IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 117

Suit 899/1990

Between

Shimizu Corporation

… *Plaintiff*

And

Lim Tiang Chuan
Another

… *Defendant*

And

The Tai Ping Insurance Co Ltd

… *Third Party*

GROUNDS OF DECISION

Insurance — Property insurance — Fire; Tort — Negligence — Causation

Version No 1: 11 Sep 2026 (01:05 hrs)

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Shimizu Corporation v Lim Tiang Chuan and Another (The Tai Ping Insurance Co Ltd, Third Party)

[1993] SGHC 117

Suit 899/1990
L P Thean J
25 May 1993

1 Cur Adv Vult

2 The plaintiffs are developers and contractors and at the material time were engaged by the Housing and Development Board (`HDB`) to construct blocks of apartments in various housing estates including the housing estate in Choa Chu Kang New Town. For the purpose of their business, the plaintiffs built a temporary timber building (`the plaintiffs` building`) at a site near Block 2 in Teck Whye Avenue for storing building materials. The defendants are a firm of contractors and at the material time were also engaged by HDB to construct blocks of apartments in the same or adjoining areas. They also constructed at the site next to the plaintiffs` building a temporary three-storey timber building (`the defendants` building`) as living quarters for their workers. Adjoining the defendants` building but on the other side thereof was also constructed a timber building of another contractor, Eng Seng Lee Construction Pte Ltd (`Eng Seng Lee`). In other words, the defendants` building was situated between the plaintiffs` building and Eng Seng Lee`s building.

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3 On 17 July 1988 at about 8.40 pm, a fire broke out which totally destroyed and gutted the defendants` building, substantially damaged Eng Seng Lee`s building, and partially damaged the plaintiffs` building. The plaintiffs` damage was surveyed and assessed by their insurers` adjusters, Toplis And Harding (Singapore) Pte Ltd and a claim therefor was presented to the defendants for payment, but no payment was made.

4 On 22 May 1990 the plaintiffs instituted this action against the defendants claiming damages for negligence. In their statement of claim, the plaintiffs averred that the fire originated from the defendants` building and was caused by over-heating of food left unattended on a kerosene stove on the top floor of the building, and that the fire was caused by the negligence of the defendants as owners and occupiers of the building and/or their servants or agents. In the alternative, they averred that the defendants had allowed cooking by the use of a kerosene stove to be carried on in the building and allowed fire to escape therefrom and damaged the plaintiffs` building. In their defence, the defendants admitted the fire on 17 July 1988 but denied all the other allegations; their defence was one of bare denial. On 8 July 1991, the defendants took out a third party notice against their insurers (`the insurers`), the third party, claiming an indemnity. In their statement of claim against the insurers, the defendants averred that by the policy of insurance No PCR-87-70037, the insurers agreed, inter alia, to indemnify the defendants in a sum up to $1m against any loss or damage to property belonging to third parties occurring in direct connection with the construction or erection of the building as described in the policy. They claimed against the insurers an indemnity or alternatively damages for breach of contract of insurance. The insurers in their defence (as subsequently amended) raised multiple defences, which I shall set out in detail later.

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5 As between the plaintiffs and the defendants, the issues are simple and straightforward: (i) whether the fire was caused by the negligence of the defendants, their servants or agents, and (ii) whether the defendants, their servants or agents had allowed to be brought to the defendants` building a kerosene stove for cooking and had allowed fire to escape therefrom and to damage the plaintiffs` property. I now turn to the facts that have been established before me. There was no dispute that the fire broke out on the evening of 17 July 1988 at about 8.40 pm. There was no direct evidence on the cause of the fire. The plaintiffs called Choo Beng Khiam, the deputy head of operations of the Civil Defence Force. He produced a report written by him, in which he said, among other things, that the fire was believed to have been caused by the over-heating of food left unattended on a kerosene stove. However, he was not at the scene of the fire at the material time, and he said that his report was based on a field incident report, the material part of which was written by one of the officers, Noordin Hamid. The field incident report was produced and admitted with the consent of all the parties. However, Noordin Hamid was not called by any of the parties for cross-examination or clarification of the matters stated in the field incident report. That report contained, among other things, the following statement:

> *As the result of this fire, two blocks of three-storey sub-standard timber construction with zinc roofing and their contents such as clothing, wooden formwork, vibrator engine, vibrator hose, television, passports, kerosene stove, etc were totally destroyed.*

6 The site store and Shimizu Construction Co Ltd near the building, their contents were partially damage by the heat.

7 The plaintiffs then called one Loh Peng Liong who is a site administrator of the plaintiffs. He could not give any direct evidence on the incident of the

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fire. He went to the site the following morning and found that the plaintiffs` store had been partially damaged. He enquired from the Chinese workers who were working there as to the cause of the fire and he took statements from them on the basis of which he prepared a report. He produced the report. However, this report was purely hearsay in so far as the truth of the content is concerned and I cannot accept it as a true report of what took place on that evening. The other material witness for the plaintiffs was Chua Beng Tong who was the site manager of the plaintiffs. He went to the site on the evening of the fire, arriving there at about 9.45 pm. He saw the fire burning the defendants` building and the plaintiffs` store beginning to burn. After he arrived he directed the firemen to connect the water hose to the fire hydrant. He said that he made enquiry from the workers and was informed that the fire had started from the defendants` building.

8 Some photographs of the site were taken and were produced. In particular, there was one photograph showing that the whole of the defendants` building was completely destroyed and gutted, that substantially the whole of Eng Seng Lee`s building was damaged and that the plaintiffs` building was partially damaged.

9 The second defendant, Lim Thiam Seng, gave evidence. He said that on the evening of 17 July 1988 he received a call from one of his workers that there was a fire at his workers` quarters. He rushed to the scene and by the time he arrived, the fire had almost been extinguished by the fire brigade. He was trying to find out the cause of the fire but the workers said that they did not know because when the fire broke out, they rushed for safety. In cross-examination, he admitted that the fire started in his workers` quarters.

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10 That was all the evidence before me on the incident of the fire. There was no investigation conducted by any fire expert as to the probable cause of the fire. Apart from the two reports from the Fire Service Department, the other reports before me were the claim adjusters` reports, which had no probative value in so far as the probable cause of the fire was concerned, and are of no assistance to me in that respect. Counsel for the plaintiffs relied on the report of Choo Beng Khiam which said, among other things, that `the fire was believed to be caused by the over-heating of food left unattended on a kerosene stove` in the defendants` building. In so far as this evidence is concerned, I am unable to accept it as the statement was purely hearsay and cannot be evidence of the truth of the content. Reliance was also placed on the field incident report and in particular that part thereof made by Noordin Hamid which said that the contents of the defendants` building such as kerosene stoves, among other things, were totally destroyed. On the basis of this, it was submitted on behalf of the plaintiffs that kerosene stoves must have been used by the defendants` servants in cooking food and the fire was caused by cooking or over-heating of food in the defendants` building. I accept that this is a possible inference to be drawn, but on the balance of probabilities I cannot properly draw this inference. In my judgment, on the evidence before me the true cause of the fire has not been established.

11 As to the place of origin of the fire, I think there was evidence before me. There was the evidence of Chua Beng Tong who went to the scene of the fire while the fire was still burning and his evidence was that at that time the defendants` building was on fire and the plaintiffs` stores were beginning to burn. There was also evidence from the photographs which showed the extent of the damage: the whole of the defendants` building was completely destroyed and gutted, while substantially the whole of the adjoining building of Eng Seng

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Lee was damaged and the plaintiffs` building was partially damaged. The second defendant himself admitted that the fire started in his workers` quarters. On the evidence before me, I am satisfied on the balance of probabilities that the fire originated from the defendants` building.

12 There was no evidence on the basis of which I can make any finding on the second issue, ie whether the defendants` servants had brought to the building a kerosene stove and used it for cooking and the use of that caused the fire. It has not been established to my satisfaction that a kerosene stove had been brought to the defendants` building and was used in cooking or heating food and that the fire was caused by over-heating of food left unattended on the kerosene stove in the defendants` building. There remains only the first issue, ie whether the fire was caused by the negligence of the defendants, their servants or agents. The burden is on the plaintiffs to prove that it was so caused by the defendants, their servants or agents. However, at all material times, the defendants by their servants or agents had possession and were in occupation of their building and the fire started in the defendants` building and spread to the plaintiffs` building. There was no explanation as to how the fire started. In such circumstances, the inference to be drawn is that the fire could not have started without some lack of care on the part of the defendants` servants or agents in the defendants` building. Therefore, it was for the defendants to show that the fire was accidental and could have occurred without their negligence and that of their servants or agents. Unfortunately, the defendants have not succeeded; they have not displaced the inference that the fire was caused by their negligence or that of their servants or agents.

13 In **Bennett v Chemical Construction (GB) Ltd,** [1971] 1 WLR 1571 the plaintiff, a foreman, was supervising the installation of 12 electrical panels.

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The plaintiff noticed that one of the panels was about to fall and rushed forward to prevent it from falling, and while he was doing so, another heavy panel fell on him and injured him. The defendants called no evidence and the trial judge could not determine how the accident happened and came to the conclusion on the facts that there must have been a lack of care on the part of the defendants` employees and found in favour of the plaintiffs. On appeal, his decision was affirmed. Davies LJ said, at p 1575:

> *Mr Wood has strenously argued that really there was no evidence on which the judge could make a finding of negligence, since the plaintiff had failed to prove how the accident happened. He went further and said that it would be quite wrong for this court to approach the case on the basis of the well known doctrine of res ipsa loquitur. He pointed out that, although it had been indicated in correspondence before the trial that the plaintiff was going to rely on that doctrine, no amendment to the pleading was made; and the judge never himself referred to res ipsa loquitur.*

14 In my view it is not necessary for that doctrine to be pleaded. If the accident is proved to have happened in such a way that prima facie it could not have happened without negligence on the part of the defendants, then it is for the defendants to explain and show how the accident could have happened without negligence. The defendants made no attempt to do that in this case. In my judgment this is really a classic case of res ipsa loquitur. Here you have the panel being moved by the defendants` men, and it falls. It should not have fallen. The defendants might, as Edmund Davies LJ said in the course of the argument, if it were so, have called evidence to show that one or more of the men had a sudden stroke or something of that kind, which no one could foresee. But here the panel fell, and I entirely agree with the judge that it could not possibly have fallen without some apparent negligence on the part of the defendants.

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15 In my judgment, the plaintiffs` claim against the defendants for damages for negligence succeeds. As regards the quantum, the defendants have accepted the quantum as pleaded in the statement of claim and, therefore, there will be judgment for the plaintiffs against the defendants in the sum of $52,209.71 with interest at 4% pa from 22 May 1990 to the date hereof and costs.

16 I now turn to the claim by the defendants against the insurers. The claim of the defendants was based on the policy No PCR-87-70037. The material part of the policy as regards the indemnity against damage to third parties` property is contained in section II of the policy and the terms thereof are as follows.

> *Section II - Third Party Liability*
>
> *The insurers will indemnify the insured up to but not exceeding the amounts specified in the schedule against such sums which the insured shall become legally liable to pay as damages consequent upon*
>
> (a) accidental bodily injury to or illness of third parties (whether fatal or not)
>
> (b) accidental loss of or damage to property belonging to [third] parties occurring in direct connection with the construction or erection of the items insured under Section I and happening on or in the immediate vicinity of the site during the period of cover.
>
> *In respect of a claim for compensation to which the indemnity provided herein applies, the insurers will in addition indemnify the insured against*
>
> (a) all costs and expenses of litigation recovered by any claimant from the insured, and
>
> (b) all costs and expenses incurred with the written consent of the insurers,
>
> *provided always that the liability of the insurers under this section shall not exceed the limits of indemnity stated in the ichedule.*

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17 The items insured under iection I are as follows:

> *INSURED ITEMS SUM INSURED*
>
> (1) Contract works comprising the permanent and)
>
> temporary works forming part of the contract including)
>
> materials incorporated or to be incorporated therein)
>
> (2) Construction plant and equipment) $14,575,000
>
> (3) Construction machinery
>
> (4) Clearance of debris $14,575,000
>
> *EXCESS:*
>
> (a) $5,000 each and every loss for storm tempest flood earthquake subsidence or collapse
>
> (b) $1,500 each and every loss for any other cause

18 To the claim of the defendants, the insurers raised no less than six separate defences and I shall deal with them in the following order. The first defence relates to non-joinder of parties. It was submitted on behalf of the insurers that the policy was issued to HDB and the defendants and therefore the defendants in bringing this claim against the insurers must join HDB, and HDB has not been joined as a party. By reason of this omission the claim of the defendants was misconceived. The short answer to this, as submitted on behalf of the defendants, is found in that section of the policy headed `Cross Liability Clause` which, so far as material, provides as follows:

> *It is agreed and understood that otherwise subject to the terms, exclusions, provisions and conditions contained in the Policy or endorsed thereon the third party liability cover of the policy shall apply to the insured parties named in the schedule [ie HDB and the defendants] as if a separate policy had been issued to each party, provided that the insurers shall not indemnify the insured under this endorsement in respect of liability for:*
>
> *...*

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19 The effect of this provision is that, so far as the third party liability cover is concerned, the policy is to be treated as if a separate policy had been issued to each of them. In my judgment, HDB is not required to be joined in these proceedings. This defence has no merit and fails.

20 Next, the insurers relied on para (c) in the section of the policy headed `General Exclusions` and the relevant part thereof is as follows:

> *The insurers will not indemnify the insured in respect of loss, damage or liability directly or indirectly caused by or arising out of or aggravated by ...*
>
> (c) wilful act or wilful negligence of the insured or of his representatives;

21 Clearly on the evidence before me, there was no basis for this defence. There was no evidence as to the cause of fire and I am in no position to find that the fire was caused by any `wilful` act or `wilful` negligence of the defendants, their servants or agents. Counsel for the third party relied on the report of Choo Beng Khiam that the fire was believed to have been caused by over-heating of food left unattended on a kerosene stove. This part of the report, as I have said, is pure hearsay and is not admissible to prove the truth of the content. There was no evidence that the defendants` employees brought a kerosene stove to the building and used the kerosene to cook or heat up their food there. I therefore reject this defence.

22 The third defence is based on condition 5 of the general conditions of the policy which, so far as material, provides:

> (5) In the event of any occurrence which might give rise to a claim under this policy, the insured shall (a) immediately notify the insurers by telephone or telegram as well as in writing,

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> giving an indication as to the nature and extent of loss or damage;
>
> …
>
> *The insurers shall not in any case be liable for loss, damage or liability of which no notice has been received by the insurers within 14 days of its occurrence.*

23 It was submitted on behalf of the insurers that the defendants acted in breach of this condition and failed to notify the insurers of `the nature and extent of loss or damage` within 14 days. I have no hesitation in rejecting the defence. On the day after the fire, 18 July 1988, the defendants` agent, Rego Insurance Agencies Pte Ltd, despatched the following telex to the insurers:

> *To : Ms Josephine Lee/Tan Teck Bak Tai Ping INS*
>
> *Fm : Irene Ang Rego Insurance*
>
> *Re: insured - Chip Eng Seng Const/HDB*
>
> *Project - Choa Chu Kang Neighbourhood C Contract 3,*
>
> *Contract NO A/298/87 CAR POL NO PCR-87-70037*
>
> *Regret to inform u, insured has reported to us fire has caused damage to the workers quarters for the above project yesterday evening. Pls arrange for a survey.*

24 There was no response to this telex. Nor did the insurers send any adjuster or other expert immediately to the site to investigate the fire. The insurers appeared to be quite lackadaisical in their treatment of this incident. Only on 20 July 1988 did the insurers instruct Allied Adjustment Company Pte Ltd, and a representative of this company visited the site on 21 July and found `the scene flattened and bulldozed`. The insurers responded to the telex from the defendants` agents only on 27 July 1988 when they forwarded a claim form to the defendants which was received by them only on 29 July 1988. The defendants submitted the claim form on 3 August 1988. If there was any delay in submitting the claim it was in part substantially caused by the insurers

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themselves; it was more the fault of the insurers than the defendants. At any rate, the crucial part of condition 5 provides that the insurers are not liable `for loss, damage or liability of which no notice has been received` by them within 14 days of the occurrence of the fire. The defendants` agents` notice to the insurers was clearly a notice falling within that condition; it was a notice of `loss, damage or liability` to the insurers. The defendants were therefore not precluded by condition 5 of the general conditions from bringing this claim.

25 The fourth defence raised by the insurers was that there was a material change in the risk insured of which the defendants failed to inform the insurers and in consequence the defendants committed a breach of condition 4(b) of general conditions. Condition 4(b) is in the following terms:

> *The insured shall immediately notify the insurers by telegram and in writing of any material change in the risk and cause at his own expense such additional precautions to be taken as circumstances may require, and the scope of cover and/or premium shall, if necessary, be adjusted accordingly.*

26 Counsel for the insurers relied on the drawing in DB27, which was a standard drawing of a two-storey building to house the workers of contractors. What the defendants had built was a three-storey building as living quarters for their workers. The insurers said that such construction was carried out without HDB`s approval and that the defendants had not informed the insurers. There was, therefore, a material change in the risk as the addition of one-storey means a larger area to be insured and there is more liability to be covered by the policy. I again have no hesitation in rejecting this defence. First, though the drawing in DB27 is a standard drawing of HDB for workers` quarters, it does not appear from the evidence that construction of workers` quarters which deviates from the plan requires HDB`s prior approval. According to the second defendant, the architect in charge did not regulate the number of storeys for workers` quarters

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and he had not objected to the construction of the three-storey building. There was no evidence that HDB had prescribed this drawing to the defendants for building their workers` quarters. Secondly, it is not the case of the insurers that they issued the policy on the basis, among others, of the drawing in DB27. On the contrary, their case is that the building as workers` quarters is not covered by the policy. In my judgment, there was no material change in the risk. The change in the risk, if material, has no relation to the incident which had occurred. The incident was the fire which wholly destroyed and gutted the entire workers` quarters and also caused damage to the property of the defendants` neighbours. The fire was certainly not attributable to any such change in the risk.

27 The fifth defence which the insurers raised is based on cl 8 of the general conditions which, so far as material, provides:

> *If a claim is ..., or if a claim is made and rejected and no action or suit is commenced within three months after such rejection or, in case of arbitration taking place as provided herein, within three months after the arbitrator or arbitrators or umpire have made their award, all benefit under this policy shall be forfeited.*

28 In connection with this defence it is necessary to refer to the insurers` pleadings to see precisely what they have pleaded. The defence was pleaded in paras 3 and 4 of the amended defence (to the claim by the defendants) which are as follows:

> (3) By a letter dated 13 April 1989 sent by the third party to Rego Insurance Brokers Pte Ltd who are the agents of the first and second defendants, and/or alternatively by a letter dated 14 April 1989 from Allied Adjustment Company Pte Ltd, (the adjusters and/or agents of the third party) to Toplis and Harding (S) Pte Ltd, (the adjusters and agents of the plaintiff) and/or alternatively by a letter dated 28 April 1989 from the third party`s solicitors to the defendants` solicitors and/or alternatively by a letter dated 4 February 1991 from the third

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> party`s solicitors to the defendants` solicitors, the third party had repudiated liability or disclaimed liability on the first and second (both trading as Chip Eng Seng Construction) claim made on or about 3 August 1988.
>
> *Particulars*
>
> (i) The liability of the third party did not arise as the fire was caused by the negligence of the first and second defendants` workers during cooking by overheating the food left unattended at a kerosene stove, which was not within the insurable risks covered by the policy. The insurable risks were construction works or items listed in para 1 herein and not food catering or canteen operations.
>
> (ii) The fire was caused by the negligence of the first and second defendants` workers not in the course of the construction work for the first and second defendants. The third party will rely on the particulars of negligence pleaded by the plaintiffs in their statement of claim paras 4, 5 and 6.
>
> (4) Further or in the alternative, it is a condition precedent (Condition 8 of the policy) that if no action or suit is commenced within three (3) months after rejection of the claim, all benefits under the policy shall be forfeited. In breach of this condition precedent, the first and second defendants had not commenced action within three (3) months from 13 April 1989 and the action is now time barred under the policy.

29 For this defence to succeed, there must be a claim made by the defendants and a rejection of that claim by the insurers. So far as the claim is concerned, the insurers relied on the claim made by the defendants on or about 3 August 1988. That was the claim the defendants made in the claim form which was submitted to the insurers and which stated the estimated amount of direct loss of or damage to the defendants` property, namely:

> (i) Quarters: $30,000
>
> (ii) Cash and belongings: $14,249
>
> (iii) Canteen loss: $4,159
>
> (iv) Sub-contractors` equipment: $1,000

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30 In so far as third party damage is concerned, the claim form merely indicated that damage had been caused to a third party and that the amount was then unknown. It is abundantly clear that in that form no claim was made by the defendants for the amount which the defendants were called upon to pay to a third party, eg the plaintiffs. There was, therefore, no claim made by the defendants on 3 August 1988 which was relied upon by the insurers for the purpose of condition 8.

31 In the South African case of **Boshoff v South British Insurance Co Ltd** [1951] 3 SALR 481 the motor insurance policy contained, among other things, condition 10 which so far as material provided:

> *... in the event of the company disclaiming liability in respect of any claim and an action or suit be not commenced within three months after such disclaimer or ..., all benefits under this policy in respect of such claim shall be forfeited.*

32 After the accident the attorney of the insured wrote to the insurance company informing them of the accident and forwarding the third party`s claim. The insurance company by their attorney denied liability. The insured settled the third party claim and instituted proceedings after three months from the date of repudiation of liability by the insurance company. The magistrates` court dismissed the claim on the ground that it was time-barred by condition 10. On appeal, the Transvaal Divisional Court held that the insured`s letter was not a claim and accordingly the insurance company`s letter was not a letter disclaiming liability in respect of any claim. Clayden J (with whom Bresler AJ concurred) said, at p 487:

> *In cl 10 `claim` must mean something in respect of which there can be a repudiation of liability, and by virtue of which there can be benefit under the policy. To that extent there is guidance in the context. Its natural meaning as I have said is `a demand for something as due; an assertion of a right to something`. All that*

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> *can ever be `due` to the insured under the policy, all that he can ever have a `right to` is an indemnity; an indemnity against loss or damage or an indemnity against sums which he becomes legally liable to pay. He can only be indemnified, compensated, when the extent of his loss is known. He only becomes legally liable to pay a sum when a sum is fixed by a court or by agreement. It does not, therefore, seem to me that he can demand something as due, or assert a right to something, under this policy until he knows what that something is. I agree with Neser J, that before the amount of the indemnity under the policy is fixed he cannot claim it, although he can say that he will claim it.*

33 The meaning which the parties intended the word `claim` to bear in its context in cl 10 was, I consider, its ordinary grammatical meaning. It means a demand for an indemnity in a particular amount.

34 The decision in **Boshoff** [1951] 3 SALR 481 was followed by the Court of Appeal here in **Federal Insurance Co v Nakano Singapore (Pte) Ltd** [1992] 1 SLR 390 There, the relevant condition in the policy was condition 8 and the terms thereof were identical with those of condition 8 here. One of the issues before the court was whether there was a claim made under the policy to the insurer for the purpose of condition 8. The Court of Appeal held, inter alia, that no such claim was made. Chan Sek Keong J, delivering the judgment of the court said, at pp 396-397:

> *... **Boshoff** decided a `claim` must contain the essential ingredient of a demand or an assertion of a particular right. In this case, condition 8 contains the words `if a claim is made`. In our view, the word `made` makes it explicit and reinforces the necessity of a demand for payment. Whether, in this case, the claim is for the respondents` direct loss or indirect loss, as from a third party claim (and here the policy insured against public liability), an essential element in the `making` of a claim is the making of a demand or request, express or implied, for payment. A claim is made when a demand or request for payment is made. It is not made by a mere notification of the happening of the insured event giving rise to a claim.*

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35 Reverting to the facts in this case, I find that the insurers relied on several letters, each in the alternative, as rejection of the claim made on 3 August 1988, namely, their letter dated 13 April to Rego Insurance Agencies Pte Ltd as agents for the defendants, the letter dated 14 April 1989 by their agents, Allied Adjustment Company Pte Ltd, to Toplis and Harding (Singapore) Pte Ltd, the letter dated 28 April 1989 from their solicitors to the defendants` solicitors and lastly the letter dated 4 February 1991 from their solicitors to the defendants` solicitors. Each of these letters (except the second letter) was written in reply to a letter from an agent of the defendants. In so far as the claim of the defendants is concerned, the insurers are not relying on any claim in each of these letters from the defendants` agents. Whether each of these letters contained a claim falling within condition 8, I express no opinion as it is not part of the case of the insurers that the defendants` claim for the purpose of these proceedings was founded on any of these letters written on behalf of the defendants subsequent to the claim dated 3 August 1988. Parties are bound by the pleadings and cases must be decided on the issues raised by the pleadings: see **Blay v Pollard and Morris** [1930] 1 KB 534 **Kiaw Aik Hang Co Ltd v Tan Tien Choy** [1964] MLJ 99 and **Farrell v Secretary of State** [1980] 1 WLR 172 The claim dated 3 August 1988 was not a claim for an indemnity for the amount claimed by the plaintiffs. Accordingly, in my judgment, the defence of the third party based on condition 8 also fails.

36 I now turn to the last defence of the third party which is that the claim of the defendants was not covered by the policy. The scope of the policy, in so far as third party liability is concerned, is contained in section II of the policy which I have set out in detail. However, it bears repeating that under the terms of that section the insurers are obliged to indemnify the defendants against such sums which the defendants are liable to pay as damages consequent upon

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accidental loss or damage to property belonging to third parties `occurring in direct connection with the construction or erection of the items insured under section I and happening on or in the immediate vicinity of the site during the cover period`. The insured items in section I were `contract works comprising the permanent and temporary works forming part of the contract including materials incorporated or to be incorporated therein`. The damage to the third party, ie the plaintiffs, was caused by a fire occurring in the defendants` workers` quarters. The defendants` workers` quarters were not an item insured in section I of the policy and the damage caused to the plaintiffs did not occur `in direct connection with the construction or erection of the items insured under section I`. It was submitted by counsel for the defendants that the policy was expressly extended to cover insurance obligations mentioned in the conditions of contract between HDB and the defendants. However, counsel has not been able to show me that the insurance obligations under the conditions of contract included an obligation to take out insurance to cover loss or damage to the defendants` workers` quarters or loss or damage caused to third party by any event or incident occurring in or about the defendants` workers` quarters. Counsel next relied on specification 1.1.9 contained in the contract between HDB and the defendants which required the defendants to submit a site layout plan to the architect of HDB indicating proposed positions of all temporary structures, for example, offices, workers` quarters, canteen, store and other buildings for approval before their construction. But there is nothing in this specification which requires insurance to be taken out to cover all such buildings and in particular workers` quarters. In my judgment, this defence of the insurers succeeds and the claim of the defendants against them is accordingly dismissed.

37 I now come to the question of costs. The insurers have raised no less than six defences and all except the last one failed. They should bear a

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substantial part of the costs themselves for raising such defences. It would be highly unjust that the entire costs of the third party proceedings should be borne by the defendants. Accordingly, a fair order as to costs should be that the defendants pay to the insurers only one-third of the costs. I so order. I further direct that in taxation the insurers should not be allowed any getting-up fee in respect of those defences which have failed.

38 **Outcome:**

39 Order accordingly.

L P Thean J

NK Pillai (Harry Elias & Partners) for the plaintiffs
Lee Tau Chye (Lee Brothers) for the defendants
Kee Lay Chien and Veronica Lai (Rajah & Tann) for the third party

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