South East Enterprises (Singapore) Pte Ltd *v* Hean Nerng Holdings Pte Ltd and another [2012] SGHC 119

Case Number	: Suit No 334 of 2009
Decision Date	: 31 May 2012
Tribunal/Court	: High Court
Coram	: Steven Chong J
Counsel Name(s)	: R Govintharasah and Noh Hamid (Gurbani & Co) for the plaintiff; Daniel Koh and Lee Wei Yung (Eldan Law LLP) for the first defendant; Chou Sean Yu and Loo Ee Lin (Wong Partnership LLP) for the second defendant.
Parties	: South East Enterprises (Singapore) Pte Ltd — Hean Nerng Holdings Pte Ltd and another

Sheriffs and Bailiffs

Tort

Agency

[LawNet Editorial Note: In Civil Appeal No 74 of 2012, the appeal against the first respondent was allowed and the appeal against the second respondent was dismissed by the Court of Appeal on 8 March 2013. See [2013] SGCA 25.]

31 May 2012 Judgment reserved.

Steven Chong J:

Introduction

1 This case centres on the duties owed by the execution creditor and the court bailiff to the execution debtor under a writ of seizure and sale. As such, it also bears upon the relationship between the execution creditor who obtains the writ of seizure and sale and the bailiff appointed to execute it. These are the two interlocking underlying principles of law upon which the plaintiff's action now rests. The dispute began in February 2004, when the plaintiff, who occupied three bays in the 1st defendant's warehouse, ran into arrears in rent and later failed to enter an appearance following service of the 1st defendant's writ of summons. Default judgment was entered and the 1st defendant obtained a writ of seizure and sale ("the WSS") to satisfy the judgment debt.

2 The parties' versions of events differ at this point. The defendants maintain that only machine parts in the first two warehouse bays, designated A2 and A3, were seized. The plaintiff asserts that machinery in a third bay, A4, though not seized, were subsequently auctioned off. One would think that this is a factual detail easily verifiable by cross-checking the Warehouse Service Agreement, Notice of Seizure and Inventory (Form 94) and the sale records, but neither the plaintiff [note: 1] nor the 2nd defendant, who as bailiff conducted the actual seizure, drew up a list of the items stored in the warehouse. Indeed, there is a fundamental dispute as to what exactly had been stored in the three bays to begin with. Even the tonnage of the machinery was not documented upon entry into the Warehouse Service Agreement, such that a comparison between the weight of the machine parts

stored and what was eventually sold and delivered cannot be conducted. The only common ground is that *some* machine parts belonging to the plaintiff had been seized, auctioned and subsequently on-sold to a Malaysian sawmill. The plaintiff's Managing Director, Mr Stanley Adam Zagrodnik ("Mr Zagrodnik"), has since informed the court that the Malaysian sawmill is in possession of some machine parts which were purportedly stored in A4 at the time of the execution of the WSS.

3 This begs the question as to why a claim in conversion for the machine parts in A4 is not also before the court. Counsel for the plaintiff, Mr R Govintharasah ("Mr Govin") was unable to provide me with a reason, except to say, quite rightly, that he is bound by his pleadings. In any event, the issue of whether a claim in conversion would have succeeded on points of both law and fact is now academic since the plaintiff is presently time-barred from commencing such an action. As a result, the plaintiff's only remedy for recovery of its machine parts or their equivalent value centres on the propriety of the defendants' conduct in the enforcement of the WSS.

Background

The Parties

4 The plaintiff is a general wholesaler and metal trader involved in the import and export of wood panel and woodworking equipment. It is "basically operated and managed personally" [note: 2] by Mr Zagrodnik. The 1st defendant operated an open-air warehouse at 27 Jalan Buroh. On or about 17 February 2003, the plaintiff entered into a Warehouse Service Agreement with the 1st defendant to store various machine parts in bays A2 and A3 at the premises for a monthly fee of S$3,000 [note: 3]. Shortly thereafter, a second agreement was entered into on or about 31 March 2003 for the use of bay A4 for the same purpose, bringing the total monthly rent to S$4,900 [note: 4]. The 2nd defendant was the court bailiff who executed the WSS. The background under which the court bailiff was added as the 2nd defendant is explained at [19] below.

5 It would be apposite at this point to describe these machine parts. There were two sets of machine parts, one of which formed a plant for the manufacture of wooden hard and soft-boards and the other for the manufacture of wooden particle boards [note: 5]. Although Mr Zagrodnik furnished a full list of machine parts for each plant in his affidavit of evidence-in-chief ("AEIC"), it appears that these machine parts were not enumerated in either the Warehouse Service Agreement or in the letter granting the plaintiff additional space at A4.

The purported agreement and subsequent seizure

6 On 9 February 2004, the 1st defendant brought an MC Suit [note: 6] against the plaintiff for the sum of S$27, 940, this being the rental owed by the plaintiff for occupation of the three bays. The plaintiff failed to enter appearance in the MC Suit and on 5 March 2004, default judgment [note: 7] was entered for the sum claimed, at an interest of 6% per annum and costs of S$1,000.

7 I pause here to consider Mr Zagrodnik's assertion that, after default judgment had been entered, he met Mr Kelvin Lim, the Managing Director of the 1st defendant ("Kelvin") and informed him that the particle board machinery was due to be sold for over US$350,000 to a Pakistani buyer. Mr Zagrodnik claims that they reached an oral agreement not to enforce the default judgment so that the plaintiff would have time to complete the sale and satisfy any outstanding arrears [note: 8]. It should be emphasised that the breach of this purported agreement has not been included in the

plaintiff's pleadings. As such, the substantive resolution of this case does not turn on whether the plaintiff can establish such an agreement. Moreover, it is not the plaintiff's evidence that the 2nd defendant had been informed of this purported agreement, so that no liability can be imputed to the latter even if Mr Zagrodnik's assertions are proved. However, the veracity of this agreement is nevertheless relevant as it may offer a possible explanation for the plaintiff's passivity between March and July 2004, despite being served with the WSS.

8 Kelvin only accepts that Mr Zagrodnik had approached him and "asked for indulgence", but denies being informed of the machinery's value or having entered into an agreement not to enforce the judgment debt. His version of the events is that he told Mr Zagrodnik to speak to the 1st defendant's lawyers instead [note: 9]. I see no reason to doubt Kelvin's account. In the context of Mr Zagrodnik's persistent failure to make payment on the outstanding storage rent, it is highly improbable that Kelvin would accede to a postponement without even seeing proof of any agreement with the Pakistani buyer. It should also be borne in mind that Kelvin had earlier agreed to allow the plaintiff to pay back the arrears in instalments, *provided* Mr Zagrodnik signs a personal Letter of Undertaking prepared by the 1st defendant's solicitors to pay the arrears [note: 10]. However, Mr Zagrodnik failed to do so. This renders it all the more unlikely that Kelvin would, having already obtained default judgment in the 1st defendant's favour, then reverse his position and agree to a wholly informal and indefinite postponement for the benefit of the plaintiff. Similarly, it is incongruous that Mr Zagrodnik made no effort to formalize this purported agreement despite the fact that the 1st defendant had every reason to exercise its rights under the WSS. In addition, Mr Zagrodnik's account fails to provide basic details such as the duration of the agreed postponement and the eventual terms of payment. Indeed, it will be seen at [62] below that Mr Zagrodnik, under cross-examination, had prevaricated as to when exactly the agreement took place. These considerations all militate against the probity of Mr Zagrodnik's assertions, and I am compelled to conclude that the plaintiff has failed to satisfy its burden of proof in relation to the purported oral agreement.

9 The 1st defendant filed the Praecipe for Writ of Seizure and Sale [note: 11] on 19 March 2004 for a total sum of S$29,771.57. It was at this point that certain procedural anomalies arose. In the Praecipe for Writ of Seizure and Sale, the 1st defendant's solicitors listed the plaintiff's "registered office" at 47 Beach Road as well as their "place of business" at 27 Jalan Buroh, without specifying at which location the WSS was to be executed. This is also the case with the WSS issued to the bailiff [note: 12]. However, in another document filed on the same day simply titled "Praecipe", the 1st defendant's solicitors mention only the plaintiff's registered office at 47 Beach Road [note: 13]. In this document, they also requested the Registrar not to inform the plaintiff of the execution date.

10 On 23 March 2004, the bailiff's office sent a General Notice to the plaintiff's office at 47 Beach Road, stating that the WSS would be executed "at this address" [note: 14]. Six days later, on 29 March 2004, the bailiff's office informed the 1st defendant in writing that it was to accompany the bailiff "to the place of execution at **47 BEACH ROAD** " [note: 15]. The 1st defendant then wrote to the bailiff's office requesting the place of execution to be changed to 27 Jalan Buroh instead of 47 Beach Road [note: 16]. A second letter was then sent to the 1st defendant specifying that it was to accompany the bailiff to 27 Jalan Buroh [note: 17]. A second General Notice was, however, not sent to the plaintiff prior to the execution of the WSS. It would, therefore, appear that the plaintiff was not specifically told that its property at 27 Jalan Buroh would be seized. Having said that, Mr Zagrodnik, under cross-examination, admitted that he was aware of the WSS which was served at the 47 Beach Road office address. It should also be noted that there is no provision in the Supreme

Court of Judicature Act (Chapter 322, Section 80) Rules of Court ("Rules of Court") requiring the bailiff's office to issue a General Notice to the execution debtor prior to the date of seizure.

11 The WSS was executed on 11 May 2004. The 2nd defendant was accompanied by a representative of the 1st defendant, Mr Eugene Lim Chang Chye (who has since left the employment of the 1st defendant) ("Eugene"). Eugene handed the 2nd defendant a letter of indemnity [note: 18] and pointed out the machine parts which were to be seized [note: 19]. It is the 2nd defendant's evidence that he only seized the machine parts in A2 and A3. Two other employees of the 1st defendant were also present at the warehouse, a security guard simply referred to as "John" and Mr Yeo Hock Heng ("Mr Yeo"), who corroborates the 2nd defendant's account [note: 20]. Under cross-examination, the 2nd defendant further particularized his description, testifying that the machine parts seized occupied only a "quarter", the "extreme right portion", of the two bays. Whilst he inspected the machine parts, the 2nd defendant appraised them to be worth S$15,000. When questioned, he explained that he had arrived at this figure, first, by keeping in mind that items worth more than S$2,000 would have to be sold by public auction and, second, by a lay evaluation of the items. I would also add that this was the 2nd defendant's first experience with seizure of machinery.

12 After being told by two workers at the warehouse that the machinery in A2 and A3 were "mesin potong kayu" or "machines for cutting timber", the 2nd defendant filled up the Inventory of items seized as "all machineries and parts of timber at lot A2 to A3 (inside)" [note: 21]. He testified at the trial that by "machineries and parts of timber" he meant "machines to cut timber", and that he pasted seals on parts of all the machinery seized at A2 and A3. At the end of this process, the 2nd defendant then went to look for Eugene at a container office situated on the premises. There, the 2nd defendant left the Notice of Seizure and Inventory (Form 94) [note: 22], as well as a General Notice addressed to the plaintiff at 27 Jalan Buroh [note: 23], with Eugene and told him that they were for the plaintiff [note: 24].

The sale

13 The first Notice of Sale was issued on 24 May 2004 [note: 25], setting the auction date on 9 June 2004. The 2nd defendant went to the warehouse and handed a copy of this Notice to the security guard. He also posted a copy of the Notice on the notice board at the Registry of the Subordinate Courts. On 26 May 2004, Kiong Chai Woon and Company Pte Ltd was appointed as the auctioneer. The advertisement of the auction sale was to be published on 7 June 2004 but the publishers failed to do so and the advertisement ran two days late, on 9 June 2004. As a result, a new Notice of Sale was issued on 7 June 2004 [note: 26] specifying that the auction would be held on 11 June 2004 at 3 pm. This second Notice was also handed to the warehouse security guard and posted on the Registry notice board at the Subordinate Courts [note: 27].

14 The auction was held at the warehouse on 11 June 2004 and the seized machine parts were sold for S$51,500 to the highest bidder, Kim Hock Corporation Pte Ltd ("Kim Hock"). Kim Hock arranged for the machine parts to be stored at the warehouse until on or about 22 July 2004. Its Managing Director, Mr Lim Kim Hock ("Mr Lim"), who has 40 years of experience in the scrap metal and machinery business, examined the machine parts on the day of the auction. His view was that they were timber-related machinery but were too old and rusty to be used. He therefore assessed the scrap metal value of the machine parts as about S$50,000, based on their weight [note: 28].

15 The sold machine parts were then stored temporarily at the warehouse until Kim Hock arranged for their transfer to its premises on or about 22 July 2004 [note: 29]. It should be noted that from June 2004 onwards, bay A2 had been leased to another company, Vigour Technologies Ltd ("Vigour"), for storage of their goods [note: 30]. After the machine parts were moved out of the bays, Vigour took over A2. There was some dispute as to the exact date on which Vigour entered into occupation of A2. In a letter dated 10 September 2004 [note: 31], Mr Albert Yeo of Vigour wrote to Mr Zagrodnik informing him that, according to their records, they took possession of A2 on 15 April 2004 based on the commencement date of the payment of the rental. Mr Yeo, however, agreed under cross-examination that he does not have any personal knowledge as to when Vigour actually commenced occupation of bay A2. In cross-examination Kelvin clarified that Vigour's goods were stored in a temporary area until Kim Hock moved the seized machinery out of bay A2.

16 Shortly after, Kim Hock on-sold the machine parts to a business associate, Mr Lau Swee Nguong ("Mr Lau"). The machine parts are, to this day, still at Mr Lau's premises at Hua Seng Sawmill Sdn Bhd ("Hua Seng") in Sibu, Sarawak [note: 32]. They remain unassembled.

Procedural history

17 Around 5 July 2004, Mr Zagrodnik visited the warehouse with a Pakistani business associate, Mr Mushtaq (the Managing Director of Best Chipboard Industries ("Best Chipboard")), to inspect the machine parts [note: 33]. His evidence is that he immediately noticed that "several pieces of machinery" were missing. The next day, he confronted Eugene about the missing machine parts. Eugene purportedly denied any knowledge of their whereabouts [note: 34]. Mr Zagrodnik claims that he was only appraised of the seizure when the duty security guard handed him some documents consisting of the Notice of Seizure and Inventory and Notice of Sale [note: 35]. It would appear that Mr Zagrodnik did not previously receive the second General Notice issued by the 2nd defendant.

18 The plaintiff's solicitors wrote to the 1st defendant on 9 July 2004 claiming that the 1st defendant's re-entry into the leased premises at A2 to A3 was wrongful and constituted a trespass [note: 36]. On or around 21 July 2004, Mr Zagrodnik also made a police report against the 1st defendant, claiming that there were eight missing items from the premises worth about S$97,000 [note: 37].

19 The plaintiff then applied to set aside the Default Judgment and the WSS. This was dismissed by the Deputy Registrar, whose decision was affirmed on appeal by both the District Court and, on 3 February 2005, the High Court. More than four years after the High Court's decision and five years after the execution of the WSS, the plaintiff commenced the present suit on 17 April 2009 against the 1st defendant and the "Bailiff, Subordinate Courts of Singapore". The plaintiff later amended its claim to replace the latter with the Attorney-General, but this action was successfully struck out pursuant to s 6(3) of the Government Proceedings Act (Cap 121). In September 2009, the High Court upheld the decision to strike out the claim against the Attorney-General. The plaintiff then obtained leave to name the bailiff who executed the WSS, Mr Sapuan Sanadi, as the 2nd defendant.

The Claims

Plaintiff's case

20 Stated briefly, the plaintiff's case is that the WSS was executed negligently and in breach of the 2nd defendant's statutory duty. Embedded within this is the proposition that the 2nd defendant, as court bailiff, acted as the agent of the 1st defendant, such that the latter is vicariously liable for the former's negligence. The particulars of this claim can be further deconstructed into the following alleged breaches presented in chronological order:

(a) Inadequate Notice of Seizure as the 2nd defendant left the relevant documents at the 1st defendant's premises and in the hands of their employees.

(b) Failure to sufficiently particularize the seized machinery.

(c) Excessive seizure as the value of the seized machinery far exceeded the judgment debt.

(d) Failure to publish an adequate advertisement which described the true nature of the seized machinery, so as to attract the attention of appropriate buyers.

(e) Inadequate Notice of Sale as the 2nd defendant left the relevant documents at the 1st defendant's premises, in the hands of their employees, and failed to allow seven days to expire before the actual sale on 11 June 2004, as required under O 46 r 23 of the Rules of Court.

(g) Sale of machinery in A4 which had not been seized pursuant to the WSS.

(h) Failure to sell the seized machinery at the best possible price.

21 The plaintiff asserts that the actual market value of the two seized machinery amounted to S$1,224,294.50, this being the combined value of, first, a 28 February 2001 contract with Ngan Linh TNHH Ltd ("Ngan Linh") for the sale of the hard and soft-board plant and, second, a 8 May 2004 contract with Best Chipboard for the particle board plant. On the back of these two purported contracts, the plaintiff is claiming loss and damage of S$1,174,999.48 [note: 38].

The Defence

22 In essence, the 2nd defendant's defence is that s 68(2) of the Subordinate Courts Act confers a statutory immunity upon the bailiff unless it can be shown that he had *knowingly* acted in excess of authority. Further, it is his position that *actual*, as opposed to constructive, knowledge is needed to satisfy this test to deprive him of his statutory immunity.

23 The 1st defendant's defence is that the bailiff is a public functionary who does not act as the agent of the execution creditor. As such, any breach on the part of the 2nd defendant does not represent a breach by the 1st defendant. Further, the 1st defendant contends that it does not owe any independent duty of care to the plaintiff in respect of the acts and omissions complained of. Finally, even if such a duty is found, it is contended that the loss suffered by the plaintiff must be based on the scrap metal value of the machinery and cannot be computed at S$1,174,999.48.

Whether the bailiff acts as an agent of the execution creditor

24 It is fitting to begin by determining whether the liability, if any, of the two co-defendants should be taken in tandem or if their conduct should be discretely assessed. Unfortunately, the precise nature of the relationship between an execution creditor and the bailiff is not entirely clear.

The available authorities do not provide a readily unequivocal answer.

25 The issue was considered by Judicial Commissioner Choo Han Teck (as he then was) in *Heng Chyu Kee v Far East Square* [2001] 3 SLR(R) 651 ("*Heng Chyu Kee*"), a case which concerned the liability in negligence of a landlord who took out a writ of distress. Choo JC opined at [5] that, "when the movables are being distrained, the landlord must ensure that the bailiff, who is deemed to be his agent in this regard, affixes the court's seal on each of the movables to be distrained." Taken on its own, it is unclear whether this agency relationship arises only specifically in relation to the act of affixing the court's seal or if Choo JC intended this to stand for a more general agency relationship between the bailiff and the landlord in the execution of a writ of distress. It should be highlighted at the outset that the bailiff was not added as a defendant in *Heng Chyu Kee*. In the context of the entire decision, however, it is apparent that the court proceeded on the basis that the negligence of the landlord, who was the sole defendant, could be constituted by the acts of the bailiff. The landlord was found to be negligent for failing to: a) ensure that the value of the goods seized by the bailiff did not exceed the debt; b) identify the goods seized by affixing the court seal on them; c) give adequate notice of the sale; d) ensure that only the seized items were sold; and e) ensure that the purchaser took away only the items purchased. It appears from the decision in *Heng Chyu Kee* that Choo JC *assumed* that the bailiff acts as the agent of the judgment creditor under the distress procedure. No authorities were cited, nor was there any exposition as to the basis for this conclusion. Further, there is nothing in the decision to indicate that this proposition was even disputed by the landlord. Upon examining the pleadings in *Heng Chyu Kee*, I have noted that the plaintiff alleged that "the Bailiff, acting in pursuant [*sic*] of the authority and instruction of the Defendant as aforesaid" had seized her goods. In response, the defendant did not deny this in its defence but instead insisted that the distress had been properly executed.

26 There is, however, clear local authority which appears to be at odds with the position adopted in *Heng Chyu Kee*. In *Curtis v Metro-Goldwin-Meyer (Oriental) Inc* [1930] SSLR 5 ("*Curtis*"), the Straits Settlements Supreme Court held after a survey of English authorities that:

> I gather from these authorities that when the sheriff acts under a valid writ of execution as in our case, he and his officers' and agents' acts are the acts of the Court, and *he is in no sense the servant or agent of the execution-creditor who merely sets the Court in motion.* If the execution-creditor does not mislead the sheriff, and takes into such active part in the actual execution as to identify himself with any wrongful acts of the sheriff or his officers or agents committed in the course of the execution of the writ, then he is not liable or responsible for such wrongful acts.
>
> [emphasis added]

27 An examination of the English authorities on this subject, however, gives cause to proceed with some caution. There are cases pointing in either direction. In *Re Caidan* [1942] 1 Ch 90 ("*Re Caidan*"), Morton J adopted the following view:

> In my view the bailiff distrains merely in the capacity of an agent for the person levying the distress. This is so stated in Halsbury's Laws of England, Hailsham ed., vol. x., p. 493, and I see no reason to doubt that the statement is correct. Further, from a practical point of view, I cannot conceive that the intention of the legislature by this sub-section was to treat the bailiff as being the person who has distrained in every case in which a bailiff was employed for the purpose. If that were the intention of the section, the result in the present case would, I suppose, be - as Mr. Burt submitted - that the bailiff, having got goods in his hands which were subject to a charge by reason of the receiving order, would be personally liable for having sold

the goods, received the proceeds, and paid them to the respondents. I cannot think that that was the intention. In my view, the "landlord or other person" referred to in the sub-section is the principal on whose instructions the distress is levied and not the agent through whom the distress is actually carried out.

28 This is to be contrasted with the more measured approach of Walton J in *Re A Debtor* (No 2 of 1977) [1979] 1 WLR 956 ("*Re A Debtor*"), in which Lord Cranworth LC's dicta in *Hooper v Lane* (1857) 6 HL Case 443 ("*Hooper*") was cited:

> For, in truth, the sheriff in such a situation is not simply an agent for the judgment creditor; he has much wider responsibilities, which now include duties toward the Official Receiver or trustee in bankruptcy. Compare what was said by Lord Cranworth L.C. in Hooper v. Lane (1857) 6 H.L.Cas. 443. 549-550: "But the answer is, that the sheriff, though for some purposes an agent of the party who puts the writ into his hands, is not a mere agent. He is a public functionary, having indeed duties to perform towards those who set him in motion analogous, in many respects, to those of an agent towards his principal; but he has also duties towards others, and particularly towards those against whom the writs in his hands are directed.

29 These two cases are counter-balanced by the decision of Evershed MR in *Barclays Bank v Roberts* [1954] 3 All ER 107 ("*Barclays Bank*"), applying the longstanding authority of *Williams v Williams & Nathan* [1937] 2 All ER 559 ("*Williams*"), wherein Greer LJ held at [2] that:

> ... I think it is clear to demonstration, from the case that has been cited of Woollen v Wright [note: 39] and other cases, and from a well known rule of law, that a sheriff and a sheriff's officer, executing a judgment of the court, are acting, as one may say, on behalf of the court. *Each is doing his duty as an officer of the court, and is not a servant or agent of the plaintiff who has recovered judgment in the action*. Of course, there may be circumstances which show that the plaintiff by intervention had made the sheriff his agent to do something which was not covered by the judgment, or by the writ of execution... But, in my view, there is no evidence justifying any finding as to the special direction given to the sheriff or the sheriff's officer which might make the sheriff or the sheriff's officer the agent of the defendant Williams, the landlord.
>
> [emphasis added]

30 It appears from *Williams* that the bailiff might be regarded as the agent of the judgment creditor in limited circumstances when the execution creditor "intervenes" to require the bailiff to do something which is not covered in the writ of execution. In *Barclays Bank v Roberts*, Evershed MR provided the following analysis as to what *intervention* is required for an agency relationship to arise:

> As a matter of principle, it seems to me impossible that the character and quality of their actions were entirely altered because they sought advice and then chose to act upon that advice (as it was, no doubt, expected that they would). The responsibility for acting on the advice they sought and received was their responsibility. They cannot, in my judgment, be converted into the agents of the persons on whose behalf the advisers were acting – whether that person was the landlord or a stranger to the property in question – *unless at the very least it were shown that the sheriff's officers made it plain that their subsequent actions were only undertaken on the basis of that other person assuming responsibility therefor*...
>
> [emphasis added]

31 On this line of authority, a principal-agent relationship only arises if the "character and quality"

of the bailiff's conduct has been altered by the execution creditor. To establish this, the execution creditor must first assume responsibility for the bailiff's actions and the bailiff must then act plainly on the former's instructions. In *Williams*, it was held that the execution creditor must give the bailiff some "special direction".

32 It need only be mentioned in passing that these cases were not cited in *Heng Chyu Kee*. It leaves me to consider this question afresh, given that the relevant authorities have now been presented for the court's consideration.

33 The case which most unreservedly supports the agency proposition is *Re Caidan*, but the standing of this decision must now be discounted given that Morton J was content to rely heavily on what was stated in the 2nd edition of Halsbury's Laws of England, without more. The 4th edition was scrutinised in the later case of *Re A Debtor* and found to be inaccurate:

> What was the sum owing to the creditor on May 31? Mr. Evans-Lombe put the matter very simply and attractively. He said that the sheriff was the agent of the creditor to accept payments made to him, citing *Halsbury's Laws of England*, 4th ed. (1976), vol. 17, para. 492, entitled "Execution," which reads:
>
> > "Payment to sheriff. The sheriff has authority from the judgment creditor to receive the amount to be levied, and can give a discharge. If payment or tender is made, he must withdraw from possession, and if no payment is made, he must, after seizure, proceed at once to prepare for sale."
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> He cited the two cases therein referred to, namely *Rook v. Wilmot* (1590) Cro.Eliz.209, and *Taylor v. Baker* (1677) Freem. K.B. 453. However, upon examination those two cases did not appear to establish the precise proposition for which they were cited...

34 The remaining authorities on this subject are generally agreed that the bailiff is a servant of the court and acts on behalf of the court, but they set different thresholds for situations wherein he can also be regarded as an agent of the execution creditor. The *Re A Debtor* and *Hooper* sequence of cases is vague in its analysis, going only so far as to establish that the bailiff is the execution creditor's agent "for some purposes" and is "not simply an agent" but has "wider responsibilities". The line of cases from *Woollen v Wright* and *Williams* through to *Barclays Bank* offers a more coherent position where the bailiff will only step into the role of an agent if there has been some "special direction" or "assumption of responsibility" by the execution creditor. The specific propositions which emerge from these cases are that the bailiff is not an agent where he receives payment of the judgment debt from the execution debtor (*Re A Debtor*), wrongly seizes the property of a non-party (*Woollen v Wright*), or wrongfully evicts a tenant (*Williams*; *Barclays Bank*).

35 On the whole, the position in English law is that the bailiff, being a public functionary, is not *by default* an agent of the execution creditor who puts the writ of seizure and sale in his hands *unless* there are special instructions from the latter which are subsequently accepted by the bailiff. Apart from this, the bailiff is to have regard to the interests and instructions of the execution creditor only insofar as it is compatible with his public duty (see *Re Cook* (1894) 63 LJ QB 756). In this regard, *Curtis* remains good law and should be applied in preference over *Heng Chyu Kee*, wherein the court did not have the benefit of being referred to the relevant authorities. It has been suggested by counsel for both the 1st and 2nd defendants, Mr Daniel Koh and Mr Chou Sean Yu respectively, that *Heng Chyu Kee* can be distinguished as it concerned the improper execution of a writ of distress as distinct from a WSS. In English law, the remedy of distress is a rare self-help remedy which permits

the landlord to immediately seize and sell the goods of a tenant in arrears. Lord Denning described it as "an archaic remedy which has largely fallen into disuse" in *Abingdon Rural District Council v O'Gorman* [1968] 2 QB 811 at 819. Until this common law right was abolished by s 71 of the Tribunals, Courts and Enforcement Act 2007, the position in England was that a landlord need not seek a court order before levying distress so long as the affected tenancy was not protected by the Rent Acts. In this context, the bailiff who executes distress on behalf of the landlord can less controversially be viewed as the latter's agent. Indeed it goes some length to explain the divergence between *Re Caidan* and the other cited English authorities. However, this does not afford a ready basis to distinguish *Heng Chyu Kee*. The operation of distress in Singapore is governed by the Distress Act (Cap 84, 1996 Rev Ed) which requires a court to issue a writ of distress before it can be levied. In *Ginsin Holdings Pte Ltd v Tan Mui Khoon (trading as Chan Eng Soon Service) and another* [1996] 3 SLR(R) 500, Judith Prakash J examined the operation of distress in Singapore against its historical development in England and reached the following conclusion:

> 14 There has been no change in the legal position since *Chop Chye Hin Chong v Ng Yeok Seng* was decided. Under the Act which in its original form as Ordinance 28 of 1934 was the successor to the Civil Procedure Code 1907 and is not substantively different from that Code, distress is a remedy which is obtained only after judicial intervention. It is not a self-help remedy as in England. Accordingly, although the Act follows the Code in not providing compensation for wrongful or illegal distress, an aggrieved tenant cannot fall back on the common law remedy of an action for damages *per se*. Instead he has to bring an action for malicious prosecution.

36 The processes involved in obtaining and executing a writ of distress (as in *Heng Chyu Kee*) are therefore broadly similar to those of a writ of execution (as in *Curtis* and the present case). Consistent with this understanding, O 46 r 16 of the Rules of Court governs both writ of execution and distress. Insofar as the issue is one of whether the bailiff acts as an agent of the person who took out the writ, the same considerations and principles are traversable whether it is a writ of distress or execution.

37 In my view, the bailiff is not, by default, viewed as the agent of the execution creditor and the onus is upon the party who argues otherwise to establish either that special instructions were issued or that there had been intervention by the execution creditor, such as to render the bailiff his agent.

Did the 1st defendant specially instruct the bailiff?

38 There is no evidence that the 1st defendant had issued any special instructions to the bailiff, apart from the fact that Eugene had directed the 2nd defendant to seize the machine parts at A2 and A3. Further, it cannot be said that the 2nd defendant acted under the special instructions of the 1st defendant merely by accepting the letter of indemnity. While agents are typically indemnified, the converse statement – that whomsoever indemnified is typically an agent – is not necessarily true. An agent is "invested with a legal power to alter his principal's legal relations with third persons" [note: 40] , but the provision of an indemnity does not, without more, also carry with it such a power. The indemnity is a standard requirement that the bailiff would require from any execution creditor and there is nothing to indicate that the 2nd defendant had conducted himself any differently as a result of the specific indemnity provided by the 1st defendant. In other words, following Megarry VC in *Barclays Bank*, it cannot be said that the "character and quality of their actions were entirely altered" by the provision of the indemnity. Further, applying the standard set out in *Curtis*, the 1st defendant did not "mislead" the 2nd defendant or take such "active part" in the actual execution as to identify

itself with any wrongful acts of the latter.

39 The inexorable conclusion which must be drawn is that no relationship of agency arose in the present case between the two co-defendants.

Statutory immunity of the bailiff

40 The key defence of the 2nd defendant rests on s 68(2) of the Subordinate Courts Act that protects him from any liability unless he knowingly acted in excess of authority. The provision is set out here in full:

> (2) No officer of a subordinate court charged with the duty of executing any writ, summons, warrant, order, notice or other mandatory process of the subordinate courts shall be liable to be sued for the execution of or attempting to execute such writ, summons, warrant, order, notice or other mandatory process, or in respect of any damage caused to any property in effecting or attempting to effect execution, *unless he knowingly acted in excess of the authority* conferred upon him by such writ, summons, warrant, order, notice or other mandatory process of the court in question.
>
> [emphasis added]

41 There are two issues which arise from s 68(2):

(a) whether actual knowledge is required to establish that the bailiff knowingly acted in excess of authority; and

(b) whether s 68(2) overrides the common law duty.

42 I proceed now to consider these issues.

Whether actual knowledge is required to establish that the bailiff knowingly acted in excess of authority

43 The determination of this issue is a prerequisite to the assessment of the 2nd defendant's liability. The plaintiff's position is that constructive knowledge, "in the sense of recklessness as in turning a blind eye to the risk of loss or damage" [note: 41], would suffice to remove the bailiff's statutory immunity. The 2nd defendant contends that the test is a subjective one, such that the plaintiff must demonstrate that the 2nd defendant had *actual* knowledge that he was acting in excess of authority. However, Mr Chou accepted that there are no reported cases on the state of knowledge required to engage the exception in s 68(2) [note: 42]. The court must therefore apply general principles of statutory interpretation to determine whether only *actual* knowledge is sufficient to displace the bailiff's statutory immunity.

44 On the face of it, s 68(2) serves the clear purpose of protecting officers of the Subordinate Courts from facing onerous civil liabilities in performing their tasks in the execution of court processes. The subjective test would fall squarely in line with this objective. Further, this gives the wording of the statute its natural and ordinary meaning because the default position is that the officers of the

Subordinate Courts, including the bailiff, are *not liable* for damage in the course of performing their judicial tasks. The onus is on the claimant to prove that the relevant officer had knowingly acted in excess of his authority in order to remove the statutory immunity. Mr Govin accepts that mere negligence is not sufficient to displace the statutory immunity.

45 On the one hand, it can be said that the subjective test would be more in keeping with the statutory objective to protect officers of the Subordinate Courts in the performance of their duties. On the other hand, it can also be persuasively argued that the subjective interpretation, taken to its logical extension, will grant officers an extensive immunity which might protect even egregious instances of excess of authority against civil action. A more objective standard might perhaps signal the legislature's intention to uphold standards of professional conduct whilst still protecting officers of the Subordinate Courts from legal harassment. However, such a purposive interpretation strains the natural meaning of "knowingly" by incepting the legal concept of constructive knowledge into the term.

46 Adopting a subjective test does not, however, mean that the 2nd defendant will only be deprived of his statutory immunity if it can be shown that he actually knew he was exceeding his authority. It is the common position in criminal law that a defendant who wilfully shuts his eyes to the commission of an offence will also satisfy the *mens rea* requirement of subjective knowledge. In *Awtar Singh s/o Margar Singh v Public Prosecutor* [2000] 2 SLR(R) 435, Yong CJ developed the following exposition of wilful blindness at [50]:

> The upshot of these cases is that actual knowledge of certain facts can be inferred from the evidence that the defendant had deliberately or wilfully shut his eyes to the obvious or that he had refrained from inquiry because he suspected the truth but did not want to have his suspicion confirmed. Where the facts obviously pointed to one result, and the accused must have appreciated it but shut his eyes to the truth, then together with the other evidence adduced, it could have formed a very compelling part of the evidence to infer the requisite guilty knowledge: *Chiaw Wai Onn v PP* [[1997] 2 SLR(R) 233]. *However, it has to be remembered that there is a vast difference between a state of mind which consists of deliberately shutting the eyes to the obvious, the result of which a person does not care to have, and a state of mind which is merely neglecting to make inquiries which a reasonable and prudent man would make*: *PP v Koo Pui Fong* [[1996] 1 SLR(R) 734].
>
> [emphasis added]

47 The criminal law treats actual knowledge and wilful blindness as legal equivalents. However, it must be emphasised that they are not substantively the same – actual knowledge is a subjective mental state, whereas wilful blindness is an objective evidential tool for establishing such a mental state (see *Public Prosecutor* v *Lim Boon Hiong and another* [2010] 4 SLR 696 at [55]).

48 In the civil context, the House of Lords undertook a comprehensive investigation into the meaning of acting "knowingly" in excess of authority in *Three Rivers DC v Bank of England (No 3)* [2003] 2 AC 1. This case is of particular relevance given that it also concerns the culpable mental state of a public officer, albeit in the context of a common law tort instead of statutory immunity. More importantly, the ingredients of the tort of misfeasance in public office are broadly similar to the requirements set out in s 68 for the displacement of the bailiff's statutory immunity. Lord Steyn described the tort as follows, at p 191:

> The case law reveals two different forms of liability for misfeasance in public office. First there is the case of targeted malice by a public officer... The second form is where a public officer acts

knowing that he has no power to do the act complained of and that the act will probably injure the plaintiff. It involves bad faith inasmuch as the public officer does not have an honest belief that his act is lawful.

49 The House of Lords concluded that "knowing" includes both situations of actual knowledge as well as subjective recklessness or reckless indifference. The plaintiff's argument that objective recklessness, wherein the defendant recklessly failed to even think about an obvious risk, should be sufficient to attract liability was rejected. It was also thought that this represented the appropriate balance between the competing policy considerations of combating abuse of public power and preventing unmeritorious claims against public officers (*per* Lord Steyn at p 196).

50 On the whole, I see no compelling reasons for extending the meaning of "knowingly" beyond the elements of actual knowledge and wilful blindness. The common thread between these elements is that the bailiff must have at least addressed his mind to whether he is exceeding his authority, as opposed to situations where the bailiff was wholly ignorant or simply failed to give the matter any thought at all. Importing notions of constructive or objective knowledge necessarily derogates from the mental cognisance which is inherently denoted by the term "knowingly". It also detracts from the purpose of s 68 by potentially opening the door to claims against court officers for *negligent* performance of their duties. Any introduction of objective standards necessarily structures the administration of these public duties by increasing the vulnerability of court officers to civil litigation. As for whether the subjective standard of reckless indifference will suffice to displace the bailiff's statutory immunity and whether it is any different from wilful blindness, I am disinclined to make a finding on this issue without the benefit of submissions from counsel and, in any event, it is unnecessary for the determination of the present case. I add only that the *mens rea* requirements of actual knowledge and wilful blindness, whilst stringent, would still capture instances where the bailiff acts egregiously outside of his authority.

Whether s 68(2) overrides the common law duty

51 There is judicial authority that bailiffs owe a common law duty of care to the execution debtor, as distinct from their statutory obligations under O 46 of the Rules of Court. Apart from the dicta of Lord Cranworth in *Hooper* (see [29] above) to this effect, there is also the case of *S Louis Pillay v AS Nadasan* [1922] FMSLR 100 ("*Pillay*"). In his judgment, Woodward JC opined that:

> ...The duties of the bailiff are in some respects analogous to those of the sheriff under English Law and in Bevan on Negligence, Vol. 1, p. 269, occurs the following passage:
>
> > So long as the sheriff is in possession of the goods of the debtor, he is bound to exercise the same degree of care in their preservation that a man of ordinary discretion and judgment may reasonably be expected to exercise in regard to his own property. He does not insure the goods, but is in the position of an ordinary bailor for the purposes of custody and sale. He is very nearly in the case of a del credere agent-the keeper and the seller of goods with an obligation to guarantee the sale, and a lien on the proceeds to secure his compensation-and is consequently, subject to the same rule of care and liability. That is he is not liable for an accidental fire, nor yet for loss by theft, robbery or other accident, without want of ordinary care on his part.
>
> And on page 278 the same learned author on the subject of public servants refers with approval to the law as laid down in the American case of Jenner *v.* Joliffe:
>
> > "In every case where an officer is entrusted by the common law or by statute, an action lies

against him for a neglect of the duty of his office, or as was said in Barry *v.* Arnand: The defendant then is a public ministered officer, and being so he is responsible for neglect of his duty to any individual who sustains damage by such neglect."

And with regard to the degree of care demanded from public servants, the author writes:

"What amount of care constitutes negligence in these cases? It would seem that the assumption of an office implies a representation that the holder possesses the qualifications for efficient performance of its duties. The amount of care necessary consequently varies with the greater or less complexity of the duties of the office. The officer must show that diligence which a conscientious and capable man versed in the duties of the particular office, is expected to show in the performance of them."

The degree of care required by section 255 may be a higher degree than this, but can hardly be a lower one...

52 Given that the bailiff owes a common law duty of care to the execution debtor, the question arises whether s 68(2) operates to protect him from any breach of this duty. In this regard, it appears to be the general position in England and the United States that liability in tort is subject to express statutory provisions conferring immunity on a judicial officer. In *Observer Ltd v Gordon* [1983] 1 WLR 1008, the defendant sheriff was accused of wrongful seizure of another's goods pursuant to a bankruptcy petition. Under s 15 of the Bankruptcy and Deeds of Arrangement Act 1913, the sheriff had a defence unless he had notice that the goods belonged to another, or if it would have been reasonable for him to make inquiries that might have ascertained that the goods were so owned. There was also a well-established common law doctrine, following *Neumann v Bakeaway Ltd* [1983] 1 WLR 1016, that the sheriff would be liable if the seized goods were sold at a gross undervalue. The following passage from Glidewell J's judgment at 1016 supports the view that the statutory defence takes precedence:

Is there then evidence that the goods have been sold at a gross undervalue? If I had not found for the sheriff on the statutory defence I would not have found myself able to say that either Mr. Cranfield or Mr. Parsons did not have an arguable case. In other words, I would have said that on the common law defence the order "no action" should not have been made against them. Their evidence as to value might persuade a court that the goods were sold at a gross undervalue; it is not for me, of course, to decide that it would so convince a court...

53 In addition, there are several United States cases which establish the same position in relation to the Illinois Local Governmental and Governmental Employees Tort Immunity Act (745 Ill Comp Stat 10) ("Tort Immunity Act"). Two cases will suffice to illustrate the application of this jurisprudence.

54 Section 2-202 of the Tort Immunity Act provides that "[a] public employee is not liable for his act or omission in the execution or enforcement of any law unless such act or omission constitutes wilful and wanton conduct". The District Court in *Hogan v Smith*, SD Ill, 2012, 2012 WL 1435402 held that negligence of police officers in a high-speed car chase was not actionable as it did not amount to wilful and wanton conduct.

55 Similarly, s 5/105 of the Tort Immunity Act extends immunity to any "injury caused by the negligent operation of a motor vehicle or firefighting or rescue equipment, when responding to an emergency call, including transportation of a person to a medical facility." In *Carter v Simpson*, 328 F 3d 948, a police officer was driving a patrol car to respond to a call of reported death. The officer was alleged to have negligently collided with the plaintiff's car. The United States Court of Appeals for

the 7th Circuit held that the officer had "immunity for any alleged negligence on his part" (at 951) except for what was expressly provided in the statute, *ie*, wilful or wanton conduct.

56 It would appear from my review of English and United States cases that the common law duty of care is expressly subject to s 68(2) of the Subordinate Courts Act, such that the bailiff's statutory immunity must be disabled before any tortious liability can be engaged.

Did the bailiff knowingly act in excess of authority?

57 Each allegation will be separately examined in turn. It will be apparent that the 2nd defendant did not in fact act in excess of authority, let alone *knowingly* act in excess of such authority.

Inadequate notice of seizure

58 The bailiff's duties as to notification of the execution debtor are set out in O 46 r 16 of the 1997 edition of the Rules of Court:

> (1) Where any movable property is seized by the Sheriff under a writ of execution or distress, he must give to the execution debtor a notice of seizure in Form 94, and a copy of the notice must be filed.
>
> (2) Where the Sheriff removes from a place any movable property that is seized, he must give to the execution debtor at the time the property is removed or immediately afterwards an inventory of the property so removed.
>
> (3) The notice of seizure under paragraph (1) and notice of removal and inventory under paragraph (2) may be —
>
> (a) handed to the execution debtor personally;
>
> (b) sent to him by post to his place of residence; or
>
> (c) left at or sent by post addressed to him at the place from which the property was seized.

59 The plaintiff contends that Form 94, the Notice of Seizure and Inventory, should not have been left at the container office at the warehouse at Jalan Buroh, but should instead have been sent to the plaintiff's office at Beach Road. However, the options under O 46 r 16 are couched in disjunctive terms. In this regard, it is plainly within the rights of the 2nd defendant to either leave the Notice at, or post it to, the place where the seizure was executed. Further, the 2nd defendant testified that he had every reason to believe that the Jalan Buroh address was the plaintiff's place of business as this address was also stated in the WSS. No doubt, it would have been *ideal* for the Notice to have been sent to the plaintiff's Beach Road office as well, but this is insufficient to show that the 2nd defendant had knowingly acted in excess of authority. Given that the Notice was properly left at the place of seizure (which was one of the addresses stated in the WSS), there can be no question of the 2nd defendant having acted in excess of authority, let alone *knowingly* doing so. The wording of O 46 r 16(3) is unambiguously clear – the bailiff has the choice of how and where he wishes to post the Notice – and directly disposes of the plaintiff's claim on this point.

60 The plaintiff has further averred, though not pleaded, that the 2nd defendant failed to provide

notice of the date and time of seizure, contrary to s 82 of the Subordinate Courts Practice Directions, introduced with effect from 1 August 2000 pursuant to Practice Direction 2 of 2000:

> (1) Bailiff to inform execution debtor of the seizure and/or sale
>
> Prior to the seizure and/or sale, the Bailiff will notify the execution debtor, as far as practicable, of the date and time of seizure and/or sale, and request that the execution debtor or his authorised representative be present at the premises at the appointed date and time.

61 The difficulty here is that Practice Directions are not binding law. In *Odex Pte Ltd v Pacific Internet Pte Ltd* [2008] 3 SLR(R) 18, Woo Bih Li J compiled and reiterated the relevant authorities:

> 29 It seemed to me that the reference to "on behalf of" in para 23A(1)(a) was an assumption that such an application could be made on behalf of a copyright owner or exclusive licensee. The practice direction did not purport to create additional rights. Even if it did, it did not have the force of law (see *BNP Paribas v Polynesia Timber Services Pte Ltd* [2002] 1 SLR(R) 539 where Justice Lai Siu Chiu held at [37] that a practice direction is not law but merely a direction for administrative purpose).
>
> 30 The *Singapore Court Practice 2006* (Jeffrey Pinsler gen ed) (LexisNexis, 2006) states at para 1/1/6:
>
> > Although practice directions may not have the force of substantive law (see *Hume v Somerton* (1890) 25 QBD 239, at 243; *Barclays Bank International v Levin Bros (Bradford)* [1977] QB 270; *Jayasankaran v PP* [1983] 1 MLJ 379 (concerning a practice note: court said that it is not intended to be more than a direction for administrative purposes and 'cannot be exalted into a rule of law')), non-compliance may result in adverse orders against the defaulting party. ...
> >
> > In a case concerning the effect of practice directions, *Ooi Bee Tat v Tan Ah Chim & Sons* [1995] 3 MLJ 465, at 470, Zakaria Yatim JCA, who delivered the judgement of the Supreme Court, stated that practice directions 'are intended to be no more than a direction for administrative purposes' (also see *Jayasankaran v PP* [1983] 1 MLJ 379, at 380, which is cited for this proposition). Therefore, it is clear that a practice direction does not have the force of a rule of court and cannot vary the force of the latter.

62 Whilst the 2nd defendant's omission to notify the plaintiff as to the date and time of the seizure might appear not to have been in compliance with the Practice Directions, it cannot be said that he acted in excess of his authority since the precedents are clear that he is under no binding legal duty to comply with the Practice Direction in the first place. Further, the Practice Direction is not couched in absolute terms. Prior notification may be provided to the execution debtor "as far as practicable".

63 In any event, the evidence suggests that whatever the omissions of the 2nd defendant, Mr Zagrodnik was in fact aware of the WSS and the seizure of the plaintiff's machinery. First, Mr Zagrodnik admitted in cross-examination that he received and understood the General Notice dated 23 March 2004. Second, in the letter from the plaintiff's solicitors to the 1st defendant dated 9 July 2004, the purported agreement between Kelvin and Mr Zagrodnik was stated to have taken place "shortly after the seizure of the items" [note: 43]. Third, Mr Zagrodnik's own affidavit, filed on 12 August 2004, states that he spoke to Kelvin after the plaintiff issued the WSS [note: 44]. While

these factors may not be conclusive, their collective weight at least casts serious doubt on the plaintiff's claim that it was kept wholly in the dark of the seizure until Mr Zagrodnik visited the premises on 5 July 2004.

Failure to particularize the seized machinery

64 The plaintiff argues that the 2nd defendant's description of the seized machinery, "all machineries and parts of timber at lot A2 to A3 (inside)", was remiss and short of the minimum standards imposed by O 46 r 16. Emphasis is placed on Choo JC's dicta in *Heng Chyu Kee*:

> 10 I would, in passing, observe that some of the problems in this sale would not have arisen had the bailiff been precise in his recording of the inventory. I accept that there may be occasions in which it would be expedient to record certain items as "miscellaneous" items, but if that should become necessary, the items must be packed together in a box or container and sealed with the court's seal, and the description should then be "miscellaneous items in box A", for example. To state merely "miscellaneous items" without any means of identifying what they are, and relying solely on the bailiff's memory is an unreliable, and therefore, undesirable method. There is authority in the case of *Davies v Property and Reversionary Investments Corp* [1929] 2 KB 222 for the proposition that if the notice of writ identifies all items in the shop as subject to the seizure the notice may be regarded as sufficient; but it is one thing to say that all the goods in the shop are seized and another to say that miscellaneous items are seized. The difference is stark and obvious and requires no further explanation.

65 As was the case with the Notice of Seizure, the 2nd defendant could have placed himself beyond reproach had he taken the further effort of particularizing the seized machinery in detail. Nevertheless, it has not been established that he had *knowingly* recorded an inaccurate description in the Inventory since the only mistake in the Inventory, *ie*, the inclusion of "parts of timber" was, by the 2nd defendant's own explanation, simply the product of a poor translation. If the 2nd defendant had made a mistake, then it necessarily implies that he did not have actual knowledge of the error at that time. There is therefore no question of wilful blindness.

66 More importantly, even if the 2nd defendant had knowingly written an erroneous or inaccurate Inventory, the plaintiff has not shown how this has prejudiced its interests, let alone caused its loss. First, the *additional* inclusion of "parts of timber" does not prejudice the plaintiff's interest unless the description of the machinery actually seized was also inaccurate. It would not be fair to reach this conclusion, since the description of "all machineries... at lot A2 and A3 (inside)" does not misrepresent the seized machinery. Indeed, the 2nd defendant's identification of the seized machinery with reference to their location appears to be on all fours with Choo JC's dicta in *Heng Chyu Kee* and the English case cited therein, *Davies v Property and Reversionary Investments Corp*. In the latter case, Talbot J held at page 231that:

> ... It appears to us the statute not only requires the cause of taking to be mentioned, but also a notice to be given 'thereof', that is, of the distress taken, which must include everything taken.. the notice ought to inform the tenant or the person whose effects are taken, and also what is the amount of rent in arrear. *The general description 'any other goods, chattels, and effects on the premises, or in and about the premises'.. is sufficient*... it is quite clear that they decided that it was a good notice because they construed the notice as meaning that all the goods were taken; and if it did mean that, then, in the words of Erle J, the word "all does itself give a description which covers everything that is on the premises'.

[emphasis added]

67 It should also be borne in mind that the plaintiff had omitted to enter an inventory of the machinery stored at the two bays, such that even a more detailed description would not have permitted the plaintiff to establish in litigation whether the Inventory was accurate or otherwise.

68 Second, the causative link between the inaccuracy in the Inventory and the plaintiff's loss is unclear. Although the same description was used in the advertisement of the public auction, the bidders had the opportunity to physically inspect the seized machinery at the auction itself. It is highly unlikely that the description used in the advertisement of the public auction would have affected the opinion of the bidders who were actually present at the auction. Indeed, it was Mr Lim's testimony that he had not read the advertisement and had turned up only because he noticed the crowd of people attending the auction close to his own office.

69 On the strength of the above considerations, the plaintiff's case on this purported breach also fails.

Seizure in excess of the judgment debt

70 The basis for this purported breach was that the WSS only authorised the 2nd defendant to seize such of the plaintiff's goods as would be sufficient to satisfy the judgment debt of S$29,771.57. The plaintiff claims that the 2nd defendant exceeded his authority because the seized machinery is worth S$1,224,294.50. To this, there is nothing to suggest that the 2nd defendant did so *knowingly*. The 2nd defendant simply assessed the value of the seized machinery to be S$15,000. In this regard, as this was his first time seizing machinery, the 2nd defendant was not personally knowledgeable of the market value of such machinery. Moreover, it is the consistent evidence of the 2nd defendant, the auctioneer, Mr Lean Lam Bong ("Mr Lean"), and Mr Lim that the seized machinery was old and rusty, which further reduces the likelihood that the 2nd defendant would have known of their purported value.

71 The plaintiff contends that the 2nd defendant should properly have sought an external valuation of the seized machinery in order to ensure that the seizure was not in excess of the judgment debt amounting to S$29,771.57. This is yet another instance of the recurrent theme that the 2nd defendant could have gone further in the performance of his duties. However, there is simply no stipulation in the Rules of Court requiring the bailiff to obtain an external valuation. It was also the 2nd defendant's uncontroverted evidence that such valuations, as a matter of practice in the Subordinate Courts, were only sought for jewellery or diamonds.

72 This should be sufficient to dispose of the plaintiff's claim for excessive seizure against the 2nd defendant. However for completeness, the evidence as regards the actual value of the seized machinery will be considered below at [92] to [97].

Failure to publish an adequate advertisement

73 Order 46 Rule 24 of the Rules of Court provides that:

(1) Where the value of the property attached or seized is estimated by the Sheriff to exceed $2,000, the sale must, unless the Sheriff otherwise orders, be conducted by an authorised

auctioneer and the sale must be publicly advertised by the Sheriff or auctioneer once 14 days before the date of sale.

74 This present version of O 46 r 24 was introduced by Amendment Act No 671 of 2004 which came into effect on 1 December 2004. At the relevant time of seizure, the required notice period was only two days. As the advertisement was published on 9 June 2004 and the auction held on 11 June 2004, the 2nd defendant had complied with his duties under the then applicable provision.

75 The plaintiff's main submission on this purported breach is that the advertisement failed to describe the actual function and purpose of the seized machinery and accordingly failed to attract the appropriate bidders. However, the seized machinery was auctioned, purchased, and even re-sold as scrap metal. By all accounts, even if they had been advertised as woodworking machinery, the outcome would have been no different as the machines were old and rusty. According to Mr Lean, the auction was competitive and was attended by 20 to 30 bidders. There is also no evidence that a more detailed description of the seized machinery in the advertisement would have made any difference in either attracting more specialised bidders or higher prices. In fact, the objective evidence before me indicates otherwise. The plaintiff had difficulties selling the seized machinery for years. Further, the seized machinery is still in a state of disuse today (some eight years after the auction and sale) despite the fact that it was ultimately purchased by Hua Seng, *ie*, a purchaser with specialised interest in the seized machinery.

76 Most importantly, the advertisement was arranged by Mr Lean and not the 2nd defendant. Mr Lean could have inspected the seized machinery himself and drawn up his own description, but he testified that this was not the general practice at that time. Although the 2nd defendant had approved the draft of the advertisement, this was entirely in line with his earlier description in the Inventory [note: 45]. So long as the 2nd defendant was under the belief that he had recorded an accurate description of the seized machinery, the case against him on this point cannot be made out. Indeed, one might surmise that the 2nd defendant had every reason to ensure that the auction yielded good value since he estimated that the seized machinery was only worth about $15,000, which fell short of the judgment debt. This renders it all the more unlikely that he knowingly acted in excess of authority as regards the advertisement for the auction.

Failure to give adequate notice of sale

77 Order 46 Rule 23 stipulates that:

> Unless the Sheriff otherwise orders, all sales must be by public auction between the hours of 9 a.m. and 5 p.m. and notice in Form 91 of the day, hour and place of any intended sale must be posted on the notice board of the Registry and as far as practicable at the place of intended sale 7 days before the date of sale.

78 The 2nd defendant left the first Notice of Sale with the security guard at the warehouse (*ie*, the place of the intended sale) on 24 May 2004. Subsequently, due to delays in the publication of the advertisement of the public auction, a second Notice of Sale was issued on 7 June 2004 stating that the auction would be held on 11 June 2004.

79 The plaintiff alleges that the required seven days between the date of Notice and date of sale was not complied with. It argues that the seven day requirement is not qualified by the phrase "as far as practicable", which only applies to the posting of the Notice at the place of execution. I disagree with the plaintiff's interpretation of O 46 r 23. If r 23 intends for the seven day period to be an

absolute requirement, then it would read "... notice in Form 91 of the day, hour and place of any intended sale must be posted *7 days before the date of sale* on the notice board of the Registry and as far as practicable at the place of intended sale ~~7 days before the date of sale~~." The requirements of both location and timing of notice should therefore be read as conjunctively qualified by the phrase "as far as practicable".

80 In any event, the plaintiff was not prejudiced by the four day period as it had already received notice on 24 May 2004, albeit for an earlier auction date. The plaintiff seeks to rely on a technical argument that a fresh period of seven days should be required after the issue of the second amended Notice of Sale. This might be the case if the original date (9 June 2004) of the auction had elapsed before the issuance of the second Notice of Sale. However, in the present case, the amended Notice was sent on 7 June 2004, *prior* to the original date of auction. As such, the second Notice, in effect, represents an extended Notice for a postponed auction rather than a fresh Notice of a new auction.

Sale of goods which were not seized

81 This issue turns on the factual determination of whether machinery stored at bay A4 had also been sold at the public auction. It is the consistent evidence of the 2nd defendant, Kelvin, Mr Yeo and Mr Lean that only goods stored at bays A2 and A3 had been seized and auctioned. Mr Zagrodnik's unchallenged evidence is that some items originally stored at A4, namely 660 sets of idler rollers, were found in Hua Seng's premises. However, an inventory of what was stored at bay A4 had never been kept. It is also worthwhile to note that the plaintiff's immediate response was to instruct its solicitors to send a letter to the 1st defendant claiming wrongful re-entry into the leased premises [note: 46]. In this letter, the affected area was described as "the portion of the premises covering an area of three thousand eight hundred square feet at 27 Jalan Buroh, Singapore at the monthly rent of $3,120.00", referring specifically to bays A2 and A3. The plaintiff's response, therefore, did not seem to contemplate any wrongful seizure or sale of machinery stored at A4.

82 This magnifies the impression that its present claim is a "*res ipsa loquitur*" inference based on Hua Seng's current possession of the idler rollers. However, this fact, at best, only serves to establish that some machinery originally stored at bay A4 is currently in the possession of Hua Seng. It does not show how, when and who sold the machinery originally stored at bay A4 to Hua Seng. I should add that it is possible that the A4 machinery might have been moved to bays A2 and A3 prior to the seizure. In this regard, it is pertinent to note that Mr Zagrodnik agreed in his AEIC and in cross-examination that when he visited the premises on or about 5 July 2004, the machinery stored at bay A4 had already been removed. However, the seized machinery bought by Kim Hock at the public auction remained stored at bays A2 and A3 until it took delivery on 22 July 2004. As such, the moving of the machinery originally stored at bay A4 prior to the seizure is entirely possible. It is equally possible that the machinery stored at bay A4 might have been wrongly removed by the 1st defendant, Kim Hock, or even Hua Seng. In this regard, however, no separate claim for conversion of the machinery stored at bay A4 is before the court. The plaintiff's entire case is premised on the auction and sale of machinery which had not been seized, yet the evidential gap as to which party had removed the machinery stored at bay A4 has not been adequately addressed. I am not convinced that the plaintiff has fulfilled its burden of proof on this count; its claim that goods stored at A4 which had not been seized were sold is therefore dismissed. For completeness, I should add that there simply cannot be any liability on the part of the 2nd defendant in respect of any sale of machinery stored at bay A4, even if proved, since by the plaintiff's own pleaded case, they were not seized by him in the first place. His Inventory clearly stated "all machineries... at lot A2 and A3 (inside)". Further, the sale was conducted by the auctioneer, Mr Lean, and not by the 2nd defendant.

83 It only remains for me to add that the plaintiff has purported to change its pleaded position at the trial in relation to the machine parts stored at bay A4. In the plaintiff's amended Statement of Claim, its pleaded case was that the machine parts in A4 had been sold despite not being seized [note: 47]. This was also the position adopted in the plaintiff's opening statement before this court [note: 48]. However, the same contention has not been pursued in the plaintiff's closing submissions, and indeed it now appears to be the plaintiff's case that *all* of its machinery had been seized, including those stored in bay A4 [note: 49]. Suffice it to say that this is not the plaintiff's pleaded case and it appears that its pleaded position, which was in any case not proved, has been abandoned.

Failure to sell for the best price

84 Finally, the plaintiff asserts that the 2nd defendant had failed to sell the goods for the best price. However, the WSS only directed the 2nd defendant to levy such property as would satisfy the judgment debt, not to achieve the best price for the execution debtor. Further, it has not been contended that the 2nd defendant had knowledge of what the best price should be. Moreover, the 2nd defendant has no control over the price at which the seized machinery is eventually sold. Mr Lean testified that he was not aware of the 2nd defendant's appraisal of the machinery and, in any case, does not as a matter of practice consult the bailiff as to the price.

85 It only remains to be added that there is no duty, even at common law, to sell seized goods for the best price. The highest at which one can place the bailiff's duty is to obtain a reasonable price for the seized goods. This position is explained in Halsbury's Laws of England (5th Ed) Vol 12, at paragraph 1336:

> It is the enforcement officer's duty, within a reasonable time after the seizure to sell the goods for a reasonable price, and it is also his duty not so to conduct the sale as to prevent them fetching such a price as may have been obtained.

86 The dicta of Justice Dean of the Supreme Court of Victoria, in *Owen v Daly* [1955] VLR 442, serves to reinforce this:

> ... at common law the duty of the sheriff in selling chattels, including chattels real, of a judgment debtor is to act reasonably in the interests of the judgment creditor and the judgment debtor in order to obtain a fair price, not necessarily the market value, for it is well recognised that compulsory sales under legal process rarely bring full value of the property sold.

87 Accordingly, the plaintiff's claim on this score likewise fails.

Liability of the 1st defendant

88 Inasmuch as the 2nd defendant was not acting as the 1st defendant's agent, any alleged misconduct which was solely the responsibility of the 2nd defendant cannot be attributed in the alternative to the 1st defendant. Referring back to the particulars of the plaintiff's claim at [20] above, the purported breaches (a), (b), (d), and (e) are all duties within the 2nd defendant's sole purview. My findings that the 2nd defendant did not breach those alleged duties, would effectively dispose of the plaintiff's case against the 1st defendant as execution creditor in relation to those alleged breaches.

89 Further, the purported breaches in (g) and (h) relate to the sale of the seized machinery which was, in accordance with O 46 r 24, conducted by an authorised auctioneer. There is no separate pleading by the plaintiff that the 1st defendant is liable for the acts or omissions of the auctioneer.

90 It is therefore the purported breach in (c), *ie*, seizure in excess of the judgment debt, which constitutes the kernel of the plaintiff's case against the 1st defendant. The basis of this claim is that the 1st defendant had negligently directed the 2nd defendant to seize the machine parts in bays A2 and A3, the value of which far exceeded the judgment debt of S$29,771.57.

91 The plaintiff alleges that the equipment is worth S$1,224,294.50, but there are several problems with this. First, the evidence of the 2nd defendant, the auctioneer, Mr Lean, and the buyer, Kim Hock, is consistent that the seized machinery looked old and rusty and was therefore treated only as scrap metal. This is approximately in line with the actual sale price of S$51,500. Second, there is no evidence that as of the date of seizure, the seized machinery allegedly comprising two separate plants was actually functional. In fact, the seized machinery, which was ultimately purchased by Mr Lau, is still in disuse today. While Mr Zagrodnik might well have told Kelvin that the machinery stored at the 1st defendant's premises was worth "a few hundred thousand dollars", that is not to say that Kelvin accepted it to be true or accurate or that it was in fact its value. Third, if it is true that the value of the goods seized far exceeded its sale price, it is indeed odd that Mr Zagrodnik did not offer to purchase the seized machinery from Mr Lau given that it is still in a state of disuse today. There are, therefore, compelling reasons to utilise the scrap value of the seized machinery rather than their purported contractual value in assessing whether there was excessive seizure. Nonetheless, these will be examined in turn.

92 Liability for excessive seizure only attaches where the value of the seized goods was clearly disproportionate to the judgment debt. The English Court of Appeal in *Steel Linings Ltd & Mark Harvey v Bibby & Co* [1993] RA 27 ("*Steel Linings*"), held at p 6 that "to be proved excessive the value of the goods seized must be clearly disproportionate to the arrears and charges". Further, "to avoid an excessive distress all that is required is that the distrainor should exercise a reasonable and honest discretion in estimating what the goods will realise at auction; he need not consider what value the ratepayer himself could have obtained for them or what they would be worth to a business successor".

Scrap value

93 Both parties in this dispute have notably called expert witnesses to provide evidence only as regards the scrap metal value of the seized machinery at the time of seizure. The 1st defendant's expert witness, Mr Robert Khan, conducted a retrospective analysis following a visit to Hua Seng's premises and reached the conclusion that the scrap metal value of the seized machinery as at 11 June 2004 was S$70,000, and their forced sale value S$55,000 [note: 50].

94 The plaintiff's expert, Mr Edmund Wong, produced a report on the scrap steel market value of the plaintiff's machine parts as of May to July 2004 based on the report issued by TEX Report Ltd as well as the local purchase price obtained by Natsteel Ltd, Singapore, the dominant purchaser of such scrap in Singapore. Mr Wong's calculations were made using the July 2004 scrap prices, following the date that the auctioned machinery was weighed. However, he conceded under cross-examination that June 2004 prices should have been used instead, as that was when the auction took place. According to his report, the international price of scrap metal as of June 2004 was S$332/ton, and the local purchase price was S$260/ton [note: 51]. The weigh bridge tickets indicate that

approximately 318 tons of scrap metal was purchased by Kim Hock. Assuming that this was also the weight of the seized machinery in June, the value of the seized machinery would have been between S$105,576 (international) and S$82,680 (local). Taking the 2nd defendant's case at its highest, and applying a 20% discount to obtain the forced sale value, the metal would have been worth between S$84,460.80 and S$66,144. It might be thought that the upper limits of this range are on the borderline of being disproportionate to the judgment debt of S$29,771.57. Taken on average, however, it would not be fair to regard the forced sale scrap value of the seized machinery as *clearly* disproportionate to the judgment debt.

Value from contracts

95 The plaintiff's pleaded case, however, is that the value of the seized machinery should be calculated according to its contracts with Ngan Linh and Best Chipboard. However, the contract with Ngan Linh for the hard and soft-board plant was entered into on 28 February 2001, over three years prior to the date of seizure. Further, the contract was never actually performed as Ngan Linh eventually purchased the machinery from Poland instead [note: 52]. Further, the contract was signed by Mr Le Tat Huan, who has since passed away, on behalf of Ngan Linh. His son, Mr Le Tat Linh, filed an AEIC to prove the Ngan Linh contract but accepted in cross-examination that the Ngan Linh contract exhibited in his AEIC was not sourced from Ngan Linh's files but was provided by the plaintiff. He testified that the signature on the Ngan Linh contract was indeed his late father's. Further, he accepted that the Ngan Linh contract, on its face, referred to two reference numbers, namely SEE/VN-001 and 002 [note: 53], of which the latter was not exhibited in his AEIC. Mr Le was not able to provide any explanation for the missing SEE/VN-002. At best, while the Ngan Linh contract may give some indication as to what a purchaser might be prepared to pay for *some* machinery (I say *some* because reference number SEE/VE-002 was not disclosed) used in the manufacture of hard and soft-boards in 2001, it does not represent the sum that a purchaser would *actually* be willing to pay as at 2004. The undeniable fact also remains that the Ngan Linh contract signed in 2001 was never performed.

96 Under clause 3.1 of the Ngan Linh contract, a letter of credit for US$441,000 was to be opened within 15 days from the date of signing, but no such letter of credit has been tendered to the court as evidence. Further, the plaintiff was to begin shipment of the machines within 45 days, with final and full shipment within 60 days of the first shipment date. There is no evidence that any extension to this time-line had been granted, and no explanation as to why the necessary steps stipulated in the contract were not performed. Collectively, these factors combine to undermine the weight which can be attributed to the Ngan Linh contract as an estimate of the market value of the hard and soft-board plant.

97 As for the purported contract with Best Chipboard for the particle board plant, numerous documentary inconsistencies were exposed during cross-examination which collectively impugn the credibility of the plaintiff's submission on this point. Apart from certain portions of the contract being cut off in the reproduction, there was also the more serious problem that the copy of the May 2004 Best Chipboard contract carried a 2010 fax date and was exhibited in Mr Muhammad Mushtaq's AEIC in 2011 [note: 54]. This raises the possibility that the contract might not have been concluded in May 2004 and was only signed and faxed to the plaintiff in 2010 in contemplation of litigation. Further, it was Mr Zagrodnik's evidence that the contract with Best Chipboard was modified from an earlier draft produced when the particle board machinery had previously been offered to Ngan Linh [note: 55]. In the earlier draft, the reference number "0222/2003" appears at the bottom of each page exhibited [note: 56]. In the Best Chipboard contract, however, this reference number appears on only the first

three pages, but not on the final page with the contracting parties' signatures [note: 57]. This further indicates that the contract which was exhibited in Mr Mushtaq's AEIC might have been signed after the fact, and not in May 2004. In addition, when the Best Chipboard contract was exhibited in Mr Zagrodnik's affidavit in aid of the plaintiff's application to set aside the default judgment, tellingly, the final page containing both parties' signature was also not exhibited. Neither Mr Zagrodnik nor Mr Mushtaq was able to provide any satisfactory explanation as to these irregularities when questioned in cross-examination. Mr Zagrodnik speculated that the discrepancies in the dates could be due to the wrong programming of the year on the plaintiff's facsimile machine. No evidence was adduced to support his speculative explanation. I would not go so far as to conclude that the Best Chipboard contract was fabricated but, given the unsatisfactory inconsistencies on the face of the contract, it suffices to say that the purported contract with Best Chipboard has not been proved.

98 It is also significant that the plaintiff's valuation of the seized machinery has been inconsistent over the entire course of events. In the letter sent to the 1st defendant by the plaintiff's solicitors dated 9 July 2004, the seized machinery was valued as "in excess of US$350,000.00" [note: 58]. By 17 April 2009, in the plaintiff's Statement of Claim, the "[a]ctual market value of woodworking machinery and panel making equipment seized" was listed as S$1,251,200.00.

99 It would therefore appear that the plaintiff's case on excessive seizure is not borne out by the objective evidence before the court. Although the scrap metal value of the seized machinery may have exceeded the judgment debt, in my view, it was not so clearly disproportionate as to attract liability. As for the alleged contractual value of the seized machinery, the plaintiff's evidence was unsatisfactory and inconclusive at best. In any event, even if Mr Zagrodnik might have managed to secure a higher price from specialty buyers, the 1st defendant, following *Steel Linings*, need not consider this on top of what would realistically be achievable at a public auction.

Conclusion

100 The plaintiff's case against both the 1st and 2nd defendants is dismissed. In reaching this conclusion I have taken cognizance that the practice and procedure of the Subordinate Courts bailiff for WSS have since been fine-tuned. This is a step in the right direction. Each bailiff is now issued with a digital camera to be utilised at commercial properties, where forced entry is applied, and where visual aid is deemed necessary as reference. Several of the evidential difficulties in the present case could have been easily resolved had this practice been introduced earlier. The 2nd defendant also testified that the bailiff may now appoint a valuer to assess seized machinery, depending on how much has been seized. Further, unlike in the present case where the auctioneer had simply taken the 2nd defendant's description for use in the public advertisement, the current practice is for the auctioneer to first inspect the seized items, and then to describe them in the advertisement for the auction. The period of time required between the advertisement and auction has also been increased from two to 14 days.

101 In his closing submissions, Mr Koh sought a cost order against Mr Zagrodnik on the grounds set out in *DB Trustees (Hong Kong) Ltd v Consult Asia Pte ltd and another appeal* [2010] 3 SLR 542 at [29] to [30], and [35]:

> 29 From *Dymocks* and *Globe Equities*, as well as *Bobby Chin*, it is clear that the overarching rule with regard to ordering costs against a non-party in court proceedings is that it must, in the circumstances of the case, be *just* to do so. That said, it appears to us that two particular factors, among the myriad of possibly relevant considerations, ought to almost always be present

to make it just to award costs against a non-party. This does not, however, mean that they are indispensable prerequisites that have to be met before a costs order against a non-party can be made.

30 The first of the two factors is that there must be a *close connection* between the non-party and the proceedings. The following sentence from the passage in *Dymocks* that was quoted at [26] above would indicate one way in which a close connection may be demonstrated:

> Where, however, the non-party not merely funds the proceedings but substantially also controls or at any rate is to benefit from them, justice will ordinarily require that, if the proceedings fail, he will pay the successful party's costs.

One clarification that we should make is that funding and control need not be conjunctive, as seems to be suggested in the above sentence. It is sufficient that the non-party either funds or controls legal proceedings with the intention of ultimately deriving a benefit from them.

...

35 The other factor, which is related to but distinct from the first, is that the non-party must have caused the incurring of costs. This is a matter of causation which has often been glossed over in case law. Ordinarily, it would not be just to order a non-party, as opposed to a litigant, to pay costs if the litigant would have incurred the legal costs regardless of the non-party's role. It suffices to cite the Privy Council's observation on this point in *Dymocks* ([26] *supra* at 2814):

> Although the position may well be different when a number of non-parties act in concert, their Lordships are content to assume for the purposes of this application that a non-party could not ordinarily be made liable for costs if those costs would in any event have been incurred even without such non-party's involvement in the proceedings.

102 Although Mr Zagrodnik's role in the present litigation may *prima facie* satisfy the first factor set out above, it is not clear that he has personally caused the incurring of costs even given the unexplained delay prior to the commencement of proceedings. In any event, the proceedings were commenced within the relevant limitation period. Such an order of costs against him personally seems inappropriate since the plaintiff has already put up a total of S$260,000 as security for the defendants' costs pursuant to an order of court. I am not convinced that it would be just to make Mr Zagrodnik personally liable for costs over and above the considerable sum already paid into court by the plaintiff. Accordingly, I shall only order the plaintiff to bear the costs of the 1st and 2nd defendants to be taxed on a standard basis if not agreed.

[note: 1] AEIC of Lim Lung Tieng, at [11]

[note: 2] AEIC of Mr Zagrovnik, at [4]

[note: 3] AEIC of Lim Lung Tieng, at [5] to [7]

[note: 4] *Ibid*, at [13]

[note: 5] AEIC of Mr Zagrovnik, at [5]

[note: 6] No. 3070 of 2004

[note: 7] Agreed Bundle Vol 1, pp 130, 132-134

[note: 8] AEIC of Mr Zagrovnik, at [24]

[note: 9] AEIC of Lim Lung Tieng, at [24]

[note: 10] Affidavit of Lim Lung Tieng filed 2 September 2004, at [23] to [24]

[note: 11] *Ibid*, p135

[note: 12] Agreed Bundle Vol 1, p146

[note: 13] *Ibid*, p141

[note: 14] *Ibid*, p150

[note: 15] *Ibid*, p151

[note: 16] *Ibid*, p153

[note: 17] *Ibid*, p157

[note: 18] *Ibid*, p168

[note: 19] 2nd Defendant's AEIC, at [11] (Bundle of Affidavits Vol 3)

[note: 20] AEIC of Mr Yeo Hock Heng, at [6] (bundle of Affidavits Vol 3)

[note: 21] 2nd Defendant's AEIC, [11] at p5

[note: 22] Agreed Bundle Vol 1, p165

[note: 23] *Ibid*, p170

[note: 24] 2nd Defendant's AEIC, [15]

[note: 25] Agreed Bundle Vol 1, p172

[note: 26] Agreed Bundle Vol 1, at 183

[note: 27] 2nd Defendant's AEIC, at [22]

[note: 28] AEIC of Mr Lim Kim Hock, at [7] (Bundle of affidavits vol 3)

[note: 29] *Ibid*, at [9]

[note: 30] AEIC of Lim Lung Tieng, at [45] (Bundle of affidavits vol 2)

[note: 31] Agreed Bundle Vol 2, at 442

[note: 32] AEIC of Lim Lung Tieng, at [11]

[note: 33] AEIC of Mr Zagrodnik, at[27] (Bundle of affidavits vol 1)

[note: 34] *Ibid*, at[28]

[note: 35] *Ibid*, at [30]

[note: 36] Agreed bundle Vol 1, pp197-198

[note: 37] *Ibid*, at [38]; Agreed Bundle Vol 1, pp201-203

[note: 38] Writ of Summons (Amendment No. 3), at [21]

[note: 39] (1862) 1 H&C 554

[note: 40] Dowrick, 'The relationship of Principal and Agent' (1954) 17 MLR 24 at 36

[note: 41] Plaintiff's Closing Submissions, at [94]

[note: 42] 2nd Defendant's Closing Submissions, at [35]

[note: 43] Agreed bundle Vol 1, at 198

[note: 44] Affidavit of Mr Zagrodnik filed on 12 August 2004, at [20]

[note: 45] AEIC of Mr Lean Lam Bong, at [6]

[note: 46] Agreed bundle Vol 1, pp197-198

[note: 47] Writ of Summons (Amendment No. 2), at p12

[note: 48] Plaintiff's Opening Statement, at p21

[note: 49] Plaintiff's Written Submissions, at p20, [31]

[note: 50] AEIC of Mr Robert Khan, p23 (Bundle of affidavits Vol 3 p127)

[note: 51] AEIC of Mr Edmund Wong, at pp8-9

[note: 52] AEIC of Mr Le Tat Linh, at [10]

[note: 53] AEIC of Mr Le Tat Linh, at p8

[note: 54] See 1st Defendant's Closing Submissions, pp9-12

[note: 55] AEIC of Mr Zagrovnik, at [26]

[note: 56] AEIC of Mr Zagrovnik, pp73-75

[note: 57] Agreed Bundle Vol 1, at 161-164

[note: 58] Agreed Bundle Vol 1 at 197

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