Bass Anne Hendricks *v* Shangri-la Hotel Ltd
[2011] SGHC 232

Case Number : Suit No 149 of 2010

Decision Date : 25 October 2011

Tribunal/Court : High Court

Coram : Judith Prakash J

Counsel Name(s) : Tan Chuan Thye, Eugene Thuraisingam and Mervyn Cheong Jun Ming (Stamford Law Corporation) for the plaintiff; K Anparasan and Tan Hui Ying Grace (KhattarWong LLP) for the defendant.

Parties : Bass Anne Hendricks — Shangri-la Hotel Ltd

INNS AND INNKEEPERS – innkeepers – liabilities

25 October 2011 Judgment reserved.

Judith Prakash J:

1 The plaintiff, who is a citizen of and resident in the United States of America, paid a brief visit to Singapore in February 2009. For the duration of her visit, the plaintiff stayed at the Shangri-la Hotel ("the hotel") in Orange Grove Road which is owned and operated by the defendant. The plaintiff says that while she was in the hotel, her valuable gold and diamond ring ("the Ring") was lost or stolen and that therefore the defendant is liable to compensate her for the loss.

Background

2 The undisputed facts relating to the claim are as follows. The plaintiff arrived in Singapore from Siem Reap, Cambodia, at about 9.35pm on 4 February 2009. Thereafter, she checked into the hotel and was given a suite in its Valley Wing, *viz* guestroom #1056 ("the suite"). The suite comprised a bedroom and a sitting room. The main door of the suite led to the sitting room and was opened by a key card. The sitting room was separated from the bedroom by a door which could be locked. The suite had its own bathroom which was accessible from the bedroom. The plaintiff was due to check out on the night of 6 February 2009.

3 The plaintiff left the hotel some time before lunch time on 6 February 2009 and she returned at 6.02pm. She went straight to the suite and then made a request for a masseuse to conduct a massage in her room. At 6:25 pm, two of the hotel's staff, masseuse Nga'Esah Binte Haji @ Maria ("Ms Maria") and Assistant Fitness Manager Reno Bin Rasi ("Mr Reno") entered the suite. Mr Reno set up the massage table and left the room at 6.26pm. Ms Maria conducted a one-hour massage on the plaintiff, and she left the suite at 7.35pm. Subsequently, the plaintiff asked for a room service delivery. At 9.31pm, butler Thong Chai Leong @ Jeremy ("Mr Thong") entered the suite to deliver the plaintiff's room service order. He left the suite at 9.32pm.

4 At around 10pm, Mr Thong and butler Jega Nathan A/L Krishnan ("Mr Jega") were waiting outside the plaintiff's suite to assist her with the checking out procedure. At approximately the same time, after the plaintiff had finished packing her suitcases in preparation for checking out, she realized that she could not find the Ring. She then informed Mr Thong and Mr Jega that her Ring was missing. Mr Thong asked Mr Jega to call Assistant Manager Mohammed Farid Bin Mohd Noor ("Mr Farid"), and

the latter arrived at the suite at 10.14pm. Mr Farid offered to help the plaintiff search for the Ring, but the plaintiff asked for privacy to search for the Ring alone. The three members of the hotel staff then waited outside the suite while the plaintiff conducted a search. At 10.45pm, the plaintiff opened the door and informed Mr Farid that she could not find the Ring. Mr Farid then helped the plaintiff to extend her stay for a further night so that she could continue to search for the Ring. He assured her that a thorough investigation would be conducted, and wrote up a log of events to be handed over to the Assistant Manager who was on duty the next day. At no time that evening did the plaintiff make an allegation that any of the hotel staff had stolen the Ring.

5 On the morning of 7 February 2009 at the hotel staff's daily executive morning meeting, the log of events created by Mr Farid was read out to the staff. At about 12.45pm, Front Office Manager Claudia Lee Chye Hwa ("Ms Lee"), along with two other members of the hotel staff, went to the plaintiff's suite. With her permission, they conducted a thorough search of the suite and the plaintiff's luggage in the plaintiff's absence. The search ended at 1pm without the Ring having been found. The plaintiff had left the hotel while the search was being conducted. When she returned in the late afternoon at about 6.30pm, Ms Lee conveyed the negative results of the search to the plaintiff and suggested that the plaintiff lodge a police report. The plaintiff agreed to do so and the hotel staff called the police on the plaintiff's behalf. The police arrived at 7.15pm and interviewed the plaintiff, as well as the relevant members of the staff, including Mr Thong, Ms Maria and Mr Reno. The police informed the plaintiff that they would conduct an investigation and inform her of the outcome.

6 The hotel conducted its own investigations by interviewing staff members and reviewing the security camera footage outside the suite and in the lifts through which the plaintiff passed, but did not note anything suspicious. With no further leads, the hotel concluded its internal investigation on 10 February 2009. The hotel continued to assist the police with their investigations, and sent letters to the police on 1 March 2010 and 12 March 2010 to enquire about the status of the case. On 16 March 2010, the police responded by way of a letter stating that they had exhausted all available leads and had no evidence to solve the case.

7 On 3 March 2010, the plaintiff filed a writ of summons and served it on the defendant, pleading that the Ring was lost or stolen within the *hospitium* of the hotel on the evening of 6 February 2009, such that the defendant as the owner and operator of the hotel was liable to the plaintiff for the value of the Ring.

The pleadings

8 In the statement of claim, the plaintiff put forward three alternative bases for her claim. First, she averred that the defendant, as an innkeeper, owed her a strict duty at common law in respect of the loss of her Ring as the loss occurred while she was a guest at the hotel. She further averred that the loss of the Ring was directly attributable to the neglect of the defendant and/or the staff of the hotel in failing to provide adequate security at the hotel to safeguard her personal property. The particulars of this allegation were as follows:

(a) Failing to take any adequate or effective security precautions to safeguard the plaintiff's personal property against misappropriation by the defendant's staff or third parties.

(b) Allowing the Ring to be removed from the plaintiff's suite without her consent.

(c) Failing to take adequate steps to attempt to recover the Ring after the plaintiff reported it as missing.

9 The second basis of her claim was that the defendant was in breach of an implied warranty or representation under its contract with the plaintiff that her Ring would be kept safe throughout her stay at the hotel. The plaintiff did not pursue this basis in her closing submissions.

10 The third basis of the claim was that, alternatively, the Ring was wilfully and unlawfully converted by the defendant's staff. The following particulars of conversion were given:

(a) At approximately 6.30pm on 6 February 2009, the defendant's masseuse or in the alternative, the defendant's masseuse jointly with the defendant's massage assistant, did without the consent of the plaintiff unlawfully remove the Ring from the suite and thereafter used the Ring as if it was her/their own.

(b) In the alternative, between approximately 9.15pm and 9.30pm, the member of the defendant's staff who delivered the plaintiff's suite service order to her suite did, without the consent of the plaintiff, unlawfully remove the Ring from the plaintiff's suite and thereafter used the Ring as if it was his own.

11 By its amended defence filed in July 2010, the defendant denied the plaintiff's claim and put the plaintiff to strict proof. In particular, it denied that she had brought the Ring into the hotel on 6 February 2009. The defendant averred that the plaintiff had not shown that she was in personal possession of the Ring at all material times during her stay at the hotel and that it was in fact brought to Singapore. The plaintiff had also left the hotel premises on various occasions during her stay. Further, if the plaintiff was in the possession of the Ring whilst she was in the premises of the hotel, the alleged loss of the Ring was caused solely by, or alternatively, contributed to by, the negligence of the plaintiff. The particulars of this allegation were, *inter alia*, that the plaintiff:

(a) Had failed to take reasonable care of her belongings particularly the Ring.

(b) Had failed to take adequate precautions to safeguard the Ring by placing it in a safe and secure place.

(c) Had failed to keep the Ring in the safety deposit box which was provided by the defendant in the plaintiff's suite.

(d) Had failed to entrust the Ring to the defendant for safe-keeping.

12 In the alternative, the defendant pleaded that it was entitled to rely on s 3 of the Innkeepers' Act (Cap 139, 1985 Rev Ed) ("the Act") to limit its liability for the loss of the Ring to $500.

The law and the issues

13 As illustrated by *Fleming John C v Sealion Hotels Ltd* [1987] SLR(R) 325, at common law, the proprietor of a hotel, as an innkeeper, is an insurer of the property of his guests which is lost or stolen within the *hospitium* of the hotel and has a strict liability to make good the loss to his guests. The liability arises without negligence on the part of the innkeeper. However, if the loss is brought about by the negligence of the guests themselves in not using the ordinary care that a prudent person may reasonably be expected to have taken under the circumstances, the innkeeper can escape liability. See *Armistead v Wilde* [1851] 17 QB 261.

14 The strict liability of the common law is modified by s 3(1) and s 5 of the Act which read:

Limitation of innkeepers' liability

3. - (1) No innkeeper shall be liable to make good to his guest any loss of or injury to goods or property brought to his inn, not being a horse or other live animal, or any gear appertaining thereto or any car or carriage, to a greater amount than the sum of $500, except –

(a) where the goods or property have been stolen, lost or injured through the wilful act, default or neglect of the innkeeper or any servant in his employ; or

To avail himself of the limitation of liability set out in s 3, the innkeeper has to exhibit a copy of s 3 in a conspicuous place in the hotel as required by s 5 which reads:

Copy of section 3 to be exhibited.

5. Every innkeeper shall cause at least one copy of section 3 printed in plain type in English to be exhibited in a conspicuous part of the hall or entrance to his inn, and he shall be entitled to the benefit of this Part in respect of the goods or property only as are brought to his inn while such copy is so exhibited.

15 In this regard, it should be noted that the plaintiff claimed that the Ring was worth US$220,000 at the time of its loss.

16 The issues that arise out of the pleadings and the law are as follows:

(a) Whether the Ring was within the *hospitium* of the hotel on the evening of 6 February 2009.

(b) Whether the plaintiff failed to use the ordinary care to safeguard the Ring that a prudent person would reasonably be expected to exercise under the circumstances, such that the hotel can escape liability.

(c) If the defendant is liable at common law, whether it can nevertheless rely on s 3 of the Act to limit its liability to $500 and in this regard:

(d) Whether the hotel displayed the s 3 notice in accordance with the requirements of s 5 of the Act.

(e) Whether the Ring was stolen or lost through:

(i) The wilful act of Ms Maria acting solely or Ms Maria acting jointly with Mr Reno or Mr Thong acting solely; or

(ii) The default or neglect of the defendant

(f) If the defendant is liable for the full value of the Ring, what its value was when it was lost.

The parties' stories

The plaintiff's account of events

17 The plaintiff alleged that she had worn the Ring at all times since she acquired it in 1986. She claimed that she wore the Ring at all times when she was in Singapore in February 2009 until she

returned to her suite on the evening of the 6 February. She then removed the Ring in preparation for the massage and left it on the dressing table in the bedroom, together with the other jewellery she had been wearing. Under cross-examination, the plaintiff asserted that she was still wearing the Ring when she opened the main door to let Ms Maria and Mr Reno in, and that she left the door between the sitting suite and the bedroom wide open when she went into her bathroom to change into a robe for the massage.

18 In court, the plaintiff claimed that she was in the shower when Mr Thong came to deliver her room service order, and that she left the shower and put on her bathrobe to receive him. Under cross-examination, the plaintiff also alleged that she went back into the shower while Mr Thong was still in the room, and that he let himself out of the room. This was the first time the plaintiff had made this assertion: she had not referred to this fact in any of her pre-trial documentary evidence.

19 The plaintiff thus alleged that the Ring was converted by Ms Maria alone or by Ms Maria and Mr Reno acting in concert, or by Mr Thong.

Ms Maria's account of events

20 At the time of the hearing, Ms Maria was a masseuse who had been in the hotel's employ since 1978. She had a clean record throughout her 33 years of service with the hotel. Ms Maria testified that when the plaintiff opened the door to let them in the plaintiff was already in her bathrobe, and she did not see the plaintiff wearing any ring. Ms Maria also testified that the door between the sitting room and the bedroom was only slightly ajar. Ms Maria averred that she did not steal the Ring.

Reno's account of events

21 Mr Reno had been in the Hotel's employ since 2007. He also testified that when the plaintiff opened the door to let them in she was already in her bathrobe, and he did not see her wearing any ring. Mr Reno corroborated Ms Maria's testimony that the door between the sitting room and the bedroom was only slightly ajar. He averred that he did not steal the Ring.

Mr Thong's account of events

22 Mr Thong was in the hotel's employ from 2005 to 2010, when he resigned to take up a job at Marina Bay Sands. He had been recommended for a promotion after his Performance Review on 7 December 2009. Mr Thong testified that when he entered the suite to deliver the room service order, the plaintiff was in her bathrobe but did not look like she had just emerged from the shower as her hair was not wet. He then set up the food on the trolley near the front door and let the plaintiff sign the bill, after which she let him out the door. He averred that he did not steal the Ring.

Was the Ring within the *hospitium* of the hotel on 6 February 2009?

23 In order to succeed in her claim, the plaintiff has first to establish that the Ring was in the *hospitium* of the hotel on the evening of 6 February 2009 before she discovered that it was missing. As evidence of this vital fact, the plaintiff relied on her own testimony, that of one Justin Hill ("Justin Hill") and supporting testimony from four other witnesses.

24 Apart from the plaintiff and Justin Hill, none of the plaintiff's witnesses were in Singapore in February 2009 and thus could not testify that the Ring was in her possession during that visit. Her partner, Mr Julian Lethbridge, who has lived with the plaintiff since 1995, testified that she wore the Ring at all times and he had never seen her leave her bathroom or dressing room without the Ring on.

The plaintiff's personal assistant, one Ms Sarah K Burton, testified that prior to the plaintiff leaving the United States in January 2009, every time Ms Burton saw the plaintiff, she was wearing the Ring. The plaintiff had dinner with one Mrs Srey Sophea Touch in Siem Reap on 9 January 2009 and Mrs Touch testified that she noticed the Ring on the plaintiff's finger that evening. The next day, 10 January 2009, the plaintiff met one Ms Lois Pattison De Menil, at the board meeting of The Center for Khmer Studies. Ms De Menil testified that she noticed the plaintiff wearing the Ring that day. Whilst this evidence established that the plaintiff was in the habit of wearing the Ring very frequently and that she wore it in Cambodia, it did not establish that the Ring was with her when she arrived in Singapore almost a month later, much less on the evening of 6 February 2009.

25 Other than her own sworn statement, the only evidence the plaintiff could adduce of the fact that she had the Ring with her in Singapore was the testimony of Justin Hill. Justin Hill, an architect in the firm of Kerry Hill Architects Pte Ltd, testified that he saw the plaintiff wearing a ring on her finger at a business lunch they had on 6 February 2009. However, Justin Hill's evidence was very generalized and vague – he could not remember any details about the Ring at all, and all he could recall was that the plaintiff was playing with her finger, which is how he noticed that there was a ring on it. Justin Hill himself acknowledged that "I noticed she was wearing a ring, but I can't remember anything about the ring in detail." Indeed, Justin Hill did not seem to have a very clear recollection of the entire event: he could not remember with any clarity who was present at the business meeting which the plaintiff had with him or at the lunch, how long the lunch and meeting lasted, or whether the lunch took place before or after the meeting. Justin Hill appeared terse and hesitant on the stand, and gave some non-committal answers when questioned. As the defendant pointed out in its closing submissions, Justin Hill's evidence was punctuated with numerous instances of facts that he could not remember: the defendant listed more than ten different extracts in which Justin Hill's response to defendant's counsel's questions was "I can't recall" or "I'm not sure of that." As Justin Hill was unable to provide any description of the ring, it is not even clear whether the ring that he saw the plaintiff wearing was the Ring in question. As such, Justin Hill's evidence is of limited assistance to the plaintiff's case that the Ring was *infra hospitium* on the evening of 6 February 2009.

26 The defendant stressed that even if the plaintiff had the Ring in her possession when she arrived in Singapore, there was every possibility that she could have misplaced it at any point during the course of her outings on 5 and 6 February 2009. It appeared from the plaintiff's evidence that on those days, she was out and about most of the time and visited many places including the Botanical Gardens and some bookshops. This was not a situation, the defendant said, where the plaintiff was in the hotel room most of the time so that it was most likely that she would have lost the Ring in the hotel. The plaintiff claimed that she had worn the Ring to a dinner with her friends, Mr and Mrs Adrian Zecha, on 5 February 2009, one day before the Ring was allegedly lost. The plaintiff did not, however, call either Mr or Mrs Zecha as witnesses to testify that they had seen the plaintiff wearing the Ring. Under re-examination, the plaintiff claimed that Mrs Zecha had told her over the telephone that she could not remember whether the plaintiff had been wearing the Ring that evening as she "never [ogled] other people's jewellery". If Mrs Zecha had actually said that (a fact that could not be established since she did not testify), then her evidence would not have assisted the plaintiff in establishing that she had the Ring on 5 February 2009.

27 The weight of the plaintiff's own evidence that the Ring was with her when she returned to the hotel at 6.05pm on 6 February 2009 must, in these circumstances, be carefully assessed. In this connection, the defendant submitted that the plaintiff's evidence was fraught with numerous inconsistencies, discrepancies and untruths. It also asserted that she had been evasive and forgetful throughout the proceedings and the trial. The defendant submitted that the plaintiff was not a credible witness and contended that her evidence that she had personal possession of the Ring on 6 February 2009 at the hotel should not be accepted.

28 The defendant made various criticisms of the plaintiff's evidence. The first two of these were as follows. First, in her affidavit of evidence-in-chief ("AEIC"), the plaintiff had said that she purchased the Ring on or about 20 June 1986. In court, however, she had admitted that the Ring was actually purchased by her ex-husband. Second, she asserted in court that when she arrived at the hotel on 4 February 2009, she had been checked in by Ms Lee. The defendant's duty roster and CCTV footage showed, however, that its guest relations officer, Mr Balvinder Singh, had been the one to sign her in and take her up to the suite. Ms Lee testified that she usually went off duty around 6pm and was not likely to have been present when the plaintiff arrived after 9.30pm. In my view, these instances did not seriously dent the plaintiff's credibility. She could easily have forgotten Mr Balvinder Singh whom she did not meet again and confused him with Ms Lee who had looked after her after the Ring was reported lost. As far as who had paid for the Ring was concerned, when the plaintiff was asked in court whether her ex-husband had paid for the Ring, she readily agreed that that was correct. This was not an issue in the case at all and therefore even though in her AEIC she said "I purchased the Ring" that must have been an inadvertent error.

29 Apart from the minor discrepancies set out above, however, there were more significant problems with the plaintiff's evidence. In her statement of claim and AEIC, the plaintiff did not set out the events that occurred on 6 February 2009 before she returned to the hotel in the evening. She first mentioned her meeting with Justin Hill in her reply to interrogatories and in that reply, she stated that she had visited the office of Kerry Hill Architects Pte Ltd on the afternoon of 6 February 2009 and had remained there until she returned to the hotel at 6pm. She did not mention the lunch with Justin Hill. This occasion was brought up in Justin Hill's AEIC. When the plaintiff was cross-examined about the meeting and the lunch, the plaintiff was unable to recall exactly who was present at these occasions. When first questioned, she said that apart from Justin Hill, there was a young lady from the office and also "I believe there was one other person with us". Later, she was told that Justin Hill during his evidence had said that he could not remember whether his business partner, Mr Kerry Hill, had also been present at the lunch. At that stage, the plaintiff said the people present over lunch were Mr Kerry Hill, Justin Hill and one or two other people from the office. Shortly afterwards, she said that she was very sure that both Mr Kerry Hill and Justin Hill were present at the meeting before lunch, during lunch and at the meeting after lunch. The changes in her evidence indicated, at the least, that the plaintiff was a rather forgetful person. She also said that she met Justin Hill for the first time on 6 February 2009. Justin Hill's evidence on the other hand was that this was not the first time that he had met her. That may have been another example of her forgetfulness.

30 The plaintiff on her return to the United States from Singapore had on 9 February 2009 sent Ms Lee an e-mail giving her an update on a search carried out on the plaintiff's luggage in her home. In this e-mail the plaintiff stated that she had returned to New York on Sunday morning, February 10, 2009 and that her ring had gone missing on Friday, February 8, 2009. A few hours later, the plaintiff sent out an amended mail in which she changed the date of her return to Sunday morning, February 8, 2009 and the date of the loss to Friday, February 6, 2009. These were the correct dates. In her evidence, the plaintiff said that she was very sure of the dates on 9 February 2009 but made a mistake when she wrote because she was very tired when she sent out the e-mails. However, when the plaintiff filed her writ in this action on 3 March 2010, there were several mistakes in the dates set out in her statement of claim. First, she said that she had been a guest of the hotel between 6 February 2009 and 9 February 2009 (the correct dates being between 4 February 2009 and 7 February 2009) and second, she said that on 9 February 2009, Ms Lee and two other members of the hotel staff had conducted a search of the suite before the plaintiff checked out of the hotel. This search in fact had taken place on the morning of 7 February 2009. It was only after the defence was filed on 29 March 2010 that the plaintiff realised her mistake and amended her pleading.

31 The plaintiff was unable to recall initially how many members of the hotel staff had entered her

suite on 6 February 2009. In the original statement of claim, the plaintiff had stated that "Other members of the Defendant's staff" had entered the suite at 9.30pm to deliver her room service order. She corrected this to "Another member of the Defendant's staff" in her statement of claim (amendment no 1) after the defence was filed.

32 The plaintiff also could not remember the sequence of events that had taken place during the massage session on 6 February 2009. The relevant paragraphs of her AEIC read as follows:

> 16. At approximately 6:30pm on 6 February 2009, I removed the Ring from my finger and placed it on the dressing table in the bedroom of the Guestroom, as I was preparing for a massage to be conducted by the Hotel staff.
>
> 17. At or about the same time as I removed the Ring from my finger, two members of the Hotel staff arrived in the Guestroom to conduct the massage. ...
>
> 18. I left [Ms Maria] and [Mr Reno] in the living room of the Guestroom, and I went briefly into the bathroom of the Guestroom to change for the massage.

33 The plaintiff agreed under cross-examination that the sequence of events as stated in her AEIC appeared to be that she had removed the Ring at about the time the hotel staff arrived and this was before she met them and let them into the suite.

34 In her oral evidence, however, the sequence of events changed. She stated that when she opened the door to let Ms Maria and Mr Reno in, she was still wearing the Ring. After that, she went into the bedroom to remove the Ring and proceeded to change. The plaintiff was asked several questions about the change in the sequence of events. She did not accept that the sequence of events as stated in the AEIC and in her oral evidence was different. She said she did not understand how the two versions were different. She emphasised that in her affidavit, she did not say that she had removed the Ring and then the two persons had come in. Instead, she had stated in the affidavit that she had removed the Ring "at or around the same time". The plaintiff then said this:

Witness	So it was around the same time. It was around the same time which, in my memory, and it's very definite, it's that I --- if we --- you were like the --- if your Honour would like me to elaborate on my memory at that time?
Court	Yes.
Witness	Yes. I was --- at that time, I was involved in a board matter for the Centre of Khmer Studies. I was involved in a lot of email and I was sitting at the desk. Erm, the email I was doing it again after the massage and up to the time, you know, later in the evening. And so I spent a great deal of time at the table in the --- the writing table in the living room. So when they came to the door, I let them in and then I proceeded to my bedroom to prepare for my massage.
Court	So before ---
Witness	So I'm just trying to clarify.
Court	--- before they rang the doorbell, you were at the writing table?
Witness	I was dressed. I had --- still had my jewellery on and I had not prepared for the massage.
Court	Yes, but you were at the writing table. Is that what you're saying?

Witness Is [sic] at the writing table, yes.

35 It can be seen from the above, that the plaintiff's version of events was embellished when she testified in court. There was no suggestion in her affidavit that she had been in the sitting room at the computer when the two staff members arrived for the massage. The clear impression given by the e-mail was that they had arrived as she was taking off the Ring in the bedroom. The significant difference between the two versions that the plaintiff gave was that in the second version the two staff members would have had a clear opportunity to see the plaintiff wearing the Ring when she let them into the suite, whereas under the first version, by the time she let them in, the Ring would have been on the dressing table. I can only conclude that the plaintiff added the portion about working at the computer during her court testimony so as to substantiate her assertion that she had taken the Ring off after letting the two employees into the suite.

36 There was another area in which it appeared to me that the plaintiff embellished her evidence on the stand. This related to the delivery of the room service by Mr Thong at 9.30pm. In her AEIC, her account of this visit was brief. She merely stated at para 21:

> Another member of the Hotel staff entered the Guestroom at approximately 9.15pm and 9.30pm on 6 February 2009, to deliver my room service order. I am now advised that this member of the Hotel staff was Mr Jeremy Thong, a butler at the Hotel at that time ("Thong").

37 In court, she said:

> A Er, as I recall, when the, er, the room service employee came to my room, I opened the door to let him in and I believe when he came, I was taking a shower because I was getting ready to leave. And, erm, I let him in and I said, "Just please set up the table" and then I returned to my, erm, to my bathroom.
>
> Q Ms Bass ---
>
> A And I believe he left [sic] himself out.

Subsequently, the plaintiff said that the reason she had not waited for Mr Thong to leave the room before returning to the bathroom was that she was "in the middle of taking a shower, [her] hair was dripping wet and [she] went back to [her] bathroom".

38 The plaintiff had to concede on questioning that she had not stated any of these details in her (a) e-mails sent from New York after her return home (b) statement of claim, (c) AEIC. She said it was a mistake that these facts had not been put in her evidence earlier. She agreed that the evidence related to material points but asserted that it was not her intention to catch the defendant by surprise – she had simply forgotten to put the facts in the evidence earlier.

39 It should be noted that the defendant had administered interrogatories to the plaintiff on 24 May 2010 with regards to the events of 6 February 2009: this should have prompted her memory on what had occurred since she had been asked in the interrogatories to state whether Mr Thong was only in the sitting room of the suite when he delivered her room service order.

40 The plaintiff only remembered the material fact of Mr Thong having delivered her room service order while she was having a shower, when she was being cross-examined. At the start of her testimony, her counsel had asked her whether she wanted to elaborate or clarify any parts of her

evidence but in her response she had not adverted to this allegation. The impression that the plaintiff sought to give was that Mr Thong was alone in the room after she had let him in because she had returned to the bathroom to finish her shower. Whilst the plaintiff readily agreed that this was a material point, her only excuse for not pleading it was that it was an oversight and that she had never previously filed a claim of any kind and therefore was not accustomed to making such statements.

41 It is difficult to believe the plaintiff's assertion in court that she left her bathroom in the middle of a shower to open the door for the room service delivery and then did not see Mr Thong out before returning to her shower. The plaintiff is a well-educated individual and a frequent traveller. She would surely have known better than to allow a stranger, albeit a member of the hotel staff, to remain in her room when she was in the bathroom. Her testimony that her hair was dripping wet was not corroborated by Mr Thong. He remembered that she was in a bathrobe but said that it did not appear as if she had just come out of the shower. While Mr Thong did say under cross-examination that guests often asked him to find his own way out after he had made a room service delivery, that did not make it more likely that a single woman would do so in the circumstances the plaintiff described. The plaintiff's story is hard to accept. Quite apart from its inherent unlikelihood, if this had really happened in the way the plaintiff described in court, she would have told someone the same story much earlier and would probably have mentioned it to the police or to Ms Lee either in person or in her e-mails. It appears to me that this story was conjured up, as the defendant suggested, as an attempt to suggest that Mr Thong had the opportunity to take the Ring as he was left alone in the sitting room when she returned to her shower.

42 There were other discrepancies and inconsistencies in the plaintiff's evidence that the defendant made much of. I do not need to go into detail on them but, taken together, they do build up a picture of someone who is forgetful and rather careless. The evidence in the case did not show someone who had a good grasp of detail.

43 The evidence that the plaintiff produced to substantiate her contention that the Ring was with her when she returned to the hotel on the evening of 6 February 2009 was weak and purely circumstantial. The plaintiff may have had the Ring in Cambodia but it took her almost a month to get from Cambodia to Singapore. There was no convincing evidence that she had brought the Ring to Singapore, much less back to the hotel on the evening in question after two days in Singapore which she spent largely out of the hotel. The plaintiff's own evidence was wanting in many respects and I do not think that I can rely on it alone to establish the presence of the Ring at the hotel at the material time. On a balance of probabilities therefore, I find the plaintiff has not established that the Ring was within the *hospitium* of the hotel on 6 February 2009.

44 The holding above is sufficient for the plaintiff's case to be dismissed. I shall nevertheless go on to consider the other issues for the sake of completeness.

Whether the plaintiff failed to use ordinary care to safeguard the Ring

45 The defendant submitted that even if the plaintiff had taken the Ring into the hotel on 6 February 2009, it should not be liable for the loss because she had failed to use the ordinary care to safeguard the Ring that a prudent person would reasonably be expected to exercise under the circumstances.

46 The bedroom of the plaintiff's suite was outfitted with a safe deposit box. The plaintiff was aware of its existence and had put other items of jewellery into it. She did not, however, place the Ring in the safe deposit box before the start of the massage on 6 February 2009. The plaintiff did not

place the Ring in a drawer, covered compartment or bag either. Instead, she left it on the dressing table and, just prior to the massage, left the door between the sitting room and the bedroom ajar. The defendant submitted that the plaintiff had failed to exercise reasonable care in regards to the Ring, which was not a normal piece of jewellery but instead a special and extremely valuable piece, and a reasonably prudent person would not have left such an item in plain sight when she was not wearing it.

47 The plaintiff submitted that she had not been careless. She said that she had placed the Ring in her bedroom and that it did not occur to her that anyone would take something from her room whilst she was there. Leaving jewellery in the bedroom when one is also in the same room in an internationally renowned hotel in Singapore cannot possibly be an act of imprudence, the plaintiff argued. She said that under such circumstances no weight should be attached to her decision not to conceal the Ring or lock it up.

48 The defendant cited two cases in support of its contentions. The first of these was *Jones v Jackson* (1873) 29 LT 399, where the plaintiff had left his trousers and a bag (which he locked) upon a chair in his guestroom in an inn. There was a sum of money in the pocket of the trousers and a further sum of money in the bag. The plaintiff then left the room. When he returned to the inn later, he found that the valuables were missing from his trousers and his bag. The plaintiff was not able to recover for his loss because he was found to have been negligent. The plaintiff distinguished this case on the basis that the plaintiff guest there had left his room for a period and that it was during this window of opportunity that his money had been stolen. In this case, the plaintiff had remained in the room at all times. I agree that *Jones v Jackson* was decided on different facts.

49 The other case was *Oppenheim v The White Lion Hotel* (1871) LR 6 CP 515 ("*Oppenheim*"). The plaintiff had placed his clothes, a bag of money being in one of the pockets, on a chair at his bedside in his room in the hotel. Upon going to bed, the plaintiff had closed his guestroom door but did not lock or bolt it. During the night, someone entered his room by the door while the plaintiff slept and stole his money. At the trial of his action against the innkeeper, the jury found that the plaintiff was guilty of negligence which contributed to his loss and therefore the innkeeper was not liable. Upon appeal by the plaintiff, this decision was affirmed as it was held that there were circumstances in the conduct of the plaintiff which were proper to be left to the jury. Among these were that the plaintiff (1) did not lock or bolt the door to the room, (2) had taken the bag out of his pocket and a coin from the bag in the hotel's commercial room, a public place open to the full view of the other guests, and (3) had opened the window to the balcony.

50 Montague Smith J said in the course of his judgment:

> But Mr Oppenheim, contends that there was no evidence of negligence on the part of the plaintiff here, and that the judge ought to have directed the jury to find so. It seems to me, however, that there were circumstances in the conduct of the plaintiff which were proper to be left to the jury, and which it would have been wrong to withdraw from them. I agree that there is no obligation on a guest at an inn to lock his bedroom door. Though it is a precaution which a prudent man would take, I am far from saying that the omission to do so alone would relieve the innkeeper from his ordinary responsibility. ... But the fact of the guest having the means of securing himself, and choosing not to use them, is one which with the other circumstances of the case should be left to the jury. The weight of it must, of course, depend upon the state of society at the time and place. What would be prudent in a small hotel, in a small town, might be the extreme of imprudence at a large hotel in a city like Bristol, where probably three hundred bed-rooms are occupied by people of all sorts. It was proved here that the plaintiff took out the bag in the commercial-room, - a public room. I cannot suppose that that fact would have been

referred to unless there had been some significance in it. It does not appear to have been done ostentatiously; but he did take it for the purpose of taking sixpence out of it. Added to this, his bedroom door was furnished with a proper bolt and lock, and he left it unfastened. I think the direction was right, and that the jury came to a right conclusion.

51 In citing *Oppenheim*, the defendant emphasised the fact that the plaintiff there was negligent because he had had the means of securing himself and he had chosen not to use them, and further, he had made it obvious that he was carrying a bag of money. In this case, I do not think that the plaintiff's failure to put the Ring into the safe deposit box or a drawer while she remained in the suite was in itself negligent. However, all the circumstances have to be considered. On the plaintiff's story, or at least the final version thereof in court, she had the Ring on her finger when she opened the door to the room and let Ms Maria and Mr Reno into the sitting room. She then left them there and went into the bedroom leaving the bedroom door ajar. It was clear from the photographs that there was a line of sight from the sitting room through the door to the dressing table. The defendant's employees would therefore have easily been able to see the plaintiff take off the Ring, her earrings and her bracelet and place them all on the dressing table before she went into the bathroom to change. I think that on this account of what happened, the plaintiff was negligent and did not act as a prudent person. If she had taken the Ring off before they came in and had then made sure that the bedroom door was properly closed then, even though she had rather carelessly left it on the dressing table, I would not have considered such carelessness culpable enough to relieve the defendant of liability. In the present case, however, on the plaintiff's own account of all the circumstances, she did not take the steps that a prudent person would have take to safeguard a precious piece of jewellery. On this basis, too, therefore, I would relieve the defendant of liability.

52 I now move on to consider whether, if the plaintiff's conduct in the care of the Ring was not considered to be imprudent, the defendant would be able to rely on the statutory limitation of liability afforded by s 3 of the Act.

Can the defendant limit its liability under the Act?

Did the defendant comply with s 5 of the Act?

53 As stated above, s 3 of the Act provides a statutory limitation of the innkeeper's common law liability. The Act further stipulates that to enjoy the benefit of the s 3 limitation of liability, the innkeeper must exhibit a copy of s 3 in accordance with the requirements laid down in s 5.

54 Here, the Hotel displayed a copy of s 3 ("the Notice") in a conspicuous part of its main lobby, which satisfies the requirements of s 5. *Black's Law Dictionary* (West, 2009) defines "conspicuous place" thus: "for the purposes of posting notices, a location that is reasonably likely to be seen." An examination of the photographs of the Notice shows that that it is posted in a reasonably prominent location in the lobby that is reasonably likely to be seen by guests. The Notice was displayed at the top left side of the reception desk in the main lobby, just below the money changing rates display. The Notice was of a reasonable size for reading (17.8 cm by 26.8 cm) and printed in black font size 12 on a white background. Additionally, the defendant has complied with the spirit of s 5, *viz* giving guests fair notice of its limitation of liability, by going above and beyond the minimum statutory requirements in deliberately choosing to post copies of the Notice behind the front door of every single room. These copies of the Notice are prominently displayed on the back of the door at eye level, together with the fire escape plan, such that each guest will have clear sight of the Notice every time he leaves his room. Indeed, the plaintiff did not plead at any point in her case that she was not aware of s 3 or that it was never brought to her attention.

55 Instead, the plaintiff argued in her closing submissions that the defendant failed to comply with the s 5 requirements because it did not exhibit an additional Notice in the lobby of the Valley Wing, from which the plaintiff entered the hotel. However, careful reading of the provision reveals that once the innkeeper places a single copy of the Notice in a conspicuous part of the entrance to the inn, the operation of s 3 is triggered and he is entitled to its protection: as long as "at least one copy of section 3" is exhibited in a conspicuous part of the hall, the innkeeper "shall be entitled to the benefit of this Part." Additionally, as highlighted above, the defendant has also complied with the spirit of s 5.

56 The plaintiff further argued that "the purpose of this requirement is clearly to bring the limitation of liability to the guest's attention at the point of checking in, not after the contract has been concluded." This argument is flawed as it appears to be premised on the erroneous notion that the s 3 limitation of liability is somehow akin to a contractual limitation of liability that must be incorporated by notice of the terms of the contract at the point of formation. It is clear that the s 3 limitation of liability is statutory rather than contractual in nature and its operation is triggered by the defendant's compliance with the statutory requirements. It need not be incorporated in the contract at the point of contract formation. As such, it makes no sense for the plaintiff to object on the ground that the contract had already been concluded.

Whether the Ring was stolen through the wilful act of any one or more of the defendant's staff

57 The plaintiff submitted that on totality of the evidence, one or more of Ms Maria, Mr Reno and Mr Thong converted the Ring on 6 February 2009. She put forward alternative hypotheses: the first was that Ms Maria took the Ring at some point before or during the massage, dropped it off in the service area after the massage was completed and subsequently asked Mr Reno to pick it up. In the alternative, she appeared to insinuate that Mr Thong took the Ring from the plaintiff's bedroom after the plaintiff returned to the shower. The plaintiff relied, to some extent, on bare inferences to support her case: in her closing submissions, it was stated that "it might even be inferred that [Ms Maria] converted the Ring with [Mr Reno's] help". However, the plaintiff cannot rely on bare inferences to prove her case. As the court observed in *Whitehouse v R&W Pickett* [1908] 1 AC 357 at 364:

> Then I seek in vain for particular proof of the alleged negligence. Certain hypotheses are presented as to the way the theft might have been committed, but in order to establish negligence, it is not enough to surmise the manner of the loss, and then to say opportunity for the theft may have arisen through causes which were not shown to have any connection with such loss.

58 The plaintiff's stand in her closing submissions was in great contrast to the way that she acted on the day of the loss. As the plaintiff herself conceded, she did not make any allegation that the hotel's employees had stolen her ring when she discovered that she no longer had it on 6 February 2009 because she had no proof of theft:

> Q: And that's why even in your dealings with the defendant, emails and to the police, there was no allegation of theft?
>
> A: There was no allegation of theft because I had no proof of theft.

59 The plaintiff even acknowledged that at the time of the event, she did not find anything suspicious about the behaviour of the hotel staff:

> Q: And you acknowledge that in your emails… and in your evidence here that you have no reason to doubt the staff?

A: Erm, the – the – the hotel staff did not behave in any manner that I would have found suspicious at the time I was staying there.

60 Additionally, the plaintiff admitted under cross-examination that she did not see any of the three employees going to her bedroom, and could not say for certain that they had done so:

Q: And you have no reason to believe that this hotel staff, the three people you mentioned – the butler, the masseuse and the attendant who set up the massage table would have gone into your bedroom?

A: I – I couldn't say whether they went to my bedroom or not. I did not see them going to my bedroom. That is true.

61 Indeed, as stated earlier, it appeared from the evidence that the plaintiff did not have a particularly clear recollection of the entire incident. This is corroborated by the fact that in the first version of the statement of claim, she claimed that both Ms Maria and Mr Reno were present in her room throughout the period of the massage, when in fact Mr Reno had left immediately after setting up the massage table.

62 Further, an analysis of the direct evidence suggests that the probability that the Ms Maria and Mr Reno would have been able to convert the Ring was very small.

63 First, if indeed the plaintiff had already changed into her bathrobe and removed her ring before opening the door for Ms Maria and Mr Reno, the probability that they would have even caught a glimpse of the Ring, which was lying on the dressing table in the bedroom, is minimal. As stated earlier, though her affidavit suggested that she removed the Ring before they arrived, she changed her evidence in court and asserted that it was still on when she opened the door to let them in.

64 In contrast, Ms Maria and Mr Reno were consistent in their evidence. In Ms Maria's AEIC, she stated that she did not see the plaintiff wearing any ring. She denied taking any ring or other item from the plaintiff's room. In Mr Reno's AEIC, he similarly denied that he had taken the Ring or any other item. Under cross-examination, Mr Maria testified that the plaintiff was wearing the hotel bathrobe when she opened the door and that she did not see the plaintiff wearing any jewellery. Mr Reno also testified that the plaintiff was wearing the hotel bathrobe when she opened the door.

65 Second, if the door between the bedroom and sitting room was only slightly ajar, there is a much lower probability that Ms Maria and Mr Reno would have been able to see the Ring on the dressing room table from where they were standing in the sitting room. Both of them testified that the door was only slightly ajar. The plaintiff testified that she had left the door wide open. However, the testimony of Ms Maria and Mr Reno appears credible – the fact that Ms Maria acknowledged that if the bedroom door was fully open she would be able to see the dressing table suggests that she was an honest witness. Additionally, it can be observed from the photographs of the suite that there is a high-backed chair in front of the dressing table – if this chair was present on that day, it would probably have partly obscured the view of the jewellery on the table, thus further reducing the probability that Ms Maria and Mr Reno would have been able to see the Ring on the table.

66 Third, Mr Reno was only in the room for a brief time. The security tape recordings revealed that he was in the room for one minute and 18 seconds altogether. Looking at the period of time that he was in the sitting room without the plaintiff being present, the window of opportunity during which he could have stolen the Ring is even briefer. By the plaintiff's own admission, there was only, at most, a one minute window in which Ms Maria and Mr Reno were in the sitting room alone while she went into

the bathroom:

Q: And how long did you take to come back to the living room?

A: Erm, it's not – probably 1 minute at the most?

Q: Yes. It was very brief?

A: It was very brief, yes.

67 If indeed Mr Reno was still in the sitting room when the plaintiff returned from the bathroom to the sitting room as per his testimony, the plaintiff would probably have been out of the sitting room for less than a minute as Mr Reno was in and out of the room within one minute and 18 seconds. (The plaintiff did not recall whether Mr Reno was still in the sitting room when she returned from the bathroom, and Ms Maria's testimony is silent on this issue.) This would mean that the window of opportunity for Mr Reno to take the Ring would have been extremely narrow. Furthermore, the plaintiff has not been able to establish that he even entered the bedroom.

68 It is extremely improbable that Mr Reno saw the Ring, set up the massage table, was bold enough to dart into the bedroom while the plaintiff was changing in the adjacent bathroom, snatched the Ring, and left the suite, all within the space of one minute and 18 seconds. It is also unlikely that Mr Reno would have done this in the presence of Ms Maria. They did not generally work together. The fact that Mr Reno was the person who took the massage table to the plaintiff's room that evening was purely fortuitous. He testified that normally the massage table was taken up by one of his subordinates but, on that particular day, his subordinate was on his dinner break and therefore Mr Reno took the table up himself. Whilst Mr Reno had set up a massage table a few times after he joined the hotel in June 2007, this was not a common occurrence for him. Ms Maria was a long established employee of the hotel while Mr Reno was much younger and a relatively new employee. The chances of them being in cahoots or of him taking the risk that Ms Maria would not blow the whistle on him if he went into the bedroom and the Ring was subsequently discovered to be lost, are, to my mind, extremely small.

69 Fourth, the links in the evidentiary chain of the plaintiff's hypothesis are tenuous and based on weak evidence. For example, the plaintiff highlighted that there was a 38 second phone call at 7:00pm reflected in the call log for the suite. However, it is not clear from the closing submissions what point the plaintiff was trying to make based on the phone call – the plaintiff seemed to be insinuating that Ms Maria made this phone call to tell Mr Reno that she had taken the Ring, and to instruct him to pick up the Ring after she dropped it off in the staff pantry. The plaintiff did not, however, adduce further evidence about the phone call or attempt to uncover further details about it in cross-examination. It was not clear from the call log whether it was an incoming or outgoing call, or whether it was made to the staff pantry room or to Mr Reno's phone number. Furthermore, if this was the plaintiff's case theory, it should have been put to Ms Maria and Mr Reno to give them an opportunity to refute the allegations. This was not done by counsel for the plaintiff during his cross-examination of Ms Maria. The bare fact that a phone call was made has weak evidentiary value as no further details about the call are known. It follows that the plaintiff's insinuation that Ms Maria called Mr Reno to tell him to pick up the Ring is a mere hypothesis without any evidence to support it.

70 The plaintiff also tried to make much of the video of Ms Maria returning to the staff pantry and appearing to drop something on the floor. It is not clear from the video footage, however, what Ms Maria put down on the floor. Ms Maria maintained that she had been looking for a nice paper bag and had dropped the docket for the massage. Counsel for the plaintiff did not put it to Ms Maria that

the item she had dropped on the floor was the Ring, and he thus failed to give her an opportunity to respond to this grave allegation.

71 Fifth, there was no evidence that once the massage started, Ms Maria was ever away from the plaintiff's side, albeit the plaintiff stated in her closing submissions that "the evidence indicates that Ms Bass had fallen asleep during the massage." It appears that the plaintiff was trying to suggest that Ms Maria had a very large window of time during which she could have stolen the Ring. This conclusion appears to be an overly sweeping one. From the evidence, it is not actually clear whether the plaintiff was asleep during the massage. The plaintiff herself did not state anywhere in her evidence that she was asleep during the massage. It was not mentioned in her AEIC or during the course of her oral evidence in court. If this had indeed happened, one would have expected the plaintiff to mention it at some point in the course of giving evidence.

72 The submission was based on Ms Maria's statement that she could not tell whether the plaintiff was asleep during the massage because the plaintiff's face was facing downwards. This evidence does not establish that, objectively, the plaintiff was actually asleep. Even if I assume that the plaintiff did fall asleep at some point in the massage, the plaintiff cannot have been asleep throughout the entire hour as she would have had to wake up and turn over for Ms Maria to massage her front. Ms Maria testified that the plaintiff did indeed do so, stating that she "turn over after he---complete the back massage."

73 Careful examination of Ms Maria's evidence reveals that it is inconclusive as to whether the plaintiff was asleep during the massage. The strongest piece of evidence that the plaintiff attempted to rely on was the following portion of Ms Maria's testimony:

Q: Is it usual that a guest falls asleep during a massage?

A: I don't understand you.

Q: Well, when you – when you are giving a guest a massage, is it you –

A: Yes.

Q: -- is it usual –

A: Yes.

Q: -- that, you know, the – the guest falls asleep?

A: Sometimes, yes.

74 However, all that Ms Maria actually conceded was that, in general, guests have been known to fall asleep during massages. It is a leap of logic for the plaintiff to extrapolate from this statement that in this specific instance, the evidence clearly indicates that she was asleep during the massage. Finally, it was not put to Ms Maria that she stole the Ring while the plaintiff was asleep, and Ms Maria had no opportunity to defend herself against this accusation.

75 Coming to the issue of whether Mr Thong could have converted the Ring, the plaintiff's difficulty here is that her version of events in relation to Mr Thong's presence in the suite is not credible. If Mr Thong's own version of events is accepted rather than the plaintiff's, then Mr Thong would not have had the opportunity to convert the Ring.

76 As stated earlier, the plaintiff never once mentioned before the trial that she was in the shower when Mr Thong came to deliver her room service order or that she had returned to the shower and asked him to let himself out. It was not mentioned in her pleadings nor in her contemporaneous e-mails to the defendant and to the police. If Mr Thong had let himself out, this would have been an extremely important fact as it would have given rise to a higher probability of his being able to take the Ring from the bedroom without the plaintiff realising it. Conversely, if the plaintiff did indeed let Mr Thong out of the suite after signing the room service bill, he would not have had any opportunity to enter the bedroom and take the Ring since he would have been in the plaintiff's presence throughout the period he was in the suite. It would have been logical for the plaintiff to have mentioned this in the statements she made to the police at the time or in the e-mails that she sent out shortly afterwards since she was trying her best to assist the police and the defendant in their investigations.

77 The plaintiff herself conceded during cross-examination that it would have been logical for her to mention at that point that she had asked Mr Thong to let himself out and had returned to the shower, and that she had failed to do so.

> Q: And this material point that "at that point I was showering in the bathroom" [you] could have said that the butler was in the room and he helped himself out of the door. Wouldn't it have been a logical thing to say at that point in time when you are thinking and you remembered the showering?
>
> A: I think you are correct. It – it certainly appears that way.
>
> Q: But it's not there.
>
> A: I agree it's not there.

She also conceded that this was material information that would have been pertinent for her to mention in the e-mail:

> Q: …as you said, the purpose of the email is to identify people who came into your room, correct?
>
> A: That is correct.
>
> Q: And would it not be pertinent that this is the time for you to add this very material information?
>
> A: I agree that it would appear that way, yes.

78 The plaintiff had multiple opportunities to raise the point that Mr Thong was in the suite unsupervised when she went back to the shower. In contrast, when asked in the interrogatories to state if Mr Reno and Ms Maria were only in the sitting room of her suite when they came to set up the massage table, she specifically mentioned that there was a brief period when she went into the bathroom to change and was thus unaware of their whereabouts during that time.

79 In contrast, Mr Thong's evidence on what had occurred appeared credible. His evidence that the plaintiff had let him out of the room was supported by reference to hotel policy that employees must leave the room in full view of the guest. Although he did admit that often guests let him see himself out this does not mean that his memory in this case was in error. Quite apart from the hotel

policy, he would have had cause to recall the details of his interaction with the plaintiff shortly thereafter because of the fuss that ensued when she discovered her Ring was missing and the fact that he had to answer questions from the hotel security staff and the police at that time. Mr Thong's evidence was consistent and coherent overall and there were no sudden changes in his recollection.

80 Mr Thong also appeared to have an extremely clear memory of the incident supported by detailed recollection: he stated that he was very near the door, such that after she had signed the bill, the plaintiff let him out of the door. Additionally, Mr Thong did not attempt to conceal facts that at first blush may not appear favourable to him. First, he stated clearly that the plaintiff was wearing a robe (which would seem to suggest that she might have been in the shower), although he also stated that her hair was not wet. Second, he stated that he could not clearly remember whether the door between the sitting room and the bedroom was open, although he could very easily have categorically denied that the door was open, which would have been more convenient for his case.

81 Further, the brief time that Mr Thong was in the suite makes it highly unlikely that he took the Ring. The security tape recordings revealed that he was only in the suite for one minute and 19 seconds. The plaintiff herself confirmed that she was sure that he was there for a very short time to deliver the room service table, fix it up and then leave. It is also unlikely that he would have seen the Ring when he entered the sitting room. By the plaintiff's own evidence, she would not have been wearing the Ring on her hand when she opened the door for Mr Thong as she had just emerged from the shower and she did not attempt to put it on after she took it off for the massage until just before she was ready to leave.

82 There was no evidence as to the position of the bedroom door at the time when the plaintiff let Mr Thong into the suite. Even if it is assumed that the door was fully open and the Ring was plainly visible on the dressing table, I think it is unlikely that Mr Thong would have seen the Ring among the pile of jewellery the plaintiff had put there, formed the intention to steal it, waited for the plaintiff to return to the shower, dashed into her bedroom and taken the Ring (leaving behind the earrings and bracelet) all within less than a minute and 19 seconds. The plaintiff herself acknowledged in court that it was unlikely that Mr Thong would have the temerity to enter her bedroom and take the Ring while she was in the room. In fact, she went further than this and acknowledged that it was unlikely that any hotel staff member would take anything from a client's room while the client was in the room. This concession applied as much to Ms Maria and Mr Reno as to Mr Thong.

83 On an assessment of the evidence, I find that the plaintiff has not established on a balance of probabilities that the Ring was stolen by Ms Maria, or Mr Reno and Ms Maria acting together, or by Mr Thong. I should also state that this conclusion fortifies my finding that in all probability the Ring was not within the *hospitium* of the hotel on the night in question. It was not found there after several searches conducted both by the plaintiff and the staff of the hotel. Since the likelihood of it being stolen by the three employees who entered the room that evening is extremely low, the more probable reason for it not being found in the suite is that it was never there in the first place.

Whether the Ring was lost through the default or neglect of the defendant

84 The plaintiff alleged that quite apart from possible conversion by the staff, the Ring was lost because the defendant was negligent in failing to take adequate steps to recover the Ring after the plaintiff reported that it was missing. The particulars of this allegation were that:

(a) There was a negligent failure to investigate promptly;

(b) The hotel's security staff passed the responsibility of investigating to the police;

(c) The defendant misled the police into thinking that it was in the process of investigating the loss; and

(d) The hotel staff was not informed that the plaintiff had offered a reward for information leading to the recovery of the Ring.

85 In respect of the first particular, the plaintiff submitted that the manager on duty, Mohammad Farid Bin Mohd Noor ("Mr Farid"), knew at 10.15pm that the Ring was missing. Although he informed security immediately, he did not tell them what sort of ring it was nor did he bother to ask the plaintiff for details of the Ring. Secondly, it was asserted that the defendant accepted that the hotel staff could be dishonest and that theft was not uncommon. Third, Mr Farid had ascertained from the plaintiff that three members of the staff had been in her room that evening. Yet, the three employees were not even interviewed that night nor were the video tapes produced by the CCTV system checked. The plaintiff thus asserted that Mr Rena and Ms Maria were allowed to leave the hotel without being searched as if nothing had happened.

86 The plaintiff alleged that when the investigations commenced the next day, the security staff approached the job in a careless fashion. Mr Rajendran s/o Vasavan ("Mr Rajendran"), the defendant's assistant security manager, was provided with a "Loss and Found Report" of the incident ("the Report") on the morning of 7 February 2009. The Report indicated that the plaintiff's door access card had been "erased from list" and the plaintiff complained that Mr Rajendran did not find it necessary to investigate why this had been done when she was still in the hotel. It eventually surfaced that it was a clerical error but the plaintiff criticised Mr Rajendran's "careless readiness to assume that this was an innocent error" as reflecting the hotel's lackadaisical attitude towards the entire investigation. Further, an investigation diary ("the Diary") based on viewings of the security tapes was prepared. It turned out that parts of the Diary were inaccurate because, although it noted that a female room assistant had entered the corridor leading to the suite at 9.36pm on 6 February 2009, it did not record that subsequently this room assistant had a conversation with Mr Thong in the corridor outside the suite.

87 The plaintiff also raised questions about the CCTV footage taken from the security cameras and the plaintiff's attitude to the same. First, while there were two doors leading to the plaintiff's room, the Diary was prepared without viewing the tapes from the camera covering the back door. Subsequently, when this footage was looked at, no notes were made on what was observed and Mr Rajendran's explanation was that if there was no movement, no note would be put into the Report. Second, the original CCTV footage was automatically deleted after a month. The hotel did not take any steps to preserve the footage. Instead, what was done was that one of the hotel staff made a record of all the movements shown on the tapes that the staff considered relevant and kept that record on a CD. This CD was subsequently given to the hotel's lawyers. As at the time of the trial, the original footage was no longer available.

88 As for the other particulars, the plaintiff emphasised that Mr Rajendran had testified that after the plaintiff had made her police report, he had not conducted any further interviews of Ms Maria because the defendant did not find anything unusual on the CCTV footage and also because the matter had been handed over to the police. He also said that as far as the hotel's investigations were concerned, it would cease the same after interviewing all the staff, and would then assist the police as and when they needed help. In this regard, the hotel would give the police whatever they asked for. The plaintiff also complained that the hotel's security staff did not even bother to follow up with the police until prodded to do so by the plaintiff or her friends. Finally, it appeared from an e-mail dated 13 February 2009 that the police were expecting to be updated regarding the hotel's further findings after its staff had worked on the security recordings. However, although the hotel's security

staff were aware of this expectation, they did not inform the police that they ceased their investigations on 10 February 2009. On 6 March 2009, Mr Pinto, the director of security, merely informed the police that although the hotel's security staff had done its level best to scrutinise the CCTV recordings, they had been unable to "capture any leads" that would assist them in solving the case.

89 The plaintiff's complaints about the inadequate response of the security staff to the report of the loss of the Ring are not, in my view, justified. First, the complaint that they should have interviewed Ms Maria, Mr Reno and Mr Thong on the night of 6 February 2009 itself and should have searched them before they left the hotel is an afterthought. This is because the plaintiff herself did not make any allegation of theft when she discovered that the Ring was missing. The next day, she even asked for Ms Maria to conduct another massage on her. That request must indicate that the plaintiff had no suspicions of Ms Maria at that time.

90 The Report contains the details of what transpired when the plaintiff first reported the loss. The relevant portions relating to events on 6 February 2009 (the Report was produced the next day) state thus:

> AM Farid received a call from Bellman Jegan at about 2215hrs that guest had allegedly lost her gold ring which guest only realised before departure from the suite. ...
>
> Finding
>
> AM Farid met up with guest in the suite and was told by guest that she could not recalled [sic] where she had placed her gold ring.
>
> Butler Jeremy and Bellman Jegan were also in the suite to assist with the luggage for departure.
>
> Guest mentioned that she returned to her suite in the afternoon at about 1400hrs and had not left her suite since but remembered taking out the ring.
>
> Guest also informed AM Farid that no one else entered her suite except for an in-room massage at 1730hrs for one hour and a room service order served by Butler Jeremy at 2130hrs.
>
> The in-room massage took place in the living room of the suite and was conducted by Masseuse Maria.
>
> Guest also informed AM Farid that she did not suspect anyone as most of the time she was in the suite.
>
> ...
>
> AM Farid then offered assistance to look for the ring together in her presence but guest requested for privacy while she checked the rest of the luggage as she felt nervous with the hotel [sic] around.
>
> ...
>
> Guest called for AM Farid again at about 2245hrs and mentioned that she still could not find the ring.
>
> ...

Guest thanked AM Farid and reiterated that she strongly believed that the ring is within the suite and no one had taken it as she knows very well that Shangri-la is a very safe and high-security hotel.

91 The account in the Report was corroborated by the affidavit evidence of Mr Farid, Mr Jega and Mr Thong, all of whom heard the plaintiff say that she had misplaced the Ring. The first persons to hear the complaint were in fact Mr Jega and Mr Thong. Mr Jega testified that when he went into the sitting room to call Mr Farid to tell him about the loss, the plaintiff had asked him to help her look for the Ring and he then had a look around the sitting room but had not found anything. All three men deposed that the plaintiff had not made any allegations of theft against any of the staff and had simply told them that she had misplaced the Ring. Mr Farid testified that she had indeed told him that she believed that the Ring was within the suite. Subsequently the plaintiff herself told investigation officer, Quek Kwong Boon ("IO Quek"), in an e-mail that she found it hard to believe that Ms Maria would have been involved in the disappearance of the Ring.

92 I should add that the plaintiff's failure to raise the possibility of theft at the first possible opportunity, *ie*, when Mr Farid arrived at the suite, instead asking for time to search her luggage alone again, gives rise to a different inference. This is that at that time, unlike later, the plaintiff had no clear memory of placing the Ring on the dressing table just before the massage, and thought it might have been in her bags or elsewhere in the room.

93 In this context where the plaintiff had explicitly told the hotel staff that she did not believe the Ring had been stolen, it would not be correct to find the defendant negligent because the security staff failed to interview and search the employees immediately. Indeed, by the time the plaintiff reported the loss to the hotel staff and her second search was completed it was already 10.45pm. It would have been difficult at that stage to interview both Ms Maria and Mr Reno as their shifts ended at 1100 pm and they left the hotel shortly thereafter. Further, it was the defendant's Ms Lee who advised the plaintiff to make a police report the next day. As a result, the police went to the hotel on 7 February 2009 to search the room and to interview the relevant employees. The defendant's security staff also interviewed all three employees on 9 February 2009.

94 When informed about the disappearance of the Ring, the hotel staff were quick to assist the plaintiff in conducting an investigation. Mr Pinto testified that the hotel had a standard operating procedure in place for investigation into all room losses and missing property during a guest's stay there, *viz*:

(a) Interviewing of the guest

(b) Searching the room with the guest's consent

(c) Retrieving the door lock reading of the room

(d) Viewing the closed circuit television footage

(e) Interviewing the defendant's staff concerned (if any)

(f) Submitting incident reports

(g) Advising the guest to lodge a police report

95 This procedure was strictly complied with in this case. The members of the hotel staff who gave evidence testified that they had helped search the plaintiff's room and had not found the Ring. This was not denied by the plaintiff, who also described in her AEIC how the hotel staff had assisted her with the searches. It is telling that in a contemporaneous email to Ms Lee dated 9 February 2009, the plaintiff commended the hotel for providing her with excellent assistance:

> Thank you for your kind assistance (and that of your very helpful staff) in this unfortunate matter. I truly regret that this should happen at your hotel where the staff were gracious, efficient and most attentive to my comfort.

96 Additionally, the hotel security team was cooperative with the police throughout the investigation, as reflected in the email correspondence between the hotel and the police. This was the correct procedure. The hotel security staff are there to see to the security of the hotel and its guests but they are not professional investigators. Their obligation was to co-operate with the police and not to interfere in the investigative process. I think that the criticism of the hotel staff as being negligent and lacking in the way they conducted the investigation is unwarranted. They did what they could. They interviewed the staff, reviewed the CCTV footage and reported to the police that the same did not produce any leads that would help in the investigation. Further, having in accordance with their normal procedure made a record of all movements observed, they had given this CD to their lawyer and thus preserved part of the evidence.

97 The plaintiff had a tendency to make sweeping conclusions that were not supported by the evidence cited. As noted above, she had asserted that the hotel had accepted that its staff could be dishonest and that theft was not uncommon. The evidence she relied on in this regard did not, however support that assertion. The relevant portion reads as follows:

> Q: So you have staff –
>
> A: Likewise if we –
>
> Q: - who take things of – at – away from the hotel?
>
> A: Yes, they do.
>
> Q: Quite often?
>
> A: No.
>
> Q: Because you have the safety – you have the security procedures in place?
>
> A: Yes, right. [emphasis added]

98 The conclusion that one can draw from the above testimony is that theft by hotel staff is not something that happens often due to the security procedures the hotel has in place. This excerpt does not suggest that theft was not uncommon, and it does not amount to an admission by the defendant to that effect.

99 While there is perhaps some merit to the point that the defendant could have been even more meticulous in various aspects of how it conducted its investigations, such as ensuring that all the original CCTV footage of the areas outside the staff pantry and the plaintiff's suite for the period of twenty-four hours after the loss was not automatically erased from the system after a month, the

hotel's conduct of the investigation was far from negligent to the point that one could find that the Ring was stolen or lost through the "default or neglect of the innkeeper or any servant in his employ." It is also worth pointing out that since the police did not alert the defendant to the desirability of keeping the original CCTV footage intact, it is hard to fault their failure to do so.

100 In my judgment, the plaintiff has failed to discharge the burden on her to show that the Ring was lost through the neglect or default of the defendant or its staff.

Conclusion

101 I have found that the plaintiff has not established on a balance of probabilities that the Ring was within the *hospitium* of the hotel on 6 February 2009. I have found that the Ring was not lost through the wilful default of any member of the defendant's staff. I have also found that it was not lost through the neglect of the defendant or its staff. Accordingly, even assuming *arguendo* that the Ring was in fact lost in the *hospitium* of the hotel, the defendant would be entitled to limit its liability for such loss to $500. That being the case, there is no need for me to consider the vexed question of what the actual value of the Ring was at the time of its loss.

102 For the reasons given in this judgment, I dismiss the plaintiff's claim with costs.