IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 190

Suit No 63 of 2017

Between

YCT Import & Export Pte Ltd

… *Plaintiff*

And

(1) FG Food Industries Pte Ltd
(2) Forearth (Singapore) Pte Ltd
(3) Powerjet Pte Ltd

… *Defendants*

JUDGMENT

[Tort] — [Negligence] — [Damages]

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YCT Import & Export Pte Ltd
v
FG Food Industries Pte Ltd and others

[2021] SGHC 190

General Division of the High Court — Suit No 63 of 2017
Philip Jeyaretnam JC
27–30 April, 4–7, 11–12 May, 14 July 2021

11 August 2021 Judgment reserved.

Philip Jeyaretnam JC:

Introduction

1 When assessing damages for damaged goods that had to be thrown away, should their value be determined by reference to how much they originally cost, what they would cost to replace or how much they could have been sold for?

2 This case also raises the difference between making a claim against one's insurer, in respect of which there may be evidentiary and procedural requirements imposed by the insurance contract, and the same claim being brought against a negligent tortfeasor. How does the court look at concerns raised by the insurer of that negligent tortfeasor about the way the original insurer handled the claim?

Facts

The parties

3 The plaintiff, YCT Import & Export Pte Ltd ("YCT"), is a company incorporated in Singapore that distributes herbs for use in traditional Chinese medicine and health ("Chinese herbs").[1] The first defendant, FG Food Industries Pte Ltd ("FG"), is also incorporated in Singapore. Its business is the manufacture of cooked food preparations.[2] At the material time, FG occupied premises just above those of YCT.[3] FG used its premises to prepare food, while YCT used its premises to store Chinese herbs.[4] Crucially, the pipe carrying waste water from FG's kitchen ran along the ceiling void above YCT's premises.[5]

4 YCT's sole director and shareholder is Kwa Chih Min Kelvin ("Mr Kwa").[6] Its manager is Mr Kwa's wife, Leow Lay Leng ("Mdm Leow").[7]

Background to the dispute

5 On 9 July 2015, FG engaged a contractor to clear a choke in the waste water pipe.[8] Unfortunately, in the course of that night, some part of the waste

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1 Kwa Chih Min Kelvin's affidavit of evidence-in-chief ("Kwa's AEIC") at para 4.

2 Lee Soon Heng Joseph's first affidavit of evidence-in-chief ("Lee's AEIC") at para 2.

3 Kwa's AEIC at para 8.

4 Lee's AEIC at para 8; Kwa's AEIC at para 10.

5 Kwa's AEIC at para 16 and p 82.

6 Kwa's AEIC at para 6.

7 Leow Lay Leng's AEIC ("Leow's AEIC") at paras 1 and 7; Kwa's AEIC at para 11.

8 Muhammad Hanas Bin Hassan's AEIC at paras 16–17.

water pipe broke and waste water was discharged into YCT's premises.[9] This was discovered at about 7.00am on 10 July 2015, when Mdm Leow arrived at the start of the work day.[10] The electricity supply had been cut off.[11] This caused a second problem, as the premises included a "cold room" where some of the herbs were stored in refrigeration. The interruption to the power supply shut off the air conditioning for the cold room.[12]

6 YCT informed their insurers, now known as Great Eastern General Insurance Limited ("Great Eastern").[13] Great Eastern referred the matter to their loss adjusters, Crawford & Company International Pte Ltd ("Crawford").[14] An appraiser employed by Crawford, Toh Kok Hwee ("Mr Toh"), made the first of several visits to YCT's premises that day.[15]

7 Mr Toh ultimately recommended payment of YCT's claim at $631,697.31 and, after deduction of a policy excess of $200, Great Eastern paid out $631,497.31.[16]

Procedural history

8 These proceedings are brought by YCT for $950,823.82, as the value of the damaged goods, $679.84 for disposal costs, $14,000 for certain damaged

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9 Toh Kok Hwee's affidavit of evidence-in-chief ("Toh's AEIC") at p 13.

10 Leow's AEIC at para 12.

11 Leow's AEIC at paras 12–13.

12 Leow's AEIC at para 17.

13 Kwa's AEIC at para 38; Foo Fook Khang's affidavit of evidence-in-chief ("Foo's AEIC") at paras 3–4.

14 Foo's AEIC at para 5; Toh's AEIC at para 3.

15 Toh's AEIC at para 4.

16 Toh's AEIC at p 26; Foo's AEIC at para 6.

condenser units and $4,760.50 for staff overtime work.[17] This includes Great Eastern's subrogated claim for $631,497.31.[18] Interest and costs are also claimed.[19]

9 Proceedings were initially commenced against additional parties, namely the contractor engaged to undertake the clearing works and its subcontractor.[20] However, as part of a settlement, proceedings were discontinued against them and interlocutory judgment against the first defendant was entered on 22 May 2019 for damages to be assessed with interest and costs reserved.[21]

The parties' cases

10 YCT mostly claims the value of the damaged goods by reference to their selling price. There are also a few items which it claims by reference to cost price.[22] It relies principally on the evidence of Mr Kwa, Mdm Leow and Mr Toh, together with some photographic and video evidence, to establish the extent of the damage and the process of separating and disposing of the damaged goods. YCT also called as a witness Foo Fook Khang, the Head of Claims (General Insurance) of Great Eastern.

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17 Statement of Claim (Amendment No 1) dated 30 June 2017 ("SOC") at prayers 1 and 2; Plaintiff's Closing Submissions dated 30 June 2021 ("PCS") at para 130.

18 Foo's AEIC at para 7.

19 SOC at prayers 3 and 4.

20 SOC at paras 5–6.

21 Plaintiff's Opening Statement dated 25 April 2021 ("POS") at para 3; HC/JUD 398/2019.

22 PCS at para 64.

11 FG has confirmed that it accepts the amounts claimed for staff overtime, cost of disposing of the damaged goods and the value of the damaged condenser units, totalling $19,440.34.[23] However, FG contests the claim for damages in respect of the damaged goods on various grounds. Its first argument is one of principle, that the loss should be measured by reference to original or replacement cost, and not to their selling price.[24] Secondly, FG argues that YCT has not proven that all of the goods it is claiming for were damaged.[25] Thirdly, FG argues that certain adjustments should be made to the figure awarded, taking into account factors such as the exchange rate applicable to goods bought from foreign sources, falls in replacement price, and the ageing and deterioration of the goods prior to the incident.[26] If FG's arguments are entirely accepted, this brings the claim for the damaged goods down to $300,282.33.[27]

12 FG called two factual witnesses, who both visited YCT's premises on 10 July 2015: one of its directors, Lee Soon Heng Joseph ("Mr Lee"), as well as Dhass Permal ("Mr Dhass"), from the loss adjuster engaged by FG's insurers. FG also called three persons to give evidence as experts: a forensic accountant, Mr Iain Potter ("Mr Potter"), a forensic investigator, Mr Sivasothy Nanthagopal ("Mr Siva") and Mr Tan Lai Thiam, a loss adjuster.

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23 First defendant's closing submissions dated 1 July 2021 ("DCS") at para 147.

24 DCS at paras 101–127.

25 DCS at paras 19–60 and 74–100.

26 DCS at paras 61 – 68 and 129–141; first defendant's reply submissions dated 14 July 2021 ("DRS") at paras 32–35.

27 DCS at para 143.

Issues to be determined

13 At my direction, the parties agreed a list of issues for the assessment of damages. However, having reviewed the parties' submissions, the issues that fall to be determined are better formulated as follows:

(a) As a matter of legal principle, should the value of the damaged goods be determined by reference to their cost price, replacement price or selling price?

(b) On the evidence, to what extent were the goods damaged?

(c) Should any general adjustments be made to the sum awarded? This includes adjustments for:

(i) the exchange rates applicable to the goods bought from foreign sources;

(ii) any fall, between the time the goods were first acquired and when they were damaged, in the price of replacing them; and

(iii) any ageing or deterioration of the goods prior to the damage.

Issue 1: Whether the value of the damaged goods is to be determined by reference to cost price, replacement price or selling price

14 YCT has organised its claim into 76 types of damaged goods.[28] Of these, it argues that 70 should be assessed by reference to the prices at which they could have been sold to supermarkets and medical halls.[29] For the remaining six,

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28 POS at Annex 1.

29 POS at para 54.

which YCT did not sell directly to customers, YCT asks that their value be assessed by reference to the price at which they were bought.[30] In respect of the first group of 70, their claimed cost price is $555,848.46 and their claimed sale price is $866,634.04.[31] In respect of the second group of six, their claimed cost price is $84,189.78.[32]

15 To be clear, while the goods have been described as damaged, the claim is brought in respect of goods that were thrown away because of that damage. Hence, in relation to such of the goods that YCT proves had indeed to be thrown away, the relevant principle is the measure of damages for destroyed goods. For destroyed goods, the normal measure of damages is their market value at the time and place of destruction: *McGregor on Damages* (James Edelman, Jason Varuhas & Simon Colton gen ed) (Sweet & Maxwell, 21st Ed, 2020) at para 37-063.

16 Both counsel have referred to the Court of Appeal decision in *Marco Polo Shipping Co Pte Ltd v Fairmacs Shipping & Transport Services Pte Ltd* [2015] 5 SLR 541 ("*Marco Polo*"). That case concerned the measure of damages arising from the conversion of river sand. The principles relating to damages for converted goods are broadly similar to those relating to damages for negligently destroyed goods. There, the Court of Appeal discussed (at [42]) the importance of deciding the relevant market by reference to which the value of the goods is to be determined. In the supply of goods, there will typically be different markets at different links of the supply chain, for example a wholesale market where goods are traded in higher volumes for lower prices and a retail

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30 POS at para 55.

31 POS at Annex 1.

32 POS at Annex 1.

market where goods are sold in lower volumes but at higher prices. As the Court of Appeal noted, the burden of proof is on the claimant to establish the relevant market.

17 It must be remembered, however, that the normal measure of damages is itself only an expression of the principle that damages compensate the plaintiff's loss and no more.

18 FG's argument is that YCT has failed to prove that it lost any sales as a result of the damage. It was able to fulfil its sales orders because it held more than enough inventory to meet demand. Accordingly, its real loss was having to replace the damaged goods, and hence the claimed cost price was the appropriate measure to adopt. FG supported this argument with the evidence of their expert forensic accountant, Mr Potter. He opined:[33]

> 3.28 The financial loss incurred by a business which suffers a loss of, or damage to, stocks of product for resale will often be limited to the cost price of the lost or damaged stock. This is because the business can normally go into the market and replace the lost or damaged stock at cost price and continue operations unaffected (i.e. without suffering any loss of revenue).
>
> 3.29 There are situations where the financial loss incurred can exceed the cost price of the lost or damaged stock and this will typically be where the loss or damage to stock also causes the business to suffer a loss of revenue. Such a loss of revenue will arise where the business is unable to replace the stock in time to meet demand from customers.

19 Mr Potter also analysed the inventory levels in relation to five of the products which account for 46% of the overall claim, and concluded that the

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[33] Iain Cameron Potter's affidavit of evidence-in-chief ("Potter's AEIC") at pp 24–25.

claimed stock levels were equivalent to multiple years' worth of sales.[34] These five products were as follows:

(a) Cordyceps, by far the most expensive product by weight, which is a parasitic fungus living only at high altitude in the Himalayas that consumes and mummifies its larval insect host, from which is derived its common name of caterpillar fungus;

(b) Codonopsis, which is the dried root of a flowering plant from northern China;

(c) Angelica tips, which are portions of another type of dried root;

(d) Whelk, a type of sea snail;

(e) Chicken tonic soup, which is a combination of powdered chicken soup and herbs, and which is sold at relatively high volume.

20 There are two distinct points being made by FG. One is that where a business holds stock which is destroyed, the business should only be compensated by reference to sales if it lost sales. Otherwise, it should be compensated by reference to the cost of replacing its stock because that is its true loss. The second point is that for a market to be relevant, the injured party must prove that it would have been able to sell the goods at the price claimed in the relevant market.

21 YCT in its reply submissions did not address the question of proving lost sales, but simply said it was not claiming loss of profits.[35] In other words, it

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34 Potter's AEIC at p 23.

35 Plaintiff's reply submissions dated 14 July 2021 ("PRS") para 27.

is claiming the value of the damaged goods, and for 70 types of them it is claiming their value based on their sale price.

22 YCT relies on sales invoices. To take the highest value item by way of illustration, YCT claims the sale price for 7.5 kg of cordyceps, at $31,800 per kg, totalling $238,500.[36] In relation to the period of 6 months before and 6 months after the incident, YCT adduced only one invoice.[37] This was dated 6 October 2015, and was for the sale of 1.275 kg of cordyceps at the claimed sale price of $31,800 per kg.

23 The starting point is to ask what would put the injured party back in the position it was in just before the damage or destruction occurred. In relation to YCT, the evidence shows that at that time it was not in a position to convert its stock immediately into sales, and that on the other hand it was able to replace any destroyed stock without loss of sales. It held ample stock and made sales, including of items that were the same as some damaged items, within a few days of the incident.[38] Thus, when one is considering a stockist such as YCT, the relevant market is the one in which YCT buys its stock, not the one in which it sells it.

24 While this is ultimately a question of fact, it is fair to say that the answer I have given ordinarily holds true for a business like that of YCT's. In the Supreme Court of Victoria decision in *Furness v Adrium Industries Pty Ltd* [1996] 1 VR 668, which was cited with approval in *Marco Polo* at [45]–[46], the court was concerned with novelty items wrongly taken by the landlord with

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36 POS at Annex A, at s/n 69.

37 Kwa's AEIC at pp 3258–3259 (Invoice 68297).

38 Invoices exhibited at pp 2960–2965 of Kwa's AEIC.

a view to selling them to recover arrears of rental, so that the landlord was liable for conversion. The court held that the market value ought to be the value at which the plaintiff can buy the replacement goods from the market. Ormiston J said (at 680 and 682) that "[n]otwithstanding the paucity of reported cases I am convinced that a wholesaler's loss is ordinarily to be assessed by reference to the cost of replacement at the date of conversion", and "it was not correct for the trial judge to select as the appropriate basis for calculating damages the prices at which the respondent might have sold the goods".

25 Many casual shoppers are familiar with the retailer's sign "once broken, considered sold". Whether this is the correct measure in the event of an accident depends on whether the item is one that is in ample stock, or whether breaking it has deprived the retailer of a sale. If the former, then the careless visitor is only liable for the cost of replacing it.

26 Another illustration may be drawn from the English decision of *Sonicare International Ltd v East Anglia Freight Terminal Ltd and Others and Neptune Orient Lines Ltd (Third Party)* [1997] 2 Lloyd's Rep 48 ("*Sonicare*"). In *Sonicare*, the lost goods were 294 car radios of an incoming consignment of 1,000. The court said (at 55–56):

> … In my view, the correct measure of damages is the market value for *replacement* goods, i.e. prima facie the sound arrived value of the radios … Any contrary conclusion might well involve a claimant recovering an uncovenanted windfall, as can be illustrated from the facts of the present case. Supposing, for instance, that the 706 radios delivered provided Sonicare with ample stock for their immediate requirements; and supposing that Sonicare could speedily have procured replacement radios … to award damages based upon the [selling] price would be to compensate Sonicare for lost sales which were not in fact lost. I appreciate, of course, that an alternative scenario can be advanced: what if demand were so high that all radios delivered could be resold at once, and the absence of stock meant that sales were lost which could never be retrieved? In my view, the

> answer is that such would represent consequential losses which would have to be proved, based on the absence of an *immediately* available market. …
>
> [emphasis in original]

27 To sum up, the measure of damages for destroyed stock is usually its replacement cost. This is the measure of damages applicable in this case. In cases where the source market for the goods is reasonably stable, the original cost of the goods may be sufficient evidence of their replacement cost.

Issue 2: The extent of the damage to the goods

28 In relation to this issue, I shall first consider the parties' submissions on the general state of the evidence, before turning to FG's specific contentions that certain categories of goods were not proven to be damaged to such an extent that their disposal was warranted.

The state of the evidence

29 FG makes robust arguments alleging failures in the investigation of the damage, as well as in the preservation of evidence.[39] These criticisms are largely directed at the quality of the work done by the loss adjusters. For example, the loss adjuster, Mr Toh, does not seem to have ensured that the goods to be disposed were first photographed, with the photographs matched to the list of goods for disposal. In fact, he took hardly any photographs at all.[40] Mr Toh also could not recall if he took any contemporaneous notes, and none were produced at trial.[41]

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39 DCS at paras 33–60.

40 Toh's AEIC at pp 12–16 and 25.

41 Transcript, 4 May 2021, p 79 lines 10–22.

30 Consequently, FG argues,[42] YCT had to rely on the memory of Mr Kwa and Mdm Leow, reconstructed from only 68 photographs taken by Mdm Leow[43] that were generally of poor quality and did not show all of the cold room or all of the goods. There was no systematic photograph-taking at all.

31 YCT's main point in response is that it is for the court to decide, based on the evidence adduced, what the extent of loss was, and that there is no requirement to follow any particular method of assessing or recording the loss prior to disposal.[44]

32 I accept YCT's submission as a general proposition. In the absence of contractual provisions, such as may be found in an insurance contract, governing how claims are to be presented and what evidence is required, the court's task is simply to decide based on the evidence whether the burden of proof has been met. Contractual provisions governing how an insurance claim is to be presented by the insured against his own insurer in respect of negligently caused loss would not apply to the presentation of claims against a negligent tortfeasor responsible for that loss. To this extent, the criticism of how the loss adjuster and the insurer handled the claim is beside the point. It is also true that it would be sufficient in principle for the court to believe the evidence of a single witness, even if not supported by photographs, notes or other records. Nonetheless, whether a plaintiff has failed to take simple steps to record evidence of loss is material to the court's assessment. When taking photographs is both expected and simple, as has been the case since smartphones with inbuilt cameras became common, it does raise an evidentiary doubt when proper

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42 DCS at para 34.

43 Kwa's AEIC at pp 132–204.

44 PRS at para 31.

photographs were not taken or not taken systematically. Similarly, while the fact that Mr Toh did not keep notes or take or instruct the taking of proper photographs does not itself bar YCT from succeeding in its claim, it leaves the evidence in a state that is not fully satisfactory.

33 Ultimately, however, it does come down to what evidence was adduced, and this I will consider in relation to the deductions that FG seeks to make in relation to specific categories of goods. The main goods which FG submits on are cordyceps and codonopsis, but there are some other goods to consider as well.

Cordyceps

34 FG has put in issue whether the cordyceps was properly claimable at all. They make two alternative arguments based on the evidence. The first is that the cordyceps was actually in vacuum-sealed bags and so was not damaged.[45] The other is that if they were stored in packets that were open, their saleability had already been compromised when Mr Kwa took them repeatedly out of the cold room.[46]

35 In relation to the first point, this rests on what the single photograph of the cordyceps in their packets appears to show.[47] Mr Siva, whom FG called to testify as an expert on materials, attested to how the photograph shows vacuum-

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45 DCS at paras 78–80.

46 DCS at paras 81–82.

47 Kwa's AEIC at p 148.

packing, explaining that the packages appeared like bricks.[48] Additionally, the edges of the packages had a serrated appearance.[49]

36 Against this is Mr Kwa's evidence that the cordyceps was not vacuum-packed when purchased, and that the packets were left open for the cordyceps to breathe.[50]

37 It would have been easy to take proper photographs of the cordyceps packets individually to record how waste water had entered them. Given their high value, it would really be expected of any prudent business in YCT's position intending to claim for them to take such photographs. Noting that the burden of proof is on YCT, I conclude that YCT has not proved that the packets were not sealed.

38 However, there is a further consideration of whether the cordyceps should have been salvaged despite its packaging coming into contact with waste water. After all, the cordyceps was for human consumption. I accept YCT's submission that even if it were only the packaging that had been contaminated, it was reasonable to dispose of items like cordyceps that are intended for human consumption. This submission was supported by the evidence of Mr Lee, who accepted that if FG's products came into contact with waste water, he would throw them away, notwithstanding that their packaging was watertight and airtight, because of the risk of contamination.[51]

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48 Transcript, 12 May 2021, p 36 lines 7–9.

49 Transcript, 12 May 2021, p 36 lines 2–7.

50 Kwa's AEIC at para 47(c)(i); Transcript, 27 April 2021, p 62 lines 1–6; p 63 lines 9–25; p 71 line 16 to p 72 line 13.

51 Transcript, 7 May 2021, p 22 line 25 to p 23 line 29.

39 Turning to the second point, while I accept that one would expect condensation to occur when any dried plant material is brought in and out of refrigerated conditions, I do not accept that this had compromised the condition of the cordyceps such that it was unsaleable. FG did not adduce expert evidence on storage or ageing of cordyceps. Its expert was a general expert on materials, and while he did his best to assist the court, he readily conceded that his opinion was not based on any expert knowledge of cordyceps.[52]

Codonopsis

40 The codonopsis was stored in cardboard boxes without any plastic wrapping, but with a special desiccant paper.[53] I do not accept FG's submission that this was improper storage.[54] FG did not adduce any evidence that codonopsis or other dried roots are usually, let alone must be, stored in some other manner that would have protected them from the waste water leak. FG's suggestion that the codonopsis should have been stored in sealed plastic bags is unsupported by the evidence.

41 It was also argued that not all of the boxes appeared wet in the photographs. However, as was conceded by Mr Dhass, who visited the premises between 3.00pm and 4.00pm on 10 July 2021, while some of the boxes appeared only slightly wet, they would previously have been wetter because they had signs of water staining.[55]

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52 Transcript, 12 May 2021, p 45 lines 1–16.

53 Transcript, 6 May 2021, p 7 line 22 to p 9 line 7.

54 DCS at para 70.

55 Transcript, 7 May 2021, p 38 line 29 to p 39 line 7.

42 I accept that YCT has discharged its burden of proof on a balance of probabilities in respect of the water damage to the codonopsis.

Other items

43 FG has also contested the damage to five items among the soup packets, namely pearl barley, ginseng roots, sliced Chinese yam, tribute royal wolfberry and koi wolfberry, that Mr Kwa confirmed were in machine sealed bags.[56] FG argues that as they were machine sealed, they could have been salvaged and need not have been disposed of.[57] It makes a similar argument with respect to a number of other assorted items, which were wrapped in plastic.[58]

44 YCT's response is that the packaging did not guarantee safety from contamination and must itself be clean in order for the item to be fit for sale.[59] YCT relies on the Sale of Food Act (Cap 283, 2002 Rev Ed) s 2D(1)(e). As with the cordyceps, YCT also relies on the evidence elicited from FG's Mr Lee, who said he would dispose of goods even if packaged in an airtight and watertight manner once they come into contact with waste water.[60] I accept that it was reasonable for YCT to dispose of these goods.

45 As a final note, FG has made certain concessions concerning damage to some goods. It accepts that the angelica tips were damaged.[61] It also accepts that

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56 Transcript, 6 May 2021, p 101 lines 21– 31; p 108 lines 19–23.

57 DCS at paras 85–86.

58 DCS at paras 98–100.

59 PRS at para 9.

60 Transcript, 7 May 2021, p 22 line 25 to p 23 line 29.

61 DCS at para 97.

it was warranted for YCT to dispose of the soup packets that were not machine sealed.[62]

Summary

46 In summary, notwithstanding the flawed state of the evidence adduced by YCT, I am satisfied that the waste water leak caused damage, staining or contamination to the goods it has claimed for, or their packaging, such that disposal of these goods was warranted. It follows that FG is liable for the replacement cost of these goods.

Issue 3: Adjustments to the sum to be awarded

47 I turn now to a consideration of FG's arguments for general downward adjustments to the sum to be awarded to YCT. They are, briefly, that YCT's claimed sum is premised on an incorrect approach to exchange rates; that there has been a fall in replacement price of the five products that comprised 46% of the amount claimed which may be extrapolated to the rest of the damaged goods as well; and that some adjustment should be made for ageing and deterioration of the goods in storage prior to the incident.

Exchange rate

48 Although YCT purchases many of its goods from a number of overseas suppliers, using the appropriate foreign currencies, it has denominated its claim in Singapore dollars. The exchange rates which it has applied are premised on those it received from its bank at the time it last purchased each of the damaged goods.[63]

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62 DCS at para 87.

63 PCS at paras 125–127; Transcript, 29 April 2021, p 31 lines 1–7.

49 FG does not contest the denomination of YCT's claim in Singapore dollars. It does, however, argue that YCT applied the wrong exchange rates. First, it submits, the exchange rate should be the rate on the date of the loss, in line with the principle that tort damages are typically assessed on the date of the loss, and the fact that that is the date on which YCT would have gone into the market in search of replacement stock.[64] Second, the appropriate rate should be the "buy" rates for the foreign currencies, as YCT, being a company primarily trading in Singapore for Singapore dollars, would have needed to buy the appropriate foreign currencies in order to settle foreign currency invoices.[65]

50 I accept FG's arguments, which are in line with my determination above that the appropriate measure of damages in this case is the cost of replacing the stock. Bearing this in mind, I turn to YCT's submissions regarding the fall in the cost of replacing the damaged goods.

The fall in replacement value of certain key goods, and whether this may be extrapolated to the rest of the goods

51 As part of Mr Potter's analysis of the five products that comprised 46% of the amount claimed, he compared the invoices in respect of purchases made after the incident with those made before, and concluded that the purchase cost for those five products would be $35,330 cheaper if the post-incident invoices were used.[66] He noted that if the trend were extrapolated to the remaining products, then YCT's total claim would be overstated by $77,119.[67] Upon

64 DRS at para 34.

65 DRS at para 35.

66 Potter's AEIC at pp 19–20 (paras 3.15–3.16).

67 Potter's AEIC at p 20 (para 3.17).

evaluating fresh evidence in the course of trial, he offered a new calculation which was admitted into evidence at trial.[68]

52 Insofar as this analysis showed the replacement cost as opposed to simply the original cost, it is to be preferred. As I have explained at [23] above, what puts the stockist back in its position before the destruction occurred is the cost of replacing the destroyed goods. In an absence of evidence of market changes between purchase and destruction, the replacement cost of a good may be determined by how much it originally cost. However, there is no such absence here: post-incident invoices for YCT's purchases of replacement goods indicate that their prices had fallen. If these goods could be replaced more cheaply than the price at which they had originally been bought, then it would be overcompensating to assess damages based on the higher original price.

53 Mr Potter also considered whether the destroyed cordyceps was all of a particular grade, namely 3,500 grade, or of mixed grades, and whether the ginseng had been correctly priced or mispriced, with these variables affecting his calculations.[69]

54 I accept Mr Potter's calculation of the adjusted replacement cost, but I do so based on the assumption that the destroyed cordyceps was indeed all of 3,500 grade and that the ginseng was correctly priced. FG did not refute YCT's evidence that the destroyed cordyceps was indeed all of 3,500 grade. I am also not convinced by FG's analysis of YCT's ginseng invoices and its consequent assertion that the claim for ginseng was mispriced. Accordingly, I conclude that the appropriate figure for the replacement cost, taking into account the factors

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68 Exhibit "D3".

69 Exhibit "D3".

described above, was Mr Potter's estimate of $634,625,[70] instead of the cost price submitted by the plaintiff of $640,038.24.[71] Mr Potter's estimate adopts the calculation of exchange rates which I have noted at [49]–[50] above to be correct.

55 The further question is whether the court should extrapolate from this analysis to the rest of the products. Sampling as an exercise undertaken in place of complete analysis may be relied on by the court in appropriate circumstances. A complete analysis may be impractical or disproportionately expensive. Nonetheless, the probative basis for extrapolation needs to be clear before sampling is accepted. Sampling is a more reliable tool where it proceeds on the basis of protocols agreed by the parties before the results of the sampling are known. If that is done, then the parties have agreed in advance about the value of the sampling exercise to be undertaken.

56 The considerations I have outlined have been discussed by Chief Justice Sundaresh Menon, extra-judicially, in his recent address to the 7th Annual Conference of the International Academy of Construction Lawyers entitled "The Role of Commercial Courts in the Management of Complex Disputes". He explored the issue with these illuminating remarks:

> 17 A second, more radical means of downsizing the dispute might entail the use of representative sampling. In a dispute involving thousands of defects, it may be practically impossible to require proof of each and every defect in the assessment of damages. To deal with such cases, some courts have endorsed an approach under which the result obtained in relation to a smaller, more manageable representative sample may be extrapolated to the wider set. …

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70 Exhibit "D3".

71 POS at Annex A.

> 18 Building on this, we might even consider the development of *voluntary* protocols under which parties might agree certain ground rules, such as carving out a set of "excluded" low-value claims for which recovery is pegged to the percentage eventually recovered in respect of the main "non-excluded" claims.
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> 19 Some of these suggestions detract somewhat from the common wisdom that justice requires the fullest possible determination of all the facts. But whilst accuracy is undoubtedly important, it is surely an essential element of justice – in particular, *access* to justice – that the time and resources expended in that quest are contained within sensible and proportional limits.
>
> [emphasis in original]

57 I agree that sampling may be appropriate in some cases. In this matter, however, I am not satisfied that extrapolating the analysis based on five products to the remaining products is logical or warranted. There is no evidence before me that price movements for all the products would be similar or related. Indeed, common sense suggests otherwise, as the supply of products grown in different parts of the world may change in wholly unrelated ways, and demand for one product may change quite differently from how demand for another product does.

58 In summary, pending my consideration of any adjustments which should be made for the ageing and deterioration of YCT's goods in storage prior to the incident, the sum which YCT is to be awarded for the damaged goods is $634,625.

Ageing and deterioration

59 The trial was enlivened by the persistent efforts of FG's counsel to obtain discovery of the loss adjuster's file. This was ultimately not objected to by YCT, nor by Crawford, and as a result an earlier report made by Mr Toh to the insurer came to light. In it he had proposed that there be a 10% deduction

for "normal deterioration".[72] This deduction was dropped from the final version of his report.

60 That the insurer might have been within its rights to have accepted the claim only with a deduction for the normal deterioration of the goods does not in itself mean that the same deduction should now be applied to YCT's claim. What it does show however is that Mr Toh, who observed both the damaged goods and other goods at YCT's premises, including the conditions under which they were stored, contemporaneously considered that there was likely to be some deterioration, such that not all the stock remained fit for sale.

61 Mr Potter's analysis of YCT's inventory across the different products also supported the inference that YCT's inventory was overstocked and so at risk of ageing or deterioration.[73] His analysis was limited by the peculiar fact that YCT appeared not to maintain proper stock lists.[74] Once a year, it would do a stock take in connection with the preparation of its audited accounts, but this list was not kept updated through the year.[75] The audited statements immediately prior to the incident, for the year ending 31 March 2014, did recognise impairment of stocks held by YCT,[76] and this also supported the inference that there was likely to be some deterioration over time.

62 There is a related point, namely that YCT did not have any proper "first-in-first-out" system and so did not know how long it held stock before sale. For

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72 First defendant's supplementary bundle of documents at p 110.

73 *Eg* Potter's AEIC at p 22 (para 3.22).

74 Kwa's AEIC at para 41; Leow's AEIC at para 28.

75 Transcript, 29 April 2021, p 76 lines 10–22.

76 DCS at para 68.

some items, it would at the time of onward sale affix a date before which that particular item should be consumed, but it is hard to ascribe utility to such labelling when the item could have been held in stock by YCT for greatly different periods of time, ranging from months to years, and yet still be labelled with the same "consume-by" date. While this practice seems open to question, it does not lead to the inference that all or most of the goods could not be sold. For this inference to be made out, there would need to be evidence that YCT's practice resulted in the goods being unfit for human consumption, or at least not meeting an industry standard or legal requirement for sale. FG did not adduce such evidence. However, that there was no proper "first-in-first-out" system supports Mr Potter's small adjustment for ageing. Not implementing a "first-in-first-out" system does mean an increase in the risk that some of the stock will have deteriorated before it can be sold, where, as here, the stock levels were quite high.

63 I accept Mr Potter's estimate for the appropriate adjustment for this issue, which is a reduction in value of $1,337.[77] I therefore subtract this from the sum to be awarded to YCT, leaving a final figure of $633,288.

Conclusion

64 I have held that the correct measure of damages is the value of the damaged stock at the time and place of destruction, which is to be determined by the cost of replacing it. Accordingly, I award YCT damages as follows:

(a) $633,288 being the value of the damaged goods;

(b) $679.84 for disposal costs;

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77 Potter's AEIC at p 24 (paras 3.26–2.37).

(c) $14,000 for the damaged condenser units; and

(d) $4,760.50 for staff overtime costs.

65 The usual rate and period of interest on judgment debts is 5.33% per annum, from the date of the writ to the date of the judgment (see Rules of Court (Cap 322, R 5, 2014 Rev Ed) O 42 r 12 read with Supreme Court Practice Directions para 77(2)). FG submitted that the rate and period of interest which should instead apply is 2.67% per annum, from the date of the loss to the date of the judgment.[78] However, I agree with YCT[79] that there is no basis for departing from the norm, and I accordingly award the usual rate and period of interest of 5.33% per annum, from the date of the writ to the date of the judgment.

66 I will hear parties on costs.

Philip Jeyaretnam
Judicial Commissioner

Jawharilal Balachandran and Li Shunhui Daniel (Ramdas & Wong) for the plaintiff;
Teo Weng Kie and Donald Alastair Spencer (Tan Kok Quan Partnership) for the first defendant.

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78 DCS at para 148(a).

79 PRS at para 47.