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DISTRICT JUDGE NAVIN ANAND

11 August 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 260

District Court Suit No 855 of 2022

Between

Underwater Diving
Operators Pte Ltd

... Plaintiff

And

Dundee Marine &
Industrial Services Pte Ltd

... Defendant

JUDGMENT

[Contract — Incorporation of terms]
[Evidence — Burden of proof — Legal burden]
[Tort — Conversion]
[Tort — Detinue]
[Tort — Negligence — Breach of duty]

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Underwater Diving Operators Pte Ltd
v
Dundee Marine & Industrial Services Pte Ltd

[2026] SGDC 260

District Court Suit No 855 of 2022

District Judge Navin Anand

28 May 2025, 27-29 August 2025, 4, 6 and 14 November 2025, 24 April 2026

11 August 2026

Judgment reserved.

District Judge Navin Anand:

1 In the early hours of 19 June 2021, the Plaintiff's vessel, the "Crest", listed heavily to her port side, and subsequently sank to the bottom of a berth ("Small Berth") at a shipyard operated by the Defendant ("Shipyard").

2 In DC/DC 855/2022 ("DC 855"), the Plaintiff claims in negligence and breach of contract, alleging that: (a) the Small Berth was unsafe, and (b) the Defendant unreasonably delayed the salvage of the "Crest". The Plaintiff also advances claims in detinue and conversion in respect of its equipment in the Shipyard ("Equipment") which the Defendant refused to deliver up. The Defendant, in turn, counterclaims for unpaid invoices relating to services rendered to the Plaintiff.

3 Having considered the evidence and the submissions, I find that the Plaintiff has neither proven that the Small Berth was unsafe, nor that the

Defendant behaved unreasonably in the salvage of the “Crest”. I also find that the Defendant was entitled to assert a contractual lien over the Plaintiff’s Equipment in respect of certain unpaid invoices. As a result, I dismiss the Plaintiff’s claims and allow the Defendant’s counterclaim in part. I set out my full grounds below, and will begin with the salient facts.

Facts

The parties

4 The Plaintiff, Underwater Diving Operators Pte Ltd, is a Singapore-incorporated company in the business of commercial diving.¹ At the material time, it owned two vessels central to this dispute,² namely, the “Crest”, a catamaran work boat,³ and the “Dive Pegasus”, a supply vessel formerly known as “Golden Knight”.⁴

5 The Defendant, Dundee Marine & Industrial Services Pte Ltd, is also a Singapore-incorporated company, and is in the business of building and repairing ships at its Shipyard located in Tuas.⁵ There are two berths within the Shipyard – the Small Berth and a comparatively larger berth (hereinafter

¹ Affidavit of Evidence-in-Chief of Govinder Singh (“GS AEIC”) at para 7 (Bundle of Affidavits of Evidence-in-Chief (“BAEIC”) p6).

² *Ibid* at para 8 (BAEIC p8).

³ Affidavit of Evidence-in-Chief of Bruce Gordon Ewen (“BGE AEIC”) at para 5.3 (BAEIC p1622).

⁴ Affidavit of Evidence-in-Chief of Chang Kian Chong (“CKC AEIC”) at BAEIC p693.

⁵ GS AEIC at para 10 (BAEIC p7); CKC AEIC at para 5(a) (BAEIC p640); BGE AEIC at BAEIC p1678.

referred to as “Large Berth”).⁶

Dealings between the parties

6 Between 2017 and 2021, the parties dealt with each other in relation to four vessels through Mr Govinder Singh (“Mr Singh”), a commercial diver who is the director of the Plaintiff,⁷ and Mr Chang Kian Chong (“Mr Chang”), a technical officer of the Defendant.⁸ The relevant circumstances regarding each vessel are set out below.

(1) “Raffles Princess”

7 The parties first interacted in 2017, when the Plaintiff sought to carry out modification works on the vessel, the “Raffles Princess”.⁹ On 6 June 2017, following discussions with Mr Singh, Mr Chang emailed him two documents.¹⁰

(a) The first document was the Defendant’s revised quotation for the intended works on the “Raffles Princess” (“Raffles Princess Quotation”). The Raffles Princess Quotation listed ten terms in the “Terms and Conditions” section, which reads as follows: ¹¹

Terms and Conditions:

1. *Our standard conditions of contract are applied.*

...

⁶ CKC AEIC at BAEIC p791.

⁷ GS AEIC at para 1 (BAEIC p4); Certified Transcript (28 May 2025) (“28 May CT”), p22, lines 14-25.

⁸ CKC AEIC at para 1 (BAEIC p639).

⁹ *Ibid* at paras 8-9 (BAEIC pp640-641).

¹⁰ *Ibid* at paras 9-11 (BAEIC p641) and BAEIC at pp679-680.

¹¹ *Ibid* at BAEIC pp685-686.

4. We reserve the right to claim for any additional works and materials that are not specified in the work scope.

...

6. Your instruction to commence work will deem agreement and acceptance of this contract.

...

10. Payment terms: Full payment on completion, prior to vessel departure.

[emphasis added]

(b) The second document, titled “Conditions of Contract”, set out the Defendant’s standard contractual terms (“Conditions of Contract”).

The material terms read as follows:¹²

2. In this Agreement:-

(a) the term “this Contract” shall include all amendments, supplements, modifications or variations hereto;

...

(c) the term “Customer” shall mean the Owner of the vessel ... and/or any other authorised representative or agent of the Owner.

...

4. Unless alternative credit arrangements have been agreed between the parties, full payment for the work done shall become due on completion of work. *Interest at 1.5% per month will be charged on overdue accounts.*

...

8. In addition to and without derogating from any lien to which it may entitled in law, *the [Defendant] will have a lien on the vessel and equipment (whether installed on board or not) whenever the same may come into the [Defendant’s] possession for the unpaid cost of work on the vessel and other expenses incurred pursuant to this Contract.* It is hereby agreed that any agreement on the part of the [Defendant] to permit or allow the vessel to leave its shipyard or other premises or alternative venue as agreed upon for any reason whatsoever shall not prejudice or be deemed to be a waiver

¹² *Ibid* at BAEIC pp688-691.

of the [Defendant’s] lien (possessory or otherwise) over the vessel or its rights hereunder. It is further agreed that the [Defendant’s] lien shall re-attach and apply in the event the vessel returns to the [Defendant’s] yard or other premises or alternative venue as agreed upon after leaving the said premises.

[emphasis added]

8 The Plaintiff ultimately did not engage the Defendant to perform any works on the “Raffles Princess”.¹³

(2) “Dive Pegasus”

9 On 23 June 2020, Mr Singh contacted Mr Chang to enquire about drydocking the “Dive Pegasus”, and carrying out repair works at the Shipyard.¹⁴ The Plaintiff approached the Defendant because, unlike other shipyards that were closed or experienced insufficient manpower during the COVID-19 pandemic, the Defendant was able to accommodate the vessel.¹⁵

10 Following discussions between Mr Singh and Mr Chang over WhatsApp Messenger (“WhatsApp”), the Defendant issued nine quotations to the Plaintiff for the proposed works on the “Dive Pegasus”.¹⁶ These included line items for berthing fees for occupying space at the Shipyard, repainting the hull and the vessel’s callsign, and repairs to the external hull, main deck and engine.¹⁷

¹³ *Ibid* at para 12 (BAEIC p641).

¹⁴ *Ibid* at para 14 (BAEIC p641); GS AEIC at para 23 (BAEIC p11).

¹⁵ GS AEIC at para 24 (BAEIC p11).

¹⁶ CKC AEIC at para 16 (BAEIC p642).

¹⁷ *Ibid* at BAEIC pp693-713.

11 Of these nine quotations, Mr Singh signed eight on the Plaintiff’s behalf on various dates in July and August 2020.¹⁸ Each of these signed quotations contained an identical “Terms and Conditions” section with similar terms as those found in the Raffles Princess Quotation (see [7(a)] above).¹⁹ For example, quotation DMIS/QTN/0061/KC/20, which related to berthing fees, reads as follows:²⁰

Terms and Conditions:

1. Our *standard conditions of contract* are applied.

...

3. We reserve the right to claim for additional works and materials that are not specified in the work scope.

...

5. Your instruction to commence job will deem agreement and acceptance of this contract.

...

10. Payment terms: Full payment on completion, prior to vessel departure.

[emphasis added]

12 On 27 June 2020, the “Dive Pegasus” arrived at the Shipyard, and was lifted out of the water for the Defendant to carry out the agreed works under the signed quotations.²¹ These works were completed uneventfully, and on 5 August 2020, the Defendant issued an invoice for S\$37,315.00, which the Plaintiff duly paid.²²

¹⁸ *Ibid* at para 17 (BAEIC 642); 28 May CT, p26, lines 1-5; p 28, lines 24-31; p42, lines 5-22.

¹⁹ CKC AEIC at BAEIC pp686 and 693.

²⁰ *Ibid* at para 18 (BAEIC pp642-643) and BAEIC p693.

²¹ *Ibid* at para 19 (BAEIC p643).

²² *Ibid* at paras 20-22 (BAEIC pp643-644) and BAEIC p720.

13 Thereafter, the “Dive Pegasus” remained in the Defendant’s Shipyard for further works.

(a) On or about 21 September 2020, Mr Singh signed, on the Plaintiff’s behalf, a quotation for painting works around the wheelhouse.²³ This quotation contained the same “Terms and Conditions” as the earlier eight signed quotations (see [11] above). Mr Singh thus signed a total of nine quotations for works on the “Dive Pegasus” (“Nine Signed Quotations”). The Plaintiff subsequently paid the Defendant’s invoice for the painting works.²⁴

(b) On or about 29 March 2021, Mr Singh directed the Defendant to proceed with the works set out in a quotation dated 24 November 2020.²⁵ Although that quotation was not signed, the Plaintiff nevertheless paid the Defendant’s invoice upon completion of the works.²⁶

14 After the Defendant completed the aforesaid works, the “Dive Pegasus” remained at the Shipyard until 4 August 2021 while Mr Singh carried out his own works on the vessel.²⁷ Although the Plaintiff initially agreed to pay a berthing fee of \$40 per day (*ie*, around \$1,200 per month),²⁸ the Defendant charged a discounted rate of \$500 per month from 22 August 2020. The Plaintiff

²³ *Ibid* at para 24(a) (BAEIC p644) and BAEIC p722.

²⁴ *Ibid* at BAEIC p720.

²⁵ *Ibid* at para 24(b) (BAEIC p644) and BAEIC p724.

²⁶ *Ibid* at BAEIC p720.

²⁷ *Ibid* at paras 25, 29 to 31 (BAEIC pp644-646).

²⁸ *Ibid* at BAEIC p693.

paid the berthing fees incurred for the “Dive Pegasus” from 22 August 2020 to 21 June 2021.²⁹

(3) “*Axel Supreme*”

15 Between 15 October 2020 and 9 November 2020, the Plaintiff engaged the Defendant to lift a waterjet from the vessel “Axel Supreme” onto shoreside transport.³⁰ Although the Plaintiff did not sign the Defendant’s quotation dated 14 October 2020,³¹ it paid the Defendant’s invoice upon completion of the works.³²

(4) “*Crest*”

16 On or about 22 September 2020, Mr Singh informed Mr Chang that he wished to bring the “Crest” to the Defendant’s Shipyard for repair works.³³ The “Crest” arrived at the Shipyard on 26 October 2020, and was lifted out of the water and placed alongside the Large Berth on 24 November 2020.³⁴

17 Following discussions between Mr Singh and Mr Chang, the Defendant issued a quotation dated 27 November 2020 (“Crest Quotation”).³⁵ Like the Nine Signed Quotations (see [11] and [13] above), the Crest Quotation contained the same “Terms and Conditions” and covered:³⁶

²⁹ *Ibid* at BAEIC pp715, 720, 726, 728-731, and 733-734.

³⁰ *Ibid* at paras 32-34 (BAEIC pp646-648).

³¹ *Ibid* at BAEIC p787.

³² *Ibid* at BAEIC p720.

³³ *Ibid* at para 32(a) (BAEIC p647).

³⁴ *Ibid* at paras 39 and 44 (BAEIC pp649-650).

³⁵ *Ibid* at para 45 (BAEIC p650).

³⁶ *Ibid* at BAEIC p801.

- (a) lifting the “Crest” from water to land and back to water after the completion of works;
- (b) a berthing fee of \$40 per day;
- (c) washing the underwater hull of the “Crest”; and
- (d) painting the external underwater hull of the “Crest”.

18 While the Plaintiff did not sign the Crest Quotation, it nevertheless agreed to the Defendant carrying out the quoted works.³⁷

- (a) On 28 November 2020, Mr Singh approved, over WhatsApp, the washing of the underwater hull of the “Crest”,³⁸ which was completed sometime in December 2020.³⁹
- (b) On 19 May 2021, the Defendant painted the external underwater hull of the “Crest” in accordance with Mr Singh’s instructions.⁴⁰
- (c) On 9 June 2021, the Defendant, with Mr Singh’s approval,⁴¹ lifted the “Crest” back into the Large Berth, where she was tied alongside the “Dive Pegasus”.⁴²

³⁷ 28 May CT, p61, line 1 – p62, line 18; Certified Transcript (29 August 2025) (“29 August CT”), p81, lines 10-16.

³⁸ CKC AEIC at BAEIC p760.

³⁹ *Ibid* at para 46(a) (BAEIC p650).

⁴⁰ *Ibid* at para 46(b) (BAEIC p651).

⁴¹ *Ibid* at BAEIC p776.

⁴² *Ibid* at para 67 (BAEIC pp658-659).

19 Although the Crest Quotation stipulated a berthing fee of \$40 per day, the Defendant charged a discounted rate of \$500 per month from 1 January 2021 as a gesture of goodwill. This was set out in the following WhatsApp exchange between Mr Chang and Mr Singh on 22 April 2021:⁴³

17:00 [Mr Chang]: Hi [Mr Singh], *i discussed with my boss. So for [the “Crest”], i charge special rate \$500/month starting jan/1st. Till end May same rate.*

Thereafter, will depend if we need to stay on dock to wait for anything (like mapping or engine works etc). If waiting, will revert to normal rate.

...

17:12 [Mr Singh]: Did the [“Crest”] come in jan or later?

...

17:12 [Mr Chang]: it arrived on 26 oct. we lifted up on 24 nov

18:14 [Mr Singh]: K

[emphasis added]

20 In addition to the works under the Crest Quotation, the Defendant also provided ad hoc services, including lifting the engines out of the “Crest”, and transporting items pursuant to Mr Singh’s directions.⁴⁴

21 The Plaintiff paid the Defendant’s invoices for the abovementioned work set out at [18] and [20] above, and for berthing fees from 1 January 2021 to 30 June 2021.⁴⁵

⁴³ *Ibid* at BAEIC p771.

⁴⁴ *Ibid* at paras 52-58 (BAEIC pp652-653).

⁴⁵ *Ibid* at BAEIC pp720, 803, 805, 810, and 1545.

22 For completeness, Mr Singh was permitted to, and did carry out, his own works and repairs to the “Crest” while the vessel was in the Defendant’s Shipyard, after he obtained Mr Chang’s prior approval.⁴⁶

Sinking of the “Crest”

23 When the “Crest” was lifted back into the Large Berth on 9 June 2021 and tied alongside the “Dive Pegasus”, she had no means of propulsion because both engines had been removed (see [20] above). Thus, the “Crest” had to be towed by the “Dive Pegasus” to move within the Shipyard.⁴⁷

24 As the Defendant intended to use the Large Berth for repairs to a barge due to arrive on 14 June 2021, it began relocating vessels to make way for the arriving barge.⁴⁸ In this regard, the Defendant requested, and the Plaintiff agreed, to shift the “Dive Pegasus” and the “Crest” to the Small Berth.⁴⁹

25 At about 0730 hours on 14 June 2021, Mr Singh shifted the “Dive Pegasus” and the “Crest” to their assigned positions within the Small Berth.⁵⁰ The “Dive Pegasus” and the “Crest” were tied alongside each other, and they remained safely afloat in the same position until 18 June 2021.⁵¹ It is common ground that the Defendant did not undertake any works on the “Crest” during this period, and there was no crew aboard the vessel.⁵² Further, when Mr Singh

⁴⁶ *Ibid* at paras 59-61 (BAEIC pp654-657).

⁴⁷ *Ibid* at para 68 (BAEIC p659).

⁴⁸ *Ibid* at para 65 (BAEIC p658).

⁴⁹ *Ibid* at para 66 (BAEIC p658).

⁵⁰ *Ibid* at para 74 (BAEIC p660).

⁵¹ *Ibid* at para 76 (BAEIC p660); 28 May CT, p90, lines 17-24; p92, lines 23-26.

⁵² CKC AEIC at BAEIC p822.

boarded the “Crest” between 1700 and 1745 hours on 18 June 2021, he did not notice any ingress of water into the vessel,⁵³ and did not report any issues or anomalies.⁵⁴ The weather on the night of 18 June 2021 was also fine.⁵⁵

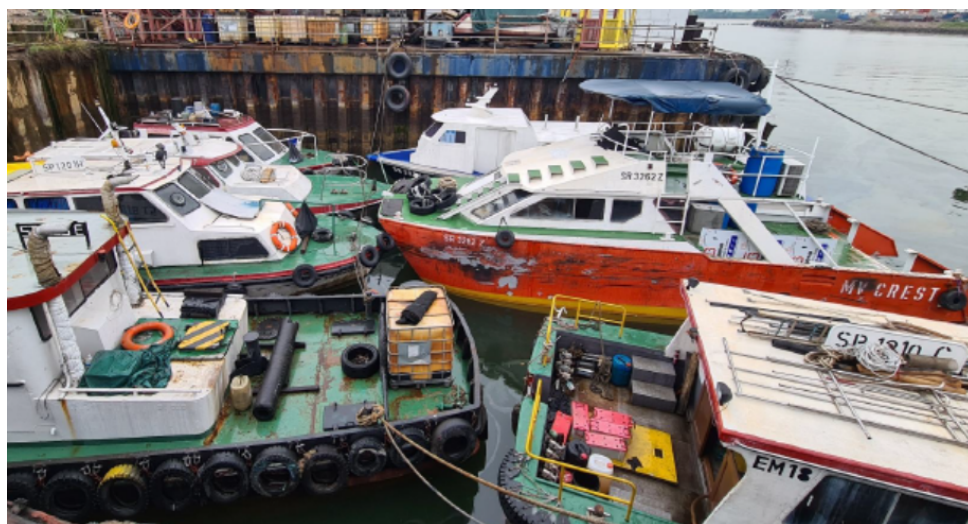


Figure 1: Photograph of the “Crest” taken on 18 June 2021 (1314 hours).⁵⁶

26 At about 0030 hours on 19 June 2021, a crew member of another vessel at the Small Berth reported the “Crest” to be listing heavily to her port side.⁵⁷ The Defendant’s yard supervisor, Mr Velu Murugesan repeatedly attempted to contact Mr Singh, but received no response until about 0730 hours on 19 June 2021.⁵⁸ By about 0800 hours, a substantial portion of the “Crest” was submerged underwater, with the vessel lying on her port side.⁵⁹ The starboard side of the

⁵³ Certified Transcript (27 August 2025) (“27 August CT”), p156, lines 24-32.

⁵⁴ CKC AEIC at para 83 (BAEIC p661).

⁵⁵ *Ibid* at para 81 (BAEIC p661).

⁵⁶ *Ibid* at BAEIC p840.

⁵⁷ *Ibid* at paras 76-77 (BAEIC pp660-661).

⁵⁸ *Ibid* at paras 78-79 (BAEIC p661).

⁵⁹ *Ibid* at para 80 (BAEIC p661).

“Crest” was still attached to the “Dive Pegasus” by two ropes, which caused the latter to list on her port side towards the “Crest” (see Figure 2).⁶⁰



Figure 2: Photograph of the “Crest” taken on 19 June 2021 (0930 hours).⁶¹

27 At about 0845 hours on 19 June 2021, Mr Singh arrived at the Shipyard and informed Mr Chang that he intended to cut the ropes connecting the “Crest” and the “Dive Pegasus” to prevent damage to the latter.⁶² Owing to safety concerns, Mr Chang neither agreed nor assisted with Mr Singh’s proposed course of action.⁶³

⁶⁰ GS AEIC at para 34 (BAEIC p14).

⁶¹ CKC AEIC at BAEIC p873.

⁶² GS AEIC at para 35 (BAEIC p14); CKC AEIC at para 87 (BAEIC p662).

⁶³ GS AEIC at paras 36-40 (BAEIC pp15-16); CKC AEIC at paras 88-89 (BAEIC p662).

28 Despite the Defendant’s position, Mr Singh dived into the Small Berth and severed the ropes connecting the two vessels.⁶⁴ After the “Dive Pegasus” was released, Mr Singh relocated the vessel to another location within the Shipyard.⁶⁵ The “Crest”, on the other hand, gradually returned to an upright position but was almost completely submerged (see Figure 3).⁶⁶

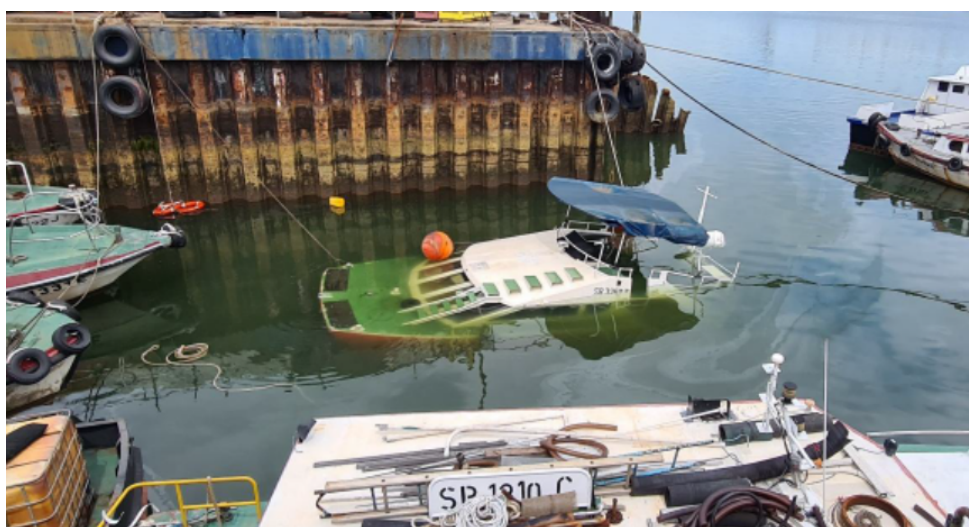


Figure 3: Photograph of the “Crest” taken on 19 June 2021 (1152 hours).⁶⁷

Salvage of the “Crest”

29 From around mid-day on 19 June 2021 until 30 July 2021, the parties engaged in protracted discussions concerning the salvage of the “Crest”. These discussions centred on the documentation required by the Defendant before it would permit the salvage operation to proceed, and covered, among other things:

⁶⁴ GS AEIC at para 42 (BAEIC p16).; CKC AEIC at para 90 (BAEIC p662-663).

⁶⁵ GS AEIC at para 43 (BAEIC p16).

⁶⁶ GS AEIC at para 42 (BAEIC p16); CKC AEIC at para 91 (BAEIC p663).

⁶⁷ CKC AEIC at BAEIC p875.

- (a) the Shipyard Safety Induction Course (“SSIC”) certificates of the personnel involved in the salvage operation; and
- (b) insurance coverage for (i) work injury compensation, and (ii) public liability, which met the Defendant’s requirements.⁶⁸

A summary of the material exchanges between the parties, together with the relevant events, is set out below.

30 Initially, Mr Singh intended to undertake the salvage operation on his own with the assistance of freelance divers.⁶⁹ On 21 June 2021, the Defendant’s staff, Ms Chen Huilian, emailed Mr Singh on the Defendant’s insurance requirements and requested that he provide complete sets of the Plaintiff’s public liability and work injury compensation insurance policies.⁷⁰ Mr Chang also informed Mr Singh over WhatsApp on the same day that the Plaintiff needed to fulfil the Defendant’s insurance requirements before the salvage operation could proceed.⁷¹

31 Between 22 and 25 June 2021, Mr Chang sent Mr Singh daily WhatsApp reminders regarding the requested insurance policies.⁷² On 28 June 2021, Mr Chang informed Mr Singh that he would verify whether work injury compensation insurance was required for the Plaintiff’s freelance divers, and again sought the Plaintiff’s insurance policies for review.⁷³

⁶⁸ *Ibid* at BAEIC p930.

⁶⁹ *Ibid* at BAEIC p926.

⁷⁰ *Ibid* at BAEIC pp925-934.

⁷¹ *Ibid* at para 104 (BAEIC p667) and BAEIC pp779-780.

⁷² *Ibid* at BAEIC p780.

⁷³ *Ibid* at BAEIC p781.

32 On 29 June 2021, the Defendant informed the Maritime and Port Authority of Singapore (“MPA”) of the sinking of the “Crest” in the Shipyard.⁷⁴ Later that day, MPA issued a Notice to Remove to the Plaintiff pursuant to s 57 of the Maritime and Port Authority of Singapore Act (Cap 170A, 1997 Rev Ed), which stipulated a deadline of 2 July 2021 for the Plaintiff to remove the “Crest” from the Shipyard.⁷⁵ By this time, the Plaintiff had notified its insurer, Lian Hong Private Limited, of the casualty.⁷⁶

33 On the morning of 30 June 2021, Mr Chang again reminded Mr Singh to furnish the insurance policies.⁷⁷ Later that afternoon, Mr Singh replied that the Plaintiff would not be carrying out the salvage operation, as neither the Plaintiff nor its insurers were able to meet the Defendant’s requirements in relation to “the insurances and documents”.⁷⁸ He also informed Mr Chang that a surveyor appointed by the Plaintiff’s insurer would attend at the Shipyard to investigate the sinking of the “Crest”. That surveyor was Mr Nandprasad Shiwsaakar (“Mr Shiwsaakar”), and he attended at the Shipyard at about 1510 hours that day.⁷⁹

34 On 1 July 2021, Mr Chang emailed Mr Singh to seek an update, and Mr Singh replied the next day to state that he was requesting quotations from a few salvage companies.⁸⁰ Subsequently, on 8 July 2021, Singapore Salvage

⁷⁴ *Ibid* at para 109(a) (BAEIC p669) and BAEIC p1533.

⁷⁵ *Ibid* at para 109(b) (BAEIC p669) and BAEIC pp951-952.

⁷⁶ *Ibid* at BAEIC p954.

⁷⁷ *Ibid* at BAEIC pp956-957.

⁷⁸ *Ibid* at BAEIC p956.

⁷⁹ *Ibid* at para 110(d) (BAEIC p670).

⁸⁰ *Ibid* at BAEIC p977.

Engineers Pte Ltd (“SSE”), which had been appointed by the Plaintiff, contacted Mr Chang to discuss the salvage operation.⁸¹

35 Thereafter, from 9 July 2026 to 30 July 2021, SSE furnished various documents to the Defendant pursuant to the latter’s request. In this regard:

(a) On 12 July 2021, SSE provided the SSIC or equivalent safety certificates to the Defendant;⁸² and

(b) On 30 July 2021, and after many rounds of back-and-forth on the insurance coverage for work injury compensation and public liability, the Defendant finally received a copy of the written endorsement to SSE’s salvor insurance policy (“Amended Cover”) issued by SSE’s Protection & Indemnity Club, which: (i) named the Defendant as a co-assured, and (ii) included a term that waived the insurer’s rights of subrogation, if any, against the Defendant.⁸³

36 After the Amended Cover was furnished, Mr Chang emailed Mr Singh at 1633 hours on 30 July 2021 to enquire on the commencement of the salvage operation.⁸⁴ Owing to SSE’s availability, however, the salvage operation did not take place until 5 August 2021.⁸⁵

⁸¹ *Ibid* at para 114 (BAEIC p671).

⁸² *Ibid* at BAEIC pp1075-1135.

⁸³ *Ibid* at para 115 (BAEIC p671) and BAEIC pp1509-1519.

⁸⁴ *Ibid* at para 118 (BAEIC p671) and BAEIC p1522.

⁸⁵ *Ibid* at paras 119-120 (BAEIC pp671-672) and BAEIC pp1521-1522.

37 During the salvage operation, the “Crest” was lifted from the seabed using a crane, placed on SSE’s barge, and thereafter brought to SSE’s yard in Tuas (“SSE’s Yard”).⁸⁶

38 Mr Shiwsaakar, who was present throughout the salvage operation, inspected the “Crest” at SSE’s Yard at about 1700 hours on 5 August 2021.⁸⁷ None of the Defendant’s representatives were present at SSE’s yard during this inspection. Based on his visual inspection, Mr Shiwsaakar observed the following.

(a) First, he identified a hole in the bottom port side 2nd bilge bay (“Bottom Plate Hole”).⁸⁸ The Bottom Plate Hole was about 4 cm in size, although no exact measurements were taken on the location of the hole. Wide angle and close-up photographs of the Bottom Plate Hole are reproduced below in Figure 4.



⁸⁶ *Ibid* at para 121 (BAEIC p121); GS AEIC at paras 89-91 (BAEIC pp32-33).

⁸⁷ Affidavit of Evidence-in-Chief of Nandprasad Shiwsaakar (“NS AEIC”) at para 27 (BAEIC p549).

⁸⁸ *Ibid*.

Figure 4: Photographs of the Bottom Plate Hole taken on 5 August 2021.⁸⁹

(b) Second, there was another hole, about 4 cm in length, on the port side of the “Crest” in the 3rd bay from the aft (“Port Side Hole”).⁹⁰ When the “Crest” was first lifted from the water, a metal rebar was seen protruding through the Port Side Hole (see Figure 5).



Figure 5: Photographs of the Port Side Hole taken on 5 August 2021.⁹¹

39 For completeness, although MPA required a bathymetric survey of the seabed where “Crest” had sunk,⁹² none was carried out. While the parties discussed the survey sporadically between 12 July 2021 and 2 October 2021,⁹³ each appeared to take the position that the other was responsible for conducting it.⁹⁴

⁸⁹ *Ibid* at BAEIC pp593-594.

⁹⁰ *Ibid* at para 23 (BAEIC p549).

⁹¹ *Ibid* at BAEIC p584.

⁹² CKC AEIC at para 125 (BAEIC p673) and BAEIC pp1529-1531.

⁹³ *Ibid* at BAEIC pp1535-1536 and 1590-1597.

⁹⁴ *Ibid* at BAEIC pp1535-1536; GS AEIC at paras 117-118 (BAEIC pp40-41).

The Defendant's outstanding invoices

40 The Plaintiff did not pay the berthing fees for the “Dive Pegasus” incurred between 22 June 2021 and 4 August 2021.⁹⁵ The outstanding invoices for these fees, which amount to S\$725.80, are set out below.⁹⁶

Invoice No	Invoice Date	Period	Unpaid Amount
DM21060132	30 June 2021	22 June 2021 to 21 July 2021	S\$500.00
DM21080153	5 August 2021	22 July 2021 to 4 August 2021 (pro-rated)	S\$225.80

41 The Plaintiff also did not pay the berthing fees for the “Crest” incurred between 1 July 2021 and 5 August 2021.⁹⁷ In addition, the Defendant invoiced the Plaintiff for anti-pollution equipment and materials deployed after the “Crest” sank and an oil sheen was observed in the immediate vicinity of the vessel.⁹⁸ This invoice remains unpaid. The outstanding invoices relating to the “Crest”, totalling S\$1,805.60, are set out below.

Invoice No	Invoice Date	Nature of Work / Period	Unpaid Amount
DM21060134	30 June 2021	Berthing fees: 1 July 2021 to 31 July 2021	S\$500.00

⁹⁵ CKC AEIC at BAEIC p720.

⁹⁶ *Ibid* at BAEIC pp735-736.

⁹⁷ *Ibid* at BAEIC pp1545 and 1558.

⁹⁸ *Ibid* at para 126(d) (BAEIC pp674-675) and BAEIC pp1562, 1599-1608.

DM21080154	5 August 2021	Berthing fees: 1 August 2021 to 5 August 2021 (pro-rated)	S\$80.60
DM21080155	5 August 2021	Anti-pollution equipment and materials	S\$1,225.00

42 The total amount due under the five invoices referred to at [40] and [41] above (“Outstanding Invoices”) is S\$2,531.40.

The Plaintiff’s Equipment

43 From about March 2021, the Plaintiff stored its Equipment, namely a Denyo Welding Generator and a Bauer K14 Compressor, at the Shipyard.⁹⁹

44 After the “Crest” sank, the Plaintiff repeatedly sought the return of the Equipment.

(a) On 22 July 2021, the Plaintiff first intimated its intention to collect the Equipment. The Defendant refused, stating that the Equipment could not be removed until the “issues” regarding the “Crest” had been resolved. The WhatsApp exchange between Mr Singh and Mr Chang is reproduced below:¹⁰⁰

14:43 [Mr Singh]:

Hi [Mr Chang], tmr ill b removing the generator n compressor n shifting back to my wkshop.

15:07 [Mr Chang]:

Hi [Mr Singh], as informed by our office, these equipments cannot be removed before the catamaran issues are settled.

⁹⁹ GS AEIC at paras 13(b) and 105 (BAEIC pp 7-8 and 37).

¹⁰⁰ CKC AEIC at BAEIC p783.

15:09 [Mr Singh]: So your company is seizing my
equipment?

(b) On 10 August 2021 (*ie*, five days after the “Crest” had been removed from the Shipyard), the Plaintiff again sought the return of its Equipment, but was informed that it first needed to: (i) settle the outstanding amounts due, and (ii) arrange the bathymetric survey required by MPA. The relevant WhatsApp exchange reads as follows:¹⁰¹

14:45 [Mr Singh]: Hi [Mr Chang], so this coming
thurs I can take the generator
n compressor from your yard
right?

15:22 [Mr Chang]: pls settle the outstanding amt
+ arrange side
scan/Bathymetric survey to
cover 30 metres from the point
of the sunken craft as per MPA
requirement

(c) On 23 September 2021, Mr Chang emailed Mr Singh to seek an update on the bathymetric survey, and reminded the Plaintiff to pay the outstanding amounts or face late interest of 1.5% per month.¹⁰² Mr Singh replied the next day to state that he would review the Defendant’s statement of accounts, and enquired about collecting the Equipment.¹⁰³ On 25 September 2021, Mr Chang responded:¹⁰⁴

... As per our previous email, please settle the outstanding
items before collection of the [Equipment].

¹⁰¹ GS AEIC at BAEIC p98.

¹⁰² *Ibid* at BAEIC pp502-503.

¹⁰³ *Ibid* at BAEIC p502.

¹⁰⁴ *Ibid*.

45 Thereafter, the Plaintiff’s solicitors, PDLegal LLC, issued two letters on 25 and 27 October 2021 to demand the release of the Equipment.¹⁰⁵ On 3 November 2021, the Defendant’s former solicitors, David Ong & Co, replied to state that the Defendant was entitled to exercise a lien over the Equipment.¹⁰⁶

The legal proceedings

46 Unable to resolve their disputes, the Plaintiff commenced DC 855 against the Defendant on 30 March 2022.

47 The trial of DC 855 took place over six and a half days, with each side adducing evidence from one factual witness and one expert witness. The Plaintiff’s factual and expert witnesses were Mr Singh and Mr Shiwsaakar respectively, while the Defendant called Mr Chang as its factual witness and Captain Bruce Gordon Ewen ("Mr Ewen"), a Master Mariner, as its expert witness.

The parties’ cases

48 In essence, the Plaintiff claims for loss arising from: (a) the sinking of the “Crest”, and (b) the Defendant’s detention of the Plaintiff’s Equipment at the Shipyard.

49 In relation to the sinking of the “Crest”, the Plaintiff alleges that the Defendant was negligent.

(a) The Plaintiff pleads that the sinking of the “Crest” was due to “some sharp metal piece from the seabed which came into contact and

¹⁰⁵ *Ibid* at BAEIC pp505-509.

¹⁰⁶ *Ibid* at BAEIC p511.

pierced through the bottom plate of the vessel”, creating the Bottom Plate Hole and causing the subsequent ingress of water into the vessel.¹⁰⁷

(b) The Plaintiff submits that the Defendant owed a duty of care to:
(i) ensure that the “Crest” was not unreasonably and unnecessarily relocated; (ii) ensure that the Small Berth was safe and free from hazards; and (iii) take all reasonable steps to mitigate the damage to the “Crest” if the hazard could not be removed.¹⁰⁸

(c) The Defendant allegedly breached its duty by: (i) unreasonably relocating the “Crest” to the Small Berth; (ii) permitting the Small Berth to remain unsafe due to underwater hazards; and (iii) obstructing the salvage operation and failing to permit the salvage to proceed promptly, thereby causing further damage to the “Crest”.¹⁰⁹

(d) The Plaintiff also relies on the maxim *res ipsa loquitur*.¹¹⁰

50 Alternatively, the Plaintiff claims in contract. The Plaintiff contends that it is an implied term in the ship repair contract between the Plaintiff and the Defendant that the latter was to provide a safe berth, which was breached as the Small Berth was unsafe and hazardous.¹¹¹

51 In relation to the Equipment, the Plaintiff claims in detinue as: (a) the Defendant is in possession of the Plaintiff’s Equipment; and (b) notwithstanding

¹⁰⁷ Statement of Claim (Amendment No. 2) (“SOC”) at para 15; NS AEIC at para 46 (BAEIC p554).

¹⁰⁸ SOC at paras 17-19; Plaintiff’s Closing Submissions (“PCS”) at paras 11-20.

¹⁰⁹ SOC at para 20; PCS at paras 4, 21-71.

¹¹⁰ SOC at para 21; PCS at paras 126-137.

¹¹¹ SOC at paras 24-28; PCS at paras 155-171.

the Plaintiff's demand for their return, the Defendant continued to retain them without lawful basis.¹¹² For the same reasons, the Plaintiff avers that the Defendant is liable in conversion.¹¹³

52 The Plaintiff claims damages amounting to S\$219,022.64 and US\$74,310.36, comprising:¹¹⁴

- (a) S\$162,380 for the cost of salvaging and repairing the "Crest";
- (b) US\$3,197.73 and S\$9,303.64 for the replacement of equipment on the "Crest";
- (c) US\$71,112.63 and S\$31,380.00 for the damaged equipment on the "Crest"; and
- (d) S\$15,959.00 for the detention of the Equipment.

53 Although the Plaintiff's claim exceeds the jurisdictional limit of S\$250,000 in the District Court, the Plaintiff confirms that it will abandon any damages awarded in excess of that amount.¹¹⁵

54 The Defendant, on the other hand, seeks the dismissal of the Plaintiff's claims.

55 In relation to the negligence claim, the Defendant puts the Plaintiff to

¹¹² SOC at paras 31-33; PCS at paras 179-190.

¹¹³ SOC at para 35; PCS at para 191.

¹¹⁴ SOC at paras 22 and 34; PCS at paras 174-178 and 192-193.

¹¹⁵ Plaintiff's Opening Statement at para 57; PCS at para 3(c).

strict proof on the alleged cause of sinking of the “Crest”,¹¹⁶ and raises three principal defences.

(a) While the Defendant accepts that it owed a duty of care to the Plaintiff to ensure that the Small Berth was safe and free of hazards, it denies having breached that duty.¹¹⁷

(b) The Defendant further contends that the requirements for invoking *res ipsa loquitur* are not satisfied.¹¹⁸

(c) In any event, even if the Plaintiff establishes negligence, it is not entitled to substantial damages as it failed to prove its loss.¹¹⁹

56 In relation to the Plaintiff’s implied term claim, the Defendant contends that such term is inconsistent with the express terms of the contract.¹²⁰ Even if such an implied term existed, it was not breached, and the Plaintiff has not proved its losses.¹²¹

57 The Defendant also contends that its Conditions of Contract were incorporated into the ship repair contracts for the “Dive Pegasus” and the “Crest”, entitling it under clause 8 to exercise a contractual lien over the Plaintiff’s Equipment in respect of the Outstanding Invoices.¹²² Accordingly, the Defendant’s retention of the Equipment was lawful, with the result that the

¹¹⁶ Defence and Counterclaim (Amendment No 3) (“DCC”) at para 15.

¹¹⁷ Defendant’s Closing Submissions (“DCS”) at paras 46-123.

¹¹⁸ *Ibid* at paras 125-138.

¹¹⁹ *Ibid* at paras 143-144 and Annex 2.

¹²⁰ *Ibid* at paras 147-155.

¹²¹ *Ibid* at paras 156-164.

¹²² *Ibid* at paras 8-41 and 204-212.

Plaintiff's claims in detinue or conversion must fail. In any event, even if liability is established, only nominal damages should be awarded because no evidence of the Equipment's market value has been adduced.¹²³

58 Lastly, the Defendant counterclaims S\$2,531.40 under the Outstanding Invoices, which relate to services rendered to the "Dive Pegasus" and the "Crest".¹²⁴ In response, the Plaintiff avers that it is entitled to set off the amount due under the Outstanding Invoices against any damages awarded to it for the Defendant's negligence.¹²⁵

Issues to be determined

59 Preliminarily, there is no dispute that this Court has the jurisdiction to hear and try the action in DC 855, since the Plaintiff has confirmed that it will abandon any excess amount above S\$250,000: see *Tan Chee Heong v Chen Hua* [2023] 5 SLR 1190 at [65].

60 In view of the parties' pleaded cases, and having considered the entirety of the evidence and the submissions of counsel, the following main issues arise for determination:

- (a) Is the Defendant liable in negligence for the sinking of the "Crest", and for the alleged delay in salvaging the "Crest"? This will entail a consideration of, among other things, whether the Defendant owed a duty of care, whether the duty was breached, and the Plaintiff's reliance on *res ipsa loquitur*.

¹²³ *Ibid* at paras 216-231.

¹²⁴ DCC at paras 37-39; DCS at paras 165-201.

¹²⁵ PCS at paras 194-196; Plaintiff's Reply Submissions at para 106.

- (b) Did the Defendant breach an implied term by failing to provide a safe berth?
- (c) Were the Conditions of Contract incorporated into the ship repair contracts for the “Dive Pegasus” and the “Crest”?
- (d) Is the Plaintiff liable to the Defendant for the amounts due under the Outstanding Invoices?
- (e) Was the Defendant entitled to rely on a contractual lien to detain the Plaintiff’s Equipment, or is it liable for detainment or conversion?

61 Each of these issues will be considered in turn.

Issue 1: Is the Defendant liable in negligence?

The law

62 The Court of Appeal in *Deloitte & Touche LLP v Hin Leong Trading (Pte) Ltd (in compulsory liquidation)* [2026] SGCA 33 (“*Deloitte*”) recently distilled the tort of negligence into six constituent elements (see [44]):

- (a) first, the complaint must concern a type of harm that is actionable in the tort of negligence;
- (b) second, the defendant must owe the claimant a duty of care;
- (c) third, the conduct of the defendant must have constituted a breach of its duty of care;
- (d) fourth, the defendant’s breach of duty must be a factual cause of the claimant’s injury;

- (e) fifth, the claimant’s injury must not be too remote, in the sense that it falls within the normatively appropriate scope of the defendant’s legal responsibility; and
- (f) sixth, the absence of any operative defences, such as illegality or contributory negligence.

63 For present purposes, it suffices to address the first three elements.

64 The first element of actionable damage requires the claimant to have suffered some sort of damage which is legally recognised in the tort of negligence: see *Deloitte* at [45]. In this regard, “damage” generally refers to being worse off, physically or economically, while the qualifier of “actionable” contemplates that there must be an interference with a right or interest recognised as capable of protection by law: see *Deloitte* at [45].

65 The second element is the existence of a duty of care. In determining whether a defendant owed the claimant a duty of care, the Court will apply the test set out in *Spandek Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100. This requires the Court to consider: (a) first, as a threshold matter, whether it was factually foreseeable that the claimant would suffer damage from the defendant’s carelessness; (b) second, whether there is sufficient legal proximity between the parties for a *prima facie* duty of care to arise; and third, whether there are any policy considerations which negate the imposition of a duty of care: see *Deloitte* at [47]. In most cases, the existence of a duty of care would not be disputed or open to any real dispute, and questions as to what the defendant should or should not have done, or whether the defendant should be responsible for a certain loss suffered by the

claimant, should not be subsumed into the duty of care inquiry: see *Deloitte* at [48].

66 The third element is that the defendant breached its duty of care, which is invariably a question of fact: see *Deloitte* at [50]. The duty is to exercise reasonable care and skill to avoid causing injury and loss to the claimant, and not a duty to take or perform any particular act. Accordingly, the question is not whether the defendant failed to do a specific act, but whether that omission amounted to a failure to exercise reasonable skill and care: see *Deloitte* at [50].

67 As the foregoing discussion shows, each element raises a distinct inquiry, and it is unhelpful therefore to frame what are, in substance, allegations of breach as questions of duty: see *Deloitte* at [70]. Defining the duty of care by reference to the specific acts the defendant should or should not have done conflates the distinct questions of: (a) whether a duty of care existed; and (b) what that duty required the defendant to do: see *Deloitte* at [51] and [70].

The Defendant owed a duty of care to the Plaintiff

68 The parties did not have the benefit of the Court of Appeal’s decision in *Deloitte*. As a result, their submissions regrettably conflate the distinct questions of duty and breach (see [49] and [55] above).

69 Notwithstanding the parties’ submissions, I begin with the first two elements: actionable damage, and the existence of a duty of care.

70 The Plaintiff’s claim is for property damage to the “Crest”, and is a well-established form of actionable damage. The first element is therefore satisfied.

71 The second element of the existence of a duty of care is likewise uncontroversial.

(a) At the material time, the parties were in a contractual relationship under which the Defendant permitted the “Crest” to berth at the Small Berth (see [17]-[20] above). This gave rise to an occupier-lawful entrant relationship between the parties.

(b) It was factually foreseeable that the Plaintiff would suffer damage if the Defendant failed to exercise reasonable care.

(c) There was also sufficient proximity: physical proximity by virtue of the “Crest” being physically situated in the Small Berth, and circumstantial proximity arising from the occupier-lawful entrant relationship: see *See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd and others* [2013] 3 SLR 284 at [78]–[80].

(d) Further, neither party identified any policy reason negating the duty of care.

72 I therefore find that the Defendant owed a duty of care to the Plaintiff.

The Defendant did not breach its duty of care

73 I next consider whether the Defendant breached its duty of care. In this regard, the Plaintiff alleges that the Defendant breached its duty in the following three ways:

- (a) relocating the “Crest” to the Small Berth when it was not “absolutely necessary”;¹²⁶
- (b) failing to ensure the Small Berth was safe and free from underwater hazards;¹²⁷ and
- (c) failing to allow the salvage to be conducted promptly, thereby causing further damage to the “Crest”.¹²⁸

(1) Relocating the “Crest” to the Small Berth

74 The first allegation is without merit.

75 For a start, the Plaintiff has not explained why the exercise of reasonable care and skill required the Defendant to relocate the “Crest” only when “absolutely necessary”.

76 Further, the Plaintiff’s witnesses accepted that the Defendant, as the shipyard, was best placed to decide where vessels should berth for operational and safety reasons.¹²⁹ Indeed, Mr Singh agreed that the “Crest” was shifted from the Large Berth to the Small Berth because the Defendant was concerned that the arrival of a barge (see [24] above) posed a safety risk to the Plaintiff’s vessels and other vessels in the Shipyard.¹³⁰

77 In any event, Reg 38(a) of the Maritime and Port Authority of Singapore

¹²⁶ SOC at paras 19 and 20(d).

¹²⁷ *Ibid* at paras 17 and 20(a)-(b).

¹²⁸ *Ibid* at paras 18 and 20(c).

¹²⁹ 28 May CT, p40, lines 1-22; p50, lines 7-17; p58, lines 6-17; p60, lines 8-25; p84, lines 21-31.

¹³⁰ *Ibid*, p84, lines 21-31.

(Port Regulations) (Cap 170A, Rg 7, 2000 Rev Ed) confers a broad discretion on the Defendant to regulate entry into the Shipyard, and to direct vessels to berth at assigned locations. In this regard, Mr Shiwsaakar accepted that the Defendant controlled the Shipyard and the Small Berth, including who could enter and leave.¹³¹

78 In the circumstances, the Defendant acted reasonably and within its rights in directing the “Crest” to shift to the Small Berth. There is thus no breach of the Defendant’s duty of care in this respect.

(2) *Ensuring that the Small Berth was safe*

79 I next consider the Plaintiff’s allegation that the Defendant failed to ensure that the Small Berth was safe and free from hazards. This allegation rests on the factual premise that the “Crest” came into contact with a sharp metal object on the seabed, thereby creating the Bottom Plate Hole and causing the vessel to sink (see [49(a)] above). Absent proof of that premise, there is no basis for finding that the Small Berth was unsafe or hazardous, and therefore that the Defendant breached its duty of care.

80 Before setting out the experts’ views on this factual issue, I make three observations on the burden of proof.

81 To begin with, there is no dispute that the Plaintiff bears the legal burden of proving its case that the “Crest” came into contact with a sharp metal object on the seabed, which caused the Bottom Plate Hole and the vessel’s sinking: see *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 at [58] and [60]. This legal burden requires the Plaintiff to establish, on a balance

¹³¹ 29 August CT, p13, line 18 – p14, line 3.

of probabilities, that its version of events was more likely than not to have occurred: see *Chubb Insurance Singapore Ltd v Sizer Metals Pte Ltd* [2023] 1 SLR 1553 (“*Chubb Insurance*”) at [69(b)] and [75].

82 While the Defendant is entitled to put forward an alternative explanation for the sinking of the “Crest”, the legal burden remains at all times with the Plaintiff and the Defendant has no burden to prove its alternative theory: see *Argoglobal Underwriting Asia Pacific Pte Ltd and others v Oversea-Chinese Banking Corp Ltd* [2026] 1 SLR 289 (“*Argoglobal*”) at [39].

83 Where the evidence permits *all other possible explanations to be eliminated*, even an improbable explanation may be found, on a balance of probabilities, to be true: see *Chubb Insurance* at [69(c)]. Conversely, where the evidence remains unsatisfactory, the cause of the vessel’s sinking may remain in doubt, with the consequence that the burden of proof is not discharged. As succinctly explained by Lord Brandon of Oakbrook in *Rhesa Shipping Company SA v Herbert David Edmunds (The Popi M)* [1985] 2 All ER 712 at 714 and 718:

... it is always *open to a court*, even after the kind of *prolonged inquiry with a mass of expert evidence which took place in this case*, to conclude, at the end of the day, that the *proximate cause of the ship's loss, even on a balance of probabilities, remains in doubt, with the consequence that the shipowners have failed to discharge the burden of proof which lay on them.*

...

... No judge likes to decide cases on burden of proof if he can legitimately avoid having to do so. *There are cases, however, in which, owing to the unsatisfactory state of the evidence or otherwise, deciding on the burden of proof is the only just course for him to take.*

[emphasis added]

(A) *Experts' views on cause of the sinking*

84 As the experts make extensive references to terminology relating to the depth of water, it is helpful to begin by explaining these terms.

(a) A vessel's *draft* refers to the distance from the bottom of her keel to the waterline.¹³²

(b) The *chart datum* refers to the level below which the tide will rarely go.¹³³ It serves as the reference plane in tidal prediction charts, including those published by MPA and the United Kingdom Hydrographic Office ("UKHO").¹³⁴ In addition, the chart datum is the depth that appears as spot depths or isobaths on navigational charts.¹³⁵

(c) The *height of tide* is the tidal height above the chart datum.¹³⁶

(d) The *depth of the water* at any given point is the vertical distance from the waterline to the seabed, and can be predicted by adding the chart datum and the height of tide together.¹³⁷

(e) The *under-keel clearance* of a vessel is the distance from the bottom of her keel to the seabed. It is calculated by deducting the draft of a vessel from the depth of the water.¹³⁸

¹³² 28 May CT, p102, lines 17-22.

¹³³ BGE AEIC at paras 9.9-9.11 (BAEIC pp1627-1628).

¹³⁴ *Ibid* at paras 9.3 and 9.7-9.10 (BAEIC pp1626-1628).

¹³⁵ *Ibid* at para 9.15 (BAEIC p1630); Certified Transcript (28 August 2025) ("28 August CT"), p99, line 24 – p100, line 30.

¹³⁶ BGE AEIC at paras 9.7-9.8 (BAEIC p1627); 28 May CT, p136, lines 17-24; p149, lines 20-31.

¹³⁷ 28 May CT, p137, lines 6-27; 28 August CT, p101, lines 2-27.

¹³⁸ BGE AEIC at para 11.2 (BAEIC p1640).

85 These terminologies are illustrated in the sketch at figure 6 below.

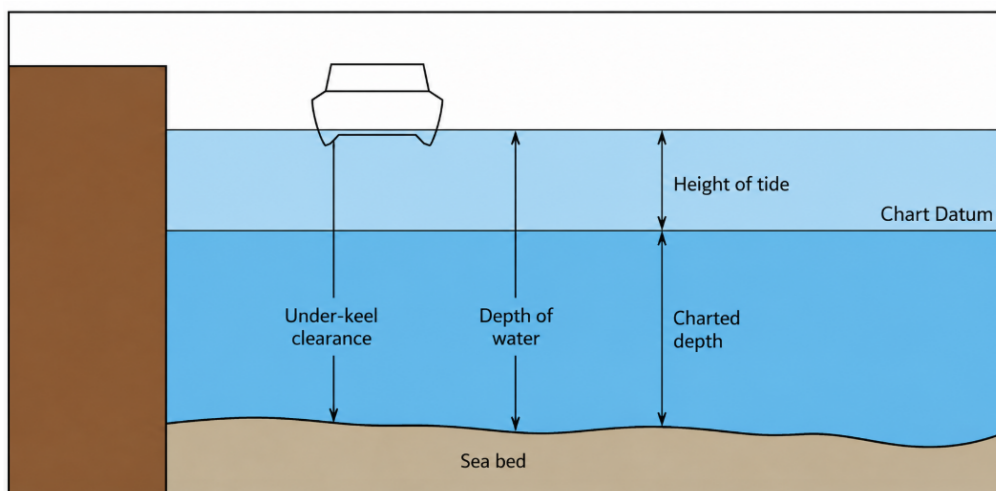


Figure 6: Simplified tidal height sketch.¹³⁹

86 With these definitions in mind, I turn to the expert evidence on the cause of the sinking.

87 The experts broadly agree on the following sequence of events:¹⁴⁰

- (a) First, the Bottom Plate Hole was created, which led to an ingress of water, causing the “Crest” to sink towards her port side.
- (b) After the “Crest” sank, her port side came into contact with a metal rebar, which gave rise to the Port Side Hole.

88 The experts therefore agree that the Bottom Plate Hole caused the sinking of the “Crest”. The real dispute is what created the Bottom Plate Hole.

¹³⁹ Adapted from Figure 1 in BGE AEIC at para 9.9 (BAEIC p1628).

¹⁴⁰ NS AEIC at paras 41, and 47-51 (BAEIC pp553-555); 28 August CT, p65, lines 1-9; p137, lines 1-5; p140, lines 2-15; Certified Transcript (14 November 2025) (“14 November CT”), p36, line 1 – p38, line 23.

89 Mr Shiwsaakar’s opinion is that the Bottom Plate Hole was caused by the “Crest” coming into contact with an object on the seabed. His explanation in his Affidavit of Evidence-in-Chief (“AEIC”) may be summarised as follows.¹⁴¹

(a) It is common for metal objects, such as angle bars and scaffolding materials, to fall into a shipyard’s waters. Some of these objects may become lodged upright on the seabed.

(b) While Mr Shiwsaakar is unaware of the chart datum at the Small Berth, he is of the view that it would not be significantly above the seabed, considering that it is not in open sea.

(c) Based on a tide table obtained by Mr Shiwsaakar from “a tug boat of one of [his] previous projects”, a low tide of 0.43 metres occurred at 1851 hours on 18 June 2021.

(d) Mr Shiwsaakar was informed by Mr Singh that the draft of the “Crest” on even keel is 0.5 metres. As the draft of the “Crest” exceeded the water depth of 0.43 metres during low tide, the vessel would have touched the seabed during this period.

(e) Mr Shiwsaakar opined that a sharp metal object on the seabed pierced the bottom plate of the “Crest” during low tide, thus creating the Bottom Plate Hole. As the tide rose and the object no longer pressed against the hull, water entered the vessel, causing it to sink. The “Crest” sank at around 0140 hours on 19 June 2021, which corresponded to a high tide of 2.12 metres.

¹⁴¹ NS AEIC at paras 39-47 (BAEIC pp552-554).

90 During the trial, however, Mr Shiwsaakar’s explanation evolved. In addition to his original theory, he relied on a principle of fluid dynamics known as Bernoulli’s principle to suggest that the displacement of water by passing vessels would cause the keel of the “Crest” to touch the seabed. He explained:¹⁴²

The Bernoulli’s principle always says if there is a passing vessel, alright, and the velocity of water that pass through the keel of the boat that is resting at the shipyard corresponds to the low pressure. And if there’s a low pressure, the boat can sink significantly and it will be touching at low tide ...

...

... vessel can sink at this low tide and all this thing. Yah, it can touch the seabed. Very simple. And don’t forget, when a passing vessel comes, there is a crest and thrust of the wave. This generation of wave can even zoom---rocking, like, you know, ... the rocking horse, it will rock very badly ...

91 On the other hand, Mr Ewen rejects the view that the Bottom Plate Hole was created through contact with an object on the seabed.¹⁴³ His opinion may be summarised as follows.

(a) Mr Ewen contends that Mr Shiwsaakar’s methodology is fundamentally flawed.¹⁴⁴ Mr Shiwsaakar did not consider the chart datum in his calculations on: (i) the depth at the Small Berth, and (ii) the under-keel clearance for the “Crest”.

(b) In addition, the tidal information used by Mr Shiwsaakar is neither from MPA nor UKHO, and is unreliable. Based on the tide tables published by MPA for the tidal station closes to the Shipyard (*ie*, Sultan Shoal Lighthouse), the predicted height of tide at low tide on 18 June

¹⁴² 28 August CT, p75, line 11 - p76, line 7.

¹⁴³ BGE AEIC at para 4.3 (BAEIC p1621).

¹⁴⁴ *Ibid* at paras 9.18-9.20 (BAEIC p1631).

2021 was 0.8 metres between 1100 and 1200 hours, and thereafter the predicted height at high tide was 2.3 metres between 1700 and 1800 hours.¹⁴⁵ These predictions are corroborated by UKHO's tidal predictions for the Tuas tidal station.¹⁴⁶

(c) Based on the pre-sinking photographs of the “Crest”, Mr Ewen’s view is that that vessel was trimmed by the bow and was not on even keel. As there are no exact measurements for the location of the hole, Mr Ewen estimates the draft at the location of the Bottom Plate Hole to be about 0.25 metres (see the sketch at Figure 7 below, which Mr Ewen prepared using the known dimensions of the “Crest” and photographs of the “Crest”).¹⁴⁷

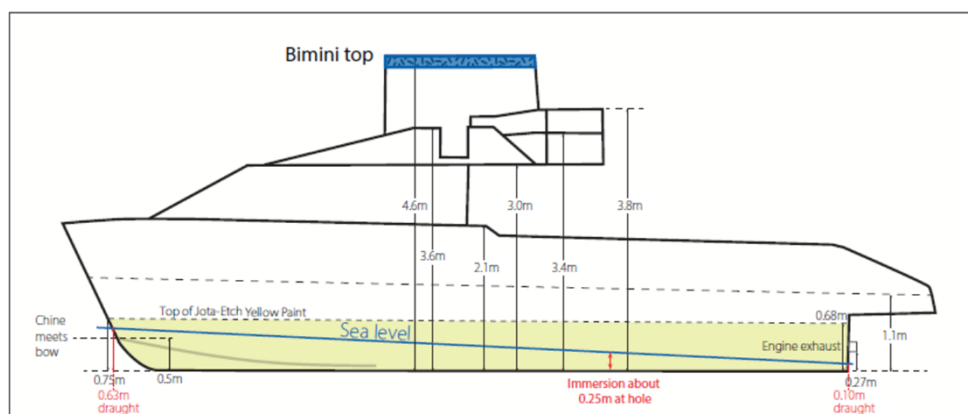


Figure 7: Profile sketch of the “Crest”.¹⁴⁸

(d) Mr Ewen’s calculations point to a chart datum of 2.6 metres at the position where the “Crest” sank. Essentially, by using the

¹⁴⁵ *Ibid* at para 9.30 (BAEIC p1633), Appendix 9 (BAEIC p1704) and Appendix 13 (BAEIC p1720).

¹⁴⁶ *Ibid* at para 9.26 (BAEIC p1633) and Appendix 15 (BAEIC pp1767-1768).

¹⁴⁷ *Ibid* at paras 8.8-8.14 and 10.3-10.4 (BAEIC pp1625-1626 and 1635).

¹⁴⁸ *Ibid* at Appendix 8 (BAEIC p1702).

dimensions in Figure 7 above against the observed level of submersion (*ie*, where the waterline intersects with the vessel), Mr Ewen could estimate the depth of the water at the position where the “Crest” sank, and thereafter calculate the chart datum by deducting the height of tide from the observed water depth. Mr Ewen applied this methodology to twelve photographs of the “Crest” sitting on the seabed from 19 June 2021 to 28 July 2021, and averaged the values obtained to arrive at a chart datum of 2.6 metres.¹⁴⁹ Mr Ewen arrived at a similar chart datum value of 2.63 metres when he used a 3D reconstruction software, Cinema 4D, to measure the chart datum across nineteen photographs of the “Crest” sitting on the seabed from 20 June 2021 to 27 July 2021.¹⁵⁰

(e) Mr Ewen also pointed out that the lowest height of tide between 14 and 18 June 2021 occurred at low tide on 14 June 2021, when the “Crest” first arrived at its position in the Small Berth.¹⁵¹ At that time, the “Crest” had an under-keel clearance of 2.95 metres. Thereafter, the height of tide at low tide continued to rise, and the “Crest” had a greater under-keel clearance of 3.15 metres on 18 June 2021 as compared to 14 June 2021.¹⁵² Given that the “Crest” did not suffer a hull penetration at the lowest tide she experienced on 14 June 2021, and did not show any changes from 15 to 18 June 2021 when the low tide was rising, the sinking could not have happened in the manner alleged by the Plaintiff.

¹⁴⁹ *Ibid* at paras 10.5-10.6 (BAEIC pp1635-1636); Certified Transcript (6 November 2025) (“6 November CT”), p54, line5 – p56, line 23; p58, lines 15-18; p60, line 15 – p61, line 2.

¹⁵⁰ Supplementary Affidavit of Evidence-in-Chief of Bruce Gordon Ewen at paras 3.1-3.5, Supplementary Appendix 1; 6 November CT, p106, line 7 -p107, line 20; 14 November CT, p17, line 29 - p18, line 2.

¹⁵¹ BGE AEIC at paras 10.13, 11.1-11.6 (BAEIC pp1639-1640).

¹⁵² *Ibid*.

(f) In response to Mr Shiwsaakar’s reliance on Bernoulli’s principle, Mr Ewen testified that, short of a tsunami, he could think of no cause or phenomenon capable of drawing the “Crest” down by 2 to 2.5 metres.¹⁵³

(g) Finally, while Mr Ewen is unable to say with certainty what created the Bottom Plate Hole, he opined that the features of the hole suggest that it was man-made.¹⁵⁴ Had the hole been caused by a sharp metal object, one would have expected to see displaced metal or ‘flaps’ bent upwards around the point of penetration.¹⁵⁵ Instead, the limited photographs of the Bottom Plate Hole are more consistent with a triangular hole with missing material and two adjacent cuts that appear to have been made by a mechanical tool such as an angle grinder or a disc grinder.¹⁵⁶

(B) My decision

92 When faced with conflicting expert evidence, the Court must sift, weigh and evaluate the expert evidence based on matters such as its credibility, coherence, consistency and logic, and against the overall context of established facts: see *Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [75]–[76]. In the present case, I prefer Mr Ewen’s evidence for the following reasons.

¹⁵³ 14 November CT, p32, line 1 – p33, line 19; p60, lines 11-17.

¹⁵⁴ *Ibid* at p60, line 27 – p61, line 7.

¹⁵⁵ BGE AEIC at paras 12.12-12.13 (BAEIC pp1643-1644).

¹⁵⁶ 14 November CT, p45, lines 9-10; p60, line 27 – p61, line 7; p63, line 19 – p64, line 6.

93 Mr Ewen’s evidence is coherent and logical. In the absence of surveys or measurements on the depth of the water at the Small Berth at the time of the sinking, he relied on objective evidence, including MPA and UKHO tide tables and the available photographs, to derive the dimensions of the “Crest” and then calculate the chart datum and under-keel clearance of the vessel.

94 His calculations are also reliable and supported by independent evidence. Mr Singh, who was best placed to know the dimensions of the “Crest”, accepted Mr Ewen’s sketch of the vessel (see Figure 7 above) as accurate.¹⁵⁷ Further, the Small Berth lies within the 2-metre and 5-metre isobaths on electronic navigation charts, indicating that the chart datum there may range between 2 and 5 metres.¹⁵⁸ Mr Ewen’s estimated chart datum of 2.6 metres is therefore consistent with those charts.

95 In addition, Mr Ewen’s opinion accords with the available evidence.

(a) The height of tide and depth of water at Small Berth increased between 14 and 18 June 2021, and the “Crest” would have had an under-keel clearance of at least 2.95 metres based on Mr Ewen’s calculations (see table below). Even adopting Mr Shiwsaakar’s evidence that the vessel’s draft was 0.5 metres, the under-keel clearance would still have been at least 2.70 metres.

¹⁵⁷ 28 May CT, p147, lines 19-29.

¹⁵⁸ BGE AEIC at para 9.15 (BAEIC p1630) and Appendix 6 (BAEIC pp1679-1681).

Item (in metres)	14 to 16 June 2021	17 June 2021	18 June 2021
Chart datum	2.6	2.6	2.6
Lowest height of tide at low tide ¹⁵⁹	0.6	0.7	0.8
Depth of water (ie, chart datum + height of tide)	3.2	3.3	3.4
Draft at Bottom Plate Hole	0.25	0.25	0.25
Under-keel clearance at Bottom Plate Hole (ie, depth of water – draft)	2.95	3.05	3.15

(b) Any object capable of puncturing the bottom hull would have had to protrude at least 2.70 metres above the seabed. It is undisputed that no such object – let alone one of that height or length – was observed or recovered during the salvage operation on 5 August 2021.¹⁶⁰

(c) The “Crest” remained in the same position within the Small Berth from 14 to 18 June 2021 (see [25] above). If the vessel did not contact any object when the under-keel clearance was at its lowest

¹⁵⁹ *Ibid* at Appendix 13 (BAEIC p1720).

¹⁶⁰ 28 May CT, p127, line 18 - p128, line 7; 27 August CT, p33, lines 9-19; 28 August CT, p82, lines 10-17; p126, line 31 - p128, line 19.

between 14 and 16 June 2021, it is improbable that she did so on 18 June 2021, when the under-keel clearance was greater.

(d) Mr Singh was last on board the “Crest” between 1700 and 1745 hours on 18 June 2021, during the predicted high tide.¹⁶¹ Had the bottom hull been punctured at low tide earlier that day, water ingress would have been expected by then. Mr Singh observed no such ingress (see [25] above).

(e) The weather on the night of 18 June 2021 was reported to be fine (see [25] above). It is therefore unlikely that meteorological conditions materially affected the predicted tide levels.¹⁶²

96 Finally, I find Mr Ewen to be objective and balanced. Although he accepted the likely existence of objects on the seabed,¹⁶³ he rejected the suggestion that any such object penetrated the “Crest” and caused her to sink.¹⁶⁴

Q ... you have not taken into consideration the objective evidence of the rebar pierced through the port side of the Crest, which indicates that there were objects on the seabed which could have penetrated the bottom hull?

A *Two different questions. I have not discounted there being stuff on---on the bottom of the seabed, including rebar. I have discounted something on the seabed penetrating the boat. In---in a way that would cause her to sink.*

[emphasis added]

97 I now explain why I reject Mr Shiwsaakar’s evidence.

¹⁶¹ BGE AEIC at para 9.26 (BAEIC p1633) and Appendix 13 (BAEIC p1720).

¹⁶² *Ibid* at BAEIC pp1722 and 1725.

¹⁶³ 6 November CT, p133, lines 23-27.

¹⁶⁴ 14 November CT, p53, lines 6-13.

98 To begin with, Mr Shiwsaakar opinion’s lacks a reliable factual foundation.

(a) Although he accepted that he did not know the chart datum at the Small Berth, he made no attempt to ascertain it and instead omitted it from his calculations (see [89] above).

(b) He also accepted that the source of his tide table was unknown and unverified, and that his estimated height of tide of 0.43 metres during low tide on 18 June 2021 was both unreliable and wrong.¹⁶⁵

(c) Further, in an email dated 5 July 2021, Mr Singh informed SSE that the “Crest” was sitting on the seabed and that the water depth was “2m at low tide” and “5m at high tide”.¹⁶⁶ It is unclear whether Mr Singh conveyed those estimates to Mr Shiwsaakar, and if so, how they can be reconciled with his calculations.

99 Second, I find Mr Shiwsaakar’s reliance on Bernoulli’s principle to be an afterthought. He did not mention it in either his AEIC or supplementary AEIC, and raised it only at trial (see [90] above). More fundamentally, despite attending at the Small Berth on 30 June 2021 and 5 August 2021 (see [33] and [38] above), Mr Shiwsaakar accepted that he had no evidence that passing vessels caused the vessels berthed there to be significantly drawn down.¹⁶⁷

¹⁶⁵ 28 August CT, p84 line 25 – p95, line 1.

¹⁶⁶ GS AEIC at BAEIC p135.

¹⁶⁷ 28 August CT, p80, line 20 - p82, line 9.

100 Third, Mr Shiwsaakar’s roles as an investigating surveyor appointed by the Plaintiff’s insurer, and as an independent expert, were, at times, blurred, which in my view, affected his independence and impartiality.

101 An investigating surveyor and an expert are distinct roles. As Belinda Ang Saw Ean J (as her Honour then was) observed in *The “Dream Star”* [2018] 4 SLR 473, an investigating surveyor is generally best deployed as a witness of fact, while expert opinion should be provided by an independent expert (see [32]):

Oftentimes, the person who investigated the casualty is subsequently called as an expert witness as there are time and cost savings to be enjoyed by the party concerned. *Generally, there is no bar to such a person’s appointment as an expert witness save that the party should disclose his expert’s earlier role as investigator. There is an important distinction between the two roles. Hence, an expert who was involved in the investigation of a marine casualty is best deployed as a witness of fact to testify on matters relating to the investigations, and this approach keeps the investigator’s role separate from the person who is an expert witness giving opinion on matters of his or her expertise ...* [emphasis added]

102 The blurring of those roles was most apparent in Mr Shiwsaakar’s evidence concerning the absence of photographs of the underside of the Bottom Plate Hole. Such photographs would have assisted in determining whether displaced metal or ‘flaps’ were present (see [91] above), and, in any event, should have formed part of the documentation of the vessel’s damage.¹⁶⁸ Yet Mr Shiwsaakar took no such photographs, explaining instead that his work as a surveyor ended on 5 August 2021.¹⁶⁹

¹⁶⁸ 28 August CT, p144, lines 15-20.

¹⁶⁹ 28 August CT, p143, lines 1-20.

103 Before leaving this issue, I briefly address two further arguments raised by the Plaintiff.

104 The Plaintiff contends that a bathymetric survey ought to have been conducted at the Small Berth after the sinking. I regard the absence of such a survey as neutral. The Defendant had approached the Plaintiff to conduct one after the “Crest” sank, but the Plaintiff did not pursue it, taking the position that the survey was not its responsibility (see [39] above).

105 The Plaintiff also submits that an adverse inference should be drawn against the Defendant for failing to provide closed-circuit television (“CCTV”) footage of the “Crest” at the Small Berth between 14 and 19 June 2021. This argument is without merit. The Plaintiff never sought discovery of such footage, and the issue arose only when Mr Chang was cross-examined at trial. In such circumstances, it is unsurprising that Mr Chang was unable to confirm whether any CCTV footage of the “Crest” existed.¹⁷⁰

106 Accordingly, for the reasons given above, I find that the cause of the Bottom Plate Hole, and hence the sinking of the “Crest” remains in doubt, with the consequence that the Plaintiff has failed to discharge its burden of proof. In the absence of a finding that the Small Berth was unsafe or hazardous, there is no basis for finding that the Defendant breached its duty of care.

(3) *Allowing the salvage to be conducted promptly*

107 I now turn to Plaintiff’s allegation that the Defendant breached its duty of care by failing to permit the prompt salvage of the “Crest”. The Plaintiff’s

¹⁷⁰ Certified Transcript (4 November 2025) (“4 November CT”), p6, line 1 – p20, line 12.

complaint is that, despite the need to salvage the “Crest” urgently, the Defendant acted obstructively by:

- (a) refusing to assist with Mr Singh’s proposal of cutting the ropes connecting the “Crest” and the “Dive Pegasus”;¹⁷¹ and
- (b) requesting unnecessary documentation.¹⁷² In this regard, Mr Singh identified the alleged unnecessary documentation to be: (i) the SSIC certificates of the personnel involved in the salvage operation, and (ii) insurance coverage for work injury compensation and public liability that met the Defendant’s requirements (see [29] above).¹⁷³

108 I am not persuaded that the Defendant breached its duty of care in this respect either.

109 To begin with, the Plaintiff’s pleaded case is that the Defendant failed to take “all reasonable and immediate steps to mitigate the damage if the hazard could not be so removed”,¹⁷⁴ which presupposes the existence of a hazard at the Small Berth. As I have found that the Plaintiff failed to prove the existence of such a hazard (see [106] above), this argument on breach necessarily fails.

110 Even putting the pleading point aside, the Plaintiff’s assertion that the “Crest” had to be salvaged urgently requires closer scrutiny. Once a vessel founders and sinks, it is more accurately described as a wreck. The speed of wreck removal depends on a range of factors, including navigational and

¹⁷¹ PCS at paras 44-54.

¹⁷² *Ibid* at paras 56-71.

¹⁷³ 28 May CT, p35, line 23 - p37, line 7.

¹⁷⁴ SOC at para 18.

pollution issues, weather, and the time required to prepare engineering plans and negotiate contracts. As explained by Professors Nicholas Gaskell and Craig Forrest in *The Law of Wreck* (Informa Law, 1st Ed, 2019) (“*The Law of Wreck*”) at p 595:

The speed with which wreck removal preparations (and operations) will be undertaken may depend on the immediacy of any hazards to navigation and threat of pollution. It may well be that a staged operation is necessary, with governments insisting on speedy action to deal with the navigational and pollution issues, while there may be more time needed to assess the necessity for (and feasibility of) any removal of all that remains of the ship ... *But ‘speedy’ is a relative concept, as this may be dependent on the weather, preparation of engineering plans, and negotiation of contracts...*

[emphasis added]

111 Having regard to the above considerations, I do not consider the Defendant’s conduct to be obstructive.

112 First, as occupier of the Shipyard, the Defendant was under a statutory duty, so far as reasonably practicable, to ensure that the Shipyard was safe and without risks to the health of every person within it: see s 11 of the Workplace Safety and Health Act (Cap 354A, 2006 Rev Ed).¹⁷⁵ The sinking of the “Crest” at the Small Berth was unprecedented,¹⁷⁶ and Mr Singh accepted that cutting the ropes connecting the “Crest” and the “Dive Pegasus” was a dangerous operation.¹⁷⁷ In those circumstances, it was entirely reasonable for the Defendant not to permit Mr Singh to cut the ropes immediately on 19 June 2021, but instead to assess the risks and determine the appropriate safety measures.¹⁷⁸

¹⁷⁵ PCS at paras 50-51.

¹⁷⁶ 29 August CT, p126, lines 14-16.

¹⁷⁷ 27 August CT, p71, lines 1-7.

¹⁷⁸ 4 November CT, p24, lines 20-27.

113 Second, there is no dispute that salvaging the “Crest” in the Shipyard was a hazardous operation.¹⁷⁹ Mr Shiwsaakar accepted that it was reasonable for the Defendant to require the SSIC certificates of the salvage personnel to ensure that they were familiar with the relevant risks and safety protocols before entering the Shipyard.¹⁸⁰ The Defendant’s request for the SSIC certificates was therefore reasonable, and in any event, caused SSE no apparent difficulty (see [35(a)] above).

114 Third, the Defendant’s insurance requirements were reasonable, and consistent with the practice of other local shipyards.

(a) The Defendant required the salvors to maintain work injury compensation and public liability coverage that: (i) named the Defendant as a co-assured, and (ii) contained a waiver of the insurer’s rights of subrogation against the Defendant (see [35(b)] above)

(b) Given that the hazardous nature of the salvage operation, it was reasonable for the Defendant, as the occupier of the Shipyard, to seek co-assured status. Had loss or damage occurred during the operation, the Defendant could have incurred liability. The co-assured status would therefore have given the Defendant a direct right of recovery against the insurer,¹⁸¹ the importance of which Mr Shiwsaakar accepted.¹⁸²

(c) Further, where insurance inures to the benefit of co-assureds, one co-assured cannot claim against another in respect of an insured loss:

¹⁷⁹ 27 August CT, p72, line 29 - p73, line 22; 29 August CT p14, line 25 -p15, line 3; p29, lines 1-6.

¹⁸⁰ 29 August CT, p26, line 26 - p27, line 20.

¹⁸¹ 4 November CT, p82, lines 14-22.

¹⁸² 29 August CT, p54, lines 3-17.

see *Gard Marine & Energy Ltd v China National Chartering Co Ltd (The Ocean Victory)* [2018] 1 All ER 832 (“*The Ocean Victory*”) at [99]. Correspondingly, an insurer cannot bring a subrogated claim against a co-assured whom it is liable to indemnify: see *The Ocean Victory* at [99]. Without the co-assured status, or a waiver of subrogation, the salvor’s insurers could, at least in theory, have pursued the Defendant. The Defendant’s requirements therefore reasonably addressed that risk.

(d) Mr Chang also testified that it was common practice for a shipyard to seek to be named as co-insured where shipowners engaged external contractors, and that no contractor had objected to the Defendant’s insurance requirements.¹⁸³ In fact, the work injury compensation and public liability policies that SSE furnished to the Defendant for review named other shipyards, such as Jurong Shipyard Pte Ltd, Sempcorp Marine Ltd, and Keppel Shipyard Limited, as co-assureds.¹⁸⁴

115 In the final analysis, it is easy, with the benefit of hindsight, to criticise and suggest that certain procedures could or should have been adopted. However, the standard of care is not assessed by retrospective plausibility, but objectively by reference to the knowledge reasonably available as well as measures that could have been reasonably adopted at the material time: see *JSI Shipping (S) Pte Ltd v Teofoongwonglcloong (a firm)* [2007] 4 SLR(R) 460 at [69]. Here, the sinking of a vessel in the Small Berth was unprecedented, and the Defendant had acted reasonably and with appropriate expedition in balancing the risks inherent in a salvage operation against the measures

¹⁸³ 4 November CT, p83, line 18 -p86, line 15.

¹⁸⁴ CKC AEIC at BAEIC pp1178-1179 and 1216.

necessary to manage those risks. To the extent that there was any delay in commencing the salvage operation, it was attributable to the Plaintiff, which only furnished the requisite insurance on 30 July 2021.

Res ipsa loquitur is not applicable

116 The Plaintiff also relied on the maxim *res ipsa loquitur*, contending that the sinking of the “Crest” was evidence of the existence of hazards at the Small Berth, and, in turn, the Defendant’s negligence, thereby shifting the burden to the Defendant to rebut that *prima facie* case.

117 The Court of Appeal in *Argoglobal* summarised the doctrine as follows (see [87]):

- (a) *Res ipsa loquitur* is a convenient label for circumstances in which a claimant establishes a *prima facie* case calling for a rebuttal from the defendant, without having to allege and prove any specific act or omission on the part of the defendant.
- (b) The doctrine applies where: (i) the occurrence is such that it would not have happened without negligence; (ii) the thing that inflicted damage was under the defendant’s sole management and control; and (iii) the cause of the occurrence is unknown to a claimant.
- (c) The doctrine is no more than a rule of evidence affecting onus. It is based on commonsense, and its enables justice to be done when the facts bearing on causation and on the care exercised by the defendant are at the outset unknown to the claimant, but are, or ought to be, within the defendant’s knowledge.

118 None of the requirements for invoking *res ipsa loquitur* is satisfied in the present case.

119 First, it cannot be said that the sinking was more likely than not caused by the Defendant’s negligence. The “Crest” could have sunk for reasons unrelated to any negligence on the Defendant’s part. For instance, Mr Ewen opined that the Bottom Plate Hole appeared to have been created by a mechanical tool such as an angle grinder or a disc grinder (see [91(g)] above), and Mr Singh accepted that a disc grinder could have caused the cuts observed around the Bottom Plate Hole.¹⁸⁵ As such, the possibility that the Bottom Plate Hole was created by a mechanical tool cannot be discounted. As VK Rajah JC (as His Honour then was) observed in *Cheong Ghim Fah and another v Murugian s/o Rangasamy* [2004] 1 SLR(R) 628 at [32]:

... [*Res ipsa loquitur*] does not apply in situations where the accident could conceivably have happened within any one of a number of different permutations: some consistent with the defendant’s negligence, some with the plaintiff’s negligence or even a combination of negligence on the part of both parties.

120 Second, the “Crest” was not under the Defendant’s sole management and control. The Defendant did not carry out work on the vessel between 14 and 19 June 2021, and none of its personnel boarded her while she was berthed at the Small Berth (see [25] above). In contrast, Mr Singh was permitted to carry out repairs, and he was the last known person to have boarded the vessel before she sank (see [25] above).

121 Third, the cause of the sinking was not unknown to the Plaintiff. Rather, the Plaintiff advanced a specific case that the Crest” came into contact with a

¹⁸⁵ 28 May CT, p184, lines 6-25.

sharp metal object on the seabed, a case which I have rejected. *Res ipsa loquitur* cannot be invoked to cure deficiencies in the Plaintiff's evidence or to overcome the failure of its chosen case theory: see *Zweite Ms "Philippa Schulte" Shipping GmbH & Co KG & another v PSA Corp Ltd* [2012] SGHC 135 at [163].

Negligence claim is dismissed

122 In the circumstances, the Plaintiff has failed to establish a breach of the Defendant's duty of care, and the maxim of *res ipsa loquitur* does not assist. The Plaintiff's claim in negligence is therefore dismissed.

Issue 2: Did the Defendant breach an implied term?

123 The Plaintiff's claim for breach of an implied term requiring the Defendant to provide a safe berth can be dealt with briefly.

124 Even if such an implied term existed, the Plaintiff has failed to establish that the Small Berth was unsafe or hazardous for the reasons set out at [92] to [106] above. It follows that the Plaintiff's claim for breach of contract must also fail.

Issue 3: Were the Conditions of Contract incorporated?

125 The next issue is whether the Defendant's Conditions of Contract were incorporated into the ship repair contracts for the "Dive Pegasus" and the "Crest". A party's standard terms and conditions may be incorporated in one of three ways: (a) by express agreement (for example, by being signed), (b) by reasonable notice, and (c) by a course of dealing: see *Wartsila Singapore Pte Ltd v Lau Yew Choong and another suit* [2017] 5 SLR 268 at [105].

126 The Defendant relies on express agreement in relation to the “Dive Pegasus”, and a course of dealing in relation to the “Crest”.

“Dive Pegasus”

127 In relation to the ship repair contracts for the “Dive Pegasus”, the following facts are undisputed:

(a) In 2020, Mr Singh signed the Nine Signed Quotations (on the Plaintiff’s behalf) for works on the “Dive Pegasus”, including the quotation for berthing fees (see [11]–[14] above); and

(b) Although the Defendant did not provide its Conditions of Contract with any of those quotations, it had provided the same Conditions of Contract to the Plaintiff in 2017 when the Plaintiff sought a quotation for works on the “Raffles Princess”.¹⁸⁶

128 A party’s standard terms may be incorporated into a contract where the counterparty signs a document containing a clear incorporating clause, even if the counterparty never received or read those terms. As Judith Prakash J (as Her Honour then was) explained in *Press Automation Technology Pte Ltd v Trans-Link Exhibition Forwarding Pte Ltd* [2003] 1 SLR(R) 712 at [39]–[40]:

39 ... the fact that the incorporating clause here was contained in a document that was signed by Patec, resulted in the conditions *being incorporated as part of the contract between the parties notwithstanding that Patec did not have a copy of them and had not read them* ...

40 ... *Where a party has signed a contract after having been given notice, by way of a clear incorporating clause such as the one used in the present case, of what would be included among the contractual terms, that party cannot afterwards assert that it is not bound by some of the terms on the ground*

¹⁸⁶ 6 November CT, p7, lines 15-17.

that the same are onerous and unusual and had not been drawn specifically to its attention. *Contracting parties must have a care for their own legal positions by ascertaining what terms are to be part of a contract before signing it. If they do not do so, they will be bound by those terms* except to the extent that UCTA offers them relief.

[emphasis added]

129 In the present case, I find that the Defendant’s Conditions of Contract were incorporated into the ship repair contracts evidenced by the Nine Signed Quotations.

130 Each quotation contained ten clauses under the heading, “Terms and Conditions” (see [11] above). Clause 1, which reads “our standard conditions of contract are applied”, plainly refers to a separate set of terms, namely, the Defendant’s Conditions of Contract. This is because the phrase “conditions of contract” was used, as opposed to “Terms and Conditions”. Further, clause 1 would be superfluous if the intention was to merely state that clauses in the quotation itself have contractual effect.

131 Further, I do not accept the Plaintiff’s contention that Mr Singh assumed that clauses 1 to 10 of the Nine Signed Quotations were the Defendant’s “standard conditions of contract”.¹⁸⁷

(a) Mr Singh had previously received *both* a quotation and the Defendant’s Conditions of Contract when seeking a quotation for works on the “Raffles Princess” (see [7] above). Although those works did not proceed, Mr Singh knew, or ought reasonably to have known, that the Defendant maintained a separate document titled “Conditions of Contract” which accompanied its quotations.

¹⁸⁷ PCS at para 150.

(b) Second, Mr Singh accepted that it was standard practice for shipyards to charge interest on late payment.¹⁸⁸ The Nine Signed Quotations contains no such provision, and it appears instead in clause 4 of the Defendant’s Conditions of Contract. It is therefore implausible that Mr Singh believed clauses 1 to 10 of the quotations constituted the Defendant’s complete standard terms.

132 In any event, even if Mr Singh was uncertain whether the Defendant’s Conditions of Contract applied, he ought to have ascertained the terms constituting the Defendant’s “standard conditions of contract”. Having signed the Nine Signed Quotations containing a clear incorporating clause, the Plaintiff is bound by the Defendant’s Conditions of Contract notwithstanding that Mr Singh neither received nor read those terms (see [128] above).

“Crest”

133 The position in relation to the “Crest” is slightly different.

(a) Although Mr Singh did not sign the Crest Quotation, the Plaintiff paid the Defendant’s invoices for the works carried out on the “Crest” and for berthing fees incurred between 1 January 2021 and 30 June 2021 (see [17]-[21] above).

(b) The Defendant likewise did not provide its Conditions of Contract with the Crest Quotation.

134 The applicable test for incorporating a party’s standard terms by a course of dealing is whether, at the time of contracting, each party was reasonably

¹⁸⁸ 27 August CT, p156, lines 11-17.

entitled to infer from: (i) the parties’ past dealings, and (ii) their conduct in relation to the contract in question, that those terms formed part of the contract: see *Straco Leisure Pte Ltd v Sumitomo (Shi) Cyclo Drive Asia Pacific Pte Ltd* [2025] 5 SLR 564 (“*Straco Leisure*”) at [70(a)]. The threshold is a high one, although it is more readily met where both parties are commercial entities: see *Straco Leisure* at [70(b)] and [70(d)]. The relevant considerations include the number of previous contracts, how recent they are, whether they have a similar subject matter, and whether they were made in a consistent manner: see *Straco Leisure* at [70(c)]. Further, unusual or unreasonable terms are less likely to be incorporated: see *Straco Leisure* at [70(e)]. Finally, the standard terms sought to be incorporated must themselves have formed part of those previous contracts: see *Straco Leisure* at [70(f)].

135 For present purposes, I confine my analysis to the incorporation of clauses 4 (contractual interest) and 8 (contractual lien) of the Conditions of Contract, as they are relevant to the Defendant’s counterclaim on the Outstanding Invoices, and the Defendant’s alleged entitlement to detain the Plaintiff’s Equipment. Having considered the evidence, I am satisfied that both clauses were incorporated by a course of dealing into the contract evidenced by the Crest Quotation. My reasons are as follows.

136 First, the ship repair contract for the “Crest” came into existence on or around 28 November 2020, after Mr Singh instructed the Defendant to proceed with the works under the Crest Quotation (see [18] above).¹⁸⁹ By then, Mr Singh had already signed the Nine Signed Quotations for the “Dive Pegasus” between June and September 2020, each of which incorporated the Defendant’s Conditions of Contract by express agreement (see [127]–[132] above).

¹⁸⁹ 28 May CT, p61, lines 17-24.

Accordingly, in the five months preceding the Crest Quotation, clauses 4 and 8 of the Conditions of Contract formed part of the parties’ contracts on nine occasions.

137 Second, the Nine Signed Quotations and the Crest Quotation all concerned ship repair work, and were entered into in a consistent manner through quotations issued by the Defendant, which Mr Singh either signed or accepted by instructing the Defendant to proceed.

138 Third, both parties were contracting in the course of business, and the Plaintiff does not contend that clauses 4 and 8 of the Conditions of Contract are onerous or unusual. Indeed, Mr Singh accepted that it was standard practice for shipyards to charge interest on late payment (see [131(b)] above).

139 In the circumstances, each party was reasonably entitled to infer that the Crest Quotation did not contain the parties’ entire agreement, and that it incorporated the Defendant’s standard terms, including clauses 4 and 8 of the Defendant’s Conditions of Contract.

Issue 4: Is the Plaintiff liable for the Outstanding Invoices?

140 I next consider the Plaintiff’s liability for the Outstanding Invoices.

141 The Plaintiff is liable to pay the four Outstanding Invoices for berthing fees set out below. The berthing fees were contractually agreed (see [14], [19], [40]-[41] above), and remained chargeable until the “Dive Pegasus” and the “Crest” left the Shipyard. The Defendant is therefore entitled to S\$1,306.40 in outstanding berthing fees.

Invoice No	Invoice Date	Period	Unpaid Amount
DM210560132 ("Dive Pegasus")	30 June 2021	22 June 2021 to 21 July 2021	S\$500.00
DM210560153 ("Dive Pegasus")	5 August 2021	22 July 2021 to 4 August 2021 (pro-rated)	S\$225.80
DM210560134 ("Crest")	30 June 2021	Berthing fees: 1 July 2021 to 31 July 2021	S\$500.00
DM21080154 ("Crest")	5 August 2021	Berthing fees: 1 August 2021 to 5 August 2021 (pro-rated)	S\$80.60
Outstanding berthing fees:			S\$1,306.40

142 Under clause 4 of the Conditions of Contract, which applied to the ship repair contracts for both the "Dive Pegasus" and the "Crest", the Defendant is also entitled to contractual interest on the outstanding berthing fees at 1.5% per month from the date of each invoice until payment (see [7(b)] above).

143 However, I decline to allow the Defendant's counterclaim for the deployment of anti-pollution equipment and materials.

(a) To begin with, the contractual basis for this claim unclear. The Defendant relies on the clause in the Crest Quotation reserving its right to "claim for any additional works and materials that are not specified in the work scope".¹⁹⁰ In the context of a ship repair contract, that clause should be construed as referring to additional works of the same character as the contracted repair works, *ie*, an expanded repair scope. It

¹⁹⁰ Defendant's Opening Statement at para 55.

cannot reasonably be construed as extending to work unilaterally undertaken in response to a casualty: see *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [74]–[75].

(b) The Defendant may have had a claim under s 3(1)(b) of the Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act (Cap 179A, 2010 Rev Ed), or in restitution for relieving the Plaintiff of potential liability under the Prevention of Pollution of the Sea Act (Cap 243, 1999 Rev Ed) and the Merchant Shipping (Wreck Removal Act) 2017 (No 25 of 2017). However, no such causes of action were pleaded, and the Defendant instead advanced its claim solely on a contractual basis.

Issue 5: Was the Defendant entitled to detain the Plaintiff's Equipment?

144 Finally, I consider the Plaintiff's claims in detinue and conversion over its Equipment at the Shipyard.

145 Pursuant to clause 8 of the Conditions of Contract (see [7(b)] above), the Defendant could assert a contractual lien on the Plaintiff's vessels or equipment for the outstanding berthing fees amounting S\$1,306.40, which I have found the Plaintiff liable for. The Defendant was therefore entitled to detain the Plaintiff's Equipment at the Shipyard.

146 As the Defendant lawfully exercised a contractual lien over the Plaintiff's Equipment, it follows that the Plaintiff's claims in detinue and conversion must fail: see *Nambu PVD Pte Ltd v UBTS Pte Ltd* [2021] SGHC 20 at [144]; *Faith Maritime Co Ltd v Feoso (Singapore) Pte Ltd and another action* [2002] 2 SLR(R) 1088 at [114].

Conclusion

147 For the foregoing reasons, the Plaintiff's claims are dismissed. The Defendant's counterclaim is allowed in part, and the Plaintiff is to pay \$1,306.40 for outstanding berthing fees to the Defendant, together with contractual interest at 1.5% per month from the date of each invoice until payment.

148 As for costs, the parties are to file written submissions, not exceeding ten pages, by 1 September 2026. Pursuant to O 55D r 14 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed), the time for appealing shall run from the date of my decision on costs.

149 Finally, I record my appreciation to counsel for their helpful submissions, which have been of considerable assistance in the preparation of this judgment.

Navin Anand
District Judge

Mato Kotwani and Wong Min Hui (PDLegal LLC) for the Plaintiff;
Koh Thiam Kwee (Xu Tiangui) and Amos Julian Sivasupramaniam
(Ang & Partners) for the Defendant.