IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 235

Suit No 848 of 2016

Between

Miah Rasel

… *Plaintiff*

And

5 Ways Engineering Services Pte Ltd

… *Defendant*

JUDGMENT

[Tort] — [Negligence] — [Duty of care]

[Tort] — [Negligence] — [Contributory negligence]

TABLE OF CONTENTS

Miah Rasel
v
5 Ways Engineering Services Pte Ltd

[2017] SGHC 235

High Court — Suit No 848 of 2016
See Kee Oon J
4, 6 July; 30 August 2017

27 September 2017 Judgment reserved

See Kee Oon J:

Introduction

1 The plaintiff, a Bangladeshi national, was employed by the defendant as a construction worker at the material time. The defendant is in the business of installation of fire protection and security alarm systems.

2 On 23 February 2015, the plaintiff was deployed to Block 2 Paya Lebar Airbase ("the worksite") by the defendant to replace sprinkler pipes located on the ceiling of the premises about seven metres above ground level. In the course of his performing his duties, he met with an unfortunate accident, falling from a height of about five metres to the ground. As a result, he suffered fairly serious injuries to his right elbow and back, including an intra-articular fracture of the right olecranon, and probable prolapsed intervertebral disc and Grade 1 compression fractures of his vertebrae.

3 The central issue in dispute relates to whether the accident was caused by the negligence of the defendant in failing to provide a safe system of work. Specifically, the plaintiff alleged that the defendant's employee(s) had instructed him to perform the work in an unsafe manner.

Undisputed background facts

4 The undisputed background facts are as follows. The plaintiff commenced his employment with the defendant on 6 June 2014. He had worked in Singapore as a construction worker since 2012 when he was first employed by Lian Beng Construction Pte Ltd. After commencing employment with the defendant, he attended a Construction Safety Orientation Course on 13 and 14 July 2014 conducted by the Ministry of Manpower's approved trainer. He subsequently attended a scissors lift operator course on 6 December 2014 and was qualified to operate a scissors lift for five years.

5 On this occasion, the defendant was sub-contracted to replace the sprinkler pipe system at the worksite which was used as premises for storage of equipment by the Republic of Singapore Air Force ("RSAF"). The plaintiff and his co-worker, one Hossain Ziarat ("Ziarat") were deployed to the worksite on 23 February 2015. The plaintiff had been issued with a letter of appointment for Mobile Elevated Work Platform Operator for the work at the worksite on that day. He and Ziarat had begun performing the same work there a few days earlier. They were provided with Personal Protective Equipment ("PPE") which included a safety harness, safety helmet and safety shoes, and they were to replace the sprinkler pipes which were attached to the ceiling while standing on the "caged" platform ("the "cage"") of a scissors lift. The replacement of the sprinkler pipes had to be carried out at a height more than three metres above ground. This came within the definition of hazardous work at height in Reg 2

of the Workplace Safety and Health (Work at Heights) Regulations 2013. The defendant did not provide a personal fall arrest system which comprises, in addition to a safety harness or body support, anchorages and a lifeline.

6 The worksite contained various obstructions in the form of racks and large stored items. There were certain areas where the sprinkler pipes needed to be replaced which proved to be inaccessible if the scissors lift were to be used. Neither party produced any photographs or a sketch plan depicting the layout of the worksite. The defendant explained that this was because the worksite belonged to the military (or more specifically, the RSAF/Ministry of Defence ("MINDEF")) and no photography was permitted for security reasons. This point was not disputed.

7 The accident occurred on 23 February 2015 at about 1.50 pm while the plaintiff had stepped out of the scissors lift and stood on an air-conditioning duct ("air-con duct") which was located below the sprinkler pipe system. The air-con duct was about five metres above ground. He secured his safety harness to the rebar of the air-con duct but the air-con duct could not take his weight as he stepped onto it and gave way, resulting in him falling to the ground.

The disputed areas

8 There were various factual disputes between the parties. I shall focus only on three material ones. The main point in contention was whether the plaintiff had been instructed by one Nur Islam, his supervisor, to step out of the "cage" and on the air-con duct to carry out the work. Related to this, the plaintiff had maintained that he and Ziarat had raised concerns with Nur Islam's instructions to stand on the air-con duct but these were ignored. The defendant denied that any such instruction had been given and asserted that the plaintiff

stepped out of the "cage" entirely on his own volition. It was thus the defendant's contention that the plaintiff had failed to act as a reasonable prudent employee would, and was either solely responsible for his own injuries or ought at least to be found to be contributorily negligent. Should the court arrive at the latter conclusion, then liability ought to be apportioned between the parties.

9 It was common ground that the plaintiff was deployed to perform hazardous work at height, and the defendant did not dispute that it owed the plaintiff a duty of care as his employer to take reasonable care in providing a safe work environment. A second disputed point was whether the defendant had provided a safe system of work, including, for example, conducting a site inspection for the purpose of preparing a preliminary risk assessment, providing all necessary PPE, and demonstrating that it had obtained a valid permit to work and appointed a competent or qualified work at height supervisor.

10 A third disputed point was whether the plaintiff had correctly described the defendant as an "occupier" of the worksite. This is a mixed question of law and fact. The defendant denied that it was an occupier and pointed to the RSAF/MINDEF, which occupied Paya Lebar Airbase, or the main contractor of the worksite QBH Pte Ltd ("QBH") as the occupier. In any event, the defendant maintained that the plaintiff had not satisfactorily proved that the defendant was an occupier by merely pointing to the fact that it was involved in performing work at the worksite to infer that it had control or possession of the worksite.

Issues for determination

11 Having set out the three material disputed areas, I shall briefly outline the issues for my determination as follows:

(a) First, what the events immediately prior to the accident were, and whether any instruction was given at any point by Nur Islam to the plaintiff to step on the air-con duct ("the instruction");

(b) Second, whether the defendant was negligent in having breached its duty of care to the plaintiff as an employer (or occupier) to provide a safe work environment; and

(c) Third, if the defendant is found to have breached its duty of care, whether the breach caused the plaintiff's injuries; related to this is the question of whether there was contributory negligence on the part of the plaintiff and if so, the extent to which the defendants' liability should be reduced.

My decision

12 Before I elaborate on the reasons for my decision, I begin with the basic observation that the plaintiff bears the burden of proving his case on the balance of probabilities. This was not a case where the doctrine of *res ipsa loquitur* could be said to apply, as the accident could have come about in various different ways and through various causes. There was also no basis for any claim on the ground of breach of the defendant's statutory duty, since s 60 of the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed) ("the WSHA") makes it clear that the WSHA is not to be construed as conferring a right of action in any civil proceedings in respect of any contravention, whether by act or omission.

13 In the event, the defendant did not dispute that as the plaintiff's employer, it did owe him a duty of care and the plaintiff could thus rely on the common law tortious cause of action founded in negligence. Insofar as the general tenor of the witnesses' evidence was concerned, the dispute turned

substantially on a factual point: whether Nur Islam had given the plaintiff the instruction as alleged. This is the first issue which I shall address.

Issue 1: Events immediately prior to the accident – whether Nur Islam gave the instruction to the plaintiff

14 At the trial, only three witnesses testified – the plaintiff himself and two witnesses for the defence, Ziarat and Mr Derrick Ng Hai Siong ("Derrick Ng"), the director of the defendant. It was evident that no one (leaving aside the plaintiff himself) had actually witnessed the plaintiff stepping out of the "cage" of the scissors lift and onto the air-con duct. In addition, Nur Islam was not available to testify as he was no longer working in Singapore. Neither the plaintiff nor the defendant made any arrangements to procure his attendance at the trial.

15 In this connection, I note that both the plaintiff's and Ziarat's evidence were not free from inconsistencies. At various points, I had sought clarification of Ziarat's evidence as I found it somewhat confusing. Perhaps this may have been attributable in part to the fact that he, like the plaintiff, needed to give evidence with the assistance of an interpreter and certain nuances or details may not have been accurately communicated. In my view, it is unhelpful to detail the various inconsistencies in both their accounts as they related to mainly inconsequential aspects. The inconsistencies did not detract from the overall thrust of their respective accounts. Both the plaintiff and Ziarat appeared for the most part to be reasonably candid in their testimony. Nevertheless, the plaintiff's insistence that Nur Islam had given the instruction to him was in direct contradiction with the evidence of Ziarat, who maintained that no such instruction was ever given.

16 In the face of material conflicting evidence on this aspect from the two co-workers, I look to the contextual and circumstantial evidence to find where the truth of the matter would more likely lie. In this regard, I begin by noting that the defendant suggests that it was not rushing to complete the work or trying to catch up for lost time. The plaintiff himself testified that Nur Islam had said that while they had to "finish the job even though [it] is a bit risky", he also told them, "you all can do it slowly, take your time". There was no suggestion that the work was behind schedule. That said, they would of course have had a deadline, and if they could not finish the job, as Nur Islam purportedly said, they would be "under pressure" from the defendant. Hence they tried to replace "as much as possible" each day although there was no specific number of pipes that were required to be replaced. This is an important aspect of the plaintiff's testimony which was unchallenged when he was cross-examined.

17 To my mind, even though the suggestion was that the defendant was not rushing to complete the work, it was clearly not going to have the luxury of taking as long as it wanted to do so. It would also not have made sense for the defendant to deploy its workers there any longer than it needed to. This made it more probable than not that Nur Islam would have informed the plaintiff to try to finish the job quickly in any case, to avoid being "under pressure" from the defendant in case there were complaints of undue delay or procrastination.

18 The defendant's case was that if there were inaccessible areas, the defendant would need to find workarounds in order for the work to be done or the workers would continue working at other areas instead. The only workaround seemed to be to move the obstructions but it also appeared that the obstructions could not be conveniently or readily moved. An alternative method of work, involving the use of step ladders to reach areas which were inaccessible to the scissors lift, was described by Ziarat during cross-examination. But

neither Ziarat nor the plaintiff made any mention of this alternative method in their respective affidavits of evidence-in-chief. I note that the availability of this alternative was not put to the plaintiff in cross-examination, but only emerged during Ziarat's oral testimony. It would appear to be an afterthought on Ziarat's part. In addition, despite Ziarat's claim that step ladders were used as an alternative method of work, he conceded that the step ladders mentioned (which had 8, 10 or 12 steps) were not sufficiently tall to allow access to the sprinkler pipes in question, or to all locations throughout the worksite.

19 On the other hand, the plaintiff's case was that no ladders were used that day and it was thus submitted that this showed that the defendant did not provide any other means to the plaintiff to gain access to the sprinkler pipes in question. In his further written submission, the plaintiff contended that the ladders could not be used at all to reach the sprinkler pipes since Ziarat had said that they were meant for use for areas at a lower height than what the scissors lift could reach. I am inclined to agree with the plaintiff's submissions in this connection. This lent considerable support to the inference that Nur Islam had instructed the plaintiff to step onto the air-con duct, since it was unlikely that any alternative method was made available to enable him to reach the inaccessible areas. This is especially when seen in the context of the plaintiff's unchallenged testimony that they would have been expected to replace "as much as possible" each day to avoid being "under pressure" from the defendant.

20 This issue was at the core of the plaintiff's case and the burden remained squarely on him to prove this to the required standard. I am satisfied that it was more probable than not that Nur Islam did give the plaintiff the instruction, and he had agreed to follow Nur Islam's instruction. Hence I find that the instruction was in fact given, if not to both Ziarat and the plaintiff, then at least to the plaintiff solely, even if Ziarat did not receive a similar instruction. The plaintiff

had decided not to take the trouble of resorting to any alternative methods of work. More likely than not, since he was already on the scissors lift, he decided that it would be more expedient to save the time and effort involved in arranging for the obstructions to be moved. He was prepared to be exposed to the risk of injury by stepping on the air-con duct to reach the inaccessible sprinkler pipes. I accept that there may have been an alternative method to perform the work if obstructions were indeed faced on-site, but the plaintiff chose not to adopt it out of convenience.

21 It is pertinent however to note the plaintiff's two medical reports from Changi General Hospital ("CGH") and his specialist medical report from MY Orthopaedic Clinic ("MYOC") (dated 26 May 2015, 2 December 2015 and 16 March 2016 respectively, all of which are exhibited in his affidavit filed on 23 May 2017 and also contained within the Agreed Bundle). No doctors were called to testify. In the 26 May 2015 CGH report prepared by Dr Chachan Sourabh, Resident Physician of the Department of Orthopaedic Surgery, CGH, it was stated that from the hospital records, "he was standing and working on a dock and was wearing a harness. The harness suddenly broke and he fell from the height of approximately 4meters". In the 2 December 2015 CGH report prepared by Dr Darshana Chandrakumara, Resident Physician of the Department of Orthopaedic Surgery, CGH, it was only stated that he was seen at the CGH Accident and Emergency Department "following a fall from 4m height". Finally, in his own specialist medical report from MYOC, it was stated that he sustained injuries to his right elbow and back "when he fell from a height of five meters after his harness broke during a work-place accident on 23rd February 2015". All the remarks found in the medical reports about the harness breaking appear to be consistent with what was recorded in the 27 February 2015 CGH "Memo to SGH Spine". The relevant documents therefore indicate

that the cause of the accident was the plaintiff's harness "breaking" or becoming detached from where it was anchored to; there was no mention of anything (much less any specific mention of the air-con duct) that he was standing on giving way beneath his weight and thus causing him to fall from a height. More crucially, there was no mention of anyone having explicitly given the plaintiff any instruction to step on the air-con duct. He was however not cross-examined at all on any of these aspects and no submissions were ultimately made on these points either. I would therefore go no further than to note the inconsistencies but I am of the view that they do not materially affect my main findings on the plaintiff's credibility.

22 As for the evidence of Derrick Ng, the director of the defendant, I find it to be generally of scant assistance to the defendant's case beyond what was already objectively undisputed. Derrick Ng was not personally aware of the events surrounding the accident. He was not present at the worksite when Nur Islam allegedly gave the instruction to the plaintiff. Crucially, he was not at the worksite when the accident occurred. He was in no position to attest to whether the accident had occurred due to the plaintiff's "own carelessness and conduct". This would be a matter of surmise, based on hearsay and conjecture. It would also appear that Derrick Ng was not personally aware of whether there had been adequate compliance with any of the safety procedures that ought to have been observed at the worksite. I should add that I find Derrick Ng's attempts to suggest that the main contractor (QBH) was the occupier and should therefore be responsible overall for "all the work permits, safety permits, safety orientation" to be unconvincing. This suggestion only arose belatedly during his re-examination and was not substantiated by any documentary evidence.

23 In the overall analysis, I accept the plaintiff's claim that the instruction had been given by Nur Islam. I would also accept however the defendant's

submission to the effect that the plaintiff was trained and sufficiently experienced to know the risk involved, and thus could have refrained from complying with the instruction and escalated the matter to another supervisor or to Derrick Ng. He did not. Instead, he elected to comply with the instruction and step out of the "cage" of the scissors lift and onto the air-con duct, believing that securing his safety harness to the rebar would provide sufficient anchorage. He claimed that it had not posed an apparent risk when he stepped onto the air-con duct previously. Perhaps that lulled him into a false sense of security. He did so when Ziarat was not present together with him on the scissors lift. Unfortunately, this was a poor exercise of judgment in undertaking an obvious risk, more so when it was one that he was conscious of. The direct and proximate cause of the fall was, as the objective and uncontroverted evidence demonstrates, the air-con duct giving way under his weight.

24 Having been conscious of the substantial risk involved in not remaining within the "cage" of the scissors lift, but deciding nonetheless to take the risk, I conclude that the plaintiff had been contributorily negligent. He knew that it was potentially dangerous but he went ahead regardless, despite having been trained on safety procedures and the proper use and operation of a scissors lift. The fact that Nur Islam may have given him an instruction to do so does not alter his subjective consciousness of the risk. To that extent, I agree with the primary defence as pleaded – the plaintiff had failed to take reasonable precautions for his own safety and to exercise reasonable care and attention himself. I shall address the question of apportionment of liability more fully in addressing Issue 3 below (at [44]–[50]).

Issue 2: Whether the defendant had breached its duty of care to provide a safe work environment

The WSH Framework governing construction activities

25 The defendant does not dispute that the nature of the work which the plaintiff was tasked to carry out is governed by the WSHA and its accompanying regulations (collectively, "the WSH Framework"). From the plaintiff's pleaded case, he appears to rely on the defendant's alleged breach of statutory duties under the WSHA as one of the possible causes of action. However, in the plaintiff's written submissions, he accepts that any breach does not afford a right of action in itself, having regard to s 60 of the WSHA(see [12] above).

26 It is nevertheless uncontroversial that the defendant may owe the plaintiff a common law duty of care under the tort of negligence. As outlined succinctly by George Wei JC (as he then was) in *Chen Qiangshi v Hong Fey CDY Construction Pte Ltd* [2014] SGHC 177 ("*Chen Qiangshi*") (at [125]), the four-fold test for negligence is trite: (a) the defendant must have owed the claimant a duty of care; (b) the defendant's conduct must have breached the duty of care by falling below the requisite standard of care; (c) the claimant must have suffered loss; and (d) the defendant's breach of duty must have been a cause of the claimant's loss. The WSH Framework intersects with the tort of negligence at the first two stages of the inquiry.

27 The principles on a statutory duty shaping the existence of a duty of care were discussed by the Court of Appeal in *Tan Juay Pah v Kimly Construction Pte Ltd and others* [2012] 2 SLR 549 at [53]–[54] which I need not recite for present purposes. These principles were later considered by the Court of Appeal in *Jurong Primewide Pte Ltd v Moh Seng Cranes Pte Ltd and others* [2014] 2

SLR 360 ("*Jurong Primewide*"), in a detailed analysis of the WSH Framework and its statutory purpose. The Court of Appeal (at [40]) cited the speech of Dr Ng Eng Hen ("Dr Ng"), the then Minister for Manpower, at the second reading of the Workplace Safety and Health Bill 2005 (No 36 of 2005) (*Singapore Parliamentary Debates, Official Report* (17 January 2006) vol 80 ("the WSH Parliamentary Debates") at cols 2208–2210). The following extracts of Dr Ng's speech bear repeating:

> Third, this Bill will better *define persons who are accountable, their responsibilities and institute penalties* which reflect the true economic and social cost of risks and accidents. Penalties should be sufficient to deter risk-taking behaviour and ensure that companies are *proactive in preventing incidents*. Appropriately, companies and persons that show *poor safety management* should be penalised even if no accident has occurred.
>
> This Bill will put into place a new and more effective framework to reduce accidents at the workplace – to bring about a quantum improvement in OSH standards and to achieve our intermediate goal of halving the present occupational fatality rate by 2015.
>
> [emphasis of the Court of Appeal adopted]

28 The Court of Appeal concluded at [41]–[42] that:

> 41 From the foregoing it is clear that [*main*] *contractors and subcontractors … are precisely the entities which the WSHA seeks to increase direct liability on for workplace safety*. They have "primary responsibility" in all areas of safety, given their "operational control" of workplaces. In fact, *the main purpose of the WSHA is to strengthen the accountability of and impose responsibilities on parties such as the main contractor and subcontractors so as to ensure a safer working environment at construction sites. These statutory responsibilities also complement the very aims of the common law tort of negligence, which is concerned with ensuring that negligent conduct, within legal limits, would attract corresponding liability.* The law of tort serves two functions here: it is an engine of compensation as well as a financial deterrent. The law governing the establishment of a duty of care in turn helps to limit claims in negligence to only parties with sufficient proximity and foreseeability, so that the net of liability is not cast too widely.

> *Plainly, contractors and subcontractors are parties whose negligence on construction sites has the most potential to result in fatal, or at least costly, consequences, given their well-placed abilities to foresee and be aware of the various possible mishaps that others without operational responsibilities and control may not be able to identify. In fact, it would be very hard to think of situations where sufficient proximity to give rise to a common law duty of care will not be found to exist due to the control contractors and subcontractors have over the worksite and the on-going activities on it.*
>
> 42 *The WSHA is clearly focussed on strengthening the safety management of worksites as its primary aim. By placing heavy responsibilities on contractors and subcontractors, the scheme of the WSHA intends that the burden of making worksites as free from hazards as possible and installing necessary systems and safeguards would fall on these parties.*
>
> [emphasis added]

29 In line with the Court of Appeal's observations in *Jurong Primewide*, it is clear that there is a parity of objectives between the tort of negligence and the WSH Framework.

The standard of care

30 The WSH Framework is also relevant in ascertaining the appropriate standard of care expected of the defendant. The standard of care is the general objective standard of a reasonable person using ordinary care and skill. Industry standards and normal practice are indicative of this standard (see for example, *Tesa Tape Asia Pacific Pte Ltd v Wing Seng Logistics Pte Ltd* [2006] 3 SLR(R) 116 at [17]). The Court of Appeal in *Jurong Primewide* endorsed (at [43]) reference to the WSH Framework and other guidelines which lay down such industry standards of care and practice.

31 As noted by Wei JC in *Chen Qiangshi* (at [147]–[148]), the WSH Framework aims to make businesses responsible for managing their own risks. The industry standards have evolved towards requiring contractors to establish

and implement effective systems of risk assessment, management and supervision, rather than seeking to secure their adherence to operating procedures prescribed down to the minutiae.

32 Wei JC went on to observe (at [149]) that the permit-to-work system contemplated in the Workplace Safety and Health (Construction) Regulations 2007 ("the Construction Regulations" – as outlined below at [36]) places the onus on the project manager of a worksite to assess the risk and safety measures present before allowing high-risk work to be undertaken. The WSH Framework envisages a sharp distinction between the duties of the contractor responsible for the conduct of activities, and the duties of the persons on the ground actually carrying out such activities. The contractor is responsible for creating and enforcing an effective system of risk assessment, management and supervision. On the other hand, prescriptive duties are imposed on the rank-and-file workers executing the activities on the ground (*Chen Qiangshi* at [156]).

33 As for whether the defendant in the present case was an occupier of the worksite, this question may arguably be moot since the defendant does not dispute that it owed the plaintiff a duty of care *qua* its capacity as the plaintiff's employer. In any event, in *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 SLR 284 ("*See Toh Siew Kee*"), a relatively recent judgment of the Court of Appeal, the interplay between the law of negligence and occupier's liability was clarified. At [52] of *See Toh Siew Kee*, V K Rajah JA opined that occupier's liability should be subsumed under the general tort of negligence. This was in line with the approach of the Court of Appeal in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*") laying down general principles which set out when a duty of care arises under the tort of negligence. The general enquiry would thus

centre on issues of factual foreseeability, legal proximity and policy as set out in *Spandeck*.

34 Although neither party made substantive submissions in this connection, I shall state for completeness that I have given the relevant issues due consideration and I am satisfied that all the requirements in *Spandeck* are satisfied in the present case. Factual foreseeability as a threshold requirement is met since it was foreseeable that injury might be sustained if the duty of care was not observed. There is also a sufficiently proximate relationship for the defendant to owe a duty of care *qua* employer. There are no policy reasons to suggest otherwise. Rather, policy considerations would reinforce the existence of such a duty.

35 Section 4(1) of the WSHA defines "occupier" as meaning, *inter alia*, "the person who has charge, management or control of those premises... whether or not he is also the owner of the premises". While there was no evidence on whether the defendant had overall charge, management or control of the worksite, I am of the view in any event that it can be reasonably inferred that the defendant had at least a sufficient degree of control and management over the relevant work area to qualify as an occupier. The defendant provided no other evidence to the contrary, and saw no necessity to call any witness or provide any documents from either the worksite owner (*ie*. the RSAF/MINDEF) or the main contractor (QBH) to support its bare assertion that it was not an occupier.

Regulatory non-compliance and adverse inferences

36 It is not in dispute that the defendant had to comply with the regulatory requirements under the Construction Regulations. The Construction

Regulations implemented a "permit-to-work system", under which the "supervisor of a person who is to carry out any high-risk construction work in a worksite" is required to obtain permits-to-work from the project manager of the worksite (Reg 13(*a*) of the Construction Regulations). As hazardous work at height was involved in the present case, it would require the supervisor of such operations to apply for and obtain a permit-to-work. However, no evidence of any such application was adduced even though the defendant attempted to suggest that it had obtained a permit. Correspondingly, no evidence of any actual existing permit was adduced as well. In the premises, there are only two logical inferences open to me arising from the defendant's chosen course. The first is that no such application had actually been made at all. Second, even if an application had been made, no such permit had been obtained. I see no other plausible reason why the defendant would not have produced the relevant evidence pertaining to an application or exhibited the permit itself. It would therefore be appropriate to draw an adverse inference against the defendant for its non-production of the evidence, pursuant to Illustration (*g*) to s 116 of the Evidence Act (Cap 97, 1997 Rev Ed).

37 Similarly, the defendant claimed to have conducted a preliminary risk assessment and to have appointed a competent and qualified safety supervisor. Once again, nothing was produced before me to substantiate or corroborate the defendant's bare assertions on these counts. Ziarat claimed to be the competent person to supervise the plaintiff's work at height and to have the necessary certificate in support, but no corroborative documents of any sort were produced by the defendant. Adopting the same reasoning which I have set out above, it can reasonably be inferred that the defendant withheld evidence on all these areas for two reasons: they would either be unfavourable to its interests if they had been produced, or they simply did not exist despite the defendant's claims

and thus were not capable of being produced. Either reason would have adversely impacted the credibility of the defence.

38 Even taking the defendant's case at its highest, if indeed all the responsibility for site safety was borne by the main contractor (QBH), it would stand to reason that the defendant could readily have obtained the necessary supporting evidence from QBH to substantiate its claims. In the event, no evidence whatsoever was produced.

39 Following from my findings of fact in relation to Issue 1, I am drawn to conclude that the defendant must bear substantial liability. As the Court of Appeal observed in *Chandran a/l Subbiah v Dockers Marine Pte Ltd* [2010] 1 SLR 786, an employer may be liable for a worksite accident in a primary or secondary manner (at [13]). The primary mode is concerned with duties that the employer owes directly to its employees, such as the employer's non-delegable duty to take care of the safety of its employees. The latter is concerned with duties that one employee owes to another employee, for which the employer is made vicariously liable.

40 While the defendant does owe the plaintiff a duty of care by virtue of the employer-employee relationship, the enquiry as to the defendant's potential secondary liability would relate to whether there was a breach of the duty of care by Ziarat's purported failure to take adequate care in ensuring that there was proper supervision of the plaintiff. Ziarat who was purportedly both a co-worker and safety supervisor was aware that the plaintiff ought not to have been left alone when the scissors lift was in operation. Assuming Ziarat's account was true and he was not present when the plaintiff fell from a height, it was obvious that Ziarat would have had to descend from a height first before stepping off the scissors lift to walk towards the storeroom. He left the plaintiff

to his own devices, and he agreed quite candidly that this was a breach of the work method. This would therefore amount to a breach of Ziarat's duty of supervision, for which the defendant should be vicariously liable, but it would be equally pertinent to note that the plaintiff had apparently chosen unilaterally to ascend in the scissors lift and continue working on his own.

41 To summarise, the general tenor of the evidence before me was that by and large, the defendant was lackadaisical in its adherence to the WSH Framework or in ensuring that workplace safety was observed. Relevant documentation to show its adherence to the WSH Framework evidently did not exist. The adequacy of control and safety measures was doubtful and supervision was lax. Daily toolbox briefings (if they were indeed conducted at all) were in all probability fairly perfunctory affairs. No documentary evidence of the briefings was adduced in any event. It was also unclear if any specific briefing on the safety issues had been conducted. In addition, given my finding in relation to Issue 1, the defendant had not provided adequately for the relevant PPE for working at a height.

42 In the circumstances, I find that the defendant had breached its duty to take reasonably practicable measures to ensure the provision of a safe work environment. It had failed to ensure the safety of the plaintiff in performing his duties at the worksite.

Issue 3: Causation and whether there was contributory negligence

43 Turning finally to the question of causation, my findings as to Issues 1 and 2 above on the relevant factual circumstances and the defendant's breach of its duty of care clearly show that causation has been established. The instruction given to the plaintiff, coupled with the lack of safe work methods and measures

and the defendant's failure to adhere to the requisite standard of care expected of an employer and occupier of a worksite, all amply support a finding of causation.

44 Contributory negligence arises where a plaintiff has acted in a careless manner, failing to take reasonable care for his own personal safety in the circumstances, with the result that he contributes in part to his own injury. The Court of Appeal in *Parno v SC Marine Pte Ltd* [1999] 3 SLR(R) 377 ("*Parno*") at [59] cited with approval the observation of Lord Denning MR in *Froom v Butcher* [1976] QB 286 at 291:

> Negligence depends on a breach of duty, whereas contributory negligence does not. Negligence is a man's carelessness in breach of duty to others. Contributory negligence is a man's carelessness in looking after his own safety. He is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man, he might hurt himself.

The defendant is thus not required to show that a claimant has breached a legal duty of care, as is necessary in a claim for negligence (Gary Chan Kok Yew, *The Law of Torts in Singapore* (Academy Publishing, 2011) ("*The Law of Torts in Singapore*") at para 07.071).

45 For convenient reference, I set out s 3(1) of the Contributory Negligence and Personal Injuries Act (Cap 54, 2002 Rev Ed) which provides as follows:

> **Apportionment of liability in case of contributory negligence**
>
> **3.**—(1) Where any person suffers damage as the result *partly of his own fault* and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but *the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.*

[emphasis added]

46 Returning to the facts of the present case, as I have outlined above (at [23]–[24]), I find that there was contributory negligence on the part of the plaintiff in consciously undertaking a risky and potentially dangerous endeavour. He was not a novice but an experienced and trained worker. He was nonetheless eager, perhaps overly so, to complete the job as quickly as possible and with minimum delay. Regrettably, he carried out the work in an improper and unsafe manner. In doing so, he did not act as a reasonably prudent man ought to have. I am therefore of the view that the plaintiff's conduct was a contributory cause of the accident.

47 Notwithstanding my finding that the plaintiff was contributorily negligent, the WSH Framework serves primarily to impose duties on an employer and is aimed at preventing or minimising the risk of injury and danger to workers and indeed to all persons at the worksite. As Wei JC noted in *Chen Qiangshi* at [211], the statutory scheme was introduced on the back of a perceived need to change mindsets and to inculcate a more proactive approach to safety. There is thus good reason why the defendant in the present case should bear substantial liability even where the plaintiff has been found to have contributed to his own injuries.

48 In the overall analysis, I am of the view that the liability of the defendant to the plaintiff should be reduced by 25%. This is consistent with the observation of the learned author of *The Law of Torts in Singapore* at para 07.079 that where contributory negligence is alleged against an employee, the law tends, on balance, to lean in favour of the employee who had suffered damage due to the employer's negligence. Where the negligence of the employer related to the failure to ensure that there was a safe system of work,

the fact that an employee took a risk or made an error of judgment does not inevitably support a finding of substantial contributory negligence (or at all). Following the Court of Appeal's observation in *Parno* at [64], "the primary responsibility for ensuring safety rests with the employer". One factor that remains relevant is whether the employee took an imprudent risk in circumstances which arose (in whole or in part) due to the negligence of the defendant.

49 In *Zheng Yu Shan v Lian Beng Construction (1988) Pte Ltd* [2009] 2 SLR(R) 587 ("*Zheng Yu Shan*"), Rajah JA observed (at [38]) that in carrying out his duty to provide a safe system of work, an employer must "take the employee's carelessness in relation to safety into account when devising a safe system of work" [emphasis omitted]. Having devised such a system, the employer must take reasonable care to see that the system is complied with. These observations are relevant not just in determining whether the employer has breached his duty of care. They are also pertinent in determining whether there is any contributory negligence by the employee and, if so, the degree to which he was responsible for the damage as compared to his employer. Where the employee's action was "so reckless or in such total disregard for his own safety", he ought to be found to be contributorily negligent (*Zheng Yu Shan* at [51]).

50 Bearing these considerations in mind, in view of the fact that the plaintiff was a trained and experienced worker who was cognisant of the risks involved, weighed against the negligence of the defendants, in my judgment it is just and equitable that the defendant's liability to the plaintiff be reduced by 25%. This is not an insignificant reduction, but in my view it is reflective of the relative degrees of responsibility that the plaintiff and defendant ought to bear in the circumstances.

Conclusion

51 Although I have ruled that the merits lie substantially in favour of the plaintiff, I should record a few observations. The plaintiff adopted a blunderbuss approach in pleading his case. Counsel for the plaintiff sought to plead common law negligence, contractual breach of duty, occupier's liability, vicarious liability and breach of statutory duty all at once, presumably in the hope that at least one cause of action (or more) might eventually hit home. Moreover, instead of pleading facts in his statement of claim, the plaintiff filed a 29-page statement of claim laying out the evidence in support of his claim, which was a relatively straightforward one for work-related personal injuries.

52 I would further note that counsel for the plaintiff placed no less than five separate sets of documents (four of which were unsolicited) before me as his closing written submissions. I decided to admit them all for consideration, while inviting counsel for the defendant to reply if he deemed it necessary to do so. This incremental drip-feed method in putting forward submissions is unsatisfactory. Counsel would be well-advised to refrain from such a practice in future.

53 I find the defendant liable in negligence to the plaintiff. I also find that the plaintiff was contributorily negligent. The defendant will bear 75% liability for the loss and damage that the plaintiff suffered as a consequence of the accident. I enter interlocutory judgment in those terms for the plaintiff for damages to be assessed.

54 Having heard the parties on costs, I shall fix the costs of the trial at $30,000 to be paid by the defendant, with reasonable disbursements to the

plaintiff in addition to be agreed between the parties. Costs of the assessment will be reserved to the Registrar hearing the assessment.

See Kee Oon
Judge

Joseph Chen (Joseph Chen & Co) for the plaintiff;
Michael Eu and Gloria Lee (United Legal Alliance LLC) for the defendant.
