IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 83

Registrar's Appeal (State Courts) No 166 of 2013

Between

Ng Kong Choon

… *Plaintiff/Appellant*

And

Tang Wee Goh

… *Defendant/Respondent*

In the matter of MC Suit No 11423 of 2013Y

Between

Ng Kong Choon

… *Plaintiff*

And

Tang Wee Goh

… *Defendant*

JUDGMENT

Version No 3: 27 Oct 2020 (22:39 hrs)

[Civil procedure] — [Striking out]
[Contract] — [Contractual terms] — [Rules of construction]
[Statutory interpretation] — [Construction of statute] — [Section 35 of the Subordinate Courts Act]

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Ng Kong Choon
v
Tang Wee Goh

[2016] SGHC 83

High Court — Magistrates' Courts Suit No 11423 of 2013 (Registrar's Appeal (State Courts) No 166 of 2013)
Belinda Ang Saw Ean J
25 August 2014; 6 April 2015; 14 January 2016

29 April 2016 Judgment reserved.

Belinda Ang Saw Ean J:

Introduction

1 This Registrar's Appeal (State Courts) No 166 of 2013 ("RAS 166/2013") raises some points of general importance to motorists and their insurers. Arising from a road traffic accident, repeated writs were filed by the plaintiff, Ng Kong Choon ("NKC"), against the defendant, Tang Wee Goh ("TWG"). Two of NKC's writs, one for uninsured loss and another for personal injury, were settled without adjudication on the merits. The present writ in NKC's name is a subrogation action instituted by NKC's insurer, Allianz Global Corporate and Specialty SE Singapore Branch ("Allianz"). The question for determination in RAS 166/2013 is whether s 35 read with s 52(2) of the Subordinate Courts Act (Cap 321, 2007 Rev Ed) ("the SCA") applies to preclude Allianz from suing through NKC to recover the cost of repairs to

NKC's vehicle, especially after NKC had sued TWG twice to recover his uninsured loss and damages for personal injury.

2 Section 35 of the SCA ("s 35") prohibits the dividing of a cause of action for the purpose of bringing two or more actions in the Subordinate Courts (now the State Courts). For the statutory prohibition to apply, the cause of action must be a single one. This judgment will consider: (a) whether one or two causes of action arise out of a tort committed on an individual where that tort results in damage to both his person and his property; and (b) whether the statutory prohibition would bar the institution of subsequent proceedings when the earlier proceedings were settled amicably without entering judgment on the merits.

3 This judgment will also examine the two discharge vouchers executed by NKC. In particular, the second discharge voucher was widely-worded and the query as to its ambit is whether the language of this discharge voucher had effectively compromised all claims in relation to the road traffic accident that NKC had and/or would have against TWG. If this was indeed the case, then TWG would have been discharged and released from the claim for cost of repairs, and the present MC Suit No 11423 of 2013 ("MC Suit 11423/2013") to recover the cost of repairs ("the Repairs Writ") must be struck out as frivolous, vexatious or an abuse of the process of the court. In that event, s 35 does not arise for determination. It is only if the cost of repairs falls outside of the second discharge voucher that the court is required to consider s 35. Therefore, logically, the resolution of this appeal calls for, first and foremost, a construction of the second discharge voucher to determine its proper ambit and effect.

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Factual background

4 The brief facts are as follows. NKC and TWG were involved in a road traffic accident. It is common ground that TWG's vehicle collided into the rear of NKC's vehicle. The accident occurred on 28 May 2009, at about 7.45am, along Loyang Avenue towards Changi Village outside Loyang Valley Condominium. The two vehicles that were behind TWG's vehicle were SFF 5753A (insured by AXA Insurance Singapore Pte Ltd ("AXA")) and JGQ 954 (insured by Pacific Insurance Bhd ("Pacific Insurance")). Although these two other vehicles were involved in what appeared to be a chain collision, the writs that were filed concerned the same two parties, *viz*, NKC and TWG, and the collision between their respective vehicles, SJC 693R and SFA 8123A.

5 NKC, and his insurer, Allianz (pursuant to its subrogation rights), brought three different claims against TWG. These claims were in respect of: (a) insurance excess and loss of use (collectively referred to as "uninsured loss"); (b) cost of repairs; and (c) personal injury. From the narrative below, a grand total of five writs were filed in respect of these three claims. The Repairs Writ is the last of the five writs.

History of the five writs

6 MC Suit No 7643 of 2010 ("MC Suit 7643/2010") was filed by NKC to recover his uninsured loss on 26 March 2010 ("the Uninsured Loss Writ"). This writ was served on 30 March 2010. The uninsured loss claim was for $3,002.35 and this claim was settled for a sum of $420.32. A discharge voucher was executed on 9 May 2011 ("the 2011 Discharge Voucher"). Although the 2011 Discharge Voucher stated that the settlement was in respect

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of "all loss or damage", there were two endorsements on the document. The endorsements are reproduced at [24] below. According to TWG's insurer, NTUC Income Insurance Co-operative Limited ("NTUC Income"), the endorsements were made by NKC and/or his then lawyers, Oracle Law Corporation ("Oracle Law"). However, NTUC Income did not take issue with the endorsements as it was accepted that in MC Suit 7643/2010, what NKC had claimed for and what was settled was the claim for uninsured loss only. The Notice of Discontinuance in respect of MC Suit 7643/2010 was filed on 12 July 2011.

7 Allianz paid the cost of repairs in the total sum of $4,888.23 on 9 July 2009. Allianz then proceeded to recover in subrogation the cost of repairs, but NTUC Income rejected the claim on the ground that the driver of JGQ 954 (the last car in the chain), who was insured by Pacific Insurance, had purportedly admitted that he had caused the chain collision. Allianz then instructed Global Law Alliance LLC ("Global Law") to issue proceedings against TWG. In this regard, Global Law ended up issuing three separate writs. First, MC Suit No 20269 of 2010 was filed on 4 August 2010 ("the August 2010 Writ"). Before issuing the August 2010 Writ, Global Law wrote to TWG and NTUC Income on 26 July 2010 to give each of them notice of Allianz's intention to bring a subrogation action to recover the cost of repairs. Attempts to serve the August 2010 Writ on TWG personally were unsuccessful, and it duly lapsed after six months of its initial period of validity. Thereafter, Global Law filed MC Suit No 8560 of 2011, a fresh writ, on 4 April 2011 ("the April 2011 Writ"). Again, the April 2011 Writ was not served within six months of its initial period of validity. Notwithstanding that an order for substituted service was granted on 5 May 2011, nothing appeared

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to have been done to effect substituted service during the period of validity of the April 2011 Writ.

8 On 13 January 2012, NKC filed MC Suit No 1204 of 2012 ("MC Suit 1204/2012") to recover damages for personal injury sustained in the accident ("the Personal Injury Writ"). The quantified claim amount was $400.20 being medical expenses, transport and medical report fees. General damages and Public Trustee's administrative fees were also claimed. The Personal Injury Writ was served on 2 February 2012. The claim for personal injury was eventually settled at $883.71, and a discharge voucher was executed on 22 August 2012 ("the 2012 Discharge Voucher"). The Notice of Discontinuance in respect of MC Suit 1204/2012 was filed on 25 October 2012. Notably absent from the 2012 Discharge Voucher were endorsements similar to those found of the 2011 Discharge Voucher. The terms of the 2012 Discharge Voucher are set out in [29] below and I will return to them in due course.

9 Returning to the April 2011 Writ referred to at [7] above, Global Law had attempted to effect substituted service of this writ in April 2012. By then, however, the April 2011 Writ was already an expired writ. This point is not controversial as there was no order extending the validity of the April 2011 Writ. The Memorandum of Service filed by Global Law showed that the April 2011 Writ was served on NKC by way of posting a copy of the same on NKC's front door and on the notice board of the Subordinate Courts on 2 April 2012 and 3 April 2012 respectively.

10 Global Law then wrote to NTUC Income on 25 May 2012 and in that communication, Global Law made reference to the April 2011 Writ. Instead of

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enclosing the April 2011 Writ, Global Law sent the August 2010 Writ. Notwithstanding this oversight, the fact of the matter is that the April 2011 Writ had also expired by then. Not surprisingly, NTUC Income's lawyers, Lawrence Chua & Partners ("LCP"), responded on 30 May 2012 and requested a copy of the order extending the validity of the August 2010 Writ. Global Law's letter of 5 July 2012 requested LCP to accept service of the April 2011 Writ.

11 On this occasion, LCP advised Global Law on 6 July 2012 that NKC had issued two writs for uninsured loss and for personal injury, and that both claims had been settled. As such, LCP took the position that NKC's claim for cost of repairs was *res judicata*. LCP promptly required Global Law to confirm that NTUC Income would not be pursuing the cost of repairs claim. On 7 July 2012, Global Law asked for documents pertaining to the settlements. On 3 August 2012, LCP advised that its stated position was based on the case of *Henderson v Henderson* (1843) 3 Hare 100 ("the Henderson rule").

12 On 23 May 2013, Global Law filed the Repairs Writ, the subject matter of this appeal in RAS 166/2013. As stated, the Repairs Writ is a subrogation action brought through NKC to recover the cost of repairs. TWG entered appearance on 11 June 2013.

Summons No 9210 of 2013 to strike out the Repairs Writ

13 On 1 July 2013, TWG filed Summons No 9210 of 2013 to strike out MC Suit 11423/2013 (*ie*, the Repairs Writ) pursuant to O 18 r 19(1)(*b*) and (*d*) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC 2006"). The

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supporting affidavit covered two points: (a) that TWG was again being vexed for the same cause of action by the Repairs Writ; and (b) that the Repairs Writ was in breach of s 35.

14 At this juncture, I should refer to two arguments raised by counsel for NTUC Income, Mr Roger Yek Nai Hui ("Mr Yek"). The first contention concerns NTUC Income's objection to the lateness of the Repairs Writ in that it surfaced after NTUC Income had settled with NKC both of his claims. In relation to those claims, NTUC was able to obtain contributions from the insurers of SFF 5753A and JGQ 954 (*ie*, AXA and Pacific Insurance). Effectively, NTUC Income's share of liability was 15% as AXA and Pacific Insurance had agreed to bear, respectively, 35% and 50% of the liability on behalf of their respective insured. In this regard, NTUC Income's point in this appeal is that, as the last settlement had taken place a number of years ago, it is not clear whether AXA and/or Pacific Insurance would now be prepared to settle the cost of repairs on the same terms. In the absence of any contributions from AXA and Pacific Insurance, NTUC Income would have to bear the cost of repairs in full, and it is said that this would be grossly unfair to NTUC Income and TWG.

15 Second is Mr Yek's point on *res judicata*. The claims for uninsured loss and personal injury were settled without proceeding to trial on the merits. As the relevant MC Suits were settled without judgment being entered, there is no room for the operation of what the High Court in *Goh Nellie v Goh Lian Teck and others* [2007] 1 SLR(R) 453 (at [17]) referred to as the umbrella doctrine of *res judicata* and its three conceptually distinct though interrelated principles (*ie*, cause of action estoppel, issue estoppel and abuse of process).

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In this regard, it suffices to say for now that this appeal concerns the statutory prohibition against claim-splitting that debars subsequent actions, and that this statutory prohibition is quite different from the doctrine of *res judicata*.

16 Before moving on, it is worth noting that while s 35 is found in the part of the SCA that deals with the civil jurisdiction of District Courts, the same provision would equally apply to Magistrates' Courts by virtue of s 52(2) of the SCA. It was accepted below that the legislative provision in s 35 applies to actions filed in Magistrates' Courts even though the District Judge did not refer to s 52(2) in her written decision in *Ng Kong Choon v Tang Wee Goh* [2013] SGMC 9. The SCA is now called the State Courts Act (Cap 321, 2007 Rev Ed), and the same provisions are found in ss 35 and 52(2) therein.

Decision of the District Judge

17 In the instant case, the District Judge took the position that two separate causes of action had arisen out of the tort committed on NKC: one for personal injury and another for property damage. With that understanding in mind, and given the objective of s 35 (which the District Judge held was to prohibit multiplicity of proceedings), the District Judge reasoned that in relation to the cause of action for property damage: (a) the claim for uninsured loss and the present claim for cost of repairs were facets of the same property damage claim; and (b) the parties could not contract out of the operation of s 35 via the endorsements on the 2011 Discharge Voucher (this point being common ground before the District Judge). NKC had therefore breached s 35 by instituting MC Suit 11423/2013 after he had already pursued in court (albeit settled) the claim for uninsured loss in MC Suit 7643/2010. The ruling

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of the District Judge is clear: that s 35 applies to the Repairs Writ even though there was a without prejudice settlement and no judgment was entered in the action for uninsured loss.

18 In striking out the Repairs Writ under O 18 r 19(1), the District Judge, using the language of the Court of Appeal in *The "Bunga Melati 5*" [2012] 4 SLR 546, said that the Repairs Writ was "legally unsustainable", as it violated s 35 which was a legal defence that would debar NKC's claim for cost of repairs.

19 In coming to her conclusion, the District Judge relied on s 18 of the Supreme Court of Judicature Act (Cap 322, 2007 Rev Ed) ("SCJA"). Sub-paragraph (2) of this section states that the High Court shall have the powers set out in the First Schedule. In turn, paragraph 9 of the First Schedule reads:

> **Stay of proceedings**
>
> 9. Power to dismiss or stay proceedings where the matter in question is res judicata between the parties, or where by reason of multiplicity of proceedings in any court or courts or by reason of a court in Singapore not being the appropriate forum the proceedings ought not to be continued.

20 The District Judge considered paragraph 9 as an equivalent provision to s 35. With respect, this analysis is doubtful. The High Court is a court of unlimited jurisdiction and there is no provision in the SCJA that prevents a plaintiff from dividing his cause of action. In this regard and generally, I wish to refer to Kaye J's observations in *Pioneer Concrete (Vic.) Pty. Ltd. v L. Grollo & Co. Pty. Ltd.; Consolidated Quarries Ltd. v L. Grollo & Co. Pty. Ltd*. [1973] VR 473 ("*Pioneer Concrete*") quoted at [50] below. Despite the absence of any statutory rule, the High Court has the inherent power to prevent

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repeated litigation of the same cause or matter in different actions by staying proceedings or by joinder of actions generally or even by making an appropriate costs order.

Issues in RAS 166/2013

21 As I had earlier alluded to in brief, there are two issues that arose for consideration in RAS 166/2013. They are: (a) the compromise argument; and (b) whether, independent of the compromise agreement, NKC's present claim is nevertheless prohibited by s 35 ("the s 35 issue").

22 The compromise argument focusses on the interpretation of the 2012 Discharge Voucher. On this matter, the court would be looking at a settlement that operates to settle all claims including the cost of repairs.

The compromise argument

The 2011 Discharge Voucher

23 As mentioned, NKC signed two discharge vouchers: the 2011 Discharge Voucher and the 2012 Discharge Voucher. The scope and effect of the 2011 Discharge Voucher is clear and, for this reason, it is the 2012 Discharge Voucher that is the focus of the compromise argument. Be that as it may, a consideration of the 2011 Discharge Voucher is desirable as it provides some context to the 2012 Discharge Voucher.

24 The 2011 Discharge Voucher was signed by NKC and witnessed by one Song Kok Him. Its main text reads as follows: [1]

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> CLAIM NO: MT/TP/MX/7448562
>
> I/We *NG KONG CHOON* hereby acknowledge and agree that payment to me/us by the *NTUC INCOME INSURANCE CO-OPERATIVE LIMITED* of the sum *S$420.32* shall be full satisfaction, liquidation and discharge of all claims whatsoever competent to me/us upon *TANG WEE GOH and/or NTUC INCOME INSURANCE CO-OPERATIVE LIMITED* in respect of all loss, ~~injury~~ or damage sustained by me/us whether now or hereafter to become manifest arising directly or indirectly from an accident which occurred on *28/5/2009* involving vehicles nos. *SJC693R / SFA 8123A / SFF5753A / JGQ 954*.
>
> I/We further acknowledge and agree that the aforesaid payment shall be made without any admission of liability on the part of upon *TANG WEE GOH and/or NTUC INCOME INSURANCE CO-OPERATIVE LIMITED*.

In addition to the main text, two endorsements were stamped on the face of the 2011 Discharge Voucher. The first endorsement simply reads: "WITHOUT PREJUDICE TO INJURY CLAIM", whereas the second states as follows:[2]

> Our acceptance of your offer of settlement would not negate or prejudice our insurer s right of recover under subrogation for "Own Damage claim paid to us by them.

25 The 2011 Discharge Voucher settled the uninsured loss and, read with the two endorsements, expressly reserved NKC's rights *vis-à-vis* the personal injury claim and the cost of repairs claim. Besides, NTUC Income's affidavit confirmed that MC Suit 7643/2010 was for the uninsured loss and what was settled was only the uninsured loss.

26 There is nothing unusual about partial releases. John Birds, Ben Lynch & Simon Milnes, *MacGillivray on Insurance Law* (Sweet & Maxwell, 13th Ed,

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[1] Lam Yee Fook's Affidavit, Exhibit LYF-15.

[2] Saw Seng Kok's Affidavit, para 10.

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2015), observed (at para 24-054) that "[i]t is possible to conceive of a release being held to be, in its context, an incomplete release, so that there could still be a claim, made on behalf of the insurers, in respect of that portion of the loss which was covered by insurance".

27 Similarly, in *Foskett on Compromise* (David Foskett gen ed) (Sweet & Maxwell, 8th Ed, 2015) ("*Foskett*"), it is said (at para 22-04) that:

> It does happen, from time to time, that a settlement is concluded by either the insurer or the insured which seems to suggest that it represents a complete settlement of both [insured and uninsured] losses. *However, where it is plain from the course of the negotiations that only one set of losses was intended to be embraced by the settlement, there will be* ***no bar to the other claims being pursued****.*
>
> [emphasis added in italics and bold italics]

28 The comment in *Foskett* which I have emphasised above is a general observation made without having in mind the rule against splitting of a single cause of action into parts. I will be dealing with the District Judge's treatment of the 2011 Discharge Voucher in the context of s 35 below. Leaving s 35 aside for the moment, a settlement, generally speaking, could well be limited to specified claims, and a plaintiff is thus not precluded from subsequently bringing other claims which fall outside the ambit of the settlement. It is plain from the 2011 Discharge Voucher that two particular heads of claims (*ie*, the personal injury claim and the cost of repairs claim) were expressly excluded from the discharge and release.

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The 2012 Discharge Voucher

29 I now turn to the 2012 Discharge Voucher. The 2012 Discharge Voucher was executed by NKC and witnessed by one Ong Hwee Ling, Pauline. The main text of it reads as follows: [3]

> CLAIM NO: MT/TP/SS/7448562
>
> I/~~We~~ *NG KONG CHOON* hereby acknowledge and agree that payment to me/~~us~~ by the *NTUC INCOME INSURANCE CO-OPERATIVE LIMITED* of the sum *S$883.71* shall be full satisfaction, liquidation and discharge of all claims whatsoever competent to me/us upon *TANG WEE GOH and/or NTUC INCOME INSURANCE CO-OPERATIVE LIMITED* in respect of all loss, injury or damage sustained by me/~~us~~ whether now or hereafter to become manifest arising directly or indirectly from an accident which occurred on *28/5/2009* involving vehicles nos. *SJC 693R / SFA 8123A / SFF 5753A / JGQ 954*.
>
> I/~~We~~ further acknowledge and agree that the aforesaid payment shall be made without any admission of liability on the part of *TANG WEE GOH and/or NTUC INCOME INSURANCE CO-OPERATIVE LIMITED*.

30 Unlike the 2011 Discharge Voucher, there are no endorsements stamped on the 2012 Discharge Voucher. Nonetheless, Mr Yek's starting point was that the 2012 Discharge Voucher was worded in broad terms that effectively discharged and released TWG from the present claim for cost of repairs. At first blush, there was some merit to this argument. In the 2012 Discharge Voucher, NKC plainly acknowledged and agreed that the payment of $883.71 was "*full* satisfaction, liquidation and discharge of *all* claims whatsoever… in respect of *all loss, injury or damage* sustained" [emphasis added]. On this basis, the Repairs Writ could plausibly be struck out as frivolous, vexatious or an abuse of the process of the court.

[3] Lam Yee Fook's Affidavit, Exhibit LYF-22.

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31 I begin with some general comments. First, there can be an abuse of process in litigating issues which have already been determined in prior litigation or concluded by way of settlement (see *Johnson v Gore Wood & Co (a firm)* [2002] 2 AC 1). In the case of a settlement, the court will have to consider the nature and scope of the settlement having regard to all the circumstances of the case. Thereafter, it will apply a broad-based approach to see if, despite the settlement, the later action is, in all the circumstances, an abuse of process.

32 My second comment pertains to the nature of a general release. *Foskett* explains a general release in the following terms (at para 5-23):

> The release by one party of another from liability arising from whatever state of affairs brought them into dispute is, of course, the very essence of compromise. Usually, parties will wish to see a resolution that wipes the slate clean and indeed that prevents further matters of disputation being added to the slate. Many formulae have been devised to secure this objective, some fairly short, some more extensive. Any such formula may be characterised as a "general release".

33 My third comment then relates to the interpretation of a general release. The House of Lords in *Bank of Credit and Commercial International SA v Ali and others* [2002] 1 AC 251 ("*BCCI*") had the opportunity to consider what rule of interpretation, if any, applies to a general release. The facts of that case are different from the case at hand: at the time of the release, the facts giving rise to the claim sought were not known to the plaintiff and the claim was, in any event, not permitted in law. Notwithstanding, the various speeches in the House of Lords are instructive in setting out the approach taken in interpreting a general release. In this regard, Lord Bingham of Cornhill stated as follows (at [8]):

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> I consider first the proper construction of this release. In construing this provision, as any other contractual provision, *the object of the court is to* ***give effect to what the contracting parties intended****. To ascertain the intention of the parties the court reads the terms of the contract as a whole, giving the words used their natural and ordinary meaning* ***in the context of the agreement, the parties' relationship and all the relevant facts surrounding the transaction so far as known to the parties****.* To ascertain the parties' intentions the court does not of course inquire into the parties' subjective states of mind but makes an objective judgment based on the materials already identified.
>
> [emphasis added in italics and bold italics]

In a similar vein, Lord Nicholls of Birkenhead stated (at [26], [28] and [29]) that:

> Further, there is no room today for the application of any special "rules" of interpretation in the case of general releases. There is no room for any special rules because there is now no occasion for them. A general release is a term in a contract. *The meaning to be given to the words used in a contract is the meaning which ought reasonably to be ascribed to those words having due regard to the* ***purpose of the contract*** *and the* ***circumstances in which the contract was made****.* This general principle is as much applicable to a general release as to any other contractual term. Why ever should it not be?
>
> …
>
> *… However widely drawn the language, the circumstances in which the release was given may suggest, and frequently they do suggest, that the parties intended, or, more precisely, the parties are reasonably to be taken to have intended, that the release should apply only to claims, known or unknown, relating to a particular subject matter.* ***The court has to consider, therefore, what was the type of claims at which the release was directed.*** For instance, depending on the circumstances, a mutual general release on a settlement of final partnership accounts might properly be interpreted as confined to claims arising in connection with the partnership business. It could not reasonably be taken to preclude a claim if it later came to light that encroaching tree roots from one partner's property had undermined the foundations of his neighbouring partner's house. Echoing judicial language used

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> in the past, *that would be regarded as outside the "contemplation" of the parties at the time the release was entered into, not because it was an unknown claim, but because it related to a subject matter which was not "under consideration"*.
>
> This approach, which is an orthodox application of the ordinary principles of interpretation, is now well established. Over the years different judges have used different language when referring to what is now commonly described as the context, or the matrix of facts, in which a contract was made. But, although expressed in different words, the constant theme is that ***the scope of general words of a release depends upon the context furnished by the surrounding circumstances in which the release was given. The generality of the wording has no greater reach than this context indicates.***
>
> [emphasis added in italics and bold italics]

34 What comes across strongly in the above passages is that in determining the scope of a release, the court must give effect to the intention of the parties as ascertained from the context in which the release was given. The same approach to construction resonates in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029.

35 Put simply, the generality of the wording in a release has no greater reach than what is indicated by the context in which the release was given. What, then, was the context in which the release was given, and what was the intention of the parties as ascertained from this context? It is to these questions that I now turn.

36 First, I note that, sequentially, the only writ that was outstanding and that had been served on TWG on 22 August 2012 (*ie*, the date the 2012 Discharge Voucher was executed) was the Personal Injury Writ, which was

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endorsed with a Statement of Claim that was clearly dealing with a claim for personal injury. In this regard, the Uninsured Loss Writ was no longer outstanding as the claim had already been settled and a partial release was given by virtue of the 2011 Discharge Voucher. Likewise, the August 2010 Writ and the April 2011 Writ in respect of the cost of repairs had expired for want of service. In this context, the intention of the parties *apropos* the 2012 Discharge Voucher must clearly have been to settle only the personal injury claim.

37 Second, NTUC Income had itself taken the position that the 2012 Discharge Voucher was only intended to cover the claim for personal injury. NTUC Income's affidavit stated as follows:[4]

> LCP advised that [NTUC Income] settle liability for the *injury claim* on the same terms as the settlement in the claim for uninsured loss. Instruction was given to LCP to proceed as advised. LCP then wrote to [AXA] and Pacific Insurance again regarding the *Plaintiff's injury claim* and *settlement was eventually reached on the Plaintiff's injury claim* sometime in May 2012.
>
> [emphasis added]

38 Even though Mr Yek argued that the wording of the 2012 Discharge Voucher was wide, he did not press the point seeing that, on the facts and circumstances, the 2012 Discharge Voucher was for the personal injury claim. In my view, it cannot be said that the settlement of the personal injury claim operated to settle the claim for cost of repairs. Even before the execution of the 2012 Discharge Voucher on 22 August 2012, NTUC Income was aware that Global Law was instructed to pursue the subrogation claim for cost of

[4] Saw Seng Kok's affidavit, para 14.

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repairs. TWG and NTUC Income received notification of the claim for cost of repairs on 26 July 2010. Subsequently, a copy of the April 2011 Writ was posted on TWG's front door on 2 April 2012. Thereafter, between 25 May 2012 and 3 August 2012, Global Law wrote to NTUC Income and then communicated with LCP about the claim for cost of repairs. Foreshadowing any positive advance, LCP warned Global Law that any fresh action would contravene the Henderson rule (see [11] above).

39 To conclude, the discharge and release contained in the 2012 Discharge Voucher was to settle the personal injury claim only and the cost of repairs claim was outside the scope of the 2012 Discharge Voucher. In short, the settlement of the personal injury claim did not operate to settle the cost of repairs claim.

40 I now turn to the s 35 issue.

The s 35 issue

The arguments

41 Both Mr Yek and counsel for Allianz, Mr Liew Teck Huat ("Mr Liew"), informed the court that there are no local cases on s 35. Mr Liew's position taken before the District Judge and in RAS 166/2013 was the same. First, a wrongful act committed by a defendant and resulting in damage to person and damage to property gives rise to one cause of action. Second, there was no pending action at the time the Repairs Writ was filed. As such, s 35 does not apply to the Repairs Writ. In his view, there must be two pending actions in existence at one time for s 35 to apply. In contrast, Mr Yek argues

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that NKC had impermissibly divided his cause of action in contravention of s 35 and that the present action was rightly struck out even though the earlier suits had been settled.

Object and ambit of s 35

42 Section 35 of the SCA reads as follows:

> **Division of causes of action**
>
> **35.** A cause of action shall not be divided for the purpose of bringing 2 or more actions.

43 The statutory language of s 35 contemplates one action for one cause of action. The whole case which the plaintiff is entitled to make in respect of a cause of action must be brought in one action in a court of limited jurisdiction. The expression "[a] cause of action" in s 35 is referable to a single indivisible cause of action. It is unlawful for a plaintiff in any court of limited jurisdiction to divide his cause of action and sue one part in the District Court and the other part or parts in the same court or another court of limited jurisdiction, such as a Magistrate's Court.

44 What is a single cause of action for this purpose is a question of fact. I will elaborate on this later. Suffice to state for now that s 35 does not apply if there are two or more causes of action. A case that aptly illustrates the application of this statutory prohibition is *Davidson v North Down Quarries Limited* [1988] NI 214 ("*Davidson*"), a decision of the High Court of Northern Ireland. In that case, there was no breach of the provision that is equivalent to s 35 because there were two causes of action. Nicholson J followed the decision of the English Court of Appeal in *Brunsden v Humphrey* (1884) 14

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QBD 141 ("*Brunsden*") and accepted the proposition that a wrongful act resulting in personal injury and property damage gave rise to two causes of action. I will return to the decision in *Brunsden* later in the course of this judgment when analysing the elements of s 35.

45 *Davidson* is also notable because of its striking similarities to the present case. The plaintiff in that case was driving his motor car when he sustained a "whiplash" injury in an accident which did not involve any other motor vehicle. His motor car was also damaged and he alleged that the defendants were to blame for the accident. The plaintiff personally brought civil bill proceedings against the defendants founded on the tort of negligence in respect of his personal injuries only and these proceedings were settled without a hearing on the merits. The plaintiff settled his claim for the damage to his motor car with his insurer, which was then subrogated to his rights against the defendants. The plaintiff's insurer later brought civil bill proceedings in the plaintiff's name against the defendants based on the tort of negligence in respect of the damage to his motor car after settlement of his claim in respect of personal injury. A preliminary objection was taken on behalf of the defendants on the basis of article 36 of the County Courts Order (Northern Ireland) 1980 (S.I. No 397, N.1. 36), which read as follows and which is substantially similar to s 35:

> It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions in any one or more than one county court.

46 For now, I highlight two relevant aspects of the decision. The first is that the defendants in that case had objected that the second proceedings were *res judicata* and an abuse of process of the court. These arguments were

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rejected as there was no adjudication on the merits and the plaintiff's personal injury claim was settled instead. That there can be no *res judicata* without a determination of the merits harks back to the point made at [15] above. The second matter to be highlighted is the plaintiff's contention in *Davidson* that the settlement in the first action was only in respect of the personal injury claim. Nicholson J agreed with this submission and found that the terms of the settlement of the first action contained an implied term that the claim for insured loss was excluded from the settlement. However, there was no bar to the plaintiff's action based on article 36 of the County Courts Order (Northern Ireland) 1980 as the plaintiff's personal injury claim and property damage claim, whilst arising from the same set of facts, gave rise to two causes of action.

47 In this instant case, even though the District Judge held that the accident gave rise to two causes of action, one for personal injury and one for property damage, s 35 was found to apply to the subrogation action to recover the cost of repairs because that claim was the same as NKC's claim for uninsured loss in that they both alleged the same kind of wrong. Furthermore, s 35 was found to apply even though no judgment on the merits was entered into in the first action to recover NKC's uninsured loss. As stated, the District Judge held that the prohibition in s 35 cannot be excluded by the agreement contained in or evidenced by the 2011 Discharge Voucher.

48 I will examine two questions in this judgment:

(a) whether *Brunsden* should be followed in Singapore; and

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(b) whether the statutory prohibition in s 35 would bar the institution of subsequent and later proceedings when the earlier proceedings were settled amicably without entering judgment on the merits.

49 Like the District Judge, I find that parliamentary debates are of limited assistance in so far as s 35 is concerned. However, several foreign cases provide a useful guide. I have already referred to *Davidson* where the court looked at a similar statutory provision in Northern Ireland and the approach taken by the High Court of Northern Ireland to claim-splitting.

50 A perusal of foreign cases dealing with statutory provisions that are equivalent or similar to s 35 shows that the provisions are intended to operate in courts of limited jurisdiction. In defining the limits of the jurisdiction of such courts, a plaintiff who sues in a court of limited jurisdiction is not permitted to indulge in claim-splitting of his single cause of action in order to bring two or more actions. It is instructive, at this juncture, to refer to Kaye J's observations in *Pioneer Concrete*, a case before a court of unlimited jurisdiction. Kaye J said (at 481) that:

> *It is significant that as long ago as 1846 the legislature saw fit to preclude by statute a plaintiff from splitting or dividing his cause of action and suing on one part in a County Court and on the other part or parts in the same court or another County Court... The legislation of course did not affect and has not affected the right of a plaintiff to do so in a superior court. Moreover, similar provisions, under either statute or rules of court, still operate in courts of limited jurisdiction. On the other hand, there is not and has not been any similar provision, imposed by statute or rules, restricting a plaintiff in courts of unlimited jurisdiction from so dividing his cause of action.*

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> In the event of a plaintiff initiating simultaneously two or more actions derived from a common cause of action, and proceeding to have both or all heard together, a defendant would not thereby suffer prejudice. Any additional or unnecessary expense incurred by the defendant as a result of multiplicity of proceedings derived from splitting could no doubt be properly provided and compensated for by appropriate orders as to costs. On the other hand, should a plaintiff having divided his cause of action choose to litigate his actions separately, the defendant might then plead issue estoppel or *res judicata* or both to the subsequent actions on the conclusion of the first action…
>
> [emphasis added]

51 It is not without significance that the statutory prohibition against dividing a single indivisible cause action is confined to courts of limited jurisdiction. Provisions expressed in similar terms as s 35 appear in foreign legislations governing courts of limited jurisdiction. It is immediately evident that the provisions bear much similarity to the scheme of the SCA on three main fronts: (a) jurisdiction of the inferior courts; (b) abandoning the excess part of the claim to give jurisdiction; and (c) division of a single cause of action.

52 To illustrate, I begin with the case of *In re Aykroyd, in a Plaint of Grimbly v Aykroyd* (1847) 1 Ex. 479 ("*Aykroyd*"). In that case, the relevant provision was the 63rd section of the Small Debts Act, 9 & 10 Vict. c. 95, which read as follows:

> that is shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts; but any plaintiff having cause of action for more than £20, for which a plaint might be entered under this act if not for more than £20, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding £20; and the judgment of the Court upon such plaint shall be in full discharge of all demands in

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> respect of such cause of action, and entry of judgment shall be made accordingly.

53 *Halsbury's Laws of England* vol 24 (LexisNexis, 5th Ed, 2010) at para 767 refers to the latest County Courts Act 1984 (c 28) (UK). Section 35 of the Act reads:

> **Division of causes of action.**
>
> It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more actions in one or more of the county courts.

The other relevant provisions are the definition of "the county court limit" in s 147(1) and the provision providing for the abandonment of the excess part of the claim to give jurisdiction in s 17(1).

54 In *Victor Romans v Bradley Barrett* (1979) 28 WIR 99 ("*Victor Romans*"), the Court of Appeal of Jamaica considered a similar provision in s 73 of the Judicature (Resident Magistrates) Act which read as follows:

> It shall not be lawful for any plaintiff to divide any cause of action for the purpose of bringing two or more suits in any of the said courts; but any plaintiff having a cause of action for more than six hundred dollars, for which a plaint might be lodged under this Act, if such cause of action had been for not more than six hundred dollars, may abandon the excess, and thereupon the plaintiff shall, on proving his case, recover to an amount not exceeding six hundred dollars, and the judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action, and entry of the judgment shall be made accordingly; and the plaintiff shall in all cases be held to have abandoned any remaining portion of any debt, demand, or penalty beyond the sum actually sued for in the plaint.

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55 In *Lun Tai Insurance Co. Ltd. and Lee Ying-Lin alias Lee Kwok-Kee* [1965] HKCU 85, the relevant provision was s 16 of the District Court (Civil Jurisdiction and Procedure) Ordinance (Cap 336), which read as follows:

> No cause of action shall be split or divided so as to be made the ground of two or more different actions for the purpose of bringing two or more actions in the Court.

56 In his judgment, Huggins J considered the decision in *Aykroyd* and noted that:

> The suggestion seems to be that *in a superior court such* ***multiplicity could be punished by an appropriate order as to costs (and possibly in other ways)*** but that *in the County Court there was the* ***further sanction*** *that the claims could be dismissed under the statute.*
>
> [emphasis added in italics and bold italics]

57 Returning to *Aykroyd*, Pollock CB, in construing the subject provision, considered (at 488─489) the "old rule of the common law as to the jurisdiction of the county court", and noted as follows:

> At common law the county court held no plea of debt or damages to the value of forty shillings or above… and if an entire contract or debt of 40s. or upwards was severed into sums below 40s., a prohibition was granted… The reason given is a very satisfactory one, for *it would be* ***extremely vexatious*** *if a plaintiff from whom goods had been purchased in small quantities at small prices at different times, by distinct contracts, either payable immediately, or on credit which had expired, instead of uniting all in one action, which he could do after the debts were all due, should divide them into several and sue for each in a separate action in the county court, which* ***could give no adequate relief by consolidating them, in the exercise of their equitable jurisdiction (if they had any), as a superior court would, for they could not unite them so as in the aggregate to exceed or be equal to 40s***.
>
> [emphasis added in italics and bold italics]

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58 While Pollock CB made it clear (at 488 and 490) that his task was to apply the relevant provision and not the "old rule of the common law as to the jurisdiction of the county court", I am of the view that the above passage nevertheless remains instructive in my determination of the purpose of s 35.

59 The Jamaican Court of Appeal in *Victor Romans* relied heavily on English cases. Carberry JA, in prefacing his review of the authorities, noted (at 104), *inter alia*, the following:

> Of greater importance is that a study of these cases show that the principle at stake is far more fundamental and far more basic than the statutory provisions in the County Court Acts or the Resident Magistrate's Court Acts: ***the Acts merely recognise and give effect to the principle in a particular context, that of a local court of limited jurisdiction***. Simply and non technically put, ***the plaintiff must bring forward all of his case at one time***. This principle flows from the basic nature of the common law, that cases are conducted on a contest theory of litigation. *The principle involved finds expression in a multiplicity of fields in the common law, for example, in the field of damages, the field of evidence, the field of estoppel per res judicata, and the field of limitation of actions.*
>
> [original emphasis omitted; emphasis added in italics and bold italics]

60 To Carberry JA, therefore, the purpose of the provision is to recognise, in the context of a court of limited jurisdiction, the principle that a plaintiff must bring forward all of his case at one time. This principle is taken together with the principle of *res judicata*.

61 As stated, the scheme evident in the foreign provisions – jurisdiction of the inferior courts, abandoning the excess part of the claim to give jurisdiction, and division of a single cause of action – is similarly found in the SCA albeit

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in separate sections of the legislation. There are sections that set up and establish the jurisdictional limit of the District Courts and the Magistrates' Courts, and there are provisions allowing a plaintiff to abandon any excess amount over the limit of the jurisdiction. Allied to the provisions that give effect to the limited jurisdiction of the District Courts and the Magistrates' Courts is the requirement that a plaintiff with a single cause of action must bring forward all of his case in one action. He is not permitted to divide or split his cause of action by suing separately for different heads of damage. This explains the statutory language of s 35 that prohibits the division of a single cause of action for the purpose of bringing two or more action in the Subordinate Courts (now the State Courts). For convenience, the various sections referred to in this paragraph are set out in Annex A to this judgment.

62 I should add that the prohibition against claim-splitting in s 35 is not fettered by language (whether express or implied) that requires a final judgment in the first action. Whilst a final judgment is required for an application of the doctrine of *res judicata*, it is not a requirement imposed by the rule against claim-splitting which does not fall within a conventional *res judicata* analysis. Section 35 is a statutory prohibition that is allied to the limited jurisdiction of the Subordinate Courts (now the State Courts) and the management of cases within its jurisdiction. The test of claim-splitting is not determined by whether there is a prior judgment but whether the requirements of s 35 are satisfied (see [65] below).

63 To illustrate, the prohibition in s 35 applies to actions brought in the District Courts or the Magistrates' Courts. The civil jurisdiction of a Magistrate's Court is generally capped at $60,000 (see s 52(1A)(*b*) read with s

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2 of the SCA). A plaintiff who has a claim for $100,000 based on a single cause of action should therefore properly sue in a District Court. The rule against claim-splitting that finds expression in s 35 requires this plaintiff to assert the whole of his case based on a single cause of action in one action in a District Court. Spreading claim amounts around in multiple actions (for example, one action with a claim amount of $65,000 in a District Court and a second action with a claim amount of $35,000 in a Magistrate's Court) is prohibited by s 35. The same prohibition applies where two actions with a claim amount of $50,000 each are brought in the Magistrates' Courts before different judges.

64 What happens in a situation where the total claim amount is within the jurisdictional limit of the Magistrates' Courts and claim-splitting is practised? This was the question expressly left open by Pollock CB in *Aykroyd* (at 493). In my view, the answer to this question must be that s 35 likewise applies to a division of a single cause of action. It is not possible for the statutory prohibition to be circumvented in this manner for the reason that the total claim amount is within the jurisdictional limit. Claim-splitting contravenes the statutory rule that requires the whole case which the plaintiff is entitled to make in respect of the same cause of action to be brought in one action. There is public interest in protecting litigants from being vexed more than once by what is really the same claim. To borrow the words of Griffiths LJ in *Buckland v Palmer* [1984] 1 WLR 1109 ("*Buckland*") at 1116:

> [T]he rule against multiplicity of proceedings in respect of a single cause of action is soundly based on considerations of public policy designed to prevent the harassment of litigants by exposing them to the anxiety and expense of unnecessary legal proceedings…

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Requirements of s 35

65 I now turn to the elements of s 35. The first relates to the existence of "a cause of action"; the second involves the word "divided"; and the third concerns the phrase "for the purpose of bringing 2 or more actions".

Single cause of action

66 Section 35 applies to a single cause of action. As stated, what is a single cause of action for this purpose is a question of fact. In this case, the question is whether the negligence of TWG that resulted in injury to NKC and his vehicle gave rise to one or two causes of action. The District Judge ruled that a plaintiff in a road traffic accident may bring a separate action for damage to his property as distinct from injury to his person because the two are separate causes of action. Having accepted that damage to property is one cause of action, the District Judge treated the claim for uninsured loss and the claim for cost of repairs as facets of damage to property. As NKC had sued once for the uninsured loss, the Repairs Writ was brought in contravention of s 35.

67 In *Brunsden*, a traffic accident occurred and the plaintiff sued the defendant in the County Court for damage to his cab, by which he recovered a certain amount. Subsequently, the plaintiff sued the defendant in the High Court for injury done to his person. The majority of the Court of Appeal allowed the action for personal injuries holding that it was not barred by a payment for damages in respect of property damage recovered by the plaintiff arising out of the same accident. The decision of the majority was concerned with two separate causes of action. Brett MR held (at 145─146) that:

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> The collision with the defendant's van *did not give rise to only one cause of action*: the plaintiff sustained bodily injuries, ***he was injured in a distinct right, and he became entitled to sue for a cause of action distinct from the cause of action in respect of the damage to his goods***: therefore the plaintiff is at liberty to maintain the present action… *Two actions may be brought in respect of the same facts, where those facts give rise to two distinct causes of action.*
>
> [emphasis added in italics and bold italics]

Agreeing with Brett MR, Bowen LJ held (at 150─151) that:

> Two separate kinds of injury were in fact inflicted, and two wrongs done. The mere negligent driving in itself, if accompanied by no injury to the plaintiff, was not actionable at all, for it was not a wrongful act at all till a wrong arose out of the damage which it caused. One wrong was done as soon as the plaintiff's enjoyment of his property was substantially interfered with. A further wrong arose as soon as the driving also caused injury to the plaintiff's person. Both causes of action, in *one* sense, may be said to be founded upon one act of the defendant's servant, but they are not on that account identical causes of action. The wrong consists in the damage done without lawful excuse, not the act of driving, which (if no damage had ensued) would have been legally unimportant.
>
> [emphasis in original]

68 The majority's decision in *Brunsden* is not without critics. Lord Coleridge who gave the dissenting judgement in *Brunsden* said (at 152─153) that:

> It appears to me that whether the negligence of the servant, or the impact of the vehicle which the servant drove, be the technical cause of action, *equally* ***the cause is one and the same****: that the injury done to the plaintiff is injury done to him at one and the same moment by one and the same act in respect of different* rights*, i.e. his person and his goods.* I do not in the least deny; but it seems to be a subtlety not warranted by law to hold that a man cannot bring two actions, if he is injured in his arm and in his leg, but can bring two, if besides his arm and leg being injured his trousers which

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> contain his leg, and his coat-sleeve which contains his arm, have been torn.
>
> [emphasis added in italics and bold italics]

69 In *Buckland*, Griffiths LJ posed the following question (at 1115):

> If as a result of an accident the cost of repairing the car is, say, £1,000 and the policy holder has agreed to bear the first £100 of the damage, can the policy holder recover £100 in one action and the insurers recover the £900 which they have paid to their policy holder in another action or must both sums be claimed in one action?

Griffiths LJ then proceeded to state (at 1115) that "[i]n [his] opinion the general rule should be that both sums must be claimed in the same action". Moreover, he also stated (at 1116) that:

> … it would in [his] view be quite impossible to contend that there are separate causes of action in respect of different parts of the damaged property and still less to suggest that there is a separate cause of action in respect of the first £100 of damage to the property.

70 *Brunsden* was not followed by the Supreme Court of Canada in *Cahoon v Franks* (1967) 63 DLR (2d) 274. In that case, the plaintiff sued the defendant in the District Court of the District of Northern Alberta, Judicial District of Edmonton pursuant to a traffic collision. Damages in the sum of $305 were claimed, being the value of his vehicle destroyed beyond repair in the collision. After the expiration of the statutory limitation period of 12 months, the plaintiff obtained an order giving him leave to amend his statement of claim to include a claim for personal injury and transferring the action to the Supreme Court. A further order was later obtained permitting the statement of claim to be amended to allege that as a result of the defendant's negligence the plaintiff sustained certain injuries which left him totally

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disabled and unable to work. The defendant appealed against these orders on the basis that they raised a new cause of action. Delivering the judgment of the Court, Hall J held (at 278─279) that he agreed with Porter JA in the court below that *Brunsden* was no longer good law in Canada and ought not to be followed. Consequently, the amendments did not set up a new cause of action. In this regard, the following paragraphs from Porter JA's judgment, which were referred to by Hall J (at 277─278), are instructive:

> It is important to bear in mind that it was the "forms of action" that were abolished by the *Judicature Act*. To apply the *Brunsden v. Humphrey* case to the facts here would be to revive one of the very forms of action which the Act abolished. *The cause of action or, to use the expression of Diplock, L.J. [the* Letang *case [*infra*], "the factual situation" which entitles the plaintiff here to recover damages from the defendant is the* ***tort of negligence****, a* ***breach*** *by the defendant of the duty which he owed to the plaintiff at common law which resulted in damage to the plaintiff.* ***The injury to the person and the injury to the goods, and perhaps the injury to the plaintiff's real property and the injury to such modern rights as the right to privacy flowing from negligence serve only as yardsticks useful in measuring the damages which the breach caused.***
>
> …
>
> … "The factual situation" which gave the plaintiff a cause of action was the ***negligence*** of the defendant which caused the plaintiff to suffer damage. *This single cause of action cannot be split to be made the subject of several causes of action.*
>
> [emphasis added in italics and bold italics]

71 On this analysis, TWG's negligence that resulted in the three claims – uninsured loss, personal injury and cost of repairs – should give rise to a single cause of action. Mr Liew's submissions adopted this single cause of action analysis.

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72 For the reasons set out hereunder, I agree that only one cause of action arises out of a single tort committed on an individual even though that tort results in damage to both his person and his property. The factual situation that gives a plaintiff in a road traffic accident a cause of action is the negligence of the other driver which caused the plaintiff to suffer damage. In my view, *Brunsden* is not good law in Singapore.

73 Local jurisprudence points strongly in favour of this. In the recent decision of the Court of Appeal in *Multistar Holdings Ltd v Geocon Piling & Engineering Pte Ltd* [2016] 2 SLR 1, which was delivered just three days before parties last appeared before me, the Court of Appeal was called upon to decide, *inter alia*, what constitutes a new "cause of action" within the meaning of O 20 r 5(5) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed). While the provision in question is undoubtedly not the same, I see no reason why the Court of Appeal's decision on the issue should not be instructive. In this connection, the Court of Appeal held (at [34]) that "cause of action" simply means the essential factual material that supports a claim. Specifically, the focus is on the underlying facts and not the relief or remedy (at [47]). In the present case, the underlying facts of the claim for uninsured loss, the claim for personal injury and the claim for cost of repairs are the same, *ie*, TWG's negligence that caused the accident.

74 This reading is, in turn, entirely consistent with the Court of Appeal's seminal decision on the law of negligence in Singapore in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*"). In *Spandeck*, the Court of Appeal established (at [71]) "a *single* test… in order to determine the imposition of a duty of care in

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all claims arising out of negligence" [emphasis in original]. Crucially, this single test is "*irrespective* of the *type* of the damages claimed" [emphasis in original] (at [71]) and should be applied "regardless of the nature of the damage caused (*ie*, pure economic loss or physical damage)" (at [115]). In the context of the test for the existence of a duty of care, *Spandeck* therefore did away with the distinction between pure economic loss and physical damage. This, coupled with the establishment of a single test in respect of *all* claims arising out of negligence, inexorably urges the conclusion that negligence is *one* cause of action, albeit with multiple possible heads of claim.

75 As stated, a single cause of action for the purpose of s 35 is a question of fact. In the present case, the claim for uninsured loss, the claim for personal injury and the claim for cost of repairs are essentially the same in that they allege the same kind of wrong which is the negligence of TWG. Thus, the term "cause of action", for the purpose of s 35, has nothing whatsoever to do with the defence that may be set up by TWG, nor does it depend on the character of the relief prayed for by NKC.

76 There are situations where a common set of facts could give rise to multiple causes of action. The decision of the Court of Appeal in *Yan Jun v Attorney-General* [2015] 1 SLR 752 ("*Yan Jun*") illustrates this. Whilst I do not propose to go into too much detail, I observe that the plaintiff in that case had, arising from his arrest by the police, claimed damages against the Attorney-General for wrongful arrest, false imprisonment, assault and battery, excessive use of force, malicious prosecution, abuse of process and defamation. For the purposes of section 24A(2) of the Limitation Act (Cap 163, 1996 Rev Ed), the Court of Appeal had (at [86]) divided the plaintiff's

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claims into two categories: claims for damages in respect of personal injuries and claims for damages which were not in respect of personal injuries. However, *Yan Jun* is distinguishable from the present case and, indeed, *Spandeck* because, in that case, the common set of facts gave rise to multiple causes of action in the proper sense of the term. This is not the same as a situation, such as the present, where a common set of facts gives rise to a single cause of action involving multiple heads of claim.

77 In my view, in the present case, there is only one cause of action in negligence arising from the road traffic accident between NKC and TWG.

"Divided"

78 Section 35 uses the word "divided" in the past tense. In the context of the rest of the section, NKC had acted in a way that "divided" his cause of action into parts as exemplified by the issuance of three writs, each for a different head of loss.

"For the purpose of bringing 2 or more actions"

79 As for the phrase "for the purpose of bringing 2 or more actions", Mr Liew's argument is that this third limb of 35 is not satisfied in that: (a) the first two writs that were filed earlier were settled and, as such, there were no "2 or more actions" within the meaning of s 35; and (b) there was no other pending action at the time the Repairs Writ was filed. To Mr Liew, s 35 applies only when there are proceedings in existence claiming damages based upon a particular cause of action, and a second action is begun based upon the same cause of action. Mr Liew's interpretation would involve reading the word

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"bringing" in s 35 as meaning "bringing and maintaining". As highlighted by Mr Yek before the District Judge, the word "maintaining" is nowhere to be found in the provision.

80 In my view, there is nothing in the statutory language (express or implied) that supports Mr Liew's interpretation of s 35. I agree with the District Judge that there is no statutory exception suffixed to s 35 stating, for example, that the provision does not apply when there was no other pending action. Mr Liew's interpretation ignores the fact that NKC had acted in a way that involved him having sued TWG twice previously in the Magistrates' Courts for the same negligence in 2010 and 2012. All three writs, the Uninsured Loss Writ (2010), the Personal Injury Writ (2012) and the Repairs Writ (2013) were served.

81 I am of the view that the subjective intention of a plaintiff to divide his single cause of action "for the purpose of bringing 2 or more actions" is objectively demonstrated by his act of filing and serving multiple writs. The same would also apply where the plaintiff only files the writs but the defendant either: (a) by agreement (whether express or implied) does not enter appearance to the writs pending settlement negotiations; or (b) enters appearance *gratis* such that the writs are deemed to be served pursuant to O 10 r 1(3) of the ROC 2006. As stated, there is nothing in the statutory language (express or implied) that requires a prior judgment before the statutory prohibition applies to the later action.

82 For the sake of argument, if there are concurrent proceedings, s 35 could still operate to preclude the second action save that in such a situation

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the plaintiff would still have the chance to apply to the court to amend the first action in order to bring in the claim(s) of the second action. Objections to the second action on s 35 grounds could be raised at any time without having to wait until judgment on the first action. As stated, s 35 is not governed by or subject to the doctrine of *res judicata.*

Application of s 35

83 I find that all the elements of s 35 have been satisfied in the present case. The result is that the Repairs Writ was brought in contravention of s 35. A related question is whether the court has the power in appropriate circumstances to allow the action to proceed. The statutory language is clear. There is no statutory exception suffixed to s 35 providing, expressly or by implication, for the exercise of discretion. My task is to apply s 35 and not the common law "once and for all rule" that requires all claims generated by or from the same cause of action be instituted in one action (see generally the comments at [31] above). The rationale underlying the common law rule is the avoidance of multiplicity of actions with the possibility of contradictory judgments and the consideration that a defendant should not be vexed by repeated legal proceedings brought by the same party and based on the same cause or matter.

84 For completeness, I should mention that there were opportunities to include all the claims in one action but nothing was done. Despite Mr Liew's view that NKC had one cause of action, claim-splitting was practised in this case. NKC appointed Oracle Law and Allianz instructed Global Law.

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85 I start with Allianz's contention that it did not know about the settlement of the claim for uninsured loss and the claim for personal injury. It is pertinent to note that what Allianz does not say is that it knew for a long time that NKC had three types of claims against TWG. That state of affairs was clearly borne out by the contemporaneous documents before this court. Correspondingly, from a very early stage (*ie*, on or before 30 June 2009), NKC's insurer was already keenly aware of the same three claims.

86 The Uninsured Loss Writ was filed and served in March 2010. On 30 June 2009, Oracle Law (acting for NKC) wrote to Allianz stating the following:[5]

> We act for your insured, Mr Ng Kong Choon, the owner of vehicle registration no. SJC 693R which was involved in the above-captioned accident.
>
> *We write to inform you that we have been instructed to make a claim to recover our client's uninsured losses and other damages suffered as a result of the above-captioned accident.*
>
> *We write to request that you resist any third party claim(s) brought against our client for the above-captioned accident.* We will be grateful if you can keep us informed on the development of the third party claim(s) brought against our client (if any). Should you wish to exercise your rights to settle any third party claim brought against our client, kindly ensure that the settlement(s) is reached without prejudicing our client's rights in their third party claim.
>
> [emphasis added]

87 What is evident from this letter is that, on or before 30 June 2009, Allianz was informed of NKC's uninsured loss. Moreover, the reference to "other damages" would be to the personal injury claim. By the same token,

[5] Lam Yee Fook's affidavit, Exhibit LYF-5.

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this letter also demonstrates that NKC was alive to Allianz's subrogated claim (*ie*, the claim for cost of repairs) once he received payment.

88 Allianz paid for the repairs to NKC's vehicle on 9 July 2009. On the same day, Allianz wrote to NKC to notify him that they were settling the cost of repairs of $4,610.03 direct with the repair workshop. (The total sum of $4,888.23 that was eventually claimed also included $278.20 in survey fees.) By this letter, NKC was once again given notice of Allianz's subrogated claim for cost of repairs.

89 NKC then proceeded to file and serve, in March 2010, the Uninsured Loss Writ. Separately, Global Law gave pre-litigation notices to TWG and NTUC Income on 26 July 2010. The August 2010 Writ and the April 2011 Writ were issued before settlement of the Uninsured Loss Writ on 9 May 2011. Global Law tried to serve the August 2010 Writ in October 2010, but failed in its attempts to do so. As for the April 2011 Writ, Global Law obtained an order for substituted service on 5 May 2011 but did not take steps to effect substituted service until April 2012. There was no explanation as to why Global Law did not write to NTUC Income about the August 2010 Writ and the April 2011 Writ before 9 May 2011. A year had lapsed before Global Law wrote to NTUC Income about the April 2011 Writ on 25 May 2012.

90 The Personal Injury Writ was issued in January 2012 and it was served on 2 February 2012. It was formally settled on 22 August 2012 via the 2012 Discharge Voucher. As stated, Global Law wrote to NTUC Income on 25 May 2012 and Global Law was informed by LCP on 6 July 2012 that NKC had issued writs for his uninsured loss and personal injury claim and that NTUC

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Income had already settled both claims. At that stage, LCP had intimated its objection to any subrogation action, relying on the Henderson rule.

91 On the facts of this case, Allianz would be hard-pressed to complain of prejudice as a result of not being able to incorporate the present claim in NKC's earlier writs, as the state of affairs was largely due to the "fortuity" of failed service and overall inattentive case handling along the way.

Contractual exclusion of the operation of s 35

92 The two discharge vouchers did not settle the claim for cost of repairs. As between the parties they operated as partial releases. Allianz would not be able to rely on the cost of repairs claim being outside of the settlement to stop TWG from raising s 35 as a ground to object to NKC instituting the third set of proceedings (*ie*, MC Suit 11423/2013). As a statement of principle, I agree with the District Judge that parties cannot contract out of a statutory prohibition. Likewise, as P. St. J. Langan in *Maxwell on the Interpretation of Statutes* (Sweet & Maxwell, 12th Ed, 1969) put it (at p 137):

> To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined: *quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud.*

Observations

93 An insured's duty is not to prejudice the insurer's right of subrogation (see, for instance, *Seagate Technology Pte Ltd and another v Goh Han Kim* [1994] 3 SLR(R) 836 at [51]). By the same token, the insurer in exercise of subrogation rights must remember that both the uninsured and insured losses

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are based on a single cause of action and that judgment or settlement of the claim for insured loss could prejudice the insured's own claim for uninsured loss. As the District Judge rightly points out, co-ordination between the insured and his insurer in litigation is important and key.

94 Where personal injury is involved, the insured should bring his claim for personal injury at the same time as the subrogated claim. Should there be a concern that his injury could subsequently worsen, the insured may make an application for provisional damages under s 18(2) read with paragraph 16 of the First Schedule of the SCJA (see, for instance, *Koh Chai Kwang v Teo Ai Ling (by her next friend, Chua Wee Bee)* [2011] 3 SLR 610). This power is presumably extended to the District Courts pursuant to section 31(1) of the State Courts Act and to the Magistrates' Courts pursuant to section 52(1B)(*a*) of the same legislation.

95 Typically, road traffic accident claims are relatively small and they ought to be settled without litigation. The Court of Appeal, albeit in a different context, has alluded to the public policy of encouraging litigants to settle their differences rather than to litigate them to the finish (*Greenline-Onyx Envirotech Phils, Inc v Otto Systems Singapore Pte Ltd* [2007] 3 SLR(R) 40 at [14]), and I am in full agreement with this.

96 In this case, Notices of Discontinuance were filed after settlement. One approach that could have been adopted was not to discontinue the action but for the settlement to provide for a stay of the action pending amendment of the writ to bring in other claims based on the same cause of action between the same parties.

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Conclusion

97 For the reasons stated, RAS 166/2103 is dismissed with costs. MC Suit 11423/2013 stands as struck out.

Belinda Ang Saw Ean
Judge

Liew Teck Huat and Thaddeus Oh (Global Law Alliance LLC) for the plaintiff/appellant;
Roger Yek Nai Hui and Cindy Cham (Lawrence Chua Practice LLC) for the defendant/respondent.

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Annex A

	Subordinate Courts Act (Cap 321, 2007 Rev Ed) (as of 23 May 2013, the date of filing of the Repairs Writ)	**State Courts Act** (Cap 321, 2007 Rev Ed)
No dividing of cause of action (District Court)	Section 35	Section 35
No dividing of cause of action (Magistrate's Court)	Section 35 read with section 52(2)	Section 35 read with section 52(2)
Jurisdictional limit (District Court)	Section 19(4) read with section 2	Section 19(4) read with section 2
Jurisdictional limit (Magistrate's Court)	Section 52(1A) read with section 2	Section 52(1A) read with section 2
Abandoning excess (District Court)	Section 22	Section 22
Abandoning excess (Magistrate's Court)	Section 22 read with section 52(2)	Section 22 read with section 52(2)

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