IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 91

Magistrate's Appeal No 14 of 2017

Between

Soil Investigation Pte Ltd

… *Appellant*

And

Public Prosecutor

… *Respondent*

JUDGMENT

[Criminal Law] — [Statutory Offences] — [Public Utilities Act]
[Statutory Interpretation] — [Construction of Statute]

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Soil Investigation Pte Ltd
v
Public Prosecutor

[2018] SGHC 91

High Court — Magistrate's Appeal No 14 of 2017
Aedit Abdullah J
22 January 2018;

19 April 2018 Judgment reserved.

Aedit Abdullah J:

Introduction

1 Soil Investigation Pte Ltd ("the Appellant") is a company incorporated in Singapore under the Companies Act (Cap 50, 2006 Rev Ed). This appeal (Magistrate's Appeal No 14 of 2017) is the Appellant's appeal against conviction for causing damage to a water main under s 47A(1)(*b*), read with s 56A of the Public Utilities Act (Cap 261, 2002 Rev Ed) ("the Act"). In this case, the damage to the water main arose in the course of drilling works carried out by a subcontractor engaged by the Appellant. The main issue in this appeal is whether a main contractor can be held liable for a s 47A(1)(*b*) offence committed by a subcontractor, by virtue of s 56A of the Act which extends criminal liability to persons other than the primary offender ("secondary liability").

2 After considering the submissions of the parties, I am of the view that the Appellant is not liable under s 56A and that the appeal should be allowed.

Facts

3 The Appellant was awarded a contract ("the main contract") by the Public Utilities Board ("PUB") to carry out soil investigation works for the Deep Tunnel Sewerage System Phase 2 project ("the DTSS Project").[1] The purpose of the soil investigation works was to provide data from boreholes to interpret the ground conditions in the areas where tunnels were to be constructed.[2] The Appellant was responsible for among others, setting out the borehole locations and carrying out underground detection services.[3] The Appellant subcontracted some parts of the works for the DTSS Project, including the drilling in soils, to Geotechnical Instrumentation Services ("GIS").[4]

4 On 15 March 2015, GIS commenced drilling works at the location of a borehole. At 6.5m depth from ground level, the driller from GIS, one Parvez Masud, encountered an obstruction and stopped drilling. When Parvez Masud drilled to 6.7m deep at the offset location (600mm from the borehole) the following day, he again encountered an obstruction and water started to gush out.[5] Investigations revealed that a 900mm in diameter NEWater main belonging to PUB ("the Water Main") had been damaged.

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1 Appellant's submissions dated 12 January 2018 ("Appellant Submissions") at para 3; Prosecution's submissions dated 12 January 2018 ("Prosecution Submissions") at para 8.

2 Record of Proceedings ("RP"), Volume 1 at p 397.

3 RP, Volume 1 at p 397-442;

4 RP, Volume 1 at p 446; Appellant Submissions at para 3; Prosecution Submissions at para 9.

5 RP, Volume 1 at pp 107-109.

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5 The Appellant claimed trial to the following charge ("the charge"): [6]

> You…are charged that you, on or about 16 March 2015, did cause to be damaged a water main belonging to the Public Utilities Board, to wit, one S Gam Shawng and one Pervez Masud who were subject to your instruction for the purpose of employment to carry out drilling works at the construction site located near to lamppost 96 Pioneer Road, Singapore, without determining the exact alignment and depth of one 900 mm in diameter NEWater main before commencement of the said works, and you have thereby committed an offence punishable under section 47A(1)(b) read with section 56A of the Public Utilities Act, Chapter 261.

The proceedings below

6 In dispute at trial was whether the Appellant could be liable under s 56A of the Act, for an act committed by its subcontractor in breach of s 47A. Section 47A(1)(*b*) of the Act reads:

> **Damage to water mains and installations, etc.**
>
> **47A**—(1)Any person who, whether wilfully or otherwise, removes, destroys or damages or causes or permits to be removed, destroyed or damaged, any water main belonging to or under the management or control of the Board, shall be guilty of an offence and shall be liable on conviction —
>
> …
>
> (*b*) if the water main is 300 mm or more in diameter, to a fine not exceeding $200,000 or to imprisonment for a term not exceeding 3 years or to both.

7 Section 56A of the Act reads:

> **Liability for offence committed by agent or employee**
>
> **56A**. Where an offence under this Act is committed by any person acting as an agent or employee of another person, or being otherwise subject to the supervision or instruction of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable for that offence in the same manner and to the

[6] RP, Volume 1 at p 9.

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> same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance and that it was not attributable to any neglect on his part.

8 At trial, the Appellant argued that it was not liable under s 56A of the Act. It submitted that s 56A extends liability only to principals and employers and that the Appellant, being neither a principal nor employer of GIS was not liable under s 56A.[7] In addition, even if a main contractor could be liable under s 56A of the Act for an offence committed by its subcontractor, the charge was not made out against the Appellant as the statutory defence was applicable since the offence was committed by GIS without the consent or connivance of the Appellant, and the offence was not attributable to the Appellant's neglect.[8] The Appellant also argued that the independent contractor defence was applicable, *ie*, that it was not liable because GIS was an independent contractor ("the Independent Contractor Defence").[9]

9 The Prosecution submitted on the other hand that s 56A comprises three limbs and renders an accused liable under any of the following three scenarios: (i) where its agent commits an offence; (ii) where its employee commits an offence; or (iii) where a person subject to its supervision or instruction for the purpose of any employment commits an offence. The Prosecution accepted that GIS was neither an agent nor an employee of the Appellant. It submitted that the third limb was applicable in the present case, *ie*, that GIS was "being otherwise subject to the supervision or instruction of [the Appellant] for the purposes of any employment".[10] The Prosecution further argued that the Appellant had not made out the statutory defence as the damage to the Water

7 RP, Volume 2 at pp 165-170.

8 RP, Volume 2 at pp 192-207.

9 RP, Volume 2 at pp 170-192.

10 RP, Volume 2 at pp 110, 498-502.

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Main was attributable to neglect on its part.[11]

10 The district judge ("the District Judge") convicted the Appellant of the charge and sentenced the Appellant to pay a fine of $50,000. The District Judge's Grounds of Decision are provided in *Public Prosecutor v Soil Investigation Pte Ltd* [2017] SGDC 249 ("the GD").

11 In convicting the Appellant, the District Judge found that:

(a) A main contractor can be held liable for the acts of its subcontractor under s 56A of the Act. The classes of individuals secondarily liable under s 56A are not limited to only principals and employers. In using the phrase "being otherwise subject to the supervision or instruction of [the defendant] for the purposes of any employment", Parliament was referring to, among others, offences committed by a subcontractor whom the defendant had supervised or instructed.[12] Such an interpretation of s 56A was aligned with the purpose and object of the statute.[13]

(b) GIS was a subcontractor engaged by the Appellant to carry out drilling works. GIS took instructions from the Appellant on when and where to drill and how deep to drill. GIS also took instructions from the Appellant as to how much to offset when its drilling encountered underground obstructions.[14]

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11 RP, Volume 2 at pp 508-510.

12 GD at para 17.

13 GD at para 18-19.

14 GD at para 19.

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(c) The Independent Contractor Defence was irrelevant in the present case. The only defence that the Appellant could invoke was the statutory defence provided under s 56A of the Act.[15]

(d) The Appellant could not invoke the statutory defence as the offence was committed due to the negligence of the Appellant. PUB had notified the Appellant that there were PUB water mains located in the vicinity of the site of investigation works for the DTSS Project. The Appellant was given a copy of a PUB service plan ("PUB Plan") which showed the approximate locations of PUB water mains and also a document on the "Dos and Dont's" on the Prevention of Damage to Water Mains ("the Guide"). The Appellant did not ascertain the exact alignment of the Water Main and merely instructed GIS to conduct a trial hole and manual hand auger. Contrary to the requirement set out in the Guide, the Appellant also failed to consult PUB when the water mains that were shown in the PUB plan to be in the vicinity of the borehole were not detected when the trial hole was carried out. The offence was therefore committed due to the negligence of the Appellant.[16]

12 On 24 August 2017, the Appellant filed an appeal against the District Judge's conviction.[17]

Submissions on appeal

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15 GD at para 19.

16 GD at para 23-26.

17 RP, Volume 1 at p14.

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The Appellant's submissions

13 On appeal, the Appellant submitted that the District Judge erred in finding that s 56A of the Act extended liability to the Appellant for an offence committed by its subcontractor. The wording of the statute and the explanatory statement to the Public Utilities (Amendment) Bill (No 7 of 2012) suggested that only principals and employers were liable.[18] Therefore, in the present case, there was no liability under s 56A to begin with.

14 Even if the Appellant fell within a class of persons caught under s 56A, the District Judge erred in finding that the Independent Contractor Defence was irrelevant in the present case. The Appellant relied on the position at common law that vicarious liability is not to be imposed on the acts of independent contractors.[19] It cited in particular the High Court decision in *Ng Huat Seng and another v Munib Mohammad Madni and another* [2016] 4 SLR 373, which was affirmed on appeal in *Ng Huat Seng and another v Munib Mohammad Madni and another* [2017] 2 SLR 1074, for the position that vicarious liability does not extend to hirers of independent contractors given that independent contractors carry on business for their own benefit and thus any risk of harm arising from the independent contractor's conduct should fall on the independent contractor alone. GIS in the present case was an independent contractor and hence the Independent Contractor Defence applied.[20] In addition, the District Judge erred in failing to give sufficient weight to the extent of control exercised by the subcontractor GIS in the manner of drilling.[21] The evidence showed that the Appellant had no control on the manner of the drilling undertaken by GIS.[22]

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18 Appellant Submissions at para 12-25.

19 Appellant Submissions at para 34-35.

20 Appellant Submissions at paras 39-41.

21 Appellant Submissions at paras 43-49.

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15 The Appellant also submitted that the District Judge erred in finding that the statutory defence had not been made out by the Appellant. Specifically, the District Judge erred in finding that the Appellant did not consult with PUB and that therefore it had failed to take reasonable precaution and due diligence.[23] The Appellant was not negligent and had not consented to the offence committed by GIS.[24]

16 Finally, the Appellant submitted that the District Judge erred in finding that there was an agreed statement of facts, where there was no such agreed statement of facts.[25]

The Prosecution's submissions

17 The Prosecution, as Respondent in this appeal, argued that the District Judge's interpretation of s 56A of the Act was correct based on the rules of statutory interpretation enshrined under s 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) ("Interpretation Act").[26] The plain meaning and legislative purpose of s 56A point in favour of main contractors such as the Appellant falling within a class of secondary offenders liable under s 56A.[27] As s 56A of the Act is neither ambiguous nor obscure, the court may only consider extraneous material to confirm that the ordinary meaning deduced is correct, pursuant to s 9A(2)(*a*) of the Interpretation Act.[28] In any event, the extraneous materials relied on by the Appellant, including its reliance on Parliamentary

22 Appellant Submissions at para 49.

23 Appellant Submissions at paras 50-56.

24 Appellant Submissions at paras 57-64.

25 Appellant Submissions at para 9.

26 Prosecution Submissions at para 30 and 49.

27 Prosecution Submissions at paras 31-41.

28 Prosecution Submissions at paras 42.

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debates relating to other statutes are irrelevant to the interpretation of s 56A of the Act. The relevant extraneous material is the explanatory statement to the Public Utilities (Amendment) Bill (No 7 of 2012) which introduced s 56A of the Act. This explanatory statement confirms the ordinary meaning of s 56A as covering main contractors.[29]

18 The Independent Contractor Defence relied on by the Appellant is irrelevant in the present case since it only applies in the realm of tort law. The statutory defence under s 56A is not identical with and should not be conflated with the Independent Contractor Defence available under the tort law doctrine of vicarious liability.[30] It is not appropriate for the court to find that the Independent Contractor Defence is available for an offence under s 56A as this would usurp the role of Parliament.[31]

19 The Prosecution further submitted that the Appellant did not establish the statutory defence on a balance of probabilities. The Appellant failed to show that there was an absence of "consent", "connivance" and "neglect" on its part.[32]

20 In relation to the Appellant's submission that the District Judge erred in finding that there was an agreed statement of facts, the District Judge had not made such a finding and there was no evidence that any agreed statement of facts was relied on by the District Judge in his decision to convict the Appellant.[33]

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29 Prosecution Submissions at paras 46-48.

30 Prosecution Submissions at para 51.

31 Prosecution Submissions at para 55.

32 Prosecution Submissions at paras 57-68.

33 Prosecution Submissions at para 26.

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Issues to be determined

21 As a preliminary matter, in relation to the Appellant's submission that the District Judge erred in making a finding that there was an agreed statement of facts, I find that the District Judge made no such finding. The District Judge had simply mistakenly made a reference to an "agreed statement of facts" in articulating the background facts in the GD, when there was none.

22 There is in any event no indication that the District Judge had relied on an agreed statement of facts in deciding to convict the Appellant or that the Appellant was otherwise prejudiced by a reliance on an agreed statement of facts by the District Judge.

23 The appeal therefore falls to be determined on a question of law, namely, whether the Appellant as a main contractor can be liable for an offence committed by its subcontractor under s 56A. If that question is answered in the affirmative, the question of whether the Appellant has successfully established the statutory defence under s 56A falls to be determined.

24 There is no need to consider the applicability of the Independent Contractor Defence separately from the question of whether s 56A extends liability to main contractors for offences committed by subcontractors, contrary to the suggestion of the Appellant. If a main contractor can be secondarily liable by virtue of the wording of s 56A, the Independent Contractor Defence, *ie*, reliance on the position of the Appellant as the hirer of the subcontractor, cannot separately absolve the main contractor of liability. Likewise, if a main contractor cannot be liable based on the wording of s 56A, then the Independent Contractor Defence is irrelevant as liability does not extend to it in the first place.

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Decision

25 I am satisfied that s 56A of the Act does not allow main contractors, such as the Appellant, to be liable for offences committed by subcontractors. As I find that the Appellant does not fall within the category of persons caught by s 56A, there is no need to determine if the statutory defence under s 56A has been established by the Appellant. Accordingly, I allow the appeal and acquit the Appellant of the charge.

Principles of statutory interpretation

26 The manner in which statutes are to be interpretation is governed by s 9A of the Interpretation Act, which reads:

> **Purposive interpretation of written law and use of extrinsic materials**
>
> **9A.—**(1) In the interpretation of a provision of a written law, an interpretation that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to an interpretation that would not promote that purpose or object.
>
> (2) Subject to subsection (4), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material —
>
> (*a*) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or
>
> (*b*) to ascertain the meaning of the provision when —
>
> (i) the provision is ambiguous or obscure; or
>
> (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or unreasonable.

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> (3) Without limiting the generality of subsection (2), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law shall include –
>
> …
>
> (*b*) any explanatory statement relating to the Bill containing the provision;
>
> (*c*) the speech made in Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in Parliament;
>
> (*d*) any relevant material in any official record of debates in Parliament;
>
> …
>
> (4) In determining whether consideration should be given to any material in accordance with subsection (2), or in determining the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to —
>
> (*a*) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; and
>
> (*b*) the need to avoid prolonging legal or other proceedings without compensating advantage.

27 The approach towards purposive interpretation under s 9A of the Interpretation Act has been summarised as involving three steps (see *Attorney-General v Ting Choon Meng and another appeal* [2017] 1 SLR 373 ("*Ting Choon Meng*") at [59]; *Tan Cheng Bock v Attorney-General* ("*Tan Cheng Bock*") [2017] 2 SLR 850 at [37]; *Public Prosecutor v Lam Leng Hung and others* [2018] SGCA 7 ("*Lam Leng Hung*") at [67]):

> (a) First, determine all the possible interpretations of the text, having regard not just to the provision in question in isolation but also to the context of that provision within the written law as a whole.

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(b) Second, determine the legislative purpose or object of the statute, which may be discerned from the language used in the statute, and also by resorting to extraneous material in certain circumstances.

(c) Third, compare the possible interpretations of the text against the purposes or objects of the statute. Where the purpose of the statute in question as discerned from the language used in the enactment clearly supports one interpretation, reference to extraneous material may be had for a limited function, *viz*, to confirm but not to alter the ordinary meaning as purposively ascertained.

28 The court first interprets the statute by deciphering the plain and ordinary meaning of the legislative provision. In *Lam Leng Hung*, Andrew Phang JA described, at [76], the ordinary meaning of a word or phrase as the "'proper and most known signification' … which *comes to the reader most naturally* by virtue of its ***regular or conventional usage*** *in the English language* and in the light of the ***linguistic context*** *in which that word or phrase is used.*" [emphasis in original].

29 The court then ascertains the legislative purpose of the provision. This may be discerned from the language used in the provision and from extraneous material where appropriate. In identifying the legislative purpose of the statute, a distinction is to be drawn between the specific purpose of the provision being interpreted and the general purpose underlying the statute as a whole. The court must begin by presuming that the statute is a coherent whole and therefore that the specific purpose is aligned with the general purpose. Thus, individual statutory provisions must be read, as far as possible, consistently with both the specific and general purposes (see *Tan Cheng Bock* at [40]-[41]; *Lam Leng Hung* at [69]).

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Interpretation of s 56A of the Act

30 It is useful at this juncture to set out again s 56A of the Act. The provision reads:

> **Liability for offence committed by agent or employee**
>
> **56A.** Where an offence under this Act is committed by any person acting as an agent or employee of another person, or being otherwise subject to the supervision or instruction of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable for that offence in the same manner and to the same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance and that it was not attributable to any neglect on his part.

Precedents

31 I note at the outset that this is the first time that the High Court is being called upon to interpret s 56A of the Act as there is no authority that has previously dealt with this issue since the introduction of the section in 2012.

32 In the absence of precedents on the proper interpretation of s 56A of the Act, the Appellant cited the case of *Public Prosecutor v Khian Heng Construction (Private) Ltd* [2012] SGDC 9 ("*Khian Heng Construction*") in which s 85(3) of the Electricity Act (Cap 89A, 2002 Rev Ed) ("Electricity Act") was considered. Section 85(3) of the Electricity Act establishes secondary liability for a s 85(2) offence of damaging any high voltage electricity cable. Section 85(2) reads:

> Notwithstanding subsection (1), any person who, in the course of carrying out any earthworks, damages or suffers to be damaged any high voltage electricity cable in the transmission network belonging to or under the management or control of an electricity licensee shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $1 million or to imprisonment for a term not exceeding 5 years or to both.

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33 Section 85(3) of the Electricity Act reads:

> Where an offence under subsection (2) is committed by any person acting as the agent or servant of another person, or being otherwise subject to the supervision or instructions of another person for the purposes of any employment in the course of which the offence was committed, that other person shall, without prejudice to the liability of the first-mentioned person, be liable under that subsection in the same manner and to the same extent as if he had personally committed the offence unless he proves to the satisfaction of the court that the offence was committed without his consent or connivance or that it was not attributable to any neglect on his part.

34 The District Court in *Khian Heng Construction* found that the primary offender that damaged the electricity cable was an independent contractor which had contracted to provide piling services for the defendant. The defendant was the main contractor in the project. Based on the finding that the primary offender was an independent contractor, the District Court rejected the main contractor's contention that the charge against the main contractor should have been brought under s 85(3) as opposed to s 85(2) (see *Khian Heng Construction* at [23]). On appeal, the district judge's conviction of the main contractor under s 85(2) was overturned as the High Court found that the elements of the offence under s 85(2) were not made out (see *Khian Heng Construction (Pte) Ltd v Public Prosecutor* [2012] 4 SLR 134).

35 I was of the view that the analysis in *Khian Heng Construction* was of limited usefulness to the determination of the present case, since that case concerned the interpretation of a different statute, *ie*, the Electricity Act. In addition, while the district judge was of the view that secondary liability under s 85(3) did not extend to a main contractor for an offence carried out by an independent contractor that it had hired, I note that this was not expressly affirmed or rejected by the High Court on appeal as it was not necessary for the disposal of the case.

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36 In this regard, s 56A of the Act has to be interpreted without the benefit of any previous authority on the appropriate interpretation of the section.

Ordinary meaning of s 56A

37 The Appellant argued that the title of s 56A which reads "Liability for offence committed by agent or employee" lends credence to its submission that secondary liability under s 56A of the Act only applies to two categories of individuals, *ie,* principals and employers.[34] The Prosecution on the other hand, submitted that the header, heading or title of a section is not determinative of a section's contents but is intended only to summarise the contents of the section for ease of reference.[35] The Prosecution argued that s 56A extends liability to a third category of individuals which includes main contractors, for offences committed by their subcontractors. This is by virtue of the inclusion of the phrase "or being otherwise subject to the supervision or instruction of another person for the purposes of any employment" under s 56A.

38 In the alternative, the Appellant accepted that s 56A extended liability to a third class of persons separate from principals and employers by virtue of the phrase "or being otherwise subject to the supervision or instruction of another person for the purposes of any employment". However, main contractors were not included under the third category. According to the Appellant, the third category would capture the direct supervisor of the primary offender, who worked for and was employed by the same entity as the primary offender, and who gave instructions to the primary offender. In the present factual matrix, the Appellant argued that the phrase would allow a charge to be brought against the GIS supervisor, *ie,* Gam Shawng who supervised the GIS

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34 Appellant Submissions at para 13.

35 Prosecution Submissions at para 36.

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driller who damaged the Water Main, *ie*, Parvez Masud.[36] In response, the Prosecution submitted that it did not disagree that Gam Shawng may be liable under s 56A but argued that this did not mean that the Appellant was not liable under s 56A.[37]

39 It is settled law that marginal notes can be used as an interpretative aid in statutory interpretation (see *Tee Soon Kay v Attorney-General* [2007] 3 SLR(R) 133; *Ratnam Alfred Christie v Public Prosecutor* [1999] 3 SLR(R) 685; *Algemene Bank Nederland NV v Tan Chin Tiong and another* [1985-1986] SLR(R) 1154). However, as I noted in *Ezion Holdings Ltd v Teras Cargo Transport Pte Ltd* [2016] 5 SLR 226 at [18], the title, header or marginal note to a section is not determinative of its contents as it is intended only to summarise the contents of sections for ease of reference and is not always precise or exhaustive. As the Court of Appeal also noted in *Tee Soon Kay v Attorney-General* [2007] 3 SLR(R) 133 (at [41]):

> While we note that it is now well established that marginal notes can be used as an aid to statutory interpretation, ultimately, the meaning to be given to any statutory provision must be gleaned from *the actual statutory language as well as the context.* For example, if despite the marginal note of s 8 [of the Pensions Act (Cap 225, 2004 Rev Ed)] itself which reads, "Pensions, etc., not of right", s 8(1) had gone on to state the direct opposite, for example, that an officer has *a* right to a pension, the courts would derive little or no help from the marginal note which states the direct opposite of what was said within the provision itself.
>
> [emphasis in original]

40 In the present case, I find that the title of the section does not limit the actual statutory language used in the section. It is rather only a broad summary of the contents of the section. In particular, the title of s 56A does not necessitate

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36 Minute sheet at p 1.

37 Minute sheet at p 3.

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that s 56A be read as extending liability for offences committed by agents or employees only. One must look beyond the title and consider the wording of the section itself.

41 While the title of the section only includes two categories of persons, *ie* agents and employees, on a plain reading of the text of s 56A, I find that secondary liability under the section extends to an offence committed by three categories of individuals:

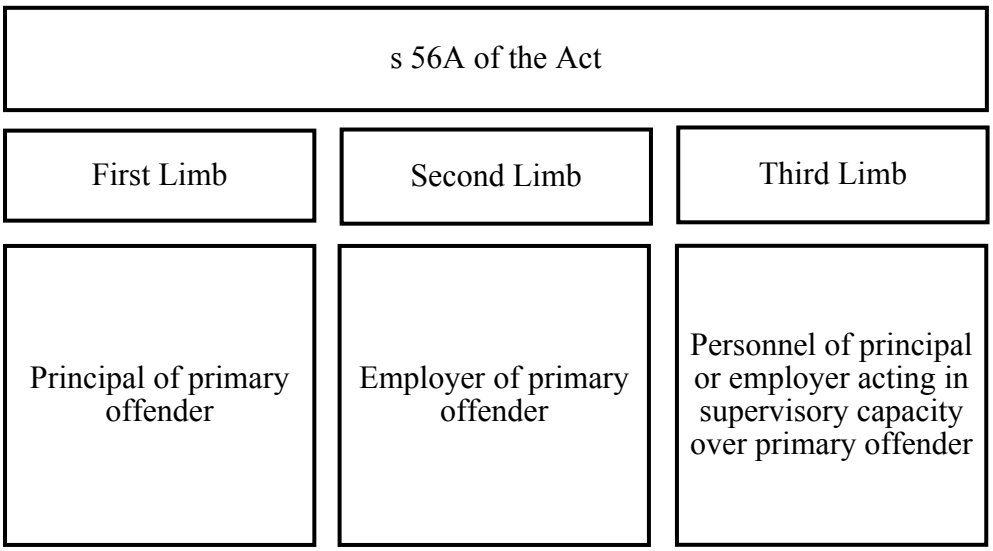
(a) a person acting as an agent of the accused ("first limb");

(b) a person acting as an employee of the accused ("second limb"); and

(c) a person being otherwise subject to the supervision or instruction of the accused for the purposes of any employment ("third limb").

42 The first and second limbs extend liability to principals and employers respectively for acts carried out by the primary offender. This is undisputed. Contrary to the submissions of the Appellant as set out at [37] above, I find that the inclusion of the words "or being otherwise subject to the supervision or instruction of another person for the purposes of any employment" extends liability to a third class of individuals, *ie*, to persons who supervise or instruct the primary offender in the context of an employment. That is, it extends liability to personnel of the principals and employers who are interposed between the primary offender and the principals or employers, or the directing mind and will of the latter. It covers managers, foremen and the like. Secondary liability under s 56A can thus be broken down into three categories in the manner shown in the following diagram:

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43 It is undisputed that GIS was neither an agent nor an employee of the Appellant and thus neither fell within the first nor the second limb of s 56A. It was not an agent as the Appellant was not vested with the authority to act on behalf of the Appellant *vis-à-vis* third parties. Likewise, it was undisputed that the nature of the relationship between GIS and the Appellant was not one of employer and employee.[38] The question that falls to be determined is whether GIS was otherwise subject to the supervision or instruction of the Appellant for the purposes of any employment in the course of which the offence was committed.

44 The Prosecution argued that the phrase "for the purposes of any employment" under the third limb should be read broadly to include the performance of a subcontract. There is no need for an employment relationship to exist in the third limb between the accused and the primary offender, as such a requirement would render this limb otiose.[39]

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38 Prosecution Submissions at para 29.

39 RP, Volume 1, at pp 112-113.

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45 In my judgment, there is no requirement that the accused must be a direct employer of the primary offender in order to be liable under the third limb. Such a requirement would render the third limb otiose. Where the accused is the employer of the primary offender, liability under s 56A is extended by virtue of the second limb, not the third.

46 That said, the third limb does require that the offence committed by the primary offender be committed under the supervision or instruction of the accused for the purpose of any employment. Where the primary offender is the subcontractor of the accused, based on a plain reading, I find that it is not subject to the supervision or instruction of the accused for the purposes of any employment. The subcontractor is liable to the main contractor and receives instructions or supervision from the main contractor, if any, pursuant to the contract of services between the parties. The subcontractor is thus not acting for the purposes of any employment, *vis-a-vis* the main contractor, in performing its obligations under the subcontract.

47 I also observe that it was open to Parliament to include the term "subcontractor" in s 56A in order to extend secondary liability to a main contractor for an offence committed by its subcontractor. As that term has not in fact been included and in the light of the plain meaning of the third limb, the court cannot then read in the word "subcontractor" into the statute. The court cannot add or take away from statutory language, which remains the domain of Parliament. As noted by the Court of Appeal in *Lim Meng Suang and another v Attorney-General and another appeal and another matter* [2015] 1 SLR 26 (at [189]):

> The court *cannot – and must not –* assume *legislative* functions which are necessarily beyond its remit. To do so would be to efface the very separation of powers which confers upon the court its *legitimacy* in the first place. If the court were to assume

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> legislative functions, it would no longer be able to sit to assess the legality of statutes from an *objective* perspective. Worse still, it would necessarily be involved in expressing views on extra-legal issues which would – in the nature of things – be (or at least be perceived to be) *subjective* in nature.
>
> [emphasis in original]

48 In addition, a finding that subcontractors do not fall within the third limb of s 56A does not render the third limb otiose, as secondary liability can be extended to classes of persons other than principals and employers pursuant to the third limb as explained above at [42]. In particular, the third limb covers personnel of the principals and employers who are interposed between the primary offender and the principals or employers, or the directing mind and will of the latter.

49 On the other hand, a broad interpretation of the third limb to include subcontractors, would render the phrase "for the purposes of any employment" meaningless, and would extend liability to any person who gives instructions to or supervises the primary offender. This cannot be sustained based on the wording of the section, in particular, Parliament's insertion of the phrase "for the purposes of any employment".

Legislative purpose of s 56A

Legislative purpose based on text

50 I turn to consider the legislative purpose of s 56A, which I find confirms the ordinary meaning of s 56A as set out in the previous section.

51 The legislative purpose of s 56A is to create secondary liability for offences under the Act, including an offence of damaging PUB's water mains under s 47A.

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52 The Prosecution suggested that the legislative intention behind s 56A is to extend secondary liability specifically to those who exercise control over the primary offender.[40] However, there is no indication from the language used in the provision that the yardstick of control was intended to be determinative of who is subject to liability under s 56A. I am of the view that in enacting s 56A, Parliament did not intend to impose a wider liability based on control as envisaged by the Prosecution, *ie*, on any person acting in a supervisory or controlling capacity in relation to the offender. Instead, in inserting the phrase "for the purposes of any employment", Parliament intended to limit secondary liability under s 56A to those with a certain proximity to the primary offender by virtue of the nature of the relationship, *ie*, one which falls within the three limbs, rather than to base secondary liability on the yardstick of control.

53 I do not think that by including the third limb of s 56A, Parliament had intended to cover offences carried out by subcontractors. If that was the intention, one would have expected Parliament to have included an explicit reference to subcontractors, especially given that the liability of hirers of independent contractors has generally been excluded under the tortious doctrine of vicarious liability.

Legislative purpose based on extraneous materials

54 As I have noted above, the legislative purpose of a statutory provision may be ascertained not just from the language of the statute, but also from a consideration of relevant extraneous material. Such extraneous material includes official records of Parliamentary debates on the legislative provision. In *Tan Cheng Bock*, the Court of Appeal, reaffirming the principles in *Ting*

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40 Prosecution Submissions at paras 39-40.

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Choon Meng, summarised three points of consideration in relation to the use of Parliamentary records as an interpretative aid (at [52]):

> (a) The statements made in Parliament must be clear and unequivocal to be of any real use.
>
> (b) The court should guard against the danger of finding itself construing and interpreting the statements made in Parliament rather than the legislative provision that Parliament has enacted.
>
> (c) Therefore, the statements in question should disclose the mischief targeted by the enactment or the legislative intention lying behind any ambiguous or obscure words. In other words, the statements should be directed to the very point in question to be especially helpful.

These principles ensure that only relevant Parliamentary records are considered in ascertaining the legislative purpose of the statute.

55 In addition, except in the limited circumstances prescribed under s 9A(2)(*b*) of the Interpretation Act, extraneous material is relied on to confirm the ordinary meaning of a legislative provision, rather than to depart from it. Where Parliament's actual legislative intention differs from that conveyed by the plain meaning of the statute, such legislative intention should be given effect through an express amendment to the wording of the statute rather than through Parliamentary statements suggesting a meaning different from that conveyed by the plain wording.

56 In order to construe the legislative intention of s 56A of the Act, the Appellant relied on Parliamentary debates on the introduction of other statutes containing a provision with similar wording to s 56A of the Act, including in particular, the Health Products Act (Cap 122D, 2008 Rev Ed) ("Health Products Act").[41]

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[41] Appellant Submissions at paras 23-24.

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57 In addition, the District Judge referred to a Parliamentary statement made during the introduction of the then s 76(2A) of the Public Utilities Act 1991 ("PUA 1991"), the equivalent provision of which is now found in s 85(3) of the Electricity Act (cited at [33] above). The District Judge was of the view that since the Parliamentary statement showed that under s 76(2A), secondary liability extended to a main contractor for an offence of damaging electrical cables committed by its subcontractor, thus Parliament likewise intended to extend secondary liability to main contractors for offences committed by subcontractors under s 56A of the Act.[42]

58 I did not find the Parliamentary statements made in relation to the Health Products Act and what is now s 85(3) of the Electricity Act particularly useful in ascertaining the legislative purpose s 56A of the Act. The court will generally refrain from referring to the Parliamentary statements concerning a particular statute, to construe the legislative objective of another statute. Transposing Parliamentary statements made in relation to one statute to another in such a manner is likely to result in Parliamentary speeches yielding unintended effects. Notwithstanding any similarity in wording, the difference in the background and context in which separate statutes are drafted renders it unhelpful to refer to the extraneous material of one statute to construe the legislative purpose of another. The fact that similar phrases may have been imbued with a particular legislative objective under one statute does not, in the absence of the express adoption of the earlier Parliamentary speeches, translate into a similar objective for a provision under another act. That would give far too much weight to Parliamentary speeches that may have but remote connection to the present statute, and too little weight to the plain words of the provision being scrutinised.

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42 GD at paras 12-17.

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59 In this regard, the only potentially relevant extraneous material that needs to be considered in the present case is the explanatory statement to the Public Utilities (Amendment) Bill (No 7 of 2012) which introduced s 56A of the Act. The relevant section of the explanatory statement reads:

> Clause 22 inserts a new section 56A to make a principal or an employer liable for an offence committed by his agent or employee, unless the principal or employer proves to the satisfaction of the court that the offence was committed without his consent or connivance and was not attributable to any neglect on his part. This provision previously applied only in relation to section 40 (Licensing of water service worker) and is now applicable generally to all offences under the Act.

60 Section 40(5) of the Public Utilities Act 2001 (No 8 of 2001) ("PUA 2001") which has since been repealed read:

> **Licensing of water service worker**
>
> …
>
> (5) Where an offence is committed under this section by any person who is the agent, employee or sub-contractor of another person, that other person shall be liable under this section in the same manner and to the same extent as if he had personally committed the offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

61 The Prosecution submitted, and the District Judge agreed, that the explanatory statement, read with the repealed s 40(5) of PUA 2001 confirms that s 56A of the Act extends liability for the offences committed by persons other than the accused's employee or agent including, among others, subcontractors whom the accused had supervised or instructed.[43] The Appellant on the other hand, argued that the explanatory statement lends credence to its position that the enactment of s 56A of the Act was intended to make only a

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43 Prosecution Submissions at para 48; RP, GD at paras 15-17.

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principal or an employer liable for an offence committed by its agent or employee.[44]

62 In my view, the explanatory statement addresses the issue of which offences under the Act attract secondary liability, rather than whom secondary liability extends to. I do not find that the explanation that s 56A is intended to extend the application of what was s 40 to all offences under the Act supports the position that Parliament's intention was for subcontractors to be subsumed under the third limb of s 56A. In fact, a comparison of the text of s 56A of the Act with the repealed s 40(5) of PUA 2001, reveals that it was in fact open to Parliament, if they had intended secondary liability under s 56A to extend to the same classes of individuals as under s 40(5), to use the same wording as s 40(5), *viz,* "agent, employee or sub-contractor of another person". The use of different language in s 56A of the Act from s 40(5) of PUA 2001 suggests that in stating that "this provision previously applied only in relation to section 40 (Licensing of water service worker) and is now applicable generally to all offences under the Act", Parliament was addressing the offences to which secondary liability applies, rather than the persons to whom secondary liability extends.

63 Therefore, I am of the view that the explanatory statement is of limited usefulness in determining which classes of individuals Parliament intended secondary liability for offences under the Act to extend to. It neither confirms nor calls into question the ordinary meaning of s 56A. The legislative purpose of s 56A is thus solely to be determined by the language of the statute, which I have found confirms the ordinary meaning.

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44 Appellant Submissions at paras 15-17.

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Application to facts

64 It was undisputed that the Appellant had subcontracted part of its work under the main contract with PUB to GIS through a contract of services. In the performance of its obligations under the contract with the Appellant, GIS – in particular, one of GIS's employees – had caused the Water Main to be damaged.

65 The District Judge found that GIS was a subcontractor of the Appellant but found nevertheless that the Appellant had supervised or instructed GIS for the purpose of employment.[45]

66 Based on my views on the proper interpretation of s 56A as outlined above, I am unable to agree with the District Judge's holding on the liability of the Appellant under s 56A. Based on the statutory interpretation as outlined above, neither GIS nor the driller employed by GIS, Parvez Masud, were instructed or supervised by the Appellant for the purposes of employment. Accordingly, I find that the Appellant is not liable under s 56A read with s 47A(1)(*b*) of the Act.

67 Since liability does not extend to the Appellant under s 56A, there is no need to consider whether the Appellant would be able to, though *prima facie* liable, "[prove] to the satisfaction of the court that the offence was committed without his consent or connivance and that it was not attributable to any neglect on his part". Based on the wording of the statute, the existence of consent, connivance or neglect on the part of the accused is not an alternative ground to the three limbs to found liability. Instead, in order for a charge under s 56A to be established, it must be established that the accused falls within one of the

45 GD at para 19.

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categories of persons caught under s 56A, *and* the accused must be unable to prove the statutory defence.

68 Therefore, even if the offence was committed by GIS with the consent or connivance of the Appellant, or attributable to the neglect of the Appellant, the Appellant cannot be found to be liable under s 56A because it was not supervising or instructing GIS for the purposes of employment.

Conclusion

69 For the reasons set out above, I allow the appeal on conviction and acquit the Appellant of the charge. The fine of $50,000 is to be refunded to the Appellant.

Aedit Abdullah
Judge

Faizal Shah, Kelvin Chia and Vigneesh Nainar (Lumen Law Corporation) for the Appellant;
Francis Ng SC, Gabriel Choong and Jane Lim (Attorney-General's Chambers) for the Respondent.

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