2012) at the Site, as the sub-tenants and licensees would take between two to four weeks to reinstate their units prior to vacating them. [note: 49] This was confirmed by Tan Chee Beng in cross-examination. [note: 50]

88 Even if the Defendants had only subsequently realised that they ought to have a one-month buffer in case any sub-tenant or licensee was dilatory in returning its unit, SLA had made it clear that SAA was to assist with the continuity of businesses that intended to remain at the Site under the Plaintiffs.

89 The emphasis of the Five SLA Letters sent in November 2011, December 2011, and early-January 2012 (see [33] and [37] above), was that the continuity of existing businesses was paramount, *especially* for those sub-tenants and licensees which were continuing under the subsequent master tenant after 29 February 2012. Further, on 11 January 2012, SLA agreed not to hold SAA liable for loss or damage caused by the retention of works at the Site.

90 By late-2011 through to early-2012, events had overtaken any legitimate concern that the Defendants might otherwise have had about the late return of units. By that point in time, the Defendants were not justified in relying on SAA's original contractual obligations to SLA in order to compel sub-tenants and licensees to vacate their units by 31 January 2012 so as to create a one-month buffer.

91 All the Defendants had to do was to inform sub-tenants and licensees that if they could produce documentary evidence of a new sub-tenancy or licence with the subsequent master tenant commencing 1 March 2012, they would be allowed to stay on until 29 February 2012. The rent or licence fee for the month of February 2012 could have been easily resolved. Indeed, the Defendants did not suggest that the rent or licence fees for that last month in February 2012 would have been an issue if they were minded to allow these sub-tenants and licensees to stay on until 29 February 2012.

92 The Defendants, however, did not inform the sub-tenants and licensees that they might be allowed to stay on until 29 February 2012. Instead, between late-2011 and 29 February 2012, the Defendants' posture towards the sub-tenants and licensees became increasingly severe.

93 On 1 November 2011, SAA wrote to the sub-tenants and licensees. SAA reminded them that their leases would expire on 31 January 2012. SAA stressed that the reinstatement work for their respective units was to be completed by that date in order to "smoothen the … process of [their] rental deposit refund." [note: 51] SAA also stated that the sub-tenants would be responsible for any loss or damage that arose from failure to reinstate and hand over their units by 31 January 2012.

94 On 1 December 2011, SAA sent out a second letter to the sub-tenants repeating the contents of their letter dated 1 November 2011. [note: 52] SAA added that if the sub-tenants and licensees failed to comply, SAA would recover possession of the units and claim damages for trespass and breach of contract.

95 SAA wrote a third letter to the sub-tenants on 4 January 2012 repeating the contents of the earlier two letters. SAA asserted that it will cut off all electricity and water supplies, terminate fire safety, and cease management and maintenance services on 31 January 2012. SAA also stated that in the event of non-compliance, it would "exercise [SAA's] rights as the Licensor immediately without further notice and all costs and expenses including removal fees, contractor costs and legal fees, incurred will be borne by [the sub-tenants and licensees]". [note: 53]

96 The Plaintiffs obtained the Injunction on 20 January 2012. The Defendants' response to the Injunction was striking. SAA sent a letter to the sub-tenants and licensees on 25 January 2012, informing them that an injunction had been obtained by the Plaintiffs. SAA stated that it had instructed lawyers to apply to set aside the Injunction. SAA concluded by stating that if the Injunction "is discharged, *we will no longer be prohibited from evicting any sub-tenant or licensee that remains on our property* after the expiration of their [licence] or sub-tenancy on 31 January 2012" [emphasis added]. [note: 54]

97 All this was done in the face of SLA's repeated letters informing SAA about the importance of ensuring continuity for the businesses of sub-tenants and licensees beyond 31 January 2012.

98 On a separate but related point, there was also some dispute as to whether the Defendants maintained utilities and waste-disposal services at the Site between 31 January 2012 and 29 February 2012.

99 The Plaintiffs allege that the Defendants ceased providing these services to the sub-tenants and licensees at the site after 31 January 2012, even though the Defendants knew that many of them were still in occupation of their units. The Plaintiffs say that this was part of the Defendants' plan to force the sub-tenants and licensees out of their units, and to prevent them from continuing under the Plaintiffs.

100 The Defendants disagree. They deny that they failed to provide adequate lighting in the common areas. The Defendants also assert that they continued to provide waste-disposal services. They claim that they maintained a "skeletal but functional force to carry out some basic cleaning and maintenance". [note: 55]

101 Lincoln Gabriel and Tan Lay Hoon gave evidence on behalf of the Plaintiffs. Both were sub-tenants at the Site when the Defendants were still master tenants. They gave evidence that the Defendants failed to maintain basic amenities such as lighting and waste-disposal services after 31 January 2012. Lincoln Gabriel's affidavit of evidence-in-chief ("AEIC") further exhibited photographs taken in January and February 2012 of dimly-lit or dark corridors and walkways. [note: 56]

102 Ang Kiong Teng, who was the chief operating officer of TCM at the material time, gave evidence for the Defendants. He filed an affidavit in response to Lincoln Gabriel's and Tan Lay Hoon's AEICs. He stated that the "decrease in illumination was due to the fact that by 2 February 2012, most, if not all, of the [sub-tenants and licensees] at [the Site] had vacated their units". [note: 57] In support of this contention, Ang Kiong Teng exhibited invoices for utilities charges for the month of February 2012 which the Defendants incurred in respect of the Site.

103 I prefer the evidence of the Plaintiffs' witness on this point. Their evidence was unchallenged in cross-examination. Their evidence is further corroborated by contemporaneous letters from SLA to SAA in February 2012 (see [47] above). In those letters, SLA complained to SAA of the inadequate lighting and improper waste disposal at the Site, highlighting the "safety and security concerns" and the "[disruption] for businesses".

104 I do not find the reason for the Defendants' reason for the "decrease in illumination" persuasive. First, any loss of illumination from lights being turned off in the vacated units should have had little impact on the amount of lighting in the common areas, which was what was being complained of. Second, I doubt that a decrease in illumination merely from the vacant units would have been sufficient to motivate SLA to write two letters in rapid succession to SAA, warning them of

the safety and security concerns arising from the lack of proper lighting. Also, the mere fact that the Defendants exhibited invoices for utilities for the month of February 2012 does not assist them. While it proves that the Defendants did incur *some* utilities expenses, it does not show that the Defendants did not cut back on lighting and waste-disposal services during that period.

105 In my view, it was no coincidence that the Defendants' pressure on the sub-tenants and licensees began in November 2011, after the tender was awarded to Cogent Land on 10 October 2011. Neither was it coincidence that this pressure intensified after the non-conclusive meeting on 1 December 2011. The Defendants further carried through with their hostile behaviour beyond 31 January 2012, by switching off lighting and ceasing other basic services despite being aware that some units at the Site were still being occupied.

106 I therefore conclude that the Defendants' attempts to force the sub-tenants and licensees to vacate their units by 31 January 2012 were not in the hope of creating a one-month buffer prior to the handover of the Site to SLA. There was no need for a buffer for those who were continuing with the subsequent master tenant.

The obligations to URA under the 2010 WP

107 The Defendants argued that they carried out the reinstatement work with the "genuine belief" that they were "duty bound" to do so. [note: 58] They believed that they were legally obliged to do so under the 2010 WP issued by URA, notwithstanding SLA's instructions to the contrary.

108 URA is the authority that oversees the uses that land is put to. If a land occupier wants to apply a plot of land to a particular use, he would first need to seek URA's approval. URA gives such approval in the form of written permissions ("WPs"). The necessity for a valid WP for the use that a particular plot of land is put to is a regulatory requirement. This requirement exists independently from any contractual permission which SAA might have had to obtain from SLA under the Extension Tenancy, or any of the earlier tenancies.

109 SAA, during their term as master tenants, had applied for and obtained a number of WPs and subsequent extensions for the use of the Site. Each of these WPs (or their extensions) was only valid for a period of between one and three years. SAA would therefore have had to make applications for new WPs (or extensions of existing ones) as and when the validity of an existing WP was about to lapse.

110 The WP in question is the 2010 WP. It was the last WP that SAA obtained from URA in respect of the Site prior to its handover on 29 February 2012. The 2010 WP was granted on 19 August 2010 and was valid until 31 August 2011. Planning Condition (c) of the 2010 WP stated that "[u]nless renewal of planning permission is granted, the approved use shall cease and the *structures erected shall be demolished upon the expiry of this permission*" [emphasis added]. [note: 59] Similar conditions were present in all the previous WPs that SAA had obtained.

111 Planning Condition (c) was the lynchpin of the Defendants' case on the reinstatement work. The Defendants argue that they carried out the reinstatement work believing that they were required to do so under Planning Condition (c). They did not, therefore, intend to cause damage to the Plaintiffs.

112 The Defendants rely on two letters purportedly received from their architectural advisors, Samson Tan Associates ("STA"), to buttress this argument. These letters were dated 19 August 2010 and 31 August 2011. I will refer to them collectively as "the STA Letters". The dates on the STA

Letters coincided with the dates of the grant and expiry of the 2010 WP.

113 The first STA letter purported to remind SAA of its obligation under Planning Condition (c) of the 2010 WP to demolish "temporary structures" upon the expiry of the 2010 WP. It also emphasised that for safety reasons, "temporary works" should be removed after their temporary uses have expired by August 2011. [note: 60]

114 The second STA letter purported to reiterate Planning Condition (c) of the 2010 WP. The second letter stated that STA absolved themselves from professional liability for uses that extended beyond the expiry date of the 2010 WP. The second letter further stated that "temporary works including the M&E works, partitions, the light weight metal plate floors and metal sheet walls" were only certified temporary and not meant to last for more than ten years. They were to be removed "for reasons of public safety". [note: 61]

115 The Plaintiffs dispute the authenticity of these letters. The Plaintiffs claim that the STA Letters were fabricated to support the Defendants' case.

116 I am of the view that the Defendants did not carry out the reinstatement work because they believed they were legally obliged to do so under the 2010 WP. Rather, the Defendants' reliance on the 2010 WP and the STA Letters was a convenient and belated excuse to mask their predominant purpose to cause damage to the Plaintiffs. The reasons for this conclusion follow below.

The Defendants failed to establish the authenticity of the STA Letters

117 I find that the Defendants have failed to establish that the STA Letters were genuine letters issued by STA on the purported dates stated in them.

118 Instead, I am of the view that Ong Cher Keong fabricated and backdated the STA Letters to assist the Defendants with their case. Ong Cher Keong was one of the Defendants' witnesses. He was a director of SAA from 1999 to 2003. During that time, he was a majority shareholder of OCK International Development Pte Ltd ("OCK International"). OCK International, in turn, owned 40% of the shares in SAA. [note: 62] He was a certified architect until 2003, when his certification lapsed due to his bankruptcy. He was thereafter consulted on an *ad hoc* basis by SAA on matters pertaining to planning, building control approval and construction.

119 The following factors lead me to believe that Ong Cher Keong fabricated and backdated the letters to assist the Defendants' case:

(a) The originals of the STA Letters were not produced. Only copies were produced. No satisfactory reason was given as to why the originals were not produced. Ong Cher Keong said he had handed the letters, presumably on two different occasions, to Ang Kiong Teng, the chief operating officer of SAA, who also gave evidence for the Defendants at trial. Ang Kiong Teng did not explain what had become of these originals.

(b) The signatory of the STA Letters was not identified by name in the letters.

(c) It was only during cross-examination that Ong Cher Keong testified that he had drafted and signed the STA Letters himself. He claimed he did so in consultation with Samson Tan (who was apparently STA's principal architect). [note: 63] Yet no mention was made of these points in Ong Cher Keong's AEIC. I find it unlikely that Samson Tan would authorise Ong Cher Keong to

issue letters on STA's behalf, as there was no apparent reason for granting him such authority. There was no clear evidence that Ong Cher Keong was employed by STA. Neither was he a certified architect on the dates that the letters bore. His certification had lapsed long before, in 2003, when he was made a bankrupt.

(d) The Defendants did not call Samson Tan as a witness to corroborate Ong Cher Keong's evidence that he had consulted with Samson Tan before each letter was sent.

(e) Ong Cher Keong was an interested party in SAA. In his AEIC, Ong Cher Keong had disclosed his previous directorship and interest in SAA through his OCK International Shares. However, he did not disclose that although he was no longer a shareholder in OCK International, he had transferred his shares in OCK International to his brother, David Ong Chit Beng, in 2002. Ong Cher Keong also did not disclose that his brother continued to hold a 75% interest in OCK International at the time of the proceedings. This information only surfaced when Ong Cher Keong was being cross-examined. [note: 64]

(f) The STA Letters were only brought to SLA's attention very much later than the dates that they bore. The STA Letters were dated 19 August 2010 and 31 August 2011. The first time SAA made mention of the STA Letters to SLA was only on 9 January 2012. If the STA Letters were genuine and were as crucial as the Defendants made them out to be, they would have been raised to SLA much earlier.

(g) The first STA letter misquoted Planning Condition (c) of the 2010 WP by inserting an additional word "temporary" to the word "structures" (see [113] above). The word "temporary" did not appear in Planning Condition (c) of the 2010 WP (see [110] above). The addition of this word appeared to be deliberate to support the Defendants' case that the structures in question were temporary and hence had to be demolished.

(h) The second STA letter stated that the works were to be removed for reasons of "public safety". But in cross-examination, Ong Cher Keong admitted that he was not in a position to comment on the safety of the structures because he was not a structural engineer. [note: 65] He also accepted that he had drafted the STA Letters without the knowledge or expertise to comment on the safety of the structures. [note: 66]

(i) The content of the second STA letter goes beyond what was necessary for the protection of the architects. Ong Cher Keong claimed in cross-examination that the purpose of the STA Letters was to discharge STA from their professional liability. [note: 67] Yet the second STA letter did more than that. It "strongly advised" SAA to ensure that its tenants remove the works in question. The "advice" appeared to be calculated to provide the basis for the Defendants' reinstatement work.

120 I am therefore of the view that the STA Letters were fabricated. This removed an important plank on which the Defendants' argument about the 2010 WP stood.

The Defendants adopted inconsistent positions in respect of their obligations under the 2010 WP

121 The evidence given by the Defendants' witnesses attempting to justify their reinstatement work with the 2010 WP was unsatisfactory. Tan Chee Beng, Ong Cher Keong and Ang Kiong Teng gave evidence on this point for the Defendants. Some of the evidence was incoherent, and there were inconsistencies in their evidence.

122 I begin with Ong Cher Keong's evidence. It was convoluted and difficult to follow. It was also characterised by constant shifts to make up for apparent inconsistencies in the positions he took.

123 His AEIC stated that 76 groups of works, which he referred to as "temporary structures", [note: 68] needed to be removed pursuant to Planning Condition (c) upon the lapse of the 2010 WP. [note: 69] However, in cross-examination, Ong Cher Keong admitted that URA approved the use of space, and not actual structures. [note: 70] He conceded that many of the 76 temporary structures were not reflected in the plans that were submitted to URA for approval. [note: 71] This did not sit well with the position taken in his AEIC.

124 Ong Cher Keong then changed tack. He stated that when a WP expires, the approved use of space expires, and consequently, any structure that encloses or defines the space must be demolished. [note: 72] The term "structures enclosing or defining space" was not mentioned in his AEIC. Further, it was apparent that many of the 76 temporary structures (which included the likes of drains, air-conditioning units and fire-protection systems) could not be conceived of as structures enclosing space.

125 Ong Cher Keong also attempted to justify his use of the phrase "temporary structures", which did not appear in the 2010 WP. He acknowledged that the 2010 WP only mentioned "structures" and not "temporary structures". [note: 73] He went on to state that "temporary structures" were works that were restricted by time, and that the time restriction was "specified by URA that approved use is [*sic*] only for three years". [note: 74] Ong Cher Keong, however, accepted that the works were not intended to last only for three years, [note: 75] and that SAA did not intend the temporary structures to last only for a specified period of time. [note: 76] Yet Ong Cher Keong refused to admit that there was no basis for him to label the works "temporary", and he was unable to satisfactorily explain the use of that phrase. [note: 77]

126 Tan Chee Beng's evidence did not suffer from the same inconsistencies that Ong Cher Keong's did. There were, however, conflicting accounts between Tan Chee Beng's and Ong Cher Keong's evidence. This was so notwithstanding that the Defendants had elected for Tan Chee Beng to give his evidence last (even though he was the Defendants' main witness). Tan Chee Beng, being a named defendant in the proceedings, was entitled to be present in court throughout the trial. Tan Chee Beng therefore had the opportunity of listening to Ong Cher Keong's evidence in full before he gave his evidence.

127 For example, when Ong Cher Keong was questioned about whether SAA would be required to remove the structures and replace them if SAA won the new tender, he stated that SAA would have to take the structures down and study them, before putting them up again. [note: 78] This stood in stark contrast to Tan Chee Beng's evidence on the point. Tan Chee Beng stated that if SAA won the tender, they would not have removed the structures (see [146] below).

128 Another example of the inconsistencies in the Defendants' case and evidence is their position on the Metal Deck Flooring. This is one of the 18 Items that the Plaintiffs complain the Defendants removed.

129 The Defendants' pleadings took the position that the Metal Deck Flooring was required to be demolished because it was a "structure" under Planning Condition (c) of the 2010 WP. [note: 79] Ang Kiong Teng's AEIC, however, indicated that the Metal Deck Flooring was required to be removed, not

because it fell within the scope of the 2010 WP, but because it was an *illegal structure*. [note: 80] In cross-examination, he acknowledged the inconsistency but was unable to explain it. [note: 81] Ang Kiong Teng later admitted that he signed his AEIC simply to comply with the instructions of Tan Chee Beng. [note: 82]

130 Tan Chee Beng's evidence was that the Metal Deck Flooring was an illegal structure from the outset. But that position is a curious one, in three respects. First, Tan Chee Beng claimed that the Metal Deck Flooring was erected in 2002 by an unnamed sub-tenant. I do not find his explanation as to why an illegal structure was even allowed to be constructed satisfactory. Second, if the structure was illegal from the outset, then it is surprising why the Defendants allowed it to stand for nine years before it was removed in 2011. They did not say that they had discovered the existence of the structure or its illegality only in 2011. Third, the Metal Deck Flooring was present in the drawings that were submitted to URA for approval, and was approved as an area for "institutional" use. [note: 83] Tan Chee Beng attempted to explain why the Metal Deck Flooring was illegal even though URA had approved it for institutional use. Tan Chee Beng stated that the Metal Deck Flooring was being applied to a "commercial" use instead of the "institutional" use that approval had been granted for. [note: 84] But this would merely mean that the Defendants were applying the Metal Deck Flooring to an incorrect use, rather than the structure being illegal in the sense that it did not fall within the scope of the WPs to begin with. [note: 85]

131 The Defendants argue that they have maintained a consistent position on the illegality of the Metal Deck Flooring. They rely on the fact that Tan Chee Beng alluded to the illegality at the meeting of 1 December 2011. I do not think that Tan Chee Beng's mere reference to the fact that it was illegal at the meeting is enough to remedy the other patent inconsistencies in the Defendants' position. In the first place, it was not even made clear at the meeting what Tan Chee Beng meant when he said that the Metal Deck Flooring was illegal. Was it illegal because it did not have the necessary approval from some other authority, or was it illegal because the 2010 WP had lapsed?

132 The Defendants' contradictions on the Metal Deck Flooring were not limited only to the reason for its removal. The Defendants prevaricated even on the location of the Metal Deck Flooring, and which portions of the Metal Deck Flooring they had removed. This is apparent from the differences between the Defendants' case which was put to the Plaintiffs' witnesses, and the subsequent evidence that Tan Chee Beng gave.

133 The Metal Deck Flooring was situated on the fifth level of the grandstand. The floor plan of the fifth-level grandstand was segregated into four areas, which I shall refer to as Areas A, B, C and D for convenience. [note: 86]

134 The Plaintiffs' witness, Tan Tze Suen, gave evidence on which portions of the Metal Deck Flooring had been removed. She was a registered architect since 2007, and a qualified person for the purpose of the Planning Act (Cap 232, 1998 Rev Ed) ("the Planning Act"). Tan Tze Suen's evidence was that the Metal Deck Flooring was removed from Areas B, C and D.

135 In cross-examination, Mr Yeap referred Tan Tze Suen to Area A. Mr Yeap stated that the Defendants' instructions were that the Metal Deck Flooring was removed from Area A. [note: 87]

136 Tan Tze Suen stated that there had never been any Metal Deck Flooring constructed within Area A, because that area was "in its original conditions [*sic*] with tile floors and steps". [note: 88] She stated that there was no debris or marks in Area A. This was in contrast with Areas B, C, and D,

which were littered with hacked-off metal stumps and other fragments, indicating that structures had been destroyed and removed. [note: 89]

137 When Tan Chee Beng was on the stand, he took a completely different position from what Mr Yeap had put to the Plaintiffs' witnesses. Tan Chee Beng stated that the Metal Deck Flooring at Area A was still intact, and that no Metal Deck Flooring had been removed from Area A at all. [note: 90] He further stated that the removal of the Metal Deck Flooring was from areas *outside* of Areas A, B, C and D referred to by Tan Tze Suen. [note: 91]

138 Not only was Tan Chee Beng's evidence inconsistent with the case that the Defendants' counsel had put to the Plaintiffs' witnesses, it also did not meet the Plaintiffs' contention. If the Metal Deck Flooring was removed from an area outside Areas A, B, C and D, then it would have been a non-issue, as the Plaintiffs were complaining only about the removal of such flooring from Areas B, C and D.

139 In totality, the evidence of the Defendants' witnesses and the case they put forth was unimpressive. The incoherence and inconsistencies suggested that they did not genuinely believe that the 2010 WP required the reinstatement work and the removal of the 18 Items. Rather, the inevitable conclusion is that the Defendants' relied on the 2010 WP as an excuse to justify their reinstatement work.

The Defendants relied on the 2010 WP belatedly

140 Third, the Defendants' reliance on the 2010 WP was belated. The Defendants did not make any mention of the 2010 WP until 9 January 2012 in a letter from SAA to SLA, despite there having been frequent correspondence about the reinstatement work throughout November and December 2011, and January 2012.

141 In the Five SLA Letters sent to SAA over that period (see [33] and [37] above), SLA emphasised that it did not require extensive reinstatement work for units that would be used by existing occupants beyond 29 February 2012. SLA also stated that there was no need to remove "renovations, repairs and authorised alterations, additions and structural changes" from the first level of the main car park building. [note: 92] In the letter of 4 January 2012, SLA also appended a reduced list of reinstatement work, and also stated specific structures which were to be retained. [note: 93] SAA did not raise the 2010 WP in response to any of these letters.

142 Further, there was no mention of the 2010 WP at the meeting of 1 December 2011 between Benson Tan, Yap Chee Sing, Tan Chee Beng and Roger Koh. At no time did Tan Chee Beng and Roger Koh say that there was no choice but to carry on with the reinstatement work because of the 2010 WP. On the contrary, their message was that they were prepared to stop such reinstatement work if appropriate compensation was paid by the Plaintiffs.

143 The lateness of the Defendants' mention of the 2010 WP is even starker in the light of their assertion that they acted in reliance on the second STA letter dated 31 August 2011. If the Defendants were well informed and aware of their obligations under the 2010 WP because of STA's advice, as was their case, then it is inconceivable that they did not raise the purported obligations under the 2010 WP to SLA at the first instance that SLA informed the Defendants to cease reinstatement work.

144 The Defendants' failure to raise the 2010 WP as a concern till so late in the day contradicts its

own position on the authenticity and importance of the STA Letters. The lateness supports the conclusion that it was never a genuine concern to begin with.

The Defendants did not believe that SLA and URA would adopt independent and conflicting positions

145 Finally, I do not accept a suggestion for the Defendants that they believed that the obligation to reinstate under the 2010 WP existed independently from SLA's instructions, which had significantly pared down the scope of reinstatement work required under the Extension Tenancy. Rather, I am of the view that Tan Chee Beng himself believed that SLA and URA would not adopt independent and conflicting positions, and that SLA and URA would work together to resolve any outstanding issues.

146 In cross-examination, Tan Chee Beng was asked what SAA's position on the reinstatement work would be if SAA won the tender for the new tenancy, SLA stated that there was no need to reinstate, and URA was silent on it (apart from the 2010 WP). [note: 94] Tan Chee Beng stated that "[l]awfully, SAA has to, but SAA will not have to [reinstate]." [note: 95] Tan Chee Beng later explained that if SAA won the tender for the new tenancy, SAA would not have carried out reinstatement work pursuant to its obligations under the 2010 WP as "SAA considers this is something that will be sorted out between URA and SLA, because [Tan Chee Beng considers that he is] dealing with the government as one body". [note: 96] Tan Chee Beng also stated that this was the reason that SAA operated without a valid WP for the period between 27 October 2004 and 30 November 2005. [note: 97]

147 Tan Chee Beng's oral evidence was also corroborated by independent contemporaneous documents. SAA's tender proposal for the new tenancy that was submitted in July 2011 indicated that no monies were estimated to be spent on structural and building works, M&E works, architectural equipment, fittings and fixtures. [note: 98] The tender proposal was made on the basis that SAA would not need to carry out reinstatement work, and then replace all the items they had removed, if they won the tender.

148 It therefore appears to me that Tan Chee Beng's understanding of the situation was that SLA and URA would work together to determine what had to be removed and what need not be removed. It was not a case where Tan Chee Beng genuinely believed that even though SLA was urging SAA to stop reinstatement work, URA would take a different position.

149 The Defendants in their reply submissions point to the fact that SH Cogent's undertaking to SLA dated 11 January 2012, required SH Cogent to indemnify SLA from any potential claims including "any civil penalty which may be imposed by URA as a debt". [note: 99] The Defendants argue that it was clear from this undertaking that SLA itself contemplated the possibility of a civil penalty imposed by URA if SAA did not remove the structures as required by the 2010 WP. They say that "SLA saw the issue … as a real and legitimate concern" and that "[t]he Defendants' concern can only be even greater given that they were the ones who erected these additions and alterations". [note: 100]

150 This argument misses the point. The question is not whether SAA or SLA would *actually* have faced potential liability to URA for a civil penalty if the reinstatement work was not carried out. Rather, the question is whether the Defendants carried out the reinstatement work because they were motivated by the belief that SAA was required to do so under the 2010 WP, and the desire to avoid the consequence of potential liability if they did not. The Defendants were clearly not concerned about the lapse of the 2010 WP. It was never mentioned at the meeting of 1 December 2011 (see [142] above) and was mentioned late only in SAA's letter to SLA dated 9 January 2012.

151 The reasons I have discussed above lead me to the conclusion that the Defendants did not carry out the reinstatement work because they believed that they were obliged to do so under the 2010 WP. Tan Chee Beng believed all along that URA would not complain if no reinstatement work was carried out because there was a subsequent master tenant taking over the Site who wanted to use it in its existing state. It was just a matter of formalising the permissions and approvals between the subsequent master tenant and URA. This belief was the reason SAA's tender proposal for the subsequent tenancy of the Site indicated that no money was to be spent on additional works. This belief was reaffirmed by URA's letter to SAA dated 10 February 2012 stating that URA did not require the demolition of any of the structures for which the approved use had ceased.

152 Rather, the reason the Defendants carried out the reinstatement work against the instructions of SLA, and the reason the Defendants attempted to force the sub-tenants and licensees to vacate their units by 31 January 2012 was because the Defendants' predominant purpose was to injure the Plaintiffs. The Plaintiffs refused to provide the Defendants with the compensation they wanted, and so, the Defendants wanted to make the Plaintiffs pay the price for their refusal.

Whether the Defendants employed unlawful means

153 In view of my finding above that the predominant purpose of the Defendants was to injure the Plaintiffs, the question of whether unlawful means was employed becomes academic. It is no longer necessary for me to address this point, and I will not do so.

Whether the Plaintiffs suffered damage

154 The Plaintiffs argued that they suffered three categories of damage as a consequence of the Defendants' conspiracy. First, the expenses incurred in replacing the 18 Items that were removed in the course of the Defendants' reinstatement work. Second, loss of income in the form of rent and licence fees from the sub-tenants and licensees who would have continued under the Plaintiffs but did not. Third, expenses incurred in uncovering the Defendants' conspiracy and minimising the damage done to the Plaintiffs, namely, legal and private investigation costs.

155 Proof of damage is necessary to establish the tort of conspiracy. However, once the Plaintiffs prove actual pecuniary loss, "the damages are at large, in the sense that they are not limited to a precise calculation of the amount of actual pecuniary loss actually proved" (*Lonrho plc and others v Fayed and others (No 5)* 1 WLR 1489 ("*Lonrho v Fayed (No 5)*") at 1494). The hearing of liability and quantum has been bifurcated. Therefore, as long as the Plaintiffs prove some actual pecuniary loss, I leave the precise extent of damage to be assessed at the hearing to determine quantum.

Damage from the removal of the 18 Items

156 The Plaintiffs' pleaded case relies on the Defendants' purported removal of the 18 Items from the Site. The Defendants admit that they removed five of the items (see the annexure to this judgment). They deny removing any of the rest. As I am concerned only with liability at this stage of the proceedings, I need not go into the question of whether all of the 18 Items were removed by the Defendants. The precise number of items that were removed goes to quantum rather than liability. I will therefore proceed on the basis that the Defendants have only removed five items.

157 I am of the view that the Plaintiffs have suffered some actual pecuniary loss as a result of the removal of the five items. I accept the evidence of the Plaintiffs' witness, Loh Yi-Shin, on this point. She was a professional engineer of nine years' standing, and a qualified person for the purposes of the Planning Act. She was an employee of Cogent Holdings at the material time. She was assigned to

oversee planning, renovation and refurbishment of the Site.

158 In her AEIC, she gave evidence that the removal of the five items resulted in the Plaintiffs having to incur expenses replacing them, with some of the replacement work needing to be carried out on an urgent basis. [note: 101] Her AEIC also exhibited a spreadsheet listing the estimated cost of replacing the structures that the Plaintiffs alleged were removed. [note: 102] I am of the view that the removal of the five items resulted in some actual pecuniary loss to the Plaintiffs.

159 The Defendants argued that the Plaintiffs suffered no loss because the Plaintiffs were not entitled to any fixtures, fittings or structures under the Plaintiffs' agreement with SLA. The Plaintiffs were only entitled to the Site on an "as is where is" basis. In other words, the Plaintiffs could not suffer a loss from the removal of what it was not entitled to.

160 I do not accept this argument. It wrongly presupposes that loss can only be suffered in respect of damage done to property owned by the Plaintiffs. But the Plaintiffs could have suffered loss by delays and/or being required to incur expenses that they would not have had to, had the tort not been committed. It is clear that but for the Defendants' acts committed pursuant to the conspiracy to injure the Plaintiffs, the expenses and time that was wasted would not have materialised.

Damage from loss of income from rent and licence fees

161 The Plaintiffs allege that the loss of income they suffered arose in two ways. First, the Defendants' acts created an atmosphere of anxiety and uncertainty amongst the second-hand car dealers at the car mart. This caused car dealers who were prepared to consider entering into licence agreements with the Plaintiffs to leave the Site, in search of alternative locations. As a result, the Plaintiffs did not enjoy licence fees they would have obtained until they were able to find replacement licensees for the vacated units. Second, the handover of units to sub-tenants and licensees of the Plaintiffs was delayed due to the time the Plaintiffs had to spend replacing the items which had been removed from the Site by the Defendants. The delay resulted in them not being able to start collecting rent or licence fees for those units from an earlier date.

162 On the first ground, the Plaintiffs claim loss of income for the period between 1 March 2012 and the date replacement licensees were found for the units concerned. 1 March 2012 would have been the date the Plaintiffs started receiving licence fees from those existing car dealers who would have continued under the Plaintiffs if they had not left the Site. The Plaintiffs provided particulars of 13 car dealers who purportedly left due to the Defendants' conduct. [note: 103]

163 The Defendants, on the other hand, argued that the car dealers did not leave as a result of their conduct. Rather, they left because of the significantly higher licence fees that the Plaintiffs were asking for.

164 Sean Peh, the Plaintiffs' witness, gave evidence on this point. He was head of the automotive department of Cogent Automotive Logistics Pte Ltd at the material time. His evidence in cross-examination was that of the 13 car dealers, two left due (either in whole or in part) to the uncertainty and anxiety. Two of the car dealers did not leave the Site, but merely switched units after the handover. The remaining nine of the 13 car dealers left as a result of the increase in licence fees. [note: 104]

165 It is not yet clear to me at this stage that the increase in licence fees was so significant that

it was the sole, decisive, factor. In my view, the Defendants' acts would have had a role to play in the car dealers' departures. Sean Peh's evidence that two car dealers left as a result of the anxiety and uncertainty was not challenged. In respect of the other 11 car dealers, Mr Adrian Wong, counsel for the Defendants who was conducting the cross-examination of Sean Peh, stopped short of suggesting to Sean Peh that the *sole reason* they left the Site was the higher licence fees. The higher licence fees may merely have been one of the factors that resulted in them leaving the Site. It is open to the Plaintiffs to prove the precise extent of loss suffered at the quantum stage of the proceedings.

166 On the second basis of the Plaintiffs' claim for loss of income from rent and licence fees, I accept that the evidence given by Loh Yi-Shin. As mentioned above (at [157]), she gave evidence that the reinstatement work resulted in the Plaintiffs having to replace the items that the Defendants had removed, some on an urgent basis. [note: 105] The spreadsheet referred to above also listed the commencement date and expected end date of the replacement work in respect of each of the items. [note: 106] I accept her evidence that the time spent replacing these items would have delayed the earliest date which the Plaintiffs could have let out the affected units, and resulted in them suffering a loss of rent or licence fees for those units.

Damage from expenses incurred in uncovering the conspiracy

167 The Plaintiffs argue that the damage necessary for actionable conspiracy can be established by expenses incurred in exposing the conspiracy. They rely on the English High Court case of *British Motor Trade Association v Salvadori and others* [1949] Ch 556 ("*British Motor*") at 569. The Plaintiffs argue that they incurred expenses in the process of uncovering the Defendants' conspiracy, and attempting to prevent further harm by the Defendants. For the former, they had to hire private investigators to conduct surveillance at the Site and to uncover what the Defendants' were doing. For the latter, they had to obtain the Injunction to prevent the Defendants from causing further loss pursuant to the conspiracy. The Plaintiffs argue that this expense was, in itself, able to satisfy the requirement of damage for actionable conspiracy.

168 The Defendants argue that *British Motor* is distinguishable. They argue that the facts of *British Motor* were exceptional; the English High Court there found that the conspiracy "imperil[ed] [the claimant's] very existence" (*British Motor* at 569). They also argue that the court in *British Motor* did not hold that expenses incurred in exposing the conspiracy were, by themselves, sufficient for the purpose of making out a case for conspiracy. They say that if that were the case, the requirement of damage for actionable conspiracy would be rendered otiose, as the claimant would almost always incur expenses in uncovering a conspiracy.

169 In view of my findings above that the Plaintiffs have suffered actual pecuniary loss over and above the expenses incurred in uncovering the conspiracy, I do not need to decide whether such expenses are, by themselves, sufficient to establish damage. The expenses can nonetheless be recovered by the Plaintiff, subject to proof at the quantum stage of the proceedings.

Whether the Defendants are entitled to damages on the Plaintiffs' undertaking in respect of the Injunction

170 I now address the Defendants' counterclaim. The Defendants seek damages for what they say was the Plaintiffs' wrongful application for the Injunction. The Defendants are asking the court to enforce the Plaintiffs' undertaking to abide by any order for damages which the Plaintiffs gave to the court when they applied for the Injunction on 20 January 2012. [note: 107] Further, the Defendants, in

their closing submissions, rely on *Rookes v Barnard* [1964] 2 WLR 269 to argue that the Plaintiffs should be required to pay exemplary damages. They say that the Plaintiffs' "conduct in seeking an injunction to advance their financial interests [is] an abuse of process", and "was a cold and calculated act on the part of the Plaintiffs". [note: 108]

171 The court has the discretion in deciding whether or not to enforce a claimant's undertaking in damages. It is to be exercised by reference to all the circumstances of the case (*Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 ("*Tribune Investment*") at [54]). In order for the court to be persuaded that a claimant's undertaking in damages should be enforced, it has to be satisfied of two things: first, that the injunction was wrongly granted; and second, that there are no special circumstances militating against the enforcement of the claimant's undertaking (*Canadian Pacific (Bermuda) Ltd v Nederkoorn Pte Ltd and another* [1999] 1 SLR(R) 628 at [50]).

172 Once it is established that the undertaking should be enforced, the court can decide whether to do so summarily, or by ordering an inquiry as to damages (*Tribune Investment* at [53]).

173 I pause to mention that a claim in respect of an undertaking in damages should not be pleaded as a counterclaim (David Bean, Isabel Parry & Andrew Burns, *Injunctions* (2012, 11th Ed, Sweet & Maxwell) at para 6–14), as the Defendants have done in this case. The undertaking in damages, which the claimant gives upon the grant of an injunction, is given to the *court* and not to the defendant. It does not create any right on the part of the defendant which can found a cause of action (*Cheltenham & Gloucester Building Society (formerly Portsmouth Building Society) v Ricketts* [1993] 1 WLR 1545 ("*Cheltenham*") at 1551D, per Neill LJ). The defendant can ask the court to enforce the undertaking. But the defendant "has no right to its enforcement or any right to damages until the discretion is exercised in his favour and damages are awarded" (*Cheltenham* at 1555B, per Peter Gibson LJ). Notwithstanding the Defendants' incorrect approach of characterising the enforcement of the undertaking as a counterclaim rather than an application, I will nonetheless deal with the merits of their claim for the undertaking in damages to be enforced.

174 I turn to the question of whether the Injunction was wrongly granted. The success of the claimant at trial and the circumstances in which the order was obtained are important to this question (*Marubeni International Petroleum (S) v Projector SA* [2004] 4 SLR(R) 233 at [15]). If the claimant fails in its claim at the trial, then the injunction would usually have been wrongly granted.

175 The Defendants' position runs into difficulties at this point. They have not elucidated in their pleadings or submissions a basis for their assertion that the Injunction was wrongly granted. Their position appears to have been premised on the discharge of the Injunction and perhaps the expected failure of the Plaintiffs' claim. But the latter premise falls away with my finding in favour of the Plaintiffs in respect of their substantive claim in this action. As for the former premise, the Defendants assume that the discharge of the Injunction at the interlocutory stage must mean that it was wrongly obtained in the first place. This is incorrect.

176 The facts and the decision of the English Court of Appeal in *Cheltenham* are instructive. There, the plaintiffs obtained an interlocutory injunction against the defendants in a fraud claim. The injunction was discharged prior to the trial of the main action. The judge discharging the injunction ordered that the plaintiffs' undertaking in damages be enforced, and that there be an inquiry as to damages. The Court of Appeal set aside the order. The Court of Appeal held that the decision of the judge enforcing the plaintiffs' undertaking in damages was premature. If the allegation of fraud was made out at the trial, it would have been material to the exercise of the discretion whether to enforce the undertaking in damages. Neill LJ observed at 1551F that "[i]t is important to underline the fact that the question whether the undertaking should be enforced is a *separate question* from the

question whether the injunction should be discharged or continued" [emphasis added].

177 The judge in the present case who granted and discharged the Injunction must have been aware of this distinction. The judge expressly reserved the issue of whether an inquiry as to damages was to be ordered for the trial judge.

178 No written reasons were given by the judge for the decision to discharge the Injunction. However, with the benefit of the dispute being ventilated in the trial before me and a full picture of the facts as they unfolded, I am of the view that the Injunction was not wrongly obtained. This is therefore not a proper case for the court to exercise its discretion to enforce the Plaintiffs' undertaking in damages. The Defendants' counterclaim is dismissed.

Conclusion

179 The Defendants' conduct was reprehensible. While they intended to target the Plaintiffs, it is troubling to note that others were also adversely affected by their conduct.

180 The Defendants must have known that the systematic conduct they embarked on was causing anxiety, inconvenience and probably loss to their own sub-tenants and licensees, that is, those who were prepared to consider entering into new agreements with the Plaintiffs. The plight of these sub-tenants and licensees came to the attention of the media and of SLA. But notwithstanding SLA's intervention, the Defendants remained callous and unrelenting in what the Plaintiffs have aptly described as the Defendants' scorched-earth policy. [note: 109]

181 Yet, despite the Defendants' own wilful conduct, they have suggested in their closing submissions that they are entitled to exemplary damages from the Plaintiffs, whom the Defendants allege acted in a "cold and calculated manner" by obtaining the Injunction.

182 In the future, landlords who operate through a master tenant should consider including adequate legal rights for themselves to protect the interests of sub-tenants, licensees and other beneficiaries from the acts of an unreasonable master tenant. Landlords must also be courageous enough to exercise those rights to protect such interests.

183 As an example, landlords should consider including for themselves the right to compel the master tenant to grant fresh sub-tenancies or licences up till the end of the existing tenancy, and to enter into such agreements on behalf of the master tenant if it refuses to do so. Accompanying this should also be the right of the landlord to insist that the master tenant stop reinstatement work and to seek injunctive relief to stop such work.

184 In the present case, SLA did try to help sub-tenants and licensees who wanted to continue under the Plaintiffs. SLA sent numerous letters to SAA to that effect. However, SLA stopped short of taking any legal action to compel SAA to cooperate. Perhaps SLA did not have the appropriate legal rights to commence legal action against SAA and intervene more directly. I hope it was not a lack of courage or a wish simply to avoid litigation that precluded them from intervening more directly.

185 I grant the Plaintiffs judgment against the Defendants for damages to be assessed for the loss and damage caused by the Defendants' conspiracy to injure the Plaintiffs. The assessment of damages is to be conducted by me or another judge (or judicial commissioner) of the High Court. I will hear the parties and make a final decision on the costs of the action at a later date, after the quantum of damages has been resolved. However, if either party wishes such costs to be determined before the quantum of damages is resolved, that party may make a written request accordingly.

ANNEXURE: THE 18 ITEMS

S/No.	Item	Location	Whether the Defendants dispute having removed the item
1.	Metal Deck Flooring	South Grandstand Level 5	No
2.	Cables at Chong Pang Steam Boat unit	North Grandstand Level 2	Yes
3.	Switch Room equipment	South Grandstand Level 4	Yes
4.	Air-conditioning units and cables	South Grandstand Level 4	Yes
5.	Air-conditioning units	North Grandstand Level 3	Yes
6.	Air-conditioning units	Management Office	No
7.	Electrical riser cables	North Grandstand	Yes
8.	Motherboard of sub-alarm panel	North Grandstand Levels 6, 7 and 8	Yes
9.	Public Announcement System for building and car mart	Management Office	No
10.	Air-conditioning units and cables	Car mart units #B-76 and #C-19	Yes
11.	Children's playground structures	Courtyard	No
12.	Directional guide-post	South Grandstand Level 1	No
13.	Lightning protection system	North and South Granstand	Yes
14.	Earthing cable of lightning protection system	Car mart	Yes
15.	Fire alarm system	Car mart	Yes
16.	Switch-boards	South Grandstand Level 6	Yes
17.	Bus-bars	Main switch-room	Yes
18.	Meters, DBs and Isolators	North Grandstand Level 2	Yes

[note: 1] 10 AB, p 102.

[note: 2] Tan Chee Beng's AEIC, para 5(2).

[note: 3] Tan Chee Beng's AEIC, para 5(1).

[note: 4] 12 March 2014 Notes of Evidence ("N/E"), p 151 lines 1–2.

[note: 5] 2 PCB, p 742.

[note: 6] Plaintiffs' further and better particulars dated 16 January 2013, Schedule A.

[note: 7] 1 PCB, p 91.

[note: 8] 1 PCB, p 92.

[note: 9] 1 PCB, p 103.

[note: 10] 1 PCB, p 156.

[note: 11] 13 March 2014 N/E, p 99 lines 1–4.

[note: 12] 13 March 2014 N/E, p 100 lines 14–18.

[note: 13] 1 PCB, p 503.

[note: 14] 1 PCB, p 529.

[note: 15] Benson Tan's AEIC, p 12.

[note: 16] Benson Tan's AEIC, p 13.

[note: 17] 1 PCB, p 533.

[note: 18] 1 PCB, p 553.

[note: 19] Benson Tan's AEIC, p 15.

[note: 20] 1 PCB, p 583.

[note: 21] 1 PCB, p 559.

[note: 22] 2 PCB, p 262.

[note: 23] 2 PCB, p 313.

[note: 24] 2 PCB, p 390.

[note: 25] 2 PCB, pp 387–388.

[note: 26] 2 PCB, p 407.

[note: 27] 2 PCB, p 415.

[note: 28]

[note: 29] 2 PCB, p 497.

[note: 30] 2 PCB, p 501.

[note: 31] 2 PCB, p 505.

[note: 32] 2 PCB, p 557.

[note: 33] 2 PCB, p 579.

[note: 34] 1 PCB, p 492.

[note: 35] 1 PCB, pp 491–492.

[note: 36] 1 PCB, pp 131–132.

[note: 37] 1 PCB, p 600.

[note: 38] 2 PCB, pp 263–265.

[note: 39] 2 PCB, p 434.

[note: 40] 13 March 2014 N/E, p 86.

[note: 41] Exhibit D10.

[note: 42] Defendants' closing submissions, para 68(a).

[note: 43] Defendants' closing submissions, para 68(a).

[note: 44] Benson Tan's AEIC, at para 34.

[note: 45] 4 March 2014 N/E, pp 79–80.

[note: 46] 6 March 2014 N/E, pp 15–16.

[note: 47] Defendants' reply submissions, para 15.

[note: 48] Defendants' reply submissions, paras 18–22.

[note: 49] 1 PCB, p 92.

[note: 50] 13 March 2014 N/E, p 38 lines 12–18.

[note: 51] 1 PCB, p 529.

[note: 52] 1 PCB, p 559.

[note: 53] 2 PCB, p 262.

[note: 54] 2 PCB, p 480.

[note: 55] Ang Keng Tiong's AEIC, para 40(c).

[note: 56] Lincoln Gabriel's AEIC, pp 9–16.

[note: 57] Ang Kiong Teng's 2nd AEIC, para 14.

[note: 58] Defendants' closing submissions, paras 48 and 49.

[note: 59] 1 PCB, p 47.

[note: 60] 2 PCB, p 411.

[note: 61] 2 PCB, p 410.

[note: 62] 11 March 2014 N/E, p 33 lines 18–24.

[note: 63] 11 March 2014 N/E, p 121.

[note: 64] 11 March 2014 N/E, p 34 line 25–p 36 line 21.

[note: 65] 11 March 2014 N/E, pp 173–175.

[note: 66] 11 March 2014 N/E, pp 173–175.

[note: 67] 11 March 2014 N/E, p 119 lines 4–20.

[note: 68] Ong Cher Keong's AEIC, para 14.

[note: 69] Ong Cher Keong's AEIC, para 19.

[note: 70] 11 March 2014 N/E, pp 39–40,

[note: 71] 11 March 2014 N/E, pp 64–74.

[note: 72] 11 March 2014 N/E, p 48; 11 March 2014 N/E, p 55 lines 19–22.

[note: 73] 11 March 2014 N/E, p 95 lines 14–21.

[note: 74] 11 March 2014 N/E, p 96.

[note: 75] 11 March 2014 N/E, p 97.

[note: 76] 11 March 2014 N/E, p 108.

[note: 77] 11 March 2014 N/E, p 118.

[note: 78] 12 March 2014 N/E, pp 87–89.

[note: 79] Defence, para 25B(2)(a).

[note: 80] Ang Kiong Teng's AEIC, para 58.

[note: 81] 12 March 2014 N/E, p 127 line 23–p 128 line 1.

[note: 82] 12 March 2014 N/E, p 129 lines 11–16.

[note: 83] 14 March 2014 N/E, p 74 lines 22–24.

[note: 84] 14 March 2014 N/E, p 75 lines 4–8.

[note: 85] 14 March 2014 N/E, p 76 lines 6–24.

[note: 86] Exhibit D3.

[note: 87] 7 March 2014 N/E, p 24 lines 6–9; p 28 line 23–p 29 line 2.

[note: 88] 7 March 2014 N/E, p 29 lines 3–8.

[note: 89] 7 March 2014 N/E, p 31 line 20–p 32 line 14.

[note: 90] 14 March 2014 N/E p 73 lines 1–2; p 74 line 12.

[note: 91] 14 March 2014 N/E p 74 lines 1–9.

[note: 92] 1 PCB, p 600.

[note: 93] 2 PCB, p 263.

[note: 94] 13 March 2014 N/E, p 28 lines 1–7.

[note: 95] 13 March 2014 N/E, p 28 line 16.

[note: 96] 13 March 2014 N/E, pp 28–29.

[note: 97] 13 March 2014 N/E, p 12.

[note: 98] 1 PCB, p 480.

[note: 99] 2 PCB, p 388.

[note: 100] Defendants' reply submissions, para 56(1).

[note: 101] Loh Yi-Shin's AEIC, para 39.

[note: 102] Loh Yi-Shin's AEIC, Exhibit LYS-12.

[note: 103] Plaintiffs' further and better particulars dated 16 January 2013, Schedule B.

[note: 104] 7 March 2014 N/E, pp 120–124.

[note: 105] Loh Yi-Shin's AEIC, para 39.

[note: 106] Loh Yi-Shin's AEIC, Exhibit LYS-12.

[note: 107] Defence and counterclaim (Amendment No 2), para 26(8)(b).

[note: 108] Defendants' closing submissions, paras 121–122.

[note: 109] Plaintiffs' closing submissions, paras 37, 53 and 161.