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

[2025] SGHC(A) 6

Appellate Division / Civil Appeal No 38 of 2024

Between

(1) Campbell Hospitality Pte Ltd
(2) Fu Yao
(3) Wang Cuirong

… *Appellants*

And

Marchmont Pte Ltd

… *Respondent*

Appellate Division / Civil Appeal No 46 of 2024

Between

Marchmont Pte Ltd

… *Appellant*

And

(1) Campbell Hospitality Pte Ltd
(2) Fu Yao
(3) Wang Cuirong

… *Respondents*

In the matter of Originating Claim No 492 of 2022

Between

Marchmont Pte Ltd

… *Claimant*

And

(1) Campbell Hospitality Pte Ltd
(2) Fu Yao
(3) Wang Cuirong

… *Defendants*

JUDGMENT

[Banking — Appropriation of payments]
[Landlord and Tenant — Termination of leases — Forfeiture — Requirements under section 18(1) of Conveyancing and Law of Property Act]
[Landlord and Tenant — Termination of leases — Forfeiture — Waiver of right to forfeiture]
[Landlord and Tenant — Covenants — Breach of tenant's covenants]
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v
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22 May 2025 Judgment reserved.

See Kee Oon JAD (delivering the judgment of the court):

Introduction

1 These appeals relate to the decision of a Judge of the General Division of the High Court (the "Judge") in HC/OC 492/2022 ("OC 492"). The dispute in OC 492 arose from attempts by Marchmont Pte Ltd ("Marchmont") to terminate a tenancy agreement dated 22 June 2021 ("Tenancy Agreement") with Campbell Hospitality Pte Ltd ("Campbell"). The Tenancy Agreement sets out Marchmont's lease to Campbell of specific parts of a property at 51 Joo Chiat Road intended solely for hotel operations (the "Demised Premises"). The lease was for a three-year term from 1 August 2021 to 31 July 2024.

2 Beginning from 14 December 2021, less than five months after the lease commenced, Marchmont issued various notices of breach ("NOBs") and notices

of termination ("NOTs"). In total, it issued three NOBs (NOBs 1, 2 and 3) and two NOTs (NOT 1 for NOB 1, and NOT 2 for NOBs 2 and 3), and claimed that these entitled it to forfeit the lease. Despite issuing the NOBs and NOTs, Marchmont continued to receive monthly payments from Campbell on a "without prejudice" basis, but maintained that the lease had been terminated after the expiry of the specified period in NOT 1. It considered that Campbell's payments would be off-set for double rent payable pursuant to s 28(4) of the Civil Law Act 1909 (2020 Rev Ed) ("CLA") on account of Campbell holding over after the termination of the lease.

3 Campbell challenged the validity of the NOBs and NOTs under s 18(1) of the Conveyancing and Law of Property Act 1886 (2020 Rev Ed) ("CLPA"). Campbell did not vacate the Demised Premises after NOTs 1 and 2 were served. It claimed that the various breaches identified had been substantially remedied. Marchmont disputed Campbell's claims and eventually filed and served OC 492 on Campbell on 28 December 2022, claiming for possession of the Demised Premises, damages, and double rent or double the value for the period of holding over.

4 Campbell's defence in OC 492 mirrored its counterclaim against Marchmont. It sought declarations that Marchmont's NOBs were invalid, that Marchmont had waived its right to forfeit the lease, and that Marchmont should be refused possession of the Demised Premises.

5 OC 492 proceeded to trial. The Judge allowed most of Marchmont's claims except for its claim for double rent or double the value from the expiry of NOT 1. The Judge found that only NOB 2 and NOT 2 were valid but that Marchmont had waived its right to forfeiture by accepting Campbell's rental

payments until it served OC 492. Campbell's counterclaim was dismissed, except for its prayers for declarations that NOB 1 and NOB 3 were invalid for non-compliance with s 18(1) of the CLPA. The Judge's reasons for his decision are set out in his written judgment: *Marchmont Pte Ltd v Campbell Hospitality Pte Ltd and others* [2024] SGHC 108 (the "Judgment").

6 AD/CA 38/2024 ("AD 38") is Campbell's appeal against the Judge's findings that NOB 2 and NOT 2 were valid and his exercise of discretion not to grant Campbell relief from forfeiture. AD/CA 46/2024 ("AD 46") is Marchmont's cross-appeal against the Judge's findings that NOB 1, NOT 1 and NOB 3 were invalid. In AD 46, Marchmont also appeals against the Judge's finding that it had waived its right to forfeiture such that it was only entitled to double the value or double rent after the service of OC 492 on Campbell, *ie*, from 29 December 2022 onwards.

Summary of key events – the NOBs and NOTs

7 The detailed background facts are stated in the Judgment. For present purposes, it suffices to set out a brief summary of the key events. NOB 1 was issued by Marchmont on 14 December 2021 after a joint inspection of the Demised Premises was conducted on 8 December 2021. Campbell was required to remedy the breaches listed in NOB 1 by 17 December 2021. As Campbell did not comply fully, NOT 1 was subsequently issued on 20 December 2021, stating that the lease would be terminated with effect from 23 December 2021. Marchmont relied on cl 4(13)(b) read with cl 10 of the Tenancy Agreement, which we set out here:

(a) Clause 4(13)(b) of the Tenancy Agreement provides that:

> The Demised Premises was constructed for use as a hotel and comprises of seventy (70) guest rooms. The

> Tenant shall not permit or allow at any time during the said Term more than two (2) guests or occupants per room. In the event of any breach of this sub-clause, the Landlord shall be at liberty forthwith to exercise its rights to terminate this Agreement.

(b) Clause 10(1) of the Tenancy Agreement provides that:

> Without prejudice to the Landlord's rights under Clause 9, … if the Tenant neglects or fails to perform or observe any of the provisions of this Agreement or commits any breach of its obligations hereunder, which breach if remediable is not remedied to the satisfaction of the Landlord … in any one of the said cases the rights privileges and interests of the Tenant in respect of the Demised Premises under this Agreement may be terminated by the Landlord. Upon termination of this Agreement, the Landlord at any time thereafter shall have the right to forfeit the Security Deposit and any other monies held by the Landlord for the account of the Tenant and to re-enter the Demised Premises or any part thereof in the name of the whole and to have again, repossess and enjoy the same but without prejudice to the right of action of the Landlord in respect of any antecedent breach of the Tenant's stipulations herein contained.

8 The list of breaches contained in NOB 1, which was stated as being non-exhaustive, was as follows:

(a) breaches of the occupancy limits (*ie*, renting rooms to more than two persons per room);

(b) turning off the air-conditioning in common areas;

(c) smoking violations;

(d) maintenance problems relating to toilets, lift vents, door closers, *etc*;

(e) motorcycle parking infractions; and

(f) denying Marchmont access to inspect suspected seepages in the rooms.

However, Marchmont's primary concern in NOB 1 was Campbell's alleged breach of the occupancy limits which were specified in the Tenancy Agreement (the "Occupancy Requirement") and improper use of the Demised Premises as a workers' dormitory.

9 Notwithstanding the issuance of NOB 1 and NOT 1, Campbell remained in possession of the Demised Premises. Marchmont subsequently discovered, from early to mid-2022, Campbell's alleged breaches of insurance requirements stipulated in cl 4(20) of the Tenancy Agreement (the "Insurance Requirements"). Marchmont also maintained that Campbell had not remedied the breach of the Occupancy Requirement and had not obtained regulatory approval to operate a foreign workers' dormitory at the Demised Premises. Marchmont thus issued an NOB on 8 March 2022 in respect of these alleged breaches.

10 NOB 2 was issued on 18 April 2022. This pertained to Campbell's breach of the Insurance Requirements. Campbell acknowledged that it had initially provided the wrong insurance policies to Marchmont. It thus submitted a new set of policies on 14 April 2022 (the "14 April 2022 policies"). Marchmont issued NOB 2 as it was of the view that the 14 April 2022 policies still did not comply with the Insurance Requirements. Campbell only procured new insurance policies on 3 August 2022 (the "3 August 2022 policies"). Marchmont was of the view that the 3 August 2022 policies were non-compliant with cl 4(20) of the Tenancy Agreement.

11 In the meantime, pursuant to a further joint inspection of the Demised Premises on 10 June 2022, NOB 3 was issued on 23 June 2022. NOB 3 related mainly to Campbell's alleged failure to adequately maintain and repair the Demised Premises and to ensure there was adequate manpower and security. NOB 3 contained a further non-exhaustive list of various breaches. The "examples" of such breaches listed in NOB 3 were mainly in respect of maintenance and cleanliness issues. Specific locations and problems were identified, with a mix of general and specific breaches set out. A period of one month to remedy the breaches in NOB 3 was afforded by Marchmont.

12 NOT 2, which related to both NOB 2 and NOB 3, was issued by Marchmont on 13 July 2022. Marchmont indicated in NOT 2 that as the breaches identified in NOB 2 and NOB 3 had not been remedied, the lease would be terminated pursuant to cl 10(1) of the Tenancy Agreement with effect from 21 July 2022. Marchmont eventually filed and served OC 492 on 28 December 2022. Campbell's directors Ms Fu Yao ("Ms Fu" or "Anna") and Mdm Wang Cuirong ("Mdm Wang"), Ms Fu's mother, were also named as defendants in OC 492 in their capacity as guarantors for all sums owed by Campbell to Marchmont. Mdm Wang is the sole shareholder of Campbell.

13 At the conclusion of the trial of OC 492 on 2 May 2024, Campbell remained in possession of the Demised Premises. Possession was eventually returned to Marchmont on 29 May 2024.

The arguments below

14 Marchmont's main arguments were as follows:

(a) In determining whether an NOB contains sufficient particulars of the alleged breaches within the meaning of s 18(1) of the CLPA, the

approach adopted by the House of Lords in *Fox v Jolly* [1916] 1 AC 1 ("*Fox*") should apply.[1] Following *Fox*, NOBs 1, 2 and 3 would still be valid even if some breaches in each NOB were not adequately particularised. As a result, Marchmont was entitled to forfeiture pursuant to either NOT 1 or NOT 2 so long as any breach which had been adequately particularised had not been rectified. The case of *Lee Tat Realty Pte Ltd v Limco Products Manufacturing Pte Ltd and others and another suit* [1998] 2 SLR(R) 258 ("*Lee Tat Realty*"), which stood for the contrary proposition, could be distinguished.[2]

(b) Campbell's argument that Marchmont had waived its right to forfeiture was meritless because: (i) the burden was on Campbell to show that the parties intended to depart from the non-waiver clause in the Tenancy Agreement (*ie*, cl 15);[3] (ii) Ms Fu knew at all material times of Marchmont's position that the Tenancy Agreement had been terminated;[4] (iii) Marchmont's various other acts apart from acceptance of payment relied upon by Campbell (the "Other Marchmont Acts") were equivocal and thus did not amount to waiver;[5] and (iv) the monthly payments that Campbell made into Marchmont's bank account were unilateral transfers and Marchmont had always maintained in correspondence that it accepted the payments as being made towards the double rent due.[6]

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1 Claimant's Closing Submissions in OC 492 dated 28 February 2024 ("CWS (HC)") at paras 12−14.
2 CWS (HC) at para 17.
3 CWS (HC) at paras 251−252.
4 CWS (HC) at para 253.
5 CWS (HC) at paras 255−256.
6 CWS (HC) at para 259.

(c) Campbell did not deserve relief from forfeiture because: (i) it did not treat key obligations seriously; (ii) it shifted positions and fabricated allegations to evade liability; (iii) it was holding over at the expense of Marchmont and neglecting the state of the Demised Premises; and (iv) it had unnecessarily protracted the proceedings in OC 492.[7] Furthermore, Campbell's allegations against Marchmont were baseless.[8]

(d) Marchmont was entitled to double rent for the duration of holding over. A landlord was entitled to double rent as long as the tenant holds over without the landlord's consent. There was no requirement of knowledge on the tenant's part that it had no right to remain in possession of the premises.[9]

(e) Alternatively, Marchmont could exercise the termination clauses in the Tenancy Agreement (cl 4(13)(b), which specifically pertained to the Occupancy Requirement, and cl 10, which was more general). As such, the lease was determined on the date specified in the NOTs.[10]

(f) Alternatively, Campbell was in repudiatory breach of the Tenancy Agreement as a result of its serious breaches of many terms of the same.[11]

15 On the other hand, Campbell's main arguments were as follows:

(a) NOBs 1, 2 and 3 were all invalid, following the approach in *Lee Tat Realty,* because each NOB contained some allegations of breach that

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7 CWS (HC) at paras 269−273.
8 CWS (HC) at paras 276−281.
9 CWS (HC) at paras 56−60.
10 CWS (HC) at paras 53−55.
11 CWS (HC) at paras 286−289.

were inadequately particularised.[12] In any case, each NOB did not afford Campbell sufficient time to remedy the breaches listed therein.[13] Therefore, Marchmont was not entitled to forfeit the lease. *Fox* had not been adopted in Singapore, because its adoption would result in hardship and prejudice to tenants; in any event, *Fox* could be distinguished.[14]

(b) Even if *Fox* were to be adopted, Marchmont failed to prove that the breaches which were sufficiently particularised had in fact occurred.[15]

(c) Even if the right to forfeiture arose, Marchmont had waived that right by reason of the Other Marchmont Acts, and/or by reason of its acceptance of monthly rental payments from Campbell following the NOBs.[16]

(d) Having regard to all the circumstances of the case, Campbell deserved relief from forfeiture for the following reasons: (i) Marchmont suffered no or minimal damage or loss as a result of Campbell's conduct; (ii) Marchmont did not explain clearly to Campbell what it had to do to avoid forfeiture, which amounted to "litigation by ambush"; and (iii) Campbell took active steps to resolve the alleged breaches and had, in any event, not wilfully breached the Tenancy Agreement.[17]

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12 Defendant's Closing Submissions in OC 492 dated 28 February 2024 ("DWS (HC)") at paras 27−29.
13 DWS (HC) at paras 45−47.
14 DWS (HC) at paras 32−35.
15 DWS (HC) at paras 52−65.
16 DWS (HC) at para 68.
17 DWS (HC) at paras 106−113.

The Judge's decision

16 The Judge made the following findings:

(a) NOB 1 and NOB 3 did not comply with s 18(1) of the CLPA because some of the breaches set out in NOB 1 and NOB 3 were insufficiently particularised. As NOT 1 was premised on NOB 1, NOT 1 was not valid. The breaches in NOB 2 were, however, sufficiently particularised. As such, Marchmont had validly exercised its right of forfeiture pursuant to NOT 2 which was premised on NOB 2.

(b) Marchmont had waived its right to forfeiture by accepting monthly rental payments from Campbell starting from December 2021. However, following Marchmont's service of OC 492 on 28 December 2022, which was an act showing Marchmont's "final determination" in exercising its right of forfeiture, no act subsequent to this could operate as a waiver. Marchmont was only entitled to double the value or rent under s 28(4) of the CLA from Campbell from 29 December 2022 onwards.

(c) Campbell was not entitled to relief from forfeiture.

17 The Judge's reasons for the above findings may be summarised as follows:

(a) The approach in *Lee Tat Realty* was to be preferred to that in *Fox*. *Fox* would place tenants in an invidious position by allowing landlords to produce NOBs with ambiguous allegations of breaches. In contrast, there was less prejudice in requiring landlords to use clear language in a notice to articulate the breaches relied on to forfeit a lease.

The tenant would face the risk that, despite expending money and time to make good some breaches, the lease could still be forfeited because it failed to comply in some unspecified way with another covenant. Furthermore, a notice requiring a tenant to rectify all breaches, whether or not listed, would be far too vague and does not meet the statutory requirement of sufficient particulars (Judgment at [38]−[41]).

(b) NOB 1 was expressly stated as being non-exhaustive. Furthermore, various alleged breaches therein were insufficiently particularised, such as the reference to the "[f]ailure to clean, upkeep and maintain the premises, for example dirty toilets, dusty lift vents, faulty door closer, *etc*" (Judgment at [42]).

(c) NOB 2 informed Campbell of the alleged breaches of the Insurance Requirements with sufficient specificity (Judgment at [52]). It also gave reasonable time for Campbell to remedy the alleged breaches, measured from the time of notice of the breach to the date of final determination of the lease (Judgment at [60]−[61]).

(d) NOB 3 was not insufficiently particularised simply because it utilised the phrase "among other things". However, it set out several insufficiently particularised breaches, *eg*, a breach of a requirement that Campbell ensure that it had "adequate" employees to operate the Demised Premises, and to ensure a "consistently high standard and quality in service to guests" (Judgment at [70]−[72]).

(e) The Other Marchmont Acts did not constitute waiver because they were consistent with Marchmont's interest in ensuring the proper maintenance of the Demised Premises as a landlord (Judgment at [94]−[99]). However, Marchmont's acceptance of monthly payments

from Campbell constituted waiver because the mode, timing and amounts of the payments were consistent with the requirements of the Tenancy Agreement, and Marchmont's qualifications in its correspondence with Campbell were not determinative (Judgment at [111]−[117]).

(f) Campbell was not entitled to relief from forfeiture because the breaches in question were not purely technical. The unremedied breach of the Occupancy Requirement increased Marchmont's regulatory risk exposure, as well as the risk of loss or damage to the Demised Premises and the risk of injury or loss of life at the Demised Premises. Such risks were accentuated by Campbell's breaches of the Insurance Requirements, which it had deliberately chosen not to remedy (Judgment at [124]−[125] and [133]−[134]).

18 As the Judge found that Marchmont had largely succeeded in its claims, he awarded costs to Marchmont subject only to a 20% reduction.

Key issues on appeal

19 We do not propose to set out the parties' main submissions on appeal as they are substantially similar to those made below. We note however that some submissions were based on matters that were not pleaded. As Campbell acknowledged at the hearing before us, these involved its submissions relating to waiver:

(a) NOB 2 (which concerned the Insurance Requirements) was a waiver of NOB 1; and

(b) Marchmont's request to Campbell to remedy the breaches pertaining to the water tank and engagement of pest extermination services was waiver by conduct.

20 We do not think that it would be appropriate to take these submissions into consideration. It is well-established that the pleadings should contain material facts which define the scope and boundaries of the parties' cases. Unpleaded matters should not be introduced in the guise of legal or factual arguments by some backdoor, whether at trial or on appeal. In so far as there are other submissions which are premised on matters that were pleaded, even if not directly or fully argued before the Judge, we see no objection to taking them into account.

21 The key issues that arise for our determination in both sets of appeals are as follows:

(a) the validity of the NOBs and NOTs, and in particular whether the relevant NOBs were invalid for lack of sufficient particulars having regard to s 18(1) CLPA and the case law;

(b) whether a valid NOT effectively forfeited the tenancy or whether the tenancy was forfeited only upon the commencement of OC 492;

(c) whether Marchmont had waived its right of forfeiture notwithstanding its qualified acceptance of rental payments and having regard to the Other Marchmont Acts;

(d) whether Campbell should be granted relief against forfeiture pursuant to s 18(3) of the CLPA; and

(e) whether Campbell is liable for double the value or rent under s 28(4) of the CLA during the period of holding over after the determination of the tenancy.

22 We turn next to consider the parties' submissions and state our decision on these issues.

Validity of the NOBs

The "sufficient particulars" requirement in s 18(1) CLPA

23 It is undisputed that the NOBs in question are governed by s 18(1) of the CLPA. As a starting point in determining whether the NOBs were valid, we examine the notice requirements under s 18(1) of the CLPA which provides:

> **Restrictions on and relief against forfeiture of leases**
>
> 18.—(1) A right of re-entry or forfeiture under any provision or stipulation in a lease, for a breach of any covenant or condition in a lease, shall not be enforceable, by action or otherwise, unless the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

24 The focal point in this case is the requirement in s 18(1) of the CLPA that the landlord must serve an NOB "*specifying the particular breach complained of*". The plain language of s 18(1) of the CLPA does not stipulate that each and every observed breach must be specified at the same time in a single NOB.

25 The issue before us may be framed thus: where there are multiple alleged breaches listed in an NOB, will the NOB be valid to the extent that any one of the breaches is sufficiently particularised? Put another way, will the entire NOB be invalid just because any one of the breaches is insufficiently particularised? The case law suggests two competing approaches. The Judge adopted the approach of the High Court in *Lee Tat Realty*, whereby the entire NOB (and any ensuing NOT) will be invalid if any single breach complained of among multiple breaches is insufficiently particularised. This aims to protect tenants from ambiguous or vague allegations of breaches, and is founded on the principle that tenants should know exactly what they need to remedy in order to avoid forfeiture.

26 In AD 46, Marchmont submits, as it did below, that the Judge ought to have adopted the House of Lords' approach in *Fox* instead. The House of Lords held in *Fox* that an NOB is valid for any breach, among multiple breaches, that is sufficiently particularised. Marchmont submits that this is more aligned with the statutory intent and interpretation of s 18(1) CLPA, and is preferable since it focuses on substance over form and avoids technical invalidation of substantially compliant NOBs. At the same time, the requirement to provide sufficient particulars offers adequate practical protection for tenants.[18] In any event, the protection afforded to tenants under *Lee Tat Realty* can be easily circumvented through the issuance of separate NOBs so that only those which are insufficiently particularised will be invalidated.[19] Furthermore, even if the NOB sets out breaches in a non-exhaustive manner, as found in NOBs 1 and 3, this does not invalidate the NOB because there is no impact on already sufficiently-particularised breaches and a landlord cannot rely on

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18 Appellant's Case in AD 46 dated 18 November 2024 ("AC46") at para 23.
19 AC46 at paras 27−28.

unparticularised breaches to begin with.[20] As for whether the NOB affords reasonable time for a remedy, this is an objective fact-specific enquiry. Complex or multiple breaches require more time to be remedied and the use of non-exhaustive provisos may require more allowance for time.

27 We begin by observing that *Lee Tat Realty* is not binding on the Judge as it is also a High Court decision. Weighing the two competing approaches in *Lee Tat Realty* and *Fox*, we are persuaded that there are good grounds to adopt the *Fox* approach. *Fox* remains good law in the UK but has apparently not been referred to in any other local case authority until OC 492. *Lee Tat Realty* relied largely on *Fletcher v Nokes* [1897] 1 Ch 271 ("*Fletcher*") and *Gregory v Serle* [1898] 1 Ch 652 ("*Gregory*"), two English Chancery Division decisions which pre-dated *Fox*. The House of Lords in *Fox* had in fact expressly cast doubt on the correctness of *Fletcher* and *Gregory* (see the judgments of Lord Buckmaster LC (at pp 13–15) and Lord Atkinson (at pp 17–18)). However, *Lee Tat Realty* was apparently decided without consideration of *Fox*. It would appear that *Fox* was not cited to the court as the judgment makes no reference to *Fox*.

28 In our view, the reasons Marchmont advances for why *Fox* should be adopted are cogent and persuasive. With respect, the approach in *Lee Tat Realty* is overly technical. It is not consistent with a plain reading of s 18(1) of the CLPA, which merely requires that any "particular breach" be specified. As Lord Atkinson put it in *Fox* (at p 18), the breaches "cannot … be taken in globo, nor can the several statements contained in the notice be taken in globo". Section 18(1) of the CLPA does not go so far as to preclude the right of forfeiture when any one such breach has been adequately specified and

[20] AC46 at para 26.

particularised but others might not have met the same threshold of particularisation.

29 We see no compelling reason why forfeiture should be denied on the basis of an "invalid" NOB when at least one of the specified breaches is sufficiently particularised and remains unrectified. By the same token, there is also no good reason why a non-exhaustive list of breaches *per se* would render an NOB invalid. An NOB can be valid if the relevant breach(es) have been clearly identified and sufficiently particularised so that adequate information is provided to the tenant to take appropriate remedial action. The tenant is still ensured a degree of protection from arbitrary, vague or unclear allegations of breach and retains the right to challenge insufficient or unclear NOBs. Furthermore, only sufficiently particularised breaches can be relied upon (if unremedied) by a landlord for the purposes of complying with s 18(1) of the CLPA.

30 For the above reasons, we differ from the Judge's view on the requirement for "sufficient particulars" in s 18(1) of the CLPA. There must of course be reasonable time afforded for remedial action so that the tenant is able to comply with the NOB. Relevant considerations include the number, nature and complexity of the breaches, the practical requirements to effect a remedy and whether there were any previous notices and communications in respect of the alleged breaches.

The specific NOBs and NOTs

31 We turn next to consider NOB 1 and NOT 1. The Judge found that NOB 1 was invalid as it was insufficiently particularised and included a "non-exhaustive" list of alleged breaches. We note that only three days were given by

Marchmont, pursuant to NOB 1, for Campbell to remedy the breaches. Campbell had at most eight days to remedy the breaches, if we also take into account the time frame for determination of the tenancy stated in NOT 1 (*ie*, on 22 December 2021).

32 The point as to whether there was reasonable time to remedy the breaches in NOB 1 was pleaded by Campbell in its Defence (Amendment No 2) at para 28. Although submissions were made by the parties below on this point, the Judge did not consider it in relation to NOB 1 since he had found NOB 1 to be invalid for insufficient particulars. Campbell did not advance this argument in AD 46. At the hearing before us, Campbell confirmed that it was not raising any argument on this point and this issue therefore did not arise for our consideration and determination.

33 It is thus unnecessary to dwell on the issue of whether Campbell was given reasonable time to remedy the breaches in NOT 1 beyond making some brief observations. Campbell would have been aware of at least some of Marchmont's concerns from as early as 8 December 2021, when the joint inspection was conducted with Campbell's two directors (Ms Fu and Mdm Wang) in attendance. The remedial action required of Campbell related mainly to evicting some occupants, effecting cleaning and repair works, and enforcing smoking and parking restrictions. Although there were a few breaches which Campbell was required to remedy, they were not necessarily highly complex or exceedingly difficult to manage. The correspondence between the parties further shows that by 16 December 2021, two days after NOB 1 was issued and eight days after the joint inspection, Campbell had already rectified four out of the six issues listed in NOB 1, leaving only two issues of breach of the Occupancy Requirement and cleaning of the Demised Premises to be

addressed.[21] In any event, the parties' dispute centred on breach of the Occupancy Requirement and Campbell did not allege that it had insufficient time to rectify this.

34 For the reasons explained above, we respectfully differ from the Judge's view that NOB 1 was insufficiently particularised and set aside his decision on this point. It follows then that NOT 1 was valid at least in so far as the breach of the Occupancy Requirement was concerned. In our view, NOB 1 and NOT 1 were both valid notices.

35 As for NOB 2, this focused on Campbell's breach of the Insurance Requirements. Marchmont had furnished a seven-page schedule which set out how the 14 April 2022 policies did not comply with the Insurance Requirements. The specific policy requirements were also outlined. Although Marchmont provided a relatively short deadline to remedy the breach, this was justified given that there was an initial notice which Marchmont had already issued to Campbell in March 2022. Following that notice, Campbell had already attempted to remedy the breach by mid-April 2022, albeit not to Marchmont's satisfaction. As Marchmont did not waive its right to forfeiture (see the discussion below on waiver at [63]–[80]), NOB 2 was valid. Sufficient particulars were provided, a reasonable time was given to remedy the breach, but the breach remained unremedied.

36 Campbell initially asserted that the Insurance Requirements were impossible to comply with and maintained this position until the trial commenced. The "impossibility" argument was eventually dropped as a defence

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21 1st Joint Core Bundle Vol B at p 39.

(Judgment at [57]). Campbell conceded that it did not comply with the Insurance Requirements. There was thus a valid basis for forfeiture of the tenancy.

37 As we have found that NOB 1 and NOB 2 were valid, it is not strictly necessary to address the question of whether NOB 3 was valid but we do so only for completeness. NOB 3 contained a non-exhaustive list of various breaches, with a mix of both sufficient and insufficient particulars of the breaches. Under the *Lee Tat Realty* approach, NOB 3 would thus be invalid even if some breaches were sufficiently particularised. We have expressed our preference for the *Fox* approach, and NOB 3 would thereby also be valid for breaches which were sufficiently particularised. A reasonable time frame of one month to remedy the breaches was provided. We thus differ from the Judge's decision on NOB 3 being invalid for insufficient particulars. It is immaterial that NOB 3 made reference to "among other things" (*ie*, non-exhaustively listing the breaches) as long as there were breaches which were sufficiently particularised so as to enable Campbell to understand with reasonable certainty what it was required to remedy.

Whether the NOTs validly forfeited the tenancy or whether the tenancy was forfeited only upon commencement and service of OC 492

38 The Judge found that NOT 2 was a valid NOT but that Marchmont had waived its right to forfeit the lease by accepting rental payments. We will address the arguments concerning waiver later in this judgment. The Judge also found that the tenancy was only determined upon Marchmont's commencement and service of OC 492 on 28 December 2022, as the service of OC 492 constituted an "act of final determination" following which no act by the landlord could operate as waiver of forfeiture (Judgment at [83]−[84]).

39 Marchmont submits that if the court agrees that NOT 1 was valid, this should be equated with the tenancy having been forfeited from the expiry of the termination notice in NOT 1. Alternatively, even if NOT 1 was not valid, NOT 2 which flowed from NOB 2 was valid and the tenancy would have been forfeited from the expiry of the termination notice in NOT 2.[22] Campbell disagrees with both of these submissions and submits that termination of its lease can only be effected by forfeiture, which in turn can only be done in two ways: by exercising the lessor's right of re-entry or by commencement of an action.[23]

The questions posed by the court

40 Prior to the hearing, we directed the parties to tender further written submissions to address the following four questions (the "Questions dated 4 March 2025") which relate to their arguments concerning the termination and forfeiture of the lease:

(a) Can the terms of a tenancy agreement give rise to a contractual right on the part of the landlord to terminate the lease *simpliciter*, independent of and distinct from the landlord's right to forfeit the lease?

(b) Assuming that Question (a) is answered in the affirmative, is the landlord's exercise of that contractual right still subject to s 18(1) of the Conveyancing and Law of Property Act 1886? In answering Questions 1 and 2, please address the case of *Richard Clarke & Co Ltd v Widnall* [1976] 1 WLR 845 ("*Richard Clarke*") and other relevant authorities.

(c) Regardless of the answers to Questions (a) and (b), can a tenancy be validly determined through the landlord's issuance of a notice of

22 AC46 at paras 111 and 116.

23 Respondent's Case in AD 46 (Amendment No 1) dated 16 December 2024 ("RC46") at para 95.

termination? If not, what steps must the landlord take to validly determine a tenancy? In particular, is it necessary that the landlord re-enters the premises and forfeits the lease or commences an action?

(d) When does the right under s 28(4) of the Civil Law Act 1909 to claim double rent or double value arise, *ie*, is it upon expiry of a contractual notice of termination or upon exercise of a right of forfeiture?

41 On 7 March 2025, the parties filed their respective written submissions in response to the Questions dated 4 March 2025.

Questions (a) and (b)

42 From their written submissions, the parties were generally in agreement on the answers to Questions (a) and (b). The answers depend on whether the contractual right to terminate a lease is contingent on any default by the tenant. If the contractual right is contingent on the tenant's default, and the landlord intends to exercise that right to forfeit the lease, s 18(1) of the CLPA must be complied with.[24] This is based on the decision of the UK Supreme Court in *Croydon London Borough Council v Kalonga* [2022] AC 1 which explained (at [52]) that any right to determine a lease by a landlord is a right of forfeiture if: (a) when exercised, it operates to bring the lease to an end earlier than when it would "naturally" be determined; and (b) it is exercisable in the event of some default by the tenant. In short, the parties essentially answered Question (a) in the negative – any contractual right to prematurely terminate the lease which is

[24] Campbell Parties' Further Written Submissions dated 7 March 2025 ("Campbell's Response") at paras 6−7; Marchmont's Response dated 7 March 2025 ("Marchmont's Response") at paras 3−7.

contingent on any default by the tenant is the exercise of the landlord's right to forfeit the lease. We agree with this view.

43 As a result of the parties' common answer to Question (a), they both answered Question (b) in the affirmative. It was common ground that in this case, Marchmont had attempted to forfeit the lease, and that these attempts were subject to s 18(1) of the CLPA.

Question (c)

44 Our intent in framing Question (c) was to decide whether, as a matter of law, an NOT could suffice to forfeit (and thus determine) a lease. The parties' positions were not aligned in relation to Question (c). In its written response dated 7 March 2025 ("Campbell's Response"), Campbell submitted that where a landlord seeks to determine a lease involving a breach of a covenant, the landlord is effectively exercising a right of forfeiture and forfeiture can only be effected by action (*ie*, legal proceedings) or by physical re-entry.[25] In support, Campbell cited *Canas Property Co Ltd v K.L. Television Services Ltd* [1970] 2 WLR 1133 at 1139 and *Woodfall: Landlord and Tenant* (Kim Lewison gen ed) (Sweet & Maxwell, 2006) ("*Woodfall*") at para 17.087. It justified this position on the basis that a lease creates a property right in favour of the tenant, and that an NOT lacks sufficient finality to extinguish a property right and is also not subject to any statutory requirements as to what it should contain.[26]

45 On the other hand, Marchmont maintained that a tenancy can be validly forfeited by relying solely on a contractual termination clause. The starting point is that a lease is both contractual and proprietary in nature.[27] According to

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25 Campbell's Response at para 12.
26 Campbell's Response at para 13.
27 Marchmont's Response at para 2.

Marchmont, the effect of the valid exercise of a termination clause is that the contractual right of the tenant is terminated.[28] However, the tenant's proprietary right is only forfeited upon the landlord's compliance with s 18(1) of the CLPA. Marchmont maintained that the lease would have been (contractually) determined at the date of termination specified in the NOT, and that whether the landlord takes further steps after the issuance of the NOT does not change the date of determination of the tenancy.[29]

46 We had asked for submissions on *Richard Clarke* in Question (b), as this case appeared at first blush to offer some possible support, at least tangentially, for Marchmont's proposition that an NOT could suffice to forfeit a lease. This indeed was the position adopted by Marchmont in its written response dated 7 March 2025 ("Marchmont's Response") to Questions (b) and (c) among the Questions dated 4 March 2025.[30]

47 At the hearing of the appeals, however, counsel for Marchmont, Ms Marina Chin SC ("Ms Chin") took a different position and conceded that *Richard Clarke* did not go so far as to provide such support for Marchmont's submission. She acknowledged that the English Court of Appeal in *Richard Clarke* did not have the benefit of full arguments on the point and had not elaborated on this issue.

48 We are of the view that *Richard Clarke* is of limited assistance to Marchmont. On a closer reading of the case, the question of whether an NOT can effect forfeiture of a lease was not expressly considered in *Richard Clarke*. Rather, the question before the Court of Appeal was entirely different and arose

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28 Marchmont's Response at para 12.
29 Marchmont's Response at para 14.
30 Marchmont's Response at paras 7, 10 and 14.

from a different set of facts. In *Richard Clarke*, cl 13(4) of the tenancy agreement provided that if the tenant committed a breach of certain covenants, the landlord could determine the lease in one of two ways – the landlord could either peacefully re-enter the premises (cl 13(4)(i)), or give three months' notice in writing to the tenant, with the tenancy determining upon expiry of the notice (cl 13(4)(ii)). The tenant breached the covenant to pay rent and the landlord elected to proceed by giving three months' notice under cl 13(4)(ii). At first instance, the court found that, because cl 13(4)(ii) did not involve forfeiture, the question of relief from forfeiture did not arise. The only question on appeal was whether a notice to terminate given under cl 13(4)(ii) by reason of a breach of the covenant to pay rent constituted, or had the same effect in law as, a forfeiture so that the question of relief from forfeiture could also arise under cl 13(4)(ii) (*Richard Clarke* at 849G). This question was answered in the affirmative. Therefore, what the Court of Appeal really held in *Richard Clarke* was that the effect of the method of determination of the lease stipulated in cl 13(4)(ii) of the tenancy agreement in that case was the same as forfeiture so that the tenant was entitled to relief from forfeiture because he had paid the outstanding rent (*Richard Clarke* at 851C). The case does not stand for the general proposition that an NOT can effect forfeiture of a lease as such.

49 On the other hand, *Woodfall* supports Campbell's position in that it states: "[f]orfeiture or re-entry (the two terms being interchangeable) can be effected only by physical re-entry, often called peaceable re-entry, or by action, that is by legal proceedings" (at para 17.087). However, it does not give a rationale for this principle. *Hill & Redman's Law of Landlord and Tenant* (John Furber *et al*) (LexisNexis, Looseleaf Ed, 1988, August 2021 release) ("*Hill & Redman's*") puts it in somewhat broader terms thus: "[w]here [a] landlord wishes to forfeit the lease, he must commit a final and positive act, which cannot

be retracted, by which he demonstrates his intention to forfeit the lease. Moreover the landlord must have an intention to forfeit" (at para A[4861]). While there is no explanation as to why the act must possess this quality of finality, it may be surmised that the rationale is that a more unequivocal act must be performed to bring a proprietary right to an end, in contrast to a mere contractual right.

50 If the broader approach in *Hill & Redman's* is adopted, in the absence of any clear authority, it may be postulated that there is nothing in theory to prevent an NOT from validly forfeiting a tenancy, provided that the NOT in a given case constitutes a final and positive act which cannot be retracted, accompanied by an intention to forfeit the lease. This is however difficult to reconcile with the long line of authority stemming from the English cases, as the acts traditionally accepted in case law as constituting forfeiture are generally more drastic than a "mere" NOT. For instance, *Woodfall* refers to changing the locks of the premises in question, or the landlord letting into occupation a third party and maintaining him as tenant.

51 In Campbell's Response, specifically in relation to Question (c), *viz*, whether a tenancy can be validly determined through the landlord's issuance of an NOT, it was submitted that the landlord "has to first comply with s 18(1) of the CLPA before taking steps to forfeit the lease to bring the lease to an end" and simply issuing an NOT would not suffice.[31] Campbell further submitted that to the best of its knowledge, there is no authority in Singapore or the UK which stands for the proposition that a landlord may effect forfeiture of a lease by the

[31] Campbell's Response at para 11.

mere issuance of an NOT.[32] The parties have not referred us to any case which has explicitly accepted that an NOT may suffice to forfeit a lease.

52 We note that Campbell's position reflects the settled position at common law, and is also reflected consistently in academic texts and commentaries across common law jurisdictions. For instance, the position in Australia is similar, as set out in Peter Butt, *Land Law* (Thomson Reuters, 6th Ed, 2010) at paras 15.191 and 15.211:

> [15 191] The law governing the landlord's power of forfeiture is a complex mix of statute and case law. Before considering the principles in detail, an overview may be useful. … Thirdly, the landlord must actually exercise the power [of forfeiture], *either by physically re-entering (where legally permissible) or by serving a summons for possession*, or, where the tenant has repudiated, by accepting the repudiation. …
>
> [15 211] … The power to forfeit may be exercised by peaceably re-entering (subject to statutory limitations) or by issuing and serving a summons for possession of the land. Both methods have the same legal effect.
>
> [emphasis added]

53 The rationale, as suggested in Campbell's Response[33] and above (see [49]), could be that a lease creates property rights in favour of the tenant. It is well-settled that the lease has both a contractual and proprietary dimension and is both an executory contract and an executed demise: Tang Hang Wu & Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 4th Ed, 2019) at para 17.2. Marchmont has also not pointed to any authority to support its proposition that there is a "contractual right" that is severable from the "proprietary right" of a lease.

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32 Campbell's Response at para 12.
33 Campbell's Response at para 13.

54 To recapitulate, the purported exercise of a right of forfeiture is subject to control by s 18(1) of the CLPA. If s 18(1) of the CLPA is satisfied, the valid exercise of that right determines the tenancy. The issue of whether a particular act amounts to forfeiture is determined by two questions: (a) whether it is a final and positive act which cannot be retracted; and (b) whether it is accompanied by an intention to forfeit the lease.

55 In *Grimwood v Moss* (1872) LR 7 CP 360 ("*Grimwood*") at 364, it was held that "the bringing of the action of ejectment is equivalent to the ancient entry. It is an act unequivocal in the sense that it asserts the right of possession upon every ground that may turn out to be available to the party claiming to re-enter". The Judge duly noted that *Grimwood* was cited in *Halsbury's Laws of England* vol 62 (LexisNexis, 2022) ("*Halsbury's 2022*") at para 541 for the proposition that if a landlord has shown a "final determination" to take advantage of the forfeiture (for instance, by commencing proceedings to recover possession), no subsequent act will operate as a waiver (Judgment at [81]).

56 Marchmont cited *Clarke v Grant and another* [1950] 1 KB 104 and *Pang Kau Chai @ Pang Hon Wah v Runway 80 Pte Ltd* [2022] SGDC 152 below to further support its submission. The Judge correctly distinguished these cases. We agree with his analysis that they are of no assistance to Marchmont. We endorse his view that "the finality that attaches to a notice of termination is far less than that of physical re-entry or service of a notice of action to recover possession" (Judgment at [82]).

57 The Judge was correct, in our view, in finding that by commencing and serving OC 492, Marchmont had carried out an act of "final determination" in exercising its right to forfeiture subsequent to which no act could operate as a waiver. Up until that point in time, however, Marchmont took no action to

enforce its right to forfeit the lease beyond issuing the NOBs and NOTs. The main explanation it offered for the length of time it took to commence OC 492 was contained in the Affidavit of Evidence-in-Chief ("AEIC") of one of its directors, Mr Lawrence Leow Chin Hin ("Mr Leow").[34] Mr Leow explained that the delay was because he had wanted, "[a]s far as possible … to try to resolve the dispute with Campbell without having to commence proceedings". When the question of Marchmont's delay was raised with Ms Chin during the hearing before us, she further suggested that more time was required to prepare for the commencement of the action given that various alleged breaches were observed, including regulatory breaches pertaining to fire safety and occupancy limits.

58 It cannot be gainsaid that that there is considerable merit in encouraging amicable dispute resolution wherever possible. Landlords should not rush headlong into hasty litigation. That being said, there should also not be undue delay on the landlord's part in commencing an action. In this connection, in making the observations above, we echo the concerns of the UK Law Commissioners in their report (UK Law Commission, *Termination of Tenancies for Tenant Default* (Law Com No 303, 4 October 2006)) (the "2006 Report"),[35] wherein an initial proposal for open-ended tenant default notices was not supported. The reason was that this "would have the effect of leaving the threat of termination action hanging over a tenant's head indefinitely".[36] This is akin to what Campbell faced due to Marchmont's delay in commencing an action to forfeit the lease, since NOT 1 was issued as far back as 20 December 2021 and OC 492 was only commenced about a year later. (We pause to observe that the

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34 Affidavit of Evidence-in-Chief of Lawrence Leow Chin Hin dated 25 August 2023 at para 193.

35 1st Joint Bundle of Authorities Vol 3 at p 218.

36 1st Joint Bundle of Authorities Vol 3 at p 285 at para 4.60.

recommendations in the 2006 Report have not been adopted as yet since the UK Government called for a further wider review in 2019.)

59 We are also not persuaded that Marchmont required so much time to commence action because of various alleged breaches. There was no affidavit to this effect and the breaches were already alleged in the various NOTs.

60 In summary, we are not persuaded that there are compelling grounds to endorse Marchmont's submission as a matter of law. Marchmont seeks to put forward a novel proposition which, as it concedes on appeal, is not supported by any authority. It relies primarily on the argument that the exercise of a landlord's contractual right to terminate is sufficient to bring the tenant's proprietary interest to an end. This would however represent an unwarranted extension of the established common law position, which has hitherto not gone so far as to recognise an NOT as being sufficient to operate as forfeiture. It is, with respect, a step too far to take.

61 In the circumstances, we are not satisfied that Marchmont had validly forfeited the tenancy by issuing the NOTs *simpliciter*. The tenancy was forfeited only upon the commencement and service of OC 492 on Campbell on 28 December 2022.

Question (d)

62 Lastly, we address Question (d). In the light of our views as set out above in relation to Questions (a) to (c), it follows that the right under s 28(4) of the CLA to claim double rent or double value would only arise after the lease has been determined, as a result of a valid exercise of the landlord's right of forfeiture.

Whether there was waiver of Marchmont's right to forfeiture

63 The Judge understood the authorities as being unanimous that the mere acceptance of rent constitutes a waiver of the landlord's right to forfeiture even where the landlord seeks to qualify the acceptance of rent. He found that Marchmont had waived its right to forfeiture by accepting Campbell's rental payments after issuing the NOBs/NOTs. The waiver on Marchmont's part continued until the service of OC 492 on Campbell on 28 December 2022.

64 The Judge relied principally on *Central Estates (Belgravia) Ltd v Woolgar (No 2)* [1972] 1 WLR 1048 ("*Central Estates*") and *Leivest International Pte Ltd v Top Ten Entertainment Pte Ltd* [2006] 1 SLR(R) 888 to support his finding that acceptance of payment as rent constitutes waiver (Judgment at [104] and [111]). We agree that *if* a payment is accepted as rent, it constitutes waiver (see below at [65]−[66]). However, these cases do not assist in answering the anterior question of whether, on the facts, the payment was indeed accepted as rent. The mere receipt of moneys by the landlord from the tenant does not automatically amount to "acceptance" of rent. Both cases can be distinguished on the basis that they involved active demands for rent by the landlord. In *Central Estates*, the demand for rent was in fact made unintentionally due to a clerical error by the landlords' agents, and when the payments were received by the agents, receipts for those payments were issued. It was clear that the fact that a demand was actually made and rental payment was consequently accepted was pivotal to the court's decision to find that the landlords had objectively waived their right to forfeiture. In contrast, no such demands were made or receipts issued by Marchmont in the present case after January 2022. Marchmont could not thus be said to be approbating and reprobating. Indeed, Marchmont's conduct was to the contrary as we elaborate later.

65 With respect, we disagree with the Judge's finding of waiver. The existence of waiver is a matter of law. In *Fico Sports Inc Pte Ltd v Thong Hup Gardens Pte Ltd* [2011] 1 SLR 40, the court had framed the enquiry as being whether, as a matter of fact, the money was only accepted as damages or whether it was tendered and accepted as rent (at [120]−[121]). The mere acceptance of payment of money does not inevitably or conclusively establish waiver. If on the facts, payment is indeed tendered and accepted as rent, it is then a principle of law that, so long as the landlord then knew of the breach, the acceptance constitutes a waiver: *Halsbury's 2022* at para 541, citing *Windmill Investments (London) Ltd v Milano Restaurant Ltd* [1962] 2 QB 373.

66 This disposes of Campbell's reliance on *Segal Securities v Thoseby* [1963] 1 QB 887 ("*Segal*") at 899 for the proposition that acceptance of rent can still operate as a waiver even if the acceptance is said to be on a "without prejudice" basis. *Segal* does not assist Campbell in answering the anterior question of whether, *on the facts*, the payment was accepted as rent (*Thomas v Ken Thomas Ltd* [2006] EWCA Civ 1504 ("*Ken Thomas*") at [16], citing *Woodfall* at para 17.095). A further reason *Segal* is of limited assistance is that in that case, it was the landlord's *demand* for rent that was construed as a waiver; the payments made by the tenant were returned to her.

67 We now turn to Campbell's submission that its monthly payments were accepted as rent, constituting waiver by election. Waiver by election requires clear and unequivocal communication and mere silence or inaction alone is insufficient: *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 at [54] and [58]. Here, Marchmont did not unequivocally communicate any such election, let alone remain silent or do nothing. Instead, it had repeatedly voiced its position by stating in its correspondence with

Campbell starting from 7 January 2022[37] that the Tenancy Agreement had been terminated and Campbell's payments were only accepted with the qualification that they would be applied by way of set-off to double rent. Campbell does not dispute these facts.

68 In so far as Marchmont's receipt of monthly payments is alleged to have constituted waiver, Campbell had transferred the payments directly into Marchmont's account. In coming to his conclusion that the payments had in fact been accepted by Marchmont as rent, the Judge took into account the fact that Campbell's payments matched the exact rental amounts, and that the timing and method of transfer followed the requirements under the Tenancy Agreement (Judgment at [117]). We think that these considerations are neutral. The payment mechanism, whether relating to the quantum, timing, or method of transfer, was under Campbell's unilateral control. Marchmont's receipt of the payments would amount to mere inaction or passivity at best, as it had not made any demand for rent to be paid as per the Tenancy Agreement. Ultimately, Marchmont had always maintained that the tenancy was terminated, and never made a clear and unequivocal communication to the effect that it would treat the tenancy as continuing.

69 We reject Campbell's suggestion that Marchmont should be expected to return the payments.[38] This does not make sense considering that Marchmont had made a claim for double the value or rent and had always qualified its retention of the payments. It would be entirely consistent with commercial realities for Marchmont to accept some payment for the continued occupation of the Demised Premises notwithstanding its position that the tenancy had been

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37 1st Joint Core Bundle Vol B at pp 50–51.

38 RC46 at para 78.

terminated. This would remain so even if the tenancy had not yet been validly forfeited, as the tenant still owes a debt for at least the monthly rental amount: *Toleman v Portbury* (1872) LR 7 QB 344. This would represent the minimum sum owing to the landlord as a consequence of the tenant remaining in possession of the premises.

70 On the other hand, Marchmont further relied on *Royal & Sons Organisation Pte Ltd v Hotel Calmo Chinatown Pte Ltd* [2024] SGHC 248 ("*Royal*") at [105], [106] and [108] to support its argument that the acceptance of payment by the landlord in that case did not constitute waiver of breach due to, among other things, the qualifying words adopted by the landlord.[39] We understand that the decision in *Royal* is pending appeal in AD/CA 90/2024. As such, we neither consider nor comment on this case for present purposes.

71 We turn to Campbell's argument that the payments were tendered and accepted as rent due to the doctrine of appropriation. This operates where several debts are due from the debtor to the creditor. It allows the debtor, when making a payment, to appropriate the money paid to a particular debt or debts, and if the creditor accepts the payment so appropriated, he must apply it in the manner directed by the debtor (Hugh Beale, *Chitty on Contracts* (Sweet & Maxwell, 35th Ed, 2023) at para 25−058). Campbell submitted that the doctrine of appropriation allowed Campbell to appropriate its monthly payments towards the rental due, such that the payments should rightfully be regarded as rent.[40]

72 As we pointed out to Campbell at the hearing, the difficulty with this submission is that the present case is *not* one in which there were several distinct debts due from Campbell to Marchmont. Rather, *one sum* was due, and it was

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39 AC46 at para 98.
40 RC46 at para 77.

the *characterisation* of that debt that was in dispute. Campbell *either* owed Marchmont double rent *or* rent *simpliciter* during the period of (alleged) holding over. Both claims cannot co-exist. If the doctrine of appropriation were applicable to a situation where there is a dispute as to the nature of the debt, the debtor could make a payment, unilaterally assert its position as to the nature of the debt, and purely on that basis prevail in its assertion as to the nature of the debt. Applied to a situation like the present, where there is a dispute as to whether the tenancy has been forfeited, Campbell's argument would allow a tenant to make payments to the landlord, unilaterally assert in correspondence that these payments were being tendered as rent, and then prevail in the tenancy dispute by invoking the doctrine of appropriation. The landlord would not be able to deny that these unilateral payments were rental payments except by returning them. We do not think that this position is supportable.

73 Campbell sought to overcome this difficulty by relying on the cases of *Ken Thomas* and *Croft v Lumley* 6 HL Cas 672 ("*Croft v Lumley*") for the proposition that the doctrine of appropriation can extend to the landlord-tenant contract.[41] However, in our view, these cases do not bring Campbell very far. *Ken Thomas* is clearly distinguishable because the debts which the tenant owed to the landlord were rents for the months of November 2004, December 2004, and January 2005 (*Ken Thomas* at [14]) and the issue was for which months the rent payments were made. It goes without saying that debts for rents of separate months can clearly co-exist; there was no dispute as to the characterisation of each of the debts *per se*.

74 As for *Croft v Lumley*, it is analogous to the present case in that there was a dispute as to whether the lease had been forfeited, giving rise to a further

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41 RC46 at para 77.

dispute as to whether a payment by the tenant had been tendered as rent, or as compensation for holding over. It is not clear to us, however, that *Croft v Lumley* stands for the proposition that appropriation can apply in a situation where there is a dispute between the landlord and tenant as to the nature of the debt (*ie*, double rent versus rent *simpliciter*); even if it does, we decline to follow it for the reasons set out at [72] above.

75 Therefore, on the objective evidence, we conclude that Marchmont did not waive its right to forfeiture after January 2022 (*ie*, after Marchmont issued NOT 1) as the mere receipt of rental payments was insufficient for waiver.

76 That said, we note that Marchmont made demands for rent on 1 December 2021 and 1 January 2022. Had we been required to decide this point, we would have found that only payments made pursuant to these demands constituted waiver. The fact that the rental demand made on 1 January 2022 was automatically generated by Marchmont's billing system[42] is immaterial (*Central Estates*, see [64] above).

77 As for the Other Marchmont Acts, we agree with the Judge that these did not amount to waiver. In *Expert Clothing Service & Sales Ltd v Hillgate House Ltd and another* [1986] Ch 340 at 360, it was held that the court may consider all the circumstances of the case to determine whether any other acts were so unequivocal that when considered objectively, those acts could only be regarded as being consistent with the continued existence of a tenancy.

78 The relevant Other Marchmont Acts that were pleaded by Campbell as evidence of waiver were the: (a) renewal of the Electrical Installation Licence;

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42 Joint Record of Appeal Vol III, Part 3 at p 648.

(b) execution of the Daikin air-conditioning maintenance servicing agreement (the "Daikin Agreement"); and (c) acceptance of utilities payments and other sums owing and payable by Campbell.

79 Essentially, Campbell's argument was that Marchmont appeared to have continued to conduct itself through the Other Marchmont Acts as if Marchmont remained its landlord while Campbell continued to bear obligations under the Tenancy Agreement *qua* tenant.[43] The difficulty with this contention is that there was no clear and unequivocal communication of intent on Marchmont's part to keep the tenancy alive. The short point is that none of these acts, whether taken singly or together, unequivocally amount to recognition of the continuance of the lease, for the reasons given by the Judge (Judgment at [94]–[99]). First, since Marchmont remained in control of the remaining space not constituting the Demised Premises at the property on 51 Joo Chiat Road, Marchmont's renewal of the Electrical Installation Licence would facilitate its ability, as landlord, to let out the remaining space. Second, when Marchmont consented to Campbell's execution of the Daikin Agreement, Marchmont stated that this was done without prejudice to the determination of the Tenancy Agreement. Marchmont's consent was granted solely in the interest of ensuring that there was at least some maintenance of the air-conditioning and mechanical ventilation system at the Demised Premises, and that it was for Campbell to determine how to ameliorate its own breach of the Tenancy Agreement. Third, concerning the utilities charges and other outstanding sums, there is no legal authority to show that payment of utilities constitutes a waiver of forfeiture, and a demand for repayment of utility bills incurred can arguably be made against a tenant at sufferance or a trespasser, such that it does not point unequivocally

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[43] RC46 at para 84; Appellants' Case in AD 38 dated 18 November 2024 ("AC38") at para 37.

towards the existence of a tenancy. For all these commercial and practical reasons, Marchmont's conduct was entirely justifiable and did not clearly amount to Marchmont's recognition of the continuance of the lease. To the contrary, Marchmont's express reservation of its rights was clear and consistent. Even if it could be said that Marchmont had been blowing hot and cold to some extent by virtue of the Other Marchmont Acts, this does not assist Campbell. This would certainly not have amounted to unequivocal communication by Marchmont that it was prepared to treat the tenancy as continuing.

80 As of the date of Marchmont's service of OC 492, Campbell remained in breach of the Occupancy and Insurance Requirements. NOBs 1 and 2 had given Campbell due notice of these breaches. The Judge considered that the Insurance Requirements set out in NOB 2 were continuing obligations, rather than single obligations (Judgment at [87]−[88]). The nature of the breach of the Insurance Requirements was ongoing as they remained unremedied. The Judge did not examine the breach of the Occupancy Requirement in the same manner since he found that NOB 1 was not valid. Nevertheless, we would characterise the breach of the Occupancy and Insurance Requirements as continuing obligations instead of "once and for all" breaches, and both breaches continued and remained unremedied even up until the date of Marchmont's act of "final determination". As the Judge held, an obligation is a continuing one if it requires the tenant to maintain a certain state of affairs over the course of a tenancy (Judgment at [87]). The Occupancy Requirement is a continuing obligation because it required that Campbell not permit or allow, at any time during the Tenancy Agreement, more than two occupants per room (cl 4(13)(b)). There are photographs suggesting that at least one room was in breach of the Occupancy Requirement on 1 January 2022. The evidence suggests that this breach was only remedied around November 2023 (Judgment at [128]). As for the

Insurance Requirements, we agree with the Judge's holding that these are continuing obligations because they had to be complied with throughout the duration of the tenancy – the Tenancy Agreement clearly did not state that the Insurance Requirements only had to be performed on or by a certain time (Judgment at [88]). The Insurance Requirements, as Campbell concedes on appeal, remain unremedied to date.

81 The validity of NOB 3 would thus be academic but in any event, we are of the view that all three NOBs were valid. NOT 1 and NOT 2 were also properly issued.

82 We now turn to consider Campbell's arguments concerning the duration for which a waiver operates following the act giving rise to the waiver. These arguments were raised for the first time on appeal. Campbell's submission is that where the tenant pays rent in advance, and the rent is accepted by the landlord, any breaches during the period for which rent is paid are waived. For instance, in a hypothetical tenancy agreement where monthly rent is payable in advance on the first of every month, and the tenant makes payment of rent as required, any breaches for the whole of that month would be waived. In our view, this argument appears to be sensible. Where a landlord accepts rent in advance, he is expressing an objective intention and election for the tenancy to subsist during the period for which rent is accepted. On this argument, the payment (and acceptance) of rent in advance in response to a demand for the same on 1 January 2022 waived all breaches in January 2022.

83 However, we are not persuaded by the alternative argument advanced by counsel for Campbell, which was that this waiver could continue "for such period as it is definitely known [the breaches] will continue" (*Segal* at 901), even if this extended beyond the period in respect of which rent had been

accepted. We do not see how the landlord's acceptance of rent for a specific period can or must give rise to waiver beyond that period. It is unclear why the landlord's assumed knowledge that the breaches will continue should be relevant to the question of the length of the waiver.

84 As we find that there was no waiver beyond January 2022, there is no question that when Marchmont commenced OC 492 on 28 December 2022, a valid cause of action was in existence. It is thus not strictly necessary to go on to further examine Campbell's arguments concerning whether a fresh NOB was necessary before Marchmont could exercise its right of forfeiture.

85 Campbell also submits that where an NOB has been issued in respect of a continuing breach, and the landlord has waived the breach for a period of time, the landlord must, *subsequent to* that period of time, issue a fresh NOB in order to validly forfeit the lease. He cannot rely on breaches which have already been waived to exercise his right of forfeiture.[44]

86 Without expressing a definitive view on the matter, it suffices for us to note that Campbell's argument appears persuasive for the reasons set out in *Farimani v Gates* [1984] 2 EGLR 66 and *Greenwich London Borough Council v Discreet Selling Estates Ltd* [1990] 2 EGLR 65. We do not consider the issue further since it is not necessary for the resolution of the appeal.

Whether Campbell should have been granted relief from forfeiture

87 Section 18(3) of CLPA gives the courts the discretion to grant or refuse relief from forfeiture. The provision reads:

> (3) The court may grant or refuse relief as the court, having regard to the proceedings and conduct of the parties under

[44] AC38 at paras 52−63.

> subsections (1) and (2) and to all the other circumstances, thinks fit.

88 The Judge declined to grant Campbell relief because he was of the view that the alleged breaches were not merely technical breaches. In particular, the breach of the Occupancy Requirement was significant, and both this and the Insurance Requirements breaches were regulatory breaches which remained unremedied. The combined breaches thus created substantial risks and potentially substantial prejudice for Marchmont (Judgment at [125]–[126] and [133]). He relied on the principle in *Shiloh Spinners Ltd v Harding* [1973] AC 691 (at 723–726) that relief against forfeiture for a breach of covenant should be granted in limited cases, and that wilful breaches should only be relieved against in exceptional cases (Judgment at [121]).

89 Campbell argues in AD 38 that there is no rule requiring exceptional circumstances for relief from forfeiture to be granted.[45] Moreover, the Judge should not have considered the breach of the Occupancy Requirement which was set out in NOB 1 since he had found that NOB 1 was insufficiently particularised.[46] The Judge also failed to consider that Marchmont would receive a potential windfall from the early termination of the tenancy as it could subsequently lease out the Demised Premises at a much higher rate. Campbell further contends that the breach of the Insurance Requirements was not a genuine or serious breach but merely a technical breach.[47]

90 As we have found that NOB 1 was in fact valid, this squarely addresses Campbell's objection to the Judge having considered the breach of the Occupancy Requirement which was set out in NOB 1. It must therefore follow

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45 AC38 at paras 72−73.
46 AC38 at para 75.
47 AC38 at para 83.

that the breach of the Occupancy Requirement ought to be capable of being taken into account as the court "thinks fit", in line with s 18(3) of the CLPA. In any event, the fact that NOB 1, which includes the breach of the Occupancy Requirement, was found by the Judge to be invalid does not in itself mean that the breach itself should be disregarded. After all, Campbell does not dispute that the Occupancy Requirement was in fact breached.

91 In our view, Campbell's arguments are self-serving and inconsistent with its own position that the court should take into account all relevant circumstances rather than selectively disregard certain factors (*eg*, the breach of the Occupancy Requirement). It is not open to Campbell to contend that the breach of the Insurance Requirements was merely a "technical" breach. This does not cohere with Campbell having strenuously maintained initially that the Insurance Requirements were too onerous and impossible to fulfil. If they were merely "technical" requirements, Campbell would have said so at the outset. The fact that breach of either the Occupancy or Insurance Requirements might have regulatory implications was sufficient to negate Campbell's arguments.

92 Campbell's "windfall" argument may be quickly dealt with. It is based on the premise that the Demised Premises were leased to Campbell for a three-year term at a low monthly rent of $50,000 to $56,000 as a result of the ongoing COVID-19 pandemic when the Tenancy Agreement was being negotiated. Campbell advances the narrative that, once the COVID-19 pandemic had subsided, Marchmont sought to determine the Tenancy Agreement prematurely so that it could regain possession of the Demised Premises from Campbell, following which it could lease the Demised Premises to another tenant at an allegedly much higher market rate of around $130,000 monthly. This market rate of $130,000 was based on an alleged listing of 51 Joo Chiat Road on a property marketing webpage which Marchmont supposedly made in September

2022. To begin with, the listing which Campbell cites appears to refer to a different property and it is unclear whether it was for 51 Joo Chiat Road at all. There is thus no clear evidence that the "market rate" of the Demised Premises was $130,000. It bears reiterating that Campbell did not remedy the relevant breaches pursuant to valid NOBs. Campbell cannot seek relief from forfeiture by simply pointing to any presumptive windfall which Marchmont might obtain, as any such windfall arises only because Campbell itself had defaulted on its obligations under the Tenancy Agreement.

93 The Judge had given due consideration to all the relevant circumstances in exercising his discretion not to order relief from forfeiture. We see no reason to differ from the Judge's analysis of the seriousness of Campbell's breaches as well as the paucity of evidence to show that Campbell had rectified the breaches. We therefore affirm his decision not to allow Campbell relief from forfeiture.

Whether Campbell was liable for double the value or rent

94 The Judge held that Marchmont was entitled to double the value or rent pursuant to s 28(4) of the CLA which allows a landlord to charge double the value or rent for holding over until possession is given up by the tenant. The provision states:

> (4) Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not.

95 Campbell repeats its submission below that the issue is whether holding over requires mere continued possession after termination of the lease, or an intention to refuse delivery up of the premises with knowledge that there is no

right to remain in possession. It relies on *Lee Wah Bank v Afro-Asia Shipping Co (Pte) Ltd* [1992] 1 SLR(R) 740 ("*Lee Wah Bank*") at [17].[48]

96 The Judge rejected Campbell's argument that Marchmont had to show such intention and knowledge on Campbell's part, relying on [15] of *Lee Wah Bank* (Judgment at [146]). We agree with the Judge's view. There is no mention in [15] of *Lee Wah Bank* of any such requirement to show intention or knowledge. To the extent that [17] of *Lee Wah Bank* may seem to suggest that there is such a requirement, the Judge correctly reasoned that the Court of Appeal's observations in [17] arose in the context of the factual finding in that case that the tenant could not be said to have intended to refuse to deliver possession (as the tenant had returned the keys to the premises). It was also not contended in *Lee Wah Bank* that the tenant did not know that he had no right to remain in possession.

97 On our facts, the Judge correctly found that Campbell clearly intended to refuse delivery of possession to Marchmont (Judgment at [146]). Campbell knew that Marchmont was terminating the tenancy and seeking possession of the Demised Premises. Campbell could not reasonably contend that it knew or honestly believed that it had any right to remain in possession, more so where Campbell would have known that it had not remedied all the alleged breaches.

98 There is the remaining question of the period from which Marchmont should be entitled to double the value or rent. As we have already explained, we are of the view that Marchmont had not waived its right to forfeiture through the mere receipt of payments in the light of its explicit qualifications to the contrary. On the other hand, it had only exercised its right to forfeit the tenancy

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[48] AC38 at para 86.

by commencing and serving OC 492 on 28 December 2022. Marchmont was therefore entitled to claim double the value or rent from 29 December 2022. For the avoidance of doubt, Marchmont may retain the payments received up to the date of forfeiture on 28 December 2022 as rent (see [69] above). Thereafter the payments will go towards part payment of double the value or rent to Marchmont until possession of the Demised Premises was returned to Marchmont on 29 May 2024.

Conclusion

99 For the reasons above, we dismiss AD 38 in its entirety and allow AD 46 in part. To sum up, we find that: (a) NOB 1/NOT 1 and NOB 3 are valid on the adoption of the *Fox* approach instead of the *Lee Tat Realty* approach; and (b) Marchmont did not waive its right of forfeiture after January 2022. However, Marchmont did not validly determine the tenancy by exercising its right of forfeiture until the commencement and service of OC 492 on 28 December 2022. Marchmont is thus entitled to double the value or rent under s 28(4) of the CLA only from 29 December 2022, as the Judge concluded.

100 As for costs of the appeals, we order Campbell to bear Marchmont's costs of both appeals, fixed at $75,000 all in for AD 38 and AD 46 together. This quantum takes into account the fact that Marchmont did not succeed on a number of the arguments it raised in AD 46, and we have also accepted Marchmont's claim to indemnity costs in principle in view of cl 17(2) of the Tenancy Agreement. The Judge's costs order below is varied such that the 20% discount he attached to Marchmont's costs and disbursements below is reduced to 10%, as Marchmont has not succeeded in full in its arguments before us.

101 Finally, we make the usual consequential orders as to the release of the security deposit(s) for the appeals.

Woo Bih Li
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

See Kee Oon
Judge of the Appellate Division

Yeap Poh Leong Andre SC, Wong Soon Peng Adrian, Ang Leong Hao (Hong Lianghao), Sia Bao Huei and Tan Hsi Jie Oliver (Rajah & Tann Singapore LLP) for the appellants in AD 38 (respondents in AD 46);
Marina Chin Li Yuen SC, Darren Ng Zhen Qiang, Gitta Priska Adelya, Nayo Leong and Koh Ru Hui (Tan Kok Quan Partnership) for the appellant in AD 46 (respondent in AD 38).