

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

[2026] SGHC 70

Suit No 296 of 2022

Between

Steven Kurniawan Prayitno

... Plaintiff

And

- (1) Oh Chin Ann
- (2) Charmy Trading Pte Ltd
- (3) Kathiresan Loga Krishnasamy
(formerly trading as Charmy
Trading Enterprise)

... Defendants

JUDGMENT

[Bailment — Bailees — Duties]

[Bailment — Contract]

[Bailment — Joint bailees]

[Bailment — Negligence]

[Contract — Breach]

[Contract — Formation]

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Steven Kurniawan Prayitno

v

Oh Chin Ann and others

[2026] SGHC 70

General Division of the High Court — Suit No 296 of 2022

Chan Seng Onn SJ

4–6 September 2024, 10–14 March, 14–16 July, 29 December 2025

31 March 2026

Judgment reserved.

Chan Seng Onn SJ:

1 The plaintiff engaged the first and second defendants to import 14 cars from the United Kingdom (“UK”) into Singapore, and to export them from thereon to Indonesia where he resides. Unexpectedly, there was a delay in obtaining the requisite permits for the importation of the cars into Indonesia. The mounting storage and other miscellaneous costs incurred in Singapore for the plaintiff’s cars were borne by the first and second defendants. They started selling off the plaintiff’s cars to defray these mounting costs. To date, all 14 of the plaintiff’s cars have been sold. The first and second defendants claim that they had the right to sell the plaintiff’s cars to recoup the outstanding storage fees. The plaintiff denies this. He brings this claim against the first and second defendants for breach of their duties as bailees to take reasonable care of the cars and for breach of contract. He also seeks to hold the third defendant, who

was named as the consignee for two of the 14 cars, liable for the sale of those cars.

2 The outcome of this dispute very much turns on what was agreed between the plaintiff on the one hand and the first and second defendants on the other. Unfortunately, the parties did not have any written contract. Their agreement was entirely oral in nature. Hence, this court is faced with the arduous task of having to parse through the documentary evidence and the parties' testimony at trial, as well as to subject the parties' conduct to a microscopic analysis, in order to decipher what the terms of their oral agreement were and where their true intentions lay.

3 I ultimately find that the parties had never agreed for the first and second defendants to have the right to sell off the plaintiff's cars. I therefore find them in breach of their duties as bailees of the plaintiff's cars and the second defendant in breach of its contract of bailment with the plaintiff. However, I find that the third defendant is not liable because he was never a bailee of the plaintiff's cars. Accordingly, I allow the plaintiff's claim against the first and second defendants (in relation to 13 out of his 14 cars only as the plaintiff is taken to have waived his claim in respect of the remaining car) but dismiss his claim against the third defendant. As the trial was bifurcated between liability and damages, this judgment only deals with the defendants' liability. With that in mind, I now proceed to explain how I have arrived at my decision.

Facts

The parties

4 The plaintiff, Mr Steven Kurniawan Prayitno, is an Indonesian businessman.¹ He has been importing antique cars to Indonesia as a hobby.² He keeps some of these cars for his own use and sells the others.³

5 The first defendant, Mr Oh Chin Ann, is a director and shareholder of the second defendant, Charmy Trading Pte Ltd.⁴ The first defendant initially joined the second defendant as an employee in or around 2012,⁵ and became a director and shareholder in or around 2015.⁶ He was handling the import and export of cars for the second defendant,⁷ and had been effectively carrying out the duties of a director since 2012.⁸ According to the first defendant, he is presently no longer running a car import and export business or doing any business at all under the second defendant.⁹

6 The third defendant, Mr Kathiresan Loga Krishnasamy, operated a sole proprietorship known as “Charmy Trading Enterprise” (“CTE”).¹⁰ Prior to

¹ Statement of claim dated 31 August 2023 (“SOC”) at para 1.

² Transcript dated 6 September 2024 (“6 September Transcript”) at p 6 lines 5–22.

³ 6 September Transcript at p 6 line 23 to p 7 line 15.

⁴ SOC at para 3; 1st and 2nd defendants’ defence dated 26 September 2023 (“12Defence”) at para 3.

⁵ Transcript dated 10 March 2025 (“10 March Transcript”) at p 71 lines 22–24.

⁶ 10 March Transcript at p 60 lines 2–6, p 72 lines 15–20.

⁷ 10 March Transcript at p 72 lines 6–8.

⁸ 10 March Transcript at p 76 lines 7–10.

⁹ Transcript dated 16 July 2025 (“16 July Transcript”) at p 3 lines 27–31.

¹⁰ SOC at para 4; Defence of the 3rd defendant dated 6 May 2022 (“3Defence”) at para 5.

setting up CTE, he was a director of the second defendant sometime between the middle of 2012 to December 2013.¹¹ He has since incorporated “Charmy Trading Enterprise Pte Ltd”, of which he is a shareholder and director, as a means of continuing his business dealings with his own customers. According to him, he has used the “Charmy” name for his business ventures because of the goodwill he had established in that name when he was conducting business as a director of the second defendant. Despite the similarity in names between the third defendant’s business entities and the second defendant, the third defendant maintains that there are no other connections and/or transactions and/or business dealings whatsoever between the second defendant and himself and/or his business entities.¹²

7 It will be readily appreciated that the striking similarity in the name of CTE and that of the second defendant is apt to cause confusion. Indeed, as will be elaborated upon below, such confusion was the genesis of the third defendant’s very involvement in the present suit.

Background to the dispute

8 As mentioned above (at [4]), the plaintiff is in the hobby of importing antique cars into Indonesia. Since around 2012, the plaintiff had been engaging the first and second defendants to help him import and export various cars into and out of Singapore respectively as well as to store the cars in Singapore.¹³ Essentially, these transactions would involve cars being imported from foreign

¹¹ 3Defence at para 5.

¹² 3Defence at para 7.

¹³ Mr Steven Kurniawan Prayitno’s affidavit of evidence-in-chief dated 7 February 2024 (“Mr Prayitno’s AEIC”) at paras 8–9.

destinations into Singapore, stored in Singapore, and then exported to Indonesia. In other words, Singapore was a transit stop for the cars en route to Indonesia.

9 The plaintiff had engaged the first and second defendants to import and export cars on three different occasions.¹⁴ It is the third transaction which is the subject of the present claim.

10 This transaction had its roots in an oral agreement which was formed between the plaintiff and the first defendant (on behalf of the second defendant) sometime in 2016 (the “2016 Agreement”).¹⁵ Under the 2016 Agreement, the first defendant was to arrange for the completion of the documentation necessary for the import of the following 14 cars from the UK to Singapore and the export of the same from Singapore to Indonesia:¹⁶

S/N	Vehicle Model	Chassis Number
1	Porsche 911 Targa	WPOZZZ99ZTS380564
2	Porsche 911 GT2	WPOZZZ99Z9S776214
3	Mercedes-Benz 300 SL	WDB1070412A070865
4	Mercedes-Benz 300 SL	WDB1070412A098090
5	BMW M3 Evolution	WBSBK92090EX66843
6	Porsche 911 Coupe	WP0ZZZ91ZDS102465

¹⁴ Mr Prayitno’s AEIC at para 10.

¹⁵ Mr Prayitno’s AEIC at para 14.

¹⁶ Mr Prayitno’s AEIC at paras 14 and 15.

7	Porsche 911 Carrera S	WP0ZZZ99ZVS310955
8	Porsche 911 Targa	WP0ZZZ99ZVS380882
9	Porsche 911 Convertible	WPOZZZ912GS140272
10	Porsche 911 GT3RS	WPOZZZ99Z4S602429
11	Porsche 911 40th Anniversary	WPOZZZ99Z4S691680
12	Mercedes-Benz 560SEC	WDB1260451A11881
13	1971 Rolls Royce	LRH11342
14	Mercedes-Benz C32 AMG	11796812082569

11 Flowing from the 2016 Agreement, the first defendant designated the second defendant as the consignee of the cars listed at S/N 1 to 9, 12 and 13 in the table above.¹⁷ As for the two Porsche cars listed at S/N 10 and 11 (the “two Porsche cars”), the first defendant had designated CTE (*ie*, the third defendant) as the consignee instead.¹⁸ According to him, he intended to designate the second defendant as the consignee but incorrectly named CTE. The third defendant himself says that he was not involved in the naming of CTE as the consignee and, until the commencement of the present action, was not aware

¹⁷ Mr Oh Chin Ann’s affidavit of evidence-in-chief dated 29 January 2024 (“Mr Oh’s AEIC”) at para 11.

¹⁸ Mr Oh’s AEIC at para 12.

that CTE had been named as the consignee for the two Porsche cars.¹⁹ Be that as it may, arrangements were made for the shipping of the cars listed at S/N 1 to 13 to Singapore.²⁰

12 It was initially a point of dispute as to whether the 2016 Agreement extended to the car listed at S/N 14 of the table (*ie*, the Mercedes-Benz C32 AMG). The first and second defendants aver that the plaintiff had, sometime in March or April 2014, unilaterally named the second defendant as the importer of the Mercedes-Benz C32 AMG on the cargo clearance permit.²¹ According to the first defendant, this had resulted in the tax invoices for storage fees in respect of the Mercedes-Benz C32 AMG being sent to the second defendant since March 2017 after the plaintiff began defaulting on them because the storage company had claimed that the second defendant was the rightful owner of the bill of lading.²² The plaintiff, however, maintains that the 2016 Agreement extended to the Mercedes-Benz C32 AMG.²³ In any case, the first defendant has since affirmed at trial that, as a matter of contract, the plaintiff had asked the second defendant to deal with and handle 14 cars to bring into Indonesia.²⁴ Hence, regardless of how the first and second defendants came to be involved in the importation of the Mercedes-Benz C32 AMG into Singapore, I will proceed on the basis that the 2016 Agreement extended to *all* of the 14 cars listed in the table at [10] above.

¹⁹ Mr Kathiresan Loga Krishnasamy's affidavit of evidence-in-chief dated 11 December 2023 ("Mr Krishnasamy's AEIC") at paras 7–8.

²⁰ Mr Oh's AEIC at paras 11–12.

²¹ 12Defence at para 13; Mr Oh's AEIC at para 17.

²² 12Defence at para 13; Mr Oh's AEIC at para 19.

²³ Reply to defence of 1st and 2nd defendants dated 3 June 2022 ("12Reply") at para 5(b).

²⁴ Transcript dated 11 March 2025 ("11 March Transcript") at p 10 lines 7–29.

13 These 14 cars were shipped to Singapore in different tranches. After they arrived, they were stored in various locations in Singapore while the necessary permits for the importation of the cars into Indonesia were sought.²⁵ The first and second defendants paid the storage fees for the cars.²⁶ However, as it transpired, there was a substantial delay in the processing of the application for the permits.²⁷ This resulted in the storage charges snowballing to the extent that the second defendant was no longer able to continue with the storage payments.²⁸

14 Subsequently, from September 2017 onwards, the first defendant repeatedly pressed the plaintiff to pay the storage fees for the cars.²⁹ When these payments were not forthcoming and/or sufficient to pay off the outstanding storage charges, the first and second defendants started selling off the plaintiff's cars in order to pay the storage fees. The first car which was sold off was the Mercedes-Benz 560SEC listed at S/N 12 of the table at [10] above.³⁰ This car was sold on 2 August 2018.³¹ The other 13 cars were sold in 2019. The table below sets out the various dates on which the cars were sold:

S/N	Vehicle Model	Date of sale
1	Porsche 911 Targa	9 October 2019

²⁵ Mr Kurniawan's AEIC at para 17.

²⁶ Mr Oh's AEIC at para 20.

²⁷ Transcript dated 5 September 2024 ("5 September Transcript") at p 25 line 9 to p 26 line 4.

²⁸ Mr Oh's AEIC at para 20.

²⁹ Mr Oh's AEIC at paras 20–39.

³⁰ Mr Oh's AEIC at paras 35–36.

³¹ Mr Oh's AEIC at para 45.

2	Porsche 911 GT2	15 July 2019
3	Mercedes-Benz 300 SL	12 November 2019
4	Mercedes-Benz 300 SL	12 November 2019
5	BMW M3 Evolution	12 November 2019
6	Porsche 911 Coupe	12 November 2019
7	Porsche 911 Carrera S	9 October 2019
8	Porsche 911 Targa	9 October 2019
9	Porsche 911 Convertible	12 November 2019
10	Porsche 911 GT3RS	12 November 2019
11	Porsche 911 40th Anniversary	12 November 2019
12	Mercedes-Benz 560SEC	2 August 2018
13	1971 Rolls Royce	12 November 2019
14	Mercedes-Benz C32 AMG	12 November 2019

It should be noted that these dates of sale are recorded in the first defendant's AEIC and not disputed by the plaintiff.³²

³² Plaintiff's closing submissions dated 14 November 2025 ("PCS") at para 26.

15 According to the first defendant, the sale of the 14 cars fetched a combined sale price of \$348,000.³³

The parties' cases

The plaintiff's case

16 The gist of the plaintiff's case is that the first and second defendants never had the right to sell any of his 14 cars to pay off the outstanding storage charges for the cars. The plaintiff avers that, pursuant to being nominated as consignees by the first defendant, the first, second and third defendants each owed a duty as bailees to take reasonable care of the cars and to deliver them safely and within reasonable time upon demand in good order and in the condition they were in when delivery of the cars was first taken.³⁴ Flowing from this, none of the 14 cars were to be sold and at no time did he consent to the same.

17 Further and/or in the alternative, the plaintiff says that it is a term of the 2016 Agreement that he would pay for the storage fees for the cars *after* they arrived in Indonesia and were delivered to him.³⁵ In other words, he would not be liable for bearing any of the storage charges *before* the cars were exported to Indonesia. The plaintiff also submits that it is an implied term of the 2016 Agreement and/or the bailment that any or all of the 14 cars were not to be sold without his consent.³⁶ This term is implied by way of a previous course of

³³ Mr Oh's AEIC at para 46.

³⁴ PCS at para 8.

³⁵ PCS at para 11.

³⁶ PCS at para 12.

dealing between him on the one hand and the first defendant, for and on behalf of himself and the second defendant, on the other hand.

18 Additionally, according to the plaintiff, there was a meeting between him and the first defendant on 17 July 2019 at which they had orally agreed that the plaintiff was to pay \$10,000 as an administrative fee for all 14 cars to be transferred to a company of his nomination, one M/s Lomax Singapore Pte Ltd (“M/s Lomax”), as consignee by August 2019 (the “July 2019 Agreement”).³⁷ It was also agreed that the plaintiff would pay an agreed sum of \$125,000 to the first and/or second defendants in full and final settlement of all moneys owed to the second defendant in respect of the 14 cars *after* the transfer of the cars to M/s Lomax.

19 The plaintiff says that he had duly paid the \$10,000 administrative fee pursuant to the July 2019 Agreement, but none of the 14 cars were ever transferred to M/s Lomax nor delivered up to him and the sale proceeds of all 14 cars were retained by the first defendant.³⁸ The plaintiff also alleges that there is a wrongful retention of sale proceeds because the total amount of sale proceeds which the first and second defendants collected from the sale of the cars exceeded the amount which he allegedly owed them, which had been agreed and settled at a fixed sum of \$125,000 pursuant to the July 2019 Agreement.³⁹

20 Furthermore, the plaintiff argues that the corporate veil between the first and second defendants ought to be lifted in order to hold the first defendant

³⁷ PCS at para 14.

³⁸ PCS at para 20.

³⁹ PCS at paras 27 and 29.

jointly and severally liable along with the second defendant for any liability that falls on the latter.⁴⁰ In this regard, the plaintiff says that the first defendant: (a) operated the second defendant as his alter ego; (b) operated the second defendant with the improper purpose of evading his duty/obligation to return the 14 cars or the sale proceeds thereof to him and shielding the said cars or proceeds from being taken/disgorged from the second defendant in satisfaction of a judgment or potential judgment; and (c) flowing from the preceding two grounds, operated the second defendant as a sham and/or façade.⁴¹

21 As against the third defendant, the plaintiff contends that his case arises primarily on the basis of CTE being listed and nominated as the consignee of two of the cars (*ie*, those listed at S/N 10 and 11 in the table at [14] above).⁴² Whether the third defendant had knowledge of the same or not, and whether it benefitted in any way from the sale proceeds of the cars, are matters to be contested between the three defendants.

22 It should be noted that the plaintiff pleads a claim in wrongful conversion of the cars against all three defendants for their sale of the cars and/or failure and/or refusal to give delivery of the cars.⁴³ However, the plaintiff does not make any submissions on the tort of conversion in his closing submissions.

The first and second defendants' case

23 The first and second defendants' case is that they had the right to sell the plaintiff's cars to pay off the outstanding storage charges for the cars. They do

⁴⁰ PCS at paras 45–47.

⁴¹ PCS at para 65.

⁴² PCS at para 22.

⁴³ SOC at para 16.

not deny owing the plaintiff duties as bailees to take reasonable care of his cars.⁴⁴ However, they say that this is subject to the implied term and/or agreement that the plaintiff would bear all the storage fees incurred for the storage of the cars in Singapore as the cars could be possessed, withheld or auctioned off for sale by the storage companies which owned the garages in which the cars were stored if the storage fees were not paid for on time. Their position is that, while they would pay the storage charges first pursuant to the 2016 Agreement, the plaintiff was supposed to reimburse them regularly and in a timely manner.⁴⁵ In support of this contention, the first and second defendants refer to a purportedly similar arrangement between them and the plaintiff in a prior course of dealing in which the plaintiff paid some of the storage charges before the cars were exported to Indonesia.⁴⁶ They also claim that, in the evidence before the court, the plaintiff had never complained or asserted that he was not supposed to reimburse the storage fees until after the cars were so exported.⁴⁷

24 The first and second defendants further submit that, over the course of the parties' dealings subsequent to the formation of the 2016 Agreement, the terms of that agreement were either varied or added to such that they were entitled to sell the cars if the plaintiff failed to reimburse them for the incurred storage fees.⁴⁸ Essentially, they refer to various pieces of correspondence between them and the plaintiff to make the point that the plaintiff accepted that they had the right to auction his cars if he failed to reimburse them in a regular

⁴⁴ 12Defence at para 11.

⁴⁵ First and second defendants' closing submissions dated 12 November 2025 ("12DCS") at para 7.

⁴⁶ 12DCS at paras 11–12.

⁴⁷ 12DCS at para 14.

⁴⁸ 12DCS at para 16.

and timely manner.⁴⁹ According to the first and second defendants, this meant that, at the time when the cars were auctioned, the contract between the parties envisioned that the first and second defendants were entitled to auction off the cars if regular and timely reimbursement was not forthcoming from the plaintiff.⁵⁰ Hence, as it is undisputed that the plaintiff failed to reimburse them in a timely manner, they did not breach the agreement between them and the plaintiff by auctioning off the cars.⁵¹ It follows that they did not deal with the plaintiff's cars in an unauthorised manner since they were entitled to auction the cars and, hence, did not commit the tort of conversion.⁵²

25 However, in the event that liability is made out, the first and second defendants submit that the first defendant should not be held personally liable to the plaintiff.⁵³ They highlight that the cars were consigned to the second and/or third defendant and that it was the second defendant that received the moneys for the cars after they were auctioned.⁵⁴ They also point out that the plaintiff has not pleaded in his statement of claim that the corporate veil should be lifted and has also not pleaded the issues of alter ego and fraud.⁵⁵ There is hence no basis for lifting the corporate veil.

⁴⁹ 12DCS at paras 17–38.

⁵⁰ 12DCS at para 39.

⁵¹ 12DCS at para 40.

⁵² 12DCS at paras 43–44.

⁵³ 12DCS at paras 48–55.

⁵⁴ 12DCS at para 49.

⁵⁵ 12DCS at paras 50 and 53.

The third defendant's case

26 The crux of the third defendant's case is that he had no knowledge that he had been named as the consignee for two of the plaintiff's cars (*ie*, the two Porsche cars referred to in [11]) until the commencement of the present proceedings.⁵⁶ As such, he did not play any role at all in taking delivery of the two Porsche cars.⁵⁷ Neither was he involved in the storage, maintenance or cleaning of the two Porsche cars at any point in time, much less their sale and disposal. Hence, it would be "manifestly unfair" to hold him responsible and liable as a consignee in respect of the two Porsche cars when his involvement in this transaction was wholly a mistake from the beginning and he had no knowledge of the transaction at the relevant time.⁵⁸ In this regard, the third defendant relies on the first and second defendants' averments that he was incorrectly named in place of the second defendant as consignee of the two Porsche cars,⁵⁹ and that he had no part to play in any of the events set out in the plaintiff's statement of claim.⁶⁰

27 The third defendant submits that the duties of a bailee arise only out of the voluntary assumption of possession of the owner's goods,⁶¹ and he had never assumed possession of the plaintiff's cars.⁶² The consignee named in a bill of lading does not automatically have a duty to take care of the goods if named

⁵⁶ Third defendant's closing submissions dated 12 November 2025 ("3DCS") at para 10.

⁵⁷ 3DCS at para 11.

⁵⁸ 3DCS at para 12.

⁵⁹ 3DCS at para 72.

⁶⁰ 3DCS at para 73.

⁶¹ 3DCS at para 24.

⁶² 3DCS at para 176.

mistakenly.⁶³ The consignee's primary role is delivery of the goods from the carrier and the duty to take care of the goods received is not necessarily imposed on the consignee. The third defendant highlights that the plaintiff did not plead any facts and/or particulars against him showing his involvement in taking delivery of or the sale and disposal of the two Porsche cars in respect of which he was mistakenly named a consignee.⁶⁴ There were also no facts or particulars pleaded by the plaintiff with regard to any previous course of conduct and/or implied terms arising from previous dealings between himself and the third defendant.⁶⁵ Hence, the third defendant was not a party to any contract between the plaintiff and the first and second defendants in respect of the present suit and there was no privity of contract between him and the plaintiff.⁶⁶

28 Additionally, the third defendant contends that both the plaintiff and the first defendant had known that the third defendant was wrongly named as consignee from as early as 2016 and did not communicate this error to him.⁶⁷ Furthermore, the first defendant had, through the fabrication of documents which had the effect of passing off the second defendant as the third defendant, authorised a third party company as agent to take delivery of and store the two Porsche cars.⁶⁸ As it was the first defendant who received the consignment and arranged for the storage of the two Porsche cars, all matters regarding the storage, maintenance and cleaning of these cars, as well as payment matters, were handled by the first defendant himself and the third defendant had virtually

⁶³ 3DCS at para 25.

⁶⁴ 3DCS at para 28.

⁶⁵ 3DCS at para 32.

⁶⁶ 3DCS at paras 131–133.

⁶⁷ 3DCS at paras 151 and 154.

⁶⁸ 3DCS at paras 157–166.

nothing to do with them.⁶⁹ All dealings regarding the two Porsche cars, including their movement, sale and disposal, were managed by the first defendant and, accordingly, it was he who had control and authority over the two Porsche cars throughout the entire period of time from the collection of those cars to their storage and subsequent disposal.⁷⁰ The plaintiff had full knowledge of this.⁷¹

Issues to be determined

29 As the plaintiff points out in his reply closing submissions, the first and second defendants do not address in their closing submissions the meeting which purportedly took place on 17 July 2019 (and at which the July 2019 Agreement was allegedly formed).⁷² Curiously, the first and second defendants do not address this meeting in their reply submissions either. The plaintiff says that this meeting was “the latest ‘shot’ in a long line of discussions and correspondence between parties on the cars, and is subsequent to their initial oral agreement entered into in or around 2016”.⁷³ I agree with this characterisation. If the July 2019 Agreement was formed, and formed on the terms described by the plaintiff (see [18] above), then it follows that this agreement would have superseded the 2016 Agreement (at least in relation to the 12 cars that had yet to be sold at the time of the 17 July 2019 meeting – see [14] above). In such a scenario, the first and second defendants’ duties, obligations and liabilities in respect of the remaining 12 cars (*ie*, S/N 1 to 14 in the table at [14] above but leaving out S/N 2 and 12), and correspondingly the

⁶⁹ 3DCS at paras 167–170.

⁷⁰ 3DCS at paras 171–174.

⁷¹ 3DCS at para 167.

⁷² Plaintiff’s reply closing submissions dated 29 December 2025 (“PRS”) at para 8(d).

⁷³ PRS at para 8(d).

plaintiff's rights in relation to them, would necessarily have to be decided with reference to the terms of the July 2019 Agreement and not the 2016 Agreement.

30 The same can be said of another alleged agreement which was formed on 14 January 2019 (the "January 2019 Agreement"). According to the first defendant, it was orally agreed on that day that the plaintiff would settle all the outstanding dues payable to the second defendant by 28 February 2019, failing which the second defendant would have the right to auction off the plaintiff's cars for sale without any further notice.⁷⁴ Neither the plaintiff nor the first and second defendants make any submissions on this agreement. However, if the January 2019 Agreement indeed existed, then the second defendant's act of selling off the Porsche 911 GT2 on 15 July 2019 (*ie*, before the alleged formation of the July 2019 Agreement on 17 July 2019) would have to be analysed with reference to the January 2019 Agreement.

31 Hence, the issues which arise for determination are as follows:

- (a) Was there a breach of the first and second defendants' duties which they owed as bailees to the plaintiff? Relatedly, was there a breach of the 2016 Agreement?
- (b) Was the January 2019 Agreement formed and, if so, was there a breach of this agreement?
- (c) Was the July 2019 Agreement formed and, if so, was there a breach of this agreement?

⁷⁴ Mr Oh's AEIC at para 40.

- (d) Did a bailor-bailee relationship arise between the plaintiff and the third defendant? If so, did the third defendant breach the duties which he owed to the plaintiff as a bailee?

Preliminary issue: Whether the plaintiff's claim should be limited to only 12 cars

32 Before turning to the substantive issues proper, I first deal with a preliminary issue which has arisen for my consideration. This pertains to whether the plaintiff's claim should be limited to only the first 12 cars listed in the table at [14] above or whether it can be extended to all 14 cars. The first and second defendants submit that the plaintiff should be bound by his pleaded case that his claim is only in relation to 12 cars, and that any departure from the pleadings would cause prejudice to them as "it would significantly increase the damages/recourse that [they] are personally liable to".⁷⁵

33 It is true that, in his statement of claim, the plaintiff had listed only 12 cars (*ie*, S/N 1 to 12 in the table at [14] above) as forming the subject matter of his claim.⁷⁶ However, it was the first and second defendants themselves who, in their defence, averred that, above and beyond the 12 cars listed in the statement of claim, the plaintiff had also intended to export the 1971 Rolls Royce (*ie*, S/N 13 in the table at [14] above) and they were also involved in dealing with the Mercedes-Benz C32 AMG (*ie*, S/N 14 in the table at [14] above).⁷⁷ In his reply to the defence of the first and second defendants, the plaintiff referred to the additional two cars mentioned by the first and second defendants and stated in

⁷⁵ First and second defendants' reply closing submissions dated 12 December 2025 ("12DRS") at paras 4–13.

⁷⁶ SOC at para 5.

⁷⁷ 12Defence at para 4.

no uncertain terms that he intended to rely on their acts of having received, stored and sold those two cars, as mentioned in their defence, at the trial.⁷⁸ Subsequently, in his affidavit of evidence-in-chief (“AEIC”), the first defendant, while saying that the plaintiff intended to import 12 cars from the UK to Indonesia, lists all 14 cars when stating the particulars of that arrangement.⁷⁹ He also makes specific references to the two additional cars which the plaintiff did not mention in the statement of claim, and accepts that he and the second defendant owe duties as bailees in respect of all 14 cars.⁸⁰ Furthermore, as alluded to above (at [12]), the first defendant had affirmed multiple times while he was on the stand that all 14 cars were part of the contractual arrangement between the second defendant and the plaintiff to import cars from the UK to Indonesia through Singapore:⁸¹

Q ... So, in total, you can confirm that this transaction, you dealt with 14 cars, correct?

A Yes.

...

Court: ... agree, Mr Oh, that whatever may be the arrangement between you and the other shipper for the other two cars, you are somehow responsible to the plaintiff to bring in 14 cars in total? Whatever be the case, you are responsible for bringing in 14 of his cars. Initially, he may have asked you to put 12, then later on somebody wanted to combine with you or whatever. I'm not sure. But eventually, you are supposed to bring in 14 cars.

Witness: Correct.

...

Court: So do you agree, as a matter of contract with the plaintiff, plaintiff asked you to deal with and handle 14

⁷⁸ 12Reply at para 4.

⁷⁹ Mr Oh's AEIC at para 9.

⁸⁰ Mr Oh's AEIC at paras 14–15, 17–19.

⁸¹ 10 March Transcript at p 87 lines 7–9, 19–26; 11 March Transcript at p 10 lines 7–11, 26–29.

cars to bring into Indonesia, not 13 cars, not 12 cars, not 11 car, 14 car? Do you agree? Your company.

Witness: Agree.

...

Court: ... *Your contract with the plaintiff ... is for 14 cars to bring in Indonesia for him.* Is that correct or incorrect? Final answer, please.

Witness: Yes, 14.

[emphasis added]

34 It is therefore apparent that, from an early stage, and all throughout the proceedings, the first and second defendants appreciated that the plaintiff's claim extended to all 14 cars. The only reason why the additional two cars were put into issue was because the first and second defendants themselves did so. They were certainly given advance notice of the plaintiff's intention to extend his pleaded case to all 14 cars in the plaintiff's reply to their defence. The first defendant himself admitted that the contractual arrangement extended to all 14 cars and that this was the basis upon which the trial was conducted. In other words, issues relating to all 14 cars were adequately ventilated at trial. In these circumstances, it does not lie in the mouths of the first and second defendants to now insist that the plaintiff's claim ought to be limited to the originally pleaded 12 cars. I cannot see any basis for saying that the first and second defendants have suffered prejudice as a result of the plaintiff's departure from his pleaded case. As such, I will allow the plaintiff's claim to extend to all 14 cars.

Whether there was a breach of the 2016 Agreement and/or breach of bailees' duties owed by the first and second defendants to the plaintiff

35 It is common ground between the parties that the first *and* second defendants each owed a duty as bailees to take reasonable care of the plaintiff's

cars.⁸² While the first defendant may be said to have been contracting on behalf of the second defendant when dealing with the plaintiff, this does not prevent the court from finding that the first defendant was also personally liable as a joint bailee of the plaintiff's cars with the second defendant (see *Colbeck v Diamanta (UK) Limited* [2002] EWHC 616 (QB) at [20]–[22]). Crucially, in the present case, the first defendant himself *admits* that he was a bailee of the plaintiff's cars. This can be seen in the first defendant's AEIC, where he states as follows:⁸³

While the 2nd Defendant *and I* owe duties as bailees to take reasonable care of the cars, this is subject to the implied term and/or agreement that the Plaintiff would bear all the storage fees incurred for the storage of the cars in Singapore, as the cars could be possessed or withheld by the garages or that they could be auctioned off for sale by the garages if the storage fees were not paid for on time. ...

[emphasis added]

36 To my mind, this is an unequivocal admission by the first defendant that he, in his personal capacity as distinct from his capacity as a director of the second defendant, was a bailee of the plaintiff's cars and could be personally liable to the plaintiff if found to be in breach of his duties as a bailee. The first defendant did not positively resile from this position at trial. Moreover, while the first and second defendants submit in their closing submissions that the first defendant should not be found to be personally liable to the plaintiff, this is confined to the first defendant's liability to the plaintiff in contract on account of the corporate veil being pierced.⁸⁴ The entirety of the first and second defendants' closing submissions relate to their liability in contract only and their submission on the first defendant not being personally liable is advanced as an

⁸² PCS at para 8; 12Defence at para 11.

⁸³ Mr Oh's AEIC at para 15.

⁸⁴ 12DCS at paras 48–53.

alternative submission in the event that the court does not agree with their primary submission that they are not liable for breaching the 2016 Agreement.⁸⁵ Furthermore, their submissions on the first defendant's personal liability only engage with the issue of whether the corporate veil should be pierced and whether the plaintiff had sufficiently pleaded this issue.⁸⁶ This, however, is only relevant to establishing the first defendant's personal liability for breach of a contract between the plaintiff and the second defendant. Even in their reply submissions, the first and second defendants, when addressing the plaintiff's arguments on bailment, only say that the terms of the bailment were varied such that *they* had the right to auction off the plaintiff's cars and that they have proven that *they* have discharged *their* duties of care.⁸⁷ Notably, they do not submit that the first defendant does not personally owe duties to the plaintiff as a bailee. In the premises, the first defendant cannot be taken to have positively resiled from his earlier admission that he was a bailee of the plaintiff's cars and, hence, this admission stands.

37 As mentioned at [23] above, the first and second defendants claim, however, that the duties which they owed to the plaintiff as bailees to take reasonable care of the cars were "subject to the implied term and/or agreement that the Plaintiff would bear all the storage fees incurred for the storage of the cars in Singapore, as the cars could be possessed or withheld by the garages or that they could be auctioned off for sale by the garages if the storage fees were not paid for on time".⁸⁸ It is therefore necessary for me to examine the

⁸⁵ 12DCS at paras 4–48.

⁸⁶ 12DCS at paras 50–53.

⁸⁷ 12DRS at paras 14–19.

⁸⁸ 12Defence at para 11

interaction between a relationship of bailment and one of contract which arise on the same set of facts.

38 The legal relationship of a bailor and bailee of chattels, which gives rise to duties owed by a bailee to a bailor, is one which can exist independently of any contract (*Morris v C W Martin & Sons Ltd* [1965] 2 All ER 725 at 734–735, cited in *Chua Keng Mong v Hong Realty Pte Ltd* [1993] 3 SLR(R) 317 at [14]). Under the common law, a bailee may owe a bailor a number of duties such as the duty not to convert the bailor’s goods and the duty to take reasonable care of the goods. A relationship of bailor and bailee can, however, also arise under a contract. As L P Thean J (as he then was) put it in *Chua Chye Leong Alan v Grand Palace De-luxe Nite Club Pte Ltd* [1993] 2 SLR(R) 420 (“*Alan Chua*”) (at [39]), the essence of bailment is “[t]he delivery of the chattels upon a trust on a contract under which the bailee undertakes to take reasonable care of the chattels and to redeliver them according to his agreement with the bailor”. The question then, in such a scenario, is whether it is the common law or the contract of bailment which primarily informs the scope of a bailee’s duties.

39 As a matter of general principle, it is possible for the contract of bailment to exclude the bailee’s duties at common law. As Colman J noted in *Yasuda Fire and Marine Insurance Co of Europe Ltd v Orion Marine Insurance Underwriting Agency Ltd* [1995] 3 All ER 211 at 220, “the rights and obligations arising as a matter of law from the existence of duty-creating relationships, such as bailment, are not in principle displaced by contractual rights and obligations unless the contract provides that such rights and obligations are to be excluded or includes terms which are inconsistent with the duties attributable as a matter of law to the relationship”. This principle was similarly applied in *Alan Chua* (at [53]), in which a question arose on whether the defendant bailee was relieved from liability by reason of a condition

excluding liability for negligence or breach of duty on a notice board within the defendant's premises. At [53], Thean J referred to and adopted the following principle from *Harling v Eddy* [1951] 2 KB 739 at 748:

... if a person wishes to exempt himself from a liability which the common law imposes on him, he can only do it by *an express stipulation brought home to the party affected* and assented to by him as part of the contract. The party who is liable at law cannot escape liability by simply putting up a printed notice, or issuing a printed catalogue, containing exempting conditions. *He must go further and show affirmatively that it is a contractual document and accepted as such by the party affected*: see *Olley v Marlborough Court Ltd* [1949] 1 KB 532

[emphasis added]

40 In my view, this puts paid to the first and second defendants' contention that the duties which they owed as bailees to the plaintiff were somehow circumscribed by the *implied* term and/or agreement that the plaintiff would bear all storage fees for the cars incurred (failing which they had the right to sell off the plaintiff's cars to recover such outstanding storage fees). Even in their closing submissions, the first and second defendants' case is that "*over the course of conduct between parties*, the terms of the [2016 Agreement] were either varied or added to, such that, [they] were entitled to sell the 12 Cars if the Plaintiff failed to reimburse them for the incurred storage fees" [emphasis added].⁸⁹ The first and second defendants do not point to any express stipulation which was clearly and affirmatively accepted by the plaintiff. All they refer to are instances in which the plaintiff had allegedly implicitly accepted this restriction on the scope of their duties as bailees through his silence when they threatened to sell his cars.⁹⁰ In particular, the first defendant's testimony during

⁸⁹ 12DCS at para 16.

⁹⁰ 12DCS at paras 17–34.

the trial on not needing the plaintiff's consent to sell his cars is particularly revealing:⁹¹

Court: ... The question is: In fact, [the plaintiff] never gave you the consent but nevertheless, you sold the cars. Would that be correct or incorrect? He didn't give you consent, neither obtain consent from him to sell the cars. Would that be correct or incorrect?

Witness: There was no oral agreement. But ***according to what I understand, I can just sell his cars because he has owed me a lot of money.*** There's a lot of money outstanding and I did not want to keep his cars for him anymore. At that time, the company was in very bad shape and there were many people ask---coming to the company to recover their debts. So, *if I keep his cars, then I could rack up debts potentially up to a few hundred thousand dollars. That is too much.* I didn't want to therefore continue taking his car. *I'd rather just sell his car because he has owed me too much money. As for whether or not there is a need for consent, I don't think so, I can just sell his cars.*

Court: So, you don't think you need his consent, you can just sell his cars, and that's what you exactly did? You didn't take his consent. You did sell his cars to repay what he owes you. That would be the fact. That is what happened. Would that be correct? As a matter of fact, no consent, you sold his cars to repay your own---the debt he owes you. That's what happened. Would that be right as a matter of fact?

Witness: That was what I meant because I had already given him way too many chances. He had in fact told me from 2018 that he would make a full settlement. At that time, the amount was only \$45,000, but still he didn't pay. And even until after I sold his cars, he said that he---at that time, the settlement was already almost 100,000. He said that he will pay, but he didn't pay up. He even said that if there is no money, he would sell his cars or one of his cars. My company has already been destroyed by him. *There has been a lot of cash flow problems. So, that was the main issue back then. I had given him way too many chances. I just wanted to settle the company's issue.*

[emphasis added in italics and bold italics]

⁹¹ 16 July Transcript at p 38 line 7 to p 39 line 10.

41 The import of the first defendant’s testimony is clear. It was his own subjective understanding that he had the right to sell off the plaintiff’s cars to recover the sums which were purportedly due and owing to him. In his mind, he did not need to ask for the plaintiff’s permission to do so. This falls far short of the standard that must be met in order for a bailee to be able to *contractually* exclude the duties he owes to the bailor at common law to take reasonable care of the goods and to not convert them.

42 In any event, I also find that it was more likely than not that, under the 2016 Agreement, the plaintiff was only supposed to be liable for paying the storage and other miscellaneous fees in relation to his cars *after* they are successfully imported to Indonesia and delivered to him and not, as the first and second defendants allege, in a “regular and timely manner” even while the cars are still stored in Singapore.

43 According to the plaintiff, the agreement was for the first and second defendants to pay for all of the storage and other miscellaneous fees until the cars were shipped to Indonesia.⁹² While he was to bear all of these costs, he was only obliged to reimburse the first and second defendants in one lump sum after the cars were shipped to Indonesia.⁹³ This would be so regardless of how long the cars were stored in Singapore for.⁹⁴ The plaintiff only paid some of the fees before the cars were shipped to Indonesia because the first defendant had asked him for help in paying for those charges.⁹⁵ He characterises these as

⁹² Transcript dated 4 September 2024 (“4 September Transcript”) at p 61 lines 12–25.

⁹³ 4 September Transcript at p 63 lines 1–4.

⁹⁴ 4 September Transcript at p 62 lines 1–9.

⁹⁵ 4 September Transcript at p 64 lines 4–9.

prepayments.⁹⁶ The plaintiff also says that this was how the parties had dealt with one another in two previous transactions involving the importation of cars into Singapore for storage and the subsequent exportation of the cars out of Singapore and importation into Indonesia upon receiving the necessary permits.⁹⁷ A previous course of dealing between the parties may indeed be used to fill in any possible gaps in a contract (*Day, Ashley Francis v Yeo Chin Huat Anthony* [2020] 5 SLR 514 at [31], citing *Gay Choon Ing v Loh Sze Ti Terence Peter* [2009] 2 SLR(R) 332 at [50]).

44 In or around 2013, there was a transaction involving one car for which the permit for importation into Indonesia was secured rather expeditiously (the “2013 Transaction”).⁹⁸ The plaintiff says that he paid all storage charges and charges levied by the first defendant and/or the second defendant only *after* the cars arrived in Indonesia and were delivered to him. Subsequently, in or around 2014, there was a transaction for 30 cars (the “2014 Transaction”).⁹⁹ This time, however, there were some delays in obtaining the necessary permits for importation into Indonesia. As a result, the plaintiff paid some of the storage charges and charges levied by the first defendant and/or the second defendant before the end of the transaction, at the first defendant’s request, *on a goodwill basis*.¹⁰⁰ The plaintiff says that he had paid everything in full.¹⁰¹ The first defendant claims to the contrary that the plaintiff still owed him around \$30,000

⁹⁶ 5 September Transcript at p 23 lines 7–8.

⁹⁷ PCS at paras 13 and 44.

⁹⁸ PCS at para 13(a).

⁹⁹ PCS at para 13(b).

¹⁰⁰ PCS at para 13(b).

¹⁰¹ 4 September Transcript at p 54 lines 13–14.

after all the cars involved in the 2014 Transaction were shipped to Indonesia.¹⁰² However, he did not sell any of the plaintiff's cars under that transaction.¹⁰³

45 The first and second defendants submit that, given that the plaintiff had paid for the storage fees for the 2014 Transaction, in which there was a “significant delay”, during the period of storage, it makes no sense for the parties to have agreed under the 2016 Agreement for them to bear all the storage fees until the cars are exported to Indonesia.¹⁰⁴ However, it could equally be said that it makes no sense for the first and second defendants to have agreed to enter into the 2016 Agreement with the plaintiff when, on their own case, there were still moneys due and owing from the plaintiff.¹⁰⁵ I accept that, from the point of view of commercial sensibility, it is somewhat questionable that the first and second defendants would agree to bear the burden of paying all the storage and miscellaneous expenses when the storage period could potentially last for an indefinite period of time. This was a point alluded to by counsel for the first and second defendants, Mr Mohamed Arshad, as well, when he asked the plaintiff if, assuming that the cars were in storage for 30 years, the first and second defendants were supposed to pay 30 years' worth of storage fees before asking him to pay.¹⁰⁶ The plaintiff's reply was that, under the agreement, the cars were supposed to be sent to Indonesia “right away”.¹⁰⁷ He also later explained that, when he first started transacting with the first and second defendants, their understanding was that the cars were supposed to be in Singapore “only for a

¹⁰² 10 March Transcript at p 90 lines 16–22.

¹⁰³ 10 March Transcript at p 91 lines 1–3.

¹⁰⁴ 12DCS at para 12.

¹⁰⁵ Transcript dated 14 March 2025 (“14 March Transcript”) at p 23 lines 9–13.

¹⁰⁶ 4 September Transcript at p 67 lines 4–13.

¹⁰⁷ 4 September Transcript at p 67 lines 14–19.

few weeks and then send it”.¹⁰⁸ It is plausible that, although the storage of the cars in Singapore could theoretically last for an indefinite period of time, the parties had envisaged that there would not be any undue delay in exporting the cars to Indonesia from Singapore and they had concluded their agreements on this basis.

46 It should also be borne in mind that, by the time the parties entered into the 2016 Agreement, the plaintiff and the first defendant had developed a fairly close personal relationship.¹⁰⁹ According to the plaintiff, the first defendant would give him some latitude with respect to the timing of his payments because he knew that there would be subsequent consignments. This can perhaps be seen in the fact that the first defendant entered into the 2016 Agreement despite the plaintiff allegedly owing him a sum of \$30,000 from the 2014 Transaction. It is therefore unsurprising that the parties would have entered into the 2016 Agreement with the same understanding that the second defendant would bear all the storage charges *before* the cars were shipped to Indonesia. Any uncertainty arising out of such an understanding was perhaps mitigated by the first defendant’s past practice of asking the plaintiff to make some payments during the storage period if they accumulated to an unbearable degree and the plaintiff readily acceding to those requests on a goodwill basis.¹¹⁰ After all, it would have been in both parties’ interests to see to it that the storage fees incurred were paid. The bottom line is that such an arrangement is a commercially sensible one when viewed in the context of the parties’ relationship and past dealings at the material time.

¹⁰⁸ 5 September Transcript at p 26 lines 19–21.

¹⁰⁹ Mr Prayitno’s AEIC at para 13.

¹¹⁰ 10 March Transcript at p 6 line 30 to p 7 line 3.

47 It is also instructive that the first and second defendants did not point to any precise deadlines and/or payment schedules which the plaintiff was obliged to comply with under the 2016 Agreement. All the first and second defendants say in their closing submissions is that, while they would pay for the storage fees first, the plaintiff was supposed to reimburse them “regularly and in a timely manner”.¹¹¹ I note that this is a slight, albeit not insignificant, shift from how the plaintiff’s obligation was framed in the first and second defendants’ defence. In their defence, the first and second defendants simply aver that there was an implied term and/or agreement that the plaintiff would bear all the storage fees incurred.¹¹² This places the obligation to pay all the storage fees upfront squarely on the plaintiff and appears to suggest that the plaintiff had an obligation to pay those fees as and when they became due to the car storage companies. The first and second defendants’ version of events in their closing submissions, however, acknowledge that they had the burden of paying the storage fees upfront. The plaintiff was only supposed to reimburse them. However, it is not clear, on their own case, *when* exactly the plaintiff was required to reimburse them.

48 As I previously explained in *Lim Swee Joo v Nan Bei Dou Mu Gong* [2024] SGHC 33 (at [51]), in the context of commercial contracts, the timing and scheduling of payments are vital to ensure certainty of repayment where the failure to do so could affect the contractual parties’ obligations to other parties (eg, in the form of back-to-back contracts), which would undermine commercial efficacy or create absurd results inconsistent with mercantile or commercial practice. While the first defendant deposes in his AEIC that he and the second defendant “[did] not owe any obligations to the Plaintiff to pay for the storage

¹¹¹ 12DCS at para 7.

¹¹² 12Defence at para 11.

fees out of [their] own pockets when it was the Plaintiff who sought their services which were necessary for and/or incidental to the purpose of exporting the cars”, the first defendant agreed with counsel for the plaintiff, Mr Nevinjit Singh, that this was factually inaccurate.¹¹³ He further agreed that he had a direct legal relationship with the storage companies and that, if there were any outstanding fees, those companies would seek payment from him and the second defendant and not the plaintiff.¹¹⁴

49 It is therefore odd, to say the least, that the parties would have operated on a vague understanding that there was an obligation on the plaintiff to pay the first and second defendants “regularly and in a timely manner” if the first and second defendants had envisaged themselves to be highly dependent on the plaintiff’s reimbursement to pay the storage fees to the storage companies from the outset. It should be borne in mind that it is not the first and second defendants’ case in their closing submissions that the plaintiff was supposed to pay the storage fees as and when they became due to the storage companies and/or at a regular fixed interval. While the first defendant did send regular statements of account to the plaintiff, these were, according to the plaintiff, merely statements describing the amounts which had been incurred for the maintenance and storage of the plaintiff’s cars every month for him to keep track of such expenses and did not function as invoices for payment.¹¹⁵ I am inclined to believe the plaintiff because, while these statements contain a line stating “[y]our account [is] long past due”,¹¹⁶ they generally did not state when the plaintiff was supposed to make payments by. Only a statement of account dated

¹¹³ 14 March Transcript at p 21 lines 12–23.

¹¹⁴ 14 March Transcript at p 22 lines 15–23.

¹¹⁵ 10 March Transcript at p 21 lines 26–31, p 22 line 28 to p 23 line 5.

¹¹⁶ See, *eg*, Agreed bundle of documents dated 11 July 2025 (“ABOD”) at pp 305, 321, 338–340.

1 October 2017 stated: “[w]e would [really] appreciate, if you could send us your payment on 10.10.2017”.¹¹⁷ Meanwhile another statement of account dated 12 April 2018 stated: “[w]e would [really] appreciate, if you could send us your payment asap”.¹¹⁸ Curiously, there were also some invoices issued by the second defendant to the plaintiff which were tendered as evidence. However, like the statements of accounts, these invoices, while containing a notice that the second defendant had the right to impose penalties for late payment, did not specify when payment of the invoiced amounts had to be made by.¹¹⁹ In my view, the almost-complete lack of particulars as to when exactly the plaintiff was required to reimburse the first and second defendants is more consistent with the plaintiff’s version of events – namely, that he would only need to pay for all the storage and miscellaneous fees in one lump sum after the cars are shipped to Indonesia and that he would be willing to make some goodwill payments if there was a prolonged delay in the shipment of the cars.

50 This is supported by the manner in which the first defendant chased the plaintiff for payments after the 2016 Agreement was formed. When one looks at the e-mail and WhatsApp correspondence between the plaintiff and the first defendant, a clear pattern emerges in which the first defendant would only go after the plaintiff for payments as and when he himself and/or the second defendant were being chased by the storage companies for payments.¹²⁰ In his WhatsApp messages to the plaintiff, the first defendant repeatedly referred to the fact that he was being chased for payments by the storage companies and

¹¹⁷ ABOD at p 305.

¹¹⁸ ABOD at p 321.

¹¹⁹ See, *eg*, ABOD at pp 276, 278, 280, 310, 312.

¹²⁰ ABOD at pp 82–98, 158–204.

asked the plaintiff not to delay his payments for too long.¹²¹ He also alluded to the possibility of the storage companies auctioning and/or forcing him to auction off the plaintiff's cars if the outstanding storage charges were not paid soon.¹²² At some points, the first defendant also pressed the plaintiff for a "payment schedule".¹²³ While the first defendant made reference to the plaintiff having promised him to make certain payments, the overall tenor of the correspondence between the parties is more consistent with these promises being the plaintiff's assurances that he would make some goodwill payments or, as the plaintiff put it, prepayments. It does not comport with there having been an agreed payment schedule at the outset which the parties had envisioned the plaintiff was to abide by strictly. If this were the case, the first defendant would in all likelihood have simply referred to such an arrangement when chasing the plaintiff for payments rather than only making reference to the storage companies chasing him for payments and the plaintiff's *ad hoc* promises to transfer some funds. To put it differently, I am unable to find any objective indicators in the correspondence between the parties that the 2016 Agreement itself encompassed a binding obligation on the plaintiff to make regular payments. If it is the first and second defendants' case that there was such an obligation, and that the plaintiff had breached that obligation, it would surely be incumbent upon them to precisely elucidate what that obligation entailed and how the plaintiff had breached it. This, they have not done.

51 I also do not place much weight on the first and second defendants' contention that, in the abovementioned WhatsApp correspondence, the plaintiff never complains or asserts that he was not supposed to reimburse the storage

¹²¹ ABOD at pp 158–159.

¹²² ABOD at pp 170–171.

¹²³ ABOD at pp 197–198, 200.

fees until after the cars were shipped to Indonesia.¹²⁴ The plaintiff's non-objection to the first defendant's request for payment is consistent with his avowed practice of making prepayments on a goodwill basis, especially when the first defendant was making it clear that he was facing mounting pressure from the storage companies to pay the outstanding storage charges.

52 I am therefore minded to conclude that the plaintiff's obligation to pay the storage and other miscellaneous fees for the cars under the 2016 Agreement would have only arisen *after* the cars were shipped to Indonesia. However, even if I am wrong in coming to this conclusion and the plaintiff did have an obligation to make regular and timely payments while the cars were stored in Singapore, I do not think that there was ever an implied agreement that the first and second defendants would have the right to sell off the plaintiff's cars to pay off the outstanding charges.

53 It is notable that, in the first and second defendants' closing submissions, they frame this as an entitlement that was "either varied or added to" the 2016 Agreement.¹²⁵ They are thus not asserting that the parties had agreed upon the second defendant having the right to sell off the plaintiff's cars *at the time the 2016 Agreement was formed*. As I have noted (at [45] above), it is likely that the parties did not envisage that there would be a prolonged delay in obtaining the requisite permits for importing the cars into Indonesia. *A fortiori*, it is likely that the parties would not have contemplated the arising of a scenario which would necessitate a sale of the plaintiff's cars. After all, the whole point of the 2016 Agreement was for the first and second defendants to assist the plaintiff in getting the cars to their final destination.

¹²⁴ 12DCS at para 14.

¹²⁵ 12DCS at para 16.

54 The difficulty with the first and second defendants' case is that they have not sufficiently demonstrated how the plaintiff's supposed acceptance of their right to auction his cars satisfy the legal requirements for the variation of a contract. I refer to the following summary of the applicable principles relating to the variation of a contract from Sean Wilken and Karim Ghaly, *The Law of Waiver, Variation and Estoppel* (Oxford University Press, 3rd Ed, 2012) at para 2.14 (and cited in *Fairview Developments Pte Ltd v Ong & Ong Pte Ltd* [2014] 2 SLR 318 at [75]):

Since *Felthouse v Brindley* [sic] unless there is a specific provision which permits it, a party cannot unilaterally vary the terms of a contract; **there has to be acceptance of the variation of the contract, that acceptance being more than 'mental acceptance or mere acquiescence'**. Therefore, in the same way as there must be offer and acceptance at the formation of the contract, **the parties to the contract must agree to the variation, must agree to all material aspects of the variation and must intend to vary the contract. ...** Finally, the parties' consensus must be **sufficiently certain and be in sufficiently clear terms such that the proposed alteration of their obligations can be given effect.**

[emphasis in original]

55 There is also the requirement of fresh consideration to be given for any contractual variations or modifications, unless the parties had, by agreement, dispensed with that requirement at the point in time the contract was formed (see *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 at [4], [36] and [93]).

56 The first and second defendants refer to the following instances in which the plaintiff allegedly accepted that they would have the right to sell his cars if the plaintiff failed to reimburse them for the storage fees incurred:

- (a) On 14 September 2017, the first and second defendants sent the plaintiff an e-mail informing him that, as a result of his repeated delays

in reimbursing the storage fees, a particular car had been sold for \$7,000 and two more cars would be sold for \$10,000.¹²⁶ The plaintiff accepted in court that his understanding upon seeing this e-mail was that the moneys obtained by the first and second defendants for the sale of the aforesaid cars would go towards reimbursing payments that he owed.¹²⁷

(b) The plaintiff testified that he did not make any police report in 2017 alleging that the first defendant sold his cars without his permission.¹²⁸

(c) On 9 June 2018, the first defendant sent the plaintiff a message stating that: (a) the plaintiff owed the second defendant a significant amount of money and had been given many chances to make good on the reimbursement payments; and (b) the first and second defendants had decided to sell the plaintiff's cars the following week unless there was a good proposal from the plaintiff.¹²⁹ However, the plaintiff did not reply to this message.¹³⁰

(d) On 6 July 2018, the first and second defendants sent the plaintiff a message informing him that his cars had already been listed for auction on 15 June 2018. They also invited the plaintiff to give a proposal in relation to the outstanding reimbursements.¹³¹ However, the plaintiff did not reply to this message.¹³²

¹²⁶ 12DCS at para 17.

¹²⁷ 12DCS at para 18.

¹²⁸ 12DCS at para 19.

¹²⁹ 12DCS at para 21.

¹³⁰ 12DCS at para 22.

¹³¹ 12DCS at para 23.

¹³² 12DCS at para 24.

(e) On 5 November 2018, the first defendant messaged the plaintiff to ask him “[h]ow soon you can settle for the matter? To avoid auction sales your cars”, to which the plaintiff replied “Ok mr Oh”.¹³³ This, the first and second defendants submit, “demonstrates an explicit acceptance and understanding” on the part of the plaintiff that they were entitled to auction the cars.¹³⁴

(f) On 10 November 2018, the first defendant messaged the plaintiff informing him that he had to reimburse \$25,000 by the following week, failing which the plaintiff’s cars would be auctioned off.¹³⁵ The plaintiff replied that he would “settle some”.¹³⁶ The first and second defendants highlight that the plaintiff “did not dispute” that they had the right to auction off his cars.¹³⁷

57 It will be apparent from the abovementioned examples that the first and second defendants are mainly relying on the plaintiff’s silence and/or acknowledgment of the first defendant’s messages to demonstrate that he had somehow acquiesced to them having the right to sell his cars. This is plainly insufficient to demonstrate that the parties have fulfilled the necessary legal requirements to vary the 2016 Agreement. Instead of evincing the plaintiff’s acquiescence, the correspondence between the parties, whether on e-mail or WhatsApp, is littered with instances to the contrary in which the plaintiff had explicitly objected to the sale of his cars. To give an example, when the first defendant told the plaintiff that his cars would be auctioned off for sale on 9

¹³³ 12DCS at paras 26–27.

¹³⁴ 12DCS at para 28.

¹³⁵ 12DCS at para 29.

¹³⁶ 12DCS at para 30.

¹³⁷ 12DCS at para 31.

March 2018, the plaintiff stated the following in an e-mail to the first defendant:¹³⁸

Mr Oh,

You cannot sell the car, as I told you before, i will settle outstanding, just need more time, as our permit also almost done

560sec [*ie*, the Mercedes-Benz 560SEC] is owned by one of our minister here,

Please dont sell that car, otherwise we all in trouble. Thank you
[emphasis added]

58 The Mercedes-Benz 560SEC referred to in this e-mail was eventually sold on 2 August 2018 despite the plaintiff telling the first defendant not to sell the car. The Mercedes-Benz 560SEC was thus sold by the first defendant without the plaintiff’s knowledge and prior consent at the material time. It is therefore clear that the plaintiff never agreed for the first and second defendants to have the right to sell away his cars, especially in relation to the Mercedes-Benz 560SEC. In fact, the first defendant acknowledged in re-examination that the plaintiff said he could not sell the Mercedes-Benz 560SEC.¹³⁹ All he could put forth was that he *notified* the plaintiff that he would be selling the car and that he “had no choice but to sell the car”.¹⁴⁰

59 Accordingly, I find that, even if the plaintiff had an obligation to make regular and timely reimbursements of the storage fees and had failed to do so, the first and second defendants never had a right to sell the plaintiff’s cars to pay off any outstanding costs under the 2016 Agreement. Hence, in selling the

¹³⁸ ABOD at p 83.

¹³⁹ 16 July Transcript at p 66 lines 28–31; Transcript dated 15 July 2025 (“15 July Transcript”) at p 49 line 30 to p 50 line 3.

¹⁴⁰ 16 July Transcript at p 65 line 31 to p 66 line 2.

Mercedes-Benz 560SEC, the first and second defendants had breached their duties as bailees and the second defendant had breached the 2016 Agreement. However, as I will explain below (at [91]), I also find that the plaintiff had waived his claims in respect of this breach.

Whether the January 2019 Agreement was formed

60 The first and second defendants make no mention of the January 2019 Agreement in their closing submissions even though their case is that the 2016 Agreement was varied to give them a right to sell off the plaintiff's cars. I would hazard that this is so because the first and second defendants will face difficulties establishing that there was an agreement formed on 14 January 2019 which was concluded on the terms described at [30] above.

61 It is not disputed that there was a meeting between the parties on 14 January 2019.¹⁴¹ However, the plaintiff does not agree that there was an agreement reached on the terms described by the first defendant. The first defendant's version of events is that it was orally agreed on 14 January 2019 that the plaintiff would settle all the outstanding dues payable to the second defendant by 28 February 2019 under the following arrangement:¹⁴²

- (a) the plaintiff agreed to sell one of the Porsche cars to pay off all the debts; or
- (b) the plaintiff would make a part payment of \$10,000 to the second defendant by 15 February 2019 and pay the remaining dues by 28 February 2019; and

¹⁴¹ 15 July Transcript at p 63 lines 2–3.

¹⁴² Mr Oh's AEIC at para 40.

- (c) if the remaining dues were not paid by 28 February 2019, the second defendant shall reserve its rights to arrange for the cars to be auctioned off for sale without any further notice.

62 If the January 2019 Agreement was formed, then the second defendant would have had the right to sell off the Porsche 911 GT2 (*ie*, S/N 2 in the table at [14] above) on 15 July 2019 because the plaintiff failed to pay off all “outstanding dues” by 28 February 2019.¹⁴³

63 The first and second defendants’ version of the 14 January 2019 Agreement is recorded in the Statement of Accounts issued by the second defendant and addressed to the plaintiff.¹⁴⁴ While this statement was dated 11 January 2019, it was signed by one Mr Saleem Jawed (“Mr Jawed”) on behalf of the second defendant on 18 July 2019.¹⁴⁵ I will henceforth refer to this statement as the “July 2019 SOA”, with “SOA” being the acronym for “Statement of Accounts”. Mr Jawed was a director of the second defendant whom the first defendant had asked the plaintiff to correspond with.¹⁴⁶ The July 2019 SOA contained the following block of text:¹⁴⁷

1st On 14.01.2019, we met at the Mercure Hotel around 5 pm, my company’s Japanese director (Saleem) also participated.

We refer to our SOA on 28 01 2019, your debt are \$90160.76. (Included Hermes Logistic’s C32 debt of \$5732.75.)

Plus the two cars (BMW M3 and Bent 300SL) have a debt of \$20000. The total debt is \$116,160.76.

¹⁴³ Mr Oh’s AEIC at para 41.

¹⁴⁴ ABOD at pp 53–56.

¹⁴⁵ ABOD at p 56.

¹⁴⁶ 10 March Transcript at p 34 lines 23–30.

¹⁴⁷ ABOD at p 56.

Based on the results of our discussion, you have two comments that will pay off all debts by the end of the month.

Firstly, sell one of the Porsche car this week to pay off all the debt.

Secondly, *your \$10,000 are settle on 15.02.19* and then all the remaining debt will be paid off at the end of the month.

If you have not paid off all of these debts on 28/02/19. We will arrange your cars for “Auction Sales” and not more further noticed.

[emphasis added]

64 When he was on the stand, the first defendant clarified that the line stating “your \$10,000 are settle on 15.02.19” meant that the plaintiff had paid \$10,000 but, as that amount was not enough to pay off all the purported debt, the outstanding had to be paid by the end of the month (*ie*, the end of February 2019).¹⁴⁸ The plaintiff had apparently made payments totalling \$10,000 on 25 January 2019.¹⁴⁹ I then asked the plaintiff if this meant that he had typed in the entire block of text on the July 2019 SOA quoted at [63] above after the meeting and after 15 February, to which he said “Yes”.¹⁵⁰ When I asked him what, then, the plaintiff had agreed to at the 14 January 2019 meeting, he replied as follows:¹⁵¹

Your Honour, when our meeting ended, *he agreed that he would clear the debt by the end of the month which is the end of January*. But when the end of the month came, there was nothing. So, he waited till when full payment came in. And that’s why ***I suggested that if he cannot pay, he can sell one of the cars to pay the debt***. And I also told him that he did not pay by the end of January so I will give him time till February.

[emphasis added in italics and bold italics]

¹⁴⁸ 15 July Transcript at p 70 lines 12–23.

¹⁴⁹ 15 July Transcript at p 70 lines 28–30.

¹⁵⁰ 15 July Transcript at p 72 line 29 to p 73 line 8.

¹⁵¹ 15 July Transcript at p 73 line 26 to p 74 line 2.

65 Crucially, the first defendant also agreed that there was no discussion about auctioning off the plaintiff's Porsche cars at the 14 January 2019 meeting and that this was only included in the July 2019 SOA which was sent to the plaintiff only subsequently on 18 July 2019:¹⁵²

Court: ... The point is at the first meeting [*ie*, the meeting on 14 January 2019], it only ended up by---according to what is written here, by [the plaintiff] saying that he will pay off the debts by the end of the month. *There was no discussion at that first meeting about you auctioning, at the first meeting.* This was something you added in to inform him in July 2019 that you would do that. You see the difference there? You put this in to inform him in July. But at the meeting, all it ended up with, as far as I interpret this, you say that he agreed that he will settle his debt by the end of the month. *The parts about auctioning sale without further notice was something you put in after the meeting in this document which was sent to him subsequently in July of 2019.* ...

...

Court: Is it correct or not?

Witness: *Yes. That's correct*, according to what is written here.

[emphasis added]

66 The upshot of this is that there was never any agreement on 14 January 2019 between the parties for the plaintiff specifically to sell off one of his Porsche cars to pay the purported outstanding debt. Hence, the sale of the Porsche 911 GT2 on 15 July 2019 (*ie*, S/N 2 in the table at [14] above) could not be justified on the basis of the January 2019 Agreement. This sale would have been made by the first and second defendants unilaterally and without the knowledge and consent of the plaintiff. It would thus have been in breach of the 2016 Agreement and the duties which the first and second defendants owed to the plaintiff as bailees of the cars.

¹⁵² 15 July Transcript at p 75 lines 1–16.

Whether the July 2019 Agreement was formed

67 To recapitulate, it is the plaintiff's case, in his closing submissions, that there was another meeting between him and the first defendant at the Park Regis Hotel on 17 July 2019 (which was two days *after* the Porsche 911 GT2 had been unilaterally sold by the second defendant on 15 July 2019) during which it was orally agreed that the plaintiff would pay \$10,000 as an administrative fee for all 14 cars to be transferred to a company of his nomination, M/s Lomax, as consignee by August 2019 (the "July 2019 Agreement").¹⁵³ According to the plaintiff, it was also agreed that the plaintiff would pay the agreed sum of \$125,000 to the first and/or second defendants in full and final settlement of all moneys owed to the second defendant in respect of the 14 cars *after* the cars were transferred to M/s Lomax.

68 Based on the plaintiff's case, he was apparently at this time still insisting on a transfer of all 14 cars when, in fact, there were only 13 cars available for transfer to his knowledge since he had already been notified a year earlier *vide* an email dated 4 August 2018 of the sale of the Mercedes-Benz 560SEC on 2 August 2018 by the second defendant.¹⁵⁴ The plaintiff's case therefore appears to be that the parties had agreed on the transfer of all 14 cars back to him on the basis that the first defendant had to get back by whatever means possible the Mercedes-Benz 560SEC so as to be able to transfer all 14 cars to M/s Lomax. If the plaintiff's case is correct, then one may well have to surmise that the first defendant went along with the plaintiff's insistence on getting all 14 of his cars back and agreed in the hope that there would be more payments forthcoming from the plaintiff for the mounting storage charges that

¹⁵³ PCS at para 14.

¹⁵⁴ Mr Oh's AEIC at p 109.

the second defendant was incurring. I further note that, at this time, the plaintiff remained unaware of the unilateral sale of the Porsche 911 GT2 two days earlier on 15 July 2019 by the second defendant. It could be said that the second defendants had sold the Porsche 911 GT2 on 15 July 2019 surreptitiously without the plaintiff's knowledge and consent. This is entirely consistent with the plaintiff's shock and anger when he first learnt of the purported sale of three of his Porsche cars, which included the Porsche 911 GT2 (see [85]–[87] below). However, as I will elaborate upon below (at [91]), I consider it unlikely that the parties had reached an agreement to a transfer of all 14 cars back to the plaintiff.

69 Strangely, neither the meeting on 17 July 2019, nor the July 2019 Agreement, was mentioned or alluded to in the plaintiff's statement of claim and AEIC. Instead, it was the first and second defendants who pleaded in their defence that the plaintiff and the first defendant had met at the Park Regis Hotel on 17 July 2019.¹⁵⁵ Their pleaded version of events, however, is that the parties had agreed for the remaining cars which had yet to be sold at that point in time to be transferred to the plaintiff's company beginning from 1 August 2019, and that the plaintiff would pay all the outstanding dues as at 17 July 2019, which amounted to some \$135,805.96, *before* the transfer of the cars to the plaintiff's company. However, the plaintiff had, pursuant to this agreement, only paid \$10,000 towards reducing the outstanding dues of \$135,805.96 before 1 August 2019. This exact same version of events also made an appearance in the first defendant's AEIC.¹⁵⁶

70 During re-examination, the plaintiff mentioned the 17 July 2019 meeting for the first time and explained that there was an agreement reached during that

¹⁵⁵ 12Defence at para 29.

¹⁵⁶ Mr Oh's AEIC at para 42.

meeting in the terms stated at [67] above.¹⁵⁷ The first defendant, on the other hand, did a complete about-turn from his pleaded position during cross-examination and denied that he even met the plaintiff on 17 July 2019.¹⁵⁸ Curiously, though, he maintained that there was an agreement for the plaintiff to pay him \$125,805.96 (*ie*, \$135,805.96 less the plaintiff's payment of the \$10,000 amount which was paid before 1 August 2019) before he would "settle the relevant procedures with the shipping company" (ostensibly to transfer the plaintiff's cars to the plaintiff's company, M/s Lomax):¹⁵⁹

Q Okay. So, Mr Oh, it's---I'm going to ask you a series of questions. You can agree or disagree. I put to you that at the meeting that occurred on 17th July 2019 at Park Regis Hotel between you and Steven, it was agreed that first, you would---he would pay a S\$10,000 administrative fee to CTPL for the transfer of all 14 cars to Mr Steven's own company. That's number 1.

A I disagree.

Q And the next term, I put it to you, that was agreed was after the 10,000 is paid, CTPL will transfer all 14 cars to Mr Steven's company.

A Impossible.

Q And after the transfer---I put it to you, the agreement was after the transfer, he will pay you the outstanding balance which is the sum of \$125,805.96. He will pay you that outstanding balance after the transfer is done.

A I didn't receive this money.

Q But the question is whether there was such an agreement.

A Yes.

Q So, there was an agreement to pay you 125805.96 after the cars were transferred, right?

¹⁵⁷ 10 March Transcript at p 33 lines 20–26.

¹⁵⁸ 15 July Transcript at p 76 line 17 to p 77 line 2; 16 July Transcript at p 6 lines 28–30.

¹⁵⁹ 16 July Transcript at p 34 line 24 to p 35 line 19.

A *There was an agreement. He said that---when I talked to him, he said that he would transfer the sums to me and after that, if I receive the money, then of course, I can go and settle the relevant procedures with the shipping company. But the issue is that he didn't transfer the money to me and I didn't receive it. If I---if the transfer was done, then he has the right to do so.*

Q *So, you say there was an agreement, right, on the 17th of July? And the agreement was at least in your version, at least, for him to pay 125805.96. Let's put aside the other clauses.*

A *Yes, this was the last message I sent to him, but he didn't follow through with this promise and therefore, I didn't continue any discussions with him.*

[emphasis added]

71 In their written submissions, the first and second defendants acknowledge that there was indeed a meeting on 17 July 2019 at the Park Regis Hotel (although they made no mention of any agreement having been reached).¹⁶⁰ I will therefore take it as an established fact that such a meeting took place. Be that as it may, the first defendant's denial of the 17 July 2019 meeting at trial has implications for his credibility as a witness.

The first defendant's credibility as a witness

72 The first defendant was clearly being untruthful when he denied ever meeting the plaintiff on 17 July 2019 at trial. It was the first defendant himself who positively asserted that this meeting took place in his defence and AEIC, well before the plaintiff made any mention of it. Moreover, all of the contemporaneous documentary evidence on record points to a meeting on 17 July 2019 between the plaintiff and the first defendant having taken place.

¹⁶⁰ 12DCS at para 36.

73 First, there are WhatsApp messages exchanged between the plaintiff and the first defendant on 17 July 2019 which point to a meeting between them having taken place at the Park Regis Hotel on that day. On the morning of 17 July 2019, the plaintiff sent the first defendant a message saying that he was in Singapore.¹⁶¹ He then sent another message later at 3.32pm in the afternoon, stating the address of the Park Regis Hotel and a link to the location of the hotel on Google Maps. A little more than an hour later, at 4.39pm, the plaintiff sent a message stating “Lomax Singapore Pte Ltd / 35 jalan Tepong” to the first defendant. This appears to be a reference to M/s Lomax, the company which the parties supposedly agreed on transferring the plaintiff’s cars to when they met on 17 July 2019 (see [67] above). The plaintiff’s case is that this message was likely sent while the meeting was still ongoing.¹⁶² There was no immediate reply from the first defendant to these two messages.

74 When the first defendant was confronted with the plaintiff’s message enclosing the location of the Park Regis Hotel, all he could muster was a bare denial that he had even seen the message.¹⁶³ He was unable to explain why the plaintiff would have sent him the location of the Park Regis Hotel if he had not met or had no intention of meeting the plaintiff that day.

75 Secondly, there are also contemporaneous WhatsApp messages between the plaintiff and Mr Jawed referring to the meeting between the plaintiff and the first defendant. Specifically, at around 4.41pm,¹⁶⁴ there was a message sent by the plaintiff to Mr Jawed stating “Saleem Im with Mr Oh now, i agree to transfer

¹⁶¹ ABOD at p 177.

¹⁶² 16 July Transcript at p 14 lines 11–14.

¹⁶³ 16 July Transcript at p 5 lines 24–31, p 6 lines 23–25.

¹⁶⁴ 16 July Transcript at p 24 line 15 to p 25 line 4.

all the cars under my company name by august” as well as “This is my company name: / Lomax Singapore Pte Ltd / 35 Jalan Tepong Singapore” [emphasis in original].¹⁶⁵ It is notable that these messages were sent about two minutes after the plaintiff sent the name and address of M/s Lomax to the first defendant (see [73] above). This is consistent with the plaintiff’s account that, during the meeting, the first defendant had instructed him to inform Mr Jawed about the agreement reached between them.¹⁶⁶ Once again, when confronted with these messages, the first defendant could only offer a bare assertion that the plaintiff “just tried to bluff [his] employee [*ie*, Mr Jawed]”.¹⁶⁷ As the first defendant acknowledged, however, Mr Jawed was not called as a witness in these proceedings.¹⁶⁸

76 Finally, the July 2019 SOA alluded to a meeting between the plaintiff and the first defendant on 17 July 2019 as well.¹⁶⁹ Near the bottom of the July 2019 SOA, there were remarks alluding to the 17 July 2019 meeting:¹⁷⁰

... On 17th July, Mr. Oh [ie, the first defendant] met at Park Regis Hotel. We agree to transfer the remaining vehicles to your company (LOMAX SINGAPORE PL) starting on August 1. In this case, we also agree to first settle all outstanding debts. My chairman had informed you that three of Porsche are sold.

[emphasis added]

77 Leaving aside the issue of whether this is an accurate account of what transpired at the meeting, the crucial point to note is that the July 2019 SOA

¹⁶⁵ ABOD at p 64.

¹⁶⁶ 10 March Transcript at p 34 lines 23–30.

¹⁶⁷ 16 July Transcript at p 31 lines 13–15.

¹⁶⁸ 16 July Transcript at p 9 lines 7–9.

¹⁶⁹ ABOD at pp 53–56.

¹⁷⁰ ABOD at p 56.

very clearly alluded to the meeting on 17 July 2019 having taken place. The first defendant first testified that it was Mr Jawed who typed the above-quoted portion into the July 2019 SOA,¹⁷¹ but later said that he had “no impression” of who typed it.¹⁷² More importantly, when the first defendant was confronted with this account of the 17 July 2019 meeting, he could not explain why it was written that he had met the plaintiff on 17 July 2019:¹⁷³

Court: You mean did you meet Mr Oh---sorry. Did you meet [the plaintiff] at Park Regis on the 17th of July?

Witness: No.

Court: Then, why does [Mr Jawed]---whoever it is, writes, “Mr Oh met at Park Regis Hotel”?

Witness: Your Honour, I don’t know what’s going on at all. *I find it very strange as well. But I didn’t meet them. So, why did [Mr Jawed] write this? I don’t know what motive he has.*

Court: So, this part you didn’t write. And you do not know why [Mr Jawed] writes something which is---write about a meeting which never happened? You were never at Park Regis Hotel to meet [the plaintiff]? Is that it? Do you confirm that? Factually, you never met Mr Oh[sic] on the 17th of July at Park Regis Hotel? You don’t---this meeting never happened?

Witness: Yes.

[emphasis added]

78 In my view, the first defendant’s continued and repeated denial that the 17 July 2019 meeting took place, in the face of the contemporaneous documentary evidence which pointed to the contrary, was simply incredible. This is all the more so when the first defendant himself had positively asserted that this meeting took place in both his defence and AEIC. I therefore find that

¹⁷¹ 15 July Transcript at p 71 lines 28–29.

¹⁷² 15 July Transcript at p 72 lines 24–27.

¹⁷³ 15 July Transcript at p 76 lines 17–31.

the first defendant was deliberately being dishonest on the stand when he maintained that he never met the plaintiff at the Park Regis Hotel on 17 July 2019. This has the effect of severely diminishing the first defendant's credibility as a witness, at least in relation to his account of any agreement (including the purported agreed terms) which was supposedly reached between him and the plaintiff.

The formation and terms of the July 2019 Agreement

79 Having established that the first defendant had met the plaintiff on 17 July 2019, I now turn to the issue of what exactly was agreed between them at this meeting. As mentioned above (at [70]), the first defendant maintained, even in the face of his repeated denials that a meeting between him and the plaintiff took place, that there was some sort of agreement or understanding between him and the plaintiff that the plaintiff would pay him \$125,805.96 *before* he would “settle the relevant procedures with the shipping company” [emphasis added].¹⁷⁴ I digress to note that the alleged settlement sum is recorded as being \$135,805.96 in the first and second defendants' defence, as well as the first defendant's AEIC.¹⁷⁵ If the sum of \$10,000 that the plaintiff paid pursuant to the discussions on 17 July 2019 was meant to be part of the agreed settlement sum, then the figure of \$135,805.96 mentioned in the first and second defendants' defence as well as the first defendant's AEIC would be the correct figure representing the total settlement sum reached at the meeting on 17 July 2019. Indeed, the outstanding sum as recorded in the July 2019 SOA is \$125,805.96 would have taken into account the \$10,000 payment which the plaintiff made

¹⁷⁴ 16 July Transcript at p 34 line 24 to p 35 line 19.

¹⁷⁵ 12Defence at para 29; Mr Oh's AEIC at para 42.

on 17 July 2019 as the July 2019 SOA records a payment of \$10,000 being made on 17 July 2019.¹⁷⁶

80 That being said, the first defendant does not explain at trial how he and the plaintiff had arrived at such an agreement (a question which naturally arises since his case at trial is that he never met the plaintiff on 17 July 2019). All he says is that this agreement arose “when [he] talk to [the plaintiff]”,¹⁷⁷ without articulating how and when this conversation occurred. In addition, as I have found the first defendant to be an untruthful witness lacking in credibility in relation to the occurrence of the 17 July 2019 meeting, it follows that I should view his testimony on the July 2019 Agreement, which he himself had previously said was formed at the 17 July 2019 meeting (albeit on different terms), with great caution. On a more important note, and as referred to at [76] above, the July 2019 SOA had referred to the agreement reached at the 17 July 2019 meeting in the following terms: “We [*ie*, the second defendant] agree to transfer the remaining vehicles to your [*ie*, the plaintiff’s] company ... starting on August 1. In this case, we also agree to *first* settle all outstanding debts” [emphasis added]. Thus, the main issue to be determined is whether the second defendant’s obligation to transfer the cars to M/s Lomax under the July 2019 Agreement was contingent on the plaintiff paying up the full settlement sum of \$125,805.96 first.

81 Another issue to be determined is whether the agreement was for the second defendant to transfer all 14 of the plaintiff’s cars to M/s Lomax, or only the 12 cars which were then remaining in the first and second defendants’ possession. The plaintiff’s version of events is that, during the 17 July 2019

¹⁷⁶ ABOD at p 56.

¹⁷⁷ 16 July Transcript at p 35 line 10.

meeting, he was made to believe that none of the cars had been sold yet and therefore the understanding reached between the parties was for all 14 of his cars to be transferred to M/s Lomax.¹⁷⁸ This appears to contradict the terms of the July 2019 Agreement recorded in the July 2019 SOA, which states that the parties “agree to transfer the *remaining* vehicles to [M/s Lomax]” [emphasis added] and also mentions that the plaintiff had been informed that three of the Porsche cars were already sold.¹⁷⁹ I note that this is inconsistent with the fact that only two cars, namely the Mercedes-Benz 560SEC and the Porsche 911 GT2, had been sold by the time the 17 July 2019 Agreement was concluded, and this would have been known to the first defendant as the seller of the cars, but not necessarily to the plaintiff, as the extent of the plaintiff’s knowledge of the sale of the cars would depend on what the first defendant had chosen to tell him. This is a question which affects whether the sale of some of the cars before the formation of the July 2019 Agreement could potentially constitute a breach under that agreement (since the corollary of selling the cars would be that the second defendant had failed to deliver those cars to the plaintiff).

82 Where no formal written agreement is entered into or signed by the parties, the existence of a contract must be “culled from the written correspondence and contemporaneous conduct of the parties at the material time” (*Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407 at [39], cited in *ARS v ART* [2015] SGHC 78 (“*ARS*”) at [49]). In this regard, the first port of call is always the relevant documentary evidence and, particularly, those which constitute a *contemporaneous* written record of what had transpired (*OCBC Capital Investment Asia Ltd v Wong Hua Choon* [2012] 4 SLR 1206 at [41], cited in *ARS* at [50]). Such contemporaneous documentary

¹⁷⁸ 10 March Transcript at p 34 lines 22–25, p 40 line 18 to p 41 line 17.

¹⁷⁹ ABOD at p 56.

evidence is often more reliable than a witness's oral testimony given well after the fact because the latter form of evidence may be coloured by the onset of subsequent events and the factual dispute between the parties. However, that is not to say that such testimony is necessarily unhelpful when credible testimony is given for the purpose of *clarifying* the existing documentary evidence. Quentin Loh J had, in *ARS* at [53], helpfully distilled the following guiding principles on the proper approach for determining the existence of an oral agreement which, in my view, can also be relied upon for determining the terms of an oral agreement:

- (a) in ascertaining the existence of an oral agreement, the court will consider the relevant documentary evidence (such as written correspondence) and contemporaneous conduct of the parties at the material time;
- (b) where possible, the court should look first at the relevant documentary evidence;
- (c) the availability of relevant documentary evidence reduces the need to rely solely on the credibility of witnesses in order to ascertain if an oral agreement exists;
- (d) oral testimony may be less reliable as it is based on the witness's recollection and it may be affected by subsequent events (such as the dispute between the parties);
- (e) credible oral testimony may clarify the existing documentary evidence;
- (f) where the witness is not legally trained, the court should not place undue emphasis on the choice of words; and

(g) if there is little or no documentary evidence, the court will nevertheless examine the precise factual matrix to ascertain if there is an oral agreement concluded between the parties.

83 In the present case, the starting point must therefore necessarily be the record of what had transpired at the 17 July 2019 meeting that can be found in the July 2019 SOA as this summary of the meeting was an almost-contemporaneous record of the meeting. As the July 2019 SOA was sent to the plaintiff on 18 July 2019 (*ie*, the day after the July 2019 Agreement was supposedly formed),¹⁸⁰ the record of the 17 July 2019 meeting therein must have been drafted during or shortly after the meeting took place.

84 The July 2019 SOA states that the plaintiff and the second defendant had agreed to “first settle all outstanding debts” (see [76] above). The question which arises, therefore, is whether the use of the word “first” is indicative of the obligation to pay the settlement sum being a condition precedent to the transferring of the cars to the plaintiff. In my view, it cannot be said with certainty that the use of the word “first” was meant to denote the sequence in which the parties’ respective obligations were to be carried out. In other words, the use of the word “first” is neither here nor there. I am therefore reluctant to assign much probative value, if at all, to the July 2019 SOA in deciphering the sequence of the parties’ obligations.

85 That being said, I consider the parties’ conduct after the 17 July 2019 meeting to be instructive. According to the plaintiff, up until Mr Jawed had sent him the July 2019 SOA on WhatsApp on 18 July, he was labouring under the

¹⁸⁰ 15 July Transcript at p 67 line 24 to p 68 line 13; ABOD at p 64.

impression that none of his cars had been sold.¹⁸¹ The plaintiff only found out, when reading the July 2019 SOA, that three of the cars (the Porsche 911 GT2, Porsche 911 GT3RS and Porsche 911 40th Anniversary) had been sold.¹⁸² The July 2019 SOA stated “My chairman [*ie*, presumably the first defendant] had informed you [*ie*, the plaintiff] that three of Porsche are sold”, and also “**Noted: 3 units of Porsche GT2, GT3 & 20th yaer) sre sold, the total price is S\$200,000.**” [emphasis in original]. Factually speaking, of the 14 cars, only the Porsche 911 GT2 and the Mercedes-Benz 560SEC had been sold by then (see table at [14] above) and the plaintiff had thus been given the incorrect facts on the July 2019 SOA. However, the important point to note here is that, when the plaintiff was told that some of his cars had been sold, his reaction to that news was one of shock and anger.

86 When Mr Jawed first sent the plaintiff the July 2019 SOA on 18 July 2019 at around 8.42pm, he also told the plaintiff to “[c]ontact [the first defendant] for the details”.¹⁸³ It would appear that there was something in the SOA which had caught the plaintiff’s attention as he responded a few minutes later to say that he had to speak with Mr Jawed because Mr Jawed was the one who was “responsible for this”. It is not clear if Mr Jawed had engaged with the plaintiff any further, but what is apparent from the record of the WhatsApp conversation between the plaintiff and the first defendant is that the plaintiff had aired his dissatisfaction with the apparent sale of the three Porsche cars later on. This conversation on the sale of the cars took place from 10.57pm onwards on the same day:¹⁸⁴

¹⁸¹ 10 March Transcript at p 34 lines 22–25, p 40 line 18 to p 41 line 17.

¹⁸² 10 March Transcript at p 35 line 28 to p 36 line 17; 16 July Transcript at p 40 lines 4–24.

¹⁸³ ABOD at p 64.

¹⁸⁴ ABOD at p 177.

[18/7/19, 10:57:36 PM] [First defendant]: According to [Mr Jawed]: For the three cars, the buyer has bought S\$200,000. The deposit is 100,000 Singapore dollars. Buyers are handled one after another. GT2 has been shipped. GT3 will arrange the schedule and payment this Friday. I hope that I will give you the correct reply tomorrow afternoon. Thanks for your understanding and cooperation

[18/7/19, 11:02:13 PM] [Plaintiff]: *Its looks like you guys sold the cars without my knowing, i bought the cars, paid the service and you sold it without telling me*

[18/7/19, 11:02:22 PM] [Plaintiff]: That is a serious crime.

[18/7/19, 11:03:19 PM] [Plaintiff]: If you cannot settle get the car back, i will send my lawyer

...

[18/7/19, 11:05:13 PM] [Plaintiff]: So its your choice ill settle everything my next month, or you want to settle it with my lawyer

[18/7/19, 11:06:56 PM] [Plaintiff]: He bill is just 100k but you sold more than that and its under value, and the rest of the money you keep it, this is not a good intention

[18/7/19, 11:08:07 PM] [Plaintiff]: *I give you chance to get my cars back*, otherwise my lawyer will take over

[18/7/19, 11:08:33 PM] [Plaintiff]: And you know under singapore law charmy is still owned by you!

[18/7/19, 11:14:33 PM] [Plaintiff]: Monday ill come to singapore again

[18/7/19, 11:33:00 PM] [Plaintiff]: Hi steven, this is the Singapore law: Penal Code 378. Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft. So if this company selling your cars without your consent, its consider as theft

[18/7/19, 11:33:12 PM] [Plaintiff]: Thats from my lawyer

[emphasis added]

87 To my mind, the plaintiff's reaction to the first defendant's message detailing the sale (or purported sale) of the three Porsche cars is telling. The plaintiff's expression of surprise upon reading this message corroborates his testimony in court that this was the first time he was hearing about the sale of

the three Porsche cars. It also indicates that the parties never agreed that the first and second defendants were given the right to sell off the plaintiff's cars.

88 Moreover, it contradicts what was recorded on the July 2019 SOA, which implies that the first defendant had earlier told the plaintiff during the 17 July 2019 meeting that the three cars had been sold (see [76] above). Indeed, if the first defendant had done so, there would have been no need for him to convey the same message on WhatsApp. This points to the July 2019 Agreement having been concluded on the basis that these three cars were to be transferred back to the plaintiff's company as well.

89 I am fortified in this view by the fact that the settlement sum of \$125,805.96 which the parties had agreed on (and which was recorded in the July 2019 SOA as the amount due and outstanding to the second defendant) did *not* account for the sum of \$200,000 which the three Porsche cars had allegedly been sold for.¹⁸⁵ If the plaintiff and the first defendant had concluded the July 2019 Agreement on the basis that three Porsche cars had already been sold for \$200,000, and that the second defendant was entitled to do so, then there would have been no need for the plaintiff to even pay any settlement sum of \$125,805.96 since the sale proceeds from that sale would be in excess of the sum due and owing to the first defendant. To put it another way, the plaintiff's obligation to pay \$125,805.96 would have made sense only if the second defendant had a corresponding obligation to transfer the three Porsche cars back to the plaintiff as well.

90 One might ask why the first defendant would have agreed to the second defendant bearing an obligation to transfer these three Porsche cars back to the

¹⁸⁵ ABOD at pp 53–56.

plaintiff if he had known that they were already sold. It would appear that, at the time the parties concluded the July 2019 Agreement, the first defendant was not entirely sure what the status of the three Porsche cars was. This can be seen from the fact that, when the first defendant told the plaintiff about what had happened to the three Porsche cars, he appeared to be relaying what Mr Jawed had told him for the first time to the plaintiff (see [86] above).¹⁸⁶ I would therefore surmise that the first defendant had entered into the July 2019 Agreement on the assumption that he would be able to get the three Porsche cars back for the plaintiff. There is hence no inconsistency between finding that the July 2019 Agreement encompassed an obligation to transfer the three Porsche cars back to the plaintiff and the fact that the Porsche 911 GT2 was sold on 15 July 2019 before the agreement was formed, even though one might have expected the first and second defendants to know of this fact by the time the parties met on 17 July 2019.

91 As for the Mercedes-Benz 560SEC, which was sold even earlier on 2 August 2018, the fact is that the first defendant had informed the plaintiff about the sale of this car on 4 August 2018 in an e-mail.¹⁸⁷ This was not just recorded in the July 2019 SOA, but also recorded in the Statement of Accounts issued by the second defendant to the plaintiff dated 19 September 2018 and signed by the plaintiff.¹⁸⁸ The plaintiff would therefore have known since then that the sale proceeds of the Mercedes-Benz 560SEC were used to pay the sums which he owed to the second defendant. As such, the parties would have entered into the July 2019 Agreement knowing that the Mercedes-Benz 560SEC was already sold and the sale proceeds had already been taken into account in the calculation

¹⁸⁶ ABOD at p 177.

¹⁸⁷ Mr Oh's AEIC at p 109.

¹⁸⁸ ABOD at pp 338–340.

of the sum of \$125,805.96 which the plaintiff was to pay to the second defendant. Hence, I will proceed on the basis that the obligation on the part of the second defendant to transfer the plaintiff's cars to M/s Lomax pertained to all of the plaintiff's cars *except for the Mercedes-Benz 560SEC*. These were the "remaining" cars which the agreement contemplated were to be returned to the plaintiff. I will also take the plaintiff to have waived his claims in bailment and contract in respect of the Mercedes-Benz 560SEC since he had agreed to enter into a full and final settlement which already accounted for the sale of this car.

92 Given the ambiguous manner in which the terms of the July 2019 Agreement were recorded on the July 2019 SOA, and taking into consideration the parties' conduct after the 17 July 2019 meeting, I am minded to conclude that the plaintiff's obligation to pay the \$125,805.96 and the second defendant's obligation to transfer the 13 remaining cars back to the plaintiff were *concurrent* obligations under the agreement.

93 Concurrent obligations are those which are mutually dependent upon one another being fulfilled. If a contract, on its true construction, provides that X's obligation to perform is concurrent with Y's obligation to perform, then X's obligation does not arise unless and until Y is also concurrently ready, willing and able to perform (and *vice versa*) (*The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) ("*The Law of Contract in Singapore*") at para 16.033; see also *BCBC Singapore Pte Ltd v PT Bayan Resources TBK* [2017] 5 SLR 77 at [112]). The effect of contractual obligations being concurrent and mutually dependent have been helpfully summarised in *Foran v Wright* (1989) 168 CLR 385 at 417 (and cited in *Straits Engineering Contracting Pte Ltd v Merteks Pte Ltd* [1995] 3 SLR(R) 864 at [27]):

The obligation of a vendor to deliver a conveyance and the obligation of a purchaser to pay the price on completion are mutually dependent and concurrent obligations in the absence of any contrary stipulation; each obligation is to be performed in exchange for the other: *Palmer v Lark* [1945] Ch 182 at pp 184–185. Where the respective obligations of parties to a contract are mutually dependent and concurrent, the primary rule is that neither party who fails to perform his obligation when the time for performance arrives can rescind for the other party's failure at that time to perform his obligation. Each party's obligation is conditional on performance by the other; neither can complain of non-performance by the other when the condition governing the other's obligation goes unfulfilled. But *if one party intimates to the other that it is useless for the other to fulfil his obligation and the other acts on the intimation, the party to whom the intimation is given is dispensed from a nugatory tender of performance.*

[emphasis added]

94 I therefore find that the July 2019 Agreement was concluded on the following terms:

(a) The plaintiff was to pay the second defendant an administrative fee of \$10,000 first.

(b) Following the payment of the administrative fee, the second defendant would transfer all of the plaintiff's cars besides the Mercedes-Benz 560SEC (*ie*, S/N 1 to 11, 13 and 14 in the table at [14] above) to the plaintiff's company, M/s Lomax, in exchange for the plaintiff paying the second defendant the sum of \$125,805.96. The plaintiff's obligation to pay the sum of \$125,805.96 and the second defendant's obligation to transfer the 13 cars were concurrent obligations.

95 This brings me to the next question, which is whether the plaintiff and/or the second defendant had breached the July 2019 Agreement.

Whether there was a breach of the July 2019 Agreement

96 For his part, the plaintiff had paid the \$10,000 administrative fee on 17 July 2019 (see [69], [70] and [79]). This constituted a part performance of the July 2019 Agreement. As recounted at [86] above, the plaintiff began pressing the first defendant to “get [his] cars back” after the first defendant informed him that the three Porsche cars had apparently been sold. On 22 July 2019, the plaintiff returned to Singapore once again and the following conversation with the first defendant ensued on WhatsApp:¹⁸⁹

[22/7/19, 6:19:43 PM] [Plaintiff]: I just arrived singapore, when can you meet?

[22/7/19, 6:19:57 PM] [Plaintiff]: Im gonna be here until Wednesday

[22/7/19, 8:56:42 PM] [First defendant]: Please get your lawyer to issue a letter and I will reply in an appropriate manner.

[22/7/19, 8:57:44 PM] [Plaintiff]: You want to solve this with the lawyer or you want to settle this with me?

[22/7/19, 8:58:15 PM] [First defendant]: Sure write me a cheque of whatever is outstanding to me and the problem will be solved.

[22/7/19, 8:58:38 PM] [Plaintiff]: *How is my cars?*

[22/7/19, 9:25:30 PM] [First defendant]: *How is the payment of 125,805.96?*

[22/7/19, 9:28:55 PM] [Plaintiff]: *Its mean if i pay that, i will get all my cars back right?*

[emphasis added]

97 It is not disputed that, after the last message in the extract quoted above, the first defendant blocked the plaintiff on WhatsApp.¹⁹⁰ I note that, as at the date of the WhatsApp messages above sent on 22 July 2019, the second

¹⁸⁹ ABOD at p 177.

¹⁹⁰ Mr Prayitno’s AEIC at para 26; 16 July Transcript at p 39 lines 13–17, p 47 lines 28–29.

defendant had already sold a second car, the Porsche 911 GT2 (*ie*, on 15 July 2019) again without the plaintiff’s knowledge and prior consent. When the plaintiff wanted confirmation that he would “get all [his] cars back” upon payment of the balance of all the outstanding storage charges of \$125,805.96, the first defendant understandably refused to engage further with the plaintiff and blocked the plaintiff on WhatsApp because he must have known that he would not be able to fulfil his side of his bargain as he had surreptitiously sold off the Porsche 911 GT2 a week earlier.

98 Some days later on 28 July 2019, the first defendant sent the plaintiff the following e-mail (the “28 July E-mail”):¹⁹¹

Hi Steven Lo,

I have tried contacting you since 2018 to have matters resolved and have given ample time to you.

Given that no arrangements were made from you, I have to do what is necessary to safe guard

from all the creditors and have to settle all the outstanding issues.

Once I have settled everything on my end, I will keep you informed and updated of the progress.

99 Thereafter, the first defendant avers that, because of the continued incurrence of storage fees in respect of the remaining cars “as a result of the inaction and lack of further response from the Plaintiff”, he and the second defendant had to auction the remaining cars off to “mitigate [their] losses”.¹⁹² All of the remaining cars have since been sold off.

¹⁹¹ ABOD at p 98.

¹⁹² Mr Oh’s AEIC at para 44.

100 In my view, the first defendant's refusal to engage with the plaintiff on the status of his cars as well as his acts of blocking the plaintiff on WhatsApp and sending the 28 July E-mail, collectively evince a clear and unambiguous intimation on the part of the second defendant that it did not intend to fulfil its part of the bargain to transfer the remaining 13 cars back to the plaintiff. The first and second defendants themselves say in their closing submissions that "it was clear [from the 28 July E-mail] that the Plaintiff's cars would be auctioned".¹⁹³ This gave the plaintiff the right to suspend performance of his obligation to pay the outstanding fees indefinitely until the second defendant appeared ready, willing and able to perform (*The Law of Contract in Singapore* at para 16.033). It therefore cannot be said that the plaintiff had breached the July 2019 Agreement by failing to pay the sum of \$125,805.96. In addition, as all of the remaining cars were sold, the second defendant had committed a repudiatory breach of the July 2019 Agreement which would have discharged the plaintiff from his obligations under that agreement. After all, this clearly conveyed that the second defendant no longer intended to transfer any of the cars back to the plaintiff and, hence, was a clear renunciation of its contractual obligations (*RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd* [2007] 4 SLR(R) 413 ("*RDC Concrete*") at [93]). Alternatively, it was an act which deprived the plaintiff of substantially the whole benefit which it was intended that he should obtain from the contract (*RDC Concrete* at [99]) since the whole *raison d'être* of the July 2019 Agreement was for the plaintiff to get his cars back.

101 Either way, I find that the second defendant had breached the July 2019 Agreement by failing to return 13 of the plaintiff's cars (*ie*, excluding the Mercedes-Benz 560SEC as this would be covered under 2016 Agreement but

¹⁹³ 12DCS at para 37.

not the July 2019 Agreement) to the plaintiff. This also constitutes a breach of the first and second defendants' duties as bailees of those 13 cars.

102 Accordingly, as the plaintiff is taken to have waived his claims in respect of the Mercedes-Benz 560SEC, the first and second defendants' liability in bailment and the second defendant's liability in contract will only extend to the 13 cars which are the subject of the July 2019 Agreement.

103 If I am wrong in finding that the July 2019 Agreement was formed, then the second defendant's acts of selling away all 14 of the plaintiff's cars (*ie*, including the Mercedes-Benz 560SEC) would have been in breach of the 2016 Agreement and would have also given rise to a breach of the first and second defendants' duties as bailees in respect of all 14 cars.

Whether the third defendant was a bailee of the plaintiff's cars

104 As there was never a contractual relationship between the plaintiff and the third defendant, the only possible way in which the plaintiff can hold the third defendant liable is to show that a relationship of bailment had arisen between them and that the third defendant had breached his duties as a bailee of the plaintiff's cars.

105 As highlighted at [38] above, the essence of bailment is the delivery of the chattels upon a trust on a contract under which the bailee *undertakes* to take reasonable care of the chattels and to redeliver them according to his agreement with the bailor. As the Court of Appeal emphasised in *Alwie Handoyo v Tjong Very Sumito* [2013] 4 SLR 308 (at [143]) (referring to Norman Palmer, *Palmer on Bailment* (Sweet & Maxwell, 3rd Ed, 2009) at paras 1-001–1-002), the essence of bailment is possession and the possessor must *knowingly and willingly assume possession* of goods that belong to the bailor. In addition,

neither delivery to the bailee nor any specific undertaking by the bailee to hold the goods on behalf of the bailor is necessary if the bailee *consents* to having possession of the bailor's goods (*T Kishen & Co (a firm) v Birkart South East Asia Pte Ltd (Dyna Movers Pte Ltd, third party)* [1996] 3 SLR(R) 156 at [24], referring to *Palmer on Bailment – The Laws of Australia* (1994 Ed) at ch 8.5, p 9).

106 In the present case, the plaintiff relies on the mere fact that CTE was named as a consignee of the Porsche 911 GT3RS and the Porsche 911 40th Anniversary (*ie*, the “two Porsche cars” being S/N 10 and 11 in the table at [14] above) on the sea waybill to hold the third defendant liable for the sale of those cars.¹⁹⁴ The first defendant has averred that he had mistakenly named CTE as the consignee on the sea waybill.¹⁹⁵ In other words, the third defendant did not voluntarily agree to be designated as the consignee for the two Porsche cars. However, if it had voluntarily accepted possession of the goods as the consignee (whether mistakenly named or not), this could still give rise to a relationship of bailment.

107 It is true that, in ordinary circumstances, one might be able to infer or even presume from the mere fact that an entity had been named as the consignee on a sea waybill that it came into possession of the goods as a matter of fact. After all, a sea waybill is a contract of carriage whereby the carrier undertakes to deliver the cargo to the person identified by the shipper as entitled to take delivery of the cargo (*APL Co Pte Ltd v Voss Peer* [2002] 2 SLR(R) 1119 at [53]). In other words, it is typically the case that only the named consignee is entitled to take delivery of the goods and, *a fortiori*, it may be safely assumed

¹⁹⁴ PCS at para 22.

¹⁹⁵ Mr Oh's AEIC at para 12.

that the goods must have passed to the named consignee. The present case, however, is not an ordinary case.

108 Despite not being the named consignee, the first and second defendants managed to take delivery of the two Porsche cars for which CTE was the named consignee.¹⁹⁶ As it was revealed during the trial, the first defendant had created an authorisation release bearing the letterhead of CTE and the seal of the second defendant, and signed by himself, to authorise SH Cogent Logistics Pte Ltd (*ie*, the storage company engaged by the second defendant) (“SH Cogent”) to take delivery of the two Porsche cars.¹⁹⁷ However, a representative from SH Cogent had apparently told him that this document was wrong and needed to be amended. He then claimed that he “followed up with a correct document” by creating an authorisation release with the second defendant’s letterhead, instead of CTE’s letterhead, along with the second defendant’s seal,¹⁹⁸ but was unable to adduce or point to any such document. The first defendant later admitted to having created an authorisation release bearing CTE’s letterhead and seal when confronted with this document on the stand,¹⁹⁹ and that he had used this to collect the two Porsche cars.²⁰⁰ This was yet another example of the first defendant being evasive and dishonest in court. According to the first defendant, the third defendant had initially given him CTE’s stamp when he first started CTE.²⁰¹ When I asked him on whether he had permission from the third

¹⁹⁶ Mr Oh’s AEIC at para 14.

¹⁹⁷ 11 March Transcript at p 88 line 30 to p 90 line 20; ABOD at p 218.

¹⁹⁸ 11 March Transcript at p 90 line 30 to p 91 line 3.

¹⁹⁹ 11 March Transcript at p 93 line 24 to p 94 line 19; Mr Kathiresan Loga Krishnasamy’s supplementary affidavit of evidence-in-chief dated 16 August 2024 at para 5; ABOD at p 548.

²⁰⁰ 11 March Transcript at p 96 lines 5–6.

²⁰¹ 11 March Transcript at p 96 lines 16–19.

defendant to use CTE's stamp on this authorisation release for the purposes of authorising SH Cogent to take delivery of the two Porsche cars, he initially prevaricated by saying that the third defendant would call him to use the stamp when the third defendant needed to resolve certain issues and that "[f]rom what [the third defendant] gave him initially, [the first defendant] could use the stamp".²⁰² However, he eventually admitted that he was never given any authorisation to use CTE's stamp on the authorisation release:²⁰³

Court: Do I take it your evidence is that you did not ask him permission to use this stamp for this particular authorisation of this consignment? And tell him that "I'm going to use your stamp to authorise consignment. Do you allow me to do so?" You never did that, right? Your evidence is all over the place, but never to the point that you never did ask for confirmation to use this specifically and give you this authorisation for this particular purpose for this document, right?

Witness: Correct.

109 The long and short of it is that the first defendant had fabricated an authorisation release and passed it off as having originated from CTE to allow the second defendant to collect the two Porsche cars and have them stored by SH Cogent. All of this was done without the knowledge and/or participation of the third defendant. As the first defendant testified, the first time the third defendant approached him on this matter was when there was a claim by the plaintiff.²⁰⁴ The first defendant also affirmed that he had made the decision to sell the two Porsche cars without the involvement of the third defendant, and that the third defendant should not be liable for those two cars.²⁰⁵ This is a

²⁰² 11 March Transcript at p 94 line 24 to p 95 line 9.

²⁰³ 11 March Transcript at p 95 lines 12–20.

²⁰⁴ Transcript dated 12 March 2025 ("12 March Transcript") at p 23 lines 20–23.

²⁰⁵ 12 March Transcript at p 26 lines 6–13.

weighty admission, given that the first defendant had made it against his own interest (as he is effectively taking responsibility for the two Porsche cars).

110 The plaintiff appears to have accepted that the third defendant never had any knowledge of and/or involvement in any matters relating to the two Porsche cars despite being named as the consignee in respect of those cars. This is because his case in his closing submissions is that “there is no way he could have known prior to trial whether or not CTE had knowledge of it being nominated as a consignee of the said two (2) cars”.²⁰⁶ However, he says that his claim against the third defendant was “brought in good faith” and that “whether CTE had knowledge of the same or not, and whether it benefitted in any way from the sale proceeds of the cars, are a matter to be contested between the 3 Defendants”. Whether the claim was brought in good faith or not is entirely irrelevant for the purposes of determining the third defendant’s liability and, given that the touchstone of bailment is a voluntary assumption of possession of another’s goods (see *The “Jeil Crystal”* [2024] 4 SLR 1691 at [88], citing *East West Corpn v DKBS AF 1912 A/S* [2003] 3 WLR 916 at [24]), it is plainly untenable to advance the submission that the third defendant’s knowledge of the goods is not in issue as between him and the plaintiff. In view of the clear and undisputed evidence demonstrating that the third defendant did not even have any knowledge of the two cars before the plaintiff’s claim in the present suit, much less voluntarily assume possession of them, I fail to see how the third defendant could have come close to being considered a bailee of the two Porsche cars.

111 Accordingly, the plaintiff’s claim against the third defendant has no leg to stand on and must necessarily fail.

²⁰⁶ PCS at para 22.

Conclusion

112 An action against a bailee is *sui generis*, arising out of the possession had by the bailee of the goods. It is distinct from an action in contract. As such, a bailee is liable to the person damnified, whether that be the bailor or owner of the goods, for any loss and damage to the goods while they are in his custody provided the loss results from the bailee's failure to exercise the required standard of care (*Seino Merchants Singapore Pte Ltd v Porcupine Pte Ltd* [1999] 3 SLR(R) 221 at [10], citing *Building and Civil Engineering Holidays Scheme Management Ltd v Post Office* [1966] 1 QB 247 at 260–262; *Sun Technosystems Pte Ltd v Federal Express Services (M) Sdn Bhd* [2007] 1 SLR(R) 411 at [28], citing *Coopers Payen Limited v Southampton Container Terminal Limited* [2004] 1 Lloyd's Rep 331 at [28]–[29]). The first defendant accepts that he was a bailee of the plaintiff's cars, and that he owed the plaintiff a duty to take reasonable care of those cars (see [35]–[36] above).²⁰⁷ I have found that he has breached that duty. As such, it is not necessary to pierce the corporate veil and/or find that the first defendant is the second defendant's alter ego in order to hold him liable for the loss of the cars. It is thus also not necessary to deal with the issue of whether the plaintiff had adequately pleaded the issue of piercing the corporate veil and/or the first defendant being the second defendant's alter ego.

113 Be that as it may, I observe that the evidence strongly suggests that the first defendant had treated the second defendant's funds as his personal piggy bank and that he had siphoned the funds received from the sale of the plaintiff's cars away from the second defendant. For instance, it appears that the first defendant had caused some, if not all, of the funds received from the sale of the

²⁰⁷ Mr Oh's AEIC at para 15.

plaintiff's cars to be routed to one Mr Vincent Leong ("Mr Leong").²⁰⁸ To provide an example, there were text messages sent by the first defendant to Mr Leong shortly after the sale of some of the plaintiff's cars in which he promised Mr Leong that sums ranging in the tens of thousands would be transferred to him.²⁰⁹ The first defendant acknowledges that, when he received moneys from the sale of the plaintiff's cars into the second defendant's account, he was taking those moneys and giving them to Mr Leong.²¹⁰ However, he characterises the sums transferred to Mr Leong as loans for investment purposes following which he would receive regular interest payments.²¹¹ He also admits that he had regarded the loans that he gave to Mr Leong personally as being the same as the loans which he gave to Mr Leong from the second defendant.²¹² Curiously, despite Mr Leong allegedly owing the first and second defendants around \$208,000, which the first defendant himself recognises to be a large amount of money,²¹³ the first defendant had not, at the time of the trial, been able to make any headway in discussing with Mr Leong the repayment of these moneys and/or the promised interest payments which had not been forthcoming for the past five years.²¹⁴ Besides the sale proceeds of \$33,000 from the Mercedes-Benz 560SEC which had already been taken into account in the agreed-upon settlement sum of \$125,805.96 in the July 2019 Agreement, the sale proceeds from the sale of the other 13 cars amounted to \$315,000.²¹⁵ To date, none of the

²⁰⁸ 16 July Transcript at p 100 line 9 to p 102 line 3.

²⁰⁹ 16 July Transcript at p 95 lines 12–19.

²¹⁰ 16 July Transcript at p 100 line 31 to p 101 line 3.

²¹¹ 16 July Transcript at p 97 lines 3–9, p 102 lines 1–3.

²¹² 16 July Transcript at p 95 lines 8–11.

²¹³ 16 July Transcript at p 86 line 4 to p 87 line 8.

²¹⁴ 16 July Transcript at p 97 lines 12–17.

²¹⁵ Mr Oh's AEIC at para 46.

sale proceeds have been returned to the plaintiff. In addition, despite the purported loans by the second defendant to Mr Leong remaining unpaid, the second defendant no longer has any bank account.²¹⁶ In the light of this backdrop, the first defendant might well have been personally liable on the ground of the corporate veil being pierced and/or the first defendant being the second defendant's alter ego as well.

114 In summary, I find that the first and second defendants are jointly and severally liable to the plaintiff for breaching their duty as bailees to take reasonable care of 13 of the plaintiff's cars (*ie*, all of the plaintiff's cars, excluding the Mercedes-Benz 560SEC that was sold on 2 August 2018). The second defendant is also liable in contract for breaching the July 2019 Agreement with the plaintiff in relation to those 13 cars. I thus allow the plaintiff's claim against the first and second defendants in part. However, I find that the third defendant was never a bailee in respect of any of the plaintiff's cars. Hence, I dismiss the claim against the third defendant.

115 It is nugatory to grant an order for delivery up of any of the plaintiff's cars which are in the first and second defendants' possession or control, which was prayed for by the plaintiff,²¹⁷ because all of the cars have since been sold. However, a bailee has a duty to account to the bailor (see *The "Endurance I" ex "Tokai Maru"* [2000] 2 SLR(R) 120 at [36]; *Jet Holding Ltd v Cooper Cameron (Singapore) Pte Ltd* [2005] 4 SLR(R) 417 at [59]). Hence, as against the first and second defendants, the plaintiff is entitled to an account of proceeds from the sale of his 13 cars (*ie*, all of the plaintiff's cars, excluding the Mercedes-Benz 560SEC that was sold on 2 August 2018). It also flows from

²¹⁶ 16 July Transcript at p 3 lines 22–31.

²¹⁷ SOC at p 12.

the first and second defendant's breaches that the plaintiff is entitled to seek damages from both of them for their breach of bailees' duties and damages from the second defendant for breach of contract, subject to the rule against double recovery, in respect of his 13 cars. I therefore order an inquiry into damages in respect of the plaintiff's 13 cars and/or an account of proceeds for the sale of those 13 cars. To the extent that an account of proceeds and damages may be alternative remedies and/or inconsistent, the plaintiff is to make an election between the two remedies at or before the stage of directions to be given for an inquiry.

116 I have sympathy for the predicament which both the plaintiff and the first defendant found themselves in. They had conducted business on an informal understanding and afforded each other a certain degree of laxity out of a sense of goodwill. Goodwill, however, has its limits when unexpected issues arise and patience wears thin. In this case, it was the long delay in obtaining the requisite permits which tested those limits. The first and second defendants came under a financial burden they could no longer bear and they, in all likelihood, never really addressed their minds to that at the outset. The plaintiff, for his part, did not accomplish the aim of the whole arrangement. At the end of the day, both parties ended up on the short end of the stick. This case should serve as a cautionary tale for parties who transact on loose, informal understandings without fully fleshing out and directing their minds towards how the risks which are inherent in their transaction should be allocated when the chips are down. There is, after all, some degree of truth in the aphorism that a verbal agreement is not worth the paper it is written on.

117 I will hear the parties on costs separately. The plaintiff is to write in within two weeks for a date to be fixed for the further hearing on costs.

Chan Seng Onn
Senior Judge

Nevinjit Singh J and K Keerthana (Peter Ong Law Corporation) for
the plaintiff;
Mohamed Arshad Bin Mohamed Tahir and Patrick Fernandez
(Fernandez LLC) for the first and second defendants;
Ambalavanar Ravidass, Divya Lakshmi d/o K Durai and Rohan Dave
Rao (Regal Law LLC) for the third defendant.