IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 256

Suit No 760 of 2018

Between

MS First Capital Insurance Limited

… Plaintiff

And

Smart Automobile Pte Ltd

… Defendant

Between

Smart Automobile Pte Ltd

… Plaintiff in Counterclaim

And

MS First Capital Insurance Limited

… Defendant in Counterclaim

JUDGMENT

[Contract] — [Breach]
[Contract] — [Contractual terms]

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v
Smart Automobile Pte Ltd

[2020] SGHC 256

High Court — Suit No 760 of 2018
Ang Cheng Hock J
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20 November 2020 Judgment reserved.

Ang Cheng Hock J:

Introduction

1 This case involves a dispute arising from a settlement agreement entered into between an insurer and the insured. Specifically, the parties are at odds over the proper interpretation of certain recitals to the settlement agreement, and, consequently, the proper characterisation of a sum of S$500,000 which had been previously paid. Arguments over this dispute have encompassed a whole litany of legal contentions, from the various permutations of mistake and estoppel, to considerations of unjust enrichment, and even resulting trust. However, what remains central is the proper interpretation of the relevant settlement agreement, particularly in the context of the negotiations between the parties. As I will go on to explain, a proper interpretation of the words in question elides the need for a consideration of the wide-ranging panoply of legal arguments which have been raised in the parties' closing submissions.

Facts

The parties

2 The plaintiff is an insurance company regulated by the Monetary Authority of Singapore and in the business of general insurance.[1] Its Chief Executive Officer is one R Athappan. The plaintiff was the defendant's insurer under a commercial vehicle policy number D-0901184MFSH/0 issued on or around 20 April 2009 (the "Policy").[2] The Policy ran from 1 March 2009 to 29 February 2012.

3 The defendant was established, and is owned and controlled by, one Johnny Harjantho ("JH"), who is also its managing director.[3] JH has been operating a car rental business in Singapore called "SMART Car Rental" since 1991.[4] The defendant was incorporated in 2001 for the purpose of carrying out the business of taxi services and the retail sale of motor vehicles. In 2003, the defendant obtained its license to operate a taxi business. The defendant's taxis were called "Smart taxis". At the relevant time, the defendant had a fleet of approximately 650 Smart taxis.[5] The defendant's taxi business ceased in 2013 as its license for operating taxi services was not renewed, and expired sometime in or around September 2013.[6]

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1 Defendant's Opening Statement at [2].

2 Defendant's Closing Submissions ("DCS") at [7].

3 Affidavit of Evidence-in-chief ("AEIC") of Johnny Harjantho ("JH") at [1].

4 Transcript of 16 June 2020, Page 22, Lines 16 to 19.

5 Transcript of 16 June 2020, Page 5, Lines 5 to 24.

6 JH at [3].

Background to the dispute

4 As outlined above, the plaintiff was the defendant's insurer for its Smart taxis under the Policy. Under the Policy, the plaintiff provided cover for any third party accident claims against all taxis operated by the defendant within Singapore for the period of insurance, which was a duration of three years from 1 March 2009 to 29 February 2012. HL Suntek Insurance Brokers Pte Ltd ("HL Suntek") was the defendant's insurance broker in respect of the Policy.[7]

5 The premium that the defendant had to pay under the Policy was structured in the following way. First, the defendant was required to pay a "Minimum Deposit Premium" ("MDP"), which was calculated at the rate of S$1,800 per taxi *per annum*.[8]

6 Second, the defendant was also required to pay what is known as the "Burning Cost Premium" ("BCP").[9] This is calculated based on two components.[10] The first component is the sum of the claims paid by the plaintiff less the excess payment for each claim. The second component is the amount in the reasonable opinion of the plaintiff that is needed to settle outstanding claims, again less the excess payment. Both these component sums are multiplied by 100/75 in order the derive the total amount of BCP payable.[11]

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7 AEIC of Lim Eng Thiam ("LET") at [3].

8 See LET-1 at p 17.

9 See LET-1 at p 17.

10 See D-1.

11 See in particular LET-1 at p 17.

7 However, significantly, the Policy also set a cap on the maximum amount of premium that was payable by the defendant. That cap is described as the "Maximum Premium" ("MP") and was set at S$3,000 per taxi *per annum*.[12] So, as an example, if 650 taxis were insured, then the sum of the MDP and BCP chargeable by the plaintiff cannot exceed S$1.95m (650 multiplied by S$3,000) in a year.

8 The other element under the Policy which is somewhat relevant to some of the factual disputes in this case is the amount of excess payments (also known as deductibles) that must be made by the defendant for claims under the Policy. As in the case of any motor insurance policy, the insured is liable to make excess payments, and the insurer is liable only for the amount over and above the excess. In the Policy, the parties agreed to set the excess at S$5,000 per claim, which meant that the defendant has to bear any claim under the Policy up to the amount of S$5,000.[13] These excess payments are collected from the defendant in arrears.

9 The defendant's license to carry out a taxi business expired in September 2013. It was publicly known that the Land Transport Authority had declined to renew the defendant's taxi license by July 2013.[14]

10 In July 2013, the plaintiff's officers met with JH to discuss the issue of outstanding excess payments that were due from the defendant.[15] The plaintiff

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12 See LET-1 at p 17 under "Premium Structure".

13 LET-1 at p 16.

14 See 'LTA will not renew Smart's taxi service operator licence', *The Straits Times*, 11 July 2013. See also Transcript of 16 June 2020, Page 5, Lines 5 to 24.

15 See P-1, item 2.

also indicated to JH that it would be billing the defendant for the BCP due under the Policy.[16]

11 Then, on or about 16 August 2013, there were several communications from the plaintiff and its representatives to the defendant regarding the issue of the BCP and the outstanding excess payments.[17]

12 First, the plaintiff and its solicitors wrote separately to the defendant and the defendant's brokers on the amount of BCP allegedly due from the defendant under the Policy.[18] In the plaintiff's Chin Oi Leng's ("OL Chin") email of 16 August 2013 to Lim Eng Thiam ("ET Lim"), HL Suntek's Chief Executive Officer, she enclosed a "Burning Cost Statement and Claims Records as at 30 June 2013". In summary, after taking into account that the MP under the Policy was capped at S$6,135,603.60, the amount of BCP that the plaintiff was claiming from the defendant was the amount of S$2,626,900.76, inclusive of goods and services tax ("GST").[19] The plaintiff's solicitors' letters of 16 and 19 August 2013 to the defendant, when read together, also stated the same figure of BCP being claimed from the defendant.[20]

13 Second, the plaintiff and its solicitors also wrote separately to the defendant on the excess payments due from the defendant.[21] The amount in question was said to be S$606,955.72. In the plaintiff's letter of 16 August

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16 See, for instance, 1 AB 74.

17 1 AB Tab 16.

18 1 AB 80-82, 1 AB 86

19 See 1 AB 88.

20 1 AB 80, 1 AB 115.

21 1 AB 83, 85.

2013, it was also stated that there were, additionally, another 567 "pending claims", and that the "total estimated policy excess recoverable" from the defendant in respect of those claims was S$1,533,265.48.[22] The plaintiff asked the defendant to provide a bank guarantee for the amount of S$1.5m as security for the "anticipated [p]olicy excess recovery for these 567 pending claims". This was subsequently clarified in another letter from the plaintiff where the number of pending claims was revised to 575.[23]

14 The defendant made payment of S$100,000 to reduce the outstanding amount owed as excess payments.[24] Then, HL Suntek requested that the plaintiff provide a breakdown of the BCP amount claimed between the figures for "paid claims" and for "outstanding claims" (see [6] above). This breakdown was furnished by the plaintiff in Tan Hue Peng's ("HP Tan") email of 6 September 2013.[25] Following this, the plaintiff continued to chase the defendant for payment of both the outstanding excess amounts and the BCP. The plaintiff threatened to commence legal proceedings for recovery if payment of at least S$1.1m was not made by the defendant by 20 September 2013.[26]

15 On 23 September 2013, there was a meeting between the plaintiff's R Athappan, HL Suntek's ET Lim, and the defendant's JH. At this meeting, JH agreed to take over the handling of all claims against the defendant where the

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22 1 AB 85.

23 1 AB 149.

24 See 1 AB 155 at item 1.

25 1 AB 156.

26 1 AB 158, 159.

claim amount was less than S$5,000, which is the amount of excess for each claim.[27]

16 On 24 September 2013, HL Suntek's Francis Ng sent an email to the plaintiff's staff to inform them that two payments had been dispatched to the plaintiff.[28] In his email, the two payments were broken down as follows:

(a) First, the sum of S$500,000 was paid as a "Deposit by [the defendant]; and

(b) Second, the sum of S$150,000 was marked as "[p]ayment of Excess Recovery".

17 The S$500,000 payment referred to at [16(a)] above was made by way of three cheques, for S$400,000, S$50,000, and S$50,000, all of which were dated 23 September 2013. The cheque payments were accompanied by the defendant's payment vouchers, which stipulated the plaintiff as the payee and which were acknowledged by one of the plaintiff's staff.[29] The payment vouchers described the payment as "Being Deposit to [the plaintiff]".[30]

18 On 19 November 2013, the plaintiff's HP Tan emailed JH to point out that only S$500,000 had been paid (in September 2013) towards the amount of BCP owed by the defendant, and asked for a further S$500,000 payment.[31] This

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27 See Transcript of 16 June 2020, Page 91, Lines 4 to 19. See also Transcript of 16 June 2020, Page 96, Lines 2 to 9.

28 1 AB 175, 176.

29 4 AB 1848, 1849.

30 4 AB 1848 to 1851.

31 1 AB 192.

then led to further meetings between the parties in the later part of 2013 and in the first half of 2014 where there was discussion about the plaintiff's claims for payment of the BCP and outstanding excess payments.[32]

19 Where they are relevant, the details of some of these meetings and the correspondence exchanged will be referred to in the course of my analysis of the issues in dispute. However, it suffices for me to state at this juncture that, in May 2014, the parties had come to an "in principle" agreement that the defendant would pay a *further* S$500,000 as full settlement of the plaintiff's claim to BCP.[33] This amount was to be paid in ten equal instalments of S$50,000 each at monthly intervals.[34]

20 In the second half of 2014, the defendant made four instalment payments of S$50,000 each, thus paying a total of S$200,000 towards the amount of S$500,000 as payment for the BCP.[35]

21 At the end of March 2015, the plaintiff's HP Tan sent JH a draft settlement agreement.[36] The parties then exchanged some comments on the draft, but there was no change as to the figure of S$500,000 that the defendant had agreed in May 2014 to pay to settle the claim for the BCP, and for which the defendant had already paid S$200,000 (see [20] above).[37]

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32 See for example, 1 AB Tabs 45 and 46.

33 1 AB 222.

34 1 AB 223.

35 Transcript of 16 June 2020, Page 210, Lines 8 to 10.

36 1 AB Tab 92.

37 See for instance, 1 AB 355.

22 Then, on 9 July 2015, one Victor Tan, an employee of the plaintiff who had legal training, sent a revised draft of the settlement agreement to JH.[38] Recital C of that draft settlement agreement stated that the amount of BCP owed by the defendant to the plaintiff was "about $2,626,900.76 … and that after [the defendant's] requests, [the plaintiff] had agreed, as a gesture of goodwill only and on a without prejudice basis, to forgive [the defendant] the bulk of the actual Burning Cost Premium and only require the repayment of the sum of $500,000".[39] The operative part of the draft settlement agreement, in relation to the issue of the BCP, required the defendant to make immediate payment of S$300,000 towards the settlement of the BCP upon the execution of the draft settlement agreement.[40]

23 Following this draft being sent, there were some exchanges of emails between JH, Victor Tan, and HP Tan.[41] But, there was nothing stated in those emails where JH raised any issue about the wording of Recital C of the draft settlement agreement.

24 On 16 July 2015, the parties executed the settlement agreement (the "Settlement Agreement").[42] As the Settlement Agreement is the focal point of the defendant's case, it would be helpful to set out some of its key terms. First, in the recitals of the Settlement Agreement, it was provided, *inter alia*, that:

> (C) [The defendant] acknowledges that the actual Burning Cost Premium owed by [the defendant] to [the plaintiff] should be in

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38 1 AB 391.

39 1 AB 393.

40 1 AB 393 and 394.

41 1 AB 400 to 421.

42 1 AB 24.

> the sum of about $2,626,900.76 (inclusive of GST) and that after [the defendant's] requests, [the plaintiff] had agreed, as a gesture of goodwill only and on a without prejudice basis, to forgive [the defendant] the bulk of the actual Burning Cost Premium and only require the repayment of the sum of $500,000 (inclusive of GST).
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> (D) [The defendant] further acknowledges that as at the date of this Agreement and after taking into account (a) [the plaintiff's] preparedness to forgive the bulk of the actual Burning Cost Premium and (b) the sum of $200,000.00 paid by [the defendant] towards the without prejudice outstanding Burning Cost Premium of $500,000.00 (inclusive of GST), which payment [the plaintiff] acknowledges, [the defendant] still has to pay [the plaintiff] the without prejudice remaining Burning Cost Premium in the sum of $300,000.00 ('the Sum').
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> (E) [The plaintiff] confirms that upon [the defendant's] payment of the Sum and full compliance with and performance of [the defendant's] obligations under this Agreement, the bulk of the actual Burning Cost Premium which [the plaintiff] is prepared to forgive will be deemed to be fully forgiven.

25 The other recitals that I have not set out here refer to, *inter alia*, (a) the plaintiff's agreement to take over conduct of 25 third party claims that had hitherto been handled by the defendant, and (b) the defendant's agreement to pay S$22,000 out of S$44,000 in outstanding excess payments claimed by the plaintiff.

26 The Settlement Agreement went on to provide that, upon its execution, the defendant would make payment to the plaintiff of S$322,000.[43] This was a reference to the figure of S$300,000 being payment towards the BCP settlement and S$22,000 being the admitted excess payments due to the plaintiff.[44]

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43 1 AB 26.

44 1 AB 25, see in particular Recitals D and F.

27 The rest of the Settlement Agreement dealt with (a) the procedure whereby the plaintiff and defendant agreed to try and reach an agreement on the disputed excess payments, and (b) the details of the parties' respective obligations in relation to the handling of the 25 third party claims taken over by the plaintiff. For instance, there was an agreed cap of S$64,000 in quantum for excess payments that the defendant would be liable for in relation to those 25 third party claims.[45]

28 The defendant duly presented the plaintiff with two cheques on the day of the execution of the Settlement Agreement. One was for the sum of S$300,000 and the other for S$22,000.[46]

29 The dealings between the parties were quite uneventful after the Settlement Agreement. But, over two years later, on 16 October 2017, the defendant sent a letter to the plaintiff claiming that its payment of the sum of S$500,000 in September 2013 was a "Goodwill deposit".[47] The defendant asked when that sum would be returned. This was followed by a letter dated 9 January 2018 from the defendant's solicitors demanding the return of the S$500,000 "deposit" within seven days.[48] It bears note that prior to the defendant's letter of 16 October 2017, there had been no written correspondence where the defendant had asked for the return of the alleged "Goodwill deposit".

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45 1 AB 27.

46 4 AB 1868.

47 2 AB 512, 513.

48 2 AB 514, 515.

30 The plaintiff's position is that the defendant was not entitled to claim the return of the sum of S$500,000. In July 2018, the plaintiff commenced these legal proceedings to seek declaratory relief to that effect.[49]

The Parties' Cases

31 While it is the plaintiff who commenced these proceedings, it is clear from the background set out above that the dispute between the parties has arisen because it is the defendant who has made a claim for the return of the payment of S$500,000 that it made to the plaintiff in September 2013. In these proceedings, the plaintiff's primary claim is for a declaration that it does not have to refund S$500,000 to the defendant. The defendant disputes this and is counterclaiming for the return of that sum of S$500,000.[50] Given the context, the parties' arguments flow more logically if I set out the defendant's case first.

The defendant's case

32 The starting point for the defendant's case is the Settlement Agreement. The defendant submits that the recitals and terms of that agreement are to the effect that the defendant's total liability for the BCP is in the sum of S$500,000. Since the defendant had, in the second half of 2014, paid the sum of S$200,000 towards the BCP, it was only required to pay the remaining balance of S$300,000 towards the BCP, and had in fact done so upon the execution of the Settlement Agreement. The Settlement Agreement binds the parties, and the total amount of BCP payable by the defendant under the Policy is thus S$500,000, and not S$1m as the plaintiff contends.

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49 Statement of Claim ("SOC") at pp 6 and 7.

50 Defence and Counterclaim (Amendment No. 2) ("D&CC") at [59] and p 18.

33 The defendant submits that the Settlement Agreement cannot be vitiated under the doctrine of unilateral mistake because the requirements for that doctrine to apply are not satisfied. In particular, the defendant argues that there was no mistake as to the purpose of the S$500,000 paid, that it had no actual or constructive knowledge of any mistake the plaintiff might have been operating under, and that in any event, the alleged mistake was not a mistake as to a term of the Settlement Agreement which entitled the plaintiff to rescission.[51]

34 The defendant argues that the S$500,000 that it paid to the plaintiff on 24 September 2013 was not towards the payment of the BCP, but as a security deposit for potential excess payments for third party claims during the period of the Policy.[52] Further and in any event, the defendant argues that the plaintiff is estopped by convention and by representation from denying that the S$500,000 payment in September 2013 was a security deposit for the abovementioned purpose.[53] In this regard, the defendant relies primarily on the wording of the recitals in the Settlement Agreement.

35 The defendant further argues that it is entitled to the return of the sum of S$500,000 from the plaintiff because that sum is held on resulting trust for the defendant.[54] Alternatively, the defendant is entitled to a claim in restitution for the return of that sum because the plaintiff has been unjustly enriched.[55]

The plaintiff's case

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51 See, *inter alia*, D&CC at [51] and [52].

52 D&CC at [50].

53 D&CC at [40].

54 D&CC at [39A].

55 D&CC at [65]. See also DCS from [117] to [122].

36 The plaintiff contends that the payment of S$500,000 made by the defendant in September 2013 was for the BCP that it was claiming from the defendant. The sum was never intended to be a deposit for excess payments for third party claims under the Policy, whether incurred or potential.[56] As such, no issue of resulting trust or unjust enrichment arises.

37 According to the plaintiff, the parties had reached a compromise of the plaintiff's claim to be entitled to payment of the BCP in the amount of approximately S$2.6m *before* the parties exchanged the drafts of the Settlement Agreement. That compromise was that the defendant would pay a further S$300,000, in addition to the S$200,000 already paid in the second half of 2014. This was also in addition to the S$500,000 paid by the defendant in September 2013, which it is argued the defendant had acknowledged was payment towards the reduction of the BCP.[57] Thus, the total amount of BCP paid and payable by the defendant to settle the claim by the plaintiff was the sum of S$1m.

38 The plaintiff submits that, on the proper interpretation of the recitals and terms of the Settlement Agreement, there was no change to the terms of the compromise reached between the parties.[58] The total amount of BCP that the defendant had to pay was still S$1m, of which S$700,000 had already been paid and what was due was another S$300,000. The purpose of the Settlement Agreement was to provide a full release and discharge for the defendant from any other claims for BCP upon the payment of the S$300,000. As such, no issue

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56 SOC at [8].

57 Reply and Defence to Counterclaim (Amendment No. 1) ("RDCC") at [6].

58 SOC at [6], RDCC at [6].

of estoppel by convention or representation arises as to the sum of S$500,000 paid by the defendant in September 2013.

39 Alternatively, if the proper interpretation of the Settlement Agreement is that the total amount of BCP that the defendant is liable for is only S$500,000, the plaintiff claims that the agreement is vitiated by a unilateral mistake on its part.[59] As such, the plaintiff seeks rescission of the Settlement Agreement and recovery from the defendant of its entire BCP claim amount of approximately S$2.6m.[60] If the Court is not minded to order rescission, the plaintiff asks for equitable rectification of the Settlement Agreement to properly reflect the parties' settlement.[61]

The Issues

40 From the parties' respective contentions, I find that the critical issue which must be decided is the nature of the payment of S$500,000 made by the defendant to the plaintiff in September 2013. Was it a security deposit for potential excess payments for third party claims under the Policy, as alleged by the defendant, or was it, as alleged by the plaintiff, payment by the defendant toward the amount of BCP claimed by the plaintiff?

41 A determination as to the nature of the S$500,000 payment will also set the proper context for the interpretation of the Settlement Agreement, which is the next key issue which must be resolved. The dispute over the issue of interpretation is as follows. The defendant contends that the Settlement

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59 SOC at [13].

60 SOC at pp 6 and 7.

61 Plaintiff's Closing Submissions ("PCS") at [143].

Agreement had the effect of fixing the liability of the defendant for the BCP at the total sum of S$500,000. By contrast, the plaintiff argues that (a) the Settlement Agreement left untouched the parties' earlier compromise that the BCP would be settled at the total sum of S$1m, and that (b) the Settlement Agreement was entered into to provide the defendant with a release and discharge upon the payment of the outstanding amount of S$300,000.

42 The resolution of the remaining issues as to mistake, resulting trust, unjust enrichment, and estoppel will flow from a determination of the first two issues set out above.

The Payment of S$500,000 Made In September 2013

43 The defendant's case that the payment of S$500,000 to the plaintiff on 24 September 2013 was for the purpose of providing the plaintiff with a security deposit for potential excess payments rests primarily on two main contentions. The first is that the payment had been made pursuant to the plaintiff's oral request, through HP Tan, to which JH had agreed. The second is that the two payment vouchers issued by the defendant in relation to the cheque payments stated that they were "Deposit[s] to [the plaintiff]". The defendant points out that the two payment vouchers were acknowledged by an employee from the plaintiff when the cheques were handed over.

44 In relation to the submission that HP Tan and JH had an oral discussion about the alleged request for a security deposit, that submission turns largely on my assessment of the credibility of these two gentlemen, both of whom took centre-stage as witnesses at the trial. In this regard, I found JH's evidence, taken as a whole, to be seriously lacking in credibility. Further, as will be explained below, his position on the issue of the deposit fluctuated over time and was

inconsistent with not only the events leading to the payment of the S$500,000, but also the communications between the parties that followed that payment.

45 There is no dispute between the parties that, in August 2013, the plaintiff was pressing the defendant to make payment of the outstanding excess payments of approximately S$600,000. This referred to excess payments for third party claims made against the defendant, which the plaintiff had already paid out. The plaintiff's solicitors had issued a letter to the defendant dated 16 August 2013 demanding payment of this outstanding amount.[62] On that same date, the plaintiff also wrote to demand payment of the outstanding excess payment.[63]

46 In that letter from the plaintiff dated 16 August 2013, the idea of a bankers' guarantee for S$1.5m to be provided by the defendant was raised by the plaintiff. It was intended to be "security for the *anticipated Policy excess recovery for … pending claims*" (emphasis added). At that time, there were approximately 575 pending third party claims against the defendant. The reason given for the request was that there was already approximately S$600,000 in outstanding excess payments owed by the defendant for settled claims (which the plaintiff had already paid out), and the plaintiff wanted an assurance that the defendant would eventually make payment when the excess amounts in relation to the "pending claims" became due from the defendant. After all, by then, the defendant's taxi license had not been renewed and its business in that regard was ceasing. Of course, there was no legal obligation for the defendant to agree

62 1 AB 83.

63 1 AB 85.

to such a request given that, under the Policy, the excess payments were only due in arrears from the defendant to the plaintiff.

47 In JH's *oral* evidence, he claimed that he then raised the idea to HP Tan that the plaintiff should take cash as a security deposit instead of the banker's guarantee.[64] In other words, JH claims that he offered to provide a cash deposit of S$500,000 in lieu of providing a banker's guarantee. However, the defendant's *own* pleaded case was the reverse – the cash deposit had been requested by the *plaintiff*.[65] It was also *not* pleaded that the deposit was intended to be a substitute for the banker's guarantee. I further note that, after having alleged that he had raised the idea to HP Tan for the defendant to take cash as a security deposit instead of the banker's guarantee, JH's position in his oral evidence shifted after being confronted with the inconsistent position in the defendant's pleadings.[66] JH then reverted back to the position in the defendant's pleaded case that the proposal for the cash deposit had originated from HP Tan.[67] On further cross-examination, JH eventually claimed that he "honestly" could not remember.[68] Yet, when questioned further on this point, JH changed his position yet again, and insisted that the giving of a cash deposit in lieu of a banker's guarantee was his idea.[69]

48 JH's evidence in court was also that the cash deposit was to cover *potential* excess payments, meaning pending claims that the plaintiff was

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64 Transcript of 16 June 2020, Page 45, Lines 18 to 24.

65 Set Down Bundle ("SDB") 48 at [36].

66 SDB 31.

67 Transcript of 16 June 2020, Page 49, Lines 17 to 20.

68 Transcript of 16 June 2020, Page 50, Lines 11 to 17.

69 Transcript of 16 June 2020, Page 50, Line 22, to Page 51, Line 12.

handling, but had not been paid out.[70] That was in line with his evidence that the deposit was intended to be a replacement for the banker's guarantee. However, the defendant's solicitors' letter of 9 January 2018 to the plaintiff stated something different. It claimed that the alleged deposit was for "any *potential* excess payments in relation to 3rd party claims *that had yet to be submitted* to [the plaintiff]" (emphasis added].[71] To make things worse, the defendant's pleaded case was neither of these two positions. The defendant pleaded that the purpose of the deposit was to "offset against *the substantial outstanding and potential excess payments* under the Policy"[72] (emphasis added). No convincing explanation was provided for these material inconsistencies.

49 JH also claimed in his oral evidence that HL Suntek's ET Lim was fully aware of this arrangement of having a cash deposit as security for potential excess payments. However, when ET Lim was giving evidence for the plaintiff, this critical point was never put to him during his cross-examination by the defendant's counsel. Instead, ET Lim's evidence was unequivocally that he understood the S$500,000 payment to be towards the reduction of BCP owed.[73]

50 I find the undisputed events leading up to the payment of the amount of S$500,000 on 24 September 2013, and the correspondence between the parties, more consistent with the payment being intended to reduce the amount of BCP, than as a deposit of some sort. As already mentioned, on or around 16 August

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70 Transcript of 16 June 2020, Page 58, Lines 8 to 11.

71 2 AB 514.

72 SDB 31.

73 Transcript of 15 June 2020, Page 120, Lines 1 to 12.

2013, there were written communications from the plaintiff and the plaintiff's solicitors separately demanding payment of the BCP in the amount of approximately S$2.6m.[74] Following these demands, JH and ET Lim met with some of the plaintiff's officers, including HP Tan, on 30 August 2013 to discuss the matter. HP Tan sent an email to JH on 3 September 2013 to record the points of their discussion.[75]

51 In that email of 3 September, it was recorded that the defendant had made payment of S$100,000 to reduce the amount of the outstanding excess payments. It was also recorded that JH had agreed to review the over 560 pending third party claims, after which he would decide on the plaintiff's request for the banker's guarantee. It was also recorded that ET Lim had requested that the plaintiff bill only the "paid claims" portion of the total BCP claimed of approximately S$2.6m. The email recorded that the plaintiff was prepared to consider this proposal.

52 On 6 September 2013, by an email from HP Tan to JH, the defendant was furnished with the breakdown of the total BCP claimed of approximately S$2.6m.[76] The "paid claims" portion and the "outstanding claims" portion were S$886,441.76 and S$1,740,459.00 respectively. In that email, HP Tan indicated that the defendant would be issued two invoices for each of these amounts, with the plaintiff expecting payment for the "paid claims" portion by 20 September 2013 and the "outstanding claims" portion by 16 November 2013.[77]

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74 1 AB 80, 88, 115.

75 1 AB 155.

76 1 AB 156.

77 1 AB 157.

53 Following this, the plaintiff continued to chase for a commitment on the part of the defendant to make payment. On 11 September 2013, HP Tan sent an email to JH copying, *inter alia*, ET Lim, where he referred to the "considerable amount of outstanding Policy excesses and Burning Cost Premium", and demanded payment of at least S$1.1m by 20 September 2013, failing which legal proceedings would be commenced against the defendant.[78]

54 There was then a further meeting between the plaintiff's officers, JH, and ET Lim on 23 September 2013. At that meeting, the parties agreed that the defendant would take over the handling of all third party property damage claims which fell below S$5,000. In other words, the defendant would be "self-insured" for these claims, and the plaintiff would cease to provide insurance coverage for those claims. This agreement was recorded in an email sent by HP Tan on 27 September 2013.[79] Subsequently, it appears from the correspondence that JH had raised the possibility of the defendant taking over *all* the third party property damage claims, *including* those which exceeded S$5,000. HP Tan gave unchallenged evidence that, since the defendant was taking over at least some of the third party property damage claims, the plaintiff decided to drop its request for a banker's guarantee.[80] In a similar vein, ET Lim explained that the suggested banker's guarantee, which was intended to cover potential excess payments arising from the over 560 pending claims, was no longer necessary because the parties had come to an agreement for the defendant to take over all

78 1 AB 159.

79 1 AB 177.

80 Transcript of 15 June 2020, Page 30, Lines 15 to 22.

the third party property damage claims.[81] ET Lim's evidence in this regard, like that of HP Tan, was not challenged under cross-examination.

55 When cross-examined, JH tried to deny that he had agreed to take over the handling of all the third party claims, and in particular the third party claims above S$5,000.[82] I find JH's attempt to do so quite remarkable, given that it is squarely contradicted by the correspondence in the period of November and December 2013. In particular, JH's email of 27 November 2013 to HP Tan where he was chasing the plaintiff to hand over the files for the pending claims speaks for itself:[83]

> Dear Mr Tan,
>
> > For this matter;
> >
> > 'Referring to your telephone conversation of 23 October, 2013, we note your suggestion to take over the handling of **ALL** Third Party Property Damage claims whose quantums [*sic*] are over and above your self-insured amount. Please confirm you would deal with such claims involving your own account and when we may expect you to take over the conduct and control of such claims.'
>
> Pls advise us what step shall we do? Can we meet tomorrow for a short while to finalize this matter? I notice that despite we have agreed before sometimes in Aug 2013 that all claims below 5k will be handled by us. Yet, FCI settled the claims without notified us. How you want to solve matter like this?
>
> [Emphasis in original]

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81 Transcript of 15 June 2020, Page 96, Lines 3 to 21. See also Transcript of 15 June 2020, Page 133, Lines 6 to 22.

82 See for example, Transcript of 16 June 2020, Page 92, Lines 15 to 20.

83 1 AB 200.

For avoidance of doubt, I should add that the extract in quotation marks in the email above is an extract from an email from HP Tan to JH dated 19 November 2013, and indicates that JH himself had suggested taking over all third party property damage claims above S$5,000. It is telling that JH's email of 27 November 2013 extracted above did not make any attempt to deny that he had suggested taking over such third party property damage claims, in addition to those claims below $$5,000. In any event, there was further correspondence which appears to have proceeded on the basis that the defendant would potentially be taking over *all* third party property damage claims, and in none of the defendant's replies was there any refutation of that underlying basis.[84]

56 The day after the meeting between the parties on 23 September 2013, the defendant paid the sum of S$500,000 by way of three cheques of S$400,000, S$50,000 and S$50,000 (see [17] above). The defendant also paid a further sum of S$150,000. It is not in dispute that the latter amount was to reduce the amount of outstanding excess payments.

57 Given the sequence of events, I accept the plaintiff's submission that the payment of S$500,000 by the defendant on 23 September 2013 was for the purpose of reducing the BCP claimed by the plaintiff. It was not for the purpose of providing a cash deposit as security for either outstanding excess payments or potential excess payments. I accept HP Tan's evidence that he never had any discussion with JH about the amount of S$500,000 being paid as a security deposit of some sort. JH's claim that there was such a discussion is not consistent with the correspondence between the parties at the material time. There was no reference in any of the correspondence to any security deposit

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84 See for instance, 1 AB 194 and 199.

being paid by the defendant for excess payments, whether outstanding or potential. In fact, I note that JH could not even provide any specific particulars as to the alleged discussion he had with HP Tan, for example when, where, and how it took place. The defendant's pleadings are deafeningly silent on any such particulars, and even in his oral evidence, JH could only vaguely claim that the discussion occurred "during one of the lunches outside the office" "at the Shenton Way area".[85] This lack of any specificity, coupled with the absence of support for JH's claim from the contemporaneous correspondence, renders it impossible for me to accept the defendant's assertion that the S$500,000 had been paid as a security deposit of sorts.

58 I also accept ET Lim's evidence that the issue of the banker's guarantee was dropped after the defendant agreed to take over all the third party claims for property damage. This is commercially logical since the banker's guarantee was sought by the plaintiff to secure potential excess payments. If the defendant was going to be "self-insured", there would no longer be any significant potential excess payments to be claimed from the defendant going forward. That being the case, it makes no sense for the defendant to have paid a significant sum of S$500,000 as a deposit for *potential* excess payments. As such, I cannot accept JH's evidence as to the alleged purpose of the S$500,000 payment. I add for completeness that, even if one were to accept that JH had agreed to take over only the third party claims *below* S$5,000, that would still provide a commercially sensible reason for the plaintiff to dispense with its request for a banker's guarantee.

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85 Transcript of 16 June 2020, Page 39, Lines 5 to 20.

59 The correspondence and events that followed the payment quite unequivocally confirm my view that the S$500,000 was not a security deposit of sorts.

60 On 19 November 2013, HP Tan sent an email to JH chasing for further payments towards the BCP claimed by the plaintiff.[86] In that email, HP Tan stated that the amount owed by the defendant for the "paid claims" portion of the BCP was S$1,042,008.50, and that the plaintiff had only paid S$500,000 towards this BCP amount. There is no doubt that this is a reference to the S$500,000 dated 23 September 2013 because he specifically referred to the three cheques and the respective amounts given on that day. Subsequent to this email, several chasers were sent by HP Tan seeking payment of the outstanding amount.[87]

61 In his emails in reply, JH never denied or expressed any surprise at HP Tan's statement that the S$500,000 had been applied to reduce the amount of the BCP claimed. He also never asserted that the sum was intended to be a security deposit for excess payments. Instead, in one email in response dated 27 November 2013, JH questioned why he "still" had to make further payments towards the BCP.[88] In my view, the use of the word "still" is telling because it shows that JH was well aware that he had already paid a substantial sum of S$500,000 towards the payment of BCP. During cross-examination, when he was questioned on this, JH's rather tenuous explanation for this choice of words was that it was "an early morning 9.04[am]" when he sent that email, and that

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86 1 AB 192.

87 See for example, 1 AB 194 to 196.

88 1 AB 195.

he might have been thinking of something else.[89] I have considerable difficulty accepting JH's somewhat convenient excuse in his answer.

62 Following yet another meeting between JH and the plaintiff's officers in February 2014 to discuss issues relating to both the outstanding excess payments and the BCP, the plaintiff's OL Chin sent an email on 25 February 2014 to the defendant's insurance broker, ET Lim, again stating that the payment of S$500,000 had been paid towards reduction of the BCP.[90] I should add that what is obvious from the evidence as to the meetings held and correspondence exchanged is how anxious the plaintiff was to settle the defendant's liability for the outstanding excess as well. If it was the case that the parties had agreed that the sum of S$500,000 was a deposit for potential excess payments, as claimed by the defendant, it is highly surprising that the plaintiff would have been so anxious to recover the then-outstanding excess payment amount of approximately S$130,000 from the defendant.[91] After all, the defendant's business had ceased by September 2013 because its taxi license had not been renewed, and at least a significant portion of the third party damage claims had been taken over by the defendant (see [58] above). That would obviously mean that the potential excess payments of any pending claims handled by the plaintiff would not be a significant amount. Quite clearly therefore, the figure of S$500,000, if *genuinely* held as a deposit, would be more than sufficient to satisfy the plaintiff's claim to the outstanding excess payments. Put simply, there would have been little to stop the plaintiff from claiming the outstanding excess payment of approximately S$130,000 from the

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89 Transcript of 16 June 2020, Page 83, Lines 3 to 4.

90 1 AB 213 and 214.

91 See, for example, 1 AB 213 to 214, and 1 AB 217 and 221.

alleged deposit of $500,000, *if* it had been paid for the very purpose of meeting such excess payments. In my judgment, the conduct of both the plaintiff and defendant after the payment of the S$500,000 is completely at odds with that sum being held as a deposit for excess payments.

63 The defendant relies heavily on the two payment vouchers for the three cheques adding up to S$500,000 given to the plaintiff on 24 September 2013.[92] The defendant points to the fact that it had obtained an acknowledgment by one of the plaintiff's employees on the payment vouchers, and that the vouchers described the payments as a "Deposit" to the plaintiff. In my judgment, I do not think that this notation on the two payment vouchers takes the defendant very far.

64 In the first place, I do not agree that the fact that an unidentified employee of the plaintiff had acknowledged the payment vouchers by initialling on them is an indication that the plaintiff accepted that the sum of S$500,000 was to be held as a deposit. That is simply reading too much into an acknowledgment, which is an administrative task when one receives cheques. The defendant's approach places undue weight on the acknowledgment and elevates form over substance. In my judgment, it is still incumbent on the defendant to show that parties had discussed and *agreed* that the payment of S$500,000 was to be held by the plaintiff as a deposit for a specific purpose. If there is no agreement as to the purpose of that payment, the plaintiff is perfectly entitled to apply that sum towards its claims against the defendant. As I have already found, the defendant has simply been unable to establish that there was any such discussion or agreement.

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92 4 AB 1848 and 1849.

65 Further, I find that the defendant had the practice of describing many of its payments to the plaintiff as "deposits" in its accounting documents. For example, there were four payments made in the second half of 2014 to the plaintiff of S$50,000 each, where there is no dispute that the payments were made to reduce the BCP payable.[93] However, for reasons which JH could not adequately explain, the payment vouchers for those payments also described them as "deposits".[94] JH's attempt in re-examination to explain the description of these payments as "deposits" on the payment vouchers but as "payments" in his affidavit of evidence-in-chief ("AEIC") centred on claiming that (a) he considered the transaction "completed" because of the Settlement Agreement, and (b) he "didn't pay too much attention".[95] I am unable to accept either of these explanations – the former does not explain why the payment vouchers, which were prepared in 2014, described the payments as "deposits" when it is not the defendant's case that they were deposits at all, and the latter is simply all too convenient. Thus, I find that the fact that the two payment vouchers for the S$500,000 payment in September 2013 described the cheques as "Deposit[s]" is not necessarily indicative of the agreed purpose for the payments.

66 In any event, what is not disputed by the parties is that, in May 2014, the parties had reached an "in principle" settlement on the issue of the BCP, where the defendant agreed to pay a further S$500,000 in ten equal instalments toward BCP. This is recorded in an email from HP Tan to JH on 28 May 2014.[96]

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93 See for example, JH from [71] to [92].

94 4 AB 1857 to 1860.

95 Transcript of 16 June 2020, Page 240, Lines 4 to 14.

96 1 AB 221.

According to JH in his oral evidence, he was prepared to allow his alleged deposit of S$500,000 paid in September 2013 to be applied by the plaintiff to pay the BCP.[97] As JH himself acknowledged, the defendant had agreed in May 2014 to pay a total amount of S$1m for the BCP as a settlement of the plaintiff's claim of approximately S$2.6m.[98] Where the plaintiff's case differs is that the sum of S$500,000 paid in September 2013 had always been for the purposes of reducing the BCP owed, and as such, there was no question of the parties having agreed only in May 2014 to apply that sum to the payment of the BCP. In my judgment, for the reasons I have set out in this section, I find that the plaintiff's version of events is by far more consonant with the correspondence between the parties, and with commercial sense and logic. As such, I have little hesitation in rejecting JH's evidence. Instead, I find that the payment made in September 2013 was quite clearly a payment by the defendant towards the reduction of the BCP.

The Interpretation of the Settlement Agreement

67 The defendant's case is that, by July 2014, the issue regarding the BCP that it had to pay the plaintiff was resolved. On 10 July 2014, the plaintiff had prepared a draft deed of undertaking and sent it over to JH because the plaintiff wanted JH to take on the personal obligation of making the payments on behalf of the defendant.[99] In that draft deed, apart from the outstanding excess payments due from the defendant, it is also recorded that the defendant still owed approximately S$2.1m in BCP, and would be making payment of another

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97 Transcript of 16 June 2020, Page 140, Line 3 to Page 141, Line 12.

98 See for example, Transcript of 16 June 2020, Page 145, Lines 9 to 15, and Page 147, Lines 20 to 25.

99 1 AB 229 to 234.

S$500,000 in BCP to the plaintiff in ten equal monthly instalments. This translated to a total liability of S$1m for BCP, because the S$2.1m figure was one that had been reduced from S$2.6m by reason of the S$500,000 already paid in September 2013 (see [50] to [52] above).

68 Pursuant to the compromise reached on the issue of the BCP, and as outlined above at [20], the defendant made payment of S$200,000 for the BCP in four S$50,000 instalments over the course of the next few months in the second half of 2014. However, disputes between the parties continued because of disagreement over which third party claims would be handled by the plaintiff and which would be handled by the defendant. This was because the defendant appeared to have changed its mind about taking over the handling of all third party claims (see [54] and [55] above).[100] The defendant also did not make any further payment towards the reduction of the outstanding excess payments.[101] The draft deed of undertaking was also not signed.[102]

69 Eventually, JH and HL Suntek's ET Lim met with the plaintiff's officers, including R Athappan and HP Tan, in mid-March 2015 in a final attempt to resolve all outstanding issues. The issues in relation to the third party claims and who would handle them were discussed, but it is not in dispute that there was no change to the compromise regarding the BCP, that is, the defendant

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100 See also 1 AB 324 and 331, and Transcript of 16 June 2020, Page 154, Line 21 to Page 160, Line 11.

101 DCS at [166(b)], PCS at [88].

102 1 AB 230 to 234.

would pay a total amount of S$1m as the BCP, of which it had already paid S$500,000 in September 2013 and S$200,000 in the latter part of 2014.[103]

70 On 1 April 2015, JH sent an email to HP Tan on the issue of the settlement regarding the BCP.[104] This email is important because JH stated, *inter alia*:

> 1. Total Burning cost payable are [*sic*] S$1,000,000.00 of which [the defendant] has paid S$700,000.00. and the remaining of S$300,000.00 will be paid immediately *upon* [*the plaintiff*] *has* [*sic*] *provided* [*the defendant*] *a full and final settlement agreement.*
>
> [Emphasis added]

He thus unequivocally acknowledged the settlement amount for the BCP being the figure of S$1m. The other issues raised in the email by JH dealt with the outstanding excess payments that the defendant would pay the plaintiff, and which third party claims the defendant now wanted the plaintiff to handle.

71 To this end, the parties exchanged drafts of a settlement agreement.[105] In these drafts, while there were issues still in dispute, notably regarding the quantum of outstanding excess payments owed by the defendant, there was no change to the settlement terms regarding the BCP, that is, the defendant only had to pay a further sum of S$300,000 as the BCP given that it had already paid S$700,000 towards the compromise sum of S$1m.[106]

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103 See for example, 1 AB 355. See also Transcript of 12 June 2020, Page 60, Line 2 to Page 61, Line 11.

104 1 AB 355.

105 See for example, 1 AB 363 to 380.

106 See for example, 1 AB 374 and 379.

72 The defendant's case relies heavily on the fact that, on 9 July 2015, the plaintiff's Victor Tan sent over a new draft of the settlement agreement.[107] This draft contained the recitals set out above (at [24]). The defendant argues that the effect of this draft was to propose *revised* terms for the settlement of the plaintiff's claim to the BCP. According to the defendant, by the wording of the recitals of this draft, the plaintiff was offering to settle its BCP claim by accepting a *lesser* amount of S$500,000. In other words, the defendant only had to pay another S$300,000, in addition to the S$200,000 paid in 2014. As for the S$500,000 paid in September 2013, while it was not expressly stated, the defendant took it as *implicit* that the sum would be restored to its status as a deposit for potential excess payments, and would be refunded to the defendant after the expiry of the limitation period for claims against the defendant.

73 According to JH, he tried to arrange a meeting with the plaintiff to seek clarification on these revised terms. But, the plaintiff declined to meet him. He sent an email to Victor Tan to tell him that the "settlement agreement facts are not correct",[108] but this was rebuffed by Victor Tan, who replied to say that "the terms of the proposed Settlement Agreement reflect fairly and accurately the compromise which [the plaintiff] has clearly informed you [the plaintiff] is prepared to accept".[109]

74 In his oral evidence, JH claimed that he telephoned both Victor Tan and HP Tan and told them that the terms of settlement regarding the BCP were being changed, but they both told him to just sign the new draft of the settlement

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107 1 AB 391 to 399.

108 1 AB 400.

109 1 AB 400.

agreement.[110] Given the plaintiff's firm stance, JH decided to sign the document as drafted. The Settlement Agreement was executed on 16 July 2015, and the defendant made payment of the BCP of S$300,000 as required by its terms.[111]

75 The defendant submits that the plaintiff is bound by the terms of the Settlement Agreement, which it argues makes clear that the "the bulk of the actual [BCP]" has been forgiven, and the defendant only has to make a payment of S$500,000 in full and final settlement of the plaintiff's claim to BCP.[112]

76 The parties are largely agreed as to the applicable principles of contractual interpretation. In *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*") at [131], the Court of Appeal accepted a number of "canons and techniques of contractual interpretation". Two such canons are particularly pertinent to the present case:

> […]
>
> *The contextual dimension*
>
> Fourthly, the exercise in construction is informed by the *surrounding circumstances or external context.* Modern judges are prepared to look beyond the four corners of a document, or the bare words of an utterance. It is permissible to have regard to the *legal, regulatory, and factual matrix* which constitutes the background in which the document was drafted or the utterance was made.
>
> *Business purpose*
>
> Fifthly, within this framework due consideration is given to the *commercial purpose* of the transaction or provision. The courts

110 Transcript of 16 June 2020, Page 167, Line 6 to Page 168, Line 18. See also Transcript of 16 June 2020, Page 190, Lines 6 to 11.

111 1 AB 24.

112 1 AB 25 at Recital [C].

> have regard to the overall purpose of the parties with respect to a particular transaction, or more narrowly the reason why a particular obligation was undertaken.
>
> …
>
> [Emphasis in original]

These considerations, in particular, will contour the Court's approach to interpreting the Settlement Agreement.

77 On the facts, it is clear that the well-documented correspondence detailing the parties' discussions satisfies the three well-known *Zurich Insurance* requirements for admissibility as it is (a) relevant in outlining the parties' intentions as to the S$500,000 payment, (b) available to both parties given that it was exchanged between them, and (c) relates to the clear and obvious context of the moneys due between the parties and the terms of the Settlement Agreement ultimately reached. Further, I do not find that the entire agreement clause included at cl 9(iv) of the Settlement Agreement is any impediment to my consideration of the context underpinning the Settlement Agreement. The Court of Appeal in *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 held at [41] that entire agreement clauses will usually not prevent a court from adopting a contextual approach in contractual interpretation. Rather, as emphasised by the Court in *Sheng Siong Supermarket Pte Ltd v Carilla Pte Ltd* [2011] 4 SLR 1094 at [36], the effect of an entire agreement clause is to render inadmissible extrinsic evidence which reveals terms *inconsistent* with those in the written contract. On the facts, I do not read cl 9(iv) of the Settlement Agreement as precluding recourse to the relevant context for the purpose of interpreting the text of the Settlement Agreement.

78 Beyond the abovementioned considerations, the Court of Appeal also made clear in *MCH International Pte Ltd and others v YG Group Pte Ltd and others and other appeals* [2019] 2 SLR 837 at [37] and [38] that the relevant context to the text of an agreement would include the applicable commercial purpose of the document. The Court of Appeal recognised that due consideration must be given to the commercial purpose underpinning why a particular obligation was undertaken, and cited with approval the decision of the House of Lords in *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd* [1997] AC 749 that:

> In determining the meaning of the language of a commercial contract … the law therefore generally favours a commercially sensible construction. The reason for this approach is that a commercial construction is more likely to give effect to the intention of the parties. Words are therefore interpreted in the way which a reasonable commercial person would construe them. And ***the standard of the reasonable commercial person is hostile to technical interpretations*** and undue emphasis on niceties of language.
>
> [Emphasis original]

The Court of Appeal went on to observe at [41] that avoiding an outcome that is not commercially sensible is another factor among others which the court may "give succour to in its task of contractual interpretation".

79 While I accept the significant role of context in determining the appropriate interpretation of the Settlement Agreement, I am also cognizant of the Court of Appeal's observation in *Y.E.S. F&B Group Pte Ltd v Soup Restaurant Singapore Pte Ltd (formerly known as Soup Restaurant (Causeway Point) Pte Ltd)* [2015] 5 SLR 1187 at [32], that:

> *However, an important caveat* is necessary at this particular juncture: there must be a *balance* between the text and the context. In other words, the context *cannot* be utilised as an excuse by the court concerned to *rewrite* the terms of the contract according to *its* (*subjective*) view of what it thinks the

> result ought to be in the case at hand. To this end, the court must always base its decision on *objective* evidence. More specifically, whilst there is a need to avoid an absurd result, this aim cannot be pursued at all costs; it must necessarily give way if the objective evidence clearly bears out a ***causative connection*** between the absurd result or consequences on the one hand and the intention of the parties at the time they entered into the contract on the other … Avoiding an absurd result is thus ***one factor*** (albeit a not unimportant one) which is considered in the entire process of interpretation by the court. Put simply, the court ***must*** ascertain, based on ***all the relevant objective evidence, the intention of the parties at the time they entered into the contract.***
>
> [Emphasis original]

Due attention will therefore also have to be paid to the plain text of the Settlement Agreement, which in any event should be the starting point for contractual interpretation.

80 Bearing the legal principles above in mind, the Court is being asked in this case to interpret what Recitals C and D of the Settlement Agreement mean. Specifically, the Court has to consider whether those recitals mean, as the defendant contends, that the parties had agreed to settle the plaintiff's entire claim to the BCP by the defendant paying a settlement sum of S$500,000, and that the previous payment of S$500,000 made in September 2013 must be refunded.

81 In my judgment, the recitals in the Settlement Agreement were simply to record what the parties had *already agreed* in order to settle the plaintiff's claim for the BCP. In that regard, while they are capable of more than one reading, I find that Recitals C and D do in fact capture the essence of what the parties had agreed in relation to the issue of the BCP.

82 Recital C states that that the "actual" BCP owed by the defendant to the plaintiff is about S$2.6m. This statement accurately records the plaintiff's

position since August 2013 that approximately S$2.6m *in toto* is owed by the defendant under the Policy as the BCP. The defendant now appears to accept that this is factually the case.[113] The recital then goes on to state that, as a gesture of goodwill and on a without prejudice basis, the plaintiff has agreed to forgive "the bulk" of the BCP and only require the repayment of the sum of S$500,000. The defendant argues that this means that the plaintiff has agreed to forgive approximately S$2.1m of BCP, but the plaintiff argues that it means that the plaintiff has agreed to forgive only around S$1.6m because S$500,000 had already been paid in September 2013 to reduce the BCP owed to S$2.1m.

83 In my view, a contextual reading of Recital C shows that the plaintiff's contention is the right one. As has already been explained at length (see, *inter alia*, [66] above), I find that the defendant had paid S$500,000 in September 2013 to reduce the amount of BCP owed from S$2.6m to S$2.1m. As such, the defendant would know very well that the "bulk" of the BCP being forgiven, bearing in mind its earlier payment in September 2013 of S$500,000, meant the amount of S$1.6m. This must have been manifestly clear to the defendant given that there was never any suggestion at any point in time up to the execution of the Settlement Agreement that the plaintiff would at some future point in time refund the sum of S$500,000 to the defendant.

84 In fact, as one would recall, since May 2014 when the figure of a total sum of S$1m was agreed upon as the settlement amount for the BCP claim, there had never been any discussion between the parties as to a change in that figure of S$1m.

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113 DCS at [55] and [67].

85 As such, the figure of S$500,000 stated in Recital C as the sum of the BCP for which the defendant had to pay must clearly have been intended by the parties as only a reference to the sum of the S$200,000 paid in the second half of 2014 *after* the "in principle" settlement was reached, *and* the S$300,000 that the defendant had yet to pay. In effect, the recital recorded the "in principle" agreement reached by the parties in May 2014 that the defendant only had to pay a *further* S$500,000 to settle the BCP claim.

86 Hence, Recital D goes on to describe S$500,000 as the "without prejudice outstanding [BCP]" and explains that it comprises the S$200,000 already paid and the S$300,000 to be paid upon the signing of the Settlement Agreement. The earlier S$500,000 paid in September 2013 is not part of the "without prejudice outstanding [BCP]" simply because it was not "outstanding" as at the time the "in principle" agreement was reached. It had already been paid to reduce the claimed BCP to S$2.1m almost two years prior to the signing of the Settlement Agreement.

87 As such, I find that the defendant's suggested interpretation of the Settlement Agreement cannot be supported by a contextual reading of that document.

88 Quite apart from that, I find that JH himself *knew* that the Settlement Agreement did not change the "in principle" agreement between the parties since May 2014 regarding the issue of the BCP, and that the defendant had no claim for a refund of the S$500,000 paid in September 2013 arising from the terms of the Settlement Agreement. I noted that JH's AEIC does not state his alleged belief that the effect of the Settlement Agreement was in any way different from what the parties had agreed on the issue of the settlement of the BCP claim since May 2014. The contention by the defendant about the

"change" brought about by Victor Tan's draft of 9 July 2015 was raised only at trial and in JH's evidence when he was cross-examined.[114]

89 JH's oral evidence that he tried to contact the plaintiff for a meeting to discuss why the terms of the settlement of the BCP were being revised after he received Victor Tan's draft settlement agreement on 9 July 2015 is a clear afterthought.[115] Counsel for the defendant described JH as being "perturbed" and "anxious" by the revision in the terms.[116] As already mentioned, this evidence is completely absent from JH's AEIC. It was also never pleaded that the draft settlement agreement of 9 July 2015 was a departure from the previously agreed terms regarding the compromise of the BCP claim.

90 I find that JH also opportunistically embellished his evidence by claiming that he had telephoned both HP Tan and Victor Tan and told them about the new revised terms relating to the BCP.[117] Significantly, this was never put to HP Tan when he was being cross-examined. This is also unsupported by any of the contemporaneous emails that passed between JH and the plaintiff's officers. JH did write to Victor Tan to complain about the "settlement agreement facts" being different in the draft, but his emails that followed showed that he was complaining about other terms relating to the outstanding

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114 See for example, Transcript of 16 June 2020, Page 192, Lines 8 to 18. See also Transcript of 12 June 2020, Page 63, Lines 1 to 15. See in addition Transcript of 15 June 2020, Page 120, Lines 1 to 9.

115 Transcript of 16 June 2020, Page 178, Line 23 to Page 179, Line 24.

116 Transcript of 12 June 2020, Page 156, Lines 16 to 21.

117 Transcript of 16 June 2020, Page 178, Lines 9 to 14, and Page 179, Lines 12 to 24.

excess payments, and not any issue relating to the compromise of the BCP claim.[118]

91 JH indicated in his emails that he wanted to use his earlier draft of the settlement agreement, and not Victor Tan's.[119] When the plaintiff did not respond positively to this, JH wrote to HL Suntek's ET Lim to complain that he was being "bullied" by the plaintiff.[120] Incredibly, he insisted under cross-examination that he was quite willing to pay the already-agreed sum of S$1m to settle the claim for the BCP, but wanted to know why the plaintiff was now asking for *less* from the defendant to settle the BCP claim.[121] But, if it was in fact the case that JH understood the draft settlement agreement sent by the plaintiff as a counter-proposal that the total amount of BCP he would pay be only S$500,000 and not S$1m, and that in effect he would later get a refund of the S$500,000 he had paid in September 2013, I find it patently absurd that he would have thought he was being "bullied". In his cross-examination, JH could not give any credible explanation as to why he would be unhappy if he truly thought that the plaintiff was offering to settle the BCP claim for *half* of what had been originally agreed and would be refunding him S$500,000 later. The only explanation JH attempted to make was an unconvincing reference to the GST and other tax liabilities which might accrue. I have considerable difficulty with this explanation. Rejecting a saving of 50% on the BCP payable for 7% of GST, even at its very highest, appears commercially indefensible to my mind. When this absurdity was pointed out to JH, all he did was insinuate that "they

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118 1 AB 407.

119 1 AB 405, 407.

120 1 AB 421.

121 Transcript of 16 June 2020, Page 265, Lines 18 to 23.

[referring to the plaintiff] have some motive" and that he did not believe that the plaintiff would in fact refund him the S$500,000 deposit.[122] No details were given of any alleged motive, nor do I see any basis for any such allegations. Accordingly, I reject JH's evidence in this regard.

92 I also find the defendant's case to be quite illogical as a matter of commercial reality. Given that it is undisputed that there were no discussions whatsoever about any change to the agreed amount of the BCP to be paid, which had been for a total of S$1m since May 2014, it is inherently unlikely that the plaintiff would suddenly decide on 9 July 2015 to unilaterally propose settling the BCP claim at half the previously agreed figure. JH confirmed that he never asked for any reduction of the BCP settlement sum. He was also unable to articulate any coherent commercial rationale as to why the plaintiff would reduce the BCP settlement amount of its own accord.

93 Instead, the truth is that both parties believed, quite correctly, that the effect of the Settlement Agreement was simply that the defendant had to pay a further S$300,000 to make a total amount of S$1m of BCP paid to the plaintiff, and the defendant would thereafter obtain a full and final release from any other claims in relation to the BCP. That was exactly what the defendant wanted in JH's email of 1 April 2015.[123] That was JH's only concern as an experienced businessman, in that he did not want to make any more payments for the BCP until he knew that there would be some finality to the plaintiff's claims.

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122 Transcript of 16 June 2020, Page 283, Line 21 to Page 284, Line 21.

123 1 AB 355.

94 The parties' conduct subsequent to the execution of the Settlement Agreement and the payment of the S$300,000 due from the defendant for the BCP is also quite telling. There was an exchange of emails between the plaintiff's officers and HL Suntek's Francis Ng in the days following the execution of the Settlement Agreement where a statement of account sent by the plaintiff stating that the S$1m which was outstanding was matched against corresponding cheques given by the defendant adding up to S$1m, including the three cheques making up the S$500,000 payment in September 2013.[124] No objection was raised by the defendant to this statement.

95 The defendant also raised no issue about seeking repayment of the amount of S$500,000 until more than *two years* later on 16 October 2017, when it first wrote to the plaintiff to ask about the "Goodwill deposit" of S$500,000 paid in September 2013.[125] When asked in cross-examination why he remained silent until October 2017, JH said that he was waiting for the limitation period of six years for third party claims to expire before claiming his refund because the deposit would be held as security for potential excess payments.[126] I reject this explanation as lacking in credibility. First of all, the limitation period of six years for third party claims for property damage would, in theory, not expire until 28 February 2018, which is six years from the time the Policy elapsed, and not in October 2017. Second, JH's reason that he was waiting for the limitation period to expire before seeking the return of the deposit is not found anywhere in his AEIC.

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124 1 AB 450, 452, and 471.

125 2 AB 512, 513.

126 Transcript of 16 June 2020, Page 219, Lines 10 to 18.

96 The more likely explanation is that the defendant has opportunistically made this claim hoping to capitalise on the ambiguity in the wording of the recitals in the Settlement Agreement and the use of the word "Deposit" in the two payment vouchers dated 23 September 2013. As I have already explained, neither basis actually supports the defendant's claim to the return of the sum of S$500,000.

97 For the above reasons, I find that the proper interpretation of the Settlement Agreement is simply that the defendant would have to pay the plaintiff a further S$300,000 upon the execution of the agreement, and that the parties would then have fully and finally settled the claims to the BCP. There is no basis to suggest that the Settlement Agreement reduced the compromised BCP sum to S$500,000 from S$1m, and that the defendant would get a refund of the S$500,000 it paid in September 2013.

98 Given my findings above, there is no need for me to consider the issues of mistake, estoppel, unjust enrichment, and resulting trust. Without going into details, the facts do not appear to disclose any mistake by either party, and there is also no clear and unequivocal representation that would give rise to any estoppel. The wording of the recitals, read in their proper context, simply does not give rise to the representations alleged by the defendant. Similarly, I do not find that there is any justification for unjust enrichment or a resulting trust arising from the facts because there is no failure of basis. The S$500,000 paid in September 2013 had been for the specific purpose of reducing the amount of the BCP, and it cannot be said that it had been paid for a purpose which had been thwarted or foiled such that a resulting trust might arise. In a similar vein, there is no failure of basis because the basis for the payment of the S$500,000 was unambiguously for the BCP owed. Simply put, several of the legal

contentions raised by the defendant do not require my consideration at all given my factual findings.

Conclusion

99 For the reasons set out in this judgment, I grant the plaintiff a declaration that the sum of S$500,000 paid by the defendant to the plaintiff in September 2013 was paid towards the BCP under the Policy, and that the defendant is accordingly not entitled to any refund of that amount. I also dismiss the defendant's counterclaim.

100 I will deal with the issue of costs separately.

Ang Cheng Hock
Judge

Lok Vi Ming SC, Lee Sien Liang Joseph and Yap Pei Yin (LVM Law Chambers LLC) for the plaintiff;
Aqbal Singh a/l Kuldip Singh and Cheng Cui Wen (Pinnacle Law LLC) for the defendant.