IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 230

District Court Appeal No 6 of 2019

Between

Kim Hock Corporation Pte Ltd

… *Appellant*

And

Mookan Sadaiyakumar

… *Respondent*

District Court Appeal No 7 of 2019

Between

Mookan Sadaiyakumar

… *Appellant*

And

Kim Hock Corporation Pte Ltd

… *Respondent*

JUDGMENT

[Civil Procedure] — [Pleadings] — [Objections]
[Evidence] — [Proof of evidence] — [Judicial notice]

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v
Kim Hock Corp Pte Ltd and another appeal

[2019] SGHC 230

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27 June 2019

27 September 2019 Judgment reserved.

Dedar Singh Gill JC:

1 This decision concerns two cross-appeals against the District Judge's ("DJ") decision on 18 February 2019 (see *Mookan Sadaiyakumar v Kim Hock Corporation Pte Ltd* [2019] SGDC 34) that Mookan Sadaiyakumar ("the plaintiff") and Kim Hock Corporation Pte Ltd ("the defendant") are equally liable in negligence for a workplace accident on 8 August 2016.

Undisputed facts

2 The defendant is in the business of collecting scrap materials, recycling waste materials, and operating power plants, among other things.[1] A part of its business involves converting waste wood into energy.[2]

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1 AEIC of Joshua Sashiram Lall Hari Lall at para 2.

2 AEIC of Joshua Sashiram Lall Hari Lall at para 2.

3 The conversion process takes place in a boiler furnace where wood is burnt to produce heat. The residual burnt ash from the furnace falls through "rotary valves" and eventually into an ash bin.[3] The rotary valves may on occasion stall or malfunction if the waste material entering the system becomes attached with metallic objects, like nails. This causes the valves to stop operating. A red signal then flashes on the monitor in the Control Room and an alarm is triggered.[4] When this happens, the defendant's shift supervisor sends a worker like the plaintiff to inspect and remove the metallic object lodged in the valve.[5]

4 The rotary valves, once tripped, do not re-start automatically until someone takes active steps to re-start the operation of the furnace involved.[6]

5 It is undisputed that the plaintiff injured several fingers in one of the rotary valves operated by the defendant. The accident took place on 8 August 2016 at the defendant's workplace, 11 Shipyard Crescent. The plaintiff was an employee of the defendant at the material time of the accident.

The decision below

6 The trial before the DJ centred on the issue of whether the defendant was liable to the plaintiff under the tort of negligence for the workplace injury. At trial, the plaintiff testified for himself while the defendant called three witnesses, including the plaintiff's supervisor, Joshua Sashiram Lall Hari Lall ("Joshua").

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3 AEIC of Joshua Sashiram Lall Hari Lall at para 3.

4 AEIC of Joshua Sashiram Lall Hari Lall at para 4.

5 AEIC of Joshua Sashiram Lall Hari Lall at para 4.

6 NE, Day 1, 68:3 – 68:20.

7 The plaintiff's case was that Joshua told him that rotary valve T1 No.3 had tripped. The plaintiff then went to valve T1 No.3 and removed the chamber cover of the inspection chamber. According to the plaintiff, the valve was not in operation at this point in time. He claimed that as he was removing a short steel bar in the housing of the rotary valve, the rotary valve suddenly "came back to life".[7] This caused several fingers on his right hand to be crushed.[8]

8 The defendants' case was that it was not possible for a tripped rotary valve to come back to life unless a certain process was observed. Once a rotary valve tripped, the supervisor had to go to a breaker control panel, which was away from the main control panel, to re-set the breaker, before going back to the main monitor panel to re-set the alarm. Lastly, the supervisor would have to go to the on/off switch to restart the rotary valve.[9] On the defendant's version of events, the plaintiff had gone to the wrong rotary valve, T1 no.3 instead of T2 no.8.[10] Unfortunately for the plaintiff, the former valve was in operation at the time.

9 The DJ did not accept the plaintiff's version of events. This was because the plaintiff's testimony that the rotary valve had come back to life after he began to remove the short steel bar within it was "implausible".[11] The DJ accepted the defendants' evidence that the plaintiff had gone to the wrong furnace, T1 no.3.[12] The plaintiff had failed to notice that T1 no.3 was in a state

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7 AEIC of Mookan Sadaiyakumar at paras 10 and 11.

8 Joint Record of Appeal volume 2 at page 365.

9 AEIC of Joshua Sashiram Lall Hari Lall at para 10b; GD at [12].

10 AEIC of Joshua Sashiram Lall Hari Lall at paras 5 and 6.

11 GD at [15].

12 GD at [20].

of operation and carelessly proceeded to place his hand into the rotary valve's housing chamber.[13]

10 Although the DJ did not accept the central pillar of the plaintiff's case, *viz*. that the rotary valve T1 no.3 had suddenly come back to life as he was removing the foreign object within it, he held that the defendant was partially liable in negligence. After watching a video of the furnaces operating, the DJ observed that the rotary valve would continue to operate even when its chamber door was opened by a worker.[14] The rotary valve did not have an automatic tripping system which stopped the operation of the machine when the chamber door was opened.[15] In the DJ's view, the operation of the machine in such a manner failed to take into account staff safety and was unsafe. The defendant was therefore negligent.[16] After assessing both parties' relative blameworthiness, the DJ apportioned liability between them at 50:50.[17]

The parties' cases

The defendants' case

11 The defendant's first submission was that the fact of the failure of the rotary valve to have an "automatic tripping system" was not adequately pleaded.[18] The plaintiff also failed to provide any evidence in his affidavit that the rotary valve system was unsafe.[19] The plaintiff did not run his case at trial

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13 GD at [20].

14 GD at pp 8 – 9.

15 GD at p 11.

16 GD at [30].

17 GD at [32] – [35].

18 Appellant's Case in DCA No 6 of 2019 at para 8.

19 Appellant's Case in DCA No 6 of 2019 at para 9.

on the basis that the rotary valve system was unsafe, and simply "chanced" on a comment made by the DJ at trial.[20]

12 The defendant's second submission was that the finding of liability, which was based on the absence of an automatic tripping system in the rotary valve, could not have been made on the basis of "judicial notice".[21] It was not specifically pleaded or proved to be "so obvious" that any reasonable and prudent employer would have installed such a system.[22]

13 The defendant also counterclaimed for 100% of the medical expenses incurred by, and medical leave wages paid out to, the plaintiff. This was on the basis that the plaintiff had been unjustly enriched.[23]

The plaintiff's case

14 The plaintiff raised a number of matters which in his view the DJ failed to take into account in arriving at his decision.[24] These may be classified into the following broad submissions.

(a) The rotary valve which tripped was valve T1 no.3 and not valve T2 no.8. The DJ was wrong to conclude otherwise.[25]

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20 Appellant's Case in DCA No 6 of 2019 at para 10.

21 Appellant's Case in DCA No 6 of 2019 at para 21.

22 Appellant's Case in DCA No 6 of 2019 at para 32.

23 Defence and Counterclaim (Amendment No 1) at para 4.

24 Appellant's Case in DCA No 7 of 2019 at para 16.

25 Appellant's Case in DCA No 7 of 2019 at para 16(b) to (d).

(b) The defendant had failed to effectively communicate to the plaintiff the correct identity of the rotary valve that he was supposed to work on.[26]

(c) Someone in the control room had re-started the rotary valve when the plaintiff was removing the steel bar from the rotary valve. Alternatively, the rotary valve re-started on its own, causing the plaintiff's fingers to be crushed.[27]

(d) The defendant disregarded the manufacturer's manual by failing to install an emergency on/off switch at the rotary valve, and by ignoring the possibility that the valve would suddenly start up.[28]

15 Lastly, the DJ was wrong to find that the plaintiff had been "unthinking and almost reckless" and therefore contributorily negligent.[29]

Issues to be determined

16 I deal with both appeals holistically. The following issues arise.

17 First, whether the DJ was correct in finding that the plaintiff had gone to the wrong rotary valve, *ie*, T1 no.3 instead of T2 no.8.

18 Second, whether the plaintiff's submission that the defendant had failed to install an automatic tripping mechanism in the rotary valve had been adequately pleaded.

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26 Appellant's Case in DCA No 7 of 2019 at para 16(a).

27 Appellant's Case in DCA No 7 of 2019 at para 16(j).

28 Appellant's Case in DCA No 7 of 2019 at paras 16(h)(i).

29 Appellant's Case in DCA No 7 of 2019 at para 14.

19 Third, whether there was sufficient evidence of the defendant's negligence.

20 Fourth, whether the DJ was entitled to take "judicial notice" of the "fact" that the furnace was unsafe because the rotary valve did not have an automatic tripping mechanism.[30]

21 Fifth, whether the defendant's counterclaim for unjust enrichment was adequately pleaded.

The decision

Whether the DJ was correct in finding that the plaintiff had gone to the wrong rotary valve

22 The plaintiff highlighted the following matters, *inter alia*, that the DJ failed to take into account in finding that the plaintiff had gone to the wrong rotary valve, *ie*, T1 no.3:

(a) in the notification of accident lodged by the defendant with the Ministry of Manpower ("the i-report"), the defendant did not report that the plaintiff had gone to the wrong rotary valve;[31]

(b) the accident and incident report prepared by the defendant's investigation team, consisting of Work Safety & Health Officer Arun

30 Appellant's Case in DCA No 6 of 2019 at para 32.

31 Appellant's Case in DCA No 7 of 2019 at para 16(c); Record of Appeal, Volume 3, pp 399 – 401.

and Plant Engineer Clement, stated that rotary valve T1 no.3 was not in motion at the time of the accident; and[32]

(c) during cross-examination, Sunderesan Sanmugam (DW2), testified that he concurred with everything that was stated in the i-report.[33]

23 In my view, none of the above matters demonstrate that the DJ was wrong in concluding that the plaintiff had gone to the wrong rotary valve. Even if the i-report fails to mention that the plaintiff had gone to the wrong rotary valve, the plaintiff's case that the rotary valve had suddenly "come back to life" as he was removing the steel bar from the chamber is inherently improbable or near impossible. Given the nature of the process required before a tripped rotary valve can "come back to life" – this requiring all three of the breaker, alarm, and on/off switch to be manually switched back on – I agree with the DJ that the rotary valve which the plaintiff had gone to could not have "tripped" at the material time of the accident. The only logical explanation is that the plaintiff had gone to a rotary valve which was in a state of operation at the time. I note that the plaintiff himself agreed at trial that the rotary valve could not simply re-start on its own unless a certain process was followed.[34]

24 There is simply insufficient evidence supporting the plaintiff's claim that the valve that he had first gone to was tripped and subsequently "came to

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32 Appellant's Case in DCA No 7 of 2019 at para 16(d); Record of Appeal, Volume 3, pp 538 – 539.

33 Appellant's Case in DCA No 7 of 2019 at para 16(d); Record of Appeal, Volume 1, pp 217 – 219.

34 NE, Day 1, 68:3 – 68:20.

life". During the oral hearing,[35] counsel for the plaintiff highlighted that the rotary valve manual contained a singular line stating "sudden start-up of valve can cause serious injury".[36] According to him, this line was sufficient to show a possibility that the valve could be re-activated on its own. In my view, the word "sudden" does not imply that the valve could be re-activated on its own without human intervention. Even if I took the manual to be saying this, it does not provide evidence of how likely this is, or under what circumstances such autonomous re-activation might take place. Short of such evidence, I cannot entertain the plaintiff's case that the rotary valve had come to life on its own.

Whether the plaintiff's submission that the defendant had failed to install an automatic tripping mechanism was adequately pleaded

25 A party is required by O 18 r 7(1) of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) to set out in his pleadings all material facts on which he relies for his claim. The fundamental purpose of pleadings is to define the issues and inform the opponent in advance of the case he has to meet, so that he may take steps to deal with the case: *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 at [168]; *Farrell (formerly McLaughlin) v Secretary of State for Defence* [1980] 1 WLR 172 at 180. This will prevent parties from being caught by surprise at trial: *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 at [76].

26 In *China Construction (South Pacific) Development Co Pte Ltd v Shao Hai* [2004] 2 SLR(R) 479 ("*China Construction*"), the plaintiff was involved in a fight at the work site, which resulted in him suffering hand fractures. The plaintiff sued the defendant for negligence at common law, claiming that it had,

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35 NEs, 27 June 2019, page 14, lines 5 to 31.

36 Record of Appeal, Volume 3, pp 488 and 499.

inter alia, failed to provide a safe system of work. After the trial, the district judge made a finding that there was "chaos" in the defendant's system of work because a tower crane had broken down. In his view, this gave rise to a "volatile mix". This arose from the fact that the metal workers had to work in close proximity with the carpenters; the two groups would be working at a height and it would therefore be extremely likely that they would get in each other's way (at [25]). In the plaintiff's Statement of Claim, it had been pleaded that the system of work was unsafe because the defendant had (at [26]), "(a) given deadlines to its workers which put them under pressure; (b) failed to provide sufficient formwork and/or make formwork easily accessible; and (c) failed to train its workers to follow proper procedures and not take formwork away from another worker". On appeal, Prakash J (as she then was) noted that the finding of the judge that there had been a "volatile mix" was not raised in the pleadings or affidavit. The allegations in relation to the "volatile mix" were raised only in cross-examination and it was held that they ought to have been rejected by the district judge. Given that a court is not allowed to give a decision on material facts which have not been pleaded, Prakash J rejected the district judge's finding that there had been a "volatile mix" (at [26] and [27]).

27 Like *China Construction*, I find that the DJ here similarly made a decision on a fact which had not been pleaded*, ie*, the defendant's failure to install an automatic tripping mechanism.

28 In the DJ's view, the defendant's failure to install an automatic tripping mechanism in the rotary valves was adequately pleaded at paragraph 9(a) and 9(b) of the plaintiff's Statement of Claim. The pleading reads:

> a. In breach of Section 11 of the [Workplace Safety and Health Act], failing to fulfil the duty of the occupier by taking such reasonably practicable measures to ensure that the workplace of the [plaintiff] and all plant, machinery and equipment kept

> in the factory were safe and without risk to health of the [plaintiff];
>
> b. In breach of section 12(1) and 12(3) of the [Workplace Safety and Health Act], failing to fulfil the duty of the employer by providing and maintain [*sic*] for him a safe and adequate work environment as regards facilities and arrangements for his welfare at work.

29 In its respondent's case for DCA No 6 of 2019, the plaintiff submitted that it had elaborated on its position that the defendant had failed to install an automatic tripping mechanism at paragraphs 9(f), 9(i), 9(j) and 9(n) of its Statement of Claim.[37] They read as follows:

> f. Failing to ensure that the valve would not suddenly rotate while the [plaintiff] was carrying out the task;
>
> i. Failing to ensure that the operator would not suddenly re-activate the rotation of the valve while the [plaintiff] was carrying out the task;
>
> j. Failing to ensure that the operator give any or any sufficient notice or warning to the [plaintiff] before re-activating the rotation of the valve; and
>
> n. Failing to establish a safe system of work for the removal of ash item [*sic*] in the Factory and to ensure that the [defendant's] employees, servants and/or agents strictly comply with that system.

30 In my view, the pleadings at paragraphs 9(a) and 9(b) of the plaintiff's Statement of Claim are less than adequate. Both paragraphs are too general, and mention nothing of the defendant's failure to install an automatic tripping mechanism in any of the rotary valves. It is not possible for the defendant to be aware of this aspect of the plaintiff's case on the basis of such general pleadings. The plaintiff's entire case at trial had nothing to do with the defendant's failure to install an automatic tripping mechanism. Although the plaintiff's counsel asked questions relating to the various safety features that were allegedly absent

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37 Respondent's Case in DCA No 6 of 2019 at para 5.

in the rotary valve system, he failed to specifically query about the defendant's failure to install an automatic tripping mechanism. In any event, the plaintiff cannot escape the consequences of inadequate pleading by pointing to the fact that he had raised the unpleaded facts during cross-examination. I also observe that the failure to install the automatic tripping mechanism was not mentioned in the plaintiff's affidavit. Given the circumstances, I cannot hold that the pleadings at paragraphs 9(a) and 9(b) are adequate to support the plaintiff's belated allegation. Paragraphs 9(f), 9(i) and 9(j) do not speak of this aspect of the plaintiff's case, which is that the defendant failed to install an automatic tripping mechanism if someone was to open the rotary valve. They instead refer to the defendant's failure to ensure that the valve would not suddenly rotate or suddenly re-activate. As for paragraph 9(n), this was again too general and mentions nothing of the defendant's failure to install an automatic tripping mechanism. As I have stated above, the purpose of pleadings is to define the issues with sufficient particularity so that the opponent can take steps to deal with the case and is not caught by surprise. In this case, the phrase "failing to establish a safe system of work" is capable of encompassing a very broad range of matters and does not permit the defendant to know in advance the case which it has to meet.

31 I note that there had been no application to court for an amendment of the pleadings. Having determined that the existing pleadings are inadequate, and given that a judgment cannot be allowed to stand on an unpleaded point (see *China Construction* at [26]), I allow the defendant's appeal. Accordingly, I also dismiss the plaintiff's appeal against the DJ's finding of contributory negligence.

Whether there was sufficient evidence of the defendant's negligence

32 Even if I am wrong on the pleadings point, there is insufficient evidence to prove negligence on the defendant's part in failing to install an automatic tripping mechanism for the rotary valve machines.

33 It is trite law that in order to succeed in a claim under the tort of negligence, a claimant has to establish that (a) the defendant owes the claimant a duty of care; (b) the defendant has breached that duty of care by acting (or omitting to act) below the standard of care required of it; (c) the defendant's breach has caused the claimant damage; (d) the claimant's losses arising from the defendant's breach are not too remote; and (e) such losses can be adequately proved and quantified: *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 at [21].

34 In my view, the plaintiff has not proved that the defendant has breached the duty of care owed by acting below the standard of care required of it. The standard of care is the general objective standard of a reasonable person using ordinary care and skill: *Miah Rasel v 5 Ways Engineering Services Pte Ltd* [2018] 3 SLR 480 at [30]. A number of variables go towards determining the appropriate standard of care: the likelihood and risks of harm, the extent of harm, the costs of avoiding the harm, the defendant's conduct of activity, the hazard or danger posed to the plaintiff and the industry standards or common practice (see *BNM (administratrix of the estate of B, deceased) on her own behalf and on behalf of others v National University of Singapore and another* [2014] 2 SLR 258 at [63] citing Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2011) at paras 5.013–5.035). In this case, there was no evidence adduced by the plaintiff to show that the industry practice required the defendant to install rotary valves with an

automatic tripping mechanism. I also observe that the rotary valve machines were being sold commercially without an automatic tripping mechanism, *ie*. there was no indication by the plaintiff that there was an automatic tripping mechanism commercially available in the market, and that the defendant was careless in failing to procure it. Under the circumstances, I find that the defendant had not breached its duty of care owed to the plaintiff. The plaintiff has therefore failed to prove one of the essential elements in a claim for negligence.

Whether the DJ was entitled to take judicial notice

35 The law on judicial notice was extensively canvassed in *Zheng Yu Shan v Lian Beng Construction (1998) Pte Ltd* [2009] 2 SLR(R) 587 at [19] to [33] ("*Zheng Yu Shan*"). I summarise the important principles.

36 Section 59 of the Evidence Act (Cap 97, 1997 Rev Ed) ("the EA") provides an exception to the general rule that all facts in issue and all relevant facts must be proved by evidence. This provision allows the court to take judicial notice of certain categories of facts.

37 It has been held that the draftsman's clear intention was not to provide in s 59 of the EA an exhaustive list of facts of which judicial notice may be taken, and that it is therefore permissible to apply the common law doctrine of judicial notice to determine which matters outside the confines of ss 59(1) and 59(2) are judicially noticeable (see *Zheng Yu Shan* at [24]).

38 At common law, there are two broad categories of facts of which judicial notice may be taken. The first are facts which are so notorious or so clearly established that they are beyond the subject of reasonable dispute. The second category comprises specific facts which are capable of being immediately and

accurately shown to exist by authoritative sources (see *Zheng Yu Shan* at [25] and [27]). A fact is considered notorious or clearly established if (Sudipto Sarkar & V R Manohar, *Sarkar's Law of Evidence* (Wadhwa & Co, 16th Ed, 2007) at p 1133, cited in *Zheng Yu Shan* at [27]):

> …its existence or operation is accepted by the public without qualification or contention. The test is whether sufficient notoriety attaches to the fact involved as to make it proper to assume its existence without proof. The fact that a belief is not universal, however, is not controlling, for there is scarcely any belief that is accepted by everyone. Those matters familiarly known to the majority of mankind or those persons familiar with the particular matter in question are properly within the concept of judicial notice.

39 At [30] of the GD, the DJ stated:

> I was of the view that either (a) a chamber cover which could be opened while the furnace was operating, without triggering a trip, or (b) a furnace was one whose cover could open while it was operating, *simply failed to take account of staff safety*. It was an obvious omission. On either account, the furnace was unsafe and the defendant was negligent. …
>
> [emphasis added]

40 Although the DJ did not use the term "judicial notice", the defendant characterised the finding of fact above as being based on judicial notice. The defendant submitted that:[38]

> 27. …The DJ had erred when he failed to realise that his concerns [of safety] ought to be addressed by way of hard evidence and not by an assumption. If the concern on the "automatic trip system" was notorious or obvious, why would the manufacturers who designed and manufactured the furnace not install the "automatic trip system"?…
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> 32. …The DJ erred in law and fact when he made the finding that the failure to install the automatic tripping system had rendered the furnace unsafe. …

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[38] Appellant's Case in DCA No 6 of 2019 at paras 27 and 32.

41 I am also of the view that the DJ took judicial notice, even though this was not explicitly stated. It is apparent from the GD that the DJ did not arrive at the finding that the furnace was "unsafe" based on any evidence which was adduced. Indeed, there was no evidence available before the court that the furnace was unsafe because of the defendant's failure to install an automatic tripping mechanism.

42 Based on [30] of the GD, it appears that what the DJ took judicial notice of was the "fact" that the furnace was *unsafe* on account of the defendant's failure to install an automatic tripping mechanism. This "fact" does not fall within any of the enumerated categories of facts under s 59 of the EA. Despite the DJ's suggestion at [30] of the GD that the lack of an automatic tripping mechanism and the fact that the furnace did not stay locked even when it was in operation was "an obvious source of danger", the safety of the furnace is clearly not a fact which is so notorious or so clearly established that it is beyond the subject of reasonable dispute. The safety, or the lack thereof, is a fact-sensitive assessment to be made on a holistic consideration of all the evidence adduced. It is clear that such specific "facts" are not intended to fall within the first category at common law. In this case, the plaintiff also failed to point to any authoritative source which would enable me to take judicial notice of the fact that the defendant's failure to install the automatic tripping mechanism was unsafe. Thus, this fact cannot fall within the second category of judicially noticeable facts set out in *Zheng Yu Shan* as well.

Whether the defendant's counterclaim in unjust enrichment was adequately pleaded

43 The DJ below, relying on *Alam Jahangir v Mega Metal Pte Ltd* [2018] SGHC 198 at [11]–[13], ordered the plaintiff to pay 50% of the medical

expenses and medical leave wages. On appeal, the defendant seeks 100% of the sums expended. This counterclaim for the said sums is premised on "unjust enrichment".[39] In my view, this has not been adequately pleaded.

44 As I have stated above at [25], a party is required by O 18 r 7(1) of the Rules of Court to set out in his pleadings all material facts on which he relies for his claim. In an unjust enrichment claim, this includes pleading the specific unjust factor upon which the defendant relies. In *Red Star Marine Consultants Pte Ltd v Personal Representatives of the Estate of Satwant Kaur d/o Sardara Singh, deceased and another* ("*Red Star*") [2019] SGHC 144, the court rejected the plaintiff's claims in unjust enrichment as they were not adequately pleaded, stating at [50]–[51]:

> 51. The plaintiff's claim simply asserted that the defendants were liable to it in unjust enrichment without identifying a particular recognised unjust factor or event which would give rise to a claim. As the Court of Appeal stated in *Wee Chiaw Sek Anna v Ng Li-Ann Genevieve (sole executrix of the estate of Ng Hock Seng, deceased) and another* [2013] 3 SLR 801 at [134] [("*Anna Wee*")]:
>
> > 'It is important to reiterate that there is no freestanding claim in unjust enrichment on the abstract basis that it is "unjust" for the defendant to retain the benefit – *there must be a particular recognised unjust factor or event which gives rise a claim.* The following observations by Prof Birks in a seminal article are, in this regard, apposite (see Peter Birks, "The English recognition of unjust enrichment" [1991] LMCLQ 473 (at 482)):
> >
> > > Unjust' is the generalization of all the factors which the law recognises as calling for restitution. Hence, at the lower level of generality *the plaintiff must put his finger on a specific ground for restitution, a circumstance recognised as rendering the defendant's enrichment 'unjust' and therefore reversible.*
>
> [emphasis in original]

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[39] Joint Record of Appeal, para 12.

45 The court found the failure to identify a recognised unjust factor or event to be fatal to the plaintiff's claims in unjust enrichment: *Red Star* at [52].

46 Reading the defendant's pleadings generously, I take the defendant to be referring to the "absence of basis" doctrine in unjust enrichment when it stated in its counterclaim at paragraph 3 that it was not legally obliged to pay for the expended sums: this ground permits restitution when the recipient of money retains it without a legal basis. However, this ground of restitution has not "yet [taken] root within the common law of restitution and unjust enrichment, and has generally appeared not, as yet, to have found favour amongst scholars in this particular field of law" (see *Anna Wee* at [129]), and has also been described as a topic of controversy (see also *Ochroid Trading Ltd and another v Chua Siok Lui (trading as VIE Import & Export) and another* [2018] 1 SLR 363 at [140]). As the defendant failed to specify a recognised ground of restitution in its pleadings, and because "absence of basis" is a doctrine which is not yet recognised under Singapore law, I allow the plaintiff's appeal against the defendant's counterclaim.

Conclusion

47 It is with a heavy heart that I have ruled against the plaintiff's claim.

48 I would like to make the following concluding remarks which are of general application. The Work Injury Compensation Act (Cap 354, 2009 Rev Ed) ("WICA") establishes a statutory compensation scheme available to employees who suffer injuries in the course of employment. The statutory scheme has its advantages and disadvantages vis-à-vis a common law claim in negligence, some of which are not always thoroughly considered. It is meant to provide a quick basic no-fault compensation for (a) employees injured by

accidents during or arising in employment, where the compensation is for the employee (and his estate if relevant); and (b) dependants for loss of dependency: *China Taiping Insurance (Singapore) Pte Ltd and another v Low Yi Lian Cindy and others* [2018] 4 SLR 523 ("*China Taiping*") at [19]. It is generally also a lower cost alternative to pursuing a common law claim for damages arising from workplace negligence: *SGB Starkstrom Pte Ltd v Commissioner for Labour* [2016] 3 SLR 598 at [1]. However, in order to successfully claim under WICA, an injured worker must make a claim for compensation within one year from the date of the accident, or in the case of death, within one year from the date of the death: s 11(1)(b) of WICA. There are also other statutory rules which the injured worker must comply with to make out a successful WICA claim. The procedure for a WICA claim has been explained in greater detail in *China Taiping* at [25] – [46].

49 The duty of counsel is to advise an injured worker on the appropriate course of action to take by carefully weighing the relative pros and cons of a WICA claim vis-à-vis a common law claim. This should be done having regard to the strength of the available evidence, which either supports or denies the claim. While an injured worker may well believe that he stands to gain a larger sum if he were to successfully claim at common law (given that there are fixed limits to the sums of compensation awarded to a worker under a WICA claim), the job of his counsel is to closely scrutinise the evidence and assess whether all the elements of a claim in negligence can be satisfied. This includes understanding the workings of the machinery, if any, to determine if the worker's version of events is plausible in so far as the operation of the machinery is concerned. It is only if counsel forms the view that the worker has a *prima facie* case that he should advise the worker to proceed with a common law claim.

50 The injured worker, if he is considering a common law claim, should consult his solicitor as soon as possible whilst the events are still fresh in his mind and provide him with a faithful account of the events leading up to the accident. The worker should not view the common law claim as a "game of chance" to gain more in the event of a successful claim. He will end up with nothing, despite having suffered from an injury, if his claim cannot be established.

51 I award costs to be paid by the plaintiff to the defendant, fixed at $5,000, inclusive of disbursements.

Dedar Singh Gill
Judicial Commissioner

Ramasamy s/o Karuppan Chettiar (Central Chambers Law Corporation) for the appellant in DCA 6/2019 and the respondent in DCA 7/2019;
Shanker Kumar K (Hoh Law Corporation) for the respondent in DCA 6/2019 and the appellant in DCA 7/2019.