IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

[2018] SGCA 42

Civil Appeal No 132 of 2017

Between

SINGAPORE RIFLE ASSOCIATION

… *Appellant*

And

THE SINGAPORE SHOOTING ASSOCIATION

… *Respondent*

In the matter of HC/Suit No 1057 of 2015

Between

THE SINGAPORE SHOOTING ASSOCIATION

… *Plaintiff*

And

SINGAPORE RIFLE ASSOCIATION

… *Defendant*

GROUNDS OF DECISION

[Tort] — [Negligence] — [Duty of care]
[Tort] — [Negligence] — [Breach of duty]
[Tort] — [Negligence] — [Causation]

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Singapore Rifle Association
v
Singapore Shooting Association

[2018] SGCA 42

Court of Appeal — Civil Appeal No 132 of 2017
Sundaresh Menon CJ, Tay Yong Kwang JA and Chao Hick Tin SJ
8 May 2018

23 July 2018

Chao Hick Tin SJ (delivering the grounds of decision of the court):

Introduction

1 The suit from which the present appeal arose was instituted by the Singapore Shooting Association ("SSA") against the Singapore Rifle Association ("SRA") for, among other things, the recovery of vacant possession of the land and premises at 990 Old Choa Chu Kang Road, Singapore 699814, known as the National Shooting Centre ("the Premises"). SRA counterclaimed against SSA to seek compensation for the losses caused by two floods that occurred at the Premises on 24 December 2014 and 3 May 2015 (respectively, "the 1st Flood" and "the 2nd Flood"), allegedly due to SSA's negligence in, *inter alia*, maintaining the condition and ensuring the safety of the Premises. Subsequently, SSA withdrew its claim against SRA, leaving only SRA's counterclaim to proceed to trial.

2 The High Court judge ("the Judge") dismissed SRA's counterclaim in relation to the 1st Flood on the ground that although SSA had breached its duty to take reasonable care to maintain the condition and ensure the safety of the Premises arising from the renovation works (which included alteration works) carried out there, that breach had not caused the 1st Flood. She allowed, however, SRA's counterclaim in relation to the 2nd Flood and awarded SRA damages of $4,708. With regard to costs, the Judge held that SRA, despite succeeding in its counterclaim in respect of the 2nd Flood, should pay costs to SSA fixed at $85,600, plus reasonable disbursements, because SRA was unsuccessful in its counterclaim in relation to the 1st Flood, which was the main claim at the trial, and the sum awarded to SRA for its counterclaim in relation to the 2nd Flood was minimal. The decision of the Judge is reported as *Singapore Shooting Association v Singapore Rifle Association* [2017] SGHC 266 ("the GD"). SRA appealed against that part of the Judge's decision pertaining to the counterclaim in respect of the 1st Flood and the costs order.

3 After hearing the parties' oral submissions on 8 May 2018, we dismissed SRA's appeal and held that SSA was not liable in negligence in respect of the 1st Flood. Contrary to the Judge's holding, SSA could not be said to have *breached* any duty of care that it owed to SRA. Furthermore, SSA's actions did not *cause* the losses that SRA complained of. In these grounds, we explain the reasons for our decision, as well as discuss the law on occupiers' liability and clarify how that law should be applied in the present case.

Background facts

4 SSA is the national association for the sport of shooting in Singapore. SRA is a member club of SSA. At the material time, SSA was the lessee of the Premises from Sport Singapore ("Sport SG"), then known as the Singapore

Sports Council, under a lease agreement dated 29 December 2008 ("the Master Lease"). In turn, SSA allowed SRA to occupy and manage part of the Premises, including two areas known as the SRA Armoury and the SRA Office. This arrangement had been in place since 2000, but was never formalised. Nonetheless, it was accepted, both in the court below and on appeal, that SRA had been granted a gratuitous licence to occupy the SRA Armoury, where it stored its firearms and ammunition.

5 At this juncture, we will briefly describe the layout of the Premises. The SRA Armoury is located in the basement of the main building on the Premises ("the NSC main building"), which is situated at the south-eastern end of the Premises. An unlined earth drain ("the unlined drain") runs north-west across the Premises. There are three crossings over the unlined drain, each of which carries beneath it a culvert (*ie*, a drainage pipe through which water can flow from one section of the unlined drain to the next). These culverts are marked out as Culverts A, B and C in the layout plan annexed to these grounds. Water flows downstream from Culvert A, which is the culvert nearest the SRA Armoury, to Culvert C and onwards out of the Premises.

The renovation works

6 In preparation for the 2015 Southeast Asian Games ("the 2015 SEA Games"), on 30 October 2013, the Premises were handed over by SSA and Sport SG to a contractor known as HCJ Construction Pte Ltd ("HCJ") for renovation works to be carried out. This handover was evidenced by a letter dated 30 October 2013 from the Singapore Sports Council (as Sport SG was then known) to HCJ, titled "Proposed expansion works including additions and alteration works at the [Premises]" and sub-titled "Handing over of site possession for commencement of works" ("the 30 October Handover Letter").[1]

This letter also stated: "Handover by: Singapore Sports Council / Singapore Shooting Association", whose respective representatives were named as Mr Ho Juan Teow and Mr Lim Meng Kiaw. It was not disputed that HCJ had been engaged by Sport SG to carry out the renovation works. However, the precise *scope* of the renovation works that Sport SG had authorised HCJ to carry out was unclear from the evidence adduced in court, in part because the contract between Sport SG and HCJ was not adduced in evidence. It followed that the precise *extent* of the handover to HCJ – *ie*, whether the whole or only part of the Premises had been handed over – was disputed. More will be said on this point later (at [46] below).

7 On 1 December 2014, HCJ handed over the Premises back to Sport SG and, in turn, SSA. This was evidenced by a "Handing Over Form" dated 1 December 2014 ("the 1 December Handover Form"), the full title of which read as follows:[2]

> Project: Proposed Addition and Alteration to existing 25m range, 50m range and Skeet & Trap range and proposed new erection of 25m range and Administration [O]ffice at the National Shooting Center on Lots 1281L MK 12 at 990 Old Choa Chu Kang Road, Singapore (Western Catchment Planning Area)

The handover form also indicated: "Taking Over By: Singapore Sports Council" and "Witnessed By: National Shooting Center". Again, Mr Ho Juan Teow and Mr Lim Meng Kiaw were named as the respective representatives. For ease of reference, the period between 30 October 2013 and 1 December 2014 during which HCJ carried out the renovation works at the Premises will hereafter be termed "the Renovation Period".

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1 Record of Appeal Vol V Part A, p 138.

2 Record of Appeal Vol V Part A, p 241.

8 During approximately the same timeframe as the Renovation Period (specifically, between August 2013 and December 2014), SRA's members noticed that numerous trucks carrying full loads of earth fill material and debris frequently entered the Premises. The trucks were observed unloading and dumping their loads on the Premises and then leaving. SSA denied having engaged the trucks to dump the earth fill material and debris on the Premises and claimed that Sport SG was responsible. Likewise, Sport SG denied the allegation and claimed that SSA was responsible. We will revisit this point later in these grounds as the indiscriminate dumping of earth fill material and debris was one of the bases upon which SRA mounted its counterclaim against SSA.

The floods

9 The 1st Flood occurred on 24 December 2014, less than a month after HCJ handed over the Premises back to Sport SG and, in turn, SSA. The basement of the NSC main building was flooded to a height of approximately 1m. The property stored in the SRA Armoury, such as SRA's ammunition and target papers, was submerged in water for hours. It was not disputed that the main cause of the 1st Flood was a landslip at the unlined drain ("the Landslip") due to what was termed a "slope failure" between Culverts B and C (at [32] of the GD). Soil from the slope of a newly-constructed embankment at that section of the unlined drain ("the embankment between Culverts B and C") had slid into the unlined drain, preventing water from flowing through Culvert C and out of the Premises, and creating a backflow of water towards the NSC main building.

10 The 2nd Flood occurred on 3 May 2015. The basement of the NSC main building was flooded to a height of approximately 30cm. This time, SRA's ammunition and target papers were not affected, but SRA nonetheless incurred

some cleaning costs. It was not disputed that the main cause of the 2nd Flood was the clogging of Culvert B by debris, with a landslide downstream as a possible contributing factor (at [56] of the GD).

The proceedings below

The parties' cases

11 In the proceedings below, SRA's case was as follows:

(a) SSA, as the lessee and occupier of the Premises, owed a duty of care to SRA, a lawful entrant, to "ensure proper maintenance and supervision of the Premises".[3]

(b) SSA had breached this duty because it had:[4]

(i) failed to properly maintain the Premises;

(ii) failed to "adequately monitor, supervise, take necessary measures to ensure safety with [regard to] any alteration to [the] Premises";

(iii) failed to "adequately monitor, supervise, take necessary measures to prevent damage to the SRA Armoury and its contents therein";

(iv) failed to design, construct and/or maintain the water drainage infrastructure at the embankment between Culverts B and C in compliance with the provisions of the PUB Code of Practice on Surface Water Drainage (6th Ed, 2011) (as amended by Addendum No 1 of June 2013) ("the PUB Code"), and to

3 Counterclaim (Amendment No 2), para 24.

4 Counterclaim (Amendment No 2), paras 29 and 33.

ensure that the said water drainage infrastructure was "hydraulically adequate, structurally sound and geotechnically stable";

(v) failed to seek the approval of the relevant government authorities before altering or interfering with the water drainage infrastructure at the embankment between Culverts B and C and/or carrying out the dumping of earth fill material on the Premises;

(vi) failed to engage qualified persons to plan, design and install earth control measures and erosion control measures, and to implement soil stabilisation methods to ensure the stability and structural integrity of the water drainage infrastructure at the embankment between Culverts B and C; and

(vii) in respect of the 2nd Flood, failed to take adequate and/or reasonable steps to remedy the causes of the 1st Flood.

(c) SSA's breaches as mentioned above resulted in a "failed slope or landslide" at the embankment between Culverts B and C, causing the backflow of water towards the NSC main building and, thus, the two floods.

(d) SRA suffered losses in the form of damaged ammunition and target papers that were no longer fit for their purposes, and cleaning costs. These losses were stated in SRA's closing submissions at the trial to amount to $454,678.28 in respect of the 1st Flood and $4,708 in respect of the 2nd Flood.

12 SSA's case was that:

(a) SSA did not owe SRA a duty of care as it did not have control over the works done on the unlined drain during the Renovation Period, including the construction of the embankment between Culverts B and C. During that period, control over the whole of the Premises (save for the NSC main building) had been handed over to Sport SG, which was responsible for authorising the renovation works on the Premises and obtaining all necessary approvals.

(b) Even if SSA did owe SRA a duty of care, SSA did not breach that duty because it was justified in relying on Sport SG to ensure that all the works on the Premises would be properly carried out.

(c) Further, SRA did not prove its losses in respect of the 1st Flood.

(d) In respect of the 2nd Flood, SSA did not act unreasonably because it had looked into the causes of the 1st Flood, but had not been able to remedy them before the 2nd Flood occurred.

(e) Finally, SRA was contributorily negligent in respect of both floods because it failed to seal the windows of the SRA Armoury despite earlier expert recommendation that it do so.

The Judge's decision

SSA's duty of care to SRA

13 The Judge first held that SSA owed SRA a duty to take reasonable care of the Premises so as to avoid causing harm to SRA. She found that the element of legal proximity was satisfied because, among other reasons, SRA was a lawful entrant to the Premises, had at least a gratuitous licence to use the SRA Armoury at the material time and, in any case, had a long relationship with SSA

dating back to 2000, which was directly relevant to the question of proximity (at [23] of the GD). Further, there were no policy considerations to negate a finding of a duty of care on SSA's part (at [26] of the GD).

14 The Judge rejected SSA's argument that because it did not construct the embankment between Culverts B and C where the Landslip occurred and was not in control of the Premises when that embankment was constructed, it did not owe any duty of care to SRA. The Judge observed that the alleged cause of the 1st Flood was "the static condition of the Premises at the time of the 1st Flood", and not any "dynamic activities or risky operations" being carried out on the Premises by a third party over which SSA had little or no control. She took the view that because SSA was the occupier of the Premises at the time of the 1st Flood and had control over the condition of the Premises then, it could not claim that it did not owe any duty of care to SRA at that time (at [24]–[25] of the GD). We will revisit this aspect of the Judge's reasoning later when we consider the existence and scope of SSA's duty of care to SRA.

The 1st Flood

15 The Judge then held that SSA had ***breached*** its duty of care to SRA in relation to the 1st Flood. Her reasoning was as follows:

(a) The main cause of the 1st Flood was the Landslip due to the slope failure at the embankment between Culverts B and C. The Judge accepted the expert evidence that the unlined drain had been constructed using unsuitable soil, and that the slope of the embankment between Culverts B and C had failed because it was too steep and the strength of the soil used to construct it had reduced over time (at [32]–[33] of the GD). Since that embankment had been newly constructed during the Renovation Period as part of the preparatory works for the 2015 SEA

Games, the issue of breach turned on whether, and to what extent, SSA (as opposed to Sport SG) had control and oversight of the construction of that embankment (at [34] and [36]–[37] of the GD).

(b) There was unchallenged evidence that during the Renovation Period, the only contractor present on the Premises was HCJ, which had been engaged by Sport SG. The Judge thus accepted that SSA *had not authorised, proposed or contracted* for the construction of any new water drainage infrastructure on the Premises, including the construction of the embankment between Culverts B and C, in the period leading up to the 1st Flood. In fact, pursuant to cl 5.12 of the Master Lease, SSA *could not* have carried out any alteration works on the Premises without Sport SG's prior written consent. Additionally, it appeared that Sport SG had been "operating on the understanding" that it had the authority or permission to carry out or extend the renovation works to any part of the Premises as was necessary during the Renovation Period (at [39]–[41] of the GD).

(c) The Judge held that regardless of whether the construction of the embankment between Culverts B and C had in fact been authorised by Sport SG, SSA *did not have immediate oversight* of any construction of or improvements to the Premises' water drainage infrastructure in the period leading up to the 1st Flood. It was reasonable for SSA to rely on Sport SG to ensure that the Premises' water drainage infrastructure had been designed and constructed in accordance with all applicable regulations and with proper advice, and that all the alterations made to the Premises during the Renovation Period were structurally safe and adequate. Thus, SSA did not breach its duty of care in relation to the

poor construction of the embankment between Culverts B and C and the failure to comply with the PUB Code in this regard (at [42] of the GD).

(d) However, this did not mean that SSA had wholly discharged its duty of care to SRA. When SSA regained control of the Premises (including the unlined drain) on 1 December 2014, it had a duty from that moment onwards to monitor and supervise the condition of the Premises arising from the alterations to the Premises effected by Sport SG, and to take reasonable steps to ensure that the Premises would remain safe after those alterations and the other renovation works carried out there. SSA was expected to make reasonable inquiries to satisfy itself of the scope and soundness of those works – that is, SSA had a duty to check that those works had been completed to a satisfactory standard, and that no unauthorised works had been undertaken during the Renovation Period. In this regard, SSA could reasonably rely on the representations and assurances by Sport SG (which had proposed and commissioned those works) that those works, which included water drainage works at the unlined drain, did not affect the structural integrity and water drainage capability of the Premises; there was no need for SSA to personally test the Premises and hire professionals to proffer their opinions on these matters (at [42]–[44] of the GD).

(e) On the facts, there was no evidence that SSA had inquired about or ascertained the scope of the renovation works that HCJ had carried out on the Premises (including the water drainage works at the unlined drain), nor had it looked into the impact of those works on the Premises and the water drainage capability thereof. SSA had simply resumed control over the Premises after the renovation works were completed without conducting any checks on the quality of those works; it had

shown "a disregard for the alterations to the Premises, the condition of the Premises, and what the alterations meant for … SSA's maintenance of the Premises in the future" (at [45]–[46] of the GD).

(f) The Judge thus concluded that SSA, by failing to inquire about and conduct checks on the Premises' water drainage capability after (among other renovation works) the water drainage works at the unlined drain, had ***breached its duty of care*** to SRA to maintain and supervise the condition of the Premises so as to avoid causing harm to SRA (at [47] of the GD).

16 That holding notwithstanding, the Judge found that SSA's aforesaid breach of duty ***had not caused*** the alleged losses suffered by SRA as a result of the 1st Flood. This was because even if SSA had exercised reasonable care upon regaining control over the Premises on 1 December 2014 by making inquiries, raising concerns and starting investigations into the renovation works carried out on the Premises, SSA would not in any case have had enough time to undertake the works needed to rectify the defects in the embankment between Culverts B and C before the 1st Flood occurred on 24 December 2014. There was no evidence that the 24-day period between 1 and 24 December 2014 was a sufficient period of time for carrying out both the checks on the renovation works done and the necessary rectification works to the embankment between Culverts B and C so as to prevent flooding. Accordingly, the Judge ruled that SSA was ***not liable*** to SRA for the alleged losses arising from the 1st Flood (at [49]–[52] of the GD).

The 2nd Flood

17 As the Judge's findings in relation to the 2nd Flood did not form the subject of the present appeal, we mention them only briefly here. In summary,

the Judge found that SSA had breached its duty of care to SRA by failing to maintain the Premises and undertake rectification or precautionary measures to prevent another flood despite having been alerted by the 1st Flood as to the inadequacy of the Premises' water drainage infrastructure. This breach caused the 2nd Flood and directly caused the losses suffered by SRA arising from that flood (at [57]–[59] of the GD). Accordingly, SSA was ***liable*** to SRA for the cleaning costs of $4,708 which SRA incurred as a result of that flood.

Costs

18 The Judge awarded costs to SSA fixed at $85,600, plus reasonable disbursements. This quantum was calculated on the basis of a daily tariff of $16,000 applied at 100% for the first five days of the trial and 80% for the remaining two days, less: (a) one day's tariff to take into account the damages awarded to SRA in respect of the 2nd Flood and SRA's leading of expert evidence on the cause of the 1st Flood (which SSA originally disputed but later conceded); and (b) $4,000 for costs incurred by SRA in dealing with SSA's dispute over the authenticity of certain invoices (at [62] and [66] of the GD).

19 In making the costs order, the Judge articulated the following considerations (at [63]–[66] of the GD):

> (a) SSA had succeeded in defending SRA's "main and largest [counter]claim" in respect of the 1st Flood, while SRA had succeeded only in its counterclaim in respect of the 2nd Flood, which was "much smaller in quantum". The appropriate costs award should reflect this split outcome. Further, the trial had centred on the evidence relating to the 1st Flood.

(b) Although the Judge had found in SRA's favour where the elements of duty and breach in respect of the 1st Flood were concerned, the issue-based approach towards costs, as discussed in *Khng Thian Huat and another v Riduan bin Yusof and another* [2005] 1 SLR(R) 130, was not a basis for SRA to be awarded costs overall.

(c) The Judge had not held that SSA had breached its duty of care in the manner argued by SRA.

(d) Considering the above, it could not be said that SRA was the successful party even though it had obtained judgment for its counterclaim in respect of the 2nd Flood. Instead, the real successful party was SSA, and SSA should not be deprived of its costs simply because it had run arguments that failed on certain issues. Besides, SSA had not acted unreasonably in running the defences which it raised.

The parties' cases on appeal

SRA's case

20 As mentioned at [2] above, SRA appealed only against the Judge's findings on the 1st Flood and the costs order which she made. SRA raised four main arguments, which may be briefly summarised as follows:

(a) First, the Judge erred by crafting a new standard of care – namely, that SSA, after regaining control of the Premises on 1 December 2014, had a duty to make reasonable inquiries to satisfy itself of the scope and soundness of the renovation works carried out on the Premises as part of its duty to maintain and supervise the condition of the Premises (which duty SSA was found to have breached) – that was *neither* a part of either party's pleaded case *nor* brought to the parties' attention

provisionally during the trial. SRA had therefore been deprived of the opportunity to be heard on this new standard of care, and to lead relevant evidence on breach and causation. The Judge's findings in relation to this new standard of care thus amounted to a breach of the *audi alteram partem* rule and ought to be set aside.

(b) Second, the Judge erred in finding that during the Renovation Period, SSA had relinquished control over the whole of the Premises to Sport SG. Instead, SSA was, at all material times, in control of the Premises. In view of this element of control, SSA owed SRA a duty to maintain and supervise the condition of the Premises (including the Premises' water drainage infrastructure), and to adequately monitor, supervise and take necessary measures to ensure safety with regard to any alterations made to that infrastructure during the Renovation Period. SSA breached that duty in various ways, causing SRA's losses in the amount of $454,678.28.

(c) Third, even if the Judge did not err in her finding on control (see sub-para (b) above), she erred in holding that SSA's failure to make reasonable inquiries into the renovation works done on the Premises and to conduct checks on the Premises' water drainage capability after regaining control over the Premises on 1 December 2014 did not cause SRA's losses in the amount of $454,678.28.

(d) Fourth, the Judge erred in ordering SRA to pay SSA costs of $85,600, plus reasonable disbursements. If SRA succeeded in its appeal, it should be awarded the costs of both the appeal and the proceedings below; and even if SRA failed in its appeal, the costs order for the

proceedings below should still be varied, with SSA and SRA each being made to bear their own costs of those proceedings.

SSA's case

21 SSA disputed each of SRA's four main arguments and contended that the Judge's decision should be affirmed. SSA also raised two other arguments:

(a) First, there was an additional ground on which the Judge's decision could be affirmed – namely, that SSA had not breached its duty to maintain and supervise the condition of the Premises as it had made reasonable inquiries into and/or conducted reasonable checks on the Premises' water drainage capability after it regained control over the Premises on 1 December 2014.[5]

(b) Second, SRA had not proved the losses which it allegedly suffered as a result of the 1st Flood, and any damages which it might be awarded should be reduced accordingly.[6]

The applicable law

22 We begin by setting out the legal principles applicable to this appeal. In *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd and others* [2013] 3 SLR 284 ("*See Toh*"), we held that the law in Singapore on occupiers' liability could and should be subsumed under the tort of negligence, with the overarching framework set out in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*") for the imposition of a duty of care in negligence claims being applied to determine whether an occupier owed a duty of care to an entrant to his premises (see *See Toh* at [76]

5 Respondent's Case, paras 10 and 70–73.

6 Respondent's Case, paras 74–92.

per V K Rajah JA, at [127] *per* Sundaresh Menon CJ and at [144] *per* Chao Hick Tin JA (as he then was)).

23 The following observations of Rajah JA in *See Toh* (at [77]–[82]) bear reiterating:

> (a) The threshold factual test of reasonable foreseeability is "readily met" in the case of occupiers. It is "eminently foreseeable" that entrants will suffer damage if occupiers do not take reasonable care to eliminate danger, whether static or dynamic, on their premises.
>
> (b) The first stage of the *Spandeck* approach requires sufficient legal proximity between an entrant and an occupier so as to justify imposing a *prima facie* duty of care on the latter. Legal proximity embraces physical, circumstantial and causal proximity, and includes proximity arising from the voluntary assumption of responsibility and concomitant reliance. There is undoubtedly physical proximity between an occupier and an entrant merely by virtue of the fact that the entrant is physically situated on the occupier's property.
>
> (c) In so far as a ***lawful entrant*** (defined at [80] of *See Toh* as an entrant whose circumstances of entry to an occupier's premises "can be definitively said, on a balance of probabilities, to be lawful") is concerned, circumstantial proximity is "tautologically present" in the occupier-lawful entrant relationship because the hallmark of a lawful entrant's presence on an occupier's premises is the occupier's consent to the lawful entrant's presence. Thus, under the first stage of the *Spandeck* approach, the *vast majority* of occupiers having *control* of the property which they occupy and/or the activities carried out there **de jure *owe a* prima facie *duty of care to lawful entrants***. At the same

time, *not* all "occupiers" (in the generic non-technical sense of persons who occupy property, regardless of the extent of their control over the property and/or the activities carried out there) owe a *prima facie* duty of care to lawful entrants because some "occupiers" may have so little control over the property and/or the activities carried out there that, for all intents and purposes, they effectively do not have control over that property and/or those activities.

(d) In the case of a ***residual entrant*** (*ie*, an entrant whose circumstances of entry to an occupier's property "cannot be definitively said, on a balance of probabilities, to be lawful" (see *See Toh* at [82])), the court will go on to consider "whether the particular facts of the case … justify imposing a *prima facie* duty of care" under the first stage of the *Spandeck* approach. That is to say, instead of considering only whether or not the occupier concerned had control over the property and/or the activities carried out there so as to justify the *de jure* imposition of a *prima facie* duty of care on him, the court will consider *all* the factors relevant to the first stage of the *Spandeck* approach. The question is simply "whether a particular occupier ought to owe a particular entrant a *prima facie* duty of care" [emphasis in original omitted].

(e) In this regard, the lawful entrant/residual entrant dichotomy "is not a true classificatory dichotomy logically mandated by *Spandeck*, but is merely a convenient (shorthand) way of applying the *Spandeck* test to particular facts".

24 At this juncture, we highlight – as the Judge did at [22] of the GD – that in *See Toh*, Menon CJ preferred a different approach from Rajah JA. While

Menon CJ agreed that it might well be correct that in the "great majority" of cases, occupiers would *de jure* owe lawful entrants a *prima facie* duty of care as there would be sufficient legal proximity, he preferred to leave such a finding as "something to be worked out by reference to the specific facts that will arise on future occasions, rather than by articulating any legal rule or principle to this effect" (at [130]). In his view, there ought not to be a perceived rule of general application so as to generate a presumptive duty of care on the part of occupiers towards lawful entrants. Furthermore, Menon CJ did not think it was necessary or helpful to maintain a distinction between lawful entrants and residual entrants, given the flexibility that was inherent in the *Spandeck* approach (likewise at [130]).

25 In our view, the approaches of Rajah JA and Menon CJ are consistent in so far as they both espouse, to a large extent, a fact-sensitive analysis of whether there is a *prima facie* duty of care on the part of an occupier under the first stage of the *Spandeck* approach. Neither judge took the view that the mere fact that a person is an occupier with control over the property and/or the activities carried out there is ***necessarily*** *determinative* in this regard. Under Menon CJ's approach, a person's status as an occupier and his degree of control over the property and/or the activities carried out there are simply *factors* to be considered in the overall assessment of whether the requirement of legal proximity is satisfied. Under Rajah JA's approach, it is merely a *general rule* that circumstantial proximity will be tautologically present where these two factors exist. Rajah JA was careful to add the caveat that legal proximity and, hence, a *prima facie* duty of care would only be found in the "vast majority" of, but not all, cases involving lawful entrants (see [23(c)] above). Accordingly, in order for the court to be satisfied that any given case is *not* an exceptional outlier, the court would likely have to consider all the relevant facts and

circumstances of the particular case concerned. It would seem that, in effect, the practical difference between the two judges' approaches is more apparent than real.

26 Aside from establishing the existence of a duty of care, an entrant who seeks to hold an occupier liable in negligence for losses suffered on the occupier's property is also required to establish a ***breach*** of that duty. In this connection, an occupier is *not* to be viewed as the insurer of the safety of his property or that of an entrant to his property. Rather, the duty of care owed by an occupier is merely to ***exercise reasonable care*** *to eliminate danger on his property* (see *See Toh* at [80]). What constitutes "reasonable care" in a given context depends on the particular factual matrix concerned. It also bears mention that the occupier's duty to exercise reasonable care to eliminate danger on his property *presupposes* that the occupier actually knew or ought reasonably to have known of such danger.

27 Finally, the entrant is required to establish that the occupier's breach of his duty of care ***caused*** the losses complained of. The test here is whether it can be shown, on a balance of probabilities, that the entrant would not have suffered those losses "but for" the occupier's alleged negligent acts and/or omissions.

The issues for determination

28 In view of the legal principles which we have set out above, whether or not SSA should be held liable in negligence for the losses allegedly suffered by SRA arising from the 1st Flood would depend on the following issues:

(a) whether SSA owed SRA a duty of care, in the form of a duty to exercise reasonable care to eliminate danger on the Premises, during the Renovation Period;

(b) whether SSA breached its duty of care to SRA; and

(c) if so, whether SSA's breach of duty caused the losses that SRA complained of.

29 Having considered the evidence and the parties' submissions, we dismissed SRA's appeal and held that SSA was ***not liable*** in negligence in respect of the 1st Flood. However, our reasoning differed from that of the Judge – in our opinion, SSA could not be said to have *breached* any duty of care that it owed to SRA. Furthermore, SSA's actions did not *cause* the losses that SRA complained of.

30 Before addressing these points, we will first consider SRA's argument that the Judge, in coming to her decision on SRA's counterclaim in respect of the 1st Flood, departed from the parties' cases as set out in their pleadings (see [20(a)] above).

Whether the Judge departed from the parties' pleadings

31 The key question in this regard is whether the Judge departed from the parties' pleaded cases and decided SRA's counterclaim in respect of the 1st Flood on the basis of a standard of care that was neither raised nor contemplated by the parties. We noted that SSA, in its written case for this appeal, accepted that the Judge raised and considered "a fresh unargued claim in negligence based on an alleged failure to inquire and conduct checks of the Premises' [water] drainage capabilities after SSA regained control of the Premises on 1 December 2014".[7] In other words, SSA agreed with SRA that the Judge departed from the parties' pleaded cases.

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7 Respondent's Case, para 25.

32 While the Judge might indeed have gone beyond the parties' pleadings, it seemed to us that she did so only in order to take SRA's pleaded case to its logical conclusion, *ie*, to complete the picture. To better appreciate this, it is important to recall how SRA pleaded its case. The underlying premise of SRA's case was simply that SSA was the occupier of the Premises and had control over the Premises *at all material times*. SRA's pleadings did not distinguish between: (a) the Renovation Period; and (b) the period of time thereafter. As it turned out, the Judge found that SSA had surrendered control over the Premises to Sport SG for the duration of the Renovation Period so as to enable the renovation works in preparation for the 2015 SEA Games to be carried out. Those renovation works included the construction of the embankment between Culverts B and C where the Landslip which was the main cause of the 1st Flood occurred. As the Judge found that SSA did not have control over the Premises during the Renovation Period, she accordingly held that it had not breached any duty of care in relation to the poor construction of that embankment and the failure to comply with the PUB Code in that regard (at [42] of the GD; see also [15(c)] above). This prompted the Judge to *go further* to consider whether SSA, after regaining control over the Premises on 1 December 2014, might nonetheless have owed a duty to monitor and supervise the condition of the Premises as well as ensure the safety of the Premises, and if so, what the precise scope or extent of that duty was and whether SSA breached that duty. It was in this context that the Judge found that SSA's duty of care after the end of the Renovation Period encompassed a duty to make reasonable inquiries to satisfy itself of the scope and soundness of the renovation works that Sport SG had effected to the Premises, and that SSA breached this duty by failing to make the necessary inquiries (at [43]–[47] of the GD). Therefore, this part of the Judge's analysis was to the advantage of SRA rather than to its detriment – it was the best possible case that could have been made for SRA based on its pleadings in the

light of the Judge's finding that SSA had surrendered control of the Premises to Sport SG during the Renovation Period.

33 That said, as both parties were in agreement that the Judge went beyond the parties' pleadings in ruling that SSA breached its duty of care to SRA by failing, after regaining control over the Premises on 1 December 2014, to make reasonable inquiries into the scope and soundness of the renovation works carried on the Premises, we did not think it necessary, for the purposes of this appeal, to consider the correctness of this ruling. It followed that it was also not necessary for us to consider SRA's argument that the Judge erred in holding that such breach did not cause its alleged losses arising from the 1st Flood (*ie*, the argument mentioned at [20(c)] above).

Whether SSA owed a duty of care to SRA during the Renovation Period

34 We turn now to the first of the issues set out at [28] above: whether SSA owed a duty of care to SRA during the Renovation Period (see [28(a)] above). We focused on this particular period of time in our analysis because both parties agreed (and the Judge held) that the main cause of the 1st Flood was the Landslip due to the slope failure at the embankment between Culverts B and C, and that embankment was constructed during this period. The key factual issue to be resolved was whether SSA had *control* over the Premises during this period. This inquiry is relevant to – but, we reiterate, not determinative of – whether SSA owed a duty of care to SRA then.

35 SRA submitted that the Judge erred in finding that it was Sport SG, and not SSA, which had control over the Premises during the Renovation Period. SRA's position was that ***SSA*** had retained full control over the *whole* of the

Premises *at all material times*. In support of its contention, SRA relied on the following evidence:

(a) a letter from Sport SG to SRA dated 23 January 2017 ("the 23 January Letter"),[8] stating that Sport SG "had **not** requested that SSA surrender to [Sport SG] the whole of the Premises (save for the [SSA] building) to allow [Sport SG] to carry out refurbishment and renovation works in preparation for the 2015 SEA Games" [emphasis in original];[9] and

(b) the evidence of Mr Lenard Pattiselanno ("Mr Pattiselanno"), a representative of Sport SG who was subpoenaed by SRA to give evidence, that Sport SG had not taken over and effected renovation works at the embankment between Culverts B and C where the Landslip occurred. In this connection, SRA submitted that Mr Pattiselanno was a credible witness whose evidence was accurate and complete.[10]

36 Another main plank of SRA's case was that whoever controlled *physical access* to the Premises had control over the Premises as a whole, and there was evidence that it was SSA which controlled physical access in this regard. Here, SRA relied on the evidence of Mr Michael Vaz, the President of SSA, that SSA was in control of the gate to the Premises during the Renovation Period. This was consistent with Mr Pattiselanno's evidence.[11] SRA argued that since SSA retained at all material times the authority to grant persons and vehicles physical

8 Core Bundle Vol II, pp 62–64.

9 Appellant's Case, paras 68–71.

10 Appellant's Case, paras 72–75.

11 Appellant's Case, paras 77–78.

access to the Premises, the "irresistible inference" must be that Sport SG never took over control of the whole of the Premises.[12]

37 Finally, SRA argued that if there had indeed been a change in who had control over the Premises, a licensee like itself could not have been kept in the dark about the change. Yet, no evidence was led by SSA to show that it had given any notification that it was relinquishing control over the Premises to Sport SG for a period of time.[13] This meant that it must have been the case that there was no change in SSA's control over the Premises.

38 In contrast, SSA's position was that it had surrendered control over the whole of the Premises (except for the NSC main building) to Sport SG during the Renovation Period. SSA reiterated the factors relied on by the Judge (summarised at [15(b)] above),[14] and also underscored in particular the following documents:

(a) the 30 October Handover Letter (referred to at [6] above);

(b) the emails exchanged between Sport SG and HCJ in or around December 2013 and January 2014 ("the Email Chain"),[15] which showed that Sport SG made a decision, upon HCJ's suggestion, to backfill and upgrade the unlined drain up to at least Culvert B, an area that fell outside the areas of the Premises covered by the renovation works originally contemplated; and

(c) the 1 December Handover Form (referred to at [7] above).

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12 Appellant's Case, para 76.

13 Appellant's Case, para 80.

14 Respondent's Case, paras 30–32.

15 Respondent's Supplemental Core Bundle, pp 23–30.

39 SSA argued that even if the original intention (*ie*, as at 30 October 2013) was for only *part* of the Premises to be handed over to Sport SG, there was no evidence that Sport SG had asked SSA to hand over an *additional* part of the Premises in or around December 2013 and January 2014 when Sport SG decided that HCJ should carry out additional (*ie*, previously unplanned) works at the unlined drain (as documented in the Email Chain).[16] The implication here was that right from the commencement of the Renovation Period, control over the *whole* of the Premises (save for the NSC main building) had effectively been handed over to Sport SG.

40 As for SRA's argument that SSA had control over the Premises because it controlled physical access to the Premises, SSA's counter-argument was as follows:

(a) The mere fact that SSA controlled physical access to the Premises and that SSA's general manager kept the keys to the gate to the Premises did not necessarily mean that SSA had the requisite level of control over the Premises for the purposes of establishing liability for the alleged negligent works done at the unlined drain.[17] SSA cited *See Toh* at [80] for the proposition that an occupier might have "so little control over the property and/or the activities carried out there that for all intents and purposes, he effectively does not have control over that property and/or those activities".

(b) Further, besides SSA, the two resident clubs at the Premises (*ie*, SRA and the Singapore Gun Club) also had keys to the gate to the Premises.[18] SRA's argument would mean that all three entities had

16 Respondent's Case, para 37.

17 Respondent's Case, para 43.

> control over the Premises simply because they controlled physical access to the Premises. It might well have been the case that SSA had been instructed by Sport SG as to who was to be allowed into the Premises during the Renovation Period.[19] Thus, in manning the gates to the Premises, SSA would merely have been acting as an agent for Sport SG.

41 Having considered the parties' submissions as outlined above, we concluded that the Judge could not be said to have erred in finding that SSA had relinquished control over the whole of the Premises to Sport SG during the Renovation Period. Our reasons are as follows.

42 In so far as SRA's contention that SSA had full control over the whole of the Premises by virtue of having control over physical access to the Premises is concerned (see [36] above), this submission must be rejected because the two concepts – control over physical access to a property, and control over the property itself and/or the activities carried out there – cannot be equated. The mere fact that a person has control over which third parties may enter a property does not necessarily indicate that he has control over the property itself and/or the activities which third parties may carry out there. To hold otherwise would be akin to saying that a gatekeeper has control over what happens within the whole of the property. In law, merely establishing SSA's control over physical access to the Premises does not necessarily mean that SSA should be taken as having the requisite level of control over the Premises and/or the activities carried out there for the purposes of establishing liability for the alleged negligent acts that occurred there. Instead, all the circumstances of this case have to be taken into account as well. It should further be pointed out that the

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18 Respondent's Case, para 45.

19 Respondent's Case, para 47.

alleged negligence on SSA's part, as set out in SRA's pleadings, related only to the design, construction and/or maintenance of the Premises' water drainage infrastructure, including the unlined drain and the embankment between Culverts B and C where the Landslip occurred. These were all matters that were entirely unrelated to SSA's control over physical access to the Premises.

43 Moreover, even if control over physical access to the Premises were relevant to the issue of the extent of SSA's control over the Premises and the activities carried out there during the Renovation Period, there were further difficulties with SRA's submission. First, it was not clear whether SSA truly had full control over physical access to the Premises in the sense of being able to exercise independent judgment as to which third parties were to be allowed to enter the Premises, or whether SSA had merely been operating under Sport SG's instructions in that regard. Second, even if SSA did have full control over physical access to the Premises, it seemed that such control was not exclusive to SSA. As mentioned earlier (at [40(b)] above), aside from SSA, two other resident clubs, one of which was SRA itself, had their own sets of keys to the gate securing the Premises. Taking SRA's submission to its logical end, this would mean that three different entities had control over physical access to the Premises, and thus could be said to have had control over the whole of the Premises and the activities carried out there during the Renovation Period. Such a conclusion would not square with reality. Furthermore, from a legal perspective, there would be difficulties in attributing liability for the alleged negligent acts that occurred on the Premises during the Renovation Period to SSA specifically (out of the three entities which had control over the Premises then) merely because a lawful entrant (namely, SRA) had suffered losses arising from those acts. For these reasons, we rejected SRA's submission that SSA had

full control over the whole of the Premises simply by virtue of the fact that it controlled physical access to the Premises.

44 We turn next to SRA's primary submission: that SSA had retained full control over the whole of the Premises at all material times, including during the Renovation Period (see [35] above). In our judgment, this submission was plainly incorrect and unsustainable. It was clear on the face of the objective documentary evidence, in the form of the 30 October Handover Letter and the 1 December Handover Form, that control over *at least* the 25m and 50m shooting ranges as well as the skeet and trap range on the Premises had been handed over to Sport SG in order for HCJ to carry out the renovation works in preparation for the 2015 SEA Games (see [6]–[7] above). In other words, it was indisputable that SSA had given up control over at least *some parts* of the Premises during the Renovation Period. Therefore, contrary to SRA's submission, SSA could not have retained full control over the *whole* of the Premises at all material times.

45 That having been said, the documentary evidence admittedly did not provide a clear picture of exactly *which* parts of the Premises had been handed over by SSA to Sport SG in order for HCJ to carry out the renovation works. We highlight the gaps in the documentary evidence in this regard:

(a) The 30 October Handover Letter referred only to "[p]roposed expansion works including additions and alteration works" (see [6] above), but omitted to specify what those works entailed and which areas of the Premises they covered.

(b) The 1 December Handover Form provided slightly more details in that its title mentioned "[a]ddition and [a]lteration to existing 25m range, 50m range and Skeet & Trap range and proposed new

erection of 25m range and Administration [O]ffice" (see [7] above). However, this title could not have been a comprehensive list of the areas of the Premises where Sport SG had authorised HCJ to carry out renovation works. This was because the Email Chain (referred to at [38(b)] above) showed that in or around December 2013 and January 2014, Sport SG decided that backfilling and upgrading works should be carried out at the unlined drain up to at least Culvert B, and that area fell outside the areas of the Premises mentioned in the title of the 1 December Handover Form. For completeness, we should point out that there was also, appended to this form, a list which referred to various parts of the Premises where HCJ had carried out renovation works. In our view, that list merely reflected those parts of the Premises where certain designated follow-up works were required; there was no indication that it was intended to comprehensively list the areas of the Premises where HCJ had carried out renovation works.

(c) In the 23 January Letter (referred to at [35(a)] above), Sport SG confirmed, in response to a query from SRA, that it had authorised "range-related addition and alteration (A&A) works … limited to the existing 25M and 50M ranges, the upgrading of the said unlined earth drain between the existing 25M and 50M ranges and construction works for the new 25M range".[20] Again, it was clear that the renovation works mentioned in this letter could not have been a comprehensive list of the works that HCJ had carried out on the Premises and, thus, the areas of the Premises which SSA had handed over to Sport SG in order for the renovation works in preparation for the 2015 SEA Games to be done. This was because the letter omitted to mention that backfilling and

[20] Core Bundle Vol II, p 63.

> upgrading works had been carried out at the unlined drain up to at least Culvert B (to be clear, this unlined drain is the one defined at [5] above, and is *different* from "the said unlined earth drain between the existing 25M and 50M ranges" mentioned in the 23 January Letter).

46 The major contributing factor for the lack of clarity over which parts of the Premises had been handed over to Sport SG in order for HCJ to carry out renovation works was alluded to earlier at [6] above – namely, the fact that the contract between Sport SG and HCJ was not adduced in evidence. By way of background, after SRA issued a subpoena to Mr Pattiselanno, SSA wrote to him the day before he was due to testify in court, requesting him to bring along (among other documents) the contract between Sport SG and HCJ. When Mr Pattiselanno came to court to give evidence on 14 February 2017, he informed the court that he required more time to retrieve the documents requested by SSA, and consequently, he was released from testifying that day. Later, there was an exchange of correspondence between the parties' counsel, in the course of which the Email Chain was surfaced. When Mr Pattiselanno returned to court to testify on 21 February 2017, the Email Chain (among other documents) was admitted into evidence, but the actual contract entered into between Sport SG and HCJ remained undisclosed at all times. Thus, the Email Chain and the three documents listed at [45] above were the only available documentary evidence which could shed light on the scope of the renovation works done by HCJ and, hence, the parts of the Premises which had been handed over by SSA to Sport SG in order for those works to be done.

47 Be that as it may, even taking into account this evidential shortcoming, it could not be said that the Judge erred in concluding that SSA had given up control over the whole of the Premises to Sport SG during the Renovation Period. First, as we have mentioned, there was objective documentary evidence,

in the form of the 30 October Handover Letter and the 1 December Handover Form, which indicated that SSA had surrendered control of at least some parts of the Premises to Sport SG (see [44]–[45] above). Second, as the Judge noted (at [41] of the GD; see also [15(b)] above), Sport SG appeared to have been operating on the understanding that it had the authority or permission to carry out or extend the renovation works to any part of the Premises as was necessary during the Renovation Period. This was evidenced by the Email Chain, which showed that in or around December 2013 and January 2014, Sport SG took the decision to authorise HCJ to carry out backfilling and upgrading works at the unlined drain up to at least Culvert B (see [38(b)] above) even though that area fell *outside* the areas of the Premises covered by the renovation works mentioned in the 1 December Handover Form and the 23 January Letter (see [38(b)] and [45(b)] above). There was no evidence that Sport SG had communicated with SSA or asked SSA to hand over an additional part of the Premises in connection with the decision to effect the aforesaid backfilling and upgrading works. On balance, we agreed with the Judge that the conclusion to be drawn from the available evidence was that Sport SG in effect had control over the whole of the Premises for the entire duration of the Renovation Period.

48 Before leaving the issue of SSA's control over the Premises during the Renovation Period, we address, for completeness, SRA's submission that being a licensee, it should have been notified by SSA if there had indeed been a change in who had control over the Premises, and since there was no evidence of any such notification by SSA, it must have been the case that there was no change in this regard (see [37] above). In our view, this submission was unmeritorious. Suffice it to say that whether notification has been given to a licensee or a lawful entrant of a change in who has control over the property is an entirely different issue from whether, as a matter of fact, there has been a change in who has

control. If a change in the person or entity having control has indeed occurred, any omission to notify a licensee or a lawful entrant of the same cannot and does not affect the fact of the change.

49 Having answered the factual question of whether SSA had control over the Premises during the Renovation Period in the negative, we turn now to the legal question of whether SSA owed a duty of care to SRA during that period. The relevant legal principles in this regard are those enunciated in *See Toh* and set out at [22]–[25] above.

50 In our opinion, regardless of whether Rajah JA's approach or Menon CJ's approach in *See Toh* is adopted, the conclusion must be that SSA *did not* owe a duty of care to SRA during the Renovation Period. The fact that SSA had given up control over the Premises to its landlord, Sport SG, during that period negated or at least strongly militated against any finding of physical and/or circumstantial proximity between SSA and SRA. Again, we emphasise that whether a person is an occupier who has control over a property and/or the activities carried out there is ***not*** *necessarily determinative* of whether that person owes a duty of care to an entrant to the property (see [25] above). We also underscore, for the purposes of this appeal, that the question of control over the Premises was central to SRA's case – SRA's contention was that because SSA was in control of the whole of the Premises at all material times including during the Renovation Period, SSA owed SRA a duty to maintain and supervise (among other things) the condition of the Premises' water drainage infrastructure in compliance with the PUB Code, and to adequately monitor, supervise and take necessary measures to ensure safety with regard to any alterations to that infrastructure. Control by SSA over the Premises during the Renovation Period not having been proved, SRA's counterclaim in respect of the 1st Flood must fail.

51 In addition, on the facts, neither causal proximity nor any voluntary assumption of responsibility by SSA and concomitant reliance by SRA was established. It will be recalled that the main cause of the 1st Flood was the Landslip due to the slope failure at the embankment between Culverts B and C. That slope failure was ultimately due to the poor design and/or poor construction of the embankment and/or the unlined drain (as counsel for SRA acknowledged at the hearing before us). There was no evidence that SSA was responsible for the design and/or construction work in this regard, or that it had engaged HCJ to carry out the same. Further, it was undisputed that the sole contractor present on the Premises at the time of the construction of the embankment between Culverts B and C was HCJ, which had been engaged by Sport SG and not SSA. We also bore in mind that pursuant to cl 5.12 of the Master Lease, SSA could not have carried out any alteration works on the Premises without Sport SG's prior written consent. In the circumstances, we agreed with the Judge's conclusion that SSA had not authorised, proposed or contracted for the construction of any new water drainage infrastructure on the Premises, including the construction of the embankment between Culverts B and C, in the period leading up to the 1st Flood (see [40] of the GD, as well as [15(b)] above). Accordingly, we did not see how it could be said that there was any causal proximity between SSA's actions and the slope failure at the aforesaid embankment which led to the Landslip and, in turn, the 1st Flood and SRA's alleged losses arising from that flood.

52 At this juncture, we revisit a point that we briefly touched on earlier at [14] above. This relates to the Judge's view that the cause of the 1st Flood was the *static* condition of the Premises at the time of that flood, as opposed to any *dynamic* activities or risky operations being carried out on the Premises by a third party; thus, since SSA had control over the Premises at the time of the 1st

Flood, it could not deny that it owed SRA a duty of care even though it had not constructed the embankment between Culverts B and C where the Landslip occurred and was not in control of the Premises when that embankment was constructed. We make two observations in this regard.

53 First, the Judge's reference to the static-dynamic dichotomy is, with respect, inconsistent with the fact that since our decision in *See Toh*, the law on occupiers' liability (which are rules pertaining to the *static* condition of property) has been subsumed under the tort of negligence (which are rules pertaining to *dynamic* activities carried out on property). More critically, it appears to ignore the fact that the static-dynamic classification has been criticised as being illogical and "an intractable Gordian knot" in so far as it is not always possible to classify a particular factual matrix solely under either one category or the other (see *See Toh* at [41]–[46]).

54 Second, while we agreed with the Judge's conclusion that SSA could not deny owing a duty of care to SRA *after* it regained control of the Premises on 1 December 2014, we must respectfully express our disagreement with any suggestion that there was a sufficient causal connection between the works carried out at the unlined drain (among other parts of the Premises) during the Renovation Period while SSA was *not* in control of the Premises, and the 1st Flood that occurred on 24 December 2014 after SSA had regained control of the Premises, so as to found a duty of care on SSA's part towards SRA. It is important to bear in mind that the renovation works carried out on the Premises, including the works at the unlined drain, were undertaken by a third party, HCJ, on the authorisation and instructions of SSA's landlord, Sport SG. Simply put, we could not see how SSA's apparent omission to rectify defects in the renovation works done by HCJ, over which SSA had no direct control or oversight, could be said to have "caused" the losses allegedly suffered by SRA

as a result of the 1st Flood, especially in the absence of any evidence that SSA actually *knew* or *ought reasonably to have known* about those defects. This is consistent with our earlier conclusion that there was no causal proximity between SSA's actions and SRA's alleged losses as a result of the 1st Flood (see [51] above).

55 For the foregoing reasons, we were of the view that legal proximity between SSA and SRA under the first stage of the *Spandeck* approach was not established. Therefore, SSA did not owe a duty of care to SRA during the Renovation Period.

Whether SSA breached its duty of care to SRA

56 In the light of our finding that SSA did not owe a duty of care to SRA during the Renovation Period, the second issue of whether SSA *breached* its duty of care to SRA during that period (see [28(b)] above) is moot. For completeness, however, we will consider two further scenarios: (a) first, *assuming*, for SRA's benefit, that SSA *was* in control of the Premises during the Renovation Period and therefore *did* owe a duty of care towards SRA, whether SSA breached that duty; and (b) second, whether SSA breached its duty of care to SRA during the period *after* it regained control over the Premises on 1 December 2014.

57 In considering the first scenario, it is important to define the exact scope of the duty of care that SSA would have owed to SRA during the Renovation Period ***if*** SSA had been in control of the Premises then. As mentioned earlier, an occupier is not to be viewed as the insurer of the safety of his property or that of an entrant to his property. Accordingly, SSA's duty would only have been to exercise reasonable care to eliminate any danger on the Premises that it actually

knew or ought reasonably to have known of (see [26] above). Further, if SSA had hired a third-party contractor (such as HCJ) to carry out any works on the Premises, its duty of care in that regard would only have encompassed taking reasonable steps to engage a competent contractor. In that scenario, SSA's duty would *not* have extended to personally supervising or checking the quality of the contractor's work – this would simply have been impractical and unrealistic in the light of, among other factors, SSA's lack of technical expertise in building and construction matters.

58 On the facts, it was Sport SG, and not SSA, which had engaged HCJ to carry out the renovation works on the Premises in preparation for the 2015 SEA Games. Thus, the relevant question was simply whether SSA had exercised reasonable care to eliminate any danger on the Premises during the Renovation Period. In this respect, there was no evidence that SSA was involved in the design and/or construction of the unlined drain and/or the embankment between Culverts B and C where the Landslip occurred, had control or oversight of the renovation works carried out by HCJ, or otherwise actually knew or ought reasonably to have known about the poor design and/or poor construction of the unlined drain and/or the embankment between Culverts B and C while the works at the unlined drain were being carried out. Thus, as far as SSA was concerned, there was no danger on the Premises during the Renovation Period which it had to take reasonable steps to eliminate. Accordingly, SSA's omission to take steps to rectify the defects in the works carried out by HCJ at the unlined drain, including the construction of the embankment between Culverts B and C (which defects eventually, as a matter of fact, led to the slope failure at the embankment that caused the Landslip and, in turn, the 1st Flood and SRA's alleged losses arising from that flood), would *not* have amounted to a breach of SSA's duty of care to SRA. SSA could not be held liable in negligence for the

poor design and/or poor construction of the unlined drain and/or the embankment between Culverts B and C when such liability could only be imposed (if at all) on the party who was responsible for, and/or who had control or oversight of the same.

59 We turn now to the second scenario set out at [56] above, which proceeds on the basis that SSA was *not* in control of the Premises during the Renovation Period, and only regained control over the Premises on 1 December 2014. On appeal, SSA accepted that it owed a duty of care to SRA to take reasonable care of the Premises so as to avoid causing harm to SRA at the time of the 1st Flood.[21] Thus, the only question was whether SSA had *breached* that duty. To be clear, our analysis of this question proceeds on the basis that SSA's duty of care after it regained control over the Premises on 1 December 2014 was simply a duty to take reasonable care to eliminate any danger on the Premises that it actually knew or ought reasonably to have known about, and (contrary to what the Judge held) *did not* extend to include a duty to (among other things) conduct checks on the Premises' water drainage capability after the renovation works at the unlined drain, since it was common ground between both parties that the latter duty went beyond their pleaded cases (see [31]–[33] above).

60 Having regard to the fact that SSA played no part in engaging or instructing HCJ to carry out the renovation works on the Premises, including the works at the unlined drain and the construction of the embankment between Culverts B and C, the only way in which SSA could be held liable in negligence for the losses allegedly suffered by SRA as a result of the 1st Flood would be if SRA proved that SSA *actually knew or ought reasonably to have known* about the poor design and/or poor construction of the unlined drain and/or the

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21 Respondent's Case, para 19.

aforesaid embankment, but failed to take reasonable steps to eliminate the danger arising therefrom. There was, however, no evidence that SRA *actually knew* of this danger. There was also, in our view, no reason or basis to conclude that SSA *ought reasonably to have known* of this danger. It is important to bear in mind that Sport SG was not only SSA's landlord, but also the one which had engaged and instructed HCJ to carry out (among other renovation works on the Premises) the works at the unlined drain, and therefore had direct control and supervision of the same. Against this backdrop, it is both unrealistic and impractical to expect SSA to have queried or inspected the works carried out by the contractor that its own landlord had authorised and instructed. This would be so even if, as counsel for SRA submitted, it was the norm for SSA's management team to "walk the ground" at the Premises, and if they had done so, they might have noticed that works at the unlined drain, including the construction of the embankment between Culverts B and C, had been carried out. In our view, SSA was entitled to assume that Sport SG would have discharged its duty of care to engage a competent contractor to carry out those works. We also agreed with the Judge that it was reasonable for SSA to rely on Sport SG to ensure that the Premises' water drainage infrastructure had been designed and constructed in accordance with all applicable regulations and with proper advice, and that all the alterations made to that infrastructure during the Renovation Period were structurally safe and adequate (see [42] of the GD, as well as [15(d)] above).

61 Accordingly, on any analysis, SSA could not be said to have breached any duty of care that it owed to SRA. SRA's counterclaim in negligence in respect of the 1st Flood was unsustainable, and we thus dismissed SRA's appeal.

Whether SSA's breach of duty caused the losses which SRA complained of

62 Even assuming in SRA's favour that SSA did somehow breach a duty of care that it owed to SRA, thus giving rise to the need to consider the third issue mentioned at [28(c)] above, we were of the view that the losses which SRA complained of could not be said to have been caused by any of SSA's acts and/or omissions.

63 As mentioned earlier, SRA accepted that the main cause of the 1st Flood was the Landslip at the embankment between Culverts B and C. That landslip was triggered by the slope failure at the embankment due to the poor design and/or poor construction of the embankment and/or the unlined drain. In view of this, the mere fact that the 1st Flood occurred at a point in time when SSA had already regained control over the Premises was in itself clearly insufficient to satisfy the element of causation for the purposes of establishing liability in negligence on SSA's part. Instead, there must be a causal link between the poor design and/or poor construction of the unlined drain and/or the embankment between Culverts B and C, and SSA's acts and/or omissions. At the risk of repetition, given that: (a) it was Sport SG which had hired HCJ to carry out (among other renovation works on the Premises) the works at the unlined drain; (b) SSA was not involved in designing and/or constructing the unlined drain and/or the embankment between Culverts B and C; (c) SSA did not and could not be expected to have had any control or oversight of the works done by HCJ; and (d) even after regaining control of the Premises, SSA did not actually know and could not reasonably have been expected to know of the defects in the design and/or construction of the unlined drain and/or the embankment between Culverts B and C, we did not see how or why SSA could be held liable for the defects that led to the Landslip and, in turn, the 1st Flood and SRA's alleged losses arising from that flood.

64 Accordingly, we found that SSA could not be said to have caused the alleged losses suffered by SRA as a result of the 1st Flood. This was itself an independent ground for dismissing SRA's appeal.

65 For completeness, before leaving the issue of causation, we briefly address SRA's argument based on SSA's alleged indiscriminate dumping of earth fill material and debris on the Premises, which we alluded to earlier (at [8] above). In our view, this argument was irrelevant for two reasons: (a) first, the Judge had found that such dumping was *not* causative of the 1st Flood, and this finding was not challenged on appeal; and (b) second, in any event, the evidence did not conclusively establish that it was SSA which was responsible for such dumping (see [35] of the GD).

The costs of the proceedings below

66 Finally, we come to SRA's appeal against the costs order made by the Judge. To recapitulate, SRA argued that if it succeeded in this appeal, it should be awarded both the costs of the appeal and the costs of the proceedings below; and even if it failed in the appeal, the costs order made by the Judge should still be varied, with SSA and SRA each being made to bear their own costs of the proceedings below (see [20(d)] above). Given that we dismissed SRA's appeal, we only had to consider the latter argument by SRA. In this regard, we were of the view that since we had affirmed the Judge's main holding that SSA was not liable to SRA for its alleged losses arising from the 1st Flood, which losses formed the bulk of SRA's counterclaim against SSA, there was no good reason to disturb the Judge's order that SRA pay SSA the costs of the proceedings below fixed at $85,600, plus reasonable disbursements.

Conclusion

67 For the foregoing reasons, we dismissed SRA's appeal and ordered that SRA pay SSA the costs of this appeal fixed at $30,000, inclusive of disbursements. We also made the usual consequential orders.

68 This was a case where the outcome seemed to have left something to be desired. We were well aware that dismissing SRA's appeal would leave it without recourse (at least for now) in respect of the alleged losses that it suffered as a result of the 1st Flood. As counsel submitted, SRA was, in this sense, an innocent victim of the circumstances. However, so was SSA, whose actions were neither in breach of any duty that it owed to SRA nor the cause of the losses suffered by SRA. SRA was left without a remedy because of the way the case proceeded.

69 We would emphasise that SRA itself made the decision to pursue its claim for the losses arising from the two floods against SSA in particular, out of the various entities involved. As things transpired, the evidence adduced at the trial was insufficient to sustain the allegations which SRA made against SSA where the 1st Flood was concerned. There are rules and procedures which can assist a potential plaintiff in identifying the potential defendant(s) whom it may sue and formulating the cause(s) of action which it may pursue. These include, for instance, pre-action discovery and interrogatories. If, despite the availability of these rules and procedures, a plaintiff chooses to sue only a particular defendant but the available evidence is insufficient to make out the plaintiff's case against that defendant, the plaintiff must accept the consequences of its decision. The present case was one such instance where, for reasons best known to itself, SRA chose not to pursue other potential defendant(s).

Sundaresh Menon	Tay Yong Kwang	Chao Hick Tin
Chief Justice	Judge of Appeal	Senior Judge

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for the respondent.

Annex