

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

[2022] SGHC 174

Suit No 1225 of 2020 (Registrar's Appeal No 332 of 2021)

Between

Thian Leng Chong Toh Tong

... Plaintiff

And

Thian Leng Old Folks Home
(2013)

... Defendant

GROUND OF DECISION

[Civil Procedure — Summary judgment]

[Land — Rent charges]

[Landlord And Tenant — Recovery of Possession]

TABLE OF CONTENTS

FACTS.....	2
THE PARTIES	2
EVENTS LEADING UP TO THE EXECUTION OF THE MANAGEMENT AGREEMENT.....	3
EVENTS LEADING UP TO THE EXECUTION OF THE TENANCY AGREEMENT.....	7
TERMINATION OF THE TENANCY AGREEMENT	10
THE PARTIES' CASES.....	12
WHETHER THERE WERE TRIABLE ISSUES.....	13
WHETHER THERE WAS A TRIABLE ISSUE AS TO THE ALLEGED LOANS	15
WHETHER THERE WAS A TRIABLE ISSUE AS TO THE ALLEGED SET-OFF AGREEMENT.....	23
WHETHER LEAVE TO DEFEND SHOULD BE GRANTED	29
THE ORDERS GRANTED BY THE COURT	29

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Thian Leng Chong Toh Tong
v
Thian Leng Old Folks Home (2013)

[2022] SGHC 174

General Division of the High Court — Suit No 1225 of 2020 (Registrar's Appeal No 332 of 2021)

Ang Cheng Hock J

12 January, 17 February, 17 March, 7 June 2022

21 July 2022

Ang Cheng Hock J:

1 In this action, the plaintiff sought orders that the defendant deliver up vacant possession of the plaintiff's property at 115 Lorong G Telok Kurau (the "Demised Premises") and make payment of unpaid rent of S\$200,000 due under a tenancy agreement dated 30 September 2015 between the parties, as well as double value from 1 October 2020 to the date of judgment. The plaintiff also sought a declaration that it may dispose of any of the defendant's belongings that remain on the Demised Premises upon obtaining vacant possession.

2 In SUM 3491/2021, the plaintiff applied for summary judgment. The assistant registrar ("AR") granted the defendant unconditional leave to defend. The plaintiff then filed an appeal against the AR's decision: RA 332/2021. After hearing parties and considering the matter, I allowed RA 332/2021 and set aside the orders made by the AR. I granted summary judgment to the

plaintiff for vacant possession of the Demised Premises, the unpaid rent, interest on the unpaid rent at the contractually agreed rate, and double value. I also granted a declaration that the plaintiff may dispose of any of the defendant's belongings that remain on the Demised Premises after vacant possession is obtained. The defendant has appealed. I now set out the detailed grounds of my decision.

Facts

The parties

3 The plaintiff is a society that was registered on 10 November 1961.¹ It operates a Chinese temple located off Changi Road (the “Temple”).² The plaintiff owns the Demised Premises.³ The plaintiff constructed a nursing home for the elderly on the Demised Premises (the “Home”).⁴ The Home commenced operations in 1991.⁵

4 The defendant is a society registered on 18 November 2013 by a former devotee of the Temple, one Liu Kim Beng (“Liu”).⁶ The defendant managed and operated the Home from around 18 November 2013 till around 2 June 2020, when the Ministry of Health (“MOH”) ordered that the Home be shut down (see

¹ Ricky See Hock Chee's 2nd Affidavit (“Ricky See's 2nd Affidavit”) at para 6.

² Ricky See's 2nd Affidavit at para 7.

³ Ricky See's 2nd Affidavit at para 12.

⁴ Ricky See's 2nd Affidavit at para 11.

⁵ Ricky See's 2nd Affidavit at para 11.

⁶ Ricky See's 2nd Affidavit at paras 20(a) and 27.

[20] below).⁷ As of the time that I first heard this matter in January 2022, the Home no longer had any residents and the defendant was not carrying out any business on the Demised Premises.⁸ The property had been locked up but remained under the defendant’s control.⁹

Events leading up to the execution of the Management Agreement

5 The Home was managed and operated by the plaintiff from 1991, when operations commenced, until around September to October 2012, when the plaintiff outsourced the management and operation of the Home to an independent party.¹⁰ This arrangement ceased on 25 February 2013.¹¹ After termination of the independent party’s services, the plaintiff faced difficulties coping with the management and operation of the Home.¹²

6 On or before 12 March 2013, Liu, who as earlier mentioned (at [4]) was a devotee of the Temple, approached the caretaker of the plaintiff, one Ricky See Hock Chee (“See”).¹³ Liu informed See that he was aware of the plaintiff’s

⁷ Ricky See’s 2nd Affidavit at paras 21 and 27; Ricky See Hock Chee’s 3rd Affidavit (“Ricky See’s 3rd Affidavit”) at page 38.

⁸ Ricky See’s 2nd Affidavit at para 108; Minute Sheet for the hearing on 12 January 2022 at page 1.

⁹ Ricky See’s 3rd Affidavit at para 43; Minute Sheet for the hearing on 12 January 2022 at page 1.

¹⁰ Ricky See’s 2nd Affidavit at paras 11 and 13–14.

¹¹ Ricky See’s 2nd Affidavit at para 14.

¹² Ricky See’s 2nd Affidavit at para 14.

¹³ Ricky See’s 2nd Affidavit at para 15.

difficulties and expressed interest in taking over the management and operation of the Home.¹⁴ See then conveyed the following to Liu:¹⁵

- (a) The plaintiff would likely be prepared to hand over the management and operation of the Home if all existing and future debts, expenses and liabilities associated with the Home were fully borne by Liu. The existing debts, expenses and liabilities associated with the Home totalled about S\$80,000 to S\$90,000.
- (b) The plaintiff would be more inclined to hand over the management and operation of the Home if Liu were prepared to make monetary contributions to the plaintiff during the period that he manages and operates the Home. These contributions were for defraying the cost of operating the Temple, since the plaintiff could no longer rely on fundraising activities and donations involving the Home after handing over the management and operation of the Home. In this regard, See suggested a sum of S\$5,000 per month.

7 See claimed that, in exchange for the right to manage and operate the Home and the right to retain all revenue generated and/or received through such efforts, Liu proposed to fully bear all existing and future debts, expenses and liabilities associated with the Home and make payment of S\$5,000 per month for the duration that he manages and operates the Home.¹⁶ According to See, Liu also offered to make a lump sum payment of about S\$60,000 to S\$70,000

¹⁴ Ricky See's 2nd Affidavit at para 15.

¹⁵ Ricky See's 2nd Affidavit at para 15(a)–(d).

¹⁶ Ricky See's 2nd Affidavit at para 15(e).

to the creditors of the plaintiff (the “Lump Sum Payment”) if his proposal was accepted.¹⁷ Liu’s version of events was largely consistent with See’s account even though, in his affidavit, he made a broad statement that the relevant paragraphs of See’s affidavit “are lies”.¹⁸ According to Liu, he understood from See that the plaintiff needed about S\$80,000 to meet its liabilities at the time of the meeting.¹⁹ Liu also stated that he “lent” a sum of S\$70,000 to the plaintiff,²⁰ which quantum is consistent with the proposal that See said Liu had made, although the stated reasons for the transfer of S\$70,000 appear to be different.

8 Subsequently, on 12 March 2013, the plaintiff’s management committee convened a meeting.²¹ See conveyed Liu’s proposal.²² The committee then resolved that Liu’s proposal be accepted by the plaintiff and a written agreement be executed to formalise the arrangement.²³ According to See, Liu took over the management and operation of the Home on or about 18 March 2013, even before any written agreement was executed.²⁴ Liu also made the Lump Sum Payment that same day.²⁵

9 On 19 April 2013, Liu and a number of the plaintiff’s representatives executed the written agreement to formalise the arrangement for Liu to manage

¹⁷ Ricky See’s 2nd Affidavit at para 15(e).

¹⁸ Liu Kim Beng’s 1st Affidavit at para 8(1).

¹⁹ Liu Kim Beng’s 1st Affidavit at para 7.

²⁰ Liu Kim Beng’s 1st Affidavit at para 8(1).

²¹ Ricky See’s 2nd Affidavit at para 18.

²² Ricky See’s 2nd Affidavit at page 50.

²³ Ricky See’s 2nd Affidavit at para 18(b) and page 50.

²⁴ Ricky See’s 2nd Affidavit at paras 21–22.

²⁵ Ricky See’s 2nd Affidavit at para 21 and page 62.

and operate the Home (the “Management Agreement”).²⁶ The Management Agreement provided:²⁷

It is hereby dated on 12 March 2013 that we the Management Committee of Thian Leng Chong Toh Tong [*ie*, the plaintiff] appoint you, Mr Liu Kim Beng ..., chairman of an Independent organization party and your team to manage Thian Leng Old Folks Home [*ie*, the Home] ... as a Committee to continue its operation independently ... for 5 years with our following terms and conditions.

[emphasis in original omitted]

10 A set of rules and regulations was agreed pursuant to the Management Agreement.²⁸ Rules 2 and 3 reflect what See conveyed to Liu at the meeting (see [6] above). Rule 2 provided as follows:²⁹

Thian Leng Old Folks Home [*ie*, the Home], a subsidiary of Thian Leng Chong Toh Tong [*ie*, the plaintiff], situated at 115 Lorong G, Telok Kurau, Singapore 426317 [*ie*, the Demised Premises] has all along been registered as an integral part of Thian Leng Chong Toh Tong (parent body), a Chinese temple situated at 472 Changi Road, Singapore 419890. Due to funding assistance requested by the Home to the government authority concerned and as a pre-requisite, a separate and independent managing team for the Home has been advised.

11 Rule 3 provided as follows:³⁰

Thian Leng Chong Toh Tong (Chinese Temple), the parent body, has now agreed to allow its Home known as Thian Leng Old Folks Home to henceforth operate independently with a set of new rules and regulations and under a separate management team known as Thian Leng Old Folks Home (2013) [*ie*, the

²⁶ Ricky See’s 2nd Affidavit at para 24 and page 66.

²⁷ Ricky See’s 2nd Affidavit at page 66.

²⁸ Ricky See’s 2nd Affidavit at page 67.

²⁹ Ricky See’s 2nd Affidavit at page 70.

³⁰ Ricky See’s 2nd Affidavit at page 70.

defendant] without any interference from them. In addition to this, Thian Leng Chong Toh Tong (parent body) has also indicated that they would appreciate if the new Thian Leng Old Folks Home (2013) could donate to them a monthly sum of money to help them defray their cost of running their temple now that they cannot rely on the Home for assisting them in the fund raising projects. Furthermore, they are not charging the management team for use of the building which is owned by them as an Old Folks Home.

Events leading up to the execution of the Tenancy Agreement

12 According to See, Liu managed and operated the Home independently of the plaintiff from around 18 March 2013 to around 18 November 2013.³¹ On 18 November 2013, the defendant was brought into existence and registered as a society.³² See claimed that the Home was then managed and operated by the defendant, under Liu’s direction.³³ This was largely consistent with the pleaded defence, which stated that in the period of March 2013 to July 2015, Liu “reorganized/streamlined/upgraded the operations of [the Home]”.³⁴

13 Sometime in July 2015, Liu verbally proposed to the plaintiff that a new written agreement be executed to replace the Management Agreement.³⁵ Under this proposed new agreement, the Home would still be managed and operated independently without the plaintiff’s involvement; the key difference was that the defendant, rather than Liu, would be party to the agreement.³⁶ The plaintiff

³¹ Ricky See’s 2nd Affidavit at para 27.

³² Ricky See’s 2nd Affidavit at para 27 and page 38.

³³ Ricky See’s 2nd Affidavit at para 28.

³⁴ Defence at 2(iv)–(v).

³⁵ Ricky See’s 2nd Affidavit at para 29.

³⁶ Ricky See’s 2nd Affidavit at para 29.

agreed. Subsequently, a written agreement dated 9 August 2015 was executed by the plaintiff and the defendant (the “Separation Agreement”).³⁷

14 The Separation Agreement provided as follows:³⁸

... it has been agreed by the parties hereto that fresh arrangements should be made for the order and good management comprised in Thian Leng Chong Toh Tong by the separation of Thian Leng Old Folks Home (2013) from Thian [sic] Leng Chong Toh Tong upon which Thian Leng Old Folks Home (2013) shall become an independent entity and society separate from and independent of Thian Leng Chong Toh Tong and so recognised by Thian Leng Chong Toh Tong ...

15 The Separation Agreement also alluded to entry into a tenancy agreement. Article IV of the Separation Agreement provided as follows:³⁹

With regard to the agreed separation herein-mentioned, all assets listed in the inventory, being assets of Thian Leng Chong Toh Tong, as per the addendum herein shall form part of the furnishing, furniture and equipment which serve as inventory to be part of the tenancy obligation on the part of the Landlord, Thian Leng Chong Toh Tong. Upon the tenancy expiration, Thian Leng Old Folks Home (2013) shall return the same to Thian Leng Chong Toh Tong less wear and tear or write-off.

16 On 30 September 2015, the plaintiff and the defendant executed a tenancy agreement under which the Demised Premises would be leased to the defendant for a period of 60 months from 1 October 2015 to 30 September 2020 (the “Tenancy Agreement”).⁴⁰

³⁷ Ricky See’s 2nd Affidavit at para 30 and page 76.

³⁸ Ricky See’s 2nd Affidavit at page 76.

³⁹ Ricky See’s 2nd Affidavit at page 77.

⁴⁰ Ricky See’s 2nd Affidavit at para 32 and page 80.

17 I now set out the key terms of the Tenancy Agreement. Clause 1 provided:⁴¹

The Landlord agrees to let and the Tenant agrees to take all that premises known as 115 Lorong G Telok Kurau, Singapore 426317 (hereinafter called “the premises”) [ie, the Demised Premises] for a period of Sixty (60) months commencing from the 1st day of October 2015 and (expiring on 30th day of September 2020), the Tenant paying therefor to the Landlord the sum of Singapore Dollars Five Thousand Only (S\$5,000.00) per month.

[emphasis in original omitted]

18 Clause 2(1) provided:⁴²

The Tenant HEREBY COVENANTS with the Landlord as follows:

-

- (1) To pay the said rent at the times and in the manner aforesaid without any deduction whatsoever whether for alleged breach of Landlord’s covenant or otherwise and not to seek to exercise any right or claim to withhold rent or right or claim to any legal or equitable set-off.

19 Clause 9 provided:⁴³

The Tenant shall be entitled to take a further tenancy of the premises for a further period of sixty (60) months each from the expiration of the term hereby granted and if the Tenant shall have fully performed and observed the covenants terms and conditions herein contained up to the expiry of the term hereby created then the Landlord will let the premises to the Tenant for 2 further terms of 5 years each and at the same rent and on the same terms and conditions as are provided in this Agreement.

⁴¹ Ricky See’s 2nd Affidavit at page 80.

⁴² Ricky See’s 2nd Affidavit at page 80.

⁴³ Ricky See’s 2nd Affidavit at page 83.

Termination of the Tenancy Agreement

20 On 2 June 2020, MOH revoked the defendant's licence to manage and operate the Home due to the defendant's persistent licensing related non-compliances.⁴⁴ The licence revocation was reported in the media on 3 August 2020.⁴⁵ This brought the matter to the attention of the plaintiff's management committee. It then called for a meeting with Liu.⁴⁶ At the meeting, Liu informed the plaintiff's management committee of the licence revocation, and that the defendant was unable to make rental payments because it was in financial distress.⁴⁷ Liu requested for time to consult other members of the defendant's senior management on the outstanding rental arrears and fixed a date for a subsequent meeting.⁴⁸ However, he failed to show up at the second meeting.⁴⁹ Thereafter, the plaintiff consulted its then solicitors, Sng & Company.⁵⁰ By way of a letter dated 10 September 2020, Sng & Company wrote to the defendant to notify it that the Tenancy Agreement would not be renewed under clause 9 given the defendant's breaches, which included its failure to make rental payments that had fallen due.⁵¹ The letter also stated that the Tenancy Agreement would be terminated on 30 September 2020, this being the last day of the tenancy period (see above at [16]).⁵²

⁴⁴ Ricky See's 3rd Affidavit at page 38.

⁴⁵ Ricky See's 2nd Affidavit at para 35.

⁴⁶ Ricky See's 2nd Affidavit at paras 36–37.

⁴⁷ Ricky See's 2nd Affidavit at para 37.

⁴⁸ Ricky See's 2nd Affidavit at para 37(d).

⁴⁹ Ricky See's 2nd Affidavit at para 38.

⁵⁰ Ricky See's 2nd Affidavit at para 39.

⁵¹ Ricky See's 2nd Affidavit at para 39(a) and pages 97–99.

⁵² Ricky See's 2nd Affidavit at para 39(b).

21 It transpired that, in the same period, the defendant had issued a letter dated 9 September 2020 to the plaintiff, which the plaintiff received only on 10 or 11 September 2020.⁵³ The two letters crossed each other. In its letter, the defendant sought to invoke clause 9 of the Tenancy Agreement to renew the tenancy.⁵⁴ In response, Sng & Company wrote by way of a letter dated 11 September 2020 to object to renewal of the tenancy and to reiterate the plaintiff's position set out in its earlier letter.⁵⁵

22 By way of a letter dated 29 September 2020, the defendant's solicitors, Seah & Co, wrote to Sng & Company to deny that the defendant had committed breaches of the Tenancy Agreement.⁵⁶ In this letter, the defendant contended that the plaintiff was indebted to *Liu and the defendant* in the sum of S\$852,622.58, and that "it was agreed" that the monthly rental payments due under the Tenancy Agreement would be set-off against the debt.⁵⁷

23 The plaintiff's new solicitors, Tan Kok Quan Partnership ("TKQP"), responded by way of a letter dated 11 November 2020, demanding that the defendant provide particulars of the alleged debt.⁵⁸ TKQP also demanded that the defendant deliver vacant possession of the Demised Premises.⁵⁹ Seah & Co did not respond, nor did the defendant deliver vacant possession or make any

⁵³ Ricky See's 2nd Affidavit at paras 40–41 and page 100.

⁵⁴ Ricky See's 2nd Affidavit at para 40.

⁵⁵ Ricky See's 2nd Affidavit at para 41 and page 101.

⁵⁶ Ricky See's 2nd Affidavit at para 42 and page 102.

⁵⁷ Ricky See's 2nd Affidavit at para 42 and page 102.

⁵⁸ Ricky See's 2nd Affidavit at para 43 and pages 103–104.

⁵⁹ Ricky See's 2nd Affidavit at para 43 and page 103.

payment of the alleged rental arrears.⁶⁰ The plaintiff thus commenced the present action.

The parties' cases

24 The plaintiff's claim was premised on the Tenancy Agreement, as earlier mentioned (at [16] above), which was dated 30 September 2015. The plaintiff sought unpaid rent due under the Tenancy Agreement. Clause 1 of the Tenancy Agreement (see [17] above) provided that the defendant was to pay rent of S\$5,000 a month for a five-year term from 1 October 2015 to 30 September 2020. The plaintiff alleged that, of the rent due over the five-year term totalling S\$300,000, only S\$100,000 in total was sporadically paid over the five years.⁶¹ The plaintiff thus sought the unpaid balance of S\$200,000, along with interest on the unpaid rent and double value.⁶² The plaintiff also sought vacant possession of the Demised Premises.⁶³ Clause 9 of the Tenancy Agreement (see [19] above) provided that the defendant would have had an option to renew the tenancy only if it "fully performed" the terms of the Tenancy Agreement. According to the plaintiff, by reason of the clear breach of the defendant's obligations to pay rent, the defendant was not entitled to renew the tenancy on its expiration on 30 September 2020.⁶⁴

25 The defendant denied that it was in breach of the Tenancy Agreement for failing to pay rent that was due. The defendant claimed that there was an

⁶⁰ Ricky See's 2nd Affidavit at para 45.

⁶¹ Plaintiff's Written Submissions ("PWS") at para 7; Ricky See's 2nd Affidavit at para 33.

⁶² Statement of Claim at para 15(2)–(5); Summons under O 14, prayer 1c.

⁶³ Statement of Claim at para 15(1).

⁶⁴ PWS at paras 6–7.

oral set-off agreement concluded on 9 August 2015 (the “Set-Off Agreement”), under which the rent owed would have been fully set-off against *loans made to the plaintiff by Liu*.⁶⁵ These loans totalling S\$852,622.58 were allegedly made from March 2013 to July 2015.⁶⁶ I pause here to note that the Set-Off Agreement was pleaded to have been concluded on 9 August 2015,⁶⁷ but the defendant later changed its position in an affidavit filed to resist the summary judgment application, and claimed that the agreement was actually concluded on or about 30 September 2015,⁶⁸ which also happens to be the date on which the Tenancy Agreement was entered into (see above at [16]). However, the defendant did not amend its defence despite having been granted leave by the AR to do so (see [42] below). At the first hearing of the registrar’s appeal on 12 January 2022, I reminded counsel for the defendant that his defence had not yet been amended. Counsel acknowledged this but still did not file an amended defence. As of the date I granted summary judgment, there had been no explanation by counsel for defendant as to why the defence had not been amended.

Whether there were triable issues

26 O 14 r 1 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) (“ROC”) provides that, “[w]here a statement of claim has been served on a defendant and that defendant has served a defence to the statement of claim, the plaintiff may, on the ground that that defendant has no defence to a claim included in the writ, or to a particular part of such a claim, or has no defence to such a claim or part

⁶⁵ Defence at para 2(viii).

⁶⁶ Defence at para 2(iv).

⁶⁷ Defence at para 2(viii).

⁶⁸ Liu Kim Beng’s 1st Affidavit at para 9(2).

except as to the amount of any damages claimed, apply to the Court for judgment against that defendant”.

27 Once a plaintiff demonstrates a *prima facie* case for summary judgment, the tactical burden shifts to the defendant, in order to obtain leave to defend, to establish that there is a fair or reasonable probability that he has a real or *bona fide* defence: *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 at [43]–[45]. Leave to defend will not be granted based upon “mere assertions” of a defence; instead, the court will look at the whole situation critically to examine whether the defence is credible: *Republic Airconditioning (S) Pte Ltd v Shinsung Eng Co Ltd (Singapore Branch)* [2012] 2 SLR 601 at [10].

28 The Tenancy Agreement made clear that the defendant was liable to pay rent (pursuant to clause 1), that the tenancy expired on 30 September 2020 (pursuant to clause 1), and that the defendant was entitled to renew the tenancy only if it fully performed the terms of the agreement (pursuant to clause 9), which terms included the defendant’s obligation to duly make rental payments.⁶⁹ The defendant did not deny that it had not made payments in accordance with its obligations under the Tenancy Agreement. The defendant contended, however, that the rent due had been set-off against the loans allegedly made by Liu to the plaintiff pursuant to the alleged Set-Off Agreement.⁷⁰ In view of the foregoing, I was satisfied that the plaintiff had established a *prima facie* case for summary judgment in respect of the unpaid rent and vacant possession of the Demised Premises.

⁶⁹ Ricky See’s 2nd Affidavit at pages 80 and 83.

⁷⁰ Defence at para 2(iv)–(viii).

29 The burden then shifted to the defendant to establish a fair or reasonable probability that it had a real or *bona fide* defence. In respect of the defence raised, two main issues arose for determination:

- (a) whether there was a triable issue as to the loans allegedly made by Liu to the plaintiff; and
- (b) if (a) was answered in the affirmative, whether there was a triable issue as to the Set-Off Agreement allegedly concluded between the plaintiff, the defendant and Liu.

Whether there was a triable issue as to the alleged loans

30 The defendant claimed that, from March 2013 to July 2015, Liu had advanced loans totalling S\$852,622.58 to the plaintiff (see [25] above). The plaintiff denied that such loans were ever made to it.⁷¹ It should be noted that, even if I were to accept that there was a triable issue that loans were made by Liu to the plaintiff, it did not immediately follow that such loans made by *Liu* should have had any impact on the *defendant's* payment obligations under the Tenancy Agreement. The defendant would also have had to show that it was arguably relieved of its obligations to pay rent because of the alleged Set-Off Agreement. With that observation out of the way, I now set out my assessment of the evidence as to the alleged loans made by Liu to the plaintiff.

31 In support of its position in relation to the alleged loans, the defendant relied on bank slips and bank statements showing transfers of sums totalling S\$852,657.05 (which is in slight excess of the alleged loan amount of S\$852,622.58) from Liu to UOB 3613023567 (the “UOB Account”) and OCBC

⁷¹ Reply to Defence at para 7.

686120890001 (the “OCBC Account”) (collectively, the “Bank Accounts”).⁷² However, a review of the documentary evidence makes it quite clear that, at the material times when the moneys were transferred into them, these Bank Accounts belonged to the defendant, or at least were controlled by the defendant and/or its representatives.

32 The key documents and their significance are as follows:

- (a) According to the respective bank statements, the UOB Account belongs to “Thian Leng Old Folks Home”, and the OCBC Account belongs to “Thian Leng Old Folks Home (2013)”.⁷³ These are references to the defendant rather than the plaintiff.
- (b) It was not disputed that the defendant’s representatives are the signatories for the OCBC Account. For instance, payment from the OCBC Account was made by way of cheque on 24 March 2016, and the cheque bore a signature that matches Liu’s signature.⁷⁴ Liu was the defendant’s chairman at the relevant time, as reflected in the annual return filed by the defendant with the Registry of Societies.⁷⁵
- (c) The defendant’s representatives became the signatories for the UOB Account shortly after Liu was granted the right to manage the Home pursuant to the Management Agreement, which was

⁷² Defence at Annex B; Liu Kim Beng’s 1st Affidavit at pages 9–161.

⁷³ Liu Kim Beng’s 1st Affidavit at pages 11 and 54.

⁷⁴ Ricky See’s 2nd Affidavit at para 95 and page 86.

⁷⁵ Ricky See’s 2nd Affidavit at page 276.

executed on 19 April 2013.⁷⁶ Liu, along with other representatives of the defendant, was an approved signatory for the UOB Account from 2 May 2013 onwards.⁷⁷ The defendant relied on a copy of a UOB approved signatory update form, which was missing the date of the form, to show that the plaintiff's committee members were the approved signatories for the UOB Account.⁷⁸ However, this was a blatant attempt to mislead the court. The plaintiff obtained a copy of the actual document from UOB showing that the form was dated 8 March 2013,⁷⁹ which was before the Management Agreement was executed on 19 April 2013. In other words, the UOB Account was handed over to the defendant for its control after the Management Agreement had been signed. This was entirely consistent with the fact that it was the defendant who was responsible for funding the operations of the Home after the Management Agreement took effect, and it was Liu who was providing the defendant with the funds to do so in the form of loans to the *defendant*, not the *plaintiff*.

- (d) I should also add that, from the time Liu took control of the Home from the plaintiff up to when the defendant was registered as a society, *ie* 18 November 2013, there is no dispute that Liu was using the moneys in the Bank Accounts to manage and operate the Home.

⁷⁶ Ricky See's 2nd Affidavit at page 66.

⁷⁷ See Raymond's 3rd Affidavit at pages 11–13.

⁷⁸ Liu Kim Beng's 2nd Affidavit at para 6 and page 6.

⁷⁹ See Raymond's 3rd Affidavit at pages 7–9.

- (e) The defendant’s unaudited financial statements for the period of March 2013 to March 2014 recorded the standing balances in an account labelled “UOB Bank”, and those standing balances recorded matched the balances (at the start of each month) in the UOB Account.⁸⁰

33 The defendant made some attempts to argue that these loans which, based on the documents, were made to the defendant, were actually loans that were made to the plaintiff. On its account of events, the Home was always a part of the plaintiff and became separate, through the registration of the defendant as a society, *only* after parties entered into the Separation Agreement on 9 August 2015.⁸¹ To show this, the defendant relied on Article II of the Separation Agreement, which provided that “Thian Leng Old Folks Home (2013) [*ie*, the defendant] shall cease to be part or related to Thian Leng Chong Toh Tong [*ie*, the plaintiff] on the 9th day of August, 2015 ...”.⁸² The defendant argued that loans made by Liu from March 2013 to July 2015 were thus actually loans to the plaintiff.

34 However, the position taken by the defendant was entirely inconsistent with the contemporaneous documents. The documents show that the Home was separately managed even before August 2015:

- (a) Rule 3 of the Management Agreement (executed on 19 April 2013) provided that “Thian Leng Chong Toh Tong (Chinese

⁸⁰ Ricky See’s 2nd Affidavit at para 97 and pages 175–205.

⁸¹ Defendant’s Written Submissions at para 2; Minute Sheet for the hearing on 17 February 2022 at page 2.

⁸² Ricky See’s 2nd Affidavit at page 77.

Temple), the parent body, has now agreed to allow its Home known as Thian Leng Old Folks Home to henceforth operate independently ... under a separate management team known as Thian Leng Old Folks Home (2013) without any interference from them”. Rule 3 also provided that “Thian Leng Chong Toh Tong (parent body) ... would appreciate if the new Thian Leng Old Folks Home (2013) could donate to them a monthly sum ... now that they cannot rely on the Home for assisting them in the fund raising projects”.⁸³ This showed that the plaintiff was not entitled to any income or moneys that the defendant received, including any loans made by Liu to the defendant. This was, of course, entirely sensible. After all, the defendant was managing the Home pursuant to the Management Agreement, and it was entitled to the income (in the form of grants, donations, fees, etc) generated by the Home’s operations because the defendant was funding the Home’s operations.

- (b) The defendant’s audited financial statements for the period of 1 April 2014 to 31 March 2015 showed that the defendant received MOH grants totalling S\$175,065 in 2014.⁸⁴ The defendant itself took the position that MOH would only provide such grants if the Home was managed and operated separately from the plaintiff.⁸⁵ The fact that MOH grants were received prior to August 2015 indicated quite clearly that the Home was indeed separately managed and operated. In other words, the

⁸³ Ricky See’s 2nd Affidavit at page 70.

⁸⁴ Ricky See’s 2nd Affidavit at page 240.

⁸⁵ Defence at para 2(vi).

plaintiff was no longer managing and operating the Home because it had been handed over to the defendant since sometime in March 2013.

35 Further, the evidence made it clear that the defendant itself treated the sums advanced by Liu as moneys owed by the defendant to Liu, rather than by the plaintiff. The defendant's audited financial statements for the financial years ending on 31 March 2014, 2015 and 2016 recorded the sums advanced by Liu as "Other payables Amount owing to [Liu]".⁸⁶ Further, counsel for the defendant confirmed, at the hearing of SUM 3491/2021 before the AR, that the defendant made partial repayment on the loans such that the sum owing to Liu was reduced from S\$852,622.58 to S\$707,711 as of 31 March 2016.⁸⁷ In my view, there was no sensible reason that the defendant would be paying off these loans if they were indeed owed by the plaintiff. This showed quite unequivocally that the defendant, as opposed to the plaintiff, was responsible for repaying Liu. At the hearing of the registrar's appeal, counsel for the defendant made a submission from the bar that the defendant paid this money from MOH grants that were intended for a period prior to the Separation Agreement (executed on 9 August 2015) and therefore such grant moneys rightly belonged to the plaintiff. Quite apart from the fact that there was nothing in the affidavits filed by Liu in support of this submission, I found it to be hopelessly unpersuasive because the plaintiff was not entitled to the defendant's revenue for the period even prior to the Separation Agreement, as I have already explained (see [34(a)] above).

⁸⁶ Ricky See's 2nd Affidavit at pages 213, 243 and 269.

⁸⁷ Transcript 29 November 2021, page 10 lines 27–32, p 11 lines 1–7; Minute Sheet for the hearing on 17 February 2022 at pages 1 and 3; Ricky See's 2nd Affidavit at page 269.

36 In my judgment, the defendant failed to discharge its tactical burden of showing that it had a fair or reasonable probability of raising a real or *bona fide* defence in respect of the alleged loan. This was for two key reasons. First, in view of the above analysis, the defendant had not put forth credible evidence that loans were made to the plaintiff. The sums advanced by Liu went into bank accounts controlled, and later owned, by the defendant. There was no merit to the defendant's argument that the loans made to it were effectively made to the plaintiff. Also, it was not disputed that the defendant had been making repayments of the loans advanced by Liu (see above at [35]).

37 Second, the defendant's version of events was utterly improbable. It entailed the court accepting that the arrangement between the parties was that the plaintiff was not involved in managing the Home and thus was not entitled to income generated by the Home, which would all be kept by the defendant, but that the plaintiff would somehow remain liable to fund the Home's operational expenses, since the loans were made by Liu for that purpose.⁸⁸ Further, because of the alleged Set-Off Agreement (which will be dealt with later at [40] to [49]), the plaintiff would not be receiving any rent for the defendant's use of the Demised Premises for a period of up to 10 years, as it would be paying off such loans to Liu. To put things mildly, the defendant's version was rather remarkable.

38 I also noted the glaring evidential deficiencies faced by the defendant in that there was no written evidence of any agreement on the alleged loan between Liu and the plaintiff. The defendant also failed to supply details on material terms relating to such a loan, including the relevant interest rate and terms of

⁸⁸ Further and Better Particulars dated 25 May 2021 at para 3(a)(i).

repayment.⁸⁹ Where assertions in support of a defence are lacking in precision, inconsistent with contemporaneous documents, or are inherently improbable, the court has a duty to reject such assertions and find that the issue raised is not triable: *M2B World Asia Pacific Pte Ltd v Matsumura Akihiko* [2015] 1 SLR 325 (“*M2B World*”) at [19]. The defendant’s assertions on the alleged loans were completely unsubstantiated and contradicted by the available evidence. I thus found that there was no triable issue concerning these alleged loans.

39 For completeness, I found that the defendant had unjustifiably failed to provide a copy of item 5 of its list of documents, namely, the schedule of advances that allegedly detailed the loans made by Liu to the defendant (the “Schedule of Advances”).⁹⁰ This was despite the plaintiff’s requests on 30 July 2021 and 26 August 2021,⁹¹ and my order at the hearing on 17 February 2022, that the defendant was to provide the plaintiff with a copy of the Schedule of Advances. The defendant’s belated explanation that the Schedule of Advances was actually the same document as Annex B of its defence⁹² was rejected because this was not what counsel for the defendant informed me at the hearing on 17 February 2022 when he asked for more time to produce the Schedule of Advances. The plaintiff argued that an adverse inference should be drawn against the defendant that the Schedule of Advances, if disclosed, would show that the alleged loans were made to the defendant and not the plaintiff. However, given the views I have already expressed on whether

⁸⁹ Defence at para 2(iv); Further and Better Particulars dated 1 April 2021 at para 3; Further and Better Particulars dated 26 April 2021 at para 3; Further and Better Particulars dated 25 May 2021 at para 3.

⁹⁰ Plaintiff’s Further Written Submissions dated 1 March 2022 at paras 3–4.

⁹¹ Ricky See’s 3rd Affidavit at pages 35–36.

⁹² Letter from TKQP to the court dated 1 March 2022 at para 3 and page 4.

there was a triable issue as to the alleged loans to the plaintiff, it was not necessary for me to express any view on whether an adverse inference should be drawn from the defendant's failure to provide the Schedule of Advances.

Whether there was a triable issue as to the alleged Set-Off Agreement

40 Given that the defendant has not shown that there is any triable issue that Liu had made any loan to the plaintiff, it followed that the alleged Set-Off Agreement must have been a fiction dreamt up by the defendant. Without any loan having been made to the plaintiff, there could be nothing for the rental payments due to the plaintiff to be set-off against. Nonetheless, for the sake of argument, even if I were to accept that there were loans made by Liu to the plaintiff, the defendant would still have needed to establish that there was a fair or reasonable probability that it has a real or *bona fide* defence in the form of the alleged Set-Off Agreement in order to resist the summary judgment application.

41 As earlier mentioned (at [25] above), the defendant claimed that there was an orally concluded Set-Off Agreement pursuant to which the rent due under the Tenancy Agreement would have been set-off against the loans allegedly advanced by Liu to the plaintiff. At this juncture, I noted that the defendant's pleadings were unclear on who the parties to the agreement were. In response to the plaintiff's request for particulars on the parties to the agreement, the defendant responded, "Plaintiffs' said Chairman with one SEE HOCK CHEE (Caretaker) present and Defendants' said Mr. Liu assisted by Mr. Wilson Lim and/or Mr. Han".⁹³ It was *not* pleaded that the plaintiff, the defendant and Liu were all parties to the alleged Set-Off Agreement.

⁹³ Further and Better Particulars dated 25 May 2021 at para 6(a).

42 Aside from the lack of clarity on the alleged parties to the agreement, there was also an issue as to the date on which the agreement was allegedly concluded. The date of the Set-Off Agreement was pleaded in the defence as 9 August 2015.⁹⁴ However, the defendant subsequently changed its position and stated in Liu’s affidavit that the date “should be on or about 30 September 2015”.⁹⁵ The date on which the Set-Off Agreement was allegedly concluded was important in view of clause 2(1) of the Tenancy Agreement dated 30 September 2015 (set out in full at [18] above), which provided that the defendant covenanted “... not to seek to exercise any ... right or claim to any legal or equitable set-off.”⁹⁶ If the date of the Set-Off Agreement was 9 August 2015, as pleaded in the defence, the Set-Off Agreement would have been superseded by the Tenancy Agreement. Although the defendant changed its position to say that the Set-Off Agreement “should be” dated 30 September 2015, it did not amend its defence despite having been granted leave to do so by the AR in SUM 4385/2021.⁹⁷

43 Further, the timing of the defendant’s change in position was pertinent. In the defence, dated 21 January 2021, the stated date of the alleged Set-Off Agreement was 9 August 2015. After having sight of the plaintiff’s documents in support of the summary judgment application, including See’s second affidavit dated 26 July 2021, which referred to clause 2(1) of the Tenancy Agreement, the defendant mentioned for the first time in Liu’s affidavit dated 19 August 2021, that the date of the Set-Off Agreement “should be on or about

⁹⁴ Defence at para 2(viii).

⁹⁵ Liu Kim Beng’s 1st Affidavit at para 9(2).

⁹⁶ Ricky See’s 2nd Affidavit at page 80.

⁹⁷ Transcript 22 November 2021, page 6 lines 7–9.

30 September 2015 when parties signed the Tenancy Agreement”.⁹⁸ The timing of this change in position, coupled with a lack of explanation for the shift, cast serious doubt on the *bona fides* of the subsequent position taken. In any event, the defendant was bound by its unamended pleaded case that the alleged agreement was made on 9 August 2015. In summary judgment proceedings, a defendant must be bound by its pleadings: *Olivine Capital Pte Ltd v Chia Chin Yan* [2014] 2 SLR 1371 at [41].

44 Even if one were to leave aside the issue of whether the Tenancy Agreement had superseded the alleged Set-Off Agreement, there was a disconcerting lack of credible evidence as to the very existence of such an agreement. The defendant had not produced any written evidence of the agreement. Further, its own account of the details concerning the Set-Off Agreement was inconsistent. In addition to the discrepancy as to the date of the Set-Off Agreement, the defendant changed its account of the individuals who were present when the oral agreement was allegedly made. In the defence, the defendant stated that the agreement was concluded in the presence of the plaintiff’s then chairman and the plaintiff’s then treasurer;⁹⁹ there was no mention of other individuals present. In contrast, the defendant’s further and better particulars dated 25 May 2021 claimed that a few other individuals were also present, namely, See, Soh Kiang Yong, Wilson Lim, one Mr Han, Chua Ban Tee and Low Yoke Lin.¹⁰⁰ Significantly, none of the persons alleged to have been present at the conclusion of the Set-Off Agreement, including the

⁹⁸ Liu Kim Beng’s 1st Affidavit at para 9(2).

⁹⁹ Defence at para 2(viii).

¹⁰⁰ Further and Better Particulars dated 25 May 2021 at para 6(b)–(c).

defendant’s own representatives Wilson Lim and Mr Han, filed any affidavit to support Liu’s claims as to the existence of the agreement.

45 I found that the defendant had conducted itself in a manner inconsistent with the existence of the alleged Set-Off Agreement by making payments of rent during the tenancy. It was not disputed that the defendant paid the plaintiff at least S\$100,000. The plaintiff produced the defendant’s cheques totalling S\$100,000 as evidence of such payment.¹⁰¹ Although the cheques did not state the purpose of payment, the plaintiff was able to produce one payment voucher for S\$15,000 with the words “rent fee” issued by the defendant to the plaintiff; this payment voucher recorded the same date and amount as one of the cheques.¹⁰² In any event, counsel for the defendant accepted in oral submissions that this S\$100,000 was indeed payment of rent. But, he pointed out that the defendant did not start to make payment of rent until 24 March 2016, almost six months into the term of the tenancy.¹⁰³

46 Counsel argued that the late payment of the very first instalment of rent, and that there was no written evidence that the plaintiff chased for payment of the outstanding rent, supported the existence of the Set-Off Agreement. I did not accept that such conduct indicated that there was a Set-Off Agreement. It was at best equivocal. It was also consistent with the evidence of the plaintiff that they usually preferred informal means of chasing for the outstanding rent, and they wanted to maintain a good relationship with the defendant.¹⁰⁴

¹⁰¹ Ricky See’s 2nd Affidavit at pages 86–95.

¹⁰² Ricky See’s 2nd Affidavit at pages 156 and 95.

¹⁰³ Minute Sheet for the hearing on 17 February 2022 at page 3.

¹⁰⁴ Ricky See’s 3rd Affidavit at para 10.

47 In my judgment, the making of such rental payments could not be reconciled with the defendant’s allegation of the Set-Off Agreement. According to the defendant’s case, pursuant to the Set-Off Agreement, the plaintiff would still owe the defendant S\$552,622.58 after setting-off the total amount of rent owed to the plaintiff for the entire term of the tenancy of five years.¹⁰⁵ Indeed, if this alleged Set-Off Agreement also applied to any renewed term of another five years, the defendant would not need to pay any rent at all for that second term as well. This would mean that there was no need for the defendant to pay rent for a period of 10 years.

48 If this were all true, it was puzzling that the defendant would have made S\$100,000 in rental payments to the plaintiff during the term of the tenancy. Counsel for the defendant explained in oral submissions that rental payments were occasionally made when the plaintiff needed money. In this respect, the defendant relied on a letter dated 13 December 2017 from Sng & Company, the plaintiff’s then solicitors, which stated that “... it would be appreciated if [the defendant] could make payment of ... \$55,000.00 to [the plaintiff’s management committee] as soon as possible”.¹⁰⁶ The defendant’s argument was that, if the plaintiff were entitled to receive rent, it would have demanded, rather than requested, the sum. However, reading the letter in full, it appeared quite clear that the plaintiff’s then solicitors were only aware of the Management Agreement but not the Tenancy Agreement (and it was only the latter that obliged the defendant to pay rent). The letter referred to “the Committee Management Appointment in writing dated 19-04-2013”, *ie*, the Management

¹⁰⁵ Defence at para 2(viii).

¹⁰⁶ Ricky See’s 3rd Affidavit at page 25.

Agreement, as the basis for requesting payment of S\$55,000.¹⁰⁷ It was difficult for the court to accept that, although the defendant made rental payments occasionally, it was actually not obliged to do so. If parties had intended an arrangement where “rent” was paid on a voluntary basis, it would not have been necessary to enter into the Tenancy Agreement, which expressly created a contractual obligation to pay rent.

49 In my judgment, the defendant failed to raise any triable issue in relation to a set-off, in that, it had not shown that it had a fair or reasonable probability of raising a real or *bona fide* defence in respect of the alleged Set-Off Agreement. The defendant’s assertion that there was a Set-Off Agreement was not substantiated by any credible evidence: the Set-Off Agreement was allegedly orally concluded, there was no written evidence that supported its existence, and none of the persons who were allegedly present at its conclusion filed any affidavit in support of Liu’s claims as to its existence. Further, the defendant presented inconsistent versions of the alleged Set-Off Agreement with changes in its position that appeared to have been necessitated by a need to meet the plaintiff’s case. The change in the alleged date of conclusion of the Set-Off Agreement was an attempt to circumvent the challenge that clause 2(1) of the Tenancy Agreement presented (see [42]–[43] above). The defendant also pivoted on its position as to the rent payable under the Tenancy Agreement. Its pleaded case was that, taking into account the set-off, rent was *not* payable at all and in fact S\$552,622.58 remained outstanding from the plaintiff. However, counsel for the defendant admitted in oral submissions that rental payments were indeed made. This change in position appeared to have been necessitated by the plaintiff’s evidence of rent actually having been paid (see [45] above)

¹⁰⁷ Ricky See’s 3rd Affidavit at page 24.

and was irreconcilable with the defence as pleaded. In view of the defendant's unsubstantiated and changing positions, I found there was no triable issue as to the alleged Set-Off Agreement.

Whether leave to defend should be granted

50 The purpose of O 14 is to enable a plaintiff to obtain a quick judgment where there is plainly no defence to the claim: *Singapore Civil Procedure Vol I* (Cavinder Bull gen ed) (Sweet & Maxwell, 2021) at para 14/1/2. A court will not grant leave to defend if all the defendant provides is a mere assertion of a given situation which forms the basis of his defence: *M2B World* at [19]. In my judgment, the defendant's assertions were almost entirely unsubstantiated and contradicted by the available evidence. The defendant had not raised a *bona fide* defence to the plaintiff's claim and should not be granted leave to defend.

The orders granted by the court

51 For the above reasons, I allowed RA 332/2021 and the orders made by the AR below were set aside. I therefore granted judgment to the plaintiff for the vacant possession of the Demised Premises, and also for the sum of S\$200,000 of unpaid rent due under the Tenancy Agreement. Interest on the S\$200,000 of unpaid rent was awarded at the contractually agreed rate of 10% per annum (see clause 4(3) of the Tenancy Agreement)¹⁰⁸ from the day after the date of the writ to the date of payment, in addition to the sum of S\$43,219.61, being the interest due from the date on which the rent fell due to the date of the writ (as set out in Schedule A of the statement of claim).¹⁰⁹ I also granted a

¹⁰⁸ Ricky See's 2nd Affidavit at page 82.

¹⁰⁹ Statement of Claim at pages 10–11.

declaration that the plaintiff may dispose of any of the defendant's belongings that remain on the Demised Premises after vacant possession is obtained.

52 Section 28(4) of the Civil Law Act 1909 (2020 Rev Ed) provides that a landlord is entitled to charge double rent or double value for the period of holding over. The plaintiff prayed for an order that the defendant be liable for double value from 1 October 2020 to the date of judgment.¹¹⁰ The defendant did not make any arguments that the plaintiff should not be entitled to a claim for double value if it is found by the court that the defendant had wrongly held over. In this case, the defendant had no contractual right to renew the lease under clause 9 of the Tenancy Agreement given that it was in clear default of its obligation to pay rent to the tune of S\$200,000. The plaintiff had also written to the defendant to notify it of the termination of the Tenancy Agreement. As such, I found that the defendant had wrongfully held over after the expiry of the tenancy on 30 September 2020. I therefore ordered that the defendant was to pay double the value of the Demised Premises from 1 October 2020, which was when the Demised Premises should have been vacated by the defendant, to the date of judgment on 17 March 2022.

53 In *UDL Marine (Singapore) Pte Ltd v Jurong Town Corporation* [2013] SGHC 236 ("*UDL Marine*"), it was explained that double value means the "market rent during the holding over period" (at [92]), as opposed to the last rent paid. The plaintiff provided some evidence of double value in the form of an email dated 2 November 2020 from one Oh Puay Ngor of the Inland Revenue Authority of Singapore ("IRAS") which referred to the annual value of the

¹¹⁰ Summons under O 14, prayer 1c.

Demised Premises as S\$197,000.¹¹¹ However, I was of the view that the actual notice of assessment of property tax from IRAS, which would show the most recent assessed annual value of the property, should have been provided in evidence. I also took the view that the defendant should be given an opportunity to challenge this manner of determining the quantum of double value, if it wished to do so. As such, I ordered that, if there was no agreement on the double value of the Demised Premises from 1 October 2020 to the date of judgment, the plaintiff was at liberty to write in for directions for the quantification of such double value by the court.

54 Subsequently, the plaintiff wrote to the court in a letter dated 30 March 2022. In this letter, the plaintiff provided further evidence as to double value in the form of the notices of assessment issued by IRAS for the periods of January to December 2020, January to December 2021, and January to December 2022.¹¹² The plaintiff also informed the court that it had provided the defendant with these notices of assessment, and had written to the defendant twice to confirm if the defendant would be agreeable to have the holding over damages quantified on the basis of the annual value of S\$197,000.¹¹³ According to the plaintiff, the defendant ignored both letters. The plaintiff then requested the court to proceed to quantify the holding over damages based on the annual value of S\$197,000, with the computed sum being S\$575,076.61.¹¹⁴ On 14 April 2022, I ordered that the defendant was to respond to the plaintiff's letter by 22 April 2022. In particular, the defendant was to state whether it accepted

¹¹¹ Ricky See's 2nd Affidavit at page 385.

¹¹² Letter from TKQP to the court dated 30 March 2022 at pages 8–13.

¹¹³ Letter from TKQP to the court dated 30 March 2022 at para 4.

¹¹⁴ Letter from TKQP to the court dated 30 March 2022 at para 7.

the annual value as stated in IRAS’s notices of assessment and if it did not, whether it intended to adduce any evidence as to the annual value of the Demised Premises.¹¹⁵ The defendant did not comply with my directions.

55 Section 4(2) of the Property Tax Act 1960 (2020 Rev Ed) (the “Act”) places responsibility on the Chief Assessor for the assessment of the annual values of properties under the Act. Section 2(1)(a) of the Act defines annual value as follows:

“annual value” — in relation to a house or building or land or tenement, not being a wharf, pier, jetty or landing-stage, means *the gross amount at which the same can reasonably be expected to be let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all taxes (other than goods and services tax) ...*

[emphasis added]

56 In *Chief Assessor v Keppel Corp Ltd* [1994] 1 SLR(R) 457, Warren L H Khoo J, in interpreting s 2(1)(a) of the Act, explained (at [8]) that annual value is “what the hypothetical tenant might reasonably be expected to pay by way of rental on a yearly tenancy upon the terms stipulated under the relevant part of the definition [in the Act]”. This is consistent with what double value represents, as explained in *UDL Marine* (see [53] above). In view of the above, I found that it was appropriate to refer to the annual value in the IRAS notices in computing double value. This was especially given that the defendant, despite having been given the opportunity to do so, did not challenge this manner of determining the quantum of double value, nor did it challenge the annual value of S\$197,000.

¹¹⁵ Letter from the court to parties dated 14 April 2022 at para 2.

57 On 7 June 2022, I thus made an order as to the quantum of damages for holding over, with such damages fixed in the amount of S\$575,076.61. This sum represents the double value of the Demised Premises for the period of 1 October 2020 to 17 March 2022, computed on the basis of the annual value of S\$197,000. The computation was set out in paragraph 5 of the court's letter to the parties dated 7 June 2022, and I reproduce it here:

Period	Computation
1 Oct 2020 to 31 Dec 2020 (92 days)	$\text{S\$}197,000 \div 366 \times 92 \times 2$ $= \text{S\$}99,038.25$
1 Jan 2021 to 31 Dec 2021 (1 year)	$\text{S\$}197,000 \times 2 =$ $\text{S\$}394,000$
1 Jan 2022 to 17 Mar 2022 (76 days)	$\text{S\$}197,000 \div 365 \times 76 \times 2$ $= \text{S\$}82,038.36$
Total	S\$575,076.61

58 As for costs, following the general principle that costs follow the event, I ordered the defendant to pay the plaintiff three sets of costs. For SUM 3491/2021, which was the plaintiff's application for summary judgment, I ordered the defendant to pay the plaintiff costs of S\$12,000. For RA 332/2021, which was the plaintiff's appeal against the AR's decision to grant the defendant unconditional leave to defend, I ordered the defendant to pay the plaintiff costs of S\$12,000. Finally, in respect of the main action, Suit 1225/2020, I ordered the defendant to pay the plaintiff costs of S\$13,000. For the last figure, I took into account that there would have been some overlap in work done for Suit 1225/2020 which the plaintiff would already be compensated for in the

costs orders for SUM 3491/2021 and RA 332/2021. All sums were inclusive of disbursements.

Ang Cheng Hock
Judge of the High Court

Parmar Karam Singh and Leong Lijie (Tan Kok Quan Partnership)
for the plaintiff;
Seah Choon Huat Johnny (Seah & Co)
for the defendant.