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DISTRICT JUDGE CHIAH KOK KHUN
30 September 2025

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2025] SGDC 260

District Court Originating Claim No 174 of 2023

Between

Tey Song Kiem Mrs Goh Cheow Miang

… *Claimant*

And

(1) Mohd Jaffar Bin Ismail practising as Ffusion Architects (Singapore UEN No. 53432836M)
(2) Wne One Enterprise LLP

… *Defendants*

JUDGMENT

[Tort – Negligence – Breach of duty – Injury suffered when automated gate fell on claimant – Whether builder negligent in

construction of automated gate –Whether duty of care arose – Whether claimant's conduct broke chain of causation – Whether claimant contributorily negligent]
[Tort – Injury suffered when automated gate fell on claimant – No contractual relationship between architect and claimant – Whether architect owed duty of care to claimant in tort — Whether sufficient proximity between architect and claimant for a duty of care to arise — Whether policy considerations exist which militate against a duty of care imposed on architect — Whether duty in respect of construction of automated gate is confined to design intent]
[Tort – Injury suffered when automated gate fell on claimant – Scope of architect's duty of supervision — Duty to supervise building works to ensure they were being carried out in conformity with contractual specifications — Whether architect breached its duty of supervision — Whether architect owed duty of care to claimant in tort]
[Damages — Measure of damages — Personal injuries — Pre-trial loss of earnings — Medical leave period coincided with Covid-19 pandemic — Whether and to what extent claimant should be awarded damages for loss of earnings]

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[2025] SGDC 260

District Court Originating Claim No 174 of 2023
District Judge Chiah Kok Khun
30 October, 29 November 2024, 12 February, 14 February, 28-29 May, 28 July, 2 September 2025

30 September 2025 Judgment reserved.

District Judge Chiah Kok Khun:

Introduction

1 This is a claim for personal injuries suffered by the claimant as a result of an automated sliding gate (the "Automated Gate") falling on her.

2 The claimant is one of the occupiers of a house at 2 Jalan Azam (the "Property") which underwent reconstruction. The 1st defendant was the architect appointed by the claimant's husband to provide architectural services for the reconstruction of the Property. The 2nd defendant was the contractor appointed by the claimant's husband to carry out the reconstruction works (the "Reconstruction Works").

3 The Reconstruction Works commenced on 21 Mar 2018 and was completed on 20 Feb 2019. The claimant and her family moved into the Property on 31 July 2019. On 12 March 2020 the Automated Gate collapsed on the claimant (the "Incident"). The claimant suffered severe injuries as a result.[1]

4 The claimant claims against the 1st and 2nd defendants for negligence resulting in the injuries she suffered. The claimant's case against the 1st defendant is for breach of duties in his design of the Automated Gate; and the supervision of its testing and installation.[2] The claimant's case in respect of the 2nd defendant is for breach of duties in its fabrication and installation of the Automated Gate.[3]

5 The defendants do not dispute that the Incident occurred. The 1st defendant however disputes that he owes a duty of care to the claimant in the design, testing and installation of the Automated Gate. The 2nd defendant on the other hand, contends that it was not the party appointed in relation to the fabrication and installation of the Automated Gate. The 2nd defendant says that the entity that was appointed for the fabrication and installation of the Automated Gate was the entity known as WNE 2 Pte Ltd ("WNE 2"). The 2nd defendant contends that in any event the Automated Gate had been properly fabricated and installed with the necessary safety mechanism.

6 Both the defendants also contend that the claimant was solely responsible for the Incident. The Incident had not occurred because of the defendants' negligence and breach of their duties of care owed to the claimant.

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1 Para 7 of the statement of claim ("SOC").

2 Para 6 of SOC.

3 Para 6 of SOC.

They further contend that the claimant was in any event contributorily negligent in sustaining her injuries.

7 For the reasons set out below, I am dismissing the claim against the 1st defendant; and allowing the claim against the 2nd defendant.

Issues to be determined

8 The issues to be determined by me are as follows:

(a) Whether the 1st defendant as the architect owed a duty of care to the claimant in the design, and the supervision of the testing and installation of the Automated Gate; and if so, whether the 1st defendant was negligent and in breach of his duty of care to the claimant.

(b) Whether the 2nd defendant was responsible for the installation of the Automated Gate; and if so, whether the 2nd defendant was negligent and in breach of its duty of care to the claimant.

(c) Whether the claimant's negligence contributed to the Incident.

(d) In the event that any of the defendants is held in breach of duty of care to the claimant, what are the damages that should be awarded to her.

Analysis and findings

9 As alluded to above, the claims against the 1st and 2nd defendants are for negligence resulting in the injuries she suffered. The claimant's case in

respect of the 1st defendant concerns his design of the Automated Gate.[4] In respect of the 2nd defendant, the claimant's case concerns its fabrication and installation of the Automated Gate.[5] On the other hand, both the defendants contend that the claimant was solely responsible for the Incident. They also claimed that the claimant was in any event contributorily negligent in sustaining her injuries.

The 1st defendant did not owe a duty of care for the operational design, or the supervision of the testing and installation of the Automated Gate

10 On top of the above contention that is common to both the defendants, the 1st defendant's case is that he owed no duty to the claimant. I turn now to discuss the 1st defendant's case in this regard.

11 The claimant's contention is that the 1st defendant breached his duty of care towards her in respect of the design of the Automated Gate for the following reasons:[6]

(a) He failed to design an adequately stable Automated Gate.

(b) He failed to adequately design and size the guides and stoppers of the Automated Gate so that it will not over-travel or topple in the event of derailment during operation.

(c) He failed to design the Automated Gate so that it can be closed manually in the event there is no supply or cut in the supply of electricity to the Property.

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4 Para 6 of SOC.

5 Para 6 of SOC.

6 Para 6 of SOC.

(d) He failed to ensure that the Automated Gate is designed in accordance with the prevailing structural codes.

12 As seen, the above design aspects referred to by the claimant have to do with the operation of the Automated Gate. For ease of reference, I refer to these design aspects collective as "operational design".

13 The claimant further contends that the 1st defendant breached his duty of care towards her in respect of the supervision of the construction of the Automated Gate for the following reasons:

(a) Failed to supervise the proper installation of the Automated Gate by the 2nd defendant to ensure that it is stable.

(b) Failed to supervise the testing of the Automated Gate to verify that it will not derail or disengage before handover to the owners of the Property.

14 As seen, the above supervisory aspects concern the supervision of the testing and installation of the Automated Gate.

15 The 1st defendant case on the other hand is that he did not owe a duty of care to the claimant in respect of the operational design of the Automated Gate, or the supervision of its testing and installation.

The 1st defendant's duty of care in law

16 I turn first to the law regarding an architect's duty of care in the tort of negligence. The question is whether and when an architect owes a duty of care in the course of carrying out his architectural services. In the present case, this

question arises in the context of the claimant having no contractual relation with the 1st defendant in relation to the reconstruction of the Property. The 1st defendant has a contractual relationship only with the claimant's husband.

17 There are two related aspects that are relevant to the question of whether an architect owes a duty of care when there is a contractual arrangement in place in respect of his architectural services. The first aspect relates to the question of whether the existence of a contractual relationship between the architect and the party with whom he has a contractual relationship excludes a duty of care towards that party from arising. In this regard, the Court of Appeal in *Animal Concerns Research & Education Society v Tan Boon Kwee* [2011] 2 SLR 146 held (at [66]) that the contractual arrangements of the parties, although an important consideration to be taken into account when deciding whether there is proximity, does not automatically exclude a duty of care. The Court of Appeal held (at [71]) that the test is "whether or not the parties structured their contracts intending thereby to exclude the imposition of a tortious duty of care". In other words, if there is nothing in the contract between the architect and the contracting party to suggest that by entering into the contract, they intend to exclude the architect's potential personal liability towards the contracting party in tort, such liability in tort may arise.

18 The other aspect concerns the question of whether such liability arises when the architect does not have a contractual relationship with a party. The answer lies with the concept of proximity. In this regard I turn to the universal test in Singapore for determining the question of duty of care: the Court of Appeal decision in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*").

19 The well-known case of *Spandeck* laid down the applicable test for determining when such a duty of care arises. It sets out the basic two-stage test premised on proximity and policy considerations, with its application preceded by a preliminary requirement of factual foreseeability. The Court of Appeal held at [115] that:

> 115 To recapitulate: A single test to determine the existence of a duty of care should be applied regardless of the nature of the damage caused (*ie*, pure economic loss or physical damage). It could be that a more restricted approach is preferable for cases of pure economic loss but this is to be done within the confines of a single test. This test is a two-stage test, comprising of, first, proximity and, second, policy considerations. These two stages are to be approached with reference to the facts of decided cases although the absence of such cases is not an absolute bar against a finding of duty. There is, of course, the threshold issue of factual foreseeability but since this is likely to be fulfilled in most cases, we do not see the need to include this as part of the legal test for a duty of care.

20 The test laid down in *Spandeck* comprises a preliminary or threshold question coupled with a two-stage test. The preliminary question asks whether it was factually foreseeable that the claimant would suffer loss from the defendant's actions. In this regard, the Court of Appeal noted that the threshold requirement of factual foreseeability is easily satisfied in most cases. As for the two-stage test, it considers at the first stage whether there exists sufficient proximity between the parties. At the second stage, it considers whether policy considerations point against a duty of care arising: *Spandeck* at [75]-[83].

21 In regard to the question of proximity in the first stage, the test is one of legal proximity arising from the closeness of relationship between the parties. The Court of Appeal stated at [77] as follows:

> 77 The *first* stage of the test to be applied to determine the existence of a duty of care is that of proximity, *ie*, that there must be sufficient *legal* proximity between the claimant and

> defendant for a duty of care to arise. The focus here is necessarily on the closeness of the relationship between the parties themselves, as alluded to by Bingham LJ in the Court of Appeal stage of *Caparo Industries Plc v Dickman* [1989] QB 653, where he said (at 679) that while "[t]he content of the requirement of proximity, whatever language is used, is not … capable of precise definition" and "[t]he approach will vary according to the particular facts of the case, … the focus of the inquiry is on the *closeness and directness of the relationship between the parties*" [emphasis added]. Indeed, in Hedley Bryne ([44] supra) itself, the House of Lords used language which pointed to the relationship between the parties as being determinative of duty.
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> [emphasis in original]

22 As seen, the requisite legal proximity stems from the closeness and directness of the relationship between the parties. The relationship between the parties is determinative of the existence of a duty of care. The Court of Appeal held further at [81] as follows:

> 81 In our view, Deane J's analysis in *Sutherland*, that proximity includes physical, circumstantial as well as causal proximity, does provide substance to the concept since it includes the twin criteria of voluntary assumption of responsibility and reliance, where the facts support them, as essential factors in meeting the test of proximity. Where A voluntarily assumes responsibility for his acts or omissions towards B, and B relies on it, it is only fair and just that the law should hold A liable for negligence in causing economic loss or physical damage to B: see Phang, Saw & Chan at 47, where the authors wrote:
>
> > *[B]oth* perspectives are, at bottom, *two different (yet inextricably connected) sides of the same coin and ought therefore to be viewed in an integrated and holistic fashion*. [emphasis in original]

23 Therefore, legal proximity can also be seen in terms of a causal proximity. This includes the situation where one party assumes responsibility for his acts or omissions towards another party, and the other party relies on that assumption of responsibility. In such a situation, it is fair and just that the law

should hold the first party liable for negligence in causing economic loss or physical damage to the second party. The twin elements of voluntary assumption of responsibility and reliance are seen as constituting a causal relationship between the parties, and would give rise to a duty of care.

24 As regards the second stage of the test, that of policy considerations, the Court of Appeal held at [83] as follows:

> 83 Assuming a positive answer to the preliminary question of factual foreseeability and the first stage of the legal proximity test, a prima facie duty of care arises. Policy considerations should then be applied to the factual matrix to determine whether or not to negate this duty. Among the relevant policy considerations would be, for example, the presence of a contractual matrix which has clearly defined the rights and liabilities of the parties and the relative bargaining positions of the parties.

25 As seen, the matter of policy considerations is left deliberately wide. It is intended to encompass considerations of a broad nature. Relevant policy considerations may include those involving value judgments which reflect differential weighing and balancing of competing moral claims and broad social welfare goals: *Spandeck* at [85].

26 The *Spandeck* test is to be applied incrementally at each stage, by reference to existing case law on analogous situations. In this regard, I note that while an incremental approach is to be applied in deciding whether a duty of care arose in any given circumstances, the absence of analogous precedent cases is not an absolute bar against a finding of duty: see *Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310 at [119].

27 Returning to the question in the present case of whether the 1st defendant owed a duty of care in the course of carrying out his architectural

services to the claimant, the first stage of the *Spandeck* test asks whether there was sufficient proximity between the claimant and the 1st defendant to give rise to a duty of care. In this regard, as discussed above, the assumption of responsibility by one party and reliance on that assumption of responsibility by another has been accepted and explained by the Court of Appeal to give rise to a duty of care: *Spandeck* at [81].

28 The Court of Appeal decision in *RSP Architects Planners & Engineers v MCST Plan No 1075* [1999] 2 SLR(R) 134 ("*RSP Architects*") provides useful guidance on the question of proximity in relation to an architect's duty of care. In that case the Court of Appeal held that there was sufficient proximity between the architect and the management corporation for a duty of care to arise, although they had no contractual relationship. The architect's contract was with the developer. However, the management corporation was known by the architect to be the entity who would ultimately benefit from the architect's professional skill. The architect must have known that his skills were being exercised for the ultimate benefit of the specific entity who was now suing him: *RSP Architects* at [38].

29 In my view, it is likewise in the present case. There is no contractual relationship between the claimant and the 1st defendant. The 1st defendant's contract was with the claimant's husband Mr Goh ("Mr Goh"). However, the claimant was known by the 1st defendant to be one of the persons who would ultimately benefit from the 1st defendant's professional skill. She is the spouse of the contracting party. They live together in the Property. The architectural services provided by the 1st defendant would impact the claimant as much as Mr Goh, the contracting party. The 1st defendant must have known that his skills were being exercised for the ultimate benefit of the claimant, who is now

making claims against him. In other words, the 1st defendant had assumed the responsibility of providing architectural services to the claimant. The claimant on the hand, would have relied on the 1st defendant's services in the Reconstruction Works. The assumption of responsibility by the 1st defendant, and the reliance on the 1st defendant's assumption of responsibility by the claimant gave rise to a duty of care.

30 I thus find that there is no reason why a duty of care towards the claimant did not arise in the 1st defendant's provision of his architectural services.

31 I turn to the second stage of the *Spandeck* test. This would be the question of whether there are policy considerations pointing against a duty of care arising. In this regard, the High Court has given specific guidance. In *Wei Siang Design Construction Pte Ltd v Euro Assets Holding (S) Pte Ltd* [2019] 4 SLR 628 at [103] the High Court held that there are no policy considerations which militate against a duty of care imposed on an architect. I note that the 1st defendant did not raise any such policy considerations as well. I therefore hold that the 1st defendant owed a duty of care to the claimant in providing his architectural services for the Reconstruction Works.

The 1st defendant's duty in respect of the Automated Gate was confined to the design intent

32 I have held above that the 1st defendant owed a duty of care to the claimant in providing his architectural services. That however is not the end of the inquiry. The question that follows is whether the 1st defendant in assuming the responsibility of providing the architectural services necessarily encompassed a duty of care to the claimant in respect of the operational design of the Automated Gate, or the supervision of its testing and installation.

33 The starting point of this analysis is the scope of engagement of the 1st Defendant for the Reconstruction Works. This is set out in his letter of offer of 9 October 2017 ("Letter of Offer") entitled "Proposed new erection of a 3-storey corner terrace dwelling unit on Lot 01100 MK 26 at No. 2 Jalan Azam". The scope of work and mode of payment in stages is set out in appendix A of the Letter of Offer. Mr Goh signed a letter of agreement to appoint registered architect ("Letter of Agreement") on 10 October 2017. By the Letter of Appointment, Mr Goh agreed to appoint the 1st defendant in the terms as set out in the Letter of Offer and its appendix A.

34 The evidence adduced at trial shows that the 1st defendant obtained the requirements and constraints of the Reconstruction Works from Mr Goh. The 1st defendant would prepare the sketch designs and schematic designs. The 1st defendant's primary role was to drive the design intent of the Reconstruction Works, which focussed on the aesthetic design of the reconstructed Property.

35 As regards the Automated Gate, the evidence adduced shows that whilst the 1st defendant designed its aesthetics and appearance, including that of the pedestrian gate at the entrance of the Property, the 1st defendant's design did not encompass the details of how the Automated Gate is to be operated or installed.[7] Neither did his design of the Automated Gate include the stoppers or the steel bracket that formed part of the fabrication and installation of the Automated Gate. Further, the evidence shows that the 1st defendant did not design the rail on which the gate slides, nor the gate's mechanical system.

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7 P 177 of 1st defendant's AEIC.

36 It is clear to me that the 1st defendant's architectural services to be provided under the agreed terms did not relate to the operational design of the Automated Gate. The 1st defendant also has no part to do with the fabrication, supply, installation, testing, commissioning of the Automated Gate, as well as its mechanical system. It should further be noted that the evidence adduced in the course of the trial reveals that there is no structural code regarding the design, construction or installation of automated gates for residential properties. The Building and Construction Authority ("BCA") does not require the design, construction or installation of automated gates for residential properties to be approved by them. In other words, the design of the Automated Gate is not an aspect of the Reconstruction Works that required the 1st defendant to apply to BCA for approval.

37 The duty of care owed by the 1st defendant to the claimant in providing his architectural services therefore would not extend to the operational design of the Automated Gate. The 1st defendant cannot be saddled with a duty of care in respect of aspects of the Reconstruction Works in which he was not contracted to provide his services.

38 In this regard, the claimant contends that the 1st defendant has breached his duties to her as his design of the Automated Gate failed to account for its manual operation, and the installation of safety overrides, including stoppers or fail-safes.[8] This contention however is premised on the 1st defendant's architectural services to include the operational design of the Automated Gate. But as discussed above, they do not. The 1st defendant has no part in the fabrication, supply, installation, testing, and commissioning of the Automated

[8] Para 16(c) of claimant's closing submissions.

Gate, as well as its mechanical system. It is likewise in respect of the claimant's argument that the 1st defendant should be held liable because he ought to have ensured that the Automated Gate could withstand ordinary manual force without collapsing, as manual operation of automated gates is common when motors fail.[9] This contention is founded on the basis that the 1st defendant's scope of services included the operational design of the Automated Gate.

39 The claimant also contends the 1st defendant's "admission" that there are no structural codes or standards applicable to the Automated Gate underscores his negligence in ensuring basic safety standards.[10] I am unable to follow this argument. Plainly it does not follow that because there are no structural codes or standards applicable, the 1st defendant is negligent. The fact is that BCA does not require the design, construction or installation of automated gates for residential properties to be approved by them. This does not speak to the 1st defendant's liability in any way.

The 1st defendant does not owe a duty to supervise the testing and installation of the Automated Gate

40 I turn to the supervision of the testing and installation of the Automated Gate. As alluded to above, the claimant's case against the 1st defendant also included his failure to supervise the proper installation of the Automated Gate by the 2nd defendant to ensure that it is stable. The evidence however shows that supervision of the installation of the Automated Gate was not within the scope of work listed in appendix A of the Letter of Offer.

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9 Para 23 of claimant's closing submissions.

10 Para 19 of claimant's closing submissions.

41 The applicable law in respect of an architect's duty of supervision is set out in the Court of Appeal decision in *Sim & Associates v Tan Alfred* [1994] 1 SLR(R) 146 wherein it is held at [39]-[40]:

> 39 It is settled law that an architect in a building contract has a duty to supervise the building works to ensure that they are being carried out in conformity with the contractual specifications. In the absence of a specific provision in the contract, such a duty will be implied in law: *R v Peto* (1826) 1 Y & J 37; *Kimberly v Dick* (1871) 13 LR Eq 1*; Brodie v Corporation of Cardiff* [1919] AC 337, 351, HL.
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> 40 The standard of supervision required of an architect ultimately depends on the facts of each case, in particular on the terms of his contract with the employer and the main building contract. In the absence of any provision in the contract requiring a higher degree of supervision, an architect is merely required to give the building works reasonable supervision. This was defined by Lord Trayner in *Jameson v Simon* [1899] 1 F (Ct of Sess) 1211 at 1222 as follows:
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> > Admittedly, the duty of the (architect) was to give reasonable supervision, and I think that means such supervision as would enable him to certify that the work had been executed according to contract, which he had to certify before the tradesmen could call for payment of the sums due under the contracts.

42 As seen, whilst the imposition of a duty of care in tort on the 1st defendant in the provision of his architectural services is independent of his contractual obligations, the standard required of his supervisory duty depends on the terms of his contract. In the present case, there is no provision in the 1st defendant's terms of engagement requiring a higher degree of supervision. The 1st defendant's duty is thus to provide reasonable supervision. In regard to the Automated Gate, as discussed above, the terms of the 1st defendant's engagement did not include the operational design of the Automated Gate. The 1st defendant's supervisory duty therefore would not extend to the supervision of its testing and installation. His supervisory duty would be confined to the

design aspects of the Automated Gate which he was engaged to provide under the Letter of Offer.

43 I therefore find that the 1st defendant did not owe a duty of care towards the claimant in respect of the supervision of the testing and installation of the Automated Gate. Instead, the duty of supervision owed was that of reasonable supervision. In this regard, there is no evidence to show that the 1st defendant has failed to provide reasonable supervision in the course of the Reconstruction Works. Further, the 1st defendant contends that he had discharged the duty of providing reasonable supervision by exercising reasonable care in selecting the 2nd defendant as an independent contractor for the purposes of the Reconstruction Works, including the installation of the Automated Gate. The 1st defendant had exercised reasonable care in considering the tender and had obtained the claimant's approval to award the 2nd defendant the Reconstruction Works. I agree. In my view, the 1st defendant's contention buttresses my finding that there is no breach of his duty to provide reasonable supervision.

44 In the premises, I find that the 1st defendant did not owe a duty of care towards the claimant in respect of the operational design of the Automated Gate, or the supervision of its testing and installation. It follows that the claimant fails in her claim against the 1st defendant.

The 2nd defendant is the entity that owed a duty of care towards the claimant

The 2nd defendant was the party which constructed the Automated Gate

45 I turn to the 2nd defendant. The claimant's case against the 2nd defendant is that it owed the claimant a duty of care to adequately install, fabricate and size the guides and stoppers of the Automated Gate to ensure that

it will not over-travel or topple in the event of derailment during operation.[11] The 2nd defendant breached its duty by failing to fabricate and install the Automated Gate that can be closed manually in the event there is no supply or cut in the supply of electricity and by failing to test the Automated Gate to verify that it will not derail or disengage.[12] The 2nd defendant's breach of its duty of care resulted in the claimant suffering injuries when the Automated Gate fell on her on 12 March 2020.

46 The 2nd defendant's case on the other hand is that the claimant was solely responsible for the Incident and that the Incident had not occurred because of the defendants' negligence and breach of their duties of care. The 2nd defendant also has a separate contention in regard to its liability for the claimant's injuries. To recap, the 2nd defendant is contending that it is not the party appointed in relation to the fabrication and installation of the Automated Gate. The 2nd defendant says that the entity that was appointed for the fabrication and installation of the Automated Gate was instead WNE 2.

47 I turn first to the 2nd defendant's contention that it was not the party which fabricated and installed the Automated Gate. I start the analysis of the 2nd defendant's contention by examining the way in which the 2nd defendant became appointed by Mr Goh to carry out the Reconstruction Works at the Property. The 2nd defendant came to be involved when the 1st defendant awarded the 2nd defendant the contract for the Reconstruction Works on behalf

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11 Para 6(b) of SOC.

12 Para 6(a) of SOC.

of Mr Goh on 23 January 2018, by way of a Letter of Intent to Award ("Letter of Intent"),[13] The Letter of Intent comprised three sections:

(a) Section I - General & Preliminaries for $190,000.00.

(b) Section II - Builders, Other Works for $824,998.00.

(c) Section III - Provisional Sums for $591,700.00; and Profit & Attendance to Provisional Sum for $20,502.00.

48 On 22 March 2018, Mr Goh engaged the 2nd defendant as his contractor for the "design, construction and maintenance" of the works for the Reconstruction Works.[14] This engagement was based on the REDAS Design and Build Conditions of Main Contract ("REDAS Conditions").[15] A permit to carry out structural works was issued for the Reconstruction Works on 20 March 2018 by the authorities. It is noted that the 2nd defendant was named as the builder under the permit for the Reconstruction Works.[16]

49 There is a separate quotation from WNE 2 to Mr Goh dated 23 March 2019 and an invoice from WNE 2 dated 7 August 2019 that referred to the Automated Gate. The Automated Gate consisted of a galvanized mild steel sliding gate that incorporated a pedestrian gate.[17] It also comprised an automation system. There is a quotation from Kerry Security Pte Ltd ("Kerry Security") to the claimant dated 28 January 201915 and an invoice dated 24 July

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13 1AB 49 – 57.

14 1AB 155.

15 1AB 139 – 249.

16 2AB 363.

17 2AB 528 and 531.

2019 in the regard to the automation system.[18] It is seen that the scope of work provided by Kerry Security consisted of the following:

(a) supplying and installing an automated sliding gate system;

(b) supplying and installing a photo beam sensor for the automated sliding gate system;

(c) supplying the sliding motor with a build-in control panel, metal gear rack and limit switch sensor; and

(d) installing, testing and commissioning the automation system.

50 The 2nd defendant says that its scope of work in relation to the Reconstruction Works is stipulated and defined in the Letter of Intent. It would appear that the supply, installation, testing and commissioning of the Automated Gate did not come under the works in sections I and II of the Letter of Intent, but fell under section III of the Letter of Intent.[19] The 2nd defendant argues that therefore the Letter of Intent does not include works for the Automated Gate, and the 2nd defendant was not the party appointed in relation to the fabrication and installation of the Automated Gate. Instead, the claimant should look to WNE 2 as they were the ones who fabricated and installed the Automated Gate, and the entity that was appointed for to do so. The 2nd defendant contends that as a separate legal entity which was not engaged for the purposes of the Automated Gate, it does not owe the claimant a duty of care in relation to the malfunctioning of the Automated Gate.

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18 2AB 253 – 264.

19 1AB 105.

51 The 2nd defendant refers to the case of *Industrial Leasing Ltd v Teck Koon (Motor) Trading (a firm)* [1998] 1 SLR(R) 501 ("*SAL Leasing*") in support of its contention that it is the wrong party to be held responsible for the construction of the Automated Gate. In *SAL Leasing*, the appellants entered into a hire purchase agreement with one Greenbay Marine Pte Ltd for the purchase of a second-hand vehicle from the respondents. When the hire was unpaid, the appellants sued the respondents. The question was whether a sales contract existed between the appellants and the respondents for the purchase of the second-hand vehicle. The Court of Appeal held that there was no sales contract formed between the appellants and respondents and there was insufficient evidence to objectively ascertain that the respondents intended to enter into a sales contract. As such the appellants had sued the wrong party. The 2nd defendant says that similar to the present case, there is clearly no contract between the claimant and the 2nd defendant for the construction of the Automated Gate. The 2nd defendant contends that the claimant therefore does not have a cause of action against the 2nd defendant in contract; and the claimant has thus clearly commenced an action against the wrong party in the present case.

52 In my view however, the 2nd defendant appears to have misconstrued the claimant's case against it. The thrust of the claimant's case is premised on negligence. The claim against both the defendants is in the tort of negligence, it is not for breach of contract. It would be plain that the claimant would not have any cause of action in contract against either of the defendants in any case. The party that contracted with the defendants was Mr Goh, not the claimant. To recap, the claimant's case as regards 2nd defendant is that it owed the claimant a duty of care to adequately install, fabricate and size the guides and stoppers of the Automated Gate to ensure that it will not over-travel or topple in the event

of derailment during operation.[20] The claimant contends that 2nd defendant's breach of its duty of care resulted in the claimant suffering injuries when the Automated Gate fell on her.

53 The question of whether the 2nd defendant is the party which should be liable for the claimant's injuries turns on who in fact constructed the Automated Gate, rather than who contracted with Mr Goh to do so. The determination of this question requires an examination of how the separate quotation and the invoice from WNE 2 to Mr Goh referring to the Automated Gate came about. It also entails the examination of the nature of WNE2 as an entity. This includes the question of whether it carried out actual activities or operations, and whether it has the capabilities to do so.

54 I start with the letter from the 2nd defendant dated 23 January 2018,[21] which assigned payment to WNE 2 but preserved the 2nd defendant's contractual obligations. The relevant portion reads as follows:

> This Payment Assignment shall have no effect on any other terms of the Contract, particularly the rights of set off against any defect liabilities and warranty issues.

55 Mr Edwin Lau Kok Keng ("Mr Lau"), a controlling partner of the 2nd defendant and the sole director of WNE 2 confirmed in his testimony in court that the purpose of the assignment of payment to WNE2 was just a business arrangement.[22] It is not disputable that Mr Lau, who represented the 2nd defendant was the only point of contact with Mr Goh throughout the

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20 Para 6(b) of SOC.

21 AB 61.

22 NE 28 May 2025p64, lines 5-10.

Reconstruction Works. All correspondence, including those concerning the fabrication of the Automated Gate was sent under the 2nd defendant's name.[23]

56 More pertinently, the senior site coordinator employed by the 2nd defendant Mr. Billal testified that he was tasked to supervise the installation of the Automated Gate.[24] There is no evidence that WNE 2 employed any supervisor of its own. In fact, there is no evidence that it has any employees. The defendant's workers comprising Mr. Billal and his team constructed the Automated Gate. Any doubt that it was the 2nd defendant's employees who constructed the Automated Gate is put to rest by the fact that after the Automated Gate toppled, Mr Billal lead a team of the 2nd defendant's workers to reinstall it and added new stoppers.[25] Mr. Billal further testified that he inspected the Automated Gate's reinstallation.[26]

57 Juxtaposed against the evidence of the 2nd defendant's direct involvement in the construction of the Automated Gate is the absence of evidence that WNE2 installed the Automated Gate. No evidence was adduced by the 2nd defendant suggesting that WNE 2 built the Automated Gate; and no evidence was adduced that it was involved in the post-collapse repairs. The rectification work, including the addition of stoppers, was performed solely by the employees of the 2nd defendant. The evidence is plain that the 2nd defendant is the entity that installed the Automated Gate. The fact that WNE2 invoiced for the work done is neither here nor there. It does not address the question of which party is to be responsible for the installation of the Automated Gate.

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23 AB 265-267.

24 Para 4 Mr Billal's AEIC; NE 28/5/25 p.100, lines 21–24.

25 NE 28 May 2025 p 101, lines 7-11.

26 NE 28 May 2025 p. 101, lines 20-21.

58 The evidence comports with Mr Lau's testimony in court. Mr Lau who is also the sole director of WNE2 agreed in court that that he was wearing two hats as he owns both two entities.[27] The two entities share the same business address. It is not disputed that both the 2nd defendant and WNE 2 are owned and controlled by Mr Lau. During cross-examination, Mr Lau admitted that the 2nd defendant and WNE 2 were used interchangeably for commercial convenience.[28] He acknowledged that there was no real operational distinction between the two entities, and that the same personnel, resources, and infrastructure were used to carry out work regardless of which entity was formally named in documents. Clearly, the use of WNE 2 for invoicing while deploying 2nd defendant's workers to carrying out the work is an arrangement for the 2nd defendant's own purposes, which would be a matter that I need not go into for the purposes of the present case.

There is sufficient legal proximity between the claimant and the 2nd defendant

59 The evidence is therefore clear that the 2nd defendant is the entity that designed and installed the Automated Gate. Applying the test laid down in *Spandeck* discussed above, the preliminary requirement of factual foreseeability is clearly satisfied in respect of the 2nd defendant. As for the question of legal proximity under the first part of two-stage test, the test is one of proximity arising from the closeness of relationship between the parties. As discussed, the assumption of responsibility by one party and reliance on that assumption of responsibility by another gives rise to a duty of care: *Spandeck* at [81]. Legal proximity can also be seen in terms of a causal proximity. In this regard, as with my analysis in respect of the 1st defendant, the claimant was known by the 2nd

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27 NE 28 May 2025 p 65, lines 4-6.

28 NE 28 May 2025 p 67, lines 25-29.

defendant to be one of the persons who would ultimately benefit from the 2nd defendant's work in the construction of the Automated Gate at the Property. She is the spouse of the Mr Goh, the contracting party. They live together in the Property. The 2nd defendant would know that the Automated Gate would be used by Mr Goh's family, including the claimant. The 2nd defendant had assumed the responsibility of constructing the Automated Gate and the claimant would have relied on that assumption of responsibility. I find no reason why a duty of care towards the claimant did not arise in the 2nd defendant's construction of the Automated Gate. As for the second stage of the two-stage test, I see no policy considerations against the finding of such a duty of care, and none has been suggested by the 2nd defendant.

60 At the end of the day, the 2nd defendant is the entity that constructed the Automated Gate and therefore is the entity that owed a duty of care towards the claimant.

The 2nd defendant has breached its duty of care towards the claimant

The action of the claimant and her family members was not an independent cause of the injuries

61 With the issue of whether the 2nd defendant is the entity that designed and installed the Automated Gate dealt with, I turn next to the issue of whether the 2nd defendant was negligent and in breach of its duty of care owed towards the claimant.

62 In this regard, the 2nd defendant's defence is essentially founded on the argument of *novus actus interveniens*. The defendant contends that the actions of the claimant and her family members on the night of 12 March 2020 have caused a break in the chain of causation. I will first refer to the law in this regard.

The sole case authority that the 2nd defendant referred to, *JBE Properties Pte Ltd and another v Handy Investments Pte Ltd and another* [2013] SGHC 184, did not at all concern the proposition of *novus actus interveniens*.[29] No other authority was offered by the 2nd defendant in support of its reliance on the legal principle of *novus actus interveniens*.

63 Nevertheless, for completeness, I would refer to a case authority which does deal with the legal principle of breaking the chain of causation. This is the case of *Management Corporation Strata Title Plan No 2668 v Rott George Hugo* [2013] 3 SLR 787 ("*Rott George*"), where the High Court stated at [40] as follows:

> 40 What then, is the extent of unreasonable conduct sufficient to break the chain of causation? In *PlanAssure PAC v Gaelic Inns Pte Ltd* [2007] 4 SLR(R) 513, the Court of Appeal at [100] opined that only when the plaintiff's conduct was so "reckless" or "deliberate", amounting to a "high degree of culpability" would the chain of causation be broken. Likewise, the Court of Appeal in *TV Media Pte Ltd v De Cruz Andrea Heidi* [2004] 3 SLR(R) 543 at [76] found that only when the plaintiff's conduct was so "wholly unreasonable" would it then constitute a *novus actus interveniens*. It is only where the act or omission of a party is of such a nature as to constitute a wholly independent cause of the damage that the intervening conduct may be termed a *novus actus interveniens* (*Muirhead v Industrial Tank Specialities Ltd* [1986] QB 507).
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> 41 Applying the foregoing principles, I find that the Respondent's conduct, while clearly foolish and unwise, did not amount to conduct so reckless or wholly unreasonable such that it broke the chain of causation. However, his conduct would be relevant in the apportionment of liability which I now turn to consider.

64 As seen, it is only when the claimant's conduct was reckless, or deliberate, and amounting to a high degree of culpability that the chain of

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[29] Para 77 of the 2nd defendant's closing submissions.

causation will be deemed to be broken. The claimant's conduct must be wholly unreasonable before it is deemed to constitute a *novus actus interveniens*.

65 The question in the present case is therefore whether there is evidence of such conduct on the part of the claimant, or her family members on the evening of the Incident that amounted to a *wholly* independent cause of the damage. Actions that are unwise do not necessarily amount to reckless or wholly unreasonable conduct that breaks the chain of causation.

66 The 2nd defendant's case is that the claimant was fully aware that the Automated Gate was heavy and therefore knew the risks associated with the acts of pushing, pulling and lifting it. Essentially, the 2nd defendant is asserting that the gate did not suddenly collapse on the claimant. The 2nd defendant contends that at the time of the Incident, as seen in the closed-circuit television ("CCTV") footage played in court, the claimant, Mr Goh and their son had forcibly and repeatedly tried to shift or move the gate. Moments before the gate collapsed, the son was seen lifting the gate. The 2nd defendant says that the conduct of the claimant, Mr Goh, and their son in attempting to manually close the gate by forcibly pulling, pushing and lifting led to the gate moving out of the safety bracket as well as the track and collapsing on the claimant. They had used excessive and unreasonable force. The 2nd defendant's case is that the Incident could have been easily avoided. But for the action of the claimant, Mr Goh and their son, the gate would not have collapsed, and the Incident would not have happened. The Incident was thus caused solely by the claimant's own conduct. She sustained injuries because of the combination of her action and that of Mr Goh's and their son.

67 In my view, the analysis of the 2nd defendant's case begins with the history of malfunction of the Automated Gate. It is undisputed that the Automated Gate had malfunctioned at least three times prior to the Incident. On each of these occasions, Mr Goh was able to close the gate manually. The vendor of the automation system of the Automated Gate, Kerry Security had given the instructions on manual operation of the Automated Gate in the event of the motor malfunctioning. This involved raising the mechanical lever of the motor, after which the Automated Gate could be opened or closed. In those previous occasions, Mr Goh was able to manually manoeuvre the Automated Gate after raising the mechanical lever. The Automated Gate could be opened and closed without incident.

68 I pause at this juncture to make the observation that the Automated Gate was plainly not to be designed in such a way that it could only be operated electrically by the motor. This is so for three reasons. First, the motor provided for the Automated Gate included a mechanical lever which when activated allows manual operation of the Automated Gate. Second, Kerry Security has given standing instructions on the steps to take by users of the Automated Gate in the event of the motor malfunctioning. As alluded to above, this involved raising the mechanical lever of the motor, after which the Automated Gate could be opened or closed. Third, it comports with normal usage of automated gates. Clearly it cannot be so that users of such gates would not be able to open or close the gates in the event of either mechanical or electrical failures. Plainly, the users must be able to get on with their daily lives and not be held ransom to such mechanical or electrical failures. Automated gates would have to be designed and constructed to allow for manual operation. I will return to this matter below.

69 Returning to the Incident, on that night the motor of the Automated Gate malfunctioned again, and the gate could not be closed. After raising the lever of the motor, the claimant, Mr Goh and their son attempted to manually close the Automated Gate. In the CCTV footage, pulling, lifting and pushing actions were seen. The Automated Gate was then seen toppling and falling on the claimant.[30] The time stamp in the CCTV footage shows that their attempt to manually move the Automated Gate did not exceed three minutes.[31]

70 At the outset, I note that there is no factual evidence before me that the claimant and her two family members used excessive and unreasonable force in their attempt to close the Automated Gate manually. The CCTV footage does not provide any evidence of the amount of force applied to the Automated Gate. That the footage depicted the Automated Gate collapsing when they were maneuvering it by itself does not prove that they had applied excessive force. The footage shows three persons, namely the claimant who was 59 years old then, Mr Goh who was older and a retiree with health issues,[32] and their son attempting to close the Automated Gate manually.

71 To determine the question of whether they had used excessive and unreasonable force on the night of the Incident, I turn to the expert evidence. In this regard, I refer to the opinion evidence of the defendants' expert, Dr Gong Dangguo ("Dr Gong''). Dr Gong was the expert jointly called by both the 1st and the 2nd defendants. Dr Gong's evidence is that the Automated Gate toppled because it was pushed out of the safety bracket by one or more of the claimant's

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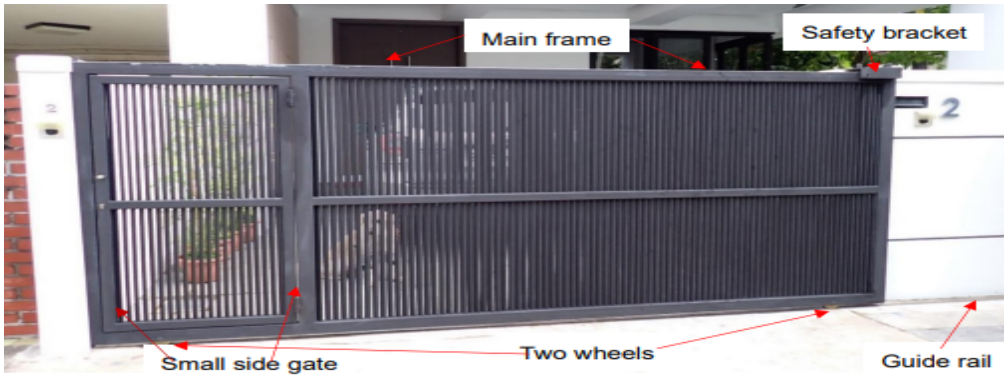
30 2AB 500.

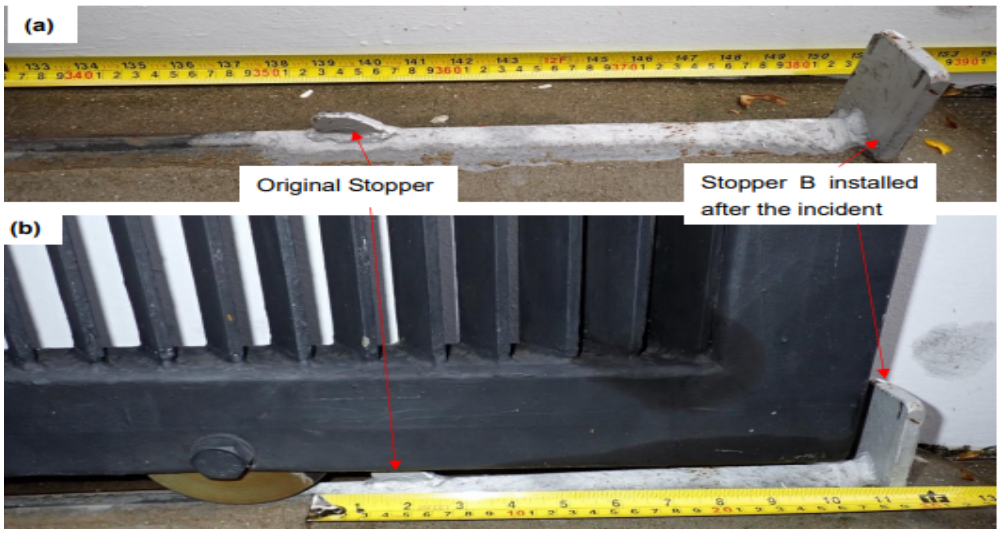
31 See paras 66 of 1st defendant's closing submissions.

32 NE 30 November 2024, p 100 lines 1-8.

family members. Once outside the bracket, the Automated Gate lost its support and collapsed onto the claimant, which resulted in her injuries. According to Dr Gong, in manual mode, which is engaged when the motor has malfunctioned, the Automated Gate can be pushed or pulled. There is safety bracket located at the top, which prevents the Automated Gate from toppling. Once the Automated Gate travel beyond the safety bracket, it would topple. To prevent the Automated Gate from travelling out of the safety bracket, there is a stopper installed in the guide rail which is on the ground (the "Stopper"). The Automated Gate rides on the guide rail when it is being slid open or close. The function of the Stopper was to stop the Automated Gate from travelling beyond the point where it will slide out of the safety bracket at the top. The safety bracket and the guide rail are depicted in the two photographs below.



72 The following two photographs, taken by Dr Gong, show the Stopper. It is depicted in the photographs and marked as "Original Stopper". It has a height of 1.5 cm. It should be noted the stopper marked as "Stopper B" was added to the Automated Gate by the 2nd defendant *after* the Incident. As seen, Stopper B, which is 6 cm high and installed at the end of the guide rail, will render a full and complete halt to any movement of the end of Automated Gate beyond the guide rail.



73 The photograph below provides another view of the Stopper and Stopper B, and where they are located in the guide rail.

74 For completeness, I would add that the 2nd defendant also installed a stopper on the top of the Automated Gate after the Incident. This is depicted as "Stopper A" in the following photographs. As seen, with Stopper A, the Automated Gate will not slide out of the safety bracket under any circumstances.

Photo 29. Plan view of Steel Bracket and top frame of Autogate. Steel Bracket is to restraint the Autogate in the X-direction, Stopper A & B are to restraint the Autogate in the Y-direction

Photo 30 Side Elevation of Steel Bracket

75 The focus of Dr Gong's evidence is on the Stopper. This is because it was the only stopper installed by the 2nd defendant before the Incident. Stoppers "A" and "B" were added after the Incident took place. As alluded to above, the Stopper is installed in the guide rail on which the Automated Gate rides on. The function of the Stopper was to stop the Automated Gate from travelling beyond the point where it will slide out of the safety bracket at the top.

76 It is undisputed that the Stopper was the only feature of the Automated Gate before the Incident that would stop it from sliding out of the safety bracket. Its function was to prevent the Automated Gate from sliding out and toppling. The question that arises for determination is therefore whether it was adequate to its task. The 2nd defendant contends that it was adequate, on the basis of Dr Gong's evidence.

77 It should first be noted that Dr Gong does not disagree that it was foreseeable the Automated Gate would be manually operated in the event of the failure of the motor.[33] In regard to the Stopper, Dr Gong's opinion, based on his calculation as set out in his report[34] is that the Automated Gate will not topple unless a force exceeding 69 kg force ("kgf") was applied to push it past the Stopper.[35] In other words, in the event that a force greater than 69 kgf was applied, the Automated Gate will be pushed out of the safety bracket. He helpfully explained in his expert report what is meant by a force 69 kgf.[36] He

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33 NE 29 May 2025, p 12, lines 1–3; p 20, lines 28–29.

34 AB511 – 527.

35 NE 29 May 2025, p 7, lines 18–23; p 10, lines 1-12.

36 AB 523.

stated in the report that it is equivalent to lifting a 69 kg object off the ground.[37] This explanation is useful in the analysis of his expert opinion.

78 In my analysis, it would not be unusual to have an individual who is able to lift a 69 kg object off the ground. Further, it would certainly not be unusual for two or three individuals collectively to be able to exert enough force to lift a 69 kg object off the ground. Such an individual or individuals would include those who may have to operate the Automated Gate manually. As discussed above, it plainly cannot be so that users of such gates would not be able to open or close the gates in the event of either mechanical or electrical failures. They must be able to get on with their daily lives. Automated gates would have to be designed and constructed to allow for manual operation. The question is what steps are considered reasonable for someone to take when manually operating an automated gate that malfunctioned.

79 In the present case the Automated Gate had malfunctioned on the night of the Incident. It could not be closed automatically using the motor. The claimant, Mr Goh and her son proceeded to close the gate manually by pulling and pushing the gate, as they had done in previous instances of malfunction of the motor. The Automated Gate had malfunctioned on a few occasions before the Incident. It is not disputed that Kerry Security had advised raising the mechanical lever to manually operate the Automated Gate in such instances of malfunction. This course of action had worked in the past,[38] and the family followed the prescribed steps of raising the lever and attempting to manually close the Automated Gate. They did so over a period of less than three minutes

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37 Para 3.2.6 of Dr Gong's report.

38 NE 30 October 2024, p 15, lines 13-15.

before the Automated Gate slid over the Stopper and toppled. In my view, it was not unreasonable for the family to spend three minutes trying to close the Automated Gate. As discussed above, there is no evidence that they used excessive force. There is also no evidence the claimant or her family had taken any unusual steps in manually closing the Automated Gate.

80 I would add that there is no merit in the 2nd defendant's argument that the family ought to have called Kerry Security when the motor malfunctioned instead of attempting to operate the Automated Gate manually. Firstly, the malfunction of the motor had occurred at 10.00 pm on the night of the Incident. It is reasonable for the family not to expect Kerry Security to respond with any immediacy.[39] Second, as discussed above, Kerry Security had advised raising the mechanical lever to manually operate the Automated Gate in instances of malfunction and this course of action had worked more than once in the past. Third, also as discussed above, it cannot be so that the claimant and her family members would not be able use the Automated Gate in the event of such malfunction. Automated gates should be designed and constructed to allow for manual operation. I agree with the claimant that the conduct of the claimant and her family members was not reckless or careless, but reasonable under the circumstances. The manual operation of the Automated Gate was undertaken by the claimant and her family members only because it had malfunctioned.

81 It should be noted that in the course of his testimony in court, Dr Gong agreed that the Automated Gate lacked sufficient redundancy in safety features.

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[39] NE 30 October 2024, p 76, lines 1-9.

In my view, redundancies in safety features are important in preventing the occurrence of accidents[40]

82 In the premises of the foregoing, in light of Dr Gong's opinion that the manual force required to push or pull the Automated Gate over the Stopper is estimated to be 69 kgf, I find that the 1.5 cm high Stopper was inadequate to stop the Automated Gate from sliding out of the safety bracket in the event of manual operation. Further, the 2nd defendant would reasonably expect an individual, or two or three individuals, who together are able to exert a force greater than 69 kgf, to operate the Automated Gate manually. A stopper that is only 1.5 cm high would not stop the Automated Gate from toppling in such an event. Therefore, by the evidence of the 2nd defendant's own expert, the 2nd defendant has failed to design and construct the Automated Gate in a way that would not topple in the course of manual operation, and has breached its duty of care towards the claimant.

83 For completeness, I would add that the evidence of the claimant's expert, Mr Tan Bin Keong ("Mr Tan") is that the Stopper, with the height of 1.5cm, was inadequate in preventing the Automated Gate from sliding out of the safety bracket.[41] As I have found that Dr Gong's evidence in fact shows that the Stopper was unable to so, I do not propose to go into Mr Tan's evidence. The claimant's case is supported by the 2nd defendant's own expert's evidence.

84 I therefore find that the action of the claimant and her family members on the night of the Incident did not constitute an independent cause of the injuries. There is no evidence of conduct on the part of the claimant, or her

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40 NE p 25, lines 20-27; p 26, lines 18-24.

41 Mr Tan's report is at AB315 – 365.

family members that was wholly unreasonable and which breaks the chain of causation.

There is no reason to find the claimant contributorily negligent

85 For completeness, I would refer briefly to the case of *Munshi Rasal v Enlighten Furniture Decoration Co Pte Ltd* [2020] SGHC 69 ("*Munshi"*) relied on by the defendants. In *Munshi*, the plaintiff employee had tried to remove dirt from the connecting rollers without stopping the laminating machine. As a result, his fingers were crushed. His claim for negligence against the defendant employer for failing to provide a safe system of work was dismissed, as his evidence was held to be unreliable. He was found to be an experienced worker who knew how to operate and maintain the machine. He also knew that he had to use an air gun to get rid of dust on the machine. The High Court referred to the principle of *volenti non fit injuria* and held that the accident arose solely through the employee's own recklessness. *Munshi* has no application to the present facts. I have discussed above that manually moving the Automated Gate was not an activity the claimant took of her own volition and the evidence is clear that it is expected that the Automated Gate is to be operated manually in the event of electrical or mechanical failure. The activity in question in the present case is not one that is not envisaged to be done, as in the case of *Munshi*. On the contrary, the Automated Gate is envisaged to be moved manually in the case of the failure of the motor so that the occupants of the Property can continue to have access to and from the Property.

86 I turn next to the question of contributory negligence. The 2nd defendant contends that the claimant should be held contributory negligent for the injuries she suffered. In the light of the evidence discussed above, I am unable to agree. I note that the present case is unlike the case of *Rott George* referred to above.

In *Rott George*, the plaintiff was walking in the basement car park of the condominium when he slipped and fell after he stepped into a puddle. The plaintiff then commenced an action against the MCST of the condominium as well as the cleaning contractor under occupier's liability and general duty of care respectively. The court held that the plaintiff was well aware of the fact that car washing in the car park was a prevalent practice, and he was also aware of the presence of oil patches in the car park. As such, the Court held that the plaintiff should bear 75% of the liability as he was blameworthy in knowingly stepping into the slippery patch with full knowledge of the risks that it entailed. In the present case, the claimant did not know that the Stopper was inadequate to stop the Automated Gate travelling out of the safety bracket. She did not knowingly operate the Automated Gate in full knowledge of the risk entailed. As discussed, the evidence is that the Automated Gate had malfunctioned on a few occasions before the Incident; and Kerry Security had advised raising the mechanical lever to manually operate the Automated Gate in such instances of malfunction. This course of action had worked in the past, and the claimant and her family members followed the prescribed steps of raising the lever and attempting to manually close the Automated Gate. The Automated Gate was not expected to topple on manual operation. Unlike the plaintiff in *Rott George*, the claimant is not blameworthy in manually operating the Automated Gate on the night of the Incident. In view of the evidence before me, there is no reason to find the claimant contributorily negligent. I have no basis to assign any portion of the liability for the Incident to the claimant.

The quantum of damages

87 I turn now to the issue of damages to be awarded to the claimant.

88 It is undisputed that the claimant suffered the following injuries.

(a) Comminuted, segmental fracture of the right proximal tibia, with rupture of the posterior cruciate ligament in the right knee.

(b) Tibial plateau fracture of the left leg.

(c) Superficial laceration on the left shin.

(d) Scars on the right knee and shin.

89 The claimant claims damages under the following heads:

(a) General damages for pain and suffering.

(b) Medical expenses.

(c) Transport expenses.

(d) Pre-trial loss of earnings.

General damages for pain and suffering

90 The starting place in the determination of this head of claim is the medical expert evidence. Only the claimant called a medical expert to give evidence on her injuries. The medical expert Dr David Chua Thai Chong ("Dr Chua"), a senior consultant and orthopaedic surgeon at Changi General Hospital wrote a report dated 4 November 2022 in respect of the claimant's injuries (the "medical report").[42]

91 In respect of the comminuted, segmental fracture of the right proximal tibia, together with a rupture of the posterior cruciate ligament, the medical

[42] AB 312-314.

report noted that the injuries required open reduction and internal fixation, which took place on 8 March 2020, followed by 18 days of hospitalisation. The claimant underwent physiotherapy, and a period of rehabilitation. Dr Chua noted in the medical report that the claimant continues to experience weakness on her right leg while brisk walking. Her right knee goes into an odd position, known as recurvatum, on occasions due to the rupture of the posterior cruciate ligament. She has difficulties with running, jumping and squatting which Dr Chua considers would be permanent. Her recreational gardening activities are impaired, and she has difficulty walking fast. He advised that there is a possibility of the claimant developing late post traumatic osteoarthritis of the knee.

92 As for the claimant's tibial plateau fracture on the left leg, it was intra-articular, displaced, and also required open reduction and internal fixation. As with the right knee, Dr Chua advised that there is a possibility of the claimant developing late post traumatic osteoarthritis of the knee.

93 The claimant refers to the *Guidelines for the Assessment of General Damages in Personal Injury Cases* (Academy Publishing, 2010) ("Guidelines") and contends in her closing submissions that the fractures above should each attract an award of $40,000 in general damages for pain and suffering. The 2nd defendant similarly relies on the Guidelines but contends that the award should be $10,000 for the comminuted, segmental fracture of the right proximal tibia and $6,000 for the tibial plateau fracture on the left leg. The defendant's submissions as regards quantum of damages were made by the 1st defendant in his closing submissions, which the 2nd defendant associates itself with.

94 The reason for the vastly different contentions despite both sides referring to the Guidelines is that the claimant referred to the severe leg injuries section of the Guidelines, whilst the defendant referred to the moderate and minor leg injuries section. The claimant contends that the specific section that concerns serious or multiple fractures leading to restricted mobility, deformity or shortening of limbs is applicable to both fractures. This section provides for an award range of $30,000-$40,000. The 2nd defendant on the other hand appears to refer to the specific section that deals with fractures where there are some residual disabilities ($10,000-$15,000); and the section that deals with simple fracture of a femur, tibia or fibula ($6,000-$10,000).

95 I would add that both sides also referred to previously decided cases in urging me to agree with the award of quantum they desired. As expected, the claimant referred to precedents involving severe leg injuries, whilst the 2nd defendant referred to precedents involving leg injuries that are not so serious. I only need to say that I find these precedents unhelpful as they did not concern injuries and disabilities similar to those in the present case.

96 Returning to the reliance by the respective parties on the Guidelines, it is plain to me that the claimant is overstating the seriousness of the injuries, while the defendant is undermining their seriousness. In my view, the applicable section is that for moderate injuries which include open or compound fractures. This section provides an award range of $15,000-$25,000. The section that the claimant referred to involves injuries resulting in significant disabilities on a long-term basis that will affect social life and the chances of finding employment. It is not applicable in the present case. On the other hand, the sections that the defendant relies on clearly concern simple fractures and are similarly not applicable in the present case.

97 As noted above, Dr Chua recorded that the claimant has difficulties with running, jumping and squatting which he considers would be permanent. Her recreational gardening activities are impaired, and she has difficulty walking fast. Dr Chua acknowledged that the claimant had made good progress in her post-surgical recovery. Following physiotherapy, she was able to bear weight, and her lower limbs were strengthened.[43] As noted above, Dr Chua is of the opinion that there is a possibility of late post-traumatic osteoarthritis developing in both knees. Dr Chua testified that, based on x-rays imaging, the risk of osteoarthritis is statistically higher. But on a percentage basis, he said that the possibility of the claimant developing late osteoarthritis would be less than 50%.[44] It should be noted that Dr Chua is of the view that the claimant does not require further treatment for her injuries.

98 In view of the above, and taking into account the various aspects of the claimant's fracture injuries, and Dr Chua's opinion in the round, I award a sum of $25,000 for the comminuted, segmental fracture of her right proximal tibia with a rupture of the posterior cruciate ligament, and $17,000 for the tibial plateau fracture on her left leg.

General damages for the scars and the superficial laceration

99 The claimant sustained the following surgical scars on the right knee and shin: (a) 6 cm medial scar, (b) 5 cm lateral scar at the knee; and (c) 4 cm scar at the mid-shin. I note that these scars would be visible and not always concealable by ordinary clothing. The Guidelines provide for a range of $5,000-$15,000 for multiple scars. The guidance given is that the higher range of the award is

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43 NE, 14 February 2025, p 5 at lines 19–30.

44 NE, 14 February 2025, p 11 at lines 24-29.

appropriate in cases where the scars are huge, unlikely to be removed completely even with cosmetic surgery and the injured person is a young female. Taking into account the size, location, nature and the number of the surgical scars in the present case, I award the global sum of $7,000 for the multiple scars. As for the superficial laceration on the claimant' left shin, the applicable section in the Guidelines for single laceration on any part of the body, excluding the face is $1,200-$1,500. As the laceration is superficial and there is no evidence that the laceration is healing into a scar, I award the sum of $1,200.

Medical Expenses

100 The claimant incurred the sum of $36,106.74 in hospitalisation, surgery, and physiotherapy costs. However, as the medical expenses were covered under Mr Goh's civil service medical benefits, she claims the sum of $689 only for out-of-pocket expenses for the wheelchair, commode and transfer board. This item is not disputed, and I accordingly award the sum of $689 to the claimant.

101 I note in the claimant's closing submissions that there is a reference to a claim for the sum of $15,000.00 for future medical expenses.[45] There is however no elaboration on the breakdown or the nature of such expenses. There is also no evidence before me of the requirement of future medical expenses, and I note that Dr Chua is of the view that the claimant does not require further treatment for her injuries. I therefore decline to award any sum for future medical expenses.

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[45] Para 114 of claimant's closing submissions.

Transport Expenses

102 The claimant claims the sum of $680.00 for hospital visits.[46] No breakdown of the sum of $680 is however provided. She also did not provide any documentary proof to support her claim for transport expenses. The 2nd defendant is prepared to accept the sum of $340 ($20 per trip x 17 trips) as the claimant's transport expenses and on that basis, I award the sum of $340.

Pre-trial loss of earnings

103 I turn now to the claim for pre-trial loss of earnings. The claimant is a real estate agent by occupation. She has worked as a real estate agent for around 30 years. Her primary income is derived from commissions earned on the sale and rental of residential properties. It is not disputed that the claimant was given 142 days of medical leave following the accident. The medical certificates state that she was on medical leave from 12 March 2020 to 31 July 2020.[47] It is undisputed that the period of her medical leave was in the midst of the Covid-19 pandemic.

104 The claimant contends that during the period of medical leave of 142 days in 2020, she was unable to attend to property viewings, conduct negotiations, or close transactions, which are essential aspects of her business. The claimant thus made no commission income during this period. She testified in court that she primarily deals in the high-end residential property market, catering to high net-worth individuals. She was unable to attend to these individuals and consequently lost out on property deals.[48] The claimant says that

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46 Para 6 of claimant's supplementary AEIC.

47 AB 283-286.

48 NE 29 November 2024, p68, lines 14–25.

although digital signatures could facilitate the execution of documents during the Covid-19 circuit breaker, in transactions involving high-value properties, it was essential to attend property viewings in person. She also needed to take videos of these properties for presentation purposes. These aspects of her work could not be carried out remotely and they were directly impacted by her injuries during the period of the medical leave.[49]

105 The claimant's case is that the assessment of pre-trial loss of earnings for self-employed individuals is based on the average past earnings over a reasonable period. The claimant does not seek any uplift or speculative bonus; the claim is based on verified past earnings and reflects an actual and proven loss. In this regard, the claimant provided her income figures for the three years preceding the accident on 12 March 2020, and the income earned in the year of 2020 during which she was on medical leave for 142 days. These income figures, which are based on the claimant's notices of assessment, are undisputed.[50] They are set out in the table below:

Year of Assessment	**Trade Income**
2018 (Income earned in 2017)	$548,709.00
2019 (Income earned in 2018)	$254,720.00
2020 (Income earned in 2019)	$227,311.00
2021 (Income earned in 2020)	$143,816.00

106 The claimant derives her claim for loss of earnings by first establishing the average of her income for 2017 to 2019, the three years before the accident,

49 Para 146 of claimant's closing submissions.

50 AB 305-308.

which is $343,580.00 ($548,709.00 + $254,720.00 + $227,311.00 ÷ 3), or approximately $28,632.00 per month or $954.40 per day. Based on the average daily income of $954.40, the claimant claims pre-trial loss of earnings for 142 days in the sum of $135,524.80 ($954.40 × 142).

107 The 2nd defendant raised several contentions in regard to the claim for loss of earnings. The 2nd defendant contends firstly that there is no explanation given by the claimant as to why her income in 2017 was $548,709 whilst her income dropped significantly to $254,720 and $227,311 in 2018 and 2019 respectively. The 2nd defendant makes reference to the effect of cooling measures put in place by the government to cool down the property market in the two years. The 2nd defendant seems to suggest that these cooling measures caused a decrease in the claimant's earnings in 2018 and 2019. On that basis, the 2nd defendant contends that "it would be fair and just" to *only* take into consideration the annual income of 2018 and 2019 for the purpose of obtaining the average. In other words, the 2nd defendant says that the claimant's income of $548,709 earned in the year of 2017 should be excluded from the calculation of her average past earnings. It is however not clear to me why this should be so, and in what way that would be fair and just. The claimant has proposed to arrive at her average earnings using her last three years of earnings prior to the Incident. The approach appears reasonable to me. The immediate past three years would give a snapshot of the latest earning capacity of the claimant at the time of the Incident. Three years of earnings would even out any unusual dip or bump in her then yearly earnings. I do not see any cogent reason to use only the last two instead of three years of earnings. The 2nd defendant's reference to the effect of property cooling measures is inexplicable. If indeed the claimant's earning dipped because of the property cooling measures, then it would follow that those years of earning should be *excluded* from arriving at the average

earnings of the claimant. This is because they would not give a true picture of her earnings as the effect of the cooling measures would have skewed the figures. It caused an unusual dip in her earnings. By the 2nd defendant's own argument, when the effect of the cooling measures fades, her earnings would return to their true levels. Contrary to the 2nd defendant's contention, extending the 2nd defendant's argument would mean that only the yearly earnings of 2017 (in the amount of $548,709) should be considered, and the earnings for 2018 and 2019 excluded. It is clear to me that there is no merit in the 2nd defendant's contention. It seems to me that the 2nd defendant is simply cherry picking – it wanted to exclude the earnings of 2017 in the calculation of average earnings for the sole reason that it was higher than that for 2018 and 2019. There is no basis in the 2nd defendant's approach. In the premises, I find no reason not to accept the claimant's calculation of the average daily income of $954.40.

108 The 2nd defendant's next contention makes reference to the Covid-19 pandemic coinciding with the year in which the claimant sustained her injuries. However, beyond suggesting that the "circuit breaker" measures that were implemented between April and June 2020 ("circuit breaker") and the restrictions and limitations in place for safe distancing and group sizes thereafter might have been the cause of the "drop" in the claimant's earnings in 2020 rather than her injuries, no arguments are made nor calculations shown on how exactly the claimant's earnings might be impacted. I will return to this below.

109 Further, the 2nd defendant made some vague reference to the claimant not taking into account subsidies under government relief schemes in her declared income for 2020. The 2nd defendant made this suggestion without providing any elaboration, details or basis. If the 2nd defendant's contention is that the claimant's earnings was in fact more than she had reported because of

government subsidies, it is for the 2nd defendant to show what exactly were these subsidies that it is referring to. In any event, the claimant has confirmed that she in fact received no subsidies beyond the $600 that every adult Singaporean received during the Covid-19 pandemic.

110 The final cluster of contentions of the 2nd defendant can be dealt with together. The 2nd defendant is essentially saying that the claimant has not proven that she was unable to work or "had been certified fit for light duty" during the period of her medical leave. In this regard, the 2nd defendant points to the claimant only attending three consultations and three rehabilitative treatments during this period. The 2nd defendant also contends that there is no evidence that the claimant had to "consume pain medications religiously to alleviate any pain or was regularly prescribed with pain medications during her consultations or rehabilitative treatments." I am unable to agree with the 2nd defendant's contentions. First, the 2nd defendant has misunderstood who carries the burden of proving that the claimant was *able* to work whilst on medical leave. The claimant has produced medical certificates for 142 days of medical leave. The medial certificates were not challenged in court. The medical leave speaks for itself. The claimant has discharged her evidentiary burden of showing that she was unable to work. The evidentiary burden shifts to the 2nd defendant to prove otherwise. If the 2nd defendant's case is that the claimant was able to work, despite the medical certificates issued by the hospital, the burden lies with it to prove that she could. It is not for the claimant to show that she was unable to work or that she could do "light duty" during her medical leave. She has produced the evidence of the medical certificates. It is for the 2nd defendant to prove its assertion that she could carry on working. Second, the number of consultations and rehabilitative sessions attended by the claimant during her medical leave are clearly inconclusive of the ability or otherwise of the claimant

to carry out her work as a real estate agent. Likewise for the amount of pain medications she consumed. Plainly, these matters are neither here nor there in respect of her ability to work. I find no merits at all in these contentions.

111 At the end of the day, the claimant discharged her evidentiary burden of proving the loss of earnings by establishing the number of days she was on medical leave; her average income for the three years prior to the Incident, and thus arriving at her claim. The 2nd defendant contends that the claimant's decrease in income is due to the Covid-19 pandemic instead. If so, it is for the 2nd defendant to prove its assertion. However, the 2nd defendant appears to be content in making broad sweeping statements of the negative impact of the Covid-19 pandemic on property transactions in Singapore. It is surprising that the 2nd defendant does not deem it necessary to adduce official statistics on property transactions in Singapore in 2020 if it is intent on making such an argument. Such official statistics are readily available online. The 2nd defendant asserts but does not produce any evidence to back its assertion. There is no basis for me to accept its confident assertion that the property market in 2020 was *adversely* affected by the Covid-19 pandemic. I will leave it at that, as it is for the 2nd defendant to discharge the burden of proving its assertion, which it failed to do. Suffice it to say that official statistics in respect of the volume of property transactions, and the property prices in 2020 might yet surprise the 2nd defendant.

112 I turn to the quantum of the claimant's loss of earnings. The question is to what extent did her inability to carry on her work as a real estate agent during the 142 days of medical leave reduced her earnings.

113 As discussed above, the claimant's case is that she primarily deals in the high-end residential property market, catering to high net-worth individuals. She was unable to attend to these individuals during her medical leave and thus lost out on property deals.[51] The claimant says that although digital signatures could facilitate the execution of documents, in transactions involving high-value properties, it was essential to attend property viewings in person. She also needed to take videos of these properties for presentation purposes. These aspects of her work could not be carried out remotely and she therefore could not perform her work during the period of the medical leave.[52]

114 In other words, the claimant's case is that the nature of her work requires in-person interactions, ground visitations and on-site work. As she was not able to carry out such activities during the period of 142 days of medical leave, she accordingly claims for loss of earnings for 142 days.

115 I note however, that the circuit breaker was implemented on 7 April and ended on 1 June 2020. It was for a total of 55 days. During the circuit breaker, no one was allowed to leave their places of abode, unless it was for essential services. With that being the case, as the claimant's work has to be performed in-person, it would follow that the claimant would not have been able to carry out her work during the circuit breaker in any event. As the claimant's 142 days of medical leave, which spanned from 12 March 2020 to 31 July 2020, straddled the circuit breaker, 55 days would have to be excluded from the calculation of her loss of earnings. I therefore find that the correct number of days that the

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51 NE 29 November 2024, p68, lines 14–25.

52 Para 146 of claimant's closing submissions.

claimant suffered a loss of earnings owing to her injuries would be 87 days (142 – 55 = 87).

116 Based on the average daily income of $954.40, the claimant's pre-trial loss of earnings for 87 days would yield the sum of $83,032.80 ($954.40 × 87). I accordingly find that the claimant suffered a pre-trial loss of earnings in the sum of $83,032.80.

Conclusion

117 In summary, I find that the claimant has failed to prove on the balance of probabilities her claim against the 1st defendant. The 1st defendant as an architect does not owe a duty of care to the claimant in respect of the operational design of the Automated Gate, or the supervision of its testing and installation. The 1st defendant's duty in respect of the Automated Gate is confined to the design intent.

118 I find that the claimant has on the balance of probabilities proven her claim against the 2nd defendant. The 2nd defendant is the entity that constructed the Automated Gate and is the entity that owed a duty of care towards the claimant in respect of its design and installation. There are no policy considerations against the finding of such a duty of care. I also find that the 2nd defendant has breached its duty of care. Further, the action of the claimant and her family members on the night of the Incident did not constitute an independent cause of the injuries. There is also no basis to find the claimant contributorily negligent.

119 I assess the damages suffered by the claimant to be as follows:

(a) General damages for pain and suffering:

(i) $25,000 for the comminuted, segmental fracture of right proximal tibia with rupture of posterior cruciate ligament.

(ii) $17,000 for the tibial plateau fracture on left leg.

(iii) $7,000 for the multiple scars on right leg.

(iv) $1,200 for the laceration on left leg.

(b) $689 for medical expenses.

(c) $340 for transport expenses.

(d) $83,032.80 for pre-trial loss of earnings.

120 The 2nd defendant is to pay the total sum of $134,261.80 to the claimant, with interest at 5.33% per annum from the date of the originating claim to the date of judgment. The claim against the 1st defendant is dismissed.

121 Parties are to file written submissions on the question of costs, to be limited to five pages, within 14 days of the date of this judgment.

Chiah Kok Khun
District Judge

Mr Yip Keng Fook Victor (Pacific Law Corporation) for the claimant;
Ms Farah Nazura Zainudin and Mr Tang Jin Sheng (WhiteFern LLC) for the 1st defendant;
Mr Phua Cheng Sye Charles and Ms Noor Heeymah Wahianuar (PKWA Law Practice LLC) for the 2nd defendant.