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

[2025] SGHC 141

Suit No 122 of 2022

Between

Feida Bus Consortium Pte Ltd

… *Plaintiff*

And

Royal Autoz Exporter Pte Ltd

… *Defendant*

Counterclaim of Defendant

Between

Royal Autoz Exporter Pte Ltd

… *Plaintiff in Counterclaim*

And

Feida Bus Consortium Pte Ltd

… *Defendant in Counterclaim*

GROUNDS OF DECISION

[Contract — Contractual terms — Implied Terms]
[Tort — Negligence — Res ipsa loquitur]

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Feida Bus Consortium Pte Ltd
v
Royal Autoz Exporter Pte Ltd

[2025] SGHC 141

General Division of the High Court — Suit No 122 of 2022
Christopher Tan JC
13, 14–17, 20–21, 23–24, 28– 29 May 2024; 12 June 2025

18 July 2025

Christopher Tan JC:

Introduction

1 The plaintiff in this action, Feida Bus Consortium Pte Ltd ("Plaintiff"), is the lessee of a property at No 6 Sungei Kadut Way ("Property").[1] Sited within the Property are several adjoining buildings, including a warehouse ("Warehouse") which the Plaintiff rented to the defendant in this action, Royal Autoz Exporter Pte Ltd ("Defendant").

2 This case arose from a fire that broke out at the Warehouse while it was tenanted by the Defendant. The Plaintiff alleged that the Defendant breached its duties in both contract and tort by, *inter alia*, (a) causing the fire and (b) failing to prevent its spread. The Plaintiff thus commenced the present action against

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[1] Statement of Claim (Amendment No 3) dated 13 May 2024 ("SOC") at para 1.

the Defendant seeking damages for the destruction caused by the fire.[2] The Defendant counterclaimed against the Plaintiff for the losses that it suffered from the fire, alleging that the Plaintiff breached its duty in both contract and tort by failing to properly maintain a hose reel in the Warehouse. It was the Defendant's case that no water came out from the hose reel, resulting in the inability to extinguish the blaze.

3 After having heard the evidence at trial, I dismissed both the Plaintiff's claim (save for an amount of $814, in respect of which the claim was allowed) and the Defendant's counterclaim. My reasons for doing so are set out below.

Facts

4 The Plaintiff is in the business of providing chartered bus services and conducting repair and maintenance of motor vehicles.[3] At all material times, its sole director was one Goh Bock Sin ("Goh").[4] Goh was also the sole director of two other companies, E K Ang Trading and Transportation Pte Ltd ("E K Ang") and Goh Transport Services Company Pte Ltd ("Goh Transport"), both of which also occupied the Property.[5] The Defendant is in the business of purchasing deregistered vehicles, with a view to either exporting them or scrapping them for parts which it then sells.[6] Since 2017, the Defendant's operations were overseen by one Gabir Nabil Abdel Moaty Ahmed ("Gabir").[7]

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2 SOC at para 27.

3 SOC at para 2; Affidavit of Evidence-in-Chief ("AEIC") of Goh Bok Sin ("Goh's AEIC") at para 5.

4 Transcripts for 13 May 2024 at p 22 (lines 11-14).

5 Transcripts for 13 May 2024 at pp 21 (line 1) – 22 (line 17) and p 30 (lines 15 – 17).

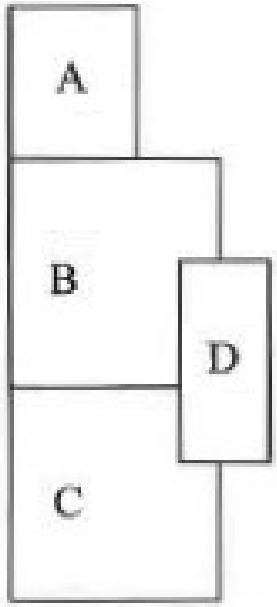
6 Defendant's Closing Submissions at para 7. See also the AEIC of Gabir Nabil Abdel Moaty Ahmed ("Gabir's AEIC") at para 6.

7 Gabir's AEIC at para 5.

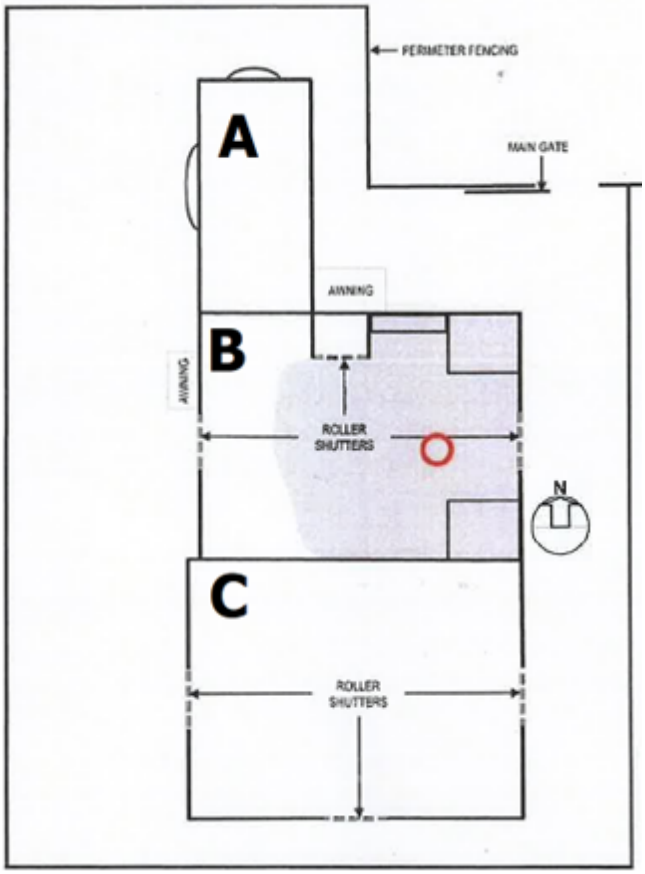
Layout of the Property

5 The Property's built area was divided into four sections: A, B, C and D. A simplified plan of the sections is set out below:

Plan of the Property's structures:[8]



Expanded view of Sections A, B & C:[9]



(a) Section A was a two-level compound occupied by the Plaintiff, with the lower level used for the Plaintiff's vehicle maintenance and repair business and the upper level used as offices by the

[8] Adapted from the floor plan in the SOC at para 5.

[9] Adapted from the diagram exhibited in Goh's AEIC at p 326.

Plaintiff and Goh's other companies.[10]

(b) Section B was the Warehouse that was tenanted to the Defendant – the red circle denotes the spot where the fire started.[11]

(c) Section C was another warehouse which, at the time of the fire, had been rented by the Plaintiff to another company.[12]

(d) Section D was a dormitory which, according to the Plaintiff, housed workers of the Plaintiff, E K Ang and Goh Transport.[13]

6 The Warehouse was rented by the Defendant from the Plaintiff pursuant to a Tenancy Agreement dated 24 March 2020 ("Tenancy Agreement") which was signed by Goh (on behalf of the Plaintiff) and Gabir (on behalf of the Defendant).[14] The Tenancy Agreement stipulated a monthly rent of $15,000. It also specified that the tenancy would commence on 1 April 2020,[15] but omitted to specify the exact duration of the tenancy. The Plaintiff contended that it was implied that the Tenancy Agreement was either for a 12-month duration or was a monthly tenancy,[16] although this was not material to the key issues in dispute.

7 Barely two weeks after the signing of the Tenancy Agreement, the Singapore Government implemented the "Circuit Breaker" measure under the

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10 Goh's AEIC at para 9.

11 Goh's AEIC at para 13; exhibited in Goh's AEIC at p 326.

12 Plaintiff's Bundle of Documents (Volume 1) ("PBD1") at p 165; Goh's AEIC at paras 11–12.

13 SOC at para 7; Goh's AEIC at para 10.

14 Exhibited in Goh's AEIC at pp 21–25.

15 Goh's AEIC at para 13.

16 SOC at para 12.

Covid-19 (Temporary Measures) (Control Order) Regulations 2020.[17] The Circuit Breaker, which lasted from 7 April 2020 to 1 June 2021, imposed restrictions on (amongst other things) activities conducted within non-residential premises.[18] Specifically, no work could be carried out by workers in workshops and factories during this period. On 4 May 2020, after the Circuit Breaker restrictions had been in place for about four weeks, the Defendant towed a deregistered yellow 2.4 litre Chery Tiggo[19] car ("Chery Car") into the Warehouse, where the Chery Car remained for the next 19 days.[20]

8 On 23 May 2020, the fire broke out. It is not in dispute that the fire originated from the Chery Car. That evening, the Defendant's employees, including one Ganapathy Vaithiyanathan ("Ganapathy") and one Mani, were present at the Warehouse.[21] Also present was another resident of the dormitory, Mayavel Asaithambi ("Mayavel"). A key point of dispute in this case centred on what these men were doing in the Warehouse that evening:

> (a) The Plaintiff alleged that at the time the fire started, the Defendant's employees (it was the Plaintiff's case that Mayavel, like Ganapathy and Mani, was also an employee of the Defendant) were working either on the Chery Car or near it. The Plaintiff claimed that this had escalated the risk of, and ultimately started, the fire.[22]

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17 Regulation 1(2) of the Covid-19 (Temporary Measures) (Control Order) Regulations 2020, as amended by the COVID-19 (Temporary Measures) (Control Order) (Amendment No. 6) Regulations 2020.

18 See reg 9 of the Covid-19 (Temporary Measures) (Control Order) Regulations 2020.

19 AEIC of Adrian Brown ("Brown's AEIC") at p 6 footnote 1.

20 Exhibited in Goh's AEIC at p 317 at para (2)iv.

21 SOC at para 45; Defence and Counterclaim (Amendment No 3) dated 22 January 2024 ("D&CC") at para 12.

22 SOC at para 45 & 46(1G); Plaintiff's Closing Submissions at para 84.

(b) The Defendant maintained that its employees were there that evening merely to take possession of deregistered vehicles delivered to the Property and bring the same into the Warehouse for storage.[23] The Defendant also clarified that Mayavel was not its employee.[24]

9 At about 6.30pm, Ganapathy spotted flames underneath the Chery Car's engine.[25] He responded by using a forklift to elevate the Chery Car.[26] Mayavel pulled a fire hose from a reel sited within the Warehouse, with a view to spraying the fire burning beneath the Chery Car which had been hoisted off the ground.[27] The hose reel was yet another focal point of contention:

(a) The Defendant claimed that no water came out of the hose when Mayavel tried to turn it on.[28]

(b) The Plaintiff claimed that the hose was working and that Mayavel was jetting the fire with water from the hose.[29]

10 When the Chery Car was lifted, flammable liquid started leaking out of it. The liquid ignited as it leaked, causing the fire to spread.[30] Ganapathy ultimately had to abandon the forklift. Various workers on the Property came running out with fire extinguishers to join the fight against the fire. They

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23 AEIC of Ganapathy Vaithiyanathan ("Ganapathy's AEIC) at para 6.

24 AEIC of Mayavel Asaithambi ("Mayavel's AEIC") at paras 1 & 3.

25 Transcripts for 28 May 2024 at p 23 (lines 10-11).

26 Ganapathy's AEIC at para 7; Transcripts for 28 May 2024 at p 23 (lines 10-11).

27 Transcripts for 28 May 2024 at p 33 (lines 10-11).

28 D&CC at para 13.

29 Plaintiff's Closing Submissions at para 153.

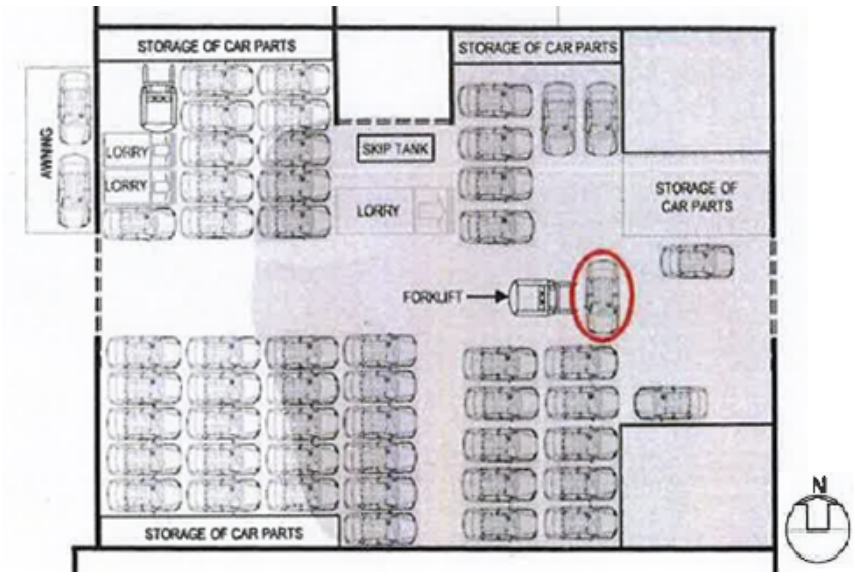
30 Exhibited in AEIC of Cheam Tat Chuan ("Cheam's AEIC) at p 63; Transcripts for 28 May 2024 at pp 16 (line 9) – 17 (line 11). See also Ganapathy's AEIC at para 7.

included one Zhang Jinhai, a mechanic working for E K Ang.[31] According to the Defendant, Mani also came running out with a fire extinguisher to fight the fire.[32] Despite everyone's efforts, the fire engulfed the entire Chery Car and continued to spread, forcing those present to flee the Warehouse.

11 Eventually, a crew from the Singapore Civil Defence Force ("SCDF") arrived at the scene and put the fire out.[33]

Aftermath of the fire

12 The diagram below, which has been expanded from section B of the plan at [5] above, illustrates the layout (albeit not to scale) of the Warehouse and its contents as at the point of the fire: [34]



The red circle denotes the Chery Car, with the forklift to its left. Although some

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31 AEIC of Zhang Jinhai ("Zhang's AEIC") at paras 19-20.

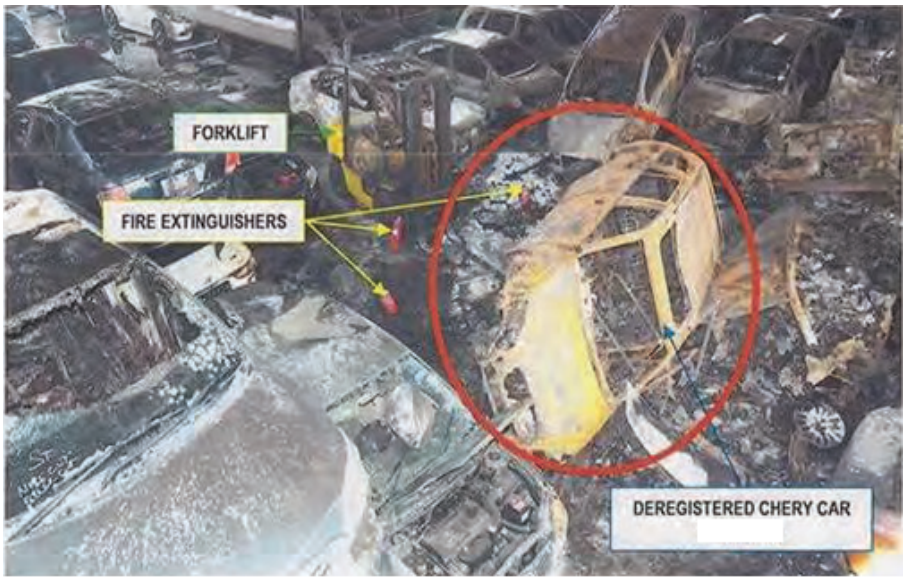
32 Transcripts for 28 May 2024 at p 21 (lines 2-10).

33 Exhibited in Goh's AEIC at p 314 para d(2).

34 Exhibited in Goh's AEIC at p 327.

of the vehicles have been portrayed as a single vehicle in the diagram, they may have comprised multiple vehicles, with one stacked on top of the other, while some of the other vehicles (including the Chery Car) stood alone without any vehicles stacked on top.

13 The Chery Car, which had toppled off the forklift and landed on its side during the fire, was badly burnt, while the forklift suffered severe thermal damage.[35] The fire also caused damage to the Defendant's stock of deregistered vehicles and spare parts stored within the Warehouse.[36] As for the losses sustained by the Plaintiff, the Statement of Claim alleged that the fire damaged various parts of the Property's structure, including:[37] (a) the Warehouse's roof, structure and fittings as well as its electrical wirings, (b) the roof of the other warehouse at section C in the plan at [5] above and (c) the Property's water piping system. A photograph of the aftermath of the fire is attached below:[38]



35 Goh's AEIC at p 314 para d(2).

36 SOC at para 28(c).

37 SOC at para 28.

38 Exhibited in p 455 of Brown's AEIC.

14 After the fire was put out, a site inspection revealed the following:

(a) Several spent fire extinguishers which had been used to fight the fire were found near the forklift[39] – these can be seen in the photograph above.

(b) Some tools were found next to the forklift and the Chery Car. From the photographs taken at the site, these tools included what appeared to be a drill powered either by batteries or compressed air, a windy wrench with attachments, what looked possibly like an electrical drill with a drill bit, as well as an aerosol cannister which possibly contained lubricant.[40] A photograph of the tools is attached below:

15 On 26 May 2020, the Commissioner of Building Control served a closure order requiring the Plaintiff to close the Property, on account of the fire having left the Property in a condition that was (or was likely to be) dangerous.[41] The closure order was lifted almost 18 months later, after repairs were done.[42]

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39 Goh's AEIC at p 318 para c(2).

40 Exhibited in Brown's AEIC at p 11 para 3.18; Transcripts for 29 May 2024 at p 52 (lines 23-32).

41 Closure Order at para 2, exhibited in Goh's AEIC at p 28.

42 Exhibited in the AEIC of Yu Chin Hwa at pp 33–34.

Expert reports on the fire

16 In the wake of the fire, SCDF conducted investigations in which it interviewed Gabir, Ganapathy and Mayavel. Their responses were captured in a fire investigation report dated 14 September 2023 that SCDF issued ("SCDF's Report").[43]

17 The Plaintiff's fire insurance company, Etiqa Insurance Pte Ltd, engaged a forensic firm, Envista Forensics Pte Ltd ("Envista"), to determine the origin and cause of the fire. The technical consultant from Envista fielding the inquiry was one Kirk Cheam Tat Chuan ("Mr Cheam"). Mr Cheam's inspections of the Property, which commenced about five days after the fire and lasted until the middle of June 2020,[44] culminated in a fire investigation report dated 23 September 2020 ("Mr Cheam's 1st Report").[45] Thereafter, the Plaintiff approached Envista to act as its expert in this trial. Envista agreed and commissioned Mr Cheam to prepare an expert report for purposes of trial.[46] To that end, Mr Cheam prepared a second report dated 13 March 2024 ("Mr Cheam's 2nd Report").[47]

18 The Defendant, on its part, engaged fire investigation consultant Adrian Brown ("Mr Brown") from Andrew Moore & Associates (Singapore) Pte Ltd as the defence expert. Unlike Mr Cheam, who conducted a site inspection of the Property shortly after the fire, Mr Brown based his analysis on the photographs

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43 Exhibited in Goh's AEIC at pp 311–353.

44 Exhibited in Cheam's AEIC at p 52 para 3.1.

45 Exhibited in Exhibited in Cheam's AEIC at pp 50–79.

46 Cheam's AEIC at para 9.

47 Exhibited in Cheam's AEIC at pp 81–91.

in the reports issued by SCDF and Mr Cheam.[48] Mr Brown prepared an expert report dated 25 March 2024 ("Mr Brown's Report").[49]

The parties' cases

19 On 11 February 2022, the Plaintiff commenced the present action against the Defendant. Broadly, the Plaintiff's claims fell under two prongs: (a) *contractually*, the Defendant breached various express and implied terms of the Tenancy Agreement;[50] and (b) in *tort*, the Defendant was negligent, having breached its duty of care to prevent both the start and the spread of the fire.[51] Underlying these claims was the Plaintiff's position that the Defendant:

(a) *caused* the fire when its employees performed works either on the Chery Car or near it (see [8] above); and

(b) *failed to curb the spread of* the fire.

20 The Defendant denied that its employees were working in the Warehouse at the time of the fire. Rather, it claimed that they were at the Warehouse merely to take possession of deregistered vehicles being delivered to the Property that evening and bring them into the Warehouse for storage (see [8] above). The Defendant maintained that its employees could not have been performing any works on the vehicles in the Warehouse at the time as the Circuit Breaker measures were still in force – any such works, being easily detectable, would have ended in severe penalties. As regards the failure to prevent the

48 Exhibited in Brown's AEIC at p 6 para 1.1.

49 Exhibited in Brown's AEIC at pp 4–25.

50 SOC at para 27.

51 SOC at para 46.

spread of the fire, the Defendant maintained that it *did* have the appropriate fire extinguishers to fight the fire[52] and suggested that efforts to put out the fire failed only because no water came out of the hose when Mayavel attempted to turn it on (see [9] above).

21 The allegedly faulty hose, which was sited within the compounds of the Warehouse,[53] in turn formed the basis of the Defendant's counterclaim. The Defendant contended that the Plaintiff (as the landlord) was under a duty in both contract and tort to properly maintain the hose reel and ensure that it worked.[54] The Defendant alleged that the hose malfunctioned because of the Plaintiff's breach of this duty. The Defendant thus counterclaimed for losses which it suffered from the fire, alleging that the fire – and consequently the losses caused by the fire – could have been ameliorated if the hose reel had worked.[55] The Plaintiff, on its part, denied the counterclaim, insisting that the hose *did* discharge water during the fire (see [9] above). The Plaintiff also suggested that efforts to fight the fire failed because this was a fire fuelled by petrol, such that hosing the fire with water had the *counterproductive* effect of spreading the flames.[56]

22 These grounds will first deal with the Plaintiff's claim in contract, followed by its claim in tort, before finally addressing the Defendant's counterclaim.

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52 Transcripts for 23 May 2024 at p 28 (lines 13-32) and 24 May 2024 at pp 28 (line 3) – p 29 (line 1).

53 Transcripts for 23 May 2024 p 58 (lines 31-32) and 28 May 2024 at p 37 lines 5-8; D&CC at para 13.

54 D&CC at paras 19-20.

55 D&CC at paras 21-25.

56 Plaintiff's Closing Submissions at para 39.

Plaintiff's claims for breach of contract

23 The Plaintiff alleged that the Defendant breached both the express and implied terms of the Tenancy Agreement.

(a) As regards the ***express*** *terms*, the relevant clauses of the Tenancy Agreement alleged to have been breached by the Defendant are set out below:[57]

> 2. The rented area shall be used for the purpose of vehicle spare parts and body kit.
>
> …
>
> 6. The place must be kept clean and fire safety measure [*sic*] must be observed at all times by the Tenant …
>
> …
>
> 11. The Tenant strictly not allowed to putting or storing the diesel tank inside/outside in the rented premises [*sic*] …
>
> …
>
> 13. The Tenant must NOT carry out any burning within the premises. If there is any thinner or chemical that is fire hazardous, the Tenant must ensure that they must be stored in a safe corner. …
>
> …
>
> 15. … The Tenant must take fire insurance to insured and covered [*sic*] for own goods. The Landlord will not responsible if there has [*sic*] any fire burning and damages on tenant's goods in the rented area.
>
> …
>
> 24. The stamp fee, if any payable on this Agreement (in duplicate) shall be borne by the Tenant.
>
> [emphasis in bold and underline omitted]

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57 Exhibited in Goh's AEIC at pp 21–24.

(b) The Plaintiff also contended that the following terms ought to be ***implied*** *into the Tenancy Agreement*:

(i) The Defendant shall not permit or allow any combustible or flammable liquids at the Warehouse.[58]

(ii) The Defendant must not carry out activities, or store/keep any liquids, chemicals or other materials that would cause a fire hazard.[59]

(iii) The Defendant must have proper firefighting equipment and materials at the Warehouse at all material times during the tenancy term.[60]

(iv) During the tenancy term, the Defendant must insure the Warehouse against fire and any other risks for *its own* goods and property in the Warehouse.[61]

(v) The Defendant must have insurance coverage for all risks and/or public liability insurance to indemnify *the Plaintiff* and other tenants or persons at the property for all damages and losses arising from any acts of negligence of the Defendant's servants, agent, licensees or invitees.[62]

The Plaintiff claimed that the Defendant breached these implied terms.[63]

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58 SOC at para 18.

59 SOC at para 20.

60 SOC at para 16.

61 SOC at para 24.

62 SOC at para 22.

63 SOC at para 27; Plaintiff's Closing Submissions at para 13.

24 The Plaintiff's submissions on breach of contract were difficult to follow, in that the Plaintiff failed to link each term within the hodgepodge of express and implied terms above with the specific act or omission of the Defendant which allegedly breached that term. To facilitate the mapping of the relevant express or implied term with the allegedly infringing behaviour, it was necessary to first categorise the contractual terms (both express and implied) alleged to have been breached. To that end, I have divided the terms listed at [23] above under three broad headings:

(a) Terms on the *permitted uses* of the Warehouse.

(b) Terms on the implementation of adequate *fire safety measures*.

(c) *Other terms* (such as procurement of insurance and payment of stamp duty).

The assessment of the Plaintiff's claims for breach of contract, laid out in the following sections, will follow the sequence of the three headings above.

Contractual terms on permitted uses of the Warehouse

25 The permitted uses of the Warehouse were encapsulated in cll 2, 11 and 13 of the Tenancy Agreement (above at [13]). For ease of reading, these clauses are reproduced below:

> 2. The rented area shall be used for purpose of vehicle spare parts and bodv kit.
>
> …
>
> 11. The Tenant strictly not allowed to putting or storing the diesel tank inside/outside in the rented premises. …
>
> …
>
> 13. The Tenant must NOT carry out any burning within the premises. If there is any thinner or chemical that is fire

> hazardous, the Tenant must ensure that they must be stored in a safe corner. …

26 Over and above these express terms, the Plaintiff contended that the Tenancy Agreement contained *implied* terms on the permitted uses of the Warehouse, specifically those set out at [23(b)(i)] and [23(b)(ii)] above prohibiting the Defendant from having any fire-hazardous materials or conducting any fire-hazardous activities within the Warehouse.

27 These grounds first deal with *each* of the express terms which the Plaintiff alleged to have been breached, followed by the purported implied terms governing the permitted uses of the Warehouse.

Clause 2

28 Clause 2 of the Tenancy Agreement stated that the Warehouse "shall be used for purpose of *vehicle spare parts* and *bodv kit*" [emphasis added]. In claiming that the Defendant breached this clause, the Plaintiff pleaded:[64]

> In breach of clause 2 of the Tenancy Agreement, the Defendant stored deregistered vehicles, forklift, engine and accessories at the tenanted premises.

It was undisputed that the Defendant did use the Warehouse to store the three categories of items listed in the Plaintiff's pleadings extracted above, *ie*, (a) deregistered vehicles; (b) the forklift; and (c) engines and accessories. Since these categories of items were not explicitly mentioned in cl 2 (which referred only to "vehicle spare parts and bodv kit"), the Plaintiff claimed that the Defendant's act of storing them in the Warehouse breached the clause.

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64 SOC at para 14; Plaintiff's Closing Submissions at para 12(ii).

29 I noted upfront that a reading of cl 2's reference to "vehicular spare parts" would very comfortably encompass "engines and accessories". Absent any elaboration from the Plaintiff as to why the term "vehicular spare parts" in cl 2 should be construed in a manner other than what its words naturally conveyed, I took the view that the storage of "engines and accessories" could not be construed as a breach of cl 2.

30 Having dealt with that, I moved on to consider whether the Defendant's act of storing the other two categories of items pleaded by the Plaintiff, *ie*, (a) deregistered vehicles and (b) the forklift, was indeed prohibited by cl 2 as claimed by the Plaintiff. Implicit in the Plaintiff's claim was the premise that cl 2 should be construed as *exhaustive* in nature – *ie*, items *not captured* by the clause's reference to "vehicle spare parts and body kits" could *not be stored* in the Warehouse. However, a plain reading of cl 2 showed that the stipulated use of the Warehouse ("shall be used for purpose of vehicle spare parts and bodv kit") was not expressed as the *sole* use. In fact, the permitted use as stipulated in cl 2 did not even employ the word "storage". Thus, the Plaintiff's contention that cl 2 should be construed as permitting *storage* of vehicle spare parts and body kits *and nothing else* added a gloss which narrowed the scope of the clause beyond what a plain reading would suggest.

31 In assessing the viability of the Plaintiff's construction, I noted the trite proposition that the court may look at the context when interpreting contractual clauses. In *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*"), the Court of Appeal endorsed (at [131]) a series of principles set out in Gerard McMeel, *The Construction of Contracts: Interpretation, Implication, and Rectification* (Oxford University Press, 2007) governing the interpretation of contracts. These included the principle that the court may take the context underlying the contract

into account, including the legal, regulatory and factual matrix:

> … the exercise in construction is informed by the *surrounding circumstances* or *external context*. Modern judges are prepared to look beyond the four corners of a document, or the bare words of an utterance. It is permissible to have regard to the *legal, regulatory, and factual matrix* which constitutes the background in which the document was drafted or the utterance was made. [emphasis in original]

Another principle of construction endorsed in *Zurich Insurance* was that the court could take account of the business purpose underlying the contract:

> … due consideration is given to the *commercial purpose* of the transaction or provision. The courts have regard to the overall purpose of the parties with respect to a particular transaction, or more narrowly the reason why a particular obligation was undertaken. [emphasis in original]

32 The Court of Appeal in *Zurich Insurance* also noted how the admission of extrinsic evidence via proviso (*f*) to s 94 of the Evidence Act (Cap 97, 1997 Rev Ed) could facilitate the contextual approach to the interpretation of contracts (at [132]):

> (c) Extrinsic evidence is admissible under proviso (*f*) to s 94 to aid in the interpretation of the written words. Our courts now adopt, via this proviso, the modern contextual approach to interpretation, in line with the developments in England in this area of the law to date. Crucially, ambiguity is not a prerequisite for the admissibility of extrinsic evidence under proviso (*f*) to s 94 …
>
> (d) The extrinsic evidence in question is admissible so long as it is relevant, reasonably available to all the contracting parties and relates to a clear or obvious context …

33 Bearing these principles in mind, I concluded that the context underlying the Tenancy Agreement as at the point of its signing did *not* lend itself to the construction which the Plaintiff purported to give cl 2. The Defendant expressly

pleaded[65] that at the time the Tenancy Agreement was entered into, the Plaintiff *knew* that:

(a) the Defendant was leasing the Warehouse for the purpose of storing not just vehicle spare parts and body kits but deregistered vehicles as well,

(b) cutting/scrapping of deregistered vehicles would take place in the Warehouse; and

(c) for the above purposes, a forklift was required to move the vehicles.

The Defendant further contended that this knowledge was possessed by Goh, who signed the Tenancy Agreement on the Plaintiff's behalf. In contrast, Goh had in his affidavit of evidence-in-chief ("AEIC") denied having such knowledge and instead affirmed that the Defendant stored deregistered vehicles in the Warehouse *without the Plaintiff's knowledge and consent*. The relevant portion of Goh's AEIC reads:[66]

> The Defendant, without the Plaintiff's knowledge and consent, used the tenanted premises to store deregistered vehicles, forklift(s), engine(s) and accessories at the tenanted premises.

34 Critically, Goh recanted this denial while under cross-examination. He explained that just prior to entering into the Tenancy Agreement, he had visited the premises which the Defendant was operating from, at No. 74 Sungei Kadut. By the time he signed the Tenancy Agreement on the Plaintiff's behalf, he knew that the Defendant was in the business of scrapping and exporting vehicles.

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65 D&CC at para 4.

66 Goh's AEIC at para 16.

Under cross-examination, Goh admitted that he knew that the Defendant would be renting the Warehouse for the purpose of carrying out the same business as it had been carrying out at No. 74 Sungei Kadut, *ie*, scrapping vehicles. He also agreed that such a business necessarily involved storing deregistered vehicles at the premises. Most importantly, Goh conceded that the Defendant's use of the Warehouse for that purpose was *with the Plaintiff's consent*. I set out the relevant exchange in the cross examination of Goh:[67]

> Q … *You knew at that point in time the defendant was in the business of purchasing deregistered cars, exporting them as whole cars, or scrapping the cars.*
>
> A *Yes.*
>
> Q *And you knew at that point in time the defendants were hoping to move their business from 74 Sungei Kadut to your premise. To the plaintiff's premise at [the Property*].
>
> A *Yes.*
>
> Q So *you knew the defendants will be carrying out the same type of business at [the Property] as they had done at the 74 Sungei Kadut.*
>
> A I can't confirm what businesses they were doing, *I only know that they scrap cars.*
>
> Q But you just said earlier on that when you agreed with me that they were involved in the purchasing of deregistered cars.
>
> A What I meant was when it was at the old place, I did not see, so I didn't know. *But when they are coming here, all I know was they were doing in the---the business of scrapping cars.*
>
> Q *So that would have included storing cars---deregistered cars at the premises.*
>
> A *Yes.*
>
> Q *So the purpose of them renting the [Property] was to store cars that were deregistered*, whatever it is, for scrap or anything, but the purpose was to store cars.

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67 Transcripts for 14 May 2024 at pp 49 (line 7) – 51 (line 19).

A *To store cars.*

…

Q *And all this was with the knowledge of the plaintiff, that is, the fact that they were storing the cars*---well, all of it. *The knowledge of the plaintiff and the consent of the plaintiff, knowledge and consent*?

A *Yes, agree. … But only for vehicles. Vehicles to be scrapped and exported.*

Q Not for storage?

A *Can also store.* He did store--- … They did store, to scrap, to store it and then export.

Q So, Mr Goh, let me be clear about this. *The plaintiff knew the business of the defendant, which included storing of deregistered cars, and it allowed the defendant to do so with the knowledge, right*?

A *Yes.* … I did know that they did the business. But all I knew---my understanding was that *they will have scrapped cars. And they will scrap, they will store the engine there and then they will sell overseas.*

Q Mr Goh, you had just stated earlier in the evidence that the plaintiff knew and consented to the defendant storing cars. Forget even about deregistered, registered. Storing cars. Do you recall that evidence?

A Yes.

Q *Isn't that evidence different from what you have stated in paragraph 16 of your [AEIC]… [Reads] "The Defendant, without the Plaintiff's knowledge and consent, used the tenanted premises to store deregistered vehicles…"*

A *Maybe I have said wrongly.*

[emphasis added]

35 Given Goh's recantation, the only conclusion I could arrive at was that the Plaintiff's construction of cl 2 was plainly at odds with the factual context when the Tenancy Agreement was signed, including the commercial purpose of the Defendant renting the Warehouse. As at that point in time, the Plaintiff (through Goh) knew that the Defendant's business involved scrapping and exporting vehicles, as well as storing the same. The Plaintiff had further

consented to the Defendant renting the Warehouse for conducting that business. As regards the forklift, this was plainly an integral part of the business (to stack the vehicles and move them around). As such, while cl 2 may have operated to *allow* the Defendant to store vehicle spare parts and body kits, I took the view that it did not (as the Plaintiff contended) *restrict* the Defendant to using the Warehouse *exclusively* for that purpose. There was nothing in the evidence allowing me to construe cl 2 as prohibiting the Defendant from storing deregistered vehicles and the forklift within the Warehouse.

36 My conclusion was fortified by cl 22 of the Tenancy Agreement, extracted below, which allowed the Defendant to conduct its *trade*/*business* in the Warehouse:[68]

> 22 The Tenant can only conduct its trade/business in the rented premises in accordance as agreeable by both parties.

Given that the Defendant's trade involved the storing, scrapping and exporting of vehicles, and the Plaintiff *knew* this as at the point of contracting, cl 22 must be construed as allowing the Defendant to store deregistered vehicles and scrap them within the Warehouse. I saw no reason to construe cl 2 in a manner that would conflict with cl 22 in that regard.

37 The Plaintiff's claim that the Defendant breached cl 2 thus failed.

Clause 11

38 Clause 11 of the Tenancy Agreement, extracted at [25] above, prohibited the Defendant from storing "the diesel tank" in the Warehouse. While the word "the" preceding the words "diesel tank" in cl 11 might have implied that parties

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[68] Exhibited in Goh's AEIC at p 24.

had a particular diesel tank in mind, parties did not proceed on that basis and appeared to take the position that cl 11 referred to diesel tanks *in general*.

39 The Plaintiff argued that the reference in cl 11 to diesel tanks should be interpreted as encompassing not only external receptacles used for storing diesel but ***vehicle*** *fuel tanks* as well. This interpretation meant that for vehicles running on diesel, the entire fuel tank would have been caught by the prohibition in cl 11 and would consequently have to be *removed* before the vehicles could be stored in the Warehouse.[69] As the Defendant failed to perform such removal prior to storing vehicles in the Warehouse, the Plaintiff claimed that cl 11 was breached.

40 While the word "tank" in cl 11 would have comfortably captured external receptacles that were primarily purposed for storage, I was not prepared to endorse the Plaintiff's attempt to extend that word (as it was used in cl 11) to encompass *fuel tanks* ***still forming part of the vehicle***. My hesitation stemmed from the following reasons:

(a) Under cross-examination, Goh testified that there was "no problem" so long as the oil remained *within the vehicle*. He also voiced the view that cl 11 prohibited only the "big tanks" used to store oil:[70]

> Q So is it your evidence that according to you, Clause 11 of the tenancy agreement which refers to that the defendant is not allowed to or putting, storing of diesel tanks inside and outside in the rented premises, means that the defendant cannot store deregistered cars with fuel in its petrol tank? Is that what you're saying?
>
> A They are not allowed to store oil in the tanks in the premises.

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69 See, *eg*, Plaintiff's Closing Submissions at para 61.

70 Transcripts for 14 May 2024 at p 60 (line 8-25).

> Q So *when you're talking about oil in the tanks, are you talking about the big tanks or are you talking about the petrol in the petrol tank within a car*?
>
> A *The big tanks*.
>
> Q So by that answer, can I take it that there was nothing wrong in the defendant's storing cars with petrol in its petrol tanks? There's nothing wrong, there's no infringement of the tenancy agreement.
>
> A As long as they put the oil in the tank, then they have infringed the clauses.
>
> Court: As long as they put the oil in the tank, in what tank?
>
> Witness: They have a very big tank for storing oil.
>
> Court: *The question does not relate to the tank for storing oil, the question relates to the fuel tank in the vehicle.*
>
> Witness: That---it would---then there is no choice. If---*since it's inside, then there would be no problem.*
>
> [emphasis added]

Given the above, construing cl 11 in a manner that would introduce an obligation on the Defendant to remove fuel tanks from vehicles prior to storage, especially when the Tenancy Agreement made no express mention of any such obligation, would simply did not cohere with the contracting parties' intentions.

(b) Secondly, the Plaintiff's contention that the Defendant failed to remove the fuel tanks from vehicles stored in the Warehouse was not pleaded. The Statement of Claim only asserted that the Defendant failed to *remove* ***the petrol*** *from the vehicles' fuel tanks* prior to storage,[71]

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[71] SOC at para 46(1A) & (1B).

> without any mention of the Defendant being obliged to remove the vehicles' fuel *tanks*.

41 My conclusion on how the word "tank" in cl 11 should be construed was itself sufficient to warrant dismissal of the Plaintiff's claim that the Defendant breached cl 11. However, even if I were wrong and that word could be construed as including fuel tanks still attached to vehicles stored in the Warehouse, that would still not salvage the Plaintiff's attempt to establish a breach of cl 11. This was because cl 11 did not prohibit just any tank – it specifically prohibited *diesel* tanks. Yet, the Plaintiff failed to adduce evidence to show if any of the deregistered vehicles stored within the Warehouse had fuel tanks containing *diesel*, as opposed to some other type of fuel. It was evident that this failure arose because the Plaintiff had erroneously conflated the term "diesel" with "petrol", to the point that it regarded the *petrol* tanks of vehicles stored in the Warehouse as being caught by cl 11's prohibition against diesel tanks. For example, Goh's AEIC had, in alleging a breach of cl 11, affirmed that "[t]he Defendant stored de-registered cars with *fuel (including petrol) tanks* at the tenanted premises".[72] Similarly, The Plaintiff's closing submissions referenced "petrol tanks" (as opposed to "diesel tanks") when alleging that cl 11 had been breached:[73]

> About 60 plus cars were uncut with batteries still connected, some cars with ignition keys in On position, *petrol tanks each with petrol of varying amounts* and cumulatively a large amount of petrol which increased the fire hazards exponentially at the tenanted premises *therefore the Defendant had breached clauses 11* and/or 13 of the [Tenancy Agreement] … [emphasis added]

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72 Goh's AEIC at para 19.

73 Plaintiff's Closing Submissions at para 54.

42 To loosely construe the term "diesel tank" in cl 11 as being synonymous with "petrol tank" would broaden the scope of the clause well beyond what its plain meaning conveyed. This was unwarranted, especially given the markedly prohibitive language of cl 11, which employed the term "strictly not allowed". This prohibition was unambiguously expressed to target *diesel* tanks – I saw no basis to extend it to tanks containing other types of fuel (*eg*, petrol).

43 As there was no evidence that the fuel tanks of any of the vehicles stored in the Warehouse contained diesel, the Plaintiff failed to demonstrate that cl 11 had been breached.

Clause 13

44 Clause 13 of the Tenancy Agreement, extracted at [25] above, imposed two obligations on the Defendant:

(a) Not to carry out of any burning within the Warehouse.

(b) To store any thinner or chemical that is fire hazardous in a safe corner.

As regards the obligation in (a), there was no evidence, nor any suggestion by the Plaintiff, that this had been breached by the Defendant.

45 As regards the obligation in (b) of the preceding paragraph, there was similarly no evidence of any thinner or fire-hazardous chemicals in the Warehouse, much less the failure to store such items in a safe corner. Nevertheless, the Plaintiff contended that the *fuel within the tanks of deregistered vehicles* stored in the Warehouse constituted a "fire hazardous" chemical within the meaning of cl 13. The Plaintiff's construction of cl 13

meant that to avoid falling foul of this clause, the Defendant had to siphon out the fuel and store the same in a "safe corner", before stowing the vehicle in the Warehouse. In this respect, the Defendant's practice was to extract fuel from vehicles *only when they were being dismantled*,[74] upon which the extracted fuel would then be taken out of the Warehouse.[74] However, prior to dismantling, deregistered vehicles would be stored in the Warehouse with fuel still in their tanks, sometimes for up to three or four days.[74] The Plaintiff thus contended that the presence of fuel within such vehicles stored at the Warehouse breached cl 13, as per its construction of the clause set out in this paragraph.

46 In my view, it would be wrong to construe cl 13 as obliging the Defendant to remove the fuel from the vehicle's fuel tank (with a view to storing the fuel in a "safe corner") before stowing the vehicle in the Warehouse:

(a) Firstly, there was nothing to show that parties regarded fuel as a "fire hazardous" chemical within the meaning of cl 13 *where that fuel still resided within the vehicle's fuel tank*. Critically, as alluded to at [40(a)] above, Goh himself admitted that there would be "no problem" if the fuel was left in the vehicle's fuel tank.

(b) Secondly, the Plaintiff failed to adduce evidence of any fire safety practice within the storage industry requiring warehouse owners to empty vehicles of their fuel before storing them.

As such, the evidence simply did not warrant me construing cl 13 in a manner that would introduce an obligation on the part of the Defendant to remove the fuel from the vehicle's fuel tank, prior to storage of the vehicle, when the Tenancy Agreement made no express mention of any such obligation.

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[74] Transcripts for 24 May 2024 at p 39 (lines 4 – 10) and p 66 (lines 3-15).

47 Consequently, the fact that there was fuel within the fuel tanks of vehicles stored in the Warehouse did not constitute a breach of cl 13.

Implied terms governing permitted uses of the Warehouse

48 To recapitulate, the Plaintiff contended that the following terms, governing the permitted uses of the Warehouse, should be implied in the Tenancy Agreement:

(a) Firstly, the Defendant was prohibited from the following:

(i) Permitting any combustible or flammable liquids or materials in the Warehouse – see [23(b)(i)] above.

(ii) Keeping any liquids or chemicals or materials that would cause a fire hazard within the Warehouse – see [23(b)(ii)] above.

I refer to both (i) and (ii) collectively as the implied term prohibiting "fire-hazardous *materials*".

(b) Secondly, the Defendant was prohibited from carrying out *activities* that would cause a fire hazard – see [23(b)(ii)] above. I refer to this as the implied term prohibiting "fire-hazardous *activities*".

At the outset, I should highlight that it was not clear to me what the Plaintiff was seeking to attain by implying the two prohibitions above. I could only assume that implying the prohibition in (a) – *ie*, against fire-hazardous *materials* – allowed the Plaintiff to say that the Defendant's act of allowing fuel to remain in the vehicles stored at the Warehouse was a breach of contract. As regards the implied prohibition in (b) – *ie*, against fire-hazardous *activities* – the Plaintiff

did not elaborate as to what activities it hoped to catch with this implied term. Presumably, the Plaintiff was hoping to say that the implied term prohibited the Defendant's activity of scrapping vehicles – the heat from the implements used to cut metal could potentially trigger a fire, if not used with precaution.

49 In evaluating the Plaintiff's submissions on implied terms, I bore in mind the guidance prescribed in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 ("*Sembcorp Marine*"), where the Court of Appeal set out a three-step test for when a term may be implied into a contract (at [101]):

> It follows from these points that the implication of terms is to be considered using a three-step process:
>
> (a) The first step is to ascertain how the gap in the contract arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the gap.
>
> (b) At the second step, the court considers whether it is necessary in the business or commercial sense to imply a term in order to give the contract efficacy.
>
> (c) Finally, the court considers the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded "Oh, of course!" had the proposed term been put to them at time of the contract. If it is not possible to find such a clear response, then, the gap persists and the consequences of that gap ensue.

50 Returning to the present case, I had considerable difficulty in assessing the Plaintiff's case on implied terms. Despite asking the court to imply a slew of terms into the Tenancy Agreement, including those at [23(b)] above, the Plaintiff's closing submissions failed to explain how the facts justified the implication of any of these terms, as per the test in *Sembcorp Marine*. Indeed, neither the test nor the case of *Sembcorp Marine* itself was cited in the Plaintiff's closing submissions, nor *any* legal authorities governing implied terms in contract. It was only after the defence highlighted the test in its closing

submissions that the Plaintiff sought to address the same in its *reply* submissions. Even after having done this, the Plaintiff still failed to sufficiently demonstrate why the facts of this case justified the implication of any of the terms proposed by the Plaintiff at [48] above.

51 Firstly, the evidence did not disclose any gap in the Tenancy Agreement, as required by step (a) of the three-step test encapsulated in the Court of Appeal's decision extracted at [49] above, that might justify implying the prohibitions against fire-hazardous materials and activities. In *Sembcorp Marine*, the Court of Appeal explained when such a gap might be found to exist (at [94]-[95]):

> 94 … [N]ot all gaps in a contract are "true" gaps in the sense that they can be remedied by the implication of a term. There are at least three ways in which a gap could arise:
>
> (a) the parties did not contemplate the issue at all and so left a gap;
>
> (b) the parties contemplated the issue but chose not to provide a term for it because they mistakenly thought that the express terms of the contract had adequately addressed it; and
>
> (c) the parties contemplated the issue but chose not to provide any term for it because they could not agree on a solution.
>
> 95 In our view, scenario (a) is the only instance where it would be appropriate for the court to even consider if it will imply a term into the parties' contract … This pertains to what the parties would be presumed to have agreed on had the gap been pointed out to them at the time of the contract. Scenario (c) is not a proper instance for implication because the parties had actually considered the gap but were unable to agree and therefore left the gap as it was. To imply a term would go against their actual intentions

52 The Plaintiff claimed that a gap existed here because cl 13 of the Tenancy Agreement was "vague" and "ambiguous" in scope, in that it prohibited burning at the Warehouse and yet allowed storage of fire-hazardous

materials at a safe corner.[75] To remediate this, it was necessary to imply a clear term prohibiting the Defendant from permitting fire-hazardous materials within the Warehouse. I rejected this argument for the following reasons.

53 Firstly, cl 13 struck me as neither vague nor ambiguous. Its two prongs were clear: (a) no burning; and (b) all fire-hazardous materials were to be safely stored. Contrary to the Plaintiff's contention, both prongs did not conflict with each other.

54 Secondly, even if cl 13 was considered deficient, in that it failed to capture what the Plaintiff truly wanted to address, the extract from the Court of Appeal's decision in *Sembcorp Marine* at [51] above (particularly sub-paragraph (b) of the extract) is clear that if the contracting parties consciously chose not to incorporate a term on an issue because they mistakenly believed that the issue was already addressed by an existing express term, this would not constitute a true gap warranting the implication of a term. As such, even if the Plaintiff had at the time of contracting mistakenly believed that cl 13 was unambiguous enough to target the activity which it had in mind (*ie*, storing fire-hazardous materials), only to now realise that the clause was too vague to achieve that purpose, this would *not* constitute a "true" gap that would justify implying the prohibition against fire-hazardous materials.

55 Thirdly, *even* if there had been a gap, I was not convinced that it would be *necessary* – as contemplated by step (b) of the three-step test encapsulated in the Court of Appeal's decision extracted at [49] above – to imply the terms propounded by the Plaintiff at [48] above. I took this view for the following reasons:

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[75] Plaintiff's Reply Submissions at para 12.

(a) As regards implying a prohibition against fire-hazardous *materials* (referred to at [48(a)] above):

(i) I did not see why it was necessary to imply such a term, particularly if the Plaintiff's objective was to prohibit the presence of fuel within the vehicles stored in the Warehouse. I have already explained (at [44(b)] above) that Goh saw no problems with the vehicles stored in the Warehouse still having fuel in their tanks. Moreover, as alluded to above (at [46(b)]) there was no evidence of any industry practice mandating that fuel be siphoned out from vehicles prior to storage.

(ii) Furthermore, the words of cl 13 showed that at the point of contracting, parties evidently applied their minds to the issue of "fire hazardous" chemicals and decided that these chemicals *could* be stored in the Warehouse – so long as they were stored in a "safe corner". Implying a flat prohibition against fire-hazardous materials would, far from being necessary, introduce conflicting obligations into the Tenancy Agreement.

(b) As regards implying a prohibition against fire-hazardous *activities* (referred to at [48(b)] above), I was similarly not minded to imply such a term, particularly if the objective was to bar the Defendant's scrapping activities. Rather than being necessary, implying such a term would *run counter to the context* facing the parties as at the time of contracting. It could not have been the intention of parties for the Tenancy Agreement to prohibit vehicle scrapping within the Warehouse, given that the Plaintiff *knew* at the time of contracting that the Defendant was going to use the Warehouse for its scrapping activities and had consented to the same: see [35] above. The following

observation by the Court of Appeal in *Sembcorp Marine* (at [73]) is apposite: "Indeed, it is trite that the court *must have regard to the context* at the time of contracting *when considering the issue of implication*" [emphasis added].

56 Finally, even if I were to imply a prohibition against fire-hazardous activities and rule that the Defendant's scrapping activities would have breached this, that would still not advance the Plaintiff's claim. As explained in the analysis below on the Plaintiff's claim in tort, the Plaintiff failed to establish that the Defendant had been conducting any scrapping works at the time of the fire. Any breach of the implied prohibition by virtue of scrapping activities conducted at some *earlier* point in time prior to the fire would have borne no causal link to the fire. As explained in *Crescendas Bionics Pte Ltd v Jurong Primewide Pte Ltd and other appeals* [2023] 1 SLR 536 ("*Crescendas Bionics*"), a plaintiff claiming damages for a breach of contract must prove that causal link, by establishing on a balance of probabilities that he would not have suffered the damage sustained but for the breach (at [38]).

57 Given the above considerations, the Plaintiff's attempt to imply the terms pertaining to the permitted uses of the Warehouse, as set out at [48] above, lacked merit and was rejected.

Contractual terms on fire safety measures

58 The Plaintiff also contended that the Defendant breached various terms in the Tenancy Agreement pertaining to fire safety measures. According to the Plaintiff, the relevant terms were both express and implied:

(a) Firstly, the Plaintiff relied on the *express* term in cl 6 of the Tenancy Agreement, which provided that:

> [t]he place must be kept clean and fire safety measure [*sic*] must be observed at all times by the Tenant. …

(b) Secondly, the Plaintiff contended that there was an *implied* term in the Tenancy Agreement obliging the Defendant to have proper firefighting equipment and materials at the Warehouse at all material times: see [23(b)(iii)] above.

The Plaintiff contended that the Defendant breached both the express and implied term set out above, by failing to have proper firefighting equipment (such as the appropriate type of fire extinguishers) on site at the Warehouse.

59 I rejected this submission. I did not think that cl 6 had been breached, nor did I think that a term should be implied to oblige the Defendant to have proper firefighting equipment and materials at the Warehouse.

60 As regards cl 6 of the Tenancy Agreement, this housed two obligations, neither of which were shown to have been breached.

(a) The first obligation under cl 6 was to keep the Warehouse clean. In asserting that this had been breached, the Plaintiff's closing submissions contended that Goh "saw oil" and also saw that the Defendant's employees "anyhow threw things around".[76] However, there was little by way of elaboration, whether in the Plaintiff's submissions or AEICs, or even in Goh's oral testimony,[77] as to where the oil was found and what "things" had been thrown around. I should add that even if I were to accept that cl 6 had been breached by the presence of oil on the premises and "things" having been thrown around,

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76 Plaintiff's Closing Submissions at para 55.

77 Transcripts for 14 May 2024 at pp 58 (line 27) – 59 (line 6).

this would still not assist the Plaintiff's case as the Plaintiff would have failed to demonstrate how these alleged breaches caused the fire (and thereby caused damage to the Plaintiff): *Crescendas Bionics* at [38].

(b) The second obligation under cl 6 was that "fire safety measure [*sic*] must be observed at all times". The Plaintiff pointed out that the term "fire safety measure" in cl 6 was "imprecise and vague in that it did not specify what amounts to fire safety measure".[78] Yet, the Plaintiff failed to explain, despite attesting to the vagueness of cl 6, why the term "fire safety measure" in that clause should be construed in a manner as to disclose a breach by the Defendant. Without such substantiation, it was not possible to conclude one way or another whether this obligation in cl 6 had indeed been breached.

61 As regards the implied term which the Plaintiff proposed, *ie*, that the Defendant must have proper firefighting equipment and materials at the Warehouse at all material times, this failed to pass muster under the test propounded by the Court of Appeal in *Sembcorp Marine*, extracted at [49] above:

(a) Firstly, I did not think that there was a gap, as required by step (a) of the three-step test encapsulated in *Sembcorp Marine*, which would justify implying the term advocated by the Plaintiff. Parties had expressly applied their mind to the fire safety issue at the time of contracting and, to that end, incorporated cl 6, which mandated the observance of "fire safety measure" [*sic*]. Nevertheless, as alluded to in the preceding paragraph, the Plaintiff highlighted that the term "fire

78 Plaintiff's Reply Submissions at para 13.

safety measure" in cl 6 was vague and imprecise and argued that this was a reason to imply a more specific term which obliged the Defendant to have proper firefighting equipment and materials at the Warehouse at all material times.[79] This submission was misconceived. The reasoning set out at [52] and [54] above applied equally here: Even if the Plaintiff had, as at the time of contracting, mistakenly believed that the term "fire safety measure" in cl 6 was specific enough to impose the obligation which the Plaintiff intended (*ie*, that Defendant must have proper firefighting equipment and materials at the Warehouse at all material times), only to now realise that the clause was too imprecise to do so, that would not constitute a "true" gap which would justify implying a term to address that obligation: *Sembcorp Marine* at [94(b)].

(b) Secondly, even if there was a gap, I still did not think it was *necessary* to imply a term that the Defendant must have proper firefighting equipment and materials at the Warehouse at all material times. It is perfectly conceivable to have a tenancy arrangement where the landlord is the party who provides the firefighting equipment (such as fire extinguishers and hoses), while the tenant observes related fire safety measures (such as ensuring that its employees follow the relevant safety protocols). In fact, the Plaintiff's evidence suggested an understanding that it was the Plaintiff which would provide the Defendant with firefighting equipment and, pursuant to that understanding, the Plaintiff *did* provide the Defendant with the necessary firefighting equipment. This was evident from the following extract of the cross-examination of Goh:[80]

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79 Plaintiff's Reply Submissions at para 13.

80 Transcripts for 14 May 2024 at p 59 (lines 7-19)

> Q: …And how about the statement [in your AEIC] where you say: "They did not have proper firefighting equipment and materials at the tenanted premises." What's the basis of saying that?
>
> A At that time, I don't know how this statement came out. I don't know how I said. This is strange because the thing is there. It is impossible that it is not there.
>
> …
>
> Court: Sorry, what was there? It is impossible for it not to have been there.
>
> Witness: The firefighting equipment are all there--- already there.
>
> Court: The firefighting equipment was already there when the defendant was occupying the premises, is it?
>
> Witness: Yes, these equipment were there.

62 In any case, even if I were to imply a term that the Defendant was obliged to have proper firefighting equipment and materials in the Warehouse at all material times, the Plaintiff failed to prove that the term (if implied) had been breached on the facts. In particular, the evidence did not sufficiently establish the Plaintiff's claim that the Defendant failed to have the appropriate fire extinguishers on site:

(a) The Plaintiff's director at the time, Namperumal Paulraj ("Paulraj"), testified that the Defendant always had fire extinguishers on the premises.[81] Gabir provided further details, testifying that the Defendant had *at least six* fire extinguishers at the Warehouse.[82] Further,

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81 Transcripts for 23 May 2024 at p 28 (lines 13-32).

82 Transcripts for 24 May 2024 at p 28 (lines 3-16).

both Gabir[83] and Ganapathy[84] were consistent in their oral testimonies that the Warehouse had type B fire extinguishers – being the type used to fight fires caused by flammable liquids.

(b) Ganapathy also testified that at the time of the fire, one of the Defendant's employees – Mani – had come running out with a fire extinguisher to fight the fire[85] (see [10] above). This fact was at the very least consistent with the Defendant having fire extinguishers on site.

(c) In the aftermath of the fire, SCDF found several spent fire extinguishers next to the Chery Car (see [14(a)] above). There was no suggestion from the Plaintiff that *all* these fire extinguishers came from its firefighting arsenal, meaning that there was nothing to rule out the prospect of one or more of these spent fire extinguishers having come from the Defendant.

Viewing the evidence in the round, it was simply not possible to infer that the inability to put out the fire arose from any want of firefighting equipment on the Defendant's part.

63 Accordingly, the Plaintiff failed to establish that the Defendant had breached the express and (purported) implied terms on fire safety measures in the Tenancy Agreement.

Other contractual terms

64 The Plaintiff also alleged that the Defendant breached various other

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83 Transcripts for 24 May 2024 at pp 28 (line 17) – p 29 (lines 1 & 28-29).

84 Transcripts for 28 May 2024 p 40 (lines 23-30).

85 Transcripts for 28 May 2024 at p 21 (lines 2-10).

miscellaneous terms in the Tenancy Agreement. Broadly, these pertained to:

(a) the procurement of insurance to cover the damage from the fire; and

(b) the payment of stamp duty on the Tenancy Agreement.

Procurement of insurance

65 Clause 15 of the Tenancy Agreement, which required the Defendant to procure insurance coverage for its *own* goods, provided:

> … The Tenant must take fire insurance to insured and covered [*sic*] for own goods. The Landlord will not responsible if there has [*sic*] any fire burning and damages on tenant's goods in the rented area.

It was undisputed that the Defendant failed to abide by cl 15, in that it failed to procure the fire insurance required by this clause.

66 Nevertheless, cl 15 pertained to procuring insurance against fire damage *suffered by the Defendant*. There being no explanation as to how cl 15 was relevant to fire damage *suffered by the Plaintiff*, I concluded that the breach of this clause did not entitle the Plaintiff to claim for any losses. These grounds will nevertheless return to cl 15 below, when analysing the *counterclaim* by the Defendant.

67 The Plaintiff also contended that a term should be implied into the Tenancy Agreement obliging the Defendant to insure the Warehouse against fire and any other risks for *the Defendant's* goods and property at the Warehouse: see [23(b)(iv)] above. It was unclear why the Plaintiff was seeking to imply such a term, when the ambit of the purported term appeared to be squarely covered by cl 15. Consequently, I rejected this submission.

68 The Plaintiff further claimed that a term should be implied to oblige the Defendant to procure insurance coverage for all risks to *indemnify the Plaintiff* and other persons at the Property, for all losses arising from any negligence by the Defendant and its servants, agents, licensees or invitees: see [23(b)(v)] above. However, I failed to see why it was necessary in the business or commercial sense – see *Sembcorp Marine* at [101] (extracted at [49] above) – to imply such a term. I agreed with the Defendant's submission[86] that a tenancy agreement can be perfectly operative and functional without such an allocation of risk via insurance coverage. Accordingly, I rejected the Plaintiff's claim that such a term be implied.

Payment of stamp duty

69 On the issue of stamp duty, cl 24 of the Tenancy Agreement stated:

> The stamp fee, if any payable on this Agreement (in duplicate) shall be borne by the Tenant.

The Plaintiff submitted that the Defendant failed to pay the stamp duty fee, with the result that it was the Plaintiff which had to pay the fee on 22 November 2022, plus a penalty, with the payments collectively amounting to $814.[87]

70 There appeared to be no dispute that the Defendant had failed to abide by this clause. In their respective oral testimonies, both Gabir[88] and Paulraj[89] conceded that the Defendant was liable for the stamp duty. I therefore held that the Defendant should honour its obligation under cl 24 and ordered the

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86 Defendant's Closing Submissions at para 58.

87 Exhibited in Goh's AEIC at p 20.

88 Transcripts for 24 May 2024 at p 71 (lines 8-25).

89 Transcripts for 23 May 2024 at p 30 (lines 4-15)

Defendant to pay the Plaintiff $814, on account of the stamp duty fee and penalty borne by the latter.

Conclusion on the Plaintiff's claims for breach of contract

71 To summarise:

(a) The Plaintiff failed to demonstrate that the Defendant had breached any *express* terms of the Tenancy Agreement (save for the clause on payment of stamp duty).

(b) The Plaintiff's claim that the Defendant breached the Tenancy Agreement's *implied* terms also failed, as the Plaintiff failed to establish why any of the purported terms which it had put forward ought to be implied in the first place.

Plaintiff's claims in tort

72 I now move to the Plaintiff's claim that the Defendant was negligent, having breached its duty of care owed to the Plaintiff in tort.

73 The starting point would be to first assess if the Defendant owed the Plaintiff a duty of care. The test for determining whether such a duty exists was laid out in the seminal case of *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck Engineering*"). Applying the framework for analysis expounded by the Court of Appeal in that case, I agreed with the Plaintiff that the Defendant *did* owe the Plaintiff *a duty to take reasonable care to prevent fires from* ***starting*** *or* ***spreading*** in the Warehouse.

74 Firstly, the threshold question was whether it was factually foreseeable

that the Plaintiff was going to suffer damage from the Defendant's negligence: *Spandeck Engineering* at [76]. On the present facts, that threshold question had to be answered in the Plaintiff's favour. It was eminently foreseeable that any fire resulting from the Defendant's failure to take proper care would likely damage the Plaintiff's assets, being the buildings within the Property and the Plaintiff's belongings therein.

75 Secondly, having crossed that threshold, the court would have to consider if the *relationship* between the parties bore sufficient proximity as to justify the imposition of a duty of care: *Spandeck Engineering* (at [77]). In *Spandeck Engineering*, the Court of Appeal expressed (at [78]) its endorsement of the views of Deane J in the Australian High Court decision of *Sutherland Shire Council v Heyman* (1985) 60 ALR 1 that an assessment of whether there was sufficient proximity as to found a duty of care would involve assessing if there was physical, circumstantial and causal proximity. The Court of Appeal further explained that when assessing if proximity exists, analogies may be drawn with the case precedents, albeit that the court need not shy away from imposing a duty of care just because the factual matrix at hand (against which a duty of care is sought to be imposed) is a novel one. The relevant section of the Court of Appeal's judgment (at [82]) is instructive:

> … in determining proximity as expounded by Deane J in *Sutherland*, the court should apply these concepts first by analogising the facts of the case for decision with those of decided cases, if such exist, but should not be constrained from limiting liability in a deserving case only because it involves a novel fact situation.

In the present case, the relationship between the Defendant (as the tenant) and the Plaintiff (as the landlord who continued to occupy the Property) was clearly proximate enough for me to find that the Defendant owed a duty of care to the Plaintiff. Specifically, the Defendant owed a duty to take reasonable care in

observing appropriate safety measures, to prevent the start and spread of fires. Any fire which started or spread as a result of the Defendant's failure to do so would have an immediate and significant impact on the interests of the Plaintiff, as well as that of the Plaintiff's other tenants. I also noted that analogies can be drawn with past precedents where a duty of care was imposed on occupiers to take appropriate fire safety measures: see, *eg*, the decisions of Chao Hick Tin J (as he then was) in *Virco Metal Industries Pte Ltd and another v Carltech Trading and Industries Pte Ltd and others* [1999] 2 SLR(R) 503 (at [14] and [17]) and the decisions of Belinda Ang J (as she then was) in *Saatchi & Saatchi Pte Ltd and others v Tan Hun Ling (Clarke Quay Pte Ltd, third party)* [2006] 1 SLR(R) 670 (at [12] and [40]) and *Te Deum Engineering Pte Ltd v Grace Electrical Engineering Pte Ltd* [2016] SGHC 232 (at [116]).

76 Thirdly, the court must assess if any policy considerations might militate against imposing a duty of care – this would include determining whether there is an existing contractual matrix which clearly defines the rights and liabilities of the parties: *Spandeck Engineering* at [83] and [114]. In the present case, there *was* a contract between the parties (*ie*, the Tenancy Agreement) defining their respective rights and liabilities. However, that contract did not rule out the imposition of a corresponding duty of care. Rather, cl 14 of the Tenancy Agreement appeared to recognise the existence of a general liability on the part of the Defendant for negligence:

> 14. In the event of any happening in our premises arising from the negligent act of the Tenant's company, servants, agent, licensees or invitees, all losses, damages affecting any other Tenant has to indemnify the Landlord for all damages caused.

77 Accordingly, I found that the Plaintiff *did* owe a duty to take reasonable care to prevent fires from starting or spreading in the Warehouse. The Defendant's submissions did not attempt to deny the existence of such a duty.

78 Having arrived at that conclusion, the next step would then be to assess if that duty had been *breached* by the Defendant. It was at this juncture of the analysis that I encountered material difficulties in the Plaintiff's submissions on its tortious claim. In the Statement of Claim,[90] the Plaintiff adopted a blunderbuss approach, firing off a plume of some 18 breaches. These were reproduced in the Plaintiff's submissions, which are extracted below:[91]

> Alternatively, the Plaintiff claims against the Defendant is in tort [*sic*] and the particulars of negligence and breach of duty of care are as follows:
>
> i) Failing to take all reasonable and effective measures whether by inspection, examination or otherwise, to ensure that there was or would be no risk of fire arising from electrical origin from the deregistered Chery Car … in the tenanted premises.
>
> ii) Failing to take appropriate or reasonable fire prevention measures by removing the petrol and/or the battery from de-registered vehicles kept at the tenanted premises.
>
> iii) Failing to remove or ensure the removal of petrol from the de-registered vehicle petrol tanks when it was kept at the tenanted premises.
>
> iv) Failing to remove or ensure the removal of the battery from the de-registered vehicle when it was kept at the tenanted premises.
>
> v) Failing to remove or ensure the removal of the car key from the ignition.
>
> vi) Working on the 23rd May 2020 which was a day during the circuit breaker period.
>
> vii) Failing to take immediate and/or effective steps to put out the fire when it was first discovered at the undercarriage of or underneath Chery [Car].
>
> viii) Working on or nearby the motor vehicle Chery [Car] during the circuit breaker period.

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90 SOC para 46.

91 Plaintiff's Closing Submissions at para 14.

ix) Using the forklift to move the motor vehicle Chery [Car] when its undercarriage or underneath was on fire.

x) Failing to take any or any suitable precautions to ensure that the fire caused by the electrical origin of the deregistered Chery Car … would not occur and spread to the other parts of the tenanted premises and the property's structure, roof, fittings and fixtures.

xi) Failing to remove and allowing deregistration vehicles to be stored at the tenanted premises.

xii) Failing to extinguish the fire at any material time.

xiii) Failing to close for work at the tenanted premises on 23 May 2020; a date which falls within the Circuit Breaker Period between 7 April 2020 and 1 June 2020. The Defendant had therefore violated the COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020).

xiv) Allowing the Defendant's workers and/or employees to enter, remain and work in the tenanted premises on 23 May 2020 during the Circuit Breaker Period in violation of the COVID-19(Temporary Measures) [*sic*] Act 2020 (Act 14 of 2020).

xv) Failing to apply and obtain fire insurance for the deregistered vehicles, vehicle spare parts, body kits and other products which were stored in the tenanted premises.

xvi) Failing to apply and obtain fire insurance for the tenanted premises[.]

xvii) Failing to take effective steps to ensure fire safety measures were observed while working at the tenanted premises[.]

xviii) Failing to have effective and adequate firefighting equipment at the tenanted premises to put out the fire immediately[.]

It was evident that little discretion had been exercised in lining up the laundry list of purported breaches extracted above. Many of the items overlapped heavily, to the point of being repetitious, with no attempt on the Plaintiff's part to properly sort them out. Additionally, it was baffling how some of these breaches found their way into the list, given that they bore no causal link to the fire whatsoever.

79 To facilitate the ease of navigating the Plaintiff's claims in tort, I categorised the alleged breaches of duty listed above under the following three headings:

(a) *Causing the fire to* ***start*** – the Plaintiff's position on this issue hinged principally on the evidential rule of *res ipsa loquitur*.

(b) *Allowing the fire to* ***spread****.*

(c) Breaches of other miscellaneous tortious duties alleged by the Plaintiff.

These three categories have been canvassed below, in the order set out above.

Whether the Defendant breached its duty of care by causing the fire to start – Res ipsa loquitur

80 Of the list of breaches pleaded by the Plaintiff and extracted at [78] above, items (i), (vii) and (xvii) in the extract related to the Plaintiff's claim that the Defendant breached its duty of care by *starting* the fire. Specifically:

(a) item (i) alleged that the Defendant failed to take all reasonable and effective measures whether by inspection, examination or otherwise, to ensure that there was or would be no risk of a fire arising from the Chery Car;

(b) item (viii) alleged that the Defendant's employees had been working on or near the Chery Car; and

(c) item (xvii) alleged that the Defendant failed to take effective steps to ensure fire safety measures were observed while working in the Warehouse.

81 The Plaintiff's pleadings nevertheless stopped short of specifying *how* these breaches led to the start of the fire. Instead, the Plaintiff's Statement of Claim sought to invoke the evidential rule of *res ipsa loquitor* to support the inference that the Defendant must have started the fire,[92] while working in the Warehouse. The Plaintiff contended that this evidential rule was available because the cause of the fire's ignition could not be precisely ascertained.[93]

82 *Res ipsa loquitur*, being Latin for "the thing speaks for itself", is an evidential rule that plaintiffs can invoke in situations where the cause of an incident is unknown and this engenders evidential challenges which may otherwise impede the plaintiff's attempts to discharge the legal burden of proving the defendant's negligence. Under such circumstances, if the defendant had been in control of the situation in which the incident occurred and that incident would not have happened in the ordinary course of things had the defendant exercised proper care, *res ipsa loquitur* may apply. A plaintiff who invokes this evidential rule would in essence be asking the court to infer that the defendant must have breached his duty of care, on the basis that the very occurrence of the incident speaks for itself. Successful invocation of *res ipsa loquitur* allows the plaintiff to establish a *prima facie* case of negligence, notwithstanding the difficulties in proving the cause of the incident, thereby shifting the *evidential* burden to the defendant to rebut the inference that the incident must have arisen from him breaching his duty of care. The mechanics underlying the operation of *res ipsa loquitur* were canvassed in *Grace Electrical Engineering Pte Ltd v Te Deum Engineering Pte Ltd* [2018] 1 SLR 76 ("*Grace Electrical Engineering*"), where the Court of Appeal explained (at [39]):

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92 SOC at para 47.

93 Plaintiff's Closing Submissions at para 234.

> It is undisputed that at law, the legal burden is on the plaintiff to prove on the balance of probabilities that the defendant was negligent in order for the plaintiff to succeed in the action. *Res ipsa loquitur* is a rule of evidence that enables a plaintiff to establish a *prima facie* case of negligence in the event that there is insufficient direct evidence to establish the cause of the accident in a situation where the accident would not have occurred in the ordinary course of things had proper care been exercised, *ie*, absent any negligence.

83 The Court of Appeal then set out three requirements which must be met by a plaintiff seeking to invoke *res ipsa loquitur* (at [39]–[40]):

> 39 … The three requirements for the application of *res ipsa loquitur* are …
>
> (a) The defendant must have been in control of the situation or thing which resulted in the accident ("the first requirement").
>
> (b) The accident would not have happened, in the ordinary course of things, if proper care had been taken ("the second requirement").
>
> (c) The cause of the accident must be unknown ("the third requirement").
>
> 40 Once the three requirements are satisfied, the evidential burden shifts to the defendant to rebut the *prima facie* case of negligence …

84 In assessing if the Plaintiff was entitled to invoke *res ipsa loquitur* to establish a *prima facie* case of negligence by the Defendant, I examined whether the three requirements above were satisfied in the present circumstances. To better accommodate the flow of the factual matrix in this case, I arranged my analysis of the three requirements in the following order:

(a) Firstly, was the cause of the fire unknown?

(b) Secondly, was the Defendant in control of the situation which resulted in the fire?

(c) Thirdly, was the fire one that would not have happened in the ordinary course of things, if the Defendant took proper care?

As will be seen below, parties devoted the bulk of their submissions to addressing requirement (c).

Was the cause of the fire unknown?

85 The third requirement for invoking *res ipsa loquitur* is that the cause of the incident must have been unknown. Where the cause is known, the evidential rule will no longer apply. The rationale for this was explained in *Grace Electrical Engineering* (at [76]):

> … This makes sense because when a cause of the accident has been established, it ceases to speak for itself and the onus is then on the plaintiff to prove that the defendant was negligent in relation to *that* cause. …
>
> [emphasis in original]

Based on the evidence, I concluded that the cause of the fire in this case was *unknown* – meaning that the third requirement for invoking *res ipsa loquitur* was satisfied. The following sets out my analysis on this issue.

86 Both experts, as well as SCDF, were unanimous in their view that the fire likely originated from the Chery Car.[94] The evidence also largely suggested that the origin of the fire was likely *electrical* in nature. Everyone was also unanimous in the view that *an electrical fault within a vehicle can trigger a fire even when the vehicle's ignition key is in the "**Off**" position*:

(a) SCDF's Report explained how electricity could continue

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94 SCDF's Report at p 7 para 9(b); Mr Cheam's 1st Report at p 29 para 5(3); Mr Brown's Report at p 13 para 5.1.

running through a vehicle's circuitry, so long as the circuits remained connected to the battery. The relevant section of SCDF's Report is extracted below:[95]

> When the engine is not running, the only available source of electrical power is the battery. A ***limited number of components remain electrically connected to the battery even though the ignition switch is off***, and the engine is not running. ***These components*** may include but are not limited to, components in the vehicle's engine compartment and undercarriage, fuse box and other items which ***can fail even when the vehicle is switched off***. [emphasis added]

During the trial, the Plaintiff called SCDF's Major Muhammad Faizal Bin Mazlan ("Maj Faizal") as a witness – he reaffirmed in his oral evidence under cross-examination that an electrical fault can still occur, even when the vehicle's ignition key is in the "Off" position.[96]

(b) Mr Cheam similarly confirmed in his oral evidence that an electrical current fault can happen even if the vehicle's ignition is in the "Off" position, given that there would still be electricity flowing through devices such as the vehicle's clock, radio, alarm system and the Electronic Control Unit memory.[97]

(c) Mr Brown, like SCDF and Mr Cheam, also agreed that the vehicle's "circuits are still alive" even when the ignition key is switched off completely.[98]

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95 SCDF's Report at p 8 para 9(c)(3).

96 Transcripts for 23 May 2024 at p 6 (lines 13-17).

97 Transcripts for 15 May 2024 at pp 71 (line 19) – 72 (lines 12).

98 Transcripts for 29 May 2024 at p 44 (lines 23-25).

87 Having said that, there was some divergence in views between parties as to whether an electrical fault (from within the Chery Car) did *in fact* cause the fire. Both SCDF and Mr Cheam took the view that this was likely the case. SCDF's Report stated that "[t]he ignition source was believed to be of an electrical origin from the deregistered Chery [Car]".[99] Similarly, Mr Cheam took the view that the cause of the ignition was "electrical in nature",[100] on account of how electrical arcing had been observed at the Chery Car's dashboard area.[101] By "arcing" Mr Cheam meant that electricity had been flowing through the wires at the time of the fire,[102] which resulted in signs of fusion, melting and bleeding on the electrical cables.[103] In contrast, Mr Brown harboured some uncertainty about whether the source of the fire in this case could have been electrical in nature.[104] Mr Brown explained that although electricity may continue to run through a vehicle's circuits while the ignition key is switched off, this phenomenon also meant that the vehicle's battery continues to drain over time.[98] He then highlighted that if the Chery Car had been left idle over the 19-day period leading up to the fire, while it was stored within the Warehouse (see [7] above), its battery might have drained to the point of going flat by the time of the fire.[105] Mr Brown explained that if that happened, an electrical fault would no longer be a competent source of ignition (there being

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99 SCDF's Report at p 8 para 9(c) & p 10 para 10(b).

100 Mr Cheam's 1st Report at p 29 para 5(4); Mr Cheam's 2nd Report at p 8 at para 5(2).

101 Mr Cheam's 1st Report at p 15 para 3.4.3(h).

102 Transcripts for 15 May 2024 at pp 13 (lines 18-20) & 17 (lines 20-25).

103 Transcripts for 15 May 2024 at p 17 (lines 26-30).

104 Mr Brown's Report at p 16 paras 5.22–5.26; Transcripts for 29 May 2024 at p 61 (lines 13-17).

105 Mr Brown's Report at p 16 para 5.22; Transcripts for 29 May 2024 at p 44 (line 26) – 45 (line 32).

no longer any charge in the battery to generate the fault).[106] In canvassing this alternative view, Mr Brown sought to cast doubts on Mr Cheam's observations that the Chery Car's wires showed signs of arcing (thereby suggesting that electricity was running through the circuitry at the time of the fire) – Mr Brown opined that what Mr Cheam saw may have been no more than "flame impingement" or "radiant heat damage".[107]

88 I accepted the unanimous view of all parties that the fire *did* originate from the Chery Car. Furthermore, I accepted the views of both SCDF and Mr Cheam that the cause of the fire was likely an *electrical* fault originating from the Chery Car. In so deciding, I was unpersuaded by Mr Brown's reservations that the Chery Car's battery may have run flat by the time of the fire (as a result of being left idle in the Warehouse for 19 days) such that an electrical fault was no longer a competent trigger:

(a) As regards the doubts which Mr Brown sought to cast on Mr Cheam's observations of electrical arcing, it had to be borne in mind that while Mr Brown based his expert conclusions on photographs taken by SCDF and Envista,[108] Mr Cheam was *physically* present at the aftermath of the fire, during which the photographs were taken. Clearly, Mr Cheam would have had a better visual perspective of the wires, which he said bore the signs of arcing – Mr Brown conceded this.[109]

(b) Plaintiff's counsel had also put to Mr Brown that people do park their cars and go off on holiday for two to three weeks at a time and it is

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106 Transcripts for 29 May 2024 at p 49 (lines 16-17).

107 Mr Brown's Report at p 9 para 3.24.

108 Transcripts for 29 May 2024 at p 36 (lines 19-33).

109 Transcripts for 29 May 2024 at p 55 (lines 1-7).

plainly uncommon for them to return home to a flat car battery. Mr Brown offered no convincing riposte, save to say that it was still "possible" for the battery to be flat upon one's return from holiday.[110]

(c) I also note that despite Mr Brown's reservations about whether electricity could still have been running within the Chery Car's circuits, he was not able to offer a sufficiently viable alternative explanation. Ultimately, he *still* concluded that an "unknown and undeterminable *electrical fault*" [emphasis added] was the "most likely cause" of the fire, subject to the caveat that he could not dismiss the prospect of the Chery Car's battery having gone flat.[111]

89 While I concluded that the fire likely started from an electrical fault within the Chery Car, I still took the view that the *cause of the fire remains* ***unknown***. I arrived at this conclusion for the following reasons.

90 Firstly, while the cause of the fire (using that term very broadly) was electrical in origin, there was no information as to *how* the electrical fault arose. SCDF's report canvassed a wide swathe of possibilities, including (i) overloaded wiring, (ii) high resistance connections due to poor or ineffective electrical connections, and (iii) electrical short circuits and arcing from damaged wiring conductor insultation:[112] Given the wide and open-ended range of possibilities, SCDF's Report concluded that "[th]e circumstances surrounding the fire of electrical origin *cannot be conclusively determined* due to the extensive damage to the car."[112] Mr Cheam's 1st Report similarly expressed an

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110 Transcripts for 29 May 2024 at p 48 (lines 6-14).

111 Mr Brown's Report at p 20 para 7.3

112 SCDF's Report at p 8 para 9(c)(3).

open-ended conclusion, stating that "the cause of the fire incident is considered *undetermined*".[113] As for Mr Brown, while he came to the qualified conclusion that an electrical fault was the most likely cause of the fire, he too described the putative electrical cause as "unknown and undeterminable" (see [88(c)] above).

91 Secondly, while the blaze may have been triggered by an electrical fault within the Chery Car, the more important question was how that electrical fault *translated* into a fire. This question lay at the very heart of the present dispute. One of the key planks undergirding the Plaintiff's case was the suggestion that the Defendant's employees were performing works either on the Chery Car or near it[114] and, while doing so, triggered the fire. In advancing that suggestion, the Plaintiff relied on Mr Cheam's 2nd Report, in which he opined that he "cannot not rule out" that the Defendant was working on the Chery Car and this may have led to (amongst other things) *petrol leakage*[115] – the electrical fault may then have ignited the leaked petrol. In contrast, SCDF contemplated that the electrical fault may have ignited a variety of materials, and not just petrol. SCDF's Report canvassed the following list of possible items:[116]

> … engine fuel, transmission, power steering, and brake fluids, lubricants, battery vapours, and the vehicle's interior component materials, contents, or cargo.

92 Accordingly, given the question marks over how the electrical fault arose, as well as how that electrical fault translated into flames, I took the view that the cause of the fire remained unknown. My conclusion was also fortified by the fact that the Defendant, despite contending that *res ipsa loquitur* was not

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113 Mr Cheam's 1st Report at p 29 para 5(6).

114 SOC at paras 45 & 46(1G); Plaintiff's Closing Submissions at para 84.

115 Mr Cheam's 2nd Report at p 7 para 4(d)(iii).

116 SCDF's Report at p 9 paras 9(d) & (e):

applicable in the present case, ultimately conceded in its submissions that the cause of the fire *was* unknown.[117]

93 This meant that the third requirement for invoking *res ipsa loquitur* was satisfied.

Was the Defendant in control of the situation?

94 The first requirement for invoking *res ipsa loquitur* is that the situation was under the Defendant's control at the time of the fire (see the extract from the decision in *Grace Electrical Engineering*, at [83] above). It was clear that this requirement was also satisfied on the facts of this case. Gabir testified that the Defendant had exclusive control over the Warehouse[118] and the things stored in it,[119] as well as control of all the people going into and out of the Warehouse.[120]

Whether the fire would not have happened in the ordinary course of things if proper care had been taken

95 The second requirement for invoking *res ipsa loquitur* is that the incident (in this case being the fire) is one that would not have happened in the ordinary course of things, if the defendant had taken proper care. In *Grace Electrical Engineering*, the Court of Appeal couched this requirement in another way: "the fire was in the ordinary course of things *more likely than not* to have been caused by the [defendant's] negligence" (at [72]). To that end, the Court of Appeal explained (at [67]) that *res ipsa loquitur* does *not* apply if the evidence is equally consistent with negligent as with non-negligent causes:

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117 Defendant's Reply Submissions at para 11.

118 Transcripts for 24 May 2024 at p 11 (lines 4-11).

119 Transcripts for 24 May 2024 at p 72 (lines 3-8).

120 Transcripts for 24 May 2024 at p 72 (lines 9-11).

> [I]n a situation where the evidence is equally consistent with negligence as with no negligence (which is premised on evidence to establish the absence of negligence in relation to the other plausible cause), then the rule simply would not apply and the plaintiff would fail at the first hurdle as it would have failed to satisfy the court that, in the ordinary course of things, the accident was more likely than not to have been caused by the defendant's negligence.

96 This specific requirement for invoking *res ipsa loquitur* is important in the context of accidents by fire. In *Grace Electrical Engineering*, the Court of Appeal observed that the mere fact that a fire occurred does not in and of itself mean that negligence must have been involved, given that fires can be triggered by many causes (at [41]):

> that the mere occurrence of a fire does not in itself give rise to the inference of negligence … This is not controversial because fires may occur without negligence on anybody's part. This does not cease to be a fact merely because the particular premises and operations carried on therein are under the exclusive control of the defendant or a person for whom he is responsible.

The above observation is particularly apposite in the present case where (as explained at [88] above) the fire was likely triggered by an electrical fault and all parties were unanimous in the view that such an electrical fault can arise in a vehicle even when its ignition key is switched to the "Off" position (see [86] above). In short, the present factual matrix was arguably a manifestation of an instance where (to use the Court of Appeal's words quoted immediately above), "the mere occurrence of the fire does not in itself give rise to an inference of negligence". An electrical fault could have been triggered within the Chery Car even as it lay dormant, with no one having turned its engine on. Without more, the state of the evidence could arguably be regarded as "equally consistent with negligence as with no negligence" (per the Court of Appeal in *Grace Electrical Engineering* at [67]), in which case *res ipsa loquitur* would not apply.

97 Under such circumstances the Plaintiff must at least *identify some act or omission* by the Defendant which could have caused the fire. As the Court of Appeal in *Grace Electrical Engineering* observed (at [47]):

> the court must necessarily examine whether there was any act or omission on the part of the defendant that could have caused the fire. Absent that, the rule simply does not apply.

If the act or omission concerned was a negligent one which *increased the risk* of a fire, the court is more likely to invoke *res ipsa loquitur*: *Grace Electrical Engineering* at [50].

98 To this end, the Plaintiff claimed that the Defendant was indeed guilty of acts or omissions which increased the risk of a fire:

(a) Firstly, the Plaintiff claimed (per item (i) of the list of breaches extracted at [78] above) that the Defendant omitted to:

> … take all reasonable and effective measures whether by inspection, examination or otherwise, to ensure that there was or would be no risk of fire arising from electrical origin from the deregistered Chery Car …

(b) Secondly, the Plaintiff claimed (per items (viii) and (xvii) of the list of breaches extracted at [78] above) that the Defendant's employees were working *on or near* the Chery Car at the time of the fire and had failed to take effective steps to ensure the observance of fire safety measures while working in the Warehouse.

I rejected the claim in (a) above as it was bereft of particulars. The Plaintiff failed to offer any elaboration as to the nature of the inspections or examinations that it had in mind, as well as how these would have ameliorated the risk of an electrical fault. Without such particulars, the court could not even begin to consider if such inspections or examinations had in fact been omitted by the

Defendant, whether the omission was negligent and whether the omission ultimately had any causal link to the fire which ensued.

99 As for the act alleged in (b) of the preceding paragraph, *ie*, working on or near the Chery Car without observing safety measures, this was the central focus of parties' submissions on *res ipsa loquitur*. At the outset, I noted that the Plaintiff's case was highly murky when it came to identifying just what "works" the Defendant's employees were allegedly performing in the Warehouse at the time of the fire.

(a) Firstly, as regards the works performed *near* the Chery Car, the Plaintiff failed to particularise just what "works" it had in mind. Given that these works would not have been performed on the Chery Car (but "near" it), it was unclear if the Plaintiff was referring to works on other vehicles, or perhaps some other type of non-vehicle-related works. In the absence of any particularisation, this aspect of the Plaintiff's claim could not be meaningfully ruled upon.

(b) Further, even if we were to focus on works performed on the Chery Car itself, the Plaintiff's position on the nature of these "works" was vague and at times self-contradictory. In its submissions, the Plaintiff suggested that the Defendant's employees were performing scrapping, which would in turn require hot works that necessarily heightened the risk of a fire.[121] I rejected this. Firstly, the Plaintiff's own expert, Mr Cheam, had ruled out the prospect of hot works having been conducted. Mr Cheam's 2nd Report stated categorically that:[122]

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121 Plaintiff's Closing Submissions at para 53.

122 Mr Cheam's 2nd Report at p 6 para 4(b)(i).

> The subject vehicle was not being cut up, with *no hot work*s to create mechanical sparks at the time of the incident, *so unlikely to be those activities* [*sic*].
>
> [emphasis added]

There was also no suggestion that any other vehicles near the Chery Car might have been undergoing hot works. Furthermore, while tools had been found near the Chery Car in the fire's aftermath (see [14(b)] above), the Plaintiff did not explain if any of them might have been employed for hot works.

100 In light of my view that the fire was most likely caused by an electrical fault within the Chery Car (see [88] above), the pertinent question should focus on what sort of works by the Defendant's employees might have allowed such an electrical fault to trigger combustion. In this respect, Mr Cheam postulated that the Defendant's employees might have been working on the Chery Car's engine compartment and said that such works could cause petrol leakage, electrical arcing and the generation of a hot surface, whereby the leaked petrol might then have ignited upon contact with electrical arcing, sparking or the hot surface.[123] When I asked Mr Cheam if he could explain the type of works he had in mind that might result in such an occurrence, he said that it could be "repairs or maintenance or whatever that is" which would require the Chery Car's bonnet to be opened.[124]

101 I found the Plaintiff's case on this point to be problematic. As explained at [97] above, a plaintiff seeking to satisfy the second requirement for invoking *res ipsa loquitur* must identify some act or omission by the defendant which

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123 Mr Cheam's 2nd Report at para 4(d)(iii); Transcripts for 15 May 2024 at p 73 (lines 6-13).

124 Transcripts for 15 May 2024 at p 73 (lines 14-25).

could have caused the fire. Further, if that act or omission *increased the risk* of occurrence of fire, the court is more likely to invoke *res ipsa loquitur*: see *Grace Electrical Engineering* at [47] and [50]. It was difficult to see why opening a vehicle's bonnet and performing (to use Mr Cheam's words) "repairs or maintenance or whatever that is" should be construed as increasing the risk of a fire. This should be contrasted with the facts of *Grace Electrical Engineering* (summarised at [14] of the Court of Appeal's decision) where the defendant had embarked on a legally prohibited course of conduct that clearly bore a proximate correlation with fire risk. The defendant in that case had, in breach of fire safety legislation, converted part of its premises into living quarters for its workers. As a result, the area was littered with electrical appliances and wiring. There were also large quantities of combustible materials, with no fire extinguishers on site. The workers even performed cooking on the premises, notwithstanding that they had no business being there in the first place. This state of affairs persisted despite repeated warnings from SCDF. It was also not disputed in that case that cooking activities were ongoing at the time the fire started. One could thus see why, on the facts of *Grace Electrical Engineering*, the defendant was regarded by the court as having engaged in conduct which increased the risk of a fire. In contrast, no such activity was discernible in the present factual matrix. Any repair and maintenance works performed under the bonnet of a vehicle plainly fell within the realm of business which parties to the Tenancy Agreement contemplated that the Defendant could engage in. This meant that *even* if the Defendant's employees had been performing such works on the Chery Car or on any other vehicle in the Warehouse at the time of the fire, they were simply doing what they were supposed to do. This could not, in and of itself, be classified as an act or omission which *increased* the risk of a fire.

102 The Plaintiff sought to emphasise the fact that any such works would, as

did the conduct of the defendant in *Grace Electrical Engineering* detailed in the preceding paragraph, constitute a serious regulatory breach. Specifically, such works would have contravened the Circuit Breaker restrictions on business activities: see item (viii) of [78] above. In my view, this was a red herring. The focus of the analysis is on whether the act or omission concerned increased the risk of a fire. On the present facts, any breach of the Circuit Breaker measures would have borne no relation to fire risk – that risk would have been the same regardless of whether the works were done during the Circuit Breaker or in some other period. While any breaches of the Circuit Breaker measures would be dealt with firmly under the relevant regulatory framework, they did not (in terms of enhancing fire risk) stand on the same footing as the regulatory breaches in *Grace Electrical Engineering*, which involved the infringement of *fire safety* legislation and clearly increased the risk of a fire.

103 In any case, I found that the Plaintiff had failed to adduce sufficient evidence to establish that the Defendant's employees had indeed been performing any works, whether on the Chery Car or on any other vehicles within the Warehouse, at the time of the fire, for the reasons which follow.

104 The Defendant flatly denied that its employees were working on any vehicles in the Warehouse at the time of the fire.[125] The Defendant maintained that on the evening of the fire, its employees were at the Warehouse merely to take possession of deregistered vehicles being delivered to the Property, with a view to storing them in the Warehouse.[126] In his oral testimony, Ganapathy explained that even during the Circuit Breaker, vehicles continued to be

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125 Defendant's Closing Submissions at paras 81–83.

126 Transcripts for 28 May 2024 at pp 23 line (line 22) – 24 (line 7); Ganapathy's AEIC at para 6.

delivered to the Property[127] and it was not open to the Defendant to simply turn them away.[128] Further, the vehicles which had been delivered needed to be moved into the Warehouse for storage, failing which they could cause obstructions.[129] The Defendant's position was that while performing any works on the vehicles would have run afoul of the Circuit Breaker's restrictions,[130] simply taking delivery of these vehicles and stowing them away to avoid obstruction was permitted.[131]

105 The Plaintiff sought to refute the Defendant's denial by highlighting a variety of factors which purportedly supported the inference that the Defendant's employees must have been working on the Chery Car or some other vehicle in the Warehouse at the time of the fire:

(a) First, the presence of tools near the Chery Car indicated that the Defendant's employees must have been working on or near it when the fire started.

(b) Second, SCDF's Report contained an explicit statement that Ganapathy was "working" when the fire started – this clearly must have been relayed by Ganapathy himself when he was being interviewed by SCDF, thereby affirming the conclusion that he *was* working in the Warehouse at the time of the fire.

(c) Third, the Defendant's explanation for why its employees were

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127 Transcripts for 28 May 2024 at p 10 lines (8-11).

128 Transcripts for 28 May 2024 at p 13 lines (23-26).

129 Transcripts for 28 May 2024 at pp 24 (lines 12) – 25 (line 13).

130 Transcripts for 28 May 2024 at p 13 lines (16-22).

131 Transcripts for 23 May 2024 at pp 31 (line 11) – 32 (line 6).

at the Warehouse on the evening of the fire – particularly its account of the *timing* at which they arrived at the Warehouse – was inconsistent.

(d) Fourth, Zhang Jinhai (a mechanic working for the Plaintiff's related company, E K Ang: see [10] above) testified that on the day of the fire, he heard sounds of acceleration and/or the movement of machines emanating from the Warehouse.

(e) Finally, the fact that fuel was leaking from the Chery Car at the time of the fire (see [10] above) was consistent with someone having worked on it just prior to the fire.

106 In my view, these factors, whether taken individually or in combination, were not sufficiently probative of the Defendant having worked on the Chery Car (on any other vehicle in the Warehouse) at the time of the fire.

107 My reasons for this conclusion are set out below.

(1) Presence of tools near the Chery Car

108 As explained at [14(b)] above, various tools were found near the Chery Car and forklift in the aftermath of the fire. Arising from the presence of these tools, the experts in this case drew the following conclusions:

(a) In Mr Cheam's 2nd Report, he opined that the location in which these tools were found was "odd", as one would have expected them to be properly kept aside.[132] Mr Cheam's 2nd Report had thereby concluded that the possibility of the Defendant's employees working on

[132] Mr Cheam's 2nd Report at pp 6–7 para 4(b)(ii).

the Chery Car at the time of the fire *could not be ruled out*.[133] This opinion had then hardened into a conclusive statement in Mr Cheam's AEIC, where he affirmed that "[w]orkers ***were*** *working* at or before the material time of the fire, as tools were found near the front of Chery [Car]"[134] [emphasis added].

(b) Mr Brown similarly suggested that "the presence of the tools directly below where the vehicle may have been, would indicate previous, or an intention to, work on the car prior to the fire."[135]

109 At the outset, it must be pointed out that the question of whether these tools were suggestive of works having been performed on the Chery Car was a *factual* inference, for which the court did not require either Mr Cheam or Mr Brown to weigh in on. In any case, Mr Cheam qualified under cross-examination that in drawing his conclusion about the tools, he was merely canvassing a possibility and he would not know for sure whether the Defendant's employees were in fact working on the Chery Car[136] (although I note that this was somewhat contrary to the unequivocal tone of the affirmation in his AEIC that the Defendant's employees "were working"). Mr Brown similarly qualified in his oral testimony that it was speculative to say whether the presence of the tools meant that works were being done on the Chery Car.[137]

110 As regards the Defendant's explanation for the tools, Ganapathy

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133 Mr Cheam's 2nd Report at p 7 paras 4(d)(iii) & (e)(ii); Transcripts for 15 May 2024 at p 59 lines (14-27).

134 Cheam's AEIC at para 11(a).

135 Mr Brown's Report at p 7 para 3.17.

136 Transcripts for 15 May 2024 at p 59 (lines 21-32)

137 Transcripts for 29 May 2024 at p 53 (lines 7-10).

surmised that they may well have already been on the floor because the relevant spot where they were found was where the Defendant worked on vehicles *before* the Circuit Breaker came into effect.[138] He also canvassed another possibility, being that the tools may have been on the forklift and fell to the ground when he was hoisting the Chery Car into the air.[139]

111 In my opinion, the presence of the tools on the floor was neither here nor there. Rather, one needed to look at the broader picture to see if the Defendant could indeed have been working in the Warehouse at the time of the fire. In this respect, the fact that the fire happened on a day that was deep within the heart of the Circuit Breaker was relevant. I accepted the Defendant's explanation that its employees were unlikely to have been performing any works on the vehicles given the prospect of regulatory prosecution.[140] To that end, I agreed with the Defendant's observation that any such vehicular works would have been easily detected.[140] There were roller shutter entrances on three of the Warehouse's four walls – the north, the east and the west walls (see the diagram at [12] above, where the roller shutters are denoted by the dotted lines). The undisputed evidence was that the roller shutters were always open,[141] even during the Circuit Breaker[142] (although parties disputed whether the roller shutters were kept open for the Defendant's own convenience or at the behest of the Plaintiff[143]). In fact, Mr Cheam's 1st Report went further to say that the

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138 Transcripts for 28 May 2024 at p 46 (lines 13-18).

139 Ganapathy's AEIC at paras 12–13; Transcripts for 28 May 2024 at p 46 (lines 13-18).

140 Defendant's Closing Submissions at para 83; Transcripts for 23 May 2024 at p 31 (lines 9-12).

141 Transcripts for 23 May 2024 at p 64 (lines 18-29).

142 Transcripts for 23 May 2024 at p 76 (line 25).

143 Transcripts for 23 May 2024 at p 76 (lines 18-25).

Warehouse had *no* roller shutters and the entrance was *open*.[144] All of this tied in with Paulraj's evidence that anyone within the Property, including the Plaintiff's employees and the workers in the dormitory, could walk around as the area was "very open".[145] Under such circumstances, it did appear unlikely that the Defendant's employees would have ventured to work on the Chery Car at the relevant time.

112 Furthermore, Mr Cheam's 1st Report had recorded Ganapathy's explanation that when the fire was first discovered, Ganapathy and Mani were standing at the *west* entrance to the warehouse (*ie*, the entrance at the *left* of the diagram at [12] above). This would have been some distance away from the Chery Car, which at the time of the fire was situated to the *right* of the diagram at [12] above, specifically at the red circle. Ganapathy's explanation thus detracted from the suggestion that he and Mani were working at or near the Chery Car when the fire started, as they were some distance away from it. Ganapathy's explanation, which was provided by him during an interview conducted six days after the fire,[146] was captured in the following section of Mr Cheam's 1st Report:[147]

> On the day of the incident, [Ganapathy] and Mr. Mani returned at approximately 4:30pm to check stocks of scrapped cars and no other work was carried out. At approximately 6:00pm, he turned on the high-bay lighting. At approximately 6.30pm, *he and Mr. Mani were standing at the container area at the West entrance. Suddenly, he saw what appeared to be flames at the bottom of Cherry* [*Car*], in between the engine bay and car cabin area. Upon closer looking, he confirmed it was a fire. He immediately drove the diesel forklift, which was parked near the container at the West entrance area, to the Cherry [Car]. He

144 Mr Cheam's 1st Report at p 5 para 3.4.1(f).

145 Transcripts for 23 May 2024 at p 64 (lines 15-24).

146 Mr Cheam's 1st Report at p 13.

147 Mr Cheam's 1st Report at p 14.

> pulled out the Cherry [Car] further into the middle pathway and lifted up the car.

Mr Cheam was thus cross-examined on the conclusions in Mr Cheam's *2nd* Report, to the effect that the Defendant's employees were possibly working on the Chery Car at the time of the fire. Specifically, Mr Cheam was confronted with how this conclusion could have cohered with the section from Mr Cheam's *1st* Report, extracted immediately above. In response, he conceded that in drawing the conclusions in Mr Cheam's 2nd Report (about the Defendant's employees working on the Chery Car at the time of the fire), he might have "overlook[ed]" Ganapathy's explanation, as captured in the section of Mr Cheam's 1st Report extracted above.[148] Mr Cheam also agreed that had he not omitted to take Ganapathy's explanation into consideration, the conclusions in Mr Cheam's 2nd Report "*would have been* ***different***".[149]

113 I should add that I was inclined to give a little more weight to Mr Cheam's 1st Report than Mr Cheam's 2nd Report. The former was far more contemporaneous, in terms of proximity in time to the fire, as compared to the latter. Mr Cheam's 1st Report was based on interviews conducted barely a week after the fire and issued as early as 23 September 2020, when he was still acting for the fire insurance company. In contrast, Mr Cheam's 2nd Report was issued much later, on 13 March 2024, long after Mr Cheam came on board as the Plaintiff's expert.

114 Looking at the evidence in totality, I thus found that the mere presence of the tools was not sufficiently probative of the Defendant's employees having worked on the Chery Car at the time of the fire.

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148 Transcripts for 15 May 2024 at p 61 (lines 15-21).

149 Transcripts for 15 May 2024 at p 61 (lines 22-24).

(2) The statement in SCDF's Report that Ganapathy was "working" in the Warehouse

115 To further buttress its submission that the Defendant's employees were working on the Chery Car when the fire started, the Plaintiff highlighted the following section of SCDF's Report, where the reference to Ganapathy "working" appeared twice:[150]

> Interviews were conducted with general workers, [Ganapathy] and [Mayavel], who were *working* in the warehouse at the time of the incident. …
>
> > i. They were *working* in the warehouse when they discovered a fire underneath [the Chery Car]…
>
> [emphasis added]

The Plaintiff submitted that the above statements in SCDF's Report could only have been relayed by Ganapathy himself, when SCDF was interviewing him.[151]

116 Mr Cheam relied on the statement in SCDF's Report (that Ganapathy was "working"), coupled with the presence of the tools on the ground, to draw the conclusion that the Defendant's employees may have been working on the Chery Car at the time of the fire.[152] However, I noted that this conclusion, which was expressed in Mr Cheam's 2nd Report, failed to properly account for what was captured in Mr Cheam's 1st Report. Specifically, Mr Cheam's 1st Report recounted how, notwithstanding the presence of the tools, the Defendant informed him that *no work* was conducted at the material time as the Defendant had to close for the Circuit Breaker period:[153]

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150 SCDF's Report at p 4 para 8(b)(1).

151 Plaintiff's Closing Submissions at paras 76(a), 77, 84 & 107.

152 Transcripts for 15 May 2024 at p 59 (lines 14-27).

153 Mr Cheam's 1st Report at p 28.

> Envista found working tools placed directly in front of the subject scrapped car Cherry … [The Defendant] stated that during the Covid-19 circuit breaker period, there was no work carried out and their company was closed during this period.

There was nothing in Mr Cheam's 1st Report to gainsay this explanation. In my view, Mr Cheam's 2nd Report should not have simply focused on the statement in SCDF's Report (*ie*, that Ganapathy and Mayavel were "working") to support his conclusion that the Defendant's employees may have been working on the Chery Car at the time of the fire, without *also* highlighting the Defendant's side of the story captured in Mr Cheam's 1st Report (extracted above) that no work was carried out during the Circuit Breaker period. In bringing only part of the picture to the fore, Mr Cheam's 2nd Report failed to paint a sufficiently balanced picture when it concluded that the Defendant's employees may have been working on the Chery Car when the fire started.

117 *Even* if I were to focus solely on the statement in SCDF's Report (that the two men were "working"), I did not think that it justified the Plaintiff's conclusions, for the following reasons:

(a) From a plain reading, SCDF's report did *not* say that Ganapathy or any of the Defendant's other employees were "working" *on the Chery Car*. In fact, it made no mention of the Defendant's employees "working" on any motor vehicle in the Warehouse.

(b) Ganapathy had also explained that the statement in SCDF's Report may have arisen from a misunderstanding, given that the interview was conducted in English,[154] a language that he understood only "a bit" of.[155] Ganapathy testified that he perceived the SCDF officer

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154 Transcripts for 28 May 2024 at p 14 (lines 19-23).

155 Transcripts for 28 May 2024 at p 23 (lines 15-16).

interviewing him as asking if he worked *for the Defendant*, to which Ganapathy replied in the affirmative.[156] Ganapathy maintained that he never told the SCDF officer that he was "working" at the time of the fire.[157] I was unable to discount Ganapathy's explanation that there may have been some miscommunication with the SCDF officer interviewing him. That SCDF officer was not called to contradict Ganapathy's explanation. I also found that Ganapathy's explanation pertaining to his lack of proficiency in the English language, cohered with the fact that both Ganapathy and Mayavel gave their testimonies in court with the aid of a Tamil interpreter.

118 Given the considerations above, there was simply no scope for the Plaintiff to place any meaningful weight on the word "working" in SCDF's Report when attempting to draw the inference that the Defendant's employees were working on the Chery Car at the time of the fire.

(3) Inconsistency in the Defendant's account of when its employees arrived at the Warehouse

119 The Plaintiff also sought to attack the credibility of Ganapathy's evidence by pointing to inconsistencies in his account of how long he had been at the Warehouse, just prior to the fire.

120 As set out in the extract of Mr Cheam's 1st Report at [112] above, Ganapathy and Mani went to the Warehouse on the evening of the fire at approximately 4:30pm. The fire started about *two hours* after that, at around 6.30pm. At trial, the Plaintiff attempted to elicit from Ganapathy what happened

156 Transcripts for 28 May 2024 at pp 15 (lines 10-12) & 23 (line 21).

157 Transcripts for 28 May 2024 at p 15 (line 10).

during this two-hour window. When asked just how many vehicles were delivered to the Property that evening, Ganapathy replied that he could not remember. When the Plaintiff's counsel pressed him on this, Ganapathy hazarded that it could have been two or three vehicles[158] (this did *not* include the Chery Car, which would have been stowed in the Warehouse since as early as 19 days before the fire: see [7] above). Ganapathy further explained that it took about 10–15 minutes to bring a vehicle into the Warehouse and stow it – this would include conducting the necessary administrative checks on the vehicle before storage[159] – and that this duration could stretch to 20–25 minutes if there was any issue with starting the vehicle.[160] Plaintiff's counsel had then pointed out to Ganapathy that the numbers did not add up: spending 10–25 minutes to stow two or three vehicles in the Warehouse would mean that if Ganapathy had indeed arrived at the Warehouse at 4.30pm, he should have been done stowing the vehicles in the Warehouse by 5.30pm. As such, why was he still present in the Warehouse when the fire was spotted at 6.30pm? When confronted with this, Ganapathy clarified that he might have arrived at the Warehouse *after* 5pm, rather than at 4.30pm (as reflected in Mr Cheam's 1st Report).[161] The Plaintiff thus submitted that Ganapathy had contradicted what he said during his interview by Mr Cheam, as captured in Mr Cheam's 1st Report.[162]

121 In my view, the Plaintiff failed to adequately demonstrate why and how this discrepancy in timing advanced its case. Presumably, the Plaintiff's point was that the timing in Mr Cheam's 1st Report should be taken as correct,

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158 Transcripts for 28 May 2024 at pp 25 (line 25) – 26 (line 3)

159 Transcripts for 28 May 2024 at pp 25 (lines 27-28) & 28 (lines 9-11).

160 Transcripts for 28 May 2024 at p 28 (lines 17-19).

161 Transcripts for 28 May 2024 at pp 28 (line 24) – 29 (line 1).

162 Plaintiff's Closing Submissions at para 179.

meaning that Ganapathy had been at the Warehouse for two hours when the fire started, and that such a duration was more consistent with Ganapathy performing works on the vehicles rather than simply storing them. However, I did not think that the margin of error in the timing was sufficiently significant for any adverse inferences to be drawn against Ganapathy's evidence on this point. After all, Ganapathy did qualify that he was unable to remember just how many vehicles were delivered to the Warehouse on the evening of the fire.[163] Without verification of this variable, it was difficult to accord any significant weight to the Plaintiff's projections in timing, given that a difference of a few vehicles could have shifted the balance either way.

(4) Zhang Jinhai's evidence about sounds emanating from the Warehouse

122 The Plaintiff also relied on testimony of Zhang Jinhai, an employee of E K Ang (see [10] above), who affirmed that he heard acceleration sounds and/or movements of machines coming from the Warehouse on the day of the fire.[164] During cross-examination, Plaintiff's counsel put Zhang Jinhai's testimony to Ganapathy and suggested that such sounds were heard "throughout the day". Ganapathy disagreed.[165]

123 In my view, Zhang Jinhai's evidence did not sufficiently assist the Plaintiff's case. Firstly, he did not pin down the time of the day at which he heard the sounds, *eg*, whether it was anywhere near the time that the fire was discovered. I noted that Plaintiff's counsel had suggested to Ganapathy that the sounds were heard "throughout the day" by "one of the witnesses".[166] However,

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163 Transcripts for 28 May 2024 at p 25 (lines 29-30)

164 Zhang's AEIC at para 16.

165 Transcripts for 28 May 2024 at p 30 (lines 1-6).

166 Transcripts for 28 May 2024 at p 30 (lines 1 – 6).

this was a bald assertion from the bar, as none of the witnesses gave evidence to this effect. Zhang Jinhai also did not specify the rough location within the Warehouse from which the sounds came from, *eg*, whether they emanated from anywhere near the spot where the fire started (being the red circle in the diagram at [12] above). Zhang Jinhai's description of the sounds (acceleration and movement of machines) was also too vague for me to attribute them to any class of works that might have increased the risk of a fire.

124 More importantly, none of the workers on the premises, including Zhang Jinhai, *saw* the Defendant's employees working on any vehicle in the Warehouse. This was noteworthy, given Paulraj's testimony that the Property was "very open" – to the point that the Plaintiff's employees and the workers in the dormitory could walk around (see [111] above). As all the entrances to the Warehouse were exposed, anyone within the Property could have peered in to see what the Defendant was doing. If the works had indeed generated sounds "throughout the day" (as suggested by Plaintiff's counsel), when this was supposed to have been the heart of the Circuit Breaker period, it was remarkable that the Plaintiff was unable to produce even a single eyewitness who might have come to see what was generating the sounds in the Warehouse.

(5) Leakage of fuel from the Chery Car during the fire

125 As described at [10] above, flammable liquid had leaked from the Chery Car when Ganapathy raised it with the forklift. Mr Cheam explained that for this leak to have occurred, the vehicle's fuel pump must have been in operation to generate sufficient pressure in the fuel lines. He further opined that the fuel pump could not have generated such pressure if the Chery Car's ignition key had been in the "Off" position. Consequently, Mr Cheam attributed the petrol

leakage observed by Ganapathy *to either* of the following two causes:[167]

(a) the Chery Car's ignition had been in the "On" position at the time of the fire; *or*

(b) the engine had been started "just prior to"[168] the fire.

That both these causes were being proposed in alternative was reinforced by Mr Cheam's confirmation that even if the engine had *not* been started, the mere act of leaving the ignition key in the "On" position could still generate pressure in the fuel lines and cause the leak.[169]

126 Building on Mr Cheam's opinion above, the Plaintiff reasoned that as the Chery Car had been stowed in the Warehouse for 19 days prior to the fire (see [7] above), there would have been little reason for someone to switch its ignition key to the "On" position, or for its engine to have been started, *unless* the Defendant's employees had been performing maintenance and repairs on it at the time the fire started.

127 However, I note that the inference which the Plaintiff sought to draw from Mr Cheam's evidence suffered from a critical flaw: just because the ignition key was in the "On" position did *not* necessarily mean that the Defendant's employees had been working on the Chery Car. It was perfectly possible for the Chery Car to have been stored in the Warehouse with the ignition key still in the "On" position, without anyone ever having worked on it

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167 Mr Cheam's 2nd Report at p 7 para 4(e)(iii) and p 8 para 5(4); Cheam's AEIC at para 11(c); Transcripts for 15 May 2024 at p 77 (lines 26-29).

168 Mr Cheam's 2nd Report at p 7 para 4(e)(iii).

169 Transcripts for 15 May 2024 at pp 77 (line 31) – 78 (line 4).

over the 19 days leading to the fire. Such a possibility was entirely consonant with the observations in Mr Cheam's reports that some of the undamaged vehicles in the Warehouse were similarly found with their ignition keys in the "On" position[170] – there was no suggestion that the Defendant was also working on all these other vehicles at the time of the fire.

128 The Plaintiff could surmount this flaw in its reasoning if it could show that the ignition key of the Chery Car had been in the "Off" position at the time of the fire. By ruling out cause (a) in [125] above, that meant that the only reason for pressure to have accumulated in the Chery Car's fuel lines would have been cause (b), *ie*, the Defendant's employees must have started the Chery Car's engine "just prior to" the fire. This might then place the Plaintiff in a slightly better vantage point to advance the suggestion that the Defendant's employees must have been working on the Chery Car at the time of the fire, on account of them having no reason to start its engine unless work was being done. However, any suggestion by the Plaintiff that the Chery Car's ignition had been in the "Off" position would have met significant challenges:

(a) Firstly, Mr Cheam's 1st Report explained that the Chery Car's ignition key could not be located.[171] This meant that the Plaintiff was in no position to speculate whether the ignition key had been in the "Off" as opposed to the "On" position.[172] In this respect, Ganapathy was also unsure if the Chery Car's ignition key had been in the "On" position.[173] In fact, he was not even able to confirm if the ignition key was within

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170 Mr Cheam's 1st Report at p 28; Mr Cheam's 2nd Report at p 7 para 4(c)(ii).

171 Mr Cheam's 1st Report at p 28; Mr Cheam's 2nd Report at p 7 para 4(c)(iii).

172 Transcripts for 15 May 2024 at p 53 (lines 5-8); Mr Cheam's 2nd Report at p 7 para 4(c)(iii).

173 Transcript for 28 May 2024 at p 18 (lines 7-17).

the Chery Car's cabin.[174]

(b) Secondly – and this was the more critical point – the stance which the Plaintiff had *repeatedly* pressed throughout the trial was that the Chery Car's ignition key was in the "On" (and *not* "Off") position.[175]

129 In any case, even if I were to rule out cause (a) in [125] above and proceed on the premise that the Chery Car's ignition key was in the "Off" position, this did not necessarily mean that cause (b) in [125] above (*ie*, that the Defendant's employees started the Chery Car's engine "just prior to" the fire) *must* have been operative, as Mr Cheam would suggest. Mr Cheam had expressly qualified his opinion about how pressure may have accumulated in the Chery Car's fuel line, saying that his views depended on the make and model of the vehicle.[176] Specifically, Mr Cheam confirmed that he did *not* know the make and model of the Chery Car[177] and caveated that there were certain makes and models for which his conclusions as to the accumulation of pressure in the fuel lines may *not* hold true.[178] With such a material proviso, I did not think it was safe to place much weight on Mr Cheam's opinion about how pressure may have accumulated in the fuel lines of the Chery Car due to its engine being started "just prior to" the fire.

130 Mr Cheam's opinion on this point had to be contrasted with that of Mr Brown, who had used the information in SCDF's Report pertaining to the Chery

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174 Transcript for 28 May 2024 at p 32 (lines 18-21).

175 See also Plaintiff's Closing Submissions at paras 87–90 & 95.

176 Mr Cheam's 2nd Report at p 8 para 5(4); Transcripts for 15 May 2024 at pp 78 (lines 1-3), 79 (lines 4-11).

177 Transcripts for 15 May 2024 at p 67 (lines 8-10).

178 Transcripts for 15 May 2024 at p 79 (lines 23-30).

Car's deregistration date[179] to trace the model of the Chery Car[180] and retrieve the vehicle manual. Armed with this information, Mr Brown disagreed with Mr Cheam's opinion about how fuel pressure would be present in the fuel lines only if the ignition key was switched on or if the engine had been running just prior to the incident.[181] Instead, Mr Brown explained that any pressure generated in the fuel lines from switching the engine on could well remain for weeks or even months.[182] This was not challenged by the Plaintiff.

131 Consequently, I could not agree with the Plaintiff's suggestion that the fact that petrol had leaked from the Chery Car at the time of the fire necessarily suggested that its engine must have been switched on just prior to the fire. Pressure could have remained in the Chery Car's fuel line for a substantial duration leading up to the fire, even if the Chery Car's engine had been untouched throughout. The leakage of fuel thus did not support the claim that the Defendant's employees were working on the Chery Car just prior to the fire.

Conclusion on whether the Defendant caused the fire to start

132 In conclusion, the Plaintiff was not entitled to rely on *res ipsa loquitur*. The Plaintiff failed to establish the second requirement for invoking this evidential rule, *ie*, that the accident would not have happened in the ordinary course of things if proper care had been taken. There was nothing to show that the Defendant might have done anything to increase the risk of a fire. In fact, all the experts agreed that an electrical fault could arise within a vehicle, even

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179 SCDF's Report at p 6 footnote 7.

180 Transcripts for 29 May 2024 at p 6 (lines 12-29).

181 Transcripts for 29 May 2024 at pp 12 (lines 10-13)

182 Transcripts for 29 May 2024 at pp 12 (line 26) – 13 (line 7), 19 (line 27) – 20 (line 11).

if the engine had been switched off. Further, the Defendant adduced evidence that it was not conducting hot works, or any works for that matter, on the Chery Car or on any other vehicle in the Warehouse just prior to the fire. The Plaintiff's evidence failed to sufficiently prove otherwise. Furthermore, *even* if the Defendant had been working on vehicles in the Warehouse, these would have been works that it was legitimately entitled to carry out under the Tenancy Agreement – the Plaintiff could not demonstrate why such works should be regarded as an escalation of fire risk that supported invoking *res ipsa loquitur*.

133 The Plaintiff thus had to prove that the Defendant breached its duty of care by causing the fire to *start*, without the aid of the evidential rule in *res ipsa loquitur*. Having looked at the evidence adduced, I was not satisfied that the Plaintiff succeeded in discharging that burden. There was simply nothing to show that the Defendant had been in any way responsible for starting the fire.

Whether the Defendant breached its duty of care by allowing the fire to spread

134 The following section canvasses the breaches pertaining to the Defendant's alleged failure to adequately prevent the *spread* of the fire. The items listed at [78] which relate to this alleged failure can very broadly be categorised under the following three headings:

(a) Storing the vehicles within the Warehouse in a manner that facilitated the spread of the fire.

(b) Failing to have effective and adequate firefighting equipment at the Warehouse to put the fire out immediately.

(c) Failing to take immediate and effective steps to extinguish the fire when it was first discovered and prevent its spread to other

parts of the Warehouse.

135 In my view, none of the Plaintiff's claims in respect of these categories of breaches was supported by the evidence. Each of these categories are addressed in turn below.

Storing vehicles within the Warehouse in a manner that facilitated the spread of fires

136 Firstly, the Plaintiff claimed that the Defendant had stored the vehicles within the Warehouse in a *manner* that facilitated the spread of the fire.

137 Before delving into this claim, I noted that one of the Plaintiff's contentions was that the mere act of *storing* deregistered vehicles in the Warehouse (regardless of the manner of storage) constituted a breach of the Defendant's duty of care in tort: see item (xi) at [78] above. In my view, that contention was a non-starter. As explained at [35] above, the Plaintiff *consented* to the Defendant storing deregistered vehicles in the Warehouse (such storage being a necessary corollary to the Defendant's business of scrapping and exporting vehicles). I did not agree that the act of storing the vehicles in the Warehouse, being an act which the Defendant was contractually entitled to do, could in and of itself be construed as a breach of the Defendant's duty to prevent the spread of fires. In this vein, it has been observed that where parties are in a contractual relationship, it would be unusual to find a duty of care in tort which imposes obligations stretching beyond that which the parties have already laid out between themselves pursuant to a contract: *Deutsche Bank AG v Chang Tse Wen* [2013] 4 SLR 886 at [51] (citing *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank Ltd* [1986] AC 80 at 107). It follows that the position taken by the Plaintiff, *ie*, that merely engaging in a contractually permitted course of business would constitute a breach of the Defendant's (purported) tortious duty of care,

must be rejected.

138 As regards the *manner* in which the vehicles were stored within the Warehouse, the Plaintiff contended that the vehicles were deposited in a state which created a fire hazard.[183] The Plaintiff maintained that for the Defendant to abide by its duty to prevent the spread of fires, the Defendant should have taken the following precautionary steps prior to storing each vehicle:

(a) remove the petrol from the vehicle (the Plaintiff was referring to the removal of petrol from the petrol tank, rather than removal of the petrol tank itself): see items (ii) and (iii) at [78] above;

(b) remove the battery from the vehicle: see items (ii), (iii) and (iv) at [78] above; and

(c) remove the ignition key: see item (v) at [78] above.

It was undisputed that the Defendant failed to take these steps. Based on witness accounts, there were about 60 vehicles in the Warehouse that still had petrol in their tanks and their batteries connected as at the point of the fire.[184] Further, as explained at [127] above, Mr Cheam's reports stated that the keys of some of the vehicles in the Warehouse were still in the ignition, at the "On" position.[185]

139 I rejected the Plaintiff's claim that these omissions constituted a breach of the Defendant's duty to prevent the spread of fires:

(a) As regards the failure to remove the petrol from the vehicles

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183 Plaintiff's Closing Submissions at para 54.

184 Transcripts for 24 May 2024 at p 32 (lines 22-26).

185 Mr Cheam's 1st Report at p 28.

stored in the Warehouse, I was unable to regard this as a breach of duty by the Defendant given the absence of any technical evidence that this was a fire hazard. As explained at [46(b)]above, there was no evidence of any industry practice mandating that fuel be siphoned out prior to the storage of vehicles. Goh himself saw no issue with the vehicles stored in the Warehouse having fuel in their tanks: see [44(b)] above.

(b) As regards the Plaintiff's claim that the vehicles' batteries should have been removed and the keys taken out of the ignition, the Plaintiff similarly failed to adduce evidence of any industry safety standard requiring such steps to be taken prior to storage. Further, the Circuit Breaker had been in force for over *six weeks* at the time of the fire – the Plaintiff failed to explain how the Defendant could have worked on the vehicles to remove their batteries without flouting the Circuit Breaker restrictions.

Failing to maintain effective and adequate firefighting equipment

140 The Plaintiff also claimed that the fire managed to spread because the Defendant failed to maintain effective and adequate firefighting equipment at the Warehouse premises: see item (xviii) at [78] above.

141 I rejected this claim, as there was nothing to suggest that the failure to extinguish the fire arose from any want of firefighting equipment on the Defendant's part. As I had explained at [62] above, evidence was adduced at trial of the following:

(a) The Defendant had at least six fire extinguishers on the premises, including the type used to fight fires caused by flammable liquids.

(b) At the time of the fire, the Defendant's employee Mani ran out with a fire extinguisher to fight the fire.

(c) SCDF's Report found that in the aftermath of the fire, several spent fire extinguishers were found next to the Chery Car.

142 These facts were at the very least consistent with the Defendant having fire extinguishers in the Warehouse compounds.

Failing to take immediate and/or effective steps to extinguish the fire and prevent it from spreading

143 The Plaintiff further contended that the Defendant failed to take immediate and effective steps to extinguish the fire and prevent its spread to other parts of the Warehouse: see items (vii), (xii) and (x) at [78] above. Specifically, the Plaintiff contended that the Defendant's failure occurred on two fronts.

(a) Ganapathy's use of the forklift to hoist the Chery Car, when his first course of action should have been to use a fire extinguisher to put out the fire at the Chery Car's undercarriage: see item (ix) at [78] above.

(b) Mayavel's attempt to extinguish the fire with a water hose, when water was a wholly inappropriate medium for tackling a fire fuelled by flammable liquids.

Each of these claims is explored below.

(1) Using the forklift to lift the Chery Car

144 Ganapathy's first reaction upon spotting the fire beneath the Chery Car was to hoist the vehicle with a forklift. However, this resulted in petrol leaking

from the Chery Car and igniting. It was only after this happened that the Defendant's employee Mani used a fire extinguisher to fight the fire.[186] The Plaintiff thus claimed that Ganapathy's use of the forklift on the Chery Car was wrong and served only to accelerate the fire. The Plaintiff contended that what Ganapathy should have done *first* was to use a fire extinguisher to put out the flames.[187] This position was also echoed in Mr Cheam's 2nd Report, where he opined that Ganapathy's use of the forklift was "not appropriate":[188]

> I consider the defendant's action of using a forklift to pull and lift the subject burning vehicle first was not appropriate; it would have been better to first extinguish the fire.

145 Having the benefit of hindsight, I agree that it was plausible that Ganapathy's use of the forklift had *in fact* facilitated the fire's spread. However, that did not mean that his actions necessarily constituted a breach of the Defendant's duty of care. Despite bearing the burden of proving the Defendant's negligence, the Plaintiff failed to adduce any evidence (particularly expert evidence) showing why Ganapathy's actions should be regarded as falling below the standard of a reasonable man. The statement in Mr Cheam's 2nd Report, extracted above, was no more than a bare allegation that Ganapathy should not have done what he did. In making that allegation, Mr Cheam failed to explain *why* he viewed Ganapathy's use of the forklift as inappropriate. It was not possible to discern the error of Ganapathy's ways when looking at SCDF's Report which, although alluding to the use of the forklift to "mitigate … the fire",[189] contained no allusion as to whether this was an improper

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186 Mr Cheam's 1st Report at p 14; SCDF's Report at p 4 paras 8(b)(1)(i)–8(b)(1)(iv).

187 Plaintiff's Closing Submissions at paras 38 & 231(9); Plaintiff's Reply Submissions at para 7(a)(i).

188 Mr Cheam's 2nd Report at p 8 para (f)(i).

189 SCDF's Report at p 7 para 9(a)(3).

measure. Adrian Brown had similarly alluded to how Ganapathy's use of the forklift may have exacerbated the fire, *eg*, by possibly fracturing a fuel line, but he was quick to qualify in the very next line of his report that "[t]his is not intended as any criticism of the actions of the workers in that regard".[190]

146 Given the specific nature of this case, I thought it was important for Mr Cheam to have explained his view that Ganapathy's use of the forklift was inappropriate. When the fire was first spotted, it was burning *beneath* the Chery Car's undercarriage. Ganapathy testified that he lifted the Chery Car with the forklift because the flames were below the engine.[191] This was therefore not necessarily a case of an exposed flame burning within plain line of sight, where one could simply grab hold of a fire extinguisher, point, and shoot at the base of the fire. If Mr Cheam's contention was that spraying the flames underneath the Chery Car without first lifting it would have been any more effective, he should have explained why that was the case. The Plaintiff also did not solicit the views of the SCDF witness who testified at the trial (Maj Faizal), or of Mr Brown, as to the merits of using fire extinguishers without first lifting the Chery Car. Indeed, Ganapathy himself was not questioned on this.

147 It must also be stressed that this was not a situation where the forklift was deployed to the *exclusion* of fire extinguishers. A fire extinguisher *was* deployed by the Defendant's employee (Mani) although, sequence-wise, this was done only after Ganapathy lifted the Chery Car.[192] The Plaintiff could thus not accuse the Defendant of failure to deploy fire extinguishers. As an aside, I noted that Plaintiff's counsel had, in the course of cross-examining Ganapathy,

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190 Mr Brown's Report at p 21 para 7.14.

191 Transcripts for 28 May 2024 p 23 (lines 10-11).

192 Transcripts for 28 May 2024 at p 21 (lines 2-10).

suggested that the Defendant's employees failed to use the correct type of fire extinguisher (*ie*, Type B) to fight the fire[193] – this contention was nonetheless not pursued in the Plaintiff's closing submissions.

148 I therefore found myself unable to agree with the Plaintiff's contention that Ganapathy's use of the forklift as his opening move in fighting the fire was necessarily a breach of the duty of care to prevent the spread of the fire.

(2) Attempting to use water to extinguish the fire

149 Before dealing with the Plaintiff's claim that Mayavel should not have attempted to extinguish the fire using water from the hose reel, there was an antecedent issue which had to be dealt with first: whether the hose reel was even working. As explained at [21] above, it was the Defendant's case that when Mayavel tried to turn on the hose reel, no water came out. The Plaintiff, on its part, maintained that the hose reel *was* working and Mayavel was "jetting" the fire with water from the hose (see [9] above). As explained in the section below on the Defendant's counterclaim, I preferred the Plaintiff's evidence that the hose reel *was* working.

150 On the premise that water *did* come out of the hose reel, the Plaintiff contended that Mayavel's use of water to fight the fire constituted a breach of the Defendant's duty to prevent the spread of the fire. Specifically, the Plaintiff argued that the fire was fuelled by flammable liquids and water (from the hose) would only serve to promote its spread.[194]

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193 Transcripts for 28 May 2024 at p 41 (lines 4-16).

194 Plaintiff's Closing Submissions at paras 38–39; Transcripts for 28 May 2024 at pp 40 (lines 8-9), 45 (lines 14-22) & 48 (lines 31-32).

151 In my view, the Plaintiff failed to establish that the use of the hose by Mayavel constituted negligence on the Defendant's part. *Even* if the act of spraying the fire with water was considered negligent in and of itself, there was no evidence that any of the Defendant's employees engaged in that act. According to Mr Cheam's 1st Report, there was only one person at the Warehouse jetting the fire with the hose – Mayavel[195] – and he was *not* the Defendant's employee. Mayavel's evidence was that he was an employee of AJ Lighting & Electrical Service Pte Ltd ("AJ Lighting")[196] and that he happened to be at the Property only because he was residing at the dormitory.[197] His testimony in this regard was consistent with the other evidence adduced at trial:

(a) Firstly, the Plaintiff's own expert, Mr Cheam, had indicated in his report that Mayavel was an employee of AJ Lighting and not the Defendant.[198] Mr Cheam's 1st Report went so far as to append an image of Mayavel's work permit,[199] which plainly reflected the employer as AJ Lighting and not the Defendant. In contrast, the image of Ganapathy's work permit appended to Mr Cheam's 1st Report[200] reflected the Defendant as the employer.

(b) The Plaintiff sought to rely on SCDF's Report, which captured Gabir as purportedly saying that one "Mayauel Lasaithambi" had been working for the Defendant for about two years.[201] I did not think that

195 Mr Cheam's 1st Report at p 12.

196 Mayavel's AEIC at para 1.

197 Mayavel's AEIC at para 3.

198 Mr Cheam's 1st Report at p 12.

199 Mr Cheam's 1st Report at p 13.

200 Mr Cheam's 1st Report at p 14.

201 SCDF's Report at p 5 para 8(b)(2)(v).

> anything turned on this. Preliminarily, I noted that SCDF's Report failed to correctly spell Mayavel's name (assuming the report was even intending to refer to him), spelling it as "Mayauel Lasaithambi" when the correct spelling should have been "Mayavel Asaithambi". Further, Gabir had explained in his oral testimony that when speaking to SCDF about the Defendant's employees, he may have been referring to Mani (who *was* the Defendant's employee) rather than Mayavel (who was not),[202] although Gabir ultimately said that he could not remember what he told SCDF.[203] Given the haziness in Gabir's recollection, it would have been useful for the SCDF officer who interviewed Gabir to be called. However, this was not done. The only SCDF officer who was called, Maj Faizal, was unable to comment about whether Gabir's answers had been properly captured in SCDF's Report.[204] As such, the statement in SCDF's Report was neither here nor there, leaving me unable to place any substantial weight on its description of "Mayauel Lasaithambi" as the Defendant's employee.

The evidence thus did not justify a finding that Mayavel was the Defendant's employee. Consequently, even if Mayavel's act of spraying the fire with water could be considered negligent, the Plaintiff failed to show why that act should be imputed to the Defendant.

152 In any case, even if I were to impute Mayavel's actions to the Defendant (notwithstanding that he was not the latter's employee), there was no technical evidence to establish why his use of water from the hose should be regarded as

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202 Transcripts for 24 May 2024 at p 86 (lines 23-31).

203 Transcripts for 24 May 2024 at p 88 (line 12).

204 Transcripts for 23 May 2024 at p 7 (lines 19-26).

negligent. None of the experts were asked any questions about whether water from the hose could have caused the fire to spread, as claimed by the Plaintiff. Nor were questions on this posed to SCDF's Maj Faizal. The Plaintiff did not even pose questions to the factual witnesses that might have shed light on this point, *eg*, whether they saw the water spreading the flames.

153 I was consequently unable to conclude that Mayavel's use of water to fight the fire constituted a breach of duty on the Defendant's part.

Other breaches alleged by the Plaintiff

154 The Plaintiff also raised various other instances of the Defendant allegedly breaching its duty of care. These were not particularly substantive and could be dealt with briefly.

155 Firstly, the Plaintiff contended that the Defendant should not have allowed its employees to work in the Warehouse during the Circuit Breaker period: see items (vi), (xiii) and (xiv) at [78] above. In my view, this did not constitute a breach of the Plaintiff's duty to prevent the start or spread of the fire, as it bore no causal link to fire risk. As explained at [102] above, on the facts of the present case, the risk of a fire arising from what the Defendant's employees were doing in the Warehouse would not have changed, regardless of whether the Circuit Breaker had been in effect.

156 Secondly, the Plaintiff claimed that the Defendant breached its duty by failing to procure the necessary insurance coverage. These included:

(a) Coverage which the Plaintiff claimed that the Defendant should have procured to insure the *Plaintiff's* assets, *ie*, the Warehouse and its fixtures: see item (xvi) at [78] above.

(b) Coverage which the Plaintiff claimed that the Defendant should have procured to insure the *Defendant's* assets within the Warehouse: see item (xv) at [78] above.

157 The Plaintiff's submissions were unclear as to whether the Plaintiff was advocating that the procurement of insurance was a *separate* duty of care standing apart from the Defendant's duty to prevent the start and spread of fires (which I found to exist). If there had been such a duty of care to procure insurance, the Defendant's failure to do so would have constituted a breach. However, I saw no basis to impose any such duty in tort:

(a) As regards insurance to protect the *Plaintiff's* assets, I explained at [68] above why it was not necessary, in the business or commercial sense, for such a term to be implied in contract. In a similar vein, the Plaintiff failed to demonstrate why, under the test in *Spandeck*, a relationship of such proximity existed as to warrant the imposition of this duty on the Defendant. After all, there was nothing to stop the Plaintiff from procuring its own insurance to protect the Warehouse, and thus no reason to hold the Defendant responsible for doing so.

(b) As regards insurance to protect the *Defendant's* assets in the Warehouse, the Plaintiff similarly failed to show why such a duty should be imposed, especially since an identical obligation already existed under contract, in cl 15 of the Tenancy Agreement (see [65] above).

158 As for whether the omission to procure insurance breached the Defendant's duty of care to prevent the start and spread of fires, the answer would have to be in the negative, given that the omission bore no connection with the start and spread of the fire in this case.

Conclusions on the Plaintiff's claims in tort

159 I accordingly dismissed the Plaintiff's claims in tort. The only discernible duty of care which arose on the part of the Defendant was the duty to prevent the start and spread of fires. The Plaintiff was not able to point to any act or omission by the Defendant which breached that duty.

The Defendant's Counterclaim

160 The Defendant's counterclaim was premised on the allegation that no water came out of the hose when Mayavel tried to turn it on: see [21] above. The Defendant contended that the Plaintiff, as the landlord, was under a duty to maintain the firefighting equipment in the Warehouse. The Defendant further claimed that the duty extended to maintaining the hose reel which Mayavel had deployed – the hose reel being situated within the Warehouse.[205] According to the Defendant, this duty arose both under contract (as an implied term of the Tenancy Agreement[206]) and in tort.[207] It was the Defendant's case that the hose reel malfunctioned because the Plaintiff had breached this duty[208] and that in turn led to the failure to contain the fire. The Defendant thus counterclaimed for its losses sustained in the fire,[209] including the damage to its inventory and the loss of its forklift.[210]

161 The Plaintiff denied that it bore any duty to maintain the hose reel. In

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205 Transcripts for 23 May 2024 p 58 (lines 31-32) and 28 May 2024 at p 37 lines 5-8; D&CC at para 13.

206 D&CC at para 19.

207 D&CC at para 20.

208 D&CC at paras 21–22.

209 D&CC at paras 23–24.

210 D&CC at para 25.

any event, the Plaintiff maintained that the hose reel *was* working and that Mayavel was actually jetting the fire with the hose.

162 The Defendant's counterclaim thus hinged on the following issues:

(a) Which party bore the duty to maintain the hose reel?

(b) Was the hose reel working during the fire?

Which party bore the duty to maintain the hose reel?

163 In my view, the Defendant failed to substantiate why any duty should be imposed on the Plaintiff, whether in contract or in tort, to maintain the hose reel.

164 In the realm of contract, I was unable to see why, under the test expounded in *Sembcorp Marine* (see the extract from the decision at [49] above), it would have been necessary in the business or commercial sense to imply a term into the Tenancy Agreement obliging the Plaintiff to maintain the fire-fighting equipment in the Warehouse. There was no evidence showing that it was an industry practice to place such an obligation on landlords of commercial properties. Certainly, there was nothing within the context of the relationship between the parties in this case to suggest that they intended to allocate responsibility for all fire-related safety issues to the Plaintiff (as landlord), especially since cl 6 of the Tenancy Agreement (extracted at [58(a)] above) placed the onus on the *Defendant* (as tenant) to "observe fire safety measures at all times".

165 In terms of tort, the Defendant similarly failed to explain why, under the test in *Spandeck* (alluded to at [75] above), a duty of care to maintain the hose reel should be placed on the landlord at law.

166 I thus found that the Defendant failed to demonstrate why the Plaintiff should be held to owe a duty of care to maintain the hose reel.

Was the hose reel working?

167 Even if the Plaintiff was under a duty to maintain the hose reel, I found that such a duty would not have been breached on the facts as the evidence suggested that the hose reel *was* working.

168 The Defendant relied on the evidence of Mayavel, who testified that no water came out of the water hose when he tried to use it.[211] His testimony was corroborated by Ganapathy, who testified that he saw no water coming out of the hose reel while Mayavel held on to it.[212] In contrast, the Defendant relied on the eyewitness testimony of Zhang Jinhai, who testified that he did see an Indian man (presumably Mayavel) using a hose from which water was being sprayed.[213]

169 I accepted the Plaintiff's evidence that the hose *was* working, for the following reasons:

(a) Firstly, Mr Cheam's 1st Report stated unequivocally that Mayavel was *jetting* the fire with the hose:[214]

> [Mayavel] stood behind the diesel forklift and behind a scrapped car, while ***jetting*** *the fire*. While firefighting, he suffered very minor burns on his left arm.
>
> [emphasis added]

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211 Mayavel's AEIC at para 5; Transcripts for 28 May 2024 at p 59 (lines 21-24).

212 Ganapathy's AEIC at paras 9–10.

213 Zhang's AEIC at para 18, Transcripts for 16 May 2024 at p 13 (lines 11-26).

214 Mr Cheam's 1st Report at p 12 para 3.4.2.

This statement would presumably have been gleaned from Mr Cheam's interview with Mayavel, conducted on 28 May 2020, which was less than a week after the fire broke out. The statement in Mr Cheam's 1st Report would thus have been highly contemporaneous.

(b) Secondly, the Defendant's position simply did not cohere with SCDF's Report. Mayavel claimed that he told SCDF that the fire hose was not working.[215] Yet, SCDF's Report made no mention of this, notwithstanding that it would have been a highly material fact. In fact, SCDF's Maj Faizal *specifically* alluded in his oral evidence to a working public hydrant within the Warehouse, when he said:[216]

> … I don't have the information but I believed it was used---they probably used the … public hydrant to supplement the firefighting"

Maj Faizal was not probed any further on this.

(c) I also found the testimony of the Defendant's witnesses on this point to be somewhat unconvincing. In his oral testimony, Ganapathy tried to corroborate Mayavel's position by testifying that Ganapathy *himself* also tried to turn the hose on but, like Mayavel, he found that no water came out.[217] Yet, this critical fact was not mentioned anywhere in Ganapathy's AEIC.

Other observations about the Defendant's counterclaim

170 It was also significant that the Defendant failed to address the court on

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215 Transcripts for 28 May 2024 at p 60 (lines 7-13).

216 Transcripts for 23 May 2024 at p 7 (lines 7-8).

217 Transcripts for 28 May at pp 21 (lines 3-14) & 38 (lines 24-25).

the impact of cl 15 of the Tenancy Agreement on the counterclaim. This clause (extracted at [65] above) comprised two limbs:

(a) The first obliged the Defendant to take out fire insurance to protect its own property.

(b) The second absolved the Plaintiff of liability for damage to the Defendant's property in the Warehouse arising from fire.

It was undisputed that the Defendant failed to procure the insurance required by limb (a) above,[218] with the Defendant having made no attempt at trial to justify the failure. While this omission by the Defendant admittedly bore no relevance to the Plaintiff's claim against the Defendant[219] (see [65] above), the Defendant completely elided the issue of the legal impact which the omission would have on its *counterclaim*. In fact, when confronted with the Plaintiff's contention that the counterclaim should be rejected in light of the Defendant's failure to comply with cl 15, Paulraj appeared to concede this, saying that because of that failure, the Plaintiff was not responsible for fire damage sustained by the Defendant.[220]

171 I would nevertheless observe that where a tenancy agreement obliges the tenant to procure insurance, the tenant's failure to do so does *not* necessarily absolve the landlord of liability for losses which the landlord's negligence causes the tenant, even if such losses might have been covered by the insurance that the tenant should have procured. This would particularly be the case if there is an absence of any indication that parties intended the insurance to inure to the benefit of the landlord (and not just the tenant): see *Wisma Development Pte Ltd*

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218 Transcripts for 23 May 2024 p 58 (lines 14-16)

219 Defendant' Closing Submissions at paras 47, 70 & 71.

220 Transcripts on 23 May 2024 at p 58 (lines 21-25).

v Sing – The Disc Shop Pte Ltd [1994] 1 SLR(R) 749 ("*Wisma Development*") at [31]-[34].

172 In my view, the more determinative limb in cl 15 is that in (b) at [170] above, which states unequivocally that the Plaintiff is not responsible for any damage caused by fire to the Defendant's property in the Warehouse. Parties to a tenancy agreement are entitled to contractually allocate the risk of damage, including damage arising from any one party's negligence. An example of this is seen in the case of *Amarnath Thakral Enterprises Pte Ltd (formerly known as Amarnath Enterprises) Pte Ltd v Man Fai Tai Investment Pte Ltd)* [1998] SGHC 271 ("*Amarnath Thakral Enterprises*"). The tenancy agreement in that case contained a provision, cl 4(i) (extracted at [15] of the decision), which stated:

> the Subtenant shall be responsible for safeguarding and insuring its own property on the sublet premises and the Landlord shall not be liable for any damage to or loss of the Subtenant's property however occurring.

As can be seen, cl 4(i) of the tenancy agreement in *Amarnath Thakral Enterprises* was drafted quite similarly to cl 15. Lai Kew Chai J observed that unlike the relevant clause in *Wisma Development*, which merely obliged the tenant to procure insurance, cl 4(i) went further and expressly absolved the landlord of liability. Lai J thus held (at [44]–[46]) that the tenant's claim, which alleged that the landlord's negligence had caused flood damage to the tenant's property, could be defeated by the operation of cl 4(i):

> 44 Even if the defendants had been negligent, I am of the view that clause 4(i) of the leases in clear terms absolves them from liability for negligence. The clause starts off referring to the responsibility of the tenant to insure its own property but unlike the clause in the case of *Wisma Development*, it does not stop there but goes on to say that "the Landlord shall not be liable for any damage to or loss of the Subtenant's property however occurring."

> …
>
> 46 On the assumption that the defendants were negligent, the plaintiffs contended that their cause of action founded in negligence would neutralise the operation of the exception in cl 4(i). This line of reasoning is flawed. Oliver J. (as he then was in *Midland Bank Trust Ltd v Hett Stubbs & Kemp (a firm)* [1978] 3 All ER 571, … ruled that "(a) concurrent or alternative liability in tort will not be admitted if its effect would be to permit the plaintiff to circumvent or escape a contractual exclusion or limitation of liability for the act or omission that would constitute the tort."

173 In my view, if the Defendant had been serious about pursuing its counterclaim, it should have addressed the legal impact of cl 15 and demonstrated why that clause ought *not* to be construed as absolving the Plaintiff of its negligence (if any). The Defendant could, for example, have canvassed whether any principles governing the construction of contracts might have operated to restrict the exculpatory scope of cl 15. However, the Defendant's submissions were entirely silent on this.

174 The Defendant also failed to plead the quantum of its losses, notwithstanding that this was an unbifurcated trial.[221]

Conclusions on the Defendant's counterclaim

175 Given the above, I dismissed the Defendant's counterclaim in its entirety.

Conclusion

176 For the reasons above, I dismissed both the Plaintiff's claims and the Defendant's counterclaim, save that I allowed the Plaintiff's claim for what it paid in respect of the stamp duty fee and penalty.

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221 Plaintiff's Reply Submissions at para 57.

177 I will now hear the parties on the issue of costs.

Christopher Tan
Judicial Commissioner

Toh Siew Sai Thomas (CK Tan Law Corporation) for the plaintiff;
Palaniappan Sundararaj and Eva Teh Jing Hui (K&L Gates Straits Law LLC) for the defendant.
