IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 138

Suit 1110/1998

Between

Virco Metal Industries Pte Ltd
Another

… Plaintiff

And

Carltech Trading and
Industries Pte Ltd

… Defendant

GROUNDS OF DECISION

Tort — Negligence — Breach of duty; Statutory Interpretation — Statutes

Version No 1: 29 Oct 2026 (23:45 hrs)

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Virco Metal Industries Pte Ltd and Another v Carltech Trading and Industries Pte Ltd and Others

[1999] SGHC 138

Suit 1110/1998
Chao Hick Tin J
25 May 1999

1 : This is an action for damages for losses suffered on account of a fire which broke out on 15 October 1997 at about 5.14pm at an industrial building (single storeyed) known as No 68 Sungai Kadut Street 1 (`No 68`). The two plaintiffs (hereinafter called `Virco` and `GJ`) were the tenants of two units in the building. The first defendant was the owner/landlord of the building and the second and third defendants were two other tenants in the same building. I shall hereinafter refer to the three defendants as `Carltech`, `Kee` and `Ah Cheong` respectively.

2 ***Background***

3

4 The land on which No 68 stood was leased by Carltech from the Jurong Town Corporation in 1989. The building was of a rectangular shape, somewhat longish. It was a large building. Carltech sub-divided the building into some 70 different units and subletted them to various entities. Earlier, in 1990, a fire

occurred at one end of the building and destroyed that part of it. After that fire, Carltech reconstructed that part and also added a mezzanine floor to that portion.

5 The two plaintiffs occupied two units on the ground floor. GJ`s unit was directly below the mezzanine floor but Virco`s unit was not. It was adjacent and separated by one other unit. Kee occupied one part of the mezzanine floor and Ah Cheong the other.

6 Kee was carrying on a business of manufacturing and supplying plastic or fibreglass vehicle bumpers and moulds and of doing coating and spray painting works. Kee would store fibreglass or plastic bumpers, moulds, paints and resins at his premises. Ah Cheong was carrying on a business of supplying disposable polyethylene bags, plastics and receptables, paper food wrappers, plastic cutlery, straws, chopsticks and papers and had utilized the unit for the storage of the same.

7 The earlier 1990 fire was suspected to have been caused by arson. Fortunately for Carltech, its losses from that fire was covered by insurance. Carltech was as a result advised by the insurers to take certain fire preventive/detection measures, eg to install smoke detectors, to clear wood waste from the premises and to advise sub-tenants against storing hazardous items such as benzene or kerosene of more than four gallons.

8 In 1993 Carltech changed its insurers. Apparently, the new insurers were less stringent in terms of fire-safety requirements. Carltech claimed that it had in 1991 installed two new fire hose-reels on the mezzanine floor. But no one has testified that he/she saw any hose-reel on that floor.

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9 Carltech was aware of the activities carried out by Kee and Ah Cheong and of the things that were stored in their respective units. So were the two plaintiffs. Carltech was also aware of the business activities of Virco and GJ, and in a general sort of a way, so were Kee and Ah Cheong.

10 On 15 October 1997, at about 5.14pm, the two employees of Kee had finished their work for the day and were preparing to return home. One of them (Dawood) went to the toilet, located at another part of the building, and the other (Aziz) was changing clothes within the premises. Then suddenly when Aziz turned his head round he noticed a small fire near the entrance to the premises. He shouted that there was a fire. A commotion followed. Dawood heard the commotion and dashed back to his unit. Both of them tried to put out the fire but failed. There was no fire-fighting equipment within the premises. Others sought to use the two fire hose-reels situated nearby on the ground floor, just below the mezzanine floor. However, the hose-reels could not function as each of the controlling tap-head was placed in a metal casing which was locked. It took a while for someone to get the keys from Carltech`s office nearby to unlock each casing in order to turn on the water supply. Alas, when the tap heads were turned on, only a trickle of water came out of the hose-reels, due to inadequate water supply or pressure or both. There was no other fire-fighting equipment which could be used to put out the fire. As a result, within about ten minutes, the fire engulfed Kee`s unit and spread to the neighbouring premises of Ah Cheong. The heat of the fire was so intense that it caused part of the steel beams supporting the roof, above Kee`s unit, to collapse. By the time the fire brigade arrived and put out the fire, the machines, equipment and materials which were in the premises of Virco and GJ were damaged, caused by heat convection.

11 ***Cause of the out-break of fire***

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13 It is not in dispute that the origin of the fire occurred at the premises occupied by Kee. However, the employee of Kee, Aziz, who was there, did not see how the fire was ignited. His back was against it. The only evidence before me which touches on this critical question on the source of the fire is that of Capt Lee Fook Seng (PW2), who is from the Singapore Civil Defence Force. He testified as an expert. There is no contrary evidence to that of Capt Lee.

14 In his report, Capt Lee determined that the fire originated near the entrance to the premises of Kee, where a double-point power switch was located (shown in photo No 14 on 1PB196). Placed near to the switch was a workbench which was used for spray-painting. Having examined the burnt patterns and the severe damage to that power switch fitting, he was of the opinion that a spark or sparks generated by the power switch could have ignited the paint residue which had accumulated at the location for several years. I should explain that Kee had only occupied the premises for about a year before the occurrence of the fire. Before him, the previous tenant had also been using the premises for carrying on the same kind of business.

15 So the question is whether can blame be placed upon either Carltech or Kee or both. Carltech says that the power switch was installed by the previous tenant. Accepting that, upon the termination of the previous tenancy, any installation done by the previous tenant, unless required to be removed by Carltech, would become a fixture of Carltech. There is no evidence that Kee knew the power switch was installed by the previous tenant and not by Carltech. The terms of the tenancy agreements which Carltech entered into with the various tenants of the building were similar. Clause 2(e) provided that the tenant

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was required to `keep ... the landlord`s fixture therein, including ... electric wiring and installations and fittings for light and power in clean condition and to replace or repair any part of ... the landlord`s fixture and fitting therein which shall be broken or damaged due to malicious negligence or careless acts or omissions of the tenant.` There was no breach by Kee of this provision when he continued to use the power switch. Kee had not done anything to cause the switch to be defective or damaged. It was undoubtedly an inherently defective switch. If no spark had escaped from the switch socket there would probably not have been any fire. A good switch, or a properly installed switch, would have contained the sparks, if any, within the socket itself.

16 Accordingly, I find there was a breach of duty on the part of Carltech in providing a defective power switch. However, in my view, there was also a breach of duty on the part of Kee in not appreciating the danger posed by the accumulation of paint-residue. The spark(s) would not have ignited but for the accumulated paint residue.

17 Even if I had imposed too high a standard of care on the part of Carltech and Kee in the preceding two paragraphs, the state of affairs which existed, to which both of them had contributed, constituted a nuisance, as actual knowledge is not an essential ingredient for this tort.

18 ***Cause for spread of fire***

19

20 On the evidence there is no doubt that there was no adequate fire-fighting equipment either within the premises of Kee or within reasonable proximity of that premises. Having regard to the nature of the business that was

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being carried out by Kee, and the materials which he stored there (though not highly inflammable), he ought to have provided at least a portable fire extinguisher within the premises for his own use if the need should arise. If there were such a fire extinguisher that day which his employees could have used to combat the fire, it could well have made a difference. To this extent, Kee was in breach of his duty of care.

21 As mentioned before, there were two fire hose-reels on the ground level, just outside the building wall, which were within close proximity to Kee`s premises. Apart from the delay due to the locking of each of the tap head in a metal casing, both the hose-reels turned out to be entirely ineffective as there was hardly any water from the hoses to fight the fire even after the taps had been turned on. In my view, Carltech was at fault in locking up the tap heads in metal casings. The whole point of having a fire fighting equipment is that it should be readily accessible for use when the need arises. I have no doubt that had the two fire hose-reels, particularly the one on the ground floor by the side of the staircase leading directly to Kee`s premises, been in operational condition and no time had been lost to look for the keys to open the metal casings and turn on the taps, the fire which broke out in Kee`s premises would have been contained and put out. It would not have spread.

22 In cross examination, Carltech`s director, Tan Chin Bee, said that the fire hose-reels were checked in May 1997. In para 7 of the statement of claim the plaintiffs specifically raised the question of the inadequate supply of water or water pressure. Yet, no record was produced by Carltech of any alleged checking done on the fire hose-reels in May 1997 by the Civil Defence Force. Nor were the latter called by Carltech to testify. The only conclusion I can come to is that no checking was done at all. As for the locking of the tap head in the

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casing, Tan Chin Bee said it was not locked, only secured by a wire to prevent knocking into by forklifts. I do not see the need for the wire if the tap was already inside the metal casing. I accept the evidence for the plaintiffs that the casing was locked.

23 The condition of the two fire hose-reels clearly shows that they had not been serviced or maintained for sometime. To have a hose-reel that does not function is worse than not providing any hose-reel at all as it gives the tenants a false impression that the fire-fighting equipment provided is adequate for the tenants` use. I find that, in this regard, Carltech has failed in its duty of care in two respects:

24 (i) failing to have the hose-reels and the water-supply to the hose-reels regularly checked and tested to ensure that they were operationally effective to fight any fire that might occur;

25 (ii) causing delay in the effort to combat the fire by locking each tap head in a metal casing. Whatever may be the reasons why Carltech did that (eg to prevent pilfering or wasting of water), I do not think those reasons could justify rendering the hose-reels inaccessible when the occasion requires it. Other steps should have been adopted which could prevent the mischief without hindering the use of a hose-reel whenever the need arises. Purely as an example, and nothing more, the key could have been placed in a glass panel which upon being broken would also trigger an alarm.

26 I must, however, hasten to add that in the circumstances of this case, even if each tap head had not been locked in the metal casing, the two hose-reels would not have been of any use either, as the water pressure was low. As

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I have said before, I have no doubt that had the fire hose-reels been in order, they would have prevented the fire from spreading within the premises of Kee and onto the premises of Ah Cheong. From a small flame which could have been controlled and extinguished, the fire developed into a raging flame, spreading onto the premises of Ah Cheong.

27 ***Unlicenced factory***

28

29 One of the points raised by the defendants is that the plaintiffs were using their premises as factories without a licence from the Chief Inspector of Factories of the Ministry of Manpower. Virco`s response is that it was in the process of obtaining such a licence.

30 It seems to me clear that Virco was operating a factory at the premises without first obtaining a factory licence. But, in my view, nothing in that breach of Virco can give Carltech a cause of action or a defence. In ***Clerk & Lindsell on Torts*** , the learned authors (17th Ed) state in para 11-01 that:

> *It is now beyond doubt that such liability will arise only when the plaintiff can establish that Parliament intended breach of the relevant statutory duty to be actionable by an individual harmed by that breach.*

31 In **Nimmo v Alexander Cowan & Sons Ltd** [1968] AC 107 Lord Upjohn stated that (at p 125):

> *... it is not in doubt that the whole object of the Factories Act is to reinforce the common law obligation of the employer to take care for the safety of his workmen ...*

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32 This statement of Lord Upjohn was fully endorsed by our Court of Appeal in **Awang bin Dollah v Shun Shing Construction & Engineering Co Ltd** [1997] 3 SLR 677 .

33 The Factories Act is for the protection of workmen. The loss which is the subject of the present action has nothing to do with the object of the Factories Act. It is really no different from that of a situation where Virco had merely used the premises to store the machines. It cannot be contended that in that situation the loss cannot be recovered from the defendants. It is pertinent to note that the notice from the Chief Inspector of Factories merely asked Virco to stop operating as a factory. It might perhaps be different if there is a claim for personal injury by an employee working at the `factory`. Accordingly, I hold that there is no merit in this contention.

34 ***Question of the liability of the third defendant***

35

36 It is clear that the fire did not start at the premises of Ah Cheong. It spread over from Kee`s premises. The basis upon which the plaintiffs seek to pin liability on Ah Cheong is that the contents of Ah Cheong`s premises had aggravated and increased the combustion, enhanced the heat and spread the fire.

37 It cannot be denied that the materials stored in the premises of Ah Cheong were combustible. While the heat from the fire from the premises of Kee, and perhaps also of Ah Cheong, was so intense that it caused the steel beams which supported that portion of the roof structure above Kee`s premises to weaken and collapse, that cannot by itself impose liability on Ah Cheong. The building was a warehouse. There was no evidence to suggest that those

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things were hazardous or highly inflammable, though they could be burnt. I do not think the mere fact that the goods stored by Ah Cheong in the premises were combustible was sufficient by itself to imply negligence or that she had created a dangerous condition. Under the terms of the tenancy agreement, what Ah Cheong was not allowed to do was to store goods which were `specially combustible, flammable or dangerous.` There is no evidence that the goods stored by Ah Cheong were of that nature. This same term was also in the Tenancy Agreements of the two plaintiffs.

38 According to Capt Lee what he observed was that there was surface burning of the contents of the materials stored in the premises of Ah Cheong. At the time of the fire, the proprietor of Ah Cheong had locked up the premises and left for the day. Ah Cheong, however, did keep a fire-extinguisher within the premises. Having regard to all the foregoing, I do not think Ah Cheong was in any way in breach of the duty of care. The plaintiffs` action against the third defendant is, therefore, dismissed.

39 ***Apportionment of liability***

40

41 Liability for the fire lies with Carltech and Kee. On the aspect as to the cause of the fire, the blame lies with both of them - on Carltech, in failing to provide a safe power switch and on Kee, in failing to appreciate the danger caused by the accumulation of paint residue. Kee knew that the previous tenant was carrying on a similar business there and Kee continued with that business. In the alternative, they are both liable in nuisance.

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42 Of greater significance was the absence of a good and effective fire fighting equipment. The flame which was ignited would have been put out if the fire hose-reels were in operational condition. This was the real cause of the damage suffered by the plaintiffs. I have also mentioned that Kee should have provided for some form of a fire extinguisher. I cannot say for certain whether a portable fire fighting equipment could have extinguished the fire and prevented it from spreading. Aziz said that the fire could have been extinguished but he had nothing to extinguish it with. But a tenant is entitled to assume that the fire-fighting equipment provided by the landlord would be maintained and be in good operational condition. As an illustration of Carltech`s neglect for fire safety, I ought to mention that it installed a smoke detector system in 1991 for the building as required by the previous insurer. It was last serviced in 1993. On the day of the fire no alarm sounded.

43 Having carefully weighed the causes and the blameworthiness of the parties and bearing in mind, in particular, the experience gained by Carltech out of the 1990 fire, my conclusion on how liability should be apportioned is as follows:

	Carltech	Kee
Initial cause of fire	10%	10%
(20%)		
Spread of fire	70%	70%
(80%)		
	80%	20%

44 I have placed a much greater share of the responsibility for the spread of the fire on Carltech because Carltech should have known better of the need to have a good and effective fire prevention and fire-fighting system, and yet did very little, if at all, about it. The intolerable state of the fire hose-reels speaks volumes. What we see is absolute neglect.

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45 ***Exemption under cl 4(c)***

46

47 In its closing written submission, Carltech seeks to avoid liability by relying on cl 4(c) of the tenancy agreement which reads as follows:

> *The landlord shall not be in any way responsible for any loss, damage of any stock or other property of the lessee left or stored in the premises except where such loss or damage has been wilfully caused by personnel directly or indirectly employed by the landlord.*

48 I must first observe that this is not a defence raised in the pleadings. That should suffice to dispose of the point. In any case, I do not think this provision is available to Carltech. In the light of my views above on the state of the fire hose-reels, I find that there was reckless disregard for safety when Carltech failed to maintain them. Having experienced a fire in 1990, the risk of an out-break of fire again was certainly an event within the contemplation of Carltech. Its conduct in failing to maintain the fire hose-reels amounted to recklessness or wilfulness.

49 ***Damages: First plaintiff`s losses***

50

51 Virco was engaged in the business of stamping and shaping metal sheets and the assembling of metal products. At all material times there were power press machines and other equipment and tools in the premises. In the course of its business Virco had also received moulds (called `toolings`) and metal and plastic components from its customers to be processed into finished or semi-

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finished products. Two such customers were Hunter Manufacturing Pte Ltd and Sin Ma Tai Engineering Pte Ltd.

52 Virco claims for three main heads of losses: (i) $127,082 for the damage to its machineries, equipment, fixtures and furnishings, (ii) $98,728 for the damage to the materials and/or components of its customers, Hunter Manufacturing and Sin Ma Tai Engineering, and (iii) $125,397 being loss of income from 15 October 1997 up to December 1998, such loss having arisen from the disruption to its business caused by the fire.

53 I must observe that under the amount of $127,082 what Virco is claiming is based upon the original purchase prices it paid for the machines, etc, without making any deduction whatsoever for depreciation. With respect, it is absurd for Virco (and to be seen later, GJ too) to claim based on the original prices. Four of those items are not even pleaded in the statement of claim. Before me, Virco had also abandoned their claim for $8,853 for fixtures and furnishings. The values of those five items come up to $20,011. In its closing written submission, Virco asked for leave to amend the statement of claim so as to include the four omitted items. I do not think it would be fair to the defendants for me to grant leave in this manner and at this late stage. As regards depreciation I note that the machines or articles had generally been in use for between two and four years. If I were to award damages based on those figures, there would be over compensation. However, there is no independent assessment of what the values of those machines or articles were as of the date of the fire. I see that in Virco`s audited statement of accounts it had depreciated machines, etc over a three-year period. Virco explained that that was for tax purposes. But there is no other evidence before me as to the correct formula for depreciation. If Virco says that the machines are worth more than the values as

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reflected in the accounts, it should adduce evidence to that effect. That, it has failed to do. Of the remaining items which have a total value of $107,071, the most expensive item there is a power press machine which was purchased less than two years before the fire at $67,500. Bearing this in mind and the fact that in the accounts, machines were depreciated over a three-year period, and taking all the machines as a whole, I think a deduction of 60% for depreciation would be fair, giving a net value of $42,828.

54 The next head of claim relates to those tooling moulds/materials which were left with Virco by its customers, Hunter Manufacturing and Sin Ma Tai, and for which Virco was allegedly responsible. Hunter Manufacturing`s claim amounted to $97,889 and Sin Mai Tai`s only $839 (as amended before me), making a total of $98,728. Other than the bills submitted by these two customers to Virco (1PB57-60), the customers were not called upon by Virco to substantiate their claims in court. Neither is there evidence of any independent adjuster or surveyor. Both Hunter Manufacturing and Sin Ma Tai have not taken action against Virco. The defendants have challenged the extent to which such tooling moulds and materials had been damaged. Initially, I was inclined to adopting a broad brush and reduce the sum claimed by a certain percentage. Although I can see from the photographs that some of the things were damaged, there is no basis for me to adopt any figure as the appropriate deduction, as there is simply no evidence to enable me to do that. The problem is one of proof, not one of absence of loss. In the circumstances, I would only make a nominal award and would fix it at $3,000.

55 The last head of claim relates to loss of profit for the period up to December 1998 which Virco has quantified at $125,397.00, made up of $75,397 for 1997 and $50,000 for 1998. The evidence which Virco has submitted to

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substantiate this claim is unsatisfactory. What is submitted to me is a hand-written statement (exh P2) purportedly to be the estimated losses for 1997 and 1998. I am skeptical as to the weight I can reasonably give to such a statement. Let me briefly amplify.

56 The 1996 annual report of Virco, exhibited at 1PB63-93, shows that for that year Virco suffered a loss of $83,617. The accumulated loss carried forward from 1995 was $107,075. Bad debts of $38,572 were written off and $56,342 was provided for depreciation, $25,550 for fines, and $13,337 for directors` fee. Even restoring the $25,000 and $13,337 into the accounts, Virco would still suffer a loss for 1996.

57 The 1995 audited accounts show a loss of $54,127. For that year it paid directors` fees of $6,750 and director`s remuneration of $45,600 and provided for depreciation of $56,342. Similarly, if one were to plough back the two sums, $6,750 and $45,600, into the company, Virco would still have made a loss.

58 As for 1997 (when Virco`s business operated only up to 15 October 1997, the date of the fire) the audited accounts show a loss of $74,608. Virco declared directors` fees of $23,011. The accounts stated that the assets written off due to the fire were of a value of $41,968. Even if these two sums of $23,011 and $41,968 were restored into the accounts, 1997 would still have ended in the negative territory. A very significant feature of the business for 1997 is that for a period of more than nine months before the fire, the sales done were only to the tune of $98,524, whereas for the full year of 1996 the sales were $252,833. So it can be seen that for 1997, there was a drastic drop in business.

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59 The amount of profit which Virco estimated it lost in 1998 is $50,000. How this figure is arrived at is set out in exh P2. It is a pure conjecture. While I do recognize that for 1998, if there had not been any fire, and the company was still operating, and, following from the provisions for depreciation for 1995, 1996 and 1997, there would have been no deduction for depreciation for 1998, it still would not follow that 1998 would have been profitable for Virco. In this regard, I have borne in mind that in 1997 Virco`s business had slowed down, and in 1998, Singapore, and this region, were going through a financial and economic crisis.

60 In any event, what better proof can there be than this to show that Virco was not profitable: it had decided to cease business. It would probably have obtained alternative premises to carry on the business if it were profitable.

61 Accordingly, I hold that Virco has not proven that it has suffered a loss of $75,397 for 1997 and $50,000 for 1998. Thus, the losses of Virco which I hold have been proven to my satisfaction are the following:

(i)	damage of machinery and equipment	:	$		42,828
(ii)	toolings and materials of customers (nominal damages)	:	$		3,000
			$		45,028

62 ***Second plaintiff`s losses***

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64 GJ was in the business of cutting and shaping metal and plastic materials and assembling them into semi-finished products. It had machines at the premises and some other equipment and tools. Like Virco, it also received and stored raw materials and/or goods of customers for processing. A main customer of GJ was Chartered Ammunition Industries Pte Ltd. GJ claims for the following heads of losses:

65 (i) $40,507, being the damage caused to GJ`s machinery, equipment, fixtures and materials;

66 (ii) $10,977.20, being the value of the materials and finished products of Chartered Ammunition damaged by the fire for which GJ is liable to indemnify;

67 (iii) $111,794.46, being the loss of income for the period 15 October 1997 to May 1998;

68 (iv) $1,000 being the expenses incurred for relocation.

69 In addition GJ also claims for a refund of the tenancy deposit of $2,700.

70 Under the first head there are two components. First is for a sum of $16,920, being the loss of its fixtures and furnishings. From the invoices produced, except for a fan which was purchased in May 1997 for $120, the other items were all bought in June 1996, more than a year before the fire. Deduction must be made for depreciation. There is no evidence before me as to their current value or the correct rate of depreciation. Adopting the same yardstick as I have adopted for the claims of Virco, and approaching this item broadly, I

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would reduce it by Ã‰ for depreciation. Thus, the sum claimed should be reduced to $11,280/-.

71 The second component is for $23,587, being the cost of five machines/equipment damaged by the fire. The most expensive machine under this head was a milling machine bought in August 1996 for $15,000. A more recent acquisition on 3 July 1997 was a projector for $6,500. Again, taking the same three-year period for depreciation, I would depreciate this head of claim by Ã‰, making it $15,725.

72 As for the claim for $10,977.20, being damage to the materials and finished products of GJ`s client, Chartered Ammunition Industries, that again suffers from the same inadequacy in terms of proof as Virco`s claim. I would only grant nominal damage of $1,000.

73 As for the claim for loss of income, 2PB194 shows that from June to December 1998, the partnership earned, including partners` wages and profits, a total of $47,648. Therefore, the average monthly earning of GJ from June to December 1996 was $6,800 per month ($47,648 divided by 7).

74 GJ asserts that from January 1997 to 15 October 1997 its net profit was about $168,653, averaging $17,752 per month. These figures are taken out of 2PB199 to 205 and are at variance with those shown on 2PB197, where the following are set out:

Name		Basis of share			Profit			Salaries			Total
Lim Eng Koon		1/3			7,641.38			12,000			19,641.38

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Ng Keng Kong		1/3			7,641.38			12,000			19,641.38
Quek Soon Seng		1/3			7,641.38			12,000			19,641.38
				$	22,924.13		$	36,000		$	58,924.13

75 I would further add that the accounts which are produced at 2PB194-222 are (with the exception of 2PB194/5) all unsigned. The witness for GJ, Lim Eng Koon (PW4), could not be certain if all these documents were submitted to the tax authorities.

76 More importantly, there is evidence of the tax return which was submitted to the tax authorities in respect of GJ`s earnings for 1997. The 1998 assessment for GJ (exh P10) shows that the firm earned a total of $63,917 in 1997. Taking $63,917 as being the earnings for nine months, it roughly works out to be $6,700 per month. I would, in passing, observe that the evidence of Lim Eng Koon on the question of loss of income leaves much to be desired. He was saying the firm reported less to the tax authorities. He must live with it.

77 By November 1997, GJ had acquired alternative premises to continue its business. Lim Eng Koon for GJ said that its income from January 1998 to November 1998 dropped significantly due mainly to the fact that it could only replace one of the two main machines due to lack of funds. But he recognized that Singapore was hit by recession from early 1998. Again, taking a broad view and bearing in mind that losses due to a party`s impecuniosity are too remote (see Liesbosch Dredger v Edison [1933] AC 449), I would award only a sum of $30,150 as loss of income. In computing this figure I have adopted a monthly loss of $6,700 as the basic figure and applied a multiplier of 4Ã§. In other words,

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I reckon that the losses suffered by GJ until February 1998 could reasonably be attributable to the fire. A period of three months, after acquiring the new premises should be adequate for GJ to obtain replacement machines (if not for GJ`s own impecuniosity).

78 In the course of the trial the parties have, by their counsel, agreed that for GJ`s loss of a host of other equipment (including tooling moulds), that would be quantified at $5,000.

79 Thus, the total claim of GJ which I would allow is as follows:

(i)	Fixtures and furnishings	$	11,280
(ii)	Machines	$	15,725
(iii)	Customer`s materials/products (nominal damages)	$	1,000
(iv)	Loss of income	$	30,150
(v)	Loss of equipment	$	5,000
(vi)	Relocation expenses	$	1,000
(vii)	Refund of deposit	$	2,700
		$	66,855

80 ***Miscellaneous points***

81

82 In the pleadings the plaintiffs have raised a number of other contentions to substantiate their claims, eg absence of a sprinkler system, absence of warning or `no-smoking` signs. But in the light of my findings as to the cause of the fire and on why it spread, these points have become wholly irrelevant.

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83 The defendants have also alleged that the plaintiffs were negligent because they had installed unauthorized electrical fittings, appliances and machines at their premises, failed to engage licenced electricians to do the same, and generally failed to have regard to fire safety. Again, these allegations have become, in the light of the cause of the fire as I have found, wholly irrelevant. Some of these allegations were, in any case, withdrawn by Carltech at the trial.

84 ***Judgment***

85

86 Accordingly, there shall be judgment for the first and second plaintiffs in the sums of $45,028 and $66,855 respectively, and these sums shall bear interest at 6% from the date of the writ. The first and second defendants shall bear the same in the ratio of 80:20 respectively. The costs of the plaintiffs shall also be borne by the first and second defendants in the same ratio.

87 The plaintiffs` claim against the third defendant is dismissed with costs which shall be borne equally by the first and second plaintiffs. I do not think this is a case where I ought to make a `Bullock` or `Sanderson` order. The facts do not warrant the bringing in of Ah Cheong as a party, and, especially, for continuing with the action against Ah Cheong after the plaintiffs were in possession of the report of Capt Lee. Neither Carltech nor Kee sought in their pleadings to shift any part of the liability for the damages suffered by Virco and GJ onto Ah Cheong.

88 ***Counterclaim of the first defendant***

89

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90 Carltech has counterclaimed against Virco for failing to pay rent for its premises for the period 15 September 1997 to 14 October 1997. The sum stated was $8,862,92. In his evidence in cross-examination, Carltech`s witness Tan Chin Bee admitted that the rent was only $3,500 per month and that Virco was holding a deposit of $6,300. It would appear from 1PB102 (a note which this witness gave to Virco) that there was some sort of a running account being maintained by Carltech showing what was owed by Virco in terms of rental and utility and the payments made from time to time by Virco. That document shows that the amount owed by Virco as of the date of the fire was $8,862 and after offsetting the deposit against that sum, there is a balance of $2,562.92. I would give judgment to Carltech on its counterclaim in the sum of $2,562.92, which shall bear interest at 6% from the date of the counterclaim.

91 Virco contended that the counterclaim is not pleaded in the defence as a balance due on a running account. But it can be seen from 1PB102 that the balance sum of $2,562.92 was by and large outstanding rental. Virco could not have failed to appreciate what was set out in 1PB102. As the point is wholly technical, I think the ends of justice would be better served by allowing the counterclaim on the balanced amount with no costs rather than the alternative approach of granting leave to Carltech to commence a fresh action to claim the balance due.

92 **Outcome:**

93 Plaintiffs` claims allowed.

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Chao Hick Tin J

VK Rai (VK Rai & Partners) for the plaintiffs
Koh Hai Keong and Jacintha Voon (Koh & Partners) for the third defendant

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