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

[2025] SGHC 66

Originating Claim No 269 of 2022

Between

Pierre Andre Jacques Lorinet

… *Claimant*

And

Helu-Trans (S) Pte Ltd

… *Defendant*

JUDGMENT

[Limitation of Actions — Particular causes of action — Contract]
[Limitation of Actions — Particular causes of action — Tort]
[Contract — Contractual terms — Exclusion clauses]
[Contract — Contractual terms — Unfair Contract Terms Act]
[Tort — Negligence — Duty of care]
[Tort — Negligence — Breach of duty]
[Tort — Negligence — Causation]
[Tort — Negligence — Res ipsa loquitur]

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v
Helu-Trans (S) Pte Ltd

[2025] SGHC 66

General Division of the High Court — Originating Claim No 269 of 2022
Lee Seiu Kin SJ
26–27, 29 August, 25 October 2024

10 April 2025 Judgment reserved.

Lee Seiu Kin SJ:

1 The claimant, Mr Pierre Andre Jacques Lorinet ("Mr Lorinet"), was the owner of a valuable sculpture. That sculpture was mounted onto the wall of Mr Lorinet's residence in 2014 by the defendant movers, Helu-Trans (S) Pte Ltd ("Helu-Trans"). Some two years later, in 2016, the sculpture fell from the wall and was damaged as a result. By this action commenced at the behest of his subrogated insurers, Mr Lorinet seeks to hold Helu-Trans responsible for damages arising from the incident. His case, in a nutshell, is that Helu-Trans had failed to mount the sculpture in a reasonably secure manner.

2 Having carefully considered the evidence and parties' submissions, I dismiss Mr Lorinet's claims against Helu-Trans. As I will explain in the rest of the judgment, there is virtually no evidence of the circumstances leading up to the incident. The parties and their experts have thus relied on forensic evidence of the aftermath to explain the fall of the sculpture, but that evidence too is

incomplete. In the result, Helu-Trans cannot safely be held responsible for the loss claimed for by Mr Lorinet. I elaborate.

The undisputed facts

3 The sculpture in question was a creation of Sir Anish Kapoor styled "Untitled (Red Apple)" (the "Sculpture"). Simply put, the Sculpture was shaped like an egg-shaped bowl. It measured 141 cm by 91 cm by 71 cm, and weighed approximately 22.8 kg.[1] To assist the reader, I reproduce a photograph of the Sculpture below:[2]

4 The Sculpture was purchased by Mr Lorinet on 30 May 2012 for £522,000. Through his insurance brokers ("R K Harrison"), Mr Lorinet had the Sculpture insured under a syndicated policy.[3] It was thereafter mounted onto a wall in Mr Lorinet's residence at the time, where it remained without incident.

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1 Agreed Statement of Facts dated 23 August 2024 ("ASOF") at para 1.

2 Pierre Andre Jacques Lorinet's affidavit of evidence-in-chief dated 26 January 2024 ("PL") at p 57.

3 Transcript of proceedings on 26 August 2024 at p 75, ln 11 to p 76, ln 14.

5 In 2014, Mr Lorinet moved homes and engaged the services of Helu-Trans in uninstalling, transporting, and reinstalling the Sculpture (among other pieces of artwork). The terms of Helu-Trans' engagement were set out in its quotation to Mr Lorinet of 10 April 2014 (the "Quotation"), which incorporated Helu-Trans' Uniform Trading Conditions (the "Conditions").[4]

6 It is common ground that Helu-Trans did not seek, nor did Mr Lorinet offer, instructions on how the Sculpture should have been installed. There were also no installation manuals or instructions from Sir Anish's studio. All Mr Lorinet did was to direct that the Sculpture be mounted onto a particular wall in the living room of his new residence (the "Wall").[5] In the event, Helu-Trans' workers proceeded to mount the Sculpture on 7 May 2014 using a 5 cm-long screw with washers in a rawl plug.[6] More will be said about the method of installation below.

7 On Mr Lorinet's case, the Sculpture fell from the Wall on 18 September 2016.[7] He says that his wife and children were having lunch when they heard a loud noise coming from the living room; upon investigating the source of the noise, Mr Lorinet's wife found the Sculpture lying on the floor.[8] Mr Lorinet himself was overseas at that time,[9] and it was only after he returned that R K Harrison was contacted (on 19 September 2016) with a view to making an insurance claim.[10]

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4 ASOF at para 4.

5 ASOF at para 7.

6 ASOF at para 7.

7 Statement of Claim in HC/OC 269/2022 ("SOC") at para 11.

8 PL at para 19.

9 PL at para 18.

10 PL at paras 18 and 20.

8 Robert Scally & Associates Limited ("RSA"), a firm of loss adjusters based in Hong Kong, was thereafter appointed by the insurers of the Sculpture to investigate Mr Lorinet's claim.[11] In this connection, the Managing Director of RSA, Mr Robert William Scally ("Mr Scally"), attended at Mr Lorinet's residence on 6 October 2016. Two reports were prepared by RSA following Mr Scally's visit – one dated 15 October 2016 (the "First RSA Report"), and the other dated 22 May 2017 (the "Second RSA Report").

9 The damage to the Sculpture as pleaded in Mr Lorinet's Statement of Claim[12] mirrors the description of the damage set out in the First RSA Report, *ie*:[13]

(a) a crack in the shape of a half-moon at the base of the Sculpture's rear resin surface; and

(b) a band of hairline fractures, also on the base of the Sculpture's rear resin surface.

10 Mr Lorinet was eventually compensated by the insurers,[14] who proceeded to have the Sculpture restored at the cost of £81,850.04 and sold by auction for £180,000.[15] By the present action commenced on 16 September 2022, the insurers (through Mr Lorinet) are looking to Helu-Trans to make good their loss.

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11 Robert William Scally's affidavit of evidence-in-chief dated 22 January 2024 ("RS") at para 4.

12 SOC at para 11.

13 PL at p 39 ("Nature and Extent of Damage").

14 PL at para 4

15 SOC at para 17.

The parties' cases

11 As I alluded to at [1] above, Mr Lorinet's case is that the Sculpture fell because it had been improperly installed by Helu-Trans. Specifically, he pleaded that "[t]he 5cm screw that held the Sculpture in place on the wall was too small to bear the full weight of the Sculpture over time."[16] This forms the basis for Mr Lorinet's claims against Helu-Trans for breach of its duty – both in contract and tort – to exercise reasonable care in installing the Sculpture.[17]

12 Helu-Trans accepts that it was contractually obliged to "take care in ensuring that proper and suitable devices would be used for installing the Sculpture".[18] Its response, however, is that there can be no contractual liability on Helu-Trans' part because (a) Mr Lorinet's claim in contract is time-barred; and (b) any contractual liability was excluded (or at least limited) by the express terms of the Conditions.[19] As for Mr Lorinet's claim in negligence, Helu-Trans submits that the parties' relationship was governed entirely by contract and so there was no duty of care in tort to begin with.[20] More generally, Helu-Trans maintains that the Sculpture was "properly and reasonably installed in a safe, secure and lasting manner fit for its purpose, with due care and skill".[21]

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16 SOC at para 12

17 SOC at paras 14–15.

18 ASOF at para 6; Defence in HC/OC 269/2022 ("Defence") at para 22.

19 Defence at para 34.

20 Defence at para 24.

21 Defence at para 30.

Whether Mr Lorinet's claims are time-barred

13 I begin with the preliminary question of whether Mr Lorinet's claims are time-barred. The relevant limitation periods are set out in s 24A of the Limitation Act 1959 (2020 Rev Ed) (the "LA"), which I reproduce below:

> **Time limits for negligence, nuisance and breach of duty actions in respect of latent injuries and damage**
>
> **24A.**—(1) This section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).
>
> …
>
> (3) An action to which this section applies, other than one referred to in subsection (2), shall not be brought after the expiration of the period of —
>
> (a) 6 years from the date on which the cause of action accrued; or
>
> (b) 3 years from the earliest date on which the claimant or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (a).

Mr Lorinet's contractual claim is time-barred

14 With regard to claims for breach of contract, it is settled law that the cause of action accrues for the purposes of s 24A(3)(*a*) LA at the time of the breach and "the fact that the damage may be suffered later does not extend the date on which the period of limitation begins to run": *Lim Check Meng v Orchard Credit Pte Ltd* [1997] 2 SLR(R) 709 at [18]; *Spandeck Engineering (S) Pte Ltd v China Construction (South Pacific) Development Co Pte Ltd* [2005] SGCA 59 at [29].

15 In this case, the breach of contractual duty pleaded by Mr Lorinet was Helu-Trans' failure to "take reasonable care in ensuring that proper and suitable devices were used for installing the Sculpture" and "to perform [its] obligation to install the Sculpture on the wall in a safe, secure and lasting manner."[22] Mr Lorinet's cause of action in contract would therefore have accrued on the date the Sculpture was installed by Helu-Trans' workers (*ie*, 7 May 2014). It follows then that the present action commenced on 16 September 2022 was brought long after the expiry of the six-year limitation period prescribed by s 24A(3)(*a*) LA.[23]

16 Nothing was said in Mr Lorinet's pleadings or submissions on the postponed limitation period under s 24A(3)(*b*) LA. In any event, it is clear to me that that limitation period would have commenced *at the latest* on 15 October 2016, when the First RSA Report was issued. That report details the damage to the Sculpture and identifies "the failure of the Helu-Trans installed screw fixation" as the cause of the incident.[24] With this, Mr Lorinet and his insurers would have had all the "knowledge required for bringing an action for damages in respect of the relevant damage" within the meaning of s 24A(3)(*b*) read with s 24A(4) LA. The postponed limitation period, therefore, would have yielded no benefit to Mr Lorinet's claims (whether in contract or tort).

The claim in tort is not time-barred

17 With respect to Mr Lorinet's tort claim, Helu-Trans has not pleaded a defence of limitation against it. That defence was only raised in relation to Mr Lorinet's contractual claim,[25] and it appears from Helu-Trans' submissions that

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22 SOC at para 14.

23 ASOF at para 7.

24 PL at pp 38–39 ("Cause").

25 Defence at para 34(d).

it is content to rely on the argument that the parties' relationship was governed entirely by contract.[26] It is therefore strictly unnecessary for me to consider if Mr Lorinet's alternative claim in negligence is time-barred because, pursuant to s 4 of the LA, it would have been incumbent on Helu-Trans to plead that defence had it wished to rely upon it: *IPP Financial Advisers Pte Ltd v Saimee bin Jumaat and another appeal* [2020] 2 SLR 272 at [34].

18 I shall nevertheless consider the matter briefly, not least because it presents an opportunity to address questions of fact relevant to the determination of this dispute. Where claims in the tort of negligence are concerned, a cause of action only accrues for the purposes of s 24A(3)(*a*) LA when the damage complained of materialises: *Management Corporation Strata Title Plan No 4099 v KTP Consultants Pte Ltd* [2024] SGHC(A) 32 at [3] and [38]; *Lian Kok Hong v Ow Wah Foong and another* [2008] 4 SLR(R) 165 at [24]. Here, the damage in question is the physical damage to the Sculpture (see [9] above). On Mr Lorinet's pleaded case, that damage arose upon the Sculpture having fallen off the Wall on 18 September 2016. Helu-Trans, for its part, disclaims any knowledge of the circumstances giving rise to the damage.[27]

19 In my view, the evidence (which I will consider in greater detail below) plainly indicates that the Sculpture fell because of a failure in its mounting system. The pleaded damage, which Helu-Trans does not dispute, is also consistent with the Sculpture having fallen from height. I therefore accept that the Sculpture fell from the Wall, and that the relevant damage was a consequence of that fall.

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26 Defendant's Closing Submissions in HC/OC 269/2022 ("DCS") at para 51.

27 Defence at para 28.

20 I also accept that the Sculpture fell on 18 September 2016. On 19 September 2016, Mr Lorinet sent R K Harrison an email informing the latter that the Sculpture "[fell] from the wall yesterday [*ie*, 18 September 2016]".[28] This was confirmed by Mr Lorinet in a further email to R K Harrison dated 29 September 2016, in which he wrote: "The date of loss was indeed 18/09."[29] Unless Mr Lorinet was being untruthful to R K Harrison at the time – and there is no reason to suppose that was the case – these emails suffice as a contemporaneous record of the date on which the Sculpture fell from the Wall.

21 It follows from these findings that the damage in question materialised on 18 September 2016. The six-year limitation period prescribed by s 24A(3)(*a*) thus ran from that date and expired on 18 September 2022. The present action, having been commenced on 16 September 2022, was therefore brought two days shy of the expiry date but within time nevertheless.

Helu-Trans owed a duty of care in tort to Mr Lorinet

22 Having decided that only Mr Lorinet's claim in contract is time-barred, the focus shifts to the merits of his negligence claim. Here, the analysis begins with the question of whether Helu-Trans separately owed Mr Lorinet a duty of care in tort.

The legal principles

23 On this issue, both sides took as their starting point the Court of Appeal's decision in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology*

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28 RS at p 26.

29 RS at p 14.

Agency [2007] 4 SLR(R) 100 ("*Spandeck*").[30] In brief, it was decided in *Spandeck* that a duty of care will only be imposed where the claimant can establish (a) the factual foreseeability of loss resulting to the claimant from the defendant's carelessness; (b) legal proximity between the claimant and the defendant; and (c) the absence of any policy reasons for negating the duty of care: *Spandeck* at [115].

24 Helu-Trans accepts that the first two limbs of the *Spandeck* framework are satisfied.[31] Helu-Trans submits, however, that the parties have clearly defined their rights and obligations by contract and this suffices as policy grounds for negating its *prima facie* duty of care in tort to Mr Lorinet.[32] To impose such a duty, so it is said, would result in the "unfair shifting of liabilities, contrary to the contractual intent, and create overlapping liabilities that expose parties to unintended burdens".[33]

25 In this connection, Helu-Trans relies on *Spandeck* itself as authority for the proposition that a duty of care will not be imposed in circumstances where there is "a contract which adequately [regulates] parties' rights, obligations and relative bargaining positions which [the plaintiff could have availed] itself of, but chose not to do so".[34] I was also referred to *Seatrium New Energy Ltd (formerly known as Keppel FELS Ltd) v HJ Shipbuilding & Construction Co,*

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30 Claimant's Written Submissions in HC/OC 269/2022 ("CCS") at para 66; DCS at para 24.

31 DCS at paras 25–26.

32 DCS at para 26.

33 DCS at para 32.

34 DWS at para 27.

Ltd (formerly known as Hanjin Heavy Industries and Construction Co Ltd) [2023] SGHC 264 ("*Seatrium*") in support of Mr Lorinet's argument that:[35]

> … the rule that the Court will not superimpose tortious duties of care on a contractual framework has been articulated as a "general policy", which applies particularly where duties of care sought to be imposed by a party are coterminous and no different in content from the contractual duty of care which exists between the parties …

26 I begin by addressing Helu-Trans' reliance on *Seatrium*. The relevant parts of the decision are reproduced below:

> 58 … I agree that the presence of a contractual framework may constitute part of the policy considerations to be taken into account when establishing a duty of care in tort. Where the parties have privately agreed to an allocation risk by means of contract, that would militate against the imposition of a duty of care in tort. That appears to be what the court in *Chubb* was pointing towards with its reference (at [44]) to exemptions and limitations imposed by contract:
>
> > 44 … It is a given that liability in tort and contract may co-exist. However, *it is also well-settled that by founding a cause of action in tort one cannot avoid the exemptions and limitations imposed by contract between the parties*. This position was affirmed in a later decision of the House of Lords: *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145 (HL). In the result the true proposition is that unless there is a definite advantage in founding a claim in tort, it would be unwise to infuse it into what is essentially a claim in contract. [emphasis added]
>
> 59 The point was made more clearly by the Court of Appeal in *Spandeck* at [114], where it expressly recognised that a duty of care should not be superimposed on a contractual framework, and that this constituted cogent policy reasons negating a duty of care even where proximity could be established.
>
> 60 In this case, the tortious duty of care which Keppel seeks to impose appears to be co-terminous and no different in content from the contractual duty of care already owed by Hanjin pursuant to the Sub-Contract. I therefore see no reason

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35 DCS at para 28.

> to depart from the general policy against superimposing tortious duties of care on a contractual framework. Accordingly, I reject Keppel's claim that Hanjin also owed it a tortious duty of care.

27 It is settled law that a duty of care will not generally be imposed if doing so would *disturb* the contractual allocation of risk that parties have freely negotiated for themselves. This concern most commonly rears its head where the imposition of a duty of care in tort would effectively permit the claimant to circumvent contractual exclusions or limitations (as the learned judge noted in *Seatrium* at [58], citing *MCST Plan No 1166 v Chubb Singapore Pte Ltd* [1999] 2 SLR(R) 1035 at [44]). This much is uncontroversial.

28 The learned judge in *Seatrium* then referred to *Spandeck* as authority for the proposition that "a duty of care should not be superimposed on a contractual framework, and that this constituted cogent policy reasons negating a duty of care even where proximity could be established" (*Seatrium* at [59]). Based on the conclusions expressed at [60] of *Seatrium*, the learned judge appears to have taken the view that a duty of care is "superimposed" simply by reason of it being "coterminous and no different in content from the contractual duty of care already owed".

29 It is here that I would respectfully part ways with the learned judge's analysis of the law. In *Spandeck*, the appellant's right to payment for construction work done (pursuant to a contract with the Government of Singapore) was subject to those works having been duly certified by the respondent. Although the contract precluded claims by the appellant against the Government in respect of the respondent's failure or delay in certification, it conferred upon the appellant a right to claim the amounts under-certified (and interest thereon) in arbitration against the Government. This last-mentioned right was, however, lost when the appellant novated the contract to another

party. It was against that backdrop that the appellant subsequently claimed against the respondent directly for the latter's allegedly negligent under-certification of certain works done by the appellant.

30 The Court of Appeal, following *Pacific Associates Inc v Baxter* [1990] 1 QB 993 ("*Pacific Associates*"), considered that the appellant's contractual right of recourse against the Government in respect of substantially the loss claimed for made it impossible to find a legally proximate relationship between the appellant and respondent: *Spandeck* at [108]–[110]. More pertinently, the Court would have refused to impose a duty of care on policy grounds because the appellant had chosen to contract with the Government solely and on terms which allocated the risk of loss resulting from under-certification by the respondent. To that extent, it was unnecessary for the appellant's protection to impose on the respondent a duty of care in tort, not least because that was a duty which the appellant could have (but chose not to) make a contractual one: *Spandeck* at [101] and [114], citing with approval Russell LJ's judgment in *Pacific Associates*.

31 With this context in mind, it appears to me that the policy against the "superimposition" of duties is concerned not with the creation of duplicative rights and obligations *per se*. Instead, it is directed against the creation of rights and obligations *distinct* from those already provided for by contract and which would upset consensual allocations of risk (whether between the contracting parties *inter se* or, as was the case in *Spandeck*, between non-contracting parties).

32 I am fortified in this view by other cases in which the existence of a contractual duty was held *not* to be a reason against imposing a parallel and coterminous duty of care in tort. In *Go Dante Yap v Bank Austria Creditanstalt*

AG [2011] 4 SLR 559 ("*Go Dante Yap*"), the Court of Appeal observed (at [20]) that:

> **Where, however, the parties have expressly or impliedly negotiated an obligation on one of them to exercise care and skill in the exercise of his rights or duties under the contract, it is entirely possible that an identical duty of care could exist in the tort of negligence**, as was accepted by the House of Lords in the leading decision of *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145 ("*Henderson v Merrett*") (see especially the speech of Lord Goff of Chieveley at 194–195). **In other words, where a contract imposes a contractual duty of care on one of the parties, that may be said to be "a case where the relationship of proximity arises by virtue of the contract and the work to be performed under it"** (see *Bryan v Maloney* (1995) 128 ALR 163 at 169 (per Mason CJ, Deane and Gaudron JJ)), **which would in general give rise to a corresponding duty of care in the tort of negligence in the absence of any policy considerations militating against such a duty.** In apparent contrast to these views, however, Stanley Burnton LJ in *Robinson v Jones* at [94] stated that "[i]t is important to note that a person who assumes a contractual duty of care does not thereby assume an identical duty of care in tort to the other contracting party". We agree that a contractual duty of care does not automatically mean that there is a duty of care in the tort of negligence, since it is always possible that, for example, the contract might contain an express clause excluding a tortious duty of care (as was the case in *Robinson v Jones* itself and in almost all the cases relied on by the Judge), or that the contractual framework may be so structured as to demonstrate that the parties intended thereby to exclude the imposition of a tortious duty of care (see *Animal Concerns Research & Education Society v Tan Boon Kwee* [2011] 2 SLR 146 at [71]), but **we do not concur with the implication contained in Stanley Burnton LJ's statement that the existence of a contractual duty of care is always insufficient on its own to give rise to a tortious duty of care, all other things being equal** …
>
> [emphasis added in bold]

33 The Court of Appeal plainly took the view in *Go Dante Yap* that the existence of a contractual duty of care may, barring any countervailing policy concerns, give rise to a corresponding duty of care in tort. It would make

nonsense of this proposition for one to regard the existence of a contractual duty itself as *ipso facto* a policy reason against imposing a coterminous duty in tort.

34 For these reasons, I would respectfully depart from the reasoning suggested in *Seatrium* at [60]. In and of itself, the existence of Helu-Trans' contractual duty of care gives rise to no policy concerns negating the imposition of an identical duty of care in tort. The real question is whether the imposition of the duty of care argued for by Mr Lorinet would upset the balance of rights and obligations negotiated between the parties, so that there exist valid policy concerns negating the imposition of that duty on Helu-Trans.

There are no policy reasons against imposing a duty of care in tort

35 Helu-Trans' argument, as I alluded to at [24] above, is that the imposition of a duty of care in tort would effectively permit Mr Lorinet to circumvent various contractual exclusions and limitations set out in the Conditions.[36] I therefore turn to consider the applicability of those exclusions and limitations to Helu-Trans' putative liability.

The relevant contractual terms

36 So far as the total exclusion of liability goes, cll 12(b) and 14(a) of the Conditions are relevant:[37]

> 12. …
>
> (b) The Company shall only be responsible for any loss of or damages to goods or any nondelivery or misdelivery, if it is proved that the loss, damage, nondelivery or misdelivery occurred whilst the goods were in the actual custody of the Company and under its actual control and that such loss, damage,

[36] DCS at para 29.

[37] Chia Richard's affidavit of evidence-in-chief dated 26 January 2024 ("CR") at p 45.

> nondelivery or misdelivery was due to the wilful neglect or default of the Company or its own servants.
>
> …
>
> 14. In event the Company shall be discharged from all liability:-
>
> (a) for loss from a package or unpacked consignment or for damage or misdelivery (however caused) unless notice be received in writing within seven days after the end of the transit where the transit ends in the Republic of Singapore or within fourteen days, after the end of the transit where the transit ends at any place outside of the Republic of Singapore.
>
> …

37 Helu-Trans submits that cl 12(b) applies because the Sculpture was plainly not in its actual custody or control at the time it was damaged, nor was the damage attributable to the wilful neglect or default of Helu-Trans or its servants in any event.[38] Mr Lorinet also gave Helu-Trans no written notice of the damage within the time allowed pursuant to cl 14(a), in which case Helu-Trans must be regarded as having been discharged from any liability for that damage.

38 It is also said that Helu-Trans' liability is limited by cl 13 of the Conditions:[39]

> 13. In no case whatsoever shall any liability of the Company howsoever arising and not withstanding any lack of explanation exceed the value of the relevant goods or a sum at the rate of S$1000 per tonne of 1000 kilos on the gross weight of the goods whichever is the lesser. The Company may, if it wishes, pay for repairing or replacing the damaged items instead.
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> [emphasis in original omitted]

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38 SOC at paras 34(b) and 34(c).

39 CR at p 45.

39 Mr Lorinet's response is that, if one were to construe the Conditions as a whole, it will be readily apparent that they were only intended to apply to Helu-Trans' business as forwarder of goods and not the installation of fine art pieces. He further submits that that cll 12(b), 13, and 14(a) should be read *contra proferentem*, so that they cannot be relied on by Helu-Trans to exclude or limit its liability in this case.[40]

40 The interpretation of the Conditions aside, Mr Lorinet submits that these terms constitute unreasonable exclusions or limitations of liability for negligence and are, therefore, unenforceable pursuant to s 2(2) or s 3(2)(*a*) of the Unfair Contract Terms Act 1977 (2020 Rev Ed) ("UCTA").[41] Counsel for Mr Lorinet has also tendered interesting arguments to the effect that there was a contract between the parties for the supply of a screw and rawl wall plug fit for the purpose of mounting the Sculpture, so that s 7(2) of the UCTA precludes any attempt by Helu-Trans at excluding or restricting its liability in respect of the quality or fitness of the screw and rawl plug.[42]

None of the contractual exclusions or limitations are applicable in this case

41 In this case, it is undisputed that the Quotation itself expressly incorporates the Conditions by reference. The incorporating provision is reproduced below:[43]

> **VERY IMPORTANT:**
>
> 1 All services offered and undertaken by Helu-Trans are subject exclusively to our Uniform Trading Conditions, of which a copy is attached for your kind references [*sic*].

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40 CCS at para 117.

41 CCS at para 128.

42 CCS at paras 112 and 127.

43 CR at p 43.

42 The Conditions then open with cl 1(a), which reads as follows:

> *All and any business undertaken, including any advice, information or service provided whether gratuitously or not* by HELU-TRANS (S) PTE LTD (hereinafter called "the Company") is transacted subject to the Conditions hereinafter set out and each Condition shall be deemed to be incorporated and to be a condition of any agreement between the Company and the contracting party (hereinafter called "the Customer").
>
> [emphasis added]

43 These terms of the Quotation and the Conditions put it beyond doubt that the installation of the Sculpture was a service that was intended to be subject to the Conditions generally. Whether a particular liability arising out of the provision of that service is excluded or limited, however, turns in the first instance on the proper construction of cll 12(b), 13, and 14(a). The task, therefore, is to interpret the words used within the contract as a whole and surrounding context to determine if the parties objectively intended for the putative liability to be so excluded or limited.

44 I begin with cl 12(b). At first blush, the language used appears broad enough to exclude Helu-Trans' putative liability for the damage to the Sculpture, that damage having materialised at a time when the Sculpture was no longer in the "actual custody" or under the "actual control" of Helu-Trans. Reading cl 12 as a whole, however, it will be readily apparent that its sub-provisions were intended to shield Helu-Trans from liability for loss of or damage to goods arising in the course of their transportation:

> (a) The Company only forwards goods subject to the contracts, terms, conditions and regulations of the various persons, companies or authorities into whose possession the goods may rise.
>
> (b) The Company shall only be responsible for any loss of or damages to goods or any nondelivery or misdelivery, if it is proved that the loss, damage, nondelivery or misdelivery occurred whilst the goods were in the actual custody of the

> Company and under its actual control and that such loss, damage, nondelivery or misdelivery was due to the wilful neglect or default of the Company or its own servants.
>
> (c) When goods have been lost or damaged during a combined transport involving movement by sea and/or air and it cannot be established in whose custody the goods were when the loss or damage occurred, it will be accepted that the loss or damage took place during the sea or air voyage. If the Company has any rtight [*sic*] of recovery from the sea or air carrier, it shall be made available to the Customer.
>
> (d) Further and without prejudice to the generality of the preceding sub-conditions, the Company shall not in any event be under any liability whatsoever for any consequential loss including loss of profits or loss of market.
>
> (e) Subject to Clause 18, goods of a fragile nature, such as glass, china, statuary, precious metals or pictures, and goods of a perishable nature, such as plants, foodstuff or provisions and special goods such as live animals, are only forwarded at the owners' risk.

Clauses 12(a) and 12(e) deal squarely with the terms on which Helu-Trans agrees to forward goods, and cl 12(c) expressly contemplates loss or damage to those goods "during a combined transport involving movement by sea and/or air".

45 Against that backdrop, it would be anomalous for the "loss" or "damage" contemplated by cl 12(b) to include loss or damage to art pieces occurring subsequent to (and in consequence of) their improper installation. I am thus more inclined to read the provision as covering only loss or damage arising in the course of Helu-Trans performing the services contracted for. This would therefore include damage arising whilst the Sculpture was in transit or being affixed onto the Wall by Helu-Trans' workers, but not thereafter. This interpretation is, I think, more consistent with the structure of cl 12(b) itself, which requires the relevant goods to have been in the "actual custody of [Helu-Trans] and under its actual control" at the time it was lost or damaged.

46 Clause 14(a) of the Conditions stands on much the same footing. That clause purports to exclude "loss from [*sic*] a package or unpacked consignment or for damage or misdelivery (however caused) *unless notice be received in writing within seven days after the end of the transit*" [emphasis added]. The fact that this contractual time-bar should commence from the "end of the transit" likewise suggests to me that the "loss" or "damage" contemplated thereunder should have materialised in the course of Helu-Trans performing the services contracted for. Put another way, the parties could not have realistically intended for Mr Lorinet to give Helu-Trans notice of damage attributable to some default on the latter's part even before that loss arises.

47 This leaves the contractual limitation of liability provided for by cl 13. Unlike cll 12(b) and 14(a), the wording of cl 13 is unambiguous. If it applies, Mr Lorinet would only be entitled to a paltry award of $22.80 for any damage (or even the total loss of) an art piece worth six figures. This, I think, cannot be a reasonable limitation provision in circumstances where Helu-Trans had undertaken to handle fine art pieces worth considerable sums of money and which will almost certainly not weigh enough to make the limitation sum remotely commensurate to any damage caused. Such limitations fixed by reference to weight are commonly and reasonably used in relation to goods carried in bulk; in the context of valuable artworks, however, a limitation fixed at S$1000 per ton cannot possibly be, as s 11(1) of the UCTA puts it, a "fair and reasonable one … having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made". For these reasons, I would have held cl 13 to be an unreasonable and therefore unenforceable limitation of liability pursuant to s 2(2) of the UCTA.

48 I am thus satisfied that Helu-Trans would not have been entitled to rely on any of the exclusion or limitation clauses in the Conditions. The upshot, therefore, is that Mr Lorinet would stand in no better a position against Helu-Trans had this been a claim in contract. The policy against the superimposition of duties does not arise in this case.

Mr Lorinet cannot prove that the Sculpture had been improperly installed

49 Having found that Helu-Trans owed Mr Lorinet a duty in tort to exercise reasonable care in affixing the Sculpture onto the wall, it remains to consider if the other ingredients of Mr Lorinet's negligence claim are made out. Here, the analysis picks up with the question of whether Helu-Trans breached its duty of care to Mr Lorinet in affixing the Sculpture the way it did.

50 Before proceeding further, I should briefly address two arguments advanced on Mr Lorinet's behalf. First, much is made of the fact that Helu-Trans never performed pre-installation checks such as confirming the makeup of the Wall, weighing the Sculpture or conducting other "risk assessments". It is suggested at parts of Mr Lorinet's closing submissions that these omissions by Helu-Trans themselves disclose a breach of its duty to ensure that the Sculpture was securely and safely mounted.

51 This argument is, in my judgment, a red-herring. As I suggested to counsel for Mr Lorinet at trial, the essential question is whether the method of installation applied by Helu-Trans was in fact sufficient (and not whether the sufficiency of that method was confirmed at any point in time). Had Helu-Trans performed the checks that Mr Lorinet says should have been done, that due diligence may well have been evidence tending to show the method chosen by Helu-Trans was adequate to the task. The failure to perform such due diligence,

however – and here, I assume for the sake of argument that Helu-Trans never performed the checks referred to by Mr Lorinet – is not itself probative of whether the chosen method of installation was suitably secure.

52 Second, Mr Lorinet argues that the "the actual event – the fall of the Sculpture – provides irrefutable evidence that the installation was not properly executed". The suggestion, therefore, is that the fall of the Sculpture is *ipso facto* proof of the installation method having been deficient. With respect, I consider this argument to be fallacious. It is entirely possible for the Sculpture to have fallen even if the mounting system was reasonably secure (*eg*, because of external forces having interfered with the Sculpture). Conversely, the Sculpture may not have fallen even if the installation method was objectively inadequate to the task: a sculpture weighing 22.8 kg may be held in place indefinitely by a mounting system that can accommodate 22.8 kg of weight and nothing more, but it would plainly be unreasonable for Helu-Trans to use a mounting system that provides no margin for failure whatsoever. Overall, the fact that the Sculpture fell is only the starting point and the real question is *why* the Sculpture fell.

The evidence

53 As I mentioned at [6] above, it is common ground that the Sculpture was mounted onto the Wall using a 5 cm-long screw with washers in a rawl plug.[44] There is some dispute as to the number of washers that were present: Mr Lorinet says there were three; Helu-Trans can neither confirm nor deny that.[45] Nothing of substance turns on this disagreement. For convenience, I will refer to these

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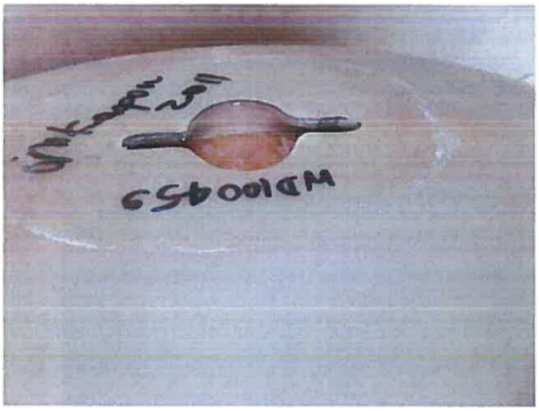
44 ASOF at para 7.

45 SOC at para 10; Defence at para 26(b).

components jointly as the "Screw". I reproduce a photograph of the Screw below, for illustrative purposes:[46]

54 The Sculpture was held in place by the Screw through an aperture in its rear panel:[47]



46 Tan Kuang Leong's affidavit of evidence-in-chief ("TKL") at p 19.

47 PL at p 66.

55 Apart from the Screw and the Sculpture, there is also the Wall itself. I reproduce a photograph of the fixation point following the fall of the Sculpture:[48]

56 In arguing that the method of fixation applied by Helu-Trans was inadequate to the task, Mr Lorinet relied on the expert evidence of Dr Tan Kuang Leong ("Dr Tan"). Dr Tan deposed that "at least more than one screw or fixation [point was] required to ensure the robustness, stability, and safety of hanging [the] bulky and heavy Sculpture",[49] the implication being that the mode of fixation applied by Helu-Trans was insufficient.

57 Helu-Trans, for its part, has called on the expert evidence of Dr Yu Yonghe ("Dr Yu") in support of its position that the mode of installation adopted was sufficient. Dr Yu maintains that there is "no effective valid evidence" of the incident having been caused by "inadequate screw fixation which failed over

48 TKL at p 32.

49 TKL at p 6, para 7.4 and p 35, para 8.0(X).

time".[50] Dr Yu further says that, based on the results of various tests commissioned by Helu-Trans, the mounting system was more than adequate.

Analysis

58 In assessing the evidence, I begin with the one conclusion that can be made with sufficient certainty: the photographs indicate – and the parties' experts are agreed[51] – that the fall of the Sculpture was a direct consequence of the failure of the Wall (and not any part of the Sculpture or the Screw).

59 By way of background, I give a brief description of the fixation method employed by Helu-Trans. A rawl plug, made of a soft material, is inserted into a hole drilled into the wall. A screw is driven into the rawl plug and, as it penetrates deeper, the rawl plug expands, exerting an outward force on the material of the surrounding wall. In this manner, the frictional force between the surface of the rawl plug is mobilised and this prevents it from being pulled out of the hole.

60 The wall material is subjected to two types of compressive forces. The first is the outward force of the rawl plug as the screw is driven deeper into it, causing it to expand. The second is caused by the downward (or shear) force on the screw due to the weight of the Sculpture. This is resisted by the lower part of the hole. If the combination of these forces exerts a pressure on the wall material that is higher than the compressive strength of that material, then it will fail, or in ordinary parlance, be crushed. Upon crushing, which typically occurs at the start of the hole where the compressive force is the highest, the hole

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50 Yu Yonghe's affidavit of evidence-in-chief dated 10 May 2024 at p 9, para (i) and p 75, para 12.3.

51 Transcript of proceedings on 27 August 2024 at p 18, ln 24 to p 19, ln 16.

expands in size and no longer provides the frictional force that prevents the plug from being pulled out. [52] The photograph of the damaged Wall reproduced at [55] above shows that this was indeed what had happened. This was confirmed by the parties' experts at trial.[53]

61 Against this backdrop, it is striking that there is no evidence whatsoever of the Wall's composition and the size of the hole. The experts' analyses did not have the benefit of that data because the Wall was no longer accessible by the time the experts were brought on board (Mr Lorinet having since moved home). This, in my judgment, is a significant evidential gap. For reasons I have just given, the size of the hole and the composition of the Wall were crucial determinants of the mounting system's adequacy. That data assumes even greater significance in circumstances where the Wall – and not the Screw, the plug or the Sculpture – has been shown to be the only point of failure.

62 Mr Lorinet submits in his closing arguments that the primary issue is "not the suitability of the wall but rather [Helu-Trans'] choice of inadequate fastening materials, specifically the 5 cm screw that was too short and too narrow in diameter to safely secure the Sculpture." It is then said that "[a] wall's theoretical capacity to support weight is irrelevant when the Sculpture has already fallen due to the use of an inadequate screw."[54] These are question-begging arguments: given that the Screw itself emerged unscathed from the incident, the adequacy of the Screw that Helu-Trans had used can only be assessed in relation to the capacity of the surrounding materials to withstand the various forces that acted upon them. I am also mindful that Dr Tan never

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52 Transcript of proceedings on 27 August 2024 at p 12, ln 22 to p 14, ln 25.

53 Transcript of proceedings on 27 August 2024 at p 18, ln 24 to p 19, ln 16.

54 CCS at para 92.

took the express position – whether in his expert report or at trial – that the Screw (or indeed, the mounting system as a whole) was inappropriate for the task.

63 Apart from stating that there is "no effective valid evidence" of the incident having been caused by "inadequate screw fixation which failed over time", Dr Yu referred to the outcomes of two separate tests in support of his position that the mounting system applied by Helu-Trans was adequate.

64 The first was a test performed by Setsco Services Pte Ltd in 2024 and commissioned by Dr Yu as part of his investigations (the "Setsco Test"). As Helu-Trans explained in its closing submissions, the Setsco Test involved:[55]

> … installing on a concrete wall in Helu-Trans' premises (which was equivalent to the wall in the Incident), a 5 cm long screw with a plastic rawl plug (plastic anchor), which was identical in nature and all relevant parameters to the materials (including the Screw) used in the original installation.

The results indicated that "[t]he shear load strength of the anchor was noted to be higher than 2.7KN (275 kg), which is more than 12 times of the weight of the Sculpture (22.8 kg)."

65 The second was described as a "mock installation" procured by Helu-Trans itself on 7 November 2022 (the "Mock Installation"). As Helu-Trans explained, this involved the:[56]

> … mock installation of the Sculpture on a wall in its premises using a metal frame (which was specifically fabricated in the shape of the Sculpture), a plastic anchor and a 5 cm long screw which was identical in nature and all relevant parameters to the materials used in the original installation. To further stress test the screw, sandbags were added to the metal frame such that

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55 DCS at para 118.

56 DCS at para 117.

> the total weight of the same was 31 kg (which significantly exceeds the stated weight of the Sculpture at 22.8 kg).

Helu-Trans' Group Chief Executive Officer, Mr Richard Chia, deposed in his affidavit of evidence-in chief (dated 26 January 2024) to the screw in the Mock Installation having "continue[d] to hang in place without incident" to date.

66 As I intimated to counsel at trial, I am not minded to accord much weight to the results of the Setsco Test and the Mock Installation because those tests were never witnessed by Mr Lorinet. This procedural difficulty aside, there is no certainty that the concrete walls used in both tests were comparable to the Wall in Mr Lorinet's residence – the parties simply had no data on or access to the Wall for the purposes of recreating it. In the premises, I do not think that the results of the Setsco Test and the Mock Installation meaningfully assist Helu-Trans in proving that the method of installation it had adopted was reasonably secure.

67 On the whole, it is impossible for me to form any conclusions on the adequacy of the mounting system applied by Helu-Trans. The evidence is simply incomplete, and the experts' analyses offered very little to advance the case for Mr Lorinet that Helu-Trans fell short of the standard of care in installing the Sculpture. This alone suffices as grounds for dismissing Mr Lorinet's claims against Helu-Trans.

Even if the Sculpture had been improperly installed, Mr Lorinet cannot prove that Helu-Trans' breach was the cause of the loss

68 Even if I were to assume for the sake of argument that the mounting system was insufficient – so that Helu-Trans had indeed breached its duty of care to Mr Lorinet – it would have remained for Mr Lorinet to prove that the breach was the cause of the Sculpture's fall (and therefore the loss claimed for).

69 As I mentioned at [7] above, the only evidence I was presented with on the circumstances immediately preceding the incident comes from Mr Lorinet himself, and even that information is hearsay. It is Mr Lorinet's evidence that *his wife* discovered the Sculpture on the floor of their living room after having heard a loud noise. This evidence is plainly inadmissible as hearsay – Mr Lorinet's wife was not called upon to testify at trial, and Helu-Trans had no opportunity to cross-examine her on the events of the material time. In short, the most that can be said is that the Sculpture fell on 18 September 2016; there is otherwise no evidence of what transpired immediately before that happened.

70 To overcome this, it was argued for Mr Lorinet that the doctrine of *res ipsa loquitur* applies to raise a presumption of causation. In particular, it was argued that "where the Sculpture fell from its mounting without evidence of any clear external cause (e.g., interference by [Mr Lorinet's] children or external factors such as applied force)", one can only infer that the Sculpture fell because of a defect in the mounting system. There is no merit to this argument. The rationale and requirements for invoking the *res ipsa loquitur* doctrine were considered by the Court of Appeal in *Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd* [2017] SGCA 65 (at [39]):

> 39 It is perhaps apposite to begin by examining the principles governing the application of *res ipsa loquitur*. It is undisputed that at law, the legal burden is on the plaintiff to prove on the balance of probabilities that the defendant was negligent in order for the plaintiff to succeed in the action. *Res ipsa loquitur* is a rule of evidence that enables a plaintiff to establish a *prima facie* case of negligence in the event that there is insufficient direct evidence to establish the cause of the accident in a situation where the accident would not have occurred in the ordinary course of things had proper care been exercised, *ie*, absent any negligence. The three requirements for the application of *res ipsa loquitur* are identified in the seminal case of *Scott* (see also *Tesa Tape Asia Pacific Pte Ltd v Wing Seng Logistics Pte Ltd* [2006] 3 SLR(R) 116 ("*Tesa Tape*") at [21]; *Teng Ah Kow* at [23]):

> (a) The defendant must have been in control of the situation or thing which resulted in the accident ("the first requirement");
>
> (b) The accident would not have happened, in the ordinary course of things, if proper care had been taken ("the second requirement"); and
>
> (c) The cause of the accident must be unknown ("the third requirement").
>
> 40 Once the three requirements are satisfied, the evidential burden shifts to the defendant to rebut the prima facie case of negligence (see *Teng Ah Kow* at [22]). …

71 Mr Lorinet's case stumbles at the first of the three requirements: Helu-Trans was plainly not "in control of the situation or thing which resulted in the accident". The fact of the Sculpture having fallen more than two years after Helu-Trans affixed it onto the Wall is not inherently probative of anything, and still less that Helu-Trans' assumed breach of duty was the operative cause of the incident.

72 To overcome this evidential gap, the parties' experts sought to determine the cause of the Sculpture's fall through forensic analyses of the photographs available. Features such as the morphology of the Wall's spalling, the deformation of the rawl plug, and the distribution of white residue on the Sculpture were considered by the experts. In my judgment, these aspects of the evidence are inconclusive and the experts' conclusions are therefore speculative. There are no tell-tale signs of the fall having been the result of any external forces, but there is equally nothing in the evidence which refutes that possibility. In the circumstances, the conclusion that Helu-Trans' putative breach of duty was the cause of the Sculpture's fall would be nothing more than a bare assumption.

Conclusion

73 To sum up, I agree with Helu-Trans that Mr Lorinet's claim in contract is time-barred (but not his claim in tort). Although I do not accept that Helu-Trans' duty of care in tort to Mr Lorinet was ousted by reason of the parties' contract, the evidence is insufficient to support a finding that Helu-Trans had breached that duty of care. Moreover, even if I were to assume that the method of installation chosen by Helu-Trans was unfit for purpose, I would not have been persuaded of a causal link between the assumed breach and the fall of the Sculpture. These suffice as grounds for dismissing Mr Lorinet's claims and it is unnecessary for me to inquire further into the quantum of the loss and whether it had been reasonably mitigated.

74 I will hear counsel on the issue of costs.

Lee Seiu Kin
Senior Judge

Govintharasah s/o Ramanathan (Gurbani & Co LLC) for the claimant;
Ramesh s/o Selvaraj, Hiew E-Wen Joshua, Jonathan Kenric Trachsel and Loo Hui Min Rebecca (Allen & Gledhill LLP) for the defendant.