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

[2023] SGHC 141

District Court Appeal No 29 of 2022

Between

(1) Auto Lease (Pte.) Ltd

… *Appellant*

And

(1) San Hup Bee Motor LLP
(2) San Hup Bee (S) Pte. Ltd
(3) Toh Beng Hock (Zhuo Mingfu) t/a V-Tech Auto Service

… *Respondents*

JUDGMENT

[Civil Procedure – Appeals – Third party's *locus standi* to appeal against judgment given in favour of plaintiff against defendant]
[Civil Procedure – Pleadings]
[Contract – Contractual terms – Exclusion clauses]
[Evidence – Hearsay]
[Contract – Remedies – Damages]
[Contract – Remedies – Mitigation of damage]
[Contract – Breach – Third party's liability under a breach of contract to indemnify defendant in respect of judgment sum and costs payable by defendant to plaintiff under another breach of contract]
[Courts and Jurisdiction – High Court – Jurisdiction – Appellate – Adjustment of damages in favour of party who did not appeal]

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v
San Hup Bee Motor LLP and others

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Mavis Chionh Sze Chyi J
12, 20 January, 2 February 2023

16 May 2023

Mavis Chionh Sze Chyi J:

Facts

The parties

1 The Appellant in HC/DCA 29/2022 is Auto Lease Pte Ltd ("**Third Party**" or "**Auto Lease**"), a Singapore registered finance company that is primarily in the business of granting hire-purchase loans for the financing of vehicle purchases.[1] The Appellant was joined as third party in the proceedings before the district courts in DC/DC 679/2020. Mr Lim Woon Cheng Anthony ("**Mr Lim**") is the director of Auto Lease.

2 The 1st Respondent is San Hup Bee Motor LLP (the "**1st Respondent**"), a Singapore registered limited liability partnership in the business of selling

[1] Record of Appeal at p21 Para 9.

vehicles on a consignment basis.[2] The partners of the 1st Respondent were one Mr. Toh See Leong and one Doris Chan Yun Zhen ("**Doris**")[3], until the former's death on 27 October 2017.[4] In the trial below, the 1st Respondent was named as the 2nd Defendant.[5]

3 The 2nd Respondent is San Hup Bee (S) Pte Ltd (the "**2nd Respondent**"), a Singapore-registered private limited company that carries on business as a used car dealer.[6] The 2nd Respondent sells vehicles purchased from third parties and also sells vehicles on behalf of third parties on a consignment basis. In the trial below, the 2nd Respondent was named as the 1st Defendant.[7] The sole director and shareholder of the 2nd Respondent is one Jaxon Toh Jun Sheng ("**Jaxon**"). Jaxon is the son of Mr Toh See Leong and Doris.[8]

4 Prior to his death, Mr Toh See Leong was also the sole director and shareholder of another Singapore-registered company called San Hup Bee Motoring Pte Ltd ("**SHB Motoring**"). SHB Motoring is a separate entity from the 1st and 2nd Respondents.[9]

5 The 3rd Respondent is Toh Beng Hock (Zhuo Mingfu) t/a V-Tech Auto Service (the "**3rd Respondent**"), a sole proprietorship in the business of the

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2 Record of Appeal at p665 Para 5.

3 Record of Appeal at p21 Para 7.

4 Record of Appeal at p275 ln 15 to ln 20.

5 Record of Appeal at p13.

6 Record of Appeal at p674 Para 4.

7 Record of Appeal at p13.

8 Record of Appeal at p21 Para 6.

9 Record of Appeal at p21 Para 8.

repair and maintenance of motor vehicles, and the provision of passenger land transport.[10] In this written judgment, I use the term "3rd Respondent" to refer both to the sole proprietorship V-Tech Auto Service and to Mr Toh Beng Hock himself.

Background to the dispute

6 The dispute below involved the alleged breach of two separate contracts, both relating to the sale and purchase of a Toyota HiAce Commuter GL2.7A bearing registration number SKC1131C (the "**Vehicle**").[11] The first of the two contracts was a sales agreement (the "**Sales Agreement**"), whereby the 3rd Respondent agreed to purchase from the 2nd Respondent the Vehicle at the price of $52,200 (the "**Purchase Price**"). The Vehicle was sold on a consignment basis by the 2nd Respondent on behalf of the 1st Respondent.[12] For the purposes of the Sales Agreement, the parties and the trial judge (the "**DJ**") treated the 1st and 2nd Respondents as joint sellers of the Vehicle.[13]

7 In the trial below, the 3rd Respondent took the position that the 1st and 2nd Respondents had breached the Sales Agreement in failing to ensure that all encumbrances over the Vehicle were removed so that legal title and/or ownership of the Vehicle could be duly transferred to the 3rd Respondent.[14] The 3rd Respondent asserted that despite having paid the full purchase price of $52,200, including a sum of $49,200.86 which he paid to the Appellant in full settlement of the hire-purchase loan outstanding on the Vehicle, he had found

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10 Record of Appeal at p20 Para 5.

11 Record of Appeal at p19 Para 1.

12 Record of Appeal at p22 Para 10.

13 Record of Appeal at p22 Para 13.

14 Record of Appeal at p25 Para 21.

himself unable to register the transfer of ownership of the Vehicle on the Land Transport Authority's ("**LTA**") online system because the 1st and 2nd Respondents had "failed to obtain and present to [LTA] any evidence that the vehicle [was] not under financing".[15]

8 The second contract was a hire purchase agreement (the "**Hire Purchase Agreement**") between the Appellant and the 1st Respondent. The Vehicle was financed by the Appellant. It was not disputed that of all the parties, the Appellant was the only one that was a member of the Hire Purchase Finance and Leasing Association of Singapore ("**HPFLAS**").

9 In the trial below, the 1st and 2nd Respondents took the position that the Appellant had breached the Hire Purchase Agreement by wrongfully misapplying monies received from the 3rd Respondent in respect of the settlement of the hire-purchase loan outstanding on the Vehicle. It was not disputed that the Appellant had appropriated a sum of $13,301 out of the total sum of $49,200.86 paid by the 3rd Respondent and applied this sum of $13,301 towards partial set-off of debts owed to the Appellant by *SHB Motoring*.[16] The Appellant claimed that he was entitled to do so because according to him, he had been dealing with Mr Toh See Leong for "more than ten years", and had noted that the latter would deal with him using both SHB Motoring and the 1st Respondent.

10 The 1st and 2nd Respondents asserted that the Appellant had no right under the Hire Purchase Agreement to use monies paid to settle the outstanding hire purchase loan for the set-off of debts owed by SHB Motoring. Further,

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15 Record of Appeal at p 695-700 Para 6-22.

16 Record of Appeal at p29 Para 31; Record of Appeal at p577-578 Para 11.

having wrongfully applied the sum of $13,301 towards partial set-off of debts owed by SHB Motoring, the Appellant had failed to take steps to lodge the HPFLAS Form B with LTA to confirm that the Vehicle was no longer under financing. This meant that the HPFLAS Form A – which indicated that the Vehicle was under financing – remained in LTA's records. The 1st and 2nd Respondents took the position that the Appellant's failure to lodge Form B effectively prevented the transfer of the Vehicle to the 3rd Respondent in LTA's records.[17] As such, the 1st and 2nd Respondents contended that they were entitled to a contribution or an indemnity from the Appellant for all losses for which the 1st and 2nd Respondents were held liable to the 3rd Respondent.[18]

The decision below

11 In respect of the 3rd Respondent's claim against the 1st and 2nd Respondents, the DJ found that it was an implied term of the Sales Agreement that the Respondents would procure and/or ensure the transfer of legal ownership and title over the Vehicle, free of any encumbrances, to the 3rd Respondent.[19] As there was plainly a failure to procure the transfer of legal title free of all encumbrances, the 1st and 2nd Respondents were in breach of their contractual obligations[20] and were liable to the 3rd Respondent for damages.[21]

12 In respect of the third party proceedings, the DJ found that the Appellant had acted in breach of the Hire Purchase Agreement with the 1st Respondent, by improperly applying part of the payment received from the 3rd Respondent

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17 Record of Appeal at p29 Para 31.

18 Record of Appeal at p31 Para 35.

19 Record of Appeal at p36 Para 43-44.

20 Record of Appeal at p38 Para 47.

21 Record of Appeal at p44 Para 63.

to set off amounts owing from SHB Motoring, a separate entity wholly unrelated to the transaction.[22] The Appellant had also failed to remove the encumbrance over the Vehicle despite having received full payment of the outstanding hire-purchase loan amount for the Vehicle. The DJ held that the Appellant had through his conduct caused the 1st and 2nd Respondents to breach the Sales Agreement with the 3rd Respondent, and that the Appellant must indemnify the 1st and 2nd Respondents in full for any damages awarded to the 3rd Respondent.[23]

13 The DJ therefore gave judgment for the 3rd Respondent against the 1st and 2nd Respondents for damages which he assessed at $16,500, with interest thereon and costs fixed at $10,000 (excluding disbursements). He further ordered the Appellant, as the third party, to indemnify the 1st and 2nd Respondents to the full extent of the sums payable by the 1st and 2nd Respondents to the 3rd Respondent (including costs and disbursements). The costs of the third party proceedings were awarded to the 1st and 2nd Respondents and fixed at $20,000 (excluding disbursements).

14 The Appellant appealed against "the whole of the decision of [the DJ]".[24]

The parties' cases on appeal

15 I summarise below the parties' respective cases on appeal.

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22 Record of Appeal at p54 Para 85.

23 Record of Appeal at p55 Para 86.

24 Record of Appeal at p5-6.

Appellant's Case

16 The Appellant contended that the DJ erred in finding that the 1st and 2nd Respondents had breached the Sales Agreement with the 3rd Respondent. *Inter alia*, the Appellant said that the DJ erred in finding that it was an implied term of the Sales Agreement that the 1st and 2nd Respondents should procure the transfer of legal title in the Vehicle, free of all encumbrances, to the 3rd Respondent. The Appellant contended that the 3rd Respondent had not pleaded any such implied term in its statement of claim; and that in any event, the Sales Agreement contained an entire agreement clause which precluded any implied contractual terms.

17 The Appellant also contended that the DJ erred in any event in finding that the 1st and 2nd Respondents failed to cause the 3rd Respondent to be registered as the lawful owner of the Vehicle; and in finding, moreover, that it was the Appellant's non-lodgement of Form B (and thus the continuing existence of Form A in LTA's records) which caused the failure of the attempts to register the 3rd Respondent's ownership.

18 The Appellant further contended that the DJ erred in his determination of the issue of mitigation by the 3rd Respondent and of the quantum of damages to be awarded to the latter.

19 Finally, the Appellant argued that the DJ erred in holding it liable to indemnify the 1st and 2nd Respondents.

1st and 2nd Respondents' Case

20 The 2nd Respondent limited its arguments in this appeal to a rebuttal of the Appellant's submissions on the DJ's alleged error in holding the Appellant

liable to indemnify the 1st and 2nd Respondents. The 1st Respondent adopted the same position as the 2nd Respondent.

3rd Respondent's Case

21 The 3rd Respondent raised, firstly, a threshold issue as to the Appellant's *locus standi* to appeal the DJ's decision insofar as that decision related to the proceedings between the 3rd Respondent (as the plaintiff below) and the 1st and 2nd Respondents (as the defendants below). In its written submissions, the 3rd Respondent contended that the 1st and 2nd Respondents had not appealed the DJ's findings on liability and quantum in the 3rd Respondent's claim against them on the Sales Agreement. This meant that the 1st and 2nd Respondents remained bound by the DJ's findings; and the relevant issue in the Appellant's appeal could therefore only be that of the Appellant's liability to indemnify the 1st and 2nd Respondents. On this issue, the 3rd Respondent maintained that the DJ's finding that the Appellant was liable to indemnify the 1st and 2nd Respondents should be upheld.

22 Further and in any event, the 3rd Respondent argued that the DJ was justified in finding that the 1st and 2nd Respondents had breached the Sales Agreement. The 3rd Respondent also took issue with the quantum of damages awarded to it by the DJ.

Issues to be determined

23 The following seven issues arose for my determination:

(a) Whether the Appellant had *locus standi* to appeal the DJ's decision in respect of the 3rd Respondent's claim against the 1st and 2nd Respondents.

(b) If the Appellant did have such *locus standi*, whether the DJ erred in finding that it was an implied term of the Sales Agreement that the 1st and 2nd Respondents should procure the transfer of legal title in the Vehicle, free of all encumbrances, to the 3rd Respondent.

(c) Whether the existence of an entire agreement clause in the Sales Agreement precluded the DJ from implying contractual terms into the Sales Agreement.

(d) Whether the DJ was correct in making the following findings as to liability:

(i) That the 1st and 2nd Respondents breached their contractual obligations in failing to cause the 3rd Respondent to be registered as the owner of the Vehicle.

(ii) That the cause of the failed attempts to register the 3rd Respondent as owner was the continued existence of the Form A in respect of the Vehicle, which indicated that the Vehicle was under financing, and which document the Appellant wrongfully allowed to remain in the HPFLAS System by dint of his failure to lodge a Form B.

(e) Whether the quantum of damages awarded to the 3rd Respondent ($2,200 a month for loss of rental income) should be revised on appeal.

(f) Whether the DJ was correct in his determination of the issue of mitigation by the 3rd Respondent.

(g) Whether the Appellant should be held liable to indemnify the 1st and 2nd Respondents in respect of the amounts payable by them to the 3rd Respondent.

24 In the paragraphs that follow, I address these issues *seriatim*.

Issue 1: Whether the Appellant had *locus standi* to appeal the DJ's decision in respect of the 3rd Respondent's claim against the 1st and 2nd Respondents

25 On the threshold issue of the Appellant's *locus standi* to appeal the DJ's decision in respect of the 3rd Respondent's claim against the 1st and 2nd Respondents, the 3rd Respondent argued that the Appellant had no such *locus standi* because it was not a party to the Sales Agreement on which the 3rd Respondent's claim was based. The Appellant initially did not deal with this threshold issue in its written submissions. As this appeared to me to be a material issue, I directed all parties to put in further written submissions; and I also drew parties' attention to the English and Australian authorities on this issue.

26 I first begin by outlining the Appellant's and the 3rd Respondent's further submissions on the threshold issue of *locus standi*.

Appellant's Case

27 Not surprisingly, in its further submissions, the Appellant argued that even though it was not a party to the Sales Agreement on which the 3rd Respondent's claim was premised, it was entitled to appeal the DJ's decision on the 3rd Respondent's claim. The Appellant sought to rely on O 16 of the Rules of Court 2014 ("ROC") and *Singapore Civil Procedure* vol.1 (Sweet & Maxwell, 2021) ("*White Book*", at para 16/7/6) in support of its argument.

Additionally, the Appellant relied on the English case of *The Millwall* [1905] P155 CA ("*The Millwall*"). According to the Appellant, *The Millwall* established that where an order had been made determining that the third party was bound by the judgment in the action, the third party would have *locus standi* to appeal the judgment.[25] In the present case, the Appellant pointed to an Order of Court made by the Deputy Registrar on 26 August 2020 which expressly provided that the Appellant was bound by the results of the action in DC/DC 679/2020.[26] This, according to the Appellant, meant that it was entitled to appeal the decision on the 3rd Respondent's claim against the 1st and 2nd Respondents.[27] I note as an aside that this Order of Court of 26 August 2020 was not included in the Record of Appeal and was only surfaced by the Appellant when I requested further submissions.

28 Further, the Appellant argued that even if it did not have any right *per se* to appeal the decision on the 3rd Respondent's claim against the 1st and 2nd Respondents, the appellate court should exercise its discretion to allow the Appellant to bring such an appeal on the basis that it was just and convenient to do so.[28] In this connection, the Appellant cited the English case of *Asphalt and Public Works Ltd. v. Indemnity Guarantee Trust Ltd.* (1969) 1 QB 465 ("*Asphalt*").[29]

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25 Appellant's Further Submissions at Paras 12-13.

26 Appellant's Further Submissions at Paras 13-14.

27 Appellant's Further Submissions at Para 20.

28 Appellant's Further Submissions at Para 33.

29 Appellant's Further Submissions at Para 26.

3rd Respondent's Case

29 In its further submissions, the 3rd Respondent maintained that the Appellant had no *locus standi* to appeal the DJ's decision on the 3rd Respondent's action against the 1st and 2nd Respondents, because the Appellant had not sought leave to appeal that part of the decision which was in favour of the 3rd Respondent vis-à-vis the 1st and 2nd Respondents. As for the 1st and 2nd Respondents, they had not appealed the DJ's decision in favour of the 3rd Respondent against them, and they remained bound by the decision below.[30]

30 The 3rd Respondent argued for the following approach towards third parties' *locus standi* to appeal a trial judge's decision in favour of the plaintiff:[31]

(a) The starting point should be that ordinarily, third parties would not be able to appeal directly against a decision in favour of the plaintiff except by leave of court;

(b) The court had the discretion to give such leave if it finds it just and convenient to do so.

31 In support of the above proposition, the 3rd Respondent cited the English cases of *The Millwall* and *Asphalt*, as well as the Australian case of *Gracechurch Holdings Pty Ltd v Breeze and another* (1992) WAR 51 ("*Gracechurch*"). The 3rd Respondent also submitted that the Australian cases of *Insurance Exchange of Australasia v Dooley and Another* [2000] NSWCA 159 ("*Dooley*") and *Helicopter Sales (Australia) Pty Limited* v *Rotor-Work Pty*

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30 3rd Respondent's Further Submissions at Para 2.

31 3rd Respondent's Further Submissions at Para 47.

Limited and another (1974) 132 CLR 1 ("*Helicopter Sales*") should not be followed.[32]

32 Adopting its proposed approach, the 3rd Respondent submitted that it was not just and convenient for leave to be given to the present Appellant to appeal the DJ's decision granting the 3rd Respondent judgment against the 1st and 2nd Respondents. This was because the 3rd Respondent was not a party to the third party proceedings below; and moreover, the Sales Agreement was a contract between the 3rd Respondent and the 2nd Respondent: the 3rd Respondent never had any relationship at all with the Appellant.[33]

My Decision

33 In considering the issue of a third party's *locus standi* to appeal directly a decision on the action between the plaintiff and the defendant, I start with the provisions of O 16 r 7 ROC, which are as follows:

> **Judgment between defendant and third party (O. 16, r. 7)**
>
> **7.** – (1) Where in any action a defendant has served a third party notice, the Court may at or after the trial of the action, or, if the action is decided otherwise than by trial, on an application by summons, order such judgment as the nature of the case may require to be entered for the defendant against the third party or for the third party against the defendant.
>
> (2) Where in an action judgment is given against a defendant and judgment is given for the defendant against a third party, execution shall not issue against the third party without the leave of the Court until the judgment against the defendant has been satisfied.

34 On the face of it, O 16 r 7 ROC simply provides for the relationship between the defendant and the third party – without saying anything about the

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[32] 3rd Respondent's Further Submissions at Para 48.

[33] 3rd Respondent Further Submissions at Para 2(c).

relationship between the plaintiff and the third party. However, the relevant extract from the *White Book* suggests that notwithstanding the absence of any express provision in O 16 r 7 ROC, the third party may in certain situations appeal against a judgment for the plaintiff:

> 16/7/6 **Appeal** – Appeal lies from any judgment between the defendant and the third party as in ordinary actions. The right of the third party to appeal from a judgment for plaintiff depends upon whether the third party is directed to be bound by the order made under r.4. See *The Millwall* [1905] P. 155.
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> …

35 I address in subsequent paragraphs the case of *The Millwall* which is cited by the authors of the *White Book*. For completeness, I add that I have also referred to O 16 r 4 ROC. The authors of the *White Book* cited this provision (at para 16/7/6) in relation to the proposition that a third party may appeal an order in favour of the plaintiff when it has been directed to be bound by the order made. I reproduce O 16 r 4 below for ease of reference:

> **Third party directions (O.16, r.4)**
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> **4.** – (1) The defendant who issued a third party notice must, by summons in Form 20 to be served on all the other parties to the action, apply to the Court for directions, except that where the action was begun by writ, such application shall not be made before the third party enters an appearance in Form 10.
>
> (2) If no summons is served on the third party under paragraph (1), the third party may –
>
> (a) in an action begun by writ, not earlier than 7 days after entering an appearance; or
>
> (b) in an action begun by originating summons, not earlier than 14 days after service of the notice on him,
>
> by summons in Form 20 to be served on all the other parties to the action, apply to the Court for directions or for an order to set aside the third party notice.
>
> (3) On an application for directions under this Rule, the Court may –

> (a) if the liability of the third party to the defendant who issued the third party notice is established on the hearing, order such judgment as the nature of the case may require to be entered against the third party in favour of the defendant;
>
> (b) order any claim, question or issue stated in the third party notice to be tried in such manner as the Court may direct; or
>
> (c) dismiss the application and terminate the proceedings on the third party notice; and may do so either before or after any judgment in the action has been signed by the plaintiff against the defendant.
>
> (4) On an application for directions under this Rule, the Court may give the third party leave to defend the action, either alone or jointly with any defendant, upon such terms as may be just, or to appear at the trial or hearing and to take such part therein as may be just, and generally may make such orders and give such directions as appear to the Court proper for having the rights and liabilities of the parties most conveniently determined and enforced and as to the extent to which the third party is to be bound by any judgment or decision in the action.
>
> (5) Any order made or direction given under this Rule must be in Form 21 and may be varied or rescinded by the Court at any time.

36 O 16 r 4(4) ROC allows a Court to order that a third party be bound by "any judgment or decision in the action". However, the rule is silent on whether such a third party may appeal a judgment or decision given in favour of the plaintiff against the defendant.

37 For completeness, I add that neither the Appellant nor the 3rd Respondent pointed me to any local caselaw on the issue of a third party's *locus standi* to appeal a judgment in favour of the plaintiff. Although the 3rd Respondent has cited the case of *Tan Juay Pah v Kimly Construction Pte Ltd and others* [2012] 2 SLR 549 ("*Tan Juay Pah*"), I do not find it to be relevant to this specific issue. In *Tan Juay Pah*, the plaintiff Kimly was the main contractor for a project where a tower crane had collapsed onsite. Kimly sued its sub-contractor Rango, who brought in the appellant TJP as third party,

claiming that TJP was obliged to indemnify Rango in the event it was found liable to Kimly. At trial, the trial judge granted Kimly judgment in its claim against Rango. TJP failed in his submission of "no case to answer" vis-à-vis Rango's claim for an indemnity from him, with the result that Rango succeeded in its claim against him. Rango did not appeal the trial judge's decision that it was liable to Kimly, but TJP appealed the entirety of the trial judge's decision. On appeal, the Court of Appeal ("CA") held that since TJP had submitted "no case to answer" vis-à-vis Rango in the court below, the determinative issue was whether Rango had established a *prima facie* legal basis for TJP to indemnify it in respect of its liability to Kimly. The CA ruled that even if all the evidential issues were resolved in Rango's favour, Rango's case against TJP would still fail as it could not establish a legal basis for TJP to indemnify it in respect of its liability to Kimly. In short, therefore, the issue of a third party's *locus standi* to appeal a judgment in favour of the plaintiff was not before the CA in *Tan Juay Pah*. I will, however, refer to this case in the later part of this judgment, in relation to a different issue.

English Position

38 I next examine the English authorities which have dealt with the issue of a third party's *locus standi* to appeal a judgment in favour of the plaintiff. I start with the case of *The Millwall*, which was cited by the authors of the *White Book.*

39 In *The Millwall*, the plaintiffs were cargo owners whose goods were damaged when the barge in which they were being conveyed met with a collision. The barge-owners had, on the plaintiffs' instructions, employed a tug; and the collision had been caused by the negligent navigation of the tug-owners' servants. The plaintiffs brought an action for damages against the barge-owners

and the tug-owners as co-defendants. The barge-owners were dismissed from the suit with costs to be paid by the plaintiffs, while the tug-owners were held liable with costs for the damage sustained by the plaintiffs, together with the costs to be paid by the plaintiffs to the barge-owners. The tug-owners served on the barge-owners, by a third-party notice, a claim for an indemnity arising from a contract of indemnity between the tug-owners (as service provider) and the barge-owners (as customer). On the issue raised by the third-party notice, the barge-owners were adjudged responsible for the amount of the damage for which the tug-owners had been held liable, together with the two sets of costs. Both the barge-owners and the tug-owners filed appeals, but the latter subsequently withdrew its appeal.

40 In dismissing the barge-owners' appeal, the English CA held that the barge-owners could not appeal in respect of the decision in favour of the plaintiffs against the tug-owners, because they were not parties to that judgment. Further, not having paid the amount adjudged to be due by the tug-owners to the plaintiffs, they were not subrogated to their rights; and even if subrogated, they could not avail themselves of an appeal which the tug-owners had abandoned. Nor could the barge-owners avail themselves of the third-party procedure under the Judicature Act: although the court would have had power under the said Act to put the barge-owners into the shoes of the tug-owners for the purpose of questioning the decision of the court below as between the plaintiffs and the tug-owners, the court had not been invited to do so. Consequently, in the words of Collins MR (at 164):

> …no order has been made determining that the third parties [the barge-owners]… were bound by the judgment in the action, and therefore…there is nothing binding the barge-owners by the result of the judgment between the plaintiffs and the tug-owners. There is no provision whereby the owners of the barge have been

> substituted as defendants, giving them all the rights in the conduct of the trial, with the right to appeal in their own name.

41 In *Asphalt*, the plaintiffs employed A Ltd to do work for them and the defendants gave a bond to guarantee A Ltd's due performance of the contract. Four individuals, including one C, then gave an undertaking to the defendants that A Ltd would perform the terms of the contract and that if any claim was made against the defendants on the bond, they would pay the claim amount with costs and expenses. When A Ltd failed to fulfil the contract, the plaintiffs sued the defendants on the bond. In turn, the latter claimed indemnity from the four individuals and served third party notices on all four of them. Directions were given that the question of liability between the third parties and the defendants be determined at the trial, and that the third parties might then appear and oppose the plaintiffs' claim so far as they might be affected thereby.

42 At trial, of the third parties, only C appeared. Judgment was given for the plaintiffs against the defendants and for the defendants against the third parties. C served notice of appeal on the defendants, who themselves served notice of appeal on the plaintiffs. The English CA was asked to rule on the question of whether C was entitled to appeal against the judgment given in favour of the plaintiffs and whether the defendants were necessary parties to any appeal against that judgment. The court ruled that the third parties could not appeal directly against the plaintiffs except by leave of the court and that leave would not be given in the present case. In his judgment (at 971H-972D), Lord Denning MR noted the observations by the court in *The Millwall* that if a third party was substituted as a defendant, or an order had been made binding him as against the plaintiff, then he might be allowed to appeal direct against the plaintiff. Lord Denning MR went on to hold as follows:

> But, there being no such order in that case [*The Millwall*], the third party there was not allowed to appeal direct. **It remains for us then to say when a third party can appeal directly against the plaintiff. In my opinion a third party cannot do so except by leave of this court: but the court can give leave whenever it thinks it just and convenient to do so**.
>
> In my view this is not a case for leave to be given. The plaintiffs ought not to be burdened by a direct appeal by [C]. He is impecunious. They have had no relations with him. Their contract was only with [A Ltd]; and they relied on the bond given by [the defendants]. In the court below they sued only [the defendants] because that was the only company who had the money to pay the claim or the costs. In this situation, I think the plaintiffs are entitled, on any appeal, to look to the defendants to pay the costs.
>
> We will direct, therefore, that the third parties can appeal and give notice of appeal as against the defendants; and the defendants in turn can give a notice of appeal as against the plaintiffs; but that the third parties cannot directly appeal against the plaintiffs.
>
> [emphasis added]

43 Agreeing with Lord Denning MR, Edmund Davies LJ also pointed out (at 973) that the third party was not bound by the judgment awarded in the plaintiff's favour and that he was never substituted as a defendant. As he noted, it "is… not right to say that in every case where a third party has been given leave to defend he is thereby ipso facto entitled to appeal directly against a judgment awarded in the plaintiffs' favour".

44 From the English authorities, it would appear that the following principles may be distilled:

(a) When an order has been made determining that the third party in an action is bound by a judgment given in favour of the plaintiff, the third party will generally have a right to appeal directly against that judgment;

(b) In the absence of such an order, a third party will ordinarily not be able to appeal directly against a judgment given in favour of the plaintiff, unless leave is obtained from the court for the third party to do so;

(c) The court has a discretion to grant the third party leave to appeal against a plaintiff directly whenever the court thinks it just and convenient to do so.

Australian Position

45 I next consider the Australian authorities on this issue, starting with the case of *Dooley*. The case arose from a baseball game in which the first defendant (one of the players) had collided with the plaintiff (another player) who was injured. The plaintiff sued the first defendant and the League (the second defendant) in charge of the conduct of these baseball tournaments, claiming damages for negligence. The second defendant joined the appellant – the Insurance Exchange of Australasia – as a third party, claiming indemnity under its policy with the appellant. The first defendant also filed a cross-claim against the appellant to seek indemnity under the policy. The trial judge gave judgment for the plaintiff against both defendants, and for both defendants against the appellant insurer. The appellant then applied for leave to appeal against the judgment given against it in favour of the defendants as well as the judgment given in favour of the plaintiff.

46 Before the New South Wales (NSW) CA, the plaintiff argued that the appellant had no standing to attack the judgment in favour of the plaintiff against the defendants. In rejecting this argument, the court held (*per* Handley JA, at [9]):

> The question of standing in a case such as this depends on the effect of a judgment in favour of a plaintiff on the liability of a third party to the defendant. If a judgment in favour of the plaintiff binds the third party as a *res judicata*, one would think, on first principles, that the third party would have the normal right of a litigant to be heard before that judgment was given, and to appeal against it should it be adverse.

47 Having considered the procedural framework in the District Court Rules 1973 (Australia) ("DCR") which governed the joinder of a third party and the conduct of third party proceedings (Pt 21 rr 4 and 5), Handley JA opined (at [12]) that the object of the third party procedure was "to get the third party bound by the decision between the plaintiff and the defendant" (citing *Barclays Bank v Tom* [1923] 1 KB 221 at 224), that is "to make that decision a *res judicata* as between the defendant and the third party". In particular, the applicable rules made the third party "a party to the action". In the circumstances, a litigant who was a party to proceedings, and bound by a judgment which was adverse to his interests "must, in principle, have the necessary standing to appeal" (at [24]).

48 Handley JA also observed (at [28]-[29]) that under the DCR, Pt 20 provided that a claim on any cause of action on which the defendant might have brought an action in court could be pleaded as a cross-claim. Pursuant to DCR Pt 20 rule 4 (b) to (d), the court could, at any stage of an action, make orders giving a defendant to a cross-claim leave to defend the claim on the statement of claim, to appear at the trial of the claim on the statement of claim, and to take such part in the trial as the court thought fit; and the court could also determine the extent to which the cross-claimant and a defendant to the cross-claim should be bound as between themselves by a judgment on the claim in the statement of claim. In *Dooley* itself, the trial had proceeded without any such orders being made, but Handley JA pointed out that the trial had been conducted on the basis that the appellant insurer had full rights of defence in respect of the plaintiff's

claims against both defendants; and counsel for the appellant insurer had cross-examined the plaintiff without objection. Citing the Australian High Court's decision in *Helicopter Sales*, Handley JA opined (at [32]) that the NSW Supreme Court should apply the dicta of Barwick CJ and Mason J in that case that in a situation where a third party had defended the action against the defendants without any order having been made under DCR Pt 20 rule 4 (b) to (d), the third party would nonetheless have standing to appeal against a judgment entered for the plaintiff.

49 Noting that there were statements in *The Millwall* which suggested a contrary result, Handley JA disagreed with the reasoning of the CA in that case. Although Collins MR in *The Millwall* had found that the barge-owners were not parties to the decision against the tug-owners, Handley JA criticized the reasoning in that case as being unsatisfactory. In his view (at [36]-[37]), since the barge-owners and the tug-owners were both defendants in the action, a decision that one of them was liable to the plaintiff – and the other was not – bound the defendants not only against the plaintiff but also as between themselves: the barge-owners who were held not liable to the plaintiff were bound by the decision that the tug-owners were liable, quite apart from the effect of the third party proceedings. He opined (at [42]) that –

> If the result of the rules of court, or directions given under them, is that a third party is not bound by the decision as between the plaintiff and the defendant, the third party would lack the standing to appeal against that decision. However in that event the defendant would have to prove his liability to the plaintiff all over against as against the third party. This would defeat the purpose of the third party procedure which is to make a judgment as between plaintiff and defendant binding on the third party.

50 As noted earlier, Handley JA cited the Australian High Court's decision in *Helicopter Sales* in *Dooley* for the purpose of applying the dicta of Barwick

CJ and Mason J. It should be pointed out, though, that on the specific issue for which Handley JA cited *Helicopter Sales*, the views of the High Court coram were not uniform.

51 In *Helicopter Sales*, the plaintiff's helicopter failed, resulting in the helicopter being lost and its occupants killed. The failure was due to a machining defect in the bolt which had occurred in its manufacture. The defendant (a wholly owned subsidiary of the plaintiff) had, under contract to the plaintiff, undertaken the servicing of the helicopter, and had fitted the defective bolt in the course of regular servicing. The defendant joined as third party the Australian distributor of helicopter parts from which it had purchased the bolt. The third party was given leave to defend and did in fact defend the plaintiff's claim against the defendant. Judgment was entered for the plaintiff against the defendant and for the defendant against the third party. The third party appealed not only against the judgment given against it in the defendant's favour but also against the judgment given against the defendant in the plaintiff's favour. No appeal was brought by the defendant. It was not disputed that there were no issues as to the defendant's judgment against the third party: it would stand or fail with the plaintiff's judgment against the defendant.

52 Stephen J, with whose judgment Menzies J agreed, observed at [28] that an order by way of pre-trial third-party directions gave the third party leave "to defend the plaintiff's action" but said nothing about "the extent to which the third party is to be bound by any judgment or decision in this action". Stephen J also noted that the relevant civil procedure rules (Supreme Court Rules (Q.) O 17 r 4(4)) did not provide that a third party who entered an appearance would be bound by the result of the trial. He opined that "in the absence of a court order it is at least doubtful whether the third party would be bound by or be competent to appeal against the judgment in favour of the plaintiff". However,

in the *Helicopter Sales* appeal, no attack had been made upon the competency of the third party's appeal against the judgment in favour of the plaintiff; and in fact, only the third party's appeal against the judgment in favour of the plaintiff was argued, with its outcome being treated as decisive of the fate of the other appeal. In the light of these circumstances, Stephen J held that despite the absence of any order binding the third party under O 17 r 4(4), the appropriate course was to treat the matter as the parties themselves had chosen to – *ie*, to deal with both of the third party's appeals as if an order had been made binding it by the result of the trial of the issues between plaintiff and defendant. In coming to this conclusion, Stephen J cited *Asphalt,* noting in addition that:

> …to do otherwise, allowing only the appeal against the defendant's judgment and that only to the extent of the damages awarded, the defendant remaining entitled to nominal damages for breach of contract, appears to be a wholly unsatisfactory alternative.

53 Mason J took a different view from Stephen J and Menzies J, opining that there was no difficulty in dealing with both of the third party's appeals. At [2], Mason J observed that although no order had been made expressly binding the third party to the result of the trial of the issues between the plaintiff and the defendant, the third party had defended the plaintiff's claim pursuant to an order giving it leave to do so. In his view, these circumstances sufficed to entitle the third party to appeal against the judgment given in the plaintiff's favour. Mason J also indicated that he would have taken the same view even if the third party had defended the plaintiff's action without the benefit of an order giving it leave to do so.

54 Like Mason J, Barwick CJ took a different view from Stephen J and Menzies J (at [3]). He was of the view that a third party who was given leave to defend a plaintiff's action, and who did so, was bound by the result of the issues

which that third party contested. He was also of the view that the result of the third party contesting issues in the action did not depend on the making of an order determining the extent to which the third party should be bound but upon the making of an order giving the third party leave to defend the plaintiff's action. Like Mason J, Barwick CJ took the position that where a third-party contested an action without leave to defend having been given, it "may well be proper to deal with the case as if an order giving leave had been made".

55 The fifth member of the coram, Jacobs J, did not express any views on the issue of the third party's standing to appeal the judgment given in favour of the plaintiff.

56 I next consider the decision of the Supreme Court of Western Australia in *Gracechurch*, a case decided after *Helicopter Sales* but before *Dooley.* In *Gracechurch*, the appellant leased certain premises to a company. The first respondent (Mr Breeze) and the second respondent (Mrs Breeze) were directors of the company, who guaranteed the company's liabilities under the lease. The appellant brought two separate actions against Mr and Mrs Breeze respectively, as guarantors, for recovery of monies owing under the lease. Mr Breeze disputed the amount owing. Mrs Breeze did not, but denied liability as a guarantor on the basis of an estoppel. Mrs Breeze issued third party proceedings against Mr Breeze founded on an indemnity given to her by Mr Breeze in respect of her liability under the guarantee. This indemnity had been provided during the course of matrimonial proceedings between Mr Breeze and Mrs Breeze. At trial, Mr Breeze was not able to be present by reason of illness, for which medical certificates were tendered. The magistrate hearing the matter proceeded with the trial and entered judgment for the appellant against Mr Breeze. The magistrate also entered judgment for the appellant against Mrs Breeze as well as judgment for Mrs Breeze against Mr Breeze.

57 Mr Breeze successfully applied to set aside both the default judgments against him and also successfully appealed to the District Court for the judgment against Mrs Breeze to be set aside. The appellant in turn appealed against the District Court's decision, contending that the court was wrong to have found Mr Breeze prejudiced by the action against Mrs Breeze proceeding in his absence.

58 In allowing the appeal and setting aside the District Court's decision, the appellate court ruled that Mr Breeze did not have standing as a third party to appeal to the District Court against the judgment awarded in the appellant's favour against the defendant Mrs Breeze. Citing *Asphalt* and *The Millwall*, Ipp J (with whom Seaman J and Pidgeon J agreed) held (at p 4):

> The general rule is that there is no right of appeal by a third party against a judgment in favour of the plaintiff... This rule is, however, subject to certain exceptions. A third party may appeal against the principal judgment if he is directed to be bound thereby... In this case no such order was given and indeed it appears that no third-party directions were ever given. Nevertheless, notwithstanding the absence of third party directions, leave will be given to a third party to appeal directly against the plaintiff whenever it is just and convenient to do so...

59 In the course of arguments on appeal, it was accepted that the question of Mr Breeze's standing to appeal the judgment against Mrs Breeze depended on whether the former had been prejudiced by the judgment against the latter: if prejudice existed, he was rightly afforded standing; if there was no prejudice, he should not have been given leave to appeal. Mr Breeze had argued that he was prejudiced by the judgment against Mrs Breeze because that judgment would result in his having to spend more time in defending the litigation and would cause him to incur further costs. This argument was rejected by the appellate court. Ipp J pointed out (at p 6) that the additional time Mr Breeze would have had to spend did not, in law, amount to prejudice of the kind that should result in the setting aside of the magistrate's judgment. The spending of

time and the enduring of inconvenience were "inevitable burdens brought about by becoming involved in litigation". As for the incurring of extra costs, any prejudice that might arise therefrom could be substantially cured by an appropriate costs award in favour of Mr Breeze, should it be held that he was so entitled.

60 In addition, the District Court had taken the view that because the case against Mr Breeze was determined separately, the magistrate did not hear evidence about the amount owing, this being an issue disputed by Mr Breeze but conceded by Mrs Breeze. The District Court considered that this constituted detriment to Mr Breeze. The appellate court disagreed (at pp 13-14), holding that the judgment given against Mrs Breeze would be inadmissible in the third party proceedings and that accordingly, Mr Breeze did not suffer prejudice when the magistrate proceeded, in his absence, with the trial between the appellant and Mrs Breeze.

61 *Hadley and anor v Hazian Pty Ltd and ors*, *BDO v Hadley and ors* BC9504075 ("*Hadley*") was another case which came before the Supreme Court of Western Australia. In *Hadley*, the plaintiff Hazian had sued the defendants Hadley, Coffey and a company called Westprime Pty Ltd ("the Company"), on the basis of a Deed of Release by which it was alleged that Hadley and Coffey had agreed to purchase Hazian's shares in the Company in accordance with the terms of the Deed. Hadley and Coffey joined as third party Nelson Parkville BDO, one of the accountants who had carried out the valuation of the shares, claiming that they had failed to value the shares in accordance with the provisions of the Deed and otherwise attacking the valuation on other grounds. The third party was given leave to appear and to be heard at the trial of the action, to take such part as the trial judge directed and to be bound by the result of the trial. A trial was ordered of a preliminary issue as to which (if any) of the

defendants were liable to acquire the plaintiff's shares in the Company and upon what basis. The Commissioner hearing the matter at first instance decided that Hadley and Coffey were each liable to purchase the plaintiff's shares. On appeal, the Supreme Court of Western Australia had to decide *inter alia* whether it was necessary for the third party to be granted leave to appeal the judgment. Malcolm CJ, with whom Pidgeon J and Franklyn J agreed, cited *Gracechurch*, *The Millwall*, *Asphalt* and *Helicopter Sales* in holding (at pp 6-7, [18]-[19]) that –

> As a general rule, a third party to a proceeding has no standing to appeal against a judgment or order as between a plaintiff and a defendant or any other party: *Gracechurch Holdings Oty Ltd v Breeze* [1992] 7 WAR 518. The reason why the third party has no standing is that a judgment cannot bind a person who is not a party to the principal proceedings in which it was granted, unless that party was directed to be bound by it: *Gracechurch Holdings Pty Ltd v Breeze,* above, and see *King v Norman* [1847] 4 CB 884; *The Millwall* [1905] P 156.
>
> …(I)n the present case directions were given by an order made on 2 May 1991, which included an order that "The Third Party be at liberty to appear at the trial of this action and take such part as the Judge shall direct and be bound by the result of the trial." By the later order dated 23 March 1993 Nelson Parkhill BDO were given leave to be heard on the trial of the preliminary issue. In my opinion, the effect of these directions was that Nelson Parkhill BDO were bound by the result of the trial of the preliminary issue and, consequently, were entitled to appeal against the decision as of right. In any event, leave may be granted to a third party to appeal whenever the Court considers it just and convenient to do so. Leave is typically granted where the third party is prejudiced in some way by the terms of the judgment or order: *Gracechurch Holdings Pty Ltd v Breeze,* above; and see *Asphalt and Public Works Ltd v Indemnity Guarantee Trust Ltd* [1969] 1 QB 465; and *Helicopter Sales (Australia) Pty Ltd v Rotor-Work Pty Ltd* [1974] 132 CLR 1. Nelson Parkhill BDO were clearly prejudiced by the result of the trial of the preliminary issue as the finding of a liability on the part of Hadley and Coffey was a necessary prerequisite to the establishment of their claim in the third party proceedings. It was for that reason that I was prepared to join in granting leave to appeal, if it was necessary. In the result, however, I am satisfied that it was not necessary.

62 From the above review of the Australian authorities, it would appear that they did not always speak with one voice. In the High Court's decision in *Helicopter Sales*, two of the five judges (Stephen J and Menzies J) opined that "in the absence of a court order it would at least be doubtful whether the third party would be bound by or be competent to appeal against the judgment in favour of the plaintiff." Another two judges (Barwick CJ and Mason J), on the other hand, opined that a third party did not even need an order giving it leave to defend an action in order for it to have standing to appeal any judgment given in favour of the plaintiff. In *Dooley*, Handley JA opted to apply the dicta of Barwick CJ and Mason J, while criticizing the decision in *The Millwall* as being unsatisfactory: in his view, since both the barge-owners and the tug-owners in *The Millwall* were defendants in the action, where either one or both of them might be liable to the plaintiff, there was also an issue between the defendants; and "a decision that one defendant is liable and the other is not binds the defendants not only against the plaintiff but as between themselves". In *Gracechurch* and *Hadley*, on the other hand, the Supreme Court of Western Australia cited the principles elucidated in both *The Millwall* and *Asphalt*, and had no difficulty applying those principles.

My decision on the approach to be adopted in the present case

63 Having considered the English and Australian positions, I am of the view that the English approach should be adopted in the present case. I find the English approach is conducive to clarity and consistency. Insofar as Barwick CJ and Mason J in *Helicopter Sales* were prepared to hold that a third party would not require permission to appeal a judgment in favour of a plaintiff even in the absence of any order giving it leave to defend the main proceedings, it must be pointed out that these views were expressed *obiter*, since no objections were

actually raised before the High Court to the competency of the third party's appeal against the judgment in favour of the plaintiff in that case.

64 Further, insofar as the court in *Dooley* endorsed the dicta of Barwick CJ and Mason J and sought to cast doubt on the approach taken by the court in *The Millwall*, I do not find *Dooley* to be strictly relevant to the present case. I am persuaded by the 3rd Respondent's submissions distinguishing the case of *Dooley*. In gist, the 3rd Respondent pointed out that in *Dooley*, the third party had the benefit of the Australian DCR, Pt 21, r 4(1) and 4(2) which enabled the third party – as a cross-defendant – to contest the defendant's liability to the plaintiff. In contrast, the procedural framework governing the conduct of third-party proceedings in Singapore is different from that in the Australian DCR:[34] the concept of a cross-defendant does not feature in the Singapore Rules of Court.[35] Since the decision in *Dooley* was mainly premised on the provisions of the Australian DCR on the conduct of third party proceedings, I agree with the 3rd Respondent that the decision in *Dooley* should not be followed.

65 Having regard to the approach adopted by the English courts in *The Millwall* and *Asphalt*, I am of the view that the following general principles are applicable in the present case:

(a) Ordinarily, a third party will not be able to appeal directly against a judgment given in favour of the plaintiff in the principal proceedings, unless leave has been obtained from the court to do so.

(b) However, when there is an order made binding a third party to the result of a trial of the action, including any judgment given in favour

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34 3rd Respondent's Further Submissions at Para 49.

35 3rd Respondent's Further Submissions at Para 50.

of the plaintiff, the third party will generally have standing to appeal that judgment.

(c) Otherwise, the court may give a third party leave to appeal directly against a judgment in favour of the plaintiff whenever the court thinks it just and convenient to do so.

Application of the above principles to the present case

66 In the present case, the Appellant has highlighted in its further submissions that an order was made by the Deputy Registrar on 26 August 2020, expressly providing for the third party to be bound by the result of the trial of this action.[36] I set out below the relevant portion of the order:

> It is ordered that:
>
> …
>
> 3. And that the said Third Party be at liberty to appear at the trial of this action, and take such part as the Judge shall direct, and be bound by the result of the trial.
>
> …

67 Applying the principles established in *The Millwall* and *Asphalt*, I find that the Appellant has the requisite *locus standi* in the present case to appeal the judgment given in favour of the 3rd Respondent.

68 Given my finding on the Appellant's *locus standi*, it is not necessary for me to make any finding on whether it would have been just and convenient to grant leave otherwise.

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[36] Appellant's Further Submissions, Para 13.

Issues 2 to 7:

General principles governing an appellate court's review of a trial judge's decision

69 Before dealing with the other issues in this appeal, I first summarise the principles applicable in an appellate court's review of a trial judge's decision. In respect of findings of fact made by a trial judge, appellate intervention is generally only warranted when the trial judge's assessment is plainly wrong or manifestly against the weight of the evidence (*Nambu PVD Pte Ltd v UBTS Pte Ltd and another appeal* [2022] 1 SLR 391 at [8]; *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 ("*Tat Seng*") at [41]; *Tuitiongenius Pte Ltd v Toh Yew Keat and another* [2021] 1 SLR 231 at [19]; *North Star (S) Capital Pte Ltd v Yip Fook Meng* [2022] 1 SLR 677 at [21]). This is because the trial judge is generally better placed to assess the credibility of witnesses, especially where oral evidence is concerned. The CA in *Tat Seng* (at [41]) has also clarified that where a finding of fact is not based on the veracity or credibility of the witness, but is instead based on an inference drawn from the facts or from an evaluation of the facts, the appellate court is in as good a position as the trial judge to undertake the exercise. This involves the appellate court evaluating the cogency of the evidence given by the witnesses by testing it against inherent probabilities or uncontroverted facts.

70 In respect of errors of law, the CA in *Ng Eng Ghee and others v Mamata Kapildev Dave and others (Horizon Partners (Pte Ltd, intervener) and another appeal* [2009] 3 SLR(R) 109 (at [90]), citing *Halsbury's Laws of England* vol 1(1) (Butterworths, 4th Ed Reissue, 1989) at para 70) listed the various types of errors of law which would warrant appellate intervention (see also *Mu Qi and another v Management Corporation Strata Plan No 1849* [2021] 5 SLR 1401 at [34]; *Wu Chiu Lin v Management Corporation Strata Title Plan No 2874*

[2018] 4 SLR 966 at [31]; *Axis Law Corp v Intellectual Property Office of Singapore* [2016] 4 SLR 554 at [61]):

> Errors of law include *misinterpretation of a statute* or any other legal document *or a rule of common law*; *asking oneself and answering the wrong question*, taking irrelevant considerations into account or failing to take relevant considerations into account when purporting to apply the law to the facts; admitting inadmissible evidence or *rejecting admissible and relevant evidence*; exercising a discretion on the basis of incorrect legal principles; *giving reasons which disclose faulty legal reasoning* or which are inadequate to fulfil an express duty to give reasons, and *misdirecting oneself as to the burden of proof*. [emphasis added]

Issue 2: Whether the DJ erred in implying terms into the Sales Agreement, given that implied terms were not pleaded by the 3rd Respondent

71 I consider first Issue 2, which concerns the Appellant's argument that the DJ erred in finding that an implied term in the Sales Agreement required the 1st and/or 2nd Respondents to procure and/or ensure the transfer of legal ownership and title over the Vehicle, free of any encumbrances, to the 3rd Respondent. The Appellant's argument was principally based on alleged defects in the 3rd Respondent's pleadings. I summarise below the Appellant's and the 3rd Respondent's submissions on this issue.

Appellant's Case

72 The Appellant argued that the 3rd Respondent had failed to plead in its statement of claim that it was an implied term of the Sales Agreement that the 1st and 2nd Respondents would procure and/or transfer to it the legal ownership and title in the Vehicle free from encumbrances;[37] and that given this defect in the 3rd Respondent's pleadings, the DJ was precluded from finding such an

[37] Appellant's Case at Paras 17-19.

implied term to be established.[38] The Appellant claimed that the 3rd Respondent's statement of claim failed to specify the cause of action; that based on the 3rd Respondent's pleadings, its cause of action appeared to lie in tort rather than in contract[39]; and that in any event the material facts in support of the alleged implied term were not pleaded.[40]

3rd Respondent's Case

73 The 3rd Respondent contended that his pleadings disclosed the material facts necessary for the DJ's finding as to the implied term requiring the 1st and 2nd Respondents to procure and/or transfer legal ownership and title in the Vehicle to the 3rd Respondent free from encumbrances.[41] The 3rd Respondent also contended that it was not necessary for the label "implied term" to be used in its pleadings before a finding could be made that a term was "implied in law".[42]

My Decision

74 By way of general principle, parties are bound by their pleadings and the court was precluded from deciding on matters which the parties had decided not to put into issue: see *V Nithia (co-administratrix of the estate of Ponnusamy Sivapakiam, deceased) v Buthmanaban s/o Vaithilingam and another* [2015] 5 SLR 1422 ("*V Nithia*") at [38]. The underlying consideration of the law of pleadings is to prevent surprises arising at trial: see *SIC College of Business and*

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38 Appellant's Case at Para 19.

39 Appellant's Case at Para 14.

40 Appellant's Case at Para 8.

41 3rd Respondent's Case at p13 Para 39.

42 3rd Respondent's Case at p 14 Para 41.

Technology Pte Ltd v Yeo Poh Siah and others [2016] 2 SLR 118 ("*SIC College*") at [46].

75 Having considered the parties' submissions, I reject the Appellant's submission regarding the alleged fatal flaws in the 3rd Respondent's pleadings. My reasons are as follows.

76 I should start by stating that I found the Appellant's arguments about the 3rd Respondent's alleged failure to plead the implied term in question to be somewhat beside the point. Although the DJ did not explicitly make a finding of a "term implied in law", it is plain that a term requiring the 1st and 2nd Respondents to procure and/or transfer legal ownership and title in the Vehicle to the 3rd Respondent free from encumbrances would constitute a "term implied in law". This is because such a term would be a statutorily implied term: see s 12(2) read with s 2(1) of the Sales of Goods Act (Cap 393, 1999 Rev Ed). *Andrew Phang et al*, *The Law of Contract in Singapore*, vol.1, Academy Publishing ("*Phang on Contract vol.1*") explains that if a statutory provision "states expressly that a particular term is to be implied, then effect must, of course, be given by the court to that provision". On the facts, given that there was an agreement for the sale and purchase of the Vehicle as between the 3rd Respondent on the one hand and the 1st and 2nd Respondents on the other, s 12(2) Sales of Goods Act provides that:

> (2) In a contract of sale, other than one to which subsection (3) applies, there is also an implied warranty that –
>
> (a) the goods are free, and will remain free until the time when the property is to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made; and
>
> (b) the buyer will enjoy quiet possession of the goods except so far as it may be disturbed by the owner or other

> person entitled to the benefit of any charge or encumbrance so disclosed or known.

77 I note parenthetically that s 12(3) has no application in the present case as there is nothing in the Sales Agreement which states or suggests that the parties' intention was for the 2nd Respondent to "transfer only such title as he or a third person may have".

78 *Per* s 12(2) Sales of Goods Act, therefore, there was an implied warranty on the part of the seller of the Vehicle that the Vehicle "[was] free and [would] remain free until the time when the property [was] to pass, from any charge or encumbrance not disclosed or known to the buyer before the contract is made". It was common ground that no "charge or encumbrance" over the Vehicle was made known to the 3rd Respondent prior to the Sales Agreement being entered into. Further, the absence of any express reference to such an implied term in the 3rd Respondent's pleadings would not preclude this point being raised. In *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another and other appeals* [2006] 3 SLR(R) 769, the CA was faced with an argument that the issue of a "term implied in law" had not been pleaded. In rejecting the argument, the CA held (at [93]) that "given the *very nature* of such a category of implied terms…it ought to be recognized by the court *as a matter of law*". In other words, even if the issue of a "term implied in law" is not pleaded, the court should still recognize such implied terms a matter of law.

79 The above should suffice to dismiss the Appellant's arguments on Issue 2. However, in the interests of completeness, since the Appellant has put forward arguments premised on the implied term being a term implied in *fact*, I address below the arguments made.

80 In *MK (Project Management) Ltd v Baker Marine Energy Pte Ltd* [1994] 3 SLR(R) 823 ("*MK (Project Management)*", at [26]), the CA made it clear that if a legal result was being relied on, the legal result did not have to be specifically pleaded, provided the pleadings disclosed at the very least the material facts which would support the cause of action relied on and gave the opponent fair notice of the substance of such a claim. In *MK (Project Management)*, the appellants relied on an oral agreement which they claimed had varied the project agreement vis-à-vis the quantum of their commission. The trial judge held that the appellants had failed to plead any consideration for this oral agreement. On appeal, the CA reversed the trial judge's decision. The CA held that the appellants had sufficiently set out their allegation of fact that the quantum of commission had been varied by agreement from that provided in the project agreement to an amount of US$750,000. In the CA's view, although the appellants had not gone on to explicitly characterize this as consideration for the variation, it was clear that such explicit characterization was unnecessary. In so holding, the CA (at [26]) cited the judgment of Lord Denning MR in *In re Vandervell's Trusts (No 2), White v Vandervell Trustees Ltd* [1974] Ch 269 at 321H:

> It is sufficient for the pleader to state the material facts. He need not state the legal result.

81 In *Tian Kong Buddhist Temple v Tuan Kong Beo (Teochew) Temple* [2021] 4 SLR 286 ("*Tian Kong Buddhist Temple*") at [10], Choo J highlighted that there was a difference between pleading law and raising a point of law in a pleading. Choo J observed that a party need not explicitly plead the legal conclusions which a party sought to persuade the court to draw from the facts. However, if a party intended to raise a particular point of law on the facts as

pleaded, he ought to plead such a point expressly, or at the very least, give the opponent fair notice of the substance of his claim.

82 In *Tian Kong Buddhist Temple* (at [14]-[15]), the appellant claimed that the individual who had purportedly signed the 2011 Agreement on its behalf (one Chin) did not have the actual authority to enter into the said agreement on its behalf. At first instance, the district judge made no findings on the issue of actual authority, but found that the appellant was bound by the 2011 Agreement by virtue of the doctrine of ostensible authority. On appeal, the appellant contended that the district judge had erred in making this finding because the respondent had not pleaded a claim of ostensible authority, nor had it pleaded the facts material to such a claim. In allowing the appeal, Choo J held (at [14]) that the words "ostensible authority" or "apparent authority" did not have to be specifically pleaded by the respondent so long as the latter's pleadings as a whole disclosed the material facts which would have supported such a claim. In its reply, in responding to the appellant's assertions in its pleadings about Chin's lack of authority, the respondent had merely stated that it did not plead to the relevant paragraphs in the appellant's defence and that it put the appellant "to strict proof thereof". Having regard to the state of the respondent's pleadings, Choo J held (at [15]) that the respondent had failed to plead any facts or particulars showing that the elements of the doctrine of ostensible authority were satisfied. Choo J further found (at [16]) that the respondent's failure to plead its case had caused irreparable prejudice to the appellant because the appellant had been deprived of the opportunity to adduce or to challenge evidence which might have been relevant to the issue of ostensible authority, and was thus unable on appeal to mount a substantive response to the respondent's arguments on this issue.

83 Applying the principles set out in the above authorities, I am satisfied that contrary to the Appellant's contention, the matters pleaded by the 3rd Respondent provided sufficient basis for the DJ's finding that an implied term in the Sales Agreement required the 1st and 2nd Respondents to procure and/or transfer legal ownership and title in the Vehicle to the 3rd Respondent free from encumbrances. Contrary to the Appellant's submission[43], it was unnecessary for the 3rd Respondent to explicitly state this implied term in its statement of claim. It was sufficient that the 3rd Respondent gave fair notice of the substance of his claim. The 3rd Respondent did so by pleading the facts material to such a claim. An examination of the 3rd Respondent's statement of claim shows that the following matters were clearly pleaded:

(a) The existence of the Sale Agreement, pursuant to which it was agreed that the 3rd Respondent would purchase the Vehicle from the 2nd Respondent at the price of $52,000.[44]

(b) The fact that the 3rd Respondent had made full payment in accordance with the Sale Agreement.[45]

(c) The receipt of the Vehicle by the 3rd Respondent.[46]

(d) The fact that after receipt of the Vehicle, the 3rd Respondent had realized that legal title and/or ownership in the Vehicle remained with the 1st Respondent.

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43 Appellant's Case at Paras 19-20.

44 Record of Appeal at p806 Para 4.

45 Record of Appeal at p807 Para 5.

46 Record of Appeal at p807 Para 6.

(e) That the 3rd Respondent was "entitled to the legal title and/or ownership" of the Vehicle it had purchased by reason of the above matters.[47]

(f) That the 1st and 2nd Respondents had "neglected and/or refused to ensure that the legal title and/or ownership of the Vehicle [was] duly transferred to the [3rd Respondent], despite the [3rd Respondent] having performed his part of the [Sales] Agreement".[48]

(g) That the 3rd Respondent had been deprived of "the benefit and rental of [the Vehicle]" and had "suffered loss as a result of the [1st and/or 2nd Respondents'] breach".[49]

84 It is plain that while the words "implied term" were not explicitly used in the 3rd Respondent's pleadings, the material facts in support of the implied term which the DJ found were more than adequately pleaded such that the 1st and 2nd Respondents had fair notice of the substance of the 3rd Respondent's claim against them. Indeed, I note that the 1st and 2nd Respondents were able to respond to the relevant paragraphs in the statement of claim: they pleaded in their defence that they had "fully complied with their obligations under the [Sales] Agreement", and that they were "not the party withholding the transfer of [the Vehicle]".[50]

85 The views I state above are stated on the assumption that the DJ was dealing with the implied term as a term implied in *fact*. For the reasons

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47 Record of Appeal at p807 Para 8.

48 Record of Appeal at p807 Para 9.

49 Record of Appeal at p807 Para 10.

50 Record of Appeal at p814 Paras 9-11.

explained above, even putting aside what I have said about a "term implied in law" (at [76]-[79] above), I am satisfied that there was no bar to the doctrine of an implied term being invoked in the present case, and that the DJ did not err in implying a term in the Sales Agreement to the effect that the 1st and 2nd Respondents were required to procure and/or transfer legal ownership and title in the Vehicle to the 3rd Respondent free from encumbrances.

86 In the interests of clarity, I should point out that the Appellant's objections to the implication of the above term were based, firstly, on the argument about the 3rd Respondent's alleged failure to plead the implied term (which I have dealt with above); and secondly, on the effect of the entire agreement clause in the Sales Agreement (which I will deal with next). The Appellant has not actually argued that business efficacy did not necessitate the implication of the said term into the Sales Agreement, nor has it sought to challenge the *merits* of the DJ's decision to imply the said term on any other grounds.

Issue 3: Whether the existence of an entire agreement clause in the Sales Agreement precluded the DJ from implying terms into the Sales Agreement

87 I next address the Appellant's submission on the effect of an entire agreement clause in the Sales Agreement. I first summarise the Appellant's and 3rd Respondent's respective positions.

Appellant's Case

88 The Appellant submitted that the existence of an entire agreement clause in the Sales Agreement "reiterates the fact that there were no other oral or written terms in the Sales Agreement other than the ones expressly stated in

writing".[51] Whilst the point of the submission was not entirely clear, I understood the Appellant to be saying that the entire agreement clause precluded the DJ from implying terms into the Sales Agreement.

3rd Respondent's Case

89 The 3rd Respondent submitted that the existence of the entire agreement clause in the Sales Agreement did not preclude the DJ from implying terms into the Sales Agreement because the implied term was implied "in law": as such a term would not have been in the contemplation of the parties at the time they entered into the agreement, it would not be excluded by an entire agreement clause (see *Ng Giap Hon v Westcomb Securities Pte Ltd* [2009] 3 SLR(R) 518 ("*Ng Giap Hon*") at [31]-[32]).[52]

My Decision

90 I reject the Appellant's submission on the effect of the entire agreement clause for the following reasons.

91 To start with, an entire agreement clause would not, as a matter of principle, exclude the implication of terms into that contract (*Ng Giap Hon* at [31]). In *Ng Giap Hon*, the CA explained why this was so (at [31]). First, an implied term, "by its *very nature* (as an *implied term*), would not, *ex hypothesi,* have been in the contemplation of the contracting parties to begin with they entered into the contract". Second, if a term were to be implied on a "broader" basis "in law" (as opposed to on a "narrower" basis "in fact"), it would follow *a fortiori* that "such a term would not have been in the contemplation of the

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51 Appellant's Case at Paras 28-30.

52 3rd Respondent's Case at p11-12 Paras 31-33.

parties", since a term implied "in law" – unlike a term implied "in fact" – "is not premised on the presumed intention of the contracting parties". Third, a term cannot be implied if it is inconsistent with an express term of the contract concerned. Finally, the CA also observed (citing *Exxonmobil Sales and Supply Corp v Texaco Ltd* [2004] 1 All ER (Comm) 435 at [27]) that it could be argued that "where it is necessary to imply a term in order to make the express terms work, such an implied term may not be excluded by [an] entire agreement clause *because* it could be said that such a term is to be found in the document or documents forming part of the contract".

92 The CA in *Ng Giap Hon* clarified (at [32]) that it was not prepared to say "that an entire agreement clause can *never* exclude the implication of terms into a contract". However, in order for an entire agreement clause to have this effect, "it would need to *express* such effect in *clear and unambiguous language*". Further, if the effect of the language used rendered an entire agreement clause, in substance, an exception clause, the clause "would be subject to both the relevant common law constraints on exclusion clauses as well as the UCTA [the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed)]".

93 In this connection, it may be helpful to examine local authorities dealing with the effects of an entire agreement clause. In *Ng Giap Hon*, the entire agreement clause reads as follows (at [29]-[30]):

> This Agreement embodies the entire understanding of the parties and there are no provisions, terms, conditions or obligations, oral or written, expressed *or implied*, other than those contained herein. All obligations of the parties to each other under previous agreements ([if] any) are hereby released, but without prejudice to any rights which have already accrued to either party.

The CA found (at [30]) that the above clause did *not* exclude the implication of terms into the contract as the clause itself contemplated the existence of implied terms: indeed, as the italicized words above showed, the clause referred expressly to implied terms.

94 In *Singapore Rifle Association v Singapore Shooting Association and others* [2019] SGHC 13 ("*Singapore Rifle Association*") at [137], Pang JC (as he then was) cited the CA's judgment in *Ng Giap Hon* for the proposition that in order for an entire agreement clause to preclude the implication of terms, it must express such effect in clear and unambiguous language. Having reviewed *Ng Giap Hon* as well as the English case of *Axa Sun Life Services Plc v Campbell Martin Ltd* [2011] 2 Lloyd's Rep 1 (cited by the CA in *Ng Giap Hon),* Pang JC distilled the following principles from these two cases (*Singapore Rifle Association* at [140]):

> (a) Terms implied in order to give business efficacy to an agreement are intrinsic to the agreement.
>
> (b) They would therefore not be precluded by an entire agreement clause which merely excludes matters extrinsic to the written agreement.
>
> (c) Nevertheless, since the effect of an entire agreement clause ultimately turns on the proper construction of the actual words used in the clause, it may still be possible for intrinsic implied terms to be excluded if there are clear and unambiguous words which expressly and specifically exclude such implied terms.

95 In *Singapore Rifle Association*, the defendant Singapore Shooting Association ("SSA") had a counterclaim against the plaintiff Singapore Rifle Association ("SRA") for an indemnity in respect of the cost incurred by SSA in demolishing a structure which it described as having been illegally built by SRA at the National Shooting Centre. SRA resisted SSA's counterclaim on the basis that the cost of demolition had resulted from SSA's own breach of an implied

term in the agreement between the two entities. Pang JC concluded that a term should be implied into the agreement to the effect that SSA would use reasonable efforts to assist SRA in obtaining any necessary regulatory approval at any stage of the construction of the disputed structure. In coming to this conclusion, Pang JC had to consider SSA's argument that no terms should be implied because of an entire agreement clause in the agreement which read as follows (at [132]):

> This Agreement constitutes the entire agreement between the Parties with respect to the matters dealt with in this Agreement and supersedes and cancels in all respects all previous agreements and undertakings, if any, between the Parties, whether written or oral. Each Party acknowledges that, in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation, warranty or other provision except as expressly provided herein, and *all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.*

Pang JC found that the implied term in question was implied based on business efficacy; and that as such, the term was intrinsic to the agreement in question and did not fall within the categories of implied terms which would be precluded by an entire agreement clause, in the absence of clear and unambiguous words to the contrary (at [141]). The phrase "terms implied by statute or by common law" in the entire agreement clause did not clearly and unambiguously refer to terms implied based on business efficacy as a specific category of terms to be excluded. In the circumstances, Pang JC held that the implied term was not precluded by the entire agreement clause.

96 In *Tonny Permana v One Tree Capital Management Pte Ltd and another* [2021] 5 SLR 477 ("*Tonny Permana*") at [160], Chan Seng Onn J (as he then was) was concerned *inter alia* with the implication of terms into an agreement between the plaintiff investor and the defendant fund managers. In gist, Chan J

found that the terms to be implied in law into the agreement concerned obligations of reasonable skill, care and diligence that the defendants had to observe in dispensing advice and providing timely updates to the plaintiff (at [155] and [158]-[159]). In coming to this conclusion, Chan J had to consider whether the following entire agreement clause precluded the implication of terms (at [120] and [160]):

> 4.2 The Agent and the Security Trustee shall be entitled to:-
>
> […]
>
> (d) without prejudice to the generality of the foregoing, the Agent and Security Trustee shall:-
>
> …
>
> (iv) have only those duties, obligations and responsibilities expressly specified in the Agreement…

97 Applying the principles articulated by Pang JC in *Singapore Rifle Association*, Chan J (at [164]) found that the entire agreement clause only excluded terms extrinsic to the contract, but did not contain express and specific language precluding the implication of terms necessary for business efficacy, which were intrinsic to the contract. In his view (at [164]):

> …cl 4.2(d)(iv) of the [agreement] states that the defendants "have only those duties, obligations and responsibilities expressly specified in the Agreement"… (O)n one interpretation, this is to the exclusion of *all* other duties. However, I echo Pang JC's sentiments in *Singapore Rife Association*, and the Court of Appeal's views in *Ng Giap Hon*: in particular, the duty of reasonable skill, care and diligence is a term implied in *law*. In my view, there are countervailing considerations when considering terms to be implied in law, which militate against a strict and inflexible operation of the foundational principle of consent in contract law. These terms are implied to provide essential and necessary appendages to contracts that do not expressly contain them. Accordingly, absent very *specific* and *unambiguous* language that *expressly* excludes terms implied in law as a category, I do not accept that such terms are excluded by cl 4.2(d)(iv) [the entire agreement clause].

98 In the present case, the entire agreement clause in the Sales Agreement read as follows:[53]

> (k) This Agreement constitutes the entire agreement of the parties relating to the subject matter addressed in this Agreement. This Agreement supersedes all prior communications, contracts, or agreements between the parties with respect to the subject matter addressed in this Agreement, whether oral or written.

99 Applying the principles articulated in *Singapore Rifle Association* and *Tonny Permana*, whether the implied term in the present case is characterized as a term implied "in law" or as a term implied "in fact" based on business efficacy, it can only be excluded with the use of clear and unambiguous language to that effect in the entire agreement clause. I find no such language in the above clause. The sentence "this agreement constitutes the entire agreement of the parties relating to the subject matter addressed in the agreement" does not suffice to exclude matters intrinsic to the agreement. It only excludes matters extrinsic to the written agreement. The words used also do not exclude "terms implied in law" – unlike the entire agreement clause in *Singapore Rifle Association* which stated that "all conditions, warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law".

100 For the reasons given above, I find that the entire agreement clause in the Sales Agreement does not preclude the implication of a term obliging the 1st and 2nd Respondents to procure and/or transfer legal ownership and title in the Vehicle to the 3rd Respondent free from encumbrances.

Issue 4: Whether the DJ was correct in making the following findings as to liability: (i) that the 1st and 2nd Respondents breached their contractual

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53 Record of Appeal at p837.

obligations in failing to cause the 3rd Respondent to be registered as the owner of the Vehicle; (ii) that the cause of the failed attempts to register the 3rd Respondent as owner was the continued existence of Form A in respect of the Vehicle due to the Appellant's wrongful failure to lodge a Form B

101 Having found that the implied term in the Sales Agreement obliged the 1st and 2nd Respondents to procure and/or transfer legal ownership and title in the Vehicle to the 3rd Respondent free from encumbrances, I turn next to Issue 4, which concerns the issue of the 1st and 2nd Respondents' liability to the 3rd Respondent for the breach of this implied term. In the course of the trial, it was not disputed that in deciding as between these two sets of parties, a key factual issue which the DJ had to determine was the reason for the 3rd Respondent's unsuccessful attempts to register the transfer of ownership following his purchase of the Vehicle. If the evidence showed that the reason for the failure of the transfer was the 3rd Respondent's own acts or omissions, then the 3rd Respondent could not blame the 1st and 2nd Respondents. However, if the evidence showed that the failure of the transfer was not due to the 3rd Respondent's own doing, it would follow that the 1st and 2nd Respondents had failed to meet their obligation to procure and/or transfer legal ownership and title in the Vehicle to the 3rd Respondent free from encumbrances.

102 In this connection, the DJ had to consider whether the failed transfer was caused by the continued existence of Form A in the HPFLAS system due to the Appellant's wrongful failure to lodge a Form B (as the 3rd Respondent alleged) – or whether it was caused by the 3rd Respondent's own acts or omissions (as the 1st and 2nd Respondents alleged) or whether it was caused by all three Respondents' own acts or omissions (as the Appellant alleged).[54] It will be remembered that the DJ decided that the failed transfer was caused by the

[54] Record of Appeal at p1042 Para 5b, p1095-1097 Paras 12-23.

former, and that it was not in any way due to any acts or omissions on the 3rd Respondent's part. The DJ observed that it was unlikely for the 3rd Respondent – who was in the business *inter alia* of leasing out cars and who had paid good money for the Vehicle – to have omitted to take proper steps to register the transfer.[55] In the DJ's view, this observation was supported by evidence of the active steps taken by the 3rd Respondent in his attempts to effect the transfer of ownership: these active steps include lodging a police report and seeking LTA assistance to transfer ownership of the Vehicle.[56] Notwithstanding the active steps taken by the 3rd Respondent, the transfer of ownership in LTA's records had failed; and the DJ found that this was because of the existence of the Form A which indicated a pre-existing encumbrance over the Vehicle. Given these findings, the DJ held that the 1st and 2nd Respondents must be said to have breached the implied term in the Sales Agreement which required the transfer of full ownership and title in the Vehicle to the 3rd Respondent without any encumbrance.[57]

103 In challenging the above findings on appeal, the Appellant argued first of all that these findings were flawed as they were based on inadmissible hearsay evidence in the form of the contents of the 3rd Respondent's police report.[58]

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55 Record of Appeal at p39 Para 50.

56 Record of Appeal at p39-40 Paras 50-53.

57 Record of Appeal at p38 Para 47.

58 Record of Appeal at p711.

Whether the DJ erred in taking into consideration the contents of the 3rd Respondent's police report

104 I summarise below the portions of the DJ's grounds of decision relating to his reliance on the police report, as well as the Appellant's and the 3rd Respondent's respective arguments on the issue of his alleged error in relying on inadmissible hearsay evidence.

Decision below

105 The DJ relied on the police incident report to find that the 3rd Respondent had taken active steps to procure the transfer of ownership in LTA's records.[59] I set out below the relevant portion of the DJ's grounds of decision:

> 46 The evidence adduced at trial suggested that the Plaintiff [3rd Respondent] took active steps to procure the transfer of ownership of LTA's records. The police incident lodged by the Plaintiff [3rd Respondent] on 24 September 2018 (the "**Plaintiff's Police Incident Report**") indicated that the Plaintiff [3rd Respondent] took active steps to effect the transfer, including: (a) making repeated calls to LTA to seek assistance; (b) sending lawyer's letters to the Defendants [1st and 2nd Respondents]; and (c) lodging police reports seeking the police's assistance in resolving this matter…

The relevant parts of the police incident report were also reproduced by the DJ as follows:

> 46 … "I am writing this letter for seeking the serious assistance and support from LTA for the case as following:
>
> On 09/03/2018, I bought a vehicle SKC1131C from San Hup Bee(s) P/L at the price of $52,000.00…
>
> …
>
> On 14/03/2018 at 12PM, I collected the car and paid the full settlement $49,200.86 to Auto lease Pte Ltd … and balance $1,999.14 to San Hup Bee (S) P/L ….. I was advised that the

[59] Record of Appeal at p37 Para 46.

> car could be transferred after 5 days by a ESA. I made an effort to transfer ownership quite [sic] some times but not eligible to transfer. I called Auto lease Pte Ltd advised to ask San Hup Bee as Sales [sic] Agreement [sic] with them not with Auto lease …..
>
> After many days of investigating, I found out ….. SKC 1131C was not belongs to San Hup Bee (s) Pte Ltd but under San Hup Bee Motor LLP which had some old debt with Auto Lease so that Auto lease didn't release Form B what is necessary requirement for the transfer ownership. I wished to make the police report at Jurong Police Station but were advised that the car was handovered to me by San hup bee so no report recorded. I called LTA on 11/04/2018 (Mr Rizal)), on 12/04/2018 (Ming Leong), 12/04/2018 (Rodnang Chua). All replied to wait till Ms Janet called me back and said that she couldn't do anything as this is under finance company (Auto lease).
>
> With an disappointment, I looked for the lawyer firm and summon letter sent to San Hup Bee on 06/06/2018, no reply from them, sent again on 30/08/2018 (writ of summons). San Hup Bee's lawyer reply on 19/09/2018 that they already give me all the transfer documents (PIN from M01) and finished their duties for sales agreement. So I called LTA on 20/09/2018 (Haz) at 11am said Officer will call back by 20/09/2018 but I still not received any return calls so I called again on 20/09/2018 at 17.30pm and get the return call from Trina on 21/096/2018 10.30am. She was helpful and advised me that making a police report and [sic] email to LTA so that they can investigate the case. … … … she called Auto lease asked them to release form B by this Tue 25/09/2018 if not LTA will let the buyer (Me) to transfer.
>
> Why LTA need 6 months to settle while San Hup Bee handovered the car for me 6 months ago without transferring ownership? And LTA didn't take any action on this? Why Auto lease got the right to cancel the full settlement amount and stop release from B while I already paid them? Is there any Law in Singapore??? ….
>
> *Kindly take this case as serious matter, and support for the ownership transfer happened."*
>
> (*emphasis added*)

106 In relying on the police report for his finding, the DJ stated:[60]

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[60] Record of Appeal at p58 Para 93.

> 93 I should note that while the Police Incident Report made references to out of court statements by various third party LTA officers, the document was being relied on as evidence of the fact that the complaints were being made by the Plaintiff [3rd Respondent] to LTA and the police, and that certain responses were received from LTA and the police. The Police Incident Report was not adduced as truth of the contents therein – it was real evidence adduced to show that certain statements were exchanged between Plaintiff and LTA (irrespective of their truth). As such, it was not hearsay.

Appellant's case

107 The Appellant argued that the obligation to effect the transfer of the Vehicle lay with the Respondents: even if the Appellant had lodged Form B, the transfer would have fallen through if none of the Respondents submitted the requisite M01 form to LTA.[61] In this connection, the Appellant argued that the 3rd Respondent had no direct evidence of the steps taken to register the Vehicle, since it was his staff who had carried out the online transfer application[62].

108 As for the 3rd Respondent's police report of 24 September 2018, in which the 3rd Respondent had described the complaints he made to LTA and the responses received from them, the Appellant argued that the DJ should not have relied on the contents of this report as evidence of the 3rd Respondent's efforts to transfer the Vehicle[63]. According to the Appellant, the contents of the report constituted inadmissible hearsay evidence because the exchanges between the 3rd Respondent and the LTA contained information about attempts allegedly made by the 3rd Respondent to transfer the Vehicle, when in fact it was the 3rd Respondent's staff who made the purported attempts and informed

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61 Appellant's Case at Para 38.

62 Appellant's Case at Para 44; Transcript of 26 April 2021 at p 48 ln 18 to p 49 ln 10.

63 Appellant's Case at Para 56-63; Transcript of 2 February 2023 at p 16 ln 29 to p 17 ln 9.

him they were unsuccessful. Therefore, these were out-of-court statements from the 3rd Respondent's staff, who were not called to testify about those exchanges.

3rd Respondent's Case

109 The 3rd Respondent contended that the DJ did not rely on inadmissible hearsay evidence: in his grounds of decision, the DJ had explained that the police incident report was not adduced as truth of the contents therein, but was instead real evidence adduced to show that certain statements were exchanged between the 3rd Respondent and LTA.[64] The DJ had also explained that the 3rd Respondent's failure to call its staff to testify about the unsuccessful online transfer was immaterial because there was other evidence to show reasonable attempts made by the 3rd Respondent to effect the transfer.[65]

My Decision

110 By way of general principle, it is trite law that assertions which are made out of court, and which are tendered in court as evidence of the truth of the content therein will be inadmissible as hearsay (*Soon Peck Wah v Woon Che Chye* [1997] 3 SLR(R) 430 ("*Soon Peck Wah*") at [26]; *Chan Sze Ying v Management Corporation Strata Title Plan No 2948 (Lee Chuen T'ng, intervener)* [2021] 1 SLR 841 ("*Chan Sze Ying*") at [95]).

111 It is also trite law that statements which are tendered not as evidence for the truth of their contents, but for the fact that they have been made are not hearsay evidence: see *Zainal bin Kuning and others v Chan Sin Mian Michael*

64 3rd Respondent's Case at p21-22 Para 64.

65 3rd Respondent's Case at p21 Para 63.

and another [1996] 2 SLR(R) 858 ("*Zainal bin Kuning*") at [35]; *CDL Hotels International Ltd v Pontiac Marina Pte Ltd* [1998] 1 SLR(R) 975 ("*CDL Hotels*") at [76]; *Saga Foodstuffs Manufacturing (Pte) Ltd v Best Food Pte Ltd* [1994] 3 SLR(R) 1013 ("*Saga Foodstuffs*") at [11]; *Subramaniam v PP* [1956] 1 WLR 1 ("*Subramaniam*").

112 As an illustration of how the above principles are applied, it may be useful to consider the case of *Zainal bin Kuning* as an example. In *Zainal bin Kuning*, the appellants sued the respondents for false arrest and malicious prosecution. The respondents denied that there was any false arrest or that the prosecution had been initiated and conducted without reasonable and probable cause. The first respondent was the police officer in charge of the investigations against the appellants. He filed an affidavit in the proceedings in which he annexed copies of statements made to the police by one Abdul Hannan, a suspect whose statements had led *inter alia* to the identification and arrest of one of the appellants. The appellants had applied at trial for Abdul Hannan's statements to be expunged from the first respondent's affidavit on the basis that they were hearsay and not admissible in evidence. Their application was rejected by the trial judge. On appeal, the CA held that the trial judge was right in not expunging the statements because these statements "were not tendered by the respondents as part of the first respondent's evidence for the truth of their contents, but for the fact that they had been made to the first respondent and therefore in this respect they were not hearsay evidence" (at [35]). The "making of these statements formed the occasion or cause for the investigations and hence they are relevant under s 7 of the Evidence Act". Alternatively, "as they show[ed] motive or preparation, they would be relevant under s 8 (of the Evidence Act)".

113 As another example: in *Subramaniam*, the appellant was found in a wounded condition by security forces operating against terrorists. He was tried on a charge of being in unlawful possession of ammunition. His defence was that he had been captured by terrorists and that at all material times he was acting under duress. At trial he sought to give evidence of what the terrorists had said to him, but this evidence was disallowed by the trial judge on the basis that it formed inadmissible hearsay. On appeal, the Privy Council held that the trial judge was wrong to have ruled out evidence of statements made by the terrorists to the appellant. As the Privy Council explained (at p 970):

> It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statements were made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made. In the case before their Lordships statements would have been made to the appellant by the terrorists, which, whether true or not, if they had been believed by the appellant, might reasonably have induced in him an apprehension of instant death if h failed to conform to their wishes.

114 In considering parties' submissions in the present case, there are several things that should be highlighted at the outset. First, the 3rd Respondent does not actually dispute that the police report should not be relied on as evidence of statements made by its staff about the failed transfer, and in particular, about the cause of the failed transfer.

115 Second, insofar as the fact that the 3rd Respondent's attempt to register transfer of the vehicle was concerned, it is plain to me that even without the police report, it was not seriously disputed by anyone in the trial below that the

attempted transfer had indeed failed. The dispute was over the cause of the failure.

116 In this connection, it is also plain to me that all the parties were agreed that the police report could not be relied on to prove that the LTA had told the 3rd Respondent the cause of his failed transfer was the Appellant's non-lodgement of Form B. In his grounds of decision, the DJ was clear about this as well.

117 The question, then, is whether the DJ was entitled to rely on the police report as evidence that the 3rd Respondent had taken positive steps to do all he reasonably could to procure the transfer of the Vehicle.[66] This brings me to my third point: even without considering the substantive contents of the police report, the report itself was undeniably evidence of the fact that *the 3rd Respondent had taken the step of escalating the matter to the police*. This was thus one piece of evidence which went towards showing that he had taken positive actions to try to surmount the obstacles he was facing in procuring the transfer of the Vehicle.

118 The DJ also relied on the police report as evidence showing that the 3rd Respondent had "made repeated calls to LTA to seek assistance". It is true that strictly speaking, if the police report was adduced as proof that the 3rd Respondent had made various calls to the LTA, it would be hearsay evidence. However, the fact that the 3rd Respondent was in court to give evidence made all the difference: in this context, the police report was not in my view relied on as hearsay evidence, but as corroboration – pursuant to s 159 of the Evidence

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66 Record of Appeal at p50 Para 50.

Act (Cap 97, 1997 Rev Ed) – of his testimony at trial that he did make numerous calls to LTA. For ease of reference, I set out below s 159:

> In order to corroborate the testimony of a witness, any former statement made by such witness, whether written or verbal, on oath, or in ordinary conversation, relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved.

119 That a witness' former statements may be proved at trial to corroborate the witness' statements at trial on the same fact has been recognized in a number of local High Court decisions: see *eg*, the judgment of Tan Lee Meng J in *Lim Weipin and another v Lim Boh Chuan and others* [2010] 3 SLR 423 at [61] (although in that case, Tan J held that the disputed evidence did not qualify as a "former statement", having been prepared by the witness and produced in his AEIC for the sole purpose of supporting his claim at trial).

120 Finally, the DJ relied on the police report as evidence showing that the 3rd Respondent had "sent lawyers' letters" to the 1st and 2nd Respondents. Again, it is true that if the police report were adduced as proof that the 3rd Respondent had "sent lawyers' letters" to the 1st and 2nd Respondents, it would be hearsay evidence. However, as I noted above, the 3rd Respondent was present to give his testimony at trial: I consider, therefore, that the statements in his police report about having "looked for the lawyer firm" and sent "summon letter to [the 1st and 2nd Respondents]" were simply corroboration of his testimony in court about having sought lawyers' assistance to advance his claim for the transfer of the Vehicle. In other words, the DJ's reliance on these statements did not amount to reliance on inadmissible hearsay evidence.

121 I add that in any event, it was common ground that by 28 August 2018, the 3rd Respondent had issued writ of summons against the 2nd Respondent:

the Appellant's Mr Lim himself acknowledged this fact in his AEIC.[67] It is reasonable to infer that "lawyers' letters" would have preceded or accompanied the issuance of such writ of summons. In other words, it was not even necessary for the DJ to rely on the police report as evidence corroborating the 3rd Respondent's testimony about the steps taken through his lawyers to procure the transfer of the Vehicle.

122 For the reasons stated above, I am satisfied that the DJ did not rely on inadmissible hearsay evidence in finding that the 3rd Respondent had taken positive steps to procure the transfer of the Vehicle.

Whether the DJ was correct to find that the 3rd Respondent had done all he reasonably could to procure the transfer of the Vehicle

123 I am further satisfied that based on the evidence available, the DJ was justified in concluding that the 3rd Respondent had done all he reasonably could to procure the transfer of the Vehicle.

124 First, as a matter of logic and common sense, I agree that as the 3rd Respondent was in the business of leasing out cars and had made full payment for the Vehicle, it was rather improbable that he would have failed to take the requisite steps to effect registration of the transfer of ownership.

125 Second, the 3rd Respondent gave clear testimony about the steps he took to procure the transfer of the Vehicle after the failed attempt to register the transfer of ownership with the LTA. The 3rd Respondent testified that he called the LTA several times, went down to the LTA office three times to speak to different LTA officers, made a police report and took legal action through his

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67 Record of Appeal at p577-578 at Para 11.

lawyers. At one point, he even resorted to going to his Member of Parliament about the matter.[68]

126 Third, as I noted earlier, the 3rd Respondent's testimony about speaking to the LTA and taking legal action through his lawyers was corroborated by his previous statements in the police report of 24 September 2018.

127 Fourth, as the DJ pointed out,[69] the 2nd Respondent's director Jaxon agreed in cross-examination that the 3rd Respondent "was always in contact with [him]"[70] regarding the subject of the transfer of the Vehicle. This supported the 3rd Respondent's assertion that he was actively doing what he could to procure the transfer of the Vehicle. In my view, there was no reason for Jaxon to lie about this point, since his interests at trial were opposed to the 3rd Respondent's interests.

Whether the DJ was correct to find that the cause of the failed transfer was the continued existence of Form A in respect of the Vehicle on the HPFLAS system due to the Appellant's wrongful failure to lodge a Form B

128 Having found that the 3rd Respondent had done all he reasonably could to procure the transfer of the Vehicle, the DJ concluded that the 3rd Respondent was not at all to blame for the failed transfer; and that it was the 1st and 2nd Respondents who had breached the implied term of the Sales Agreement that they would procure the transfer of legal title to the 3rd Respondent, free of all encumbrances. In this connection, I note that in cross-examination at trial, the 2nd Respondent's director Jaxon conceded that it was the seller's (*ie*, the 2nd

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68 Transcript of 26 April 2021 at p 18 ln 32 to p 30 ln 28; p 59 ln 26 to p 61 ln 26; Transcript of 9 December 2021 at p 93 ln 26 to ln 28.

69 Record of Appeal at p40 Para 51.

70 Record of Appeal at p392 ln 10 to ln 15.

Respondent's) obligation under the Sales Agreement to effect transfer of ownership within seven days of the said agreement, and that the seller in this case (*ie*, the 2nd Respondent) had not fulfilled its obligation.[71]

129 Further, the DJ found that the cause of the failed transfer was the continued existence of Form A in respect of the Vehicle on the HPFLAS system, which indicated that the Vehicle was under financing – and which resulted in turn from the Appellant's wrongful refusal to lodge Form B after getting full payment for the Vehicle loan[72]. This finding formed the factual basis for the DJ's determination in the third-party proceedings that the Appellant was liable to indemnify the 1st and 2nd Respondents for any sums payable by them to the 3rd Respondent.

130 I next address the Appellant's submission that the DJ erred in finding the cause of the failed transfer to be the continued existence of Form A in the HPFLAS system.

131 I first summarise the DJ's decision, as well as the submissions made by the Appellant, the 2nd Respondent and the 3rd Respondent.

Decision below

132 The DJ found that following the 3rd Respondent's payment to the Appellant of the full amount outstanding under the Hire Purchase Agreement, the Appellant should have executed a Form B to discharge Form A, on the

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71 Record of Appeal at p391 ln 15 to p 392 ln 1.

72 Record of Appeal at p41 Para 54.

request of the 1st and 2nd Respondents. However, the Appellant deliberately chose not to do so.[73]

133 The DJ also rejected the Appellant's argument that based on Clause 7 read with Annex B of the HPFLAS Code of Conduct ("COC"), non-lodgement of Form B would only have caused any transfer to be temporarily suspended for five days.[74] In the DJ's view, clause 7.5 of the HPFLAS COC clearly provided that LTA retained sole and absolute discretion in deciding whether to accept or reject any transfer, notwithstanding the HPFLAS COC. The HPFLAS COC also did not impose any obligation on LTA to take any action.[75]

Appellant's Case

134 On appeal, the Appellant claimed that based on the evidence adduced, the 1st and 2nd Respondents were the one who had failed to prove that the non-lodgement of Form B had caused the failure to transfer the title in the LTA system.[76] The Appellant gave the following three reasons for this proposition:

(a) First, the Appellant reprised the argument that the HPFLAS COC only provided for a temporary five-day suspension of any transfer in the event of non-lodgement of Form B. According to the Appellant, the presence of Form A lodged on the HPFLAS would not prevent a vehicle from being transferred on LTA's register.[77] In this connection, the Appellant claimed that the DJ

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73 Record of Appeal at p41 Para 56.

74 Record of Appeal at p42 Para 59.

75 Record of Appeal at p42-43 Paras 60-61.

76 Appellant's Case at Para 45.

77 Appellant's Case at Para 47.

had erred in his understanding of the HPFLAS COC and that the DJ had wrongly "conflated the working of the HPFLAS with the transfer of registered ownership under the LTA".[78] The Appellant also argued that the DJ had erred in placing the evidential burden on the Appellant to show that the registration would have taken place even if Form A were not discharged; and that in any event, it had adduced sufficient evidence to satisfy any such evidential burden.[79]

(b) Second, the Appellant claimed that the DJ had wrongly ignored the 3rd Respondent's own AEIC evidence that when the online transfer application was filed, an "Electronic Service Agent" had advised that the Vehicle could be transferred after five (5) days.[80] According to the Appellant, an "Electronic Service Agent" would have "access to the HPFLAS system" and "would have known of the existence of the Form A" when giving such advice.[81]

(c) Third, the Appellant sought to rely on the contents of the 3rd Respondent's police report of 24 September 2018: specifically, his statement in the police report that LTA officials had told him they would call the Appellant to "lodge the Form B", failing which they would let the 3rd Respondent effect the transfer.[82]

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78 Appellant's Case at Para 38.

79 Appellant's Case at Paras 40-41.

80 Appellant's Case at Para 48.

81 Appellant's Case at Para 49.

82 Appellant's Case at Para 50; Record of Appeal at p37-38 Para 46..

2nd Respondent's Case

135 The 2nd Respondent submitted that the DJ had rightly found the Appellant responsible for the unsuccessful transfer of ownership of the Vehicle, because the Appellant's failure to execute Form B led to Form A remaining in the system and the Vehicle being shown as "under financing".[83] The 2nd Respondent pointed to testimony given by the Appellant's Mr Lim under cross-examination at trial. *Inter alia,* Mr Lim had conceded in cross-examination that where Form A had been lodged against a vehicle, in the event of a sale of the vehicle, the transfer of title to the next owner would be stopped.[84] Mr Lim had also conceded that not releasing Form B could prevent the transfer of ownership under the LTA system.[85] Further, contrary to Mr Lim's assertion in his AEIC that the Appellant had receive no notice from HPFLAS about a transfer of the Vehicle, in cross-examination Mr Lim had admitted that the Appellant was in fact so informed by HPFLAS.[86]

136 The 2nd Respondent also submitted that the DJ was correct in finding that under Clause 7.5 of the HPFLAS COC, LTA retained the sole and absolute discretion as to whether to accept or reject any transfer, and that nothing in the HPFLAS COC imposed any obligation on LTA to accept or reject any transfer.[87]

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83 2nd Respondent's Case at Para 12.

84 Record of Appeal at p452 ln 25 to p453 ln 14.

85 2nd Respondent's Case at Para 18; Record of Appeal at p480 ln 3 to ln 19.

86 2nd Respondent's Case at Para 23; ROA at p582 Para 44 and p454 ln 15 to ln 29 and p488 ln 5 to p489 ln 4.

87 2nd Respondent's Case at Para 21.

3rd Respondent's Case

137 In similar vein, the 3rd Respondent submitted that the Appellant's Mr Lim had conceded in cross-examination that the 3rd Respondent would not be able to obtain a transfer of the Vehicle if Form B were not lodged;[88] and that the Appellant was in fact informed by HPFLAS of an attempt to transfer the Vehicle.[89] Mr Lim had further admitted in cross-examination that the LTA retained the sole and absolute discretion to decide whether to accept or reject a transfer, and that nothing in the HPFLAS COC imposed any obligation on the LTA.[90] As such, the HPFLAS did not guarantee that the transfer of the Vehicle could take place within five days of a sale, in a situation where Form A was still in place.[91]

My Decision

138 In considering parties' submissions, it must first be highlighted that in the trial below, none of the parties called any witnesses from either HPFLAS or the LTA to testify as to how vehicle transfers actually worked on the ground. In the circumstances, the DJ was obliged to draw certain inferences and conclusions from the evidence available before him.

139 Second, it must also be highlighted that the Appellant was the only party in these proceedings who was a member of the HPFLAS. The Respondents are not (and have never been) HPFLAS members. As such, the Appellant's Mr Lim

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88 3rd Respondent's Case at p26-27 Para 75.

89 3rd Respondent's Case at p28 Para 76.

90 3rd Respondent's Case at p31 Para 87.

91 3rd Respondent's Case at p31 Para 88.

was really the only witness with personal experience of how the whole system of vehicle transfers worked on the ground.

140 Third, the Appellant's argument that the HPFLAS COC only provided for a *temporary* five-day suspension of any transfer in the event of non-lodgement of Form B – and that the transfer of the Vehicle should have gone through in the LTA system once the Respondents filed the appropriate form – assumed that a successful transfer was virtually guaranteed within five days. This argument – and the assumption on which it was premised – flew in the face of the plain language of Clause 7.5 of the HPFLAS COC. For ease of reference, I reproduce Clause 7.5 below:[92]

> 7.5 Each Member acknowledges and agrees that, notwithstanding any other provision in this Code of Conduct and Regulations or the Memorandum, the LTA retains the sole and absolute discretion to decide whether to accept or reject any VRLS Transaction and that nothing in this Code of Conduct and Regulations or the Memorandum is intended to, and shall not, whether under contract, tort or any other theory or law:
>
> (a) impose any obligation on the LTA to accept or reject any VRLS Transaction or otherwise impose any fetter or duty of care on the LTA in relation to the exercise of any of its powers under the Road Traffic Act (Cap. 276) (the "**RTA**") or any other law…

141 It is not disputed that the LTA is not a member of the HPFLAS and not a party to its COC. As the DJ has rightly pointed out,[93] Clause 7.5 of the HPFLAS COC expressly acknowledges that the COC does not impose any obligation on the LTA to accept or reject any transfer, nor does it in any way fetter the LTA in the exercise of any of its powers under the Road Traffic Act. It is clearly beyond doubt, therefore, that regardless of whatever the HPFLAS

92 Record of Appeal at p897.

93 Record of Appeal at p42-43 Paras 60-61.

may say, the LTA retains sole and absolute discretion to decide whether to accept or reject any transfer. In other words, without a Form B being lodged, the LTA might still reject a transfer of ownership even after the expiration of the five-day suspension period provided by the HPFLAS COC. There is no basis, therefore, for the Appellant to claim that the Vehicle in this case could and would have been successfully transferred to the 3rd Respondent after only a "temporary" five-day suspension.

142 Fourth, Mr Lim himself conceded in cross-examination that notwithstanding the HPFLAS COC, if he did not lodge a Form B, the HPFLAS system would still indicate that the Vehicle was under financing;[94] and if he did not tell the LTA that the financing issues had been settled, then the LTA might not approve the transfer.[95] Indeed, Mr Lim accepted in cross-examination that if Form A was discharged via the lodgement of a Form B, then there would be no issues with the transfer of the Vehicle to the 3rd Respondent.[96] Mr Lim also conceded that the Appellant should have released the Form B for the Vehicle after obtaining full payment of the outstanding sum under the Hire Purchase Agreement – and that he had not done so in order to place the 1st and 2nd Respondents in a difficult position.[97]

143 In this connection, I should add that given the LTA's clear discretion to decide whether to accept any transfer, the Appellant's insistence that Mr Lim's testimony should be disregarded in the court's determination as to the actual workings of the vehicle transfer system was wholly self-serving and devoid of

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94 Record of Appeal at p473 ln 18 to ln 29.

95 Record of Appeal at p480 ln 3 to p481 ln 26.

96 2nd Respondent's Case at Para 22; Record of Appeal at p520 ln 13 to ln 16..

97 2nd Respondent's Case at Para 30; Record of Appeal at p506 ln 28 to p507 ln 9..

merit. Since the LTA clearly retained the sole discretion as to whether to approve a transfer, it was relevant for the DJ to consider evidence of the LTA's actual practice in a situation where a vehicle was shown to be still under financing. In the absence of any witnesses from the LTA or HPFLAS, and given Mr Lim's experience as the Appellant's director, the DJ was plainly justified in taking into consideration Mr Lim's evidence.

144 Fifth, I also reject the Appellant's submission that the DJ wrongly placed the evidential burden on the Appellant to show that registration would have taken place even if Form A were not discharged. By the close of the 1st and 2nd Respondents' case below, having heard evidence from all three Respondents, the DJ had before him evidence, firstly, that the outstanding hire-purchase loan on the Vehicle had been fully paid off (a fact acknowledged by the Appellant itself in its official receipt);[98] secondly, that the 1st and 2nd Respondents had given the 3rd Respondent the relevant M01 application form and transaction PIN necessary for effecting the transfer of ownership in the LTA records; thirdly, that the 3rd Respondent's attempt to effect the transfer had nevertheless failed; fourthly, that the 3rd Respondent had taken all the steps he reasonably could to effect the transfer; fifthly, that no Form B had been lodged in the HPFLAS system by the Appellant to lift its "charge" over the Vehicle despite the hire-purchase loan having been paid off. In light of this evidence, and in the absence of evidence from witnesses from LTA and HPFLAS, I find the DJ was justified in inferring at the close of the 1st and 2nd Respondents' case that there was some (not inherently incredible) evidence that the Appellant's refusal to lodge the Form B had caused the failed transfer. The evidential burden then shifted to the Appellant to adduce some evidence to show that notwithstanding

98 Record of Appeal at p 708-709.

the non-lodgement of the Form B with HPFLAS, the transfer of the vehicle would still have been accepted by the LTA after a temporary five-day suspension – *per* the provisions of the HPFLAS COC. I understand this to be what the DJ meant when he said (at [62] of his grounds of decision):

> Given the Third Party [the Appellant] was relying on the HPFLAS Code in support of its defence that the transfer would have gone through notwithstanding the failure to lodge a Form B, the burden was on the Third Party to call the relevant operators of the systems to substantiate this fact. This the Third Party failed to do.

145 I do not see anything wrong with the DJ's reasoning. This is indeed how the shifting of the evidential burden works in the course of a trial: see the CA's judgment in this respect in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855[99] ("*Britestone*") at [58]-[60]. As it turned out, not only did the Appellant fail to call any witness from the LTA and/or HPFLAS, its director Mr Lim made several material concessions during cross-examination which supported the Respondents' assertion about the non-lodgement of Form B being the cause of the failed transfer.

146 Sixth, although the Appellant has sought to rely on the statement in the 3rd Respondent's AEIC that he had been "advised by an Electronic Service Agent" that the vehicle "could be transferred after five (5) days",[100] I did not find this statement to be in any way helpful to the Appellant's case. To begin with, as the Appellant itself was at pains to point out, the 3rd Respondent had clarified in cross-examination that it was his staff – and not him – who had done the online transfer application; and he had no idea what an "Electronic Service Agent" was. No evidence was adduced by any party as to what an "Electronic

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99 1PBOA Tab 8.

100 Record of Appeal at p697 Para 14.

Service Agent" was and/or how it functioned. There was no basis, therefore, for thinking that any response given by an "Electronic Service Agent" to an online transfer application constituted some sort of official promise or guarantee from the LTA. Indisputably, as it turned out, whatever might have been indicated by the so-called "Electronic Service Agent" at the time the 3rd Respondent's transfer application was filed, that transfer application did not succeed in effecting transfer of ownership of the Vehicle to the 3rd Respondent.

147 Finally, the Appellant also sought to rely on the 3rd Respondent's statement in his police report about LTA officers having told him that they would call the Appellant to lodge the Form B, failing which they would let the 3rd Respondent transfer.[101] However, this attempt to rely on the contents of the 3rd Respondent's police report was misconceived. As the Appellant itself has pointed out in its own submissions, the rule against hearsay evidence precludes the contents of the police report being used as evidence of the truth thereof.

148 For the reasons set out above, I am satisfied that the DJ rightly decided on a balance of probabilities that the cause of the transfer issues was the continued existence of Form A in respect of the Vehicle, owing to the Appellant's wrongful failure to execute a Form B.

Issue 5: Whether the DJ awarded the correct quantum of damages of $2,200 a month to the 3rd Respondent

149 I next address the Appellant's submission that the DJ erred in assessing the damages due to the 3rd Respondent at the sum of $2,200 per month.

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101 Appellant's Case at Para 50; Record of Appeal at p711.

150 I first summarise below the DJ's decision as well as the Appellant's and the 3rd Respondent's submissions.

Decision below

151 The DJ found the appropriate measure of damages to be the market rental value of a Toyota HiAce of the same make, model and age as the Vehicle.[102] The DJ noted that proof of the market rental value of the Vehicle *per se* was scant based on the evidence adduced before the court in the proceedings below.[103] The only witness called to give evidence about the market rental value of the Vehicle was one Mr William Lee ("Mr Lee"). However, the DJ agreed with the 1st and 2nd Respondents and the Appellant that Mr Lee was not called as an expert witness and that his opinion evidence was therefore inadmissible.

152 In light of the state of the evidence on this point, the DJ decided to adopt a "rough and ready" approach (citing *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623 ("*Robertson Quay Investment*")), pursuant to which the court would do its best to estimate a measure of damages where precise evidence was not obtainable.[104] In applying this approach, the DJ took into consideration Mr Lee's affidavit evidence of the monthly rental value of a Toyota Harrier Premium 2.0 CVT (at $1,800 per month).[105] The DJ also referred to the Benchmark Rates in Appendix F of the State Courts Practice Directions, which usually apply in motor accident cases involving a claim for damages, for cost of rental of a replacement vehicle and/or

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102 Record of Appeal at p45 Para 65.

103 Record of Appeal at p46 Para 69.

104 Record of Appeal at p47-48 Para 71.

105 Record of Appeal at p47 Para 70.

loss of use.[106] In the DJ's view, the "loss of use" benchmark rate of $100-$120 a day provided another potential reference point to estimate the quantum of damages.

153 Taking into consideration all available evidence, the DJ estimated the rental value of the Vehicle to be $2,200 a month. While this represented a slight uplift from the rental of $1,800 a month for the Toyota Harrier Premium 2.0 CVT, the DJ took into account the fact that the Toyota Harrier Premium 2.0 CVT was a five-seater, whereas the Vehicle in this case was a seven-seater. The figure of $2,200 a month was also significantly lower than the Appendix F benchmark rates.[107]

Appellant's Case

154 On appeal, the Appellant argued that the DJ should not have relied on Mr Lee's affidavit evidence as to the rental value of a Toyota Harrier Premium 2.0 CVT. According to the Appellant, since the DJ had found Mr Lee's opinion evidence to be inadmissible hearsay,[108] this meant that Mr Lee's evidence was inadmissible *in toto*; and no part of it could be relied on.[109]

3rd Respondent's Case

155 The 3rd Respondent, for its part, contended that since the Appellant had elected not to contest the issue of quantum of damages either during the trial or in closing submissions below, the Appellant should not be permitted on appeal

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106 Record of Appeal at p49-50 Para 72(d).

107 Record of Appeal at p50 Para 73.

108 Appellant's Case at Paras 74-75.

109 Appellant's Case at Para 78.

to challenge the DJ's decision on quantum[110] – and all the more so when there was no appeal from the 1st and 2nd Respondents on the issue of quantum.[111]

156 The 3rd Respondent also submitted that the Benchmark Rates in Appendix F of the State Courts Practice Directions should be used as a guide by the court because these benchmarks were collated from surveys of the market rental rate on a daily basis. The courts have applied these rates in hearing matters involving either claims for loss of use or for rental fees incurred. The benchmark rates were therefore an acceptable guideline in the present case.[112] As for Mr Lee's evidence about the rental value of a Toyota Harrier Premium 2.0 CVT, the 3rd Respondent argued that the DJ's rejection of Mr Lee's opinion evidence did not render other parts of Mr Lee's evidence inadmissible. The DJ was therefore entitled to consider Mr Lee's evidence about the rental value of a Toyota Harrier Premium 2.0 CVT.[113]

157 The 3rd Respondent pointed out, moreover, that the Appellant had never asserted at any stage what the appropriate quantum of damages should be – much less adduced evidence in support of any such assertion. On the evidence available, the 3rd Respondent submitted that anything less than $2,200 per month would be unreasonable. Indeed, according to the 3rd Respondent, its original claim of monthly rental of $2,500 was "not farfetched" and could be awarded.[114]

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110 3rd Respondent's Case at p33 Para 1.

111 3rd Respondent's Case at p33 Para 2.

112 3rd Respondent's Case at p35 Para 14.

113 3rd Respondent's Case at p37 Paras 23-24.

114 3rd Respondent's Case at p36 Para 17.

My Decision

158 Having considered parties' submissions, I find the Appellant's position to be unmeritorious and untenable. My reasons are as follows.

159 First, it is evident from the DJ's grounds of decision that he did not reject Mr Lee's evidence *in toto*. Instead, at [69] of the grounds of decision,[115] the DJ expressly identified paragraph [8] of Mr Lee's affidavit as the opinion evidence he rejected. This was the paragraph in which Mr Lee had stated that he "would expect the market rental rate for a similar size and seating capacity as the [3rd Respondent's] purchase vehicle [to] be between $2,500.00 [per] month to $2,700.00 per month".[116] Clearly, therefore, the DJ did not reject the other parts of Mr Lee's affidavit evidence; and specifically, he did not reject that part of Mr Lee's affidavit in relation to the market rental value of a Toyota Harrier Premium 2.0 CVT.

160 Second, there is ample case law which establishes that the lack of credibility in respect of one area of a witness' testimony does not necessarily preclude the court from accepting the witness' testimony in another area (*Sumoi Paramesvaeri v Fleury, Jeffrey Gerard and another* [2016] 5 SLR 302 ("*Sumoi*") at [57]; *Sundara Moorthy Lankatharan v Public Prosecutor* [1997] 2 SLR(R) 253 at [43]-[44]; *Teo Geok Fong v Lim Eng Hock* [1996] 2 SLR(R) 957 ("*Teo Geok Fong*") at [42]).

161 In *Sumoi*, for example, the plaintiff held a 10% legal interest in a property known as the Jansen Road property while the defendants (her daughter and son-in-law) were the other registered co-owners. The plaintiff sought a

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115 Record of Appeal p46 Para 69.

116 Record of Appeal at p750 Para 8.

declaration for a 10% share in the property, if not more, reflecting her financial contributions. The defendants contended that the plaintiff had made a promise or representation that her 10% legal interest was to go to the second defendant (her daughter), or to the second defendant ad her children. This was denied by the plaintiff. In assessing the parties' competing claims, Aedit Abdullah JC (as he then was) noted that the plaintiff had made several claims about forgery of her signature on various conveyancing documents which he found "surprising" and "doubtful" (at [54]-[57]). However, Abdullah JC held that:

> [L]ack of credibility in respect of one area of a witness's testimony does not necessarily doom their testimony with respect to other areas: *Sundara Moorthy Lankatharan v Public Prosecutor* [1997] 2 SLR(R) 253 at [43]-[44]. Although the Plaintiff's seemingly baseless accusations regarding the signing of documents were serious ones, they ultimately do not relate to the main factual dispute in this case, which concerns the existence and content of the Plaintiff's alleged promise or representation. As far as those key matters were concerned, I found the Plaintiff to be generally consistent and believable. Her testimony that she had not made the representation as claimed by the Defendants was believable because it was consistent with the probabilities of the situation… I found nothing that put her evidence in this specific area in doubt.

162 Applying the above principles to the present case, I am satisfied that the DJ was entitled to rely on Mr Lee's affidavit evidence about the market rental value of a Toyota Harrier Premium 2.0 CVT being $1,800 per month. I agree with the DJ that Mr Lee's evidence on this point was reliable and credible: Mr Lee was able to produce an actual invoice of a Toyota Harrier Premium 2.0 CVT being rented out by his car dealership[117] at $1,800 a month during this period of time;[118] and no evidence was adduced by any other party to refute Mr Lee's evidence on this point.

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117 Record of Appeal at p754.

118 Record of Appeal at p756.

163 For completeness, I note that despite arguing that the DJ had wrongly estimated the quantum of damages, the Appellant made no submissions on what the appropriate quantum of damages should be.

Issue 6: Whether the DJ properly assessed the 3rd Respondent's duty to mitigate

164 I next address the Appellant's submission that the DJ erred in his assessment of the 3rd Respondent's duty to mitigate. I start by summarising below the DJ's decision as well as the Appellant's and the 3rd Respondent's arguments.

Decision below

165 The DJ considered that the 3rd Respondent was under a duty to mitigate. Citing *The "Asia Star"* [2010] 2 SLR 1154 ("*The Asia Star*", at [45]), he noted that while the standard required of the innocent party in discharging its duty of mitigation was not high and would not be weighed on fine scales, this standard would be higher where the innocent party chose a path of inaction. In this connection, the DJ found that up to September 2018 (when the police report was made), the 3rd Respondent had taken active steps to procure the transfer of ownership of the Vehicle to itself. The DJ was of the view that save for the commencement of various lawsuits in March 2019, there was little evidence to suggest that the 3rd Respondent had been equally proactive in seeking to effect the transfer of the Vehicle *after* the making of the police report,[119] and that moreover, the Appellant did not follow through with those earlier lawsuits until the writ of summons for the present action was filed in March 2020.[120]

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119 Record of Appeal at p50-51 Para 75.

120 Record of Appeal at p51 Para 76.

166 The DJ also opined that the 3rd Respondent could have carried certain steps to mitigate damage but failed to do so. Specifically, the DJ was of the view that:

(a) The 3rd Respondent could have sought the assistance of the 1st Respondent (with whom legal title to the Vehicle remained) to lease the Vehicle out. Any attendant expenses that had to be incurred to address operational issues (*eg*, insurance premiums, etc.) could then be recovered from the 1st and 2nd Respondents by way of damages.[121]

(b) The DJ was also of the view that the 3rd Respondent could have paid a further sum of $13,301.00 to the Appellant to discharge the allegedly outstanding balance under the Hire Purchase Agreement so as to procure the transfer of the Vehicle to the 3rd Respondent. The DJ opined that this would have allowed the 3rd Respondent to proceed to rent out the Vehicle first, and thereafter to claim any consequential losses from the 1st and 2nd Respondents.[122]

167 In all, the DJ found that the 3rd Respondent did not take active steps after end-October 2018 to mitigate its losses, and that this inaction was not reasonable. The DJ therefore limited the recovery by the 3rd Respondent to a 7.5-month period from 15 March 2018 to 30 October 2018.[123]

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121 Record of Appeal at p51 Para 77.

122 Record of Appeal at p52 Para 78.

123 Record of Appeal at p53 Para 81.

Appellant's Case

168 The Appellant argued that since the DJ had found insufficient evidence of mitigation by the 3rd Respondent post 25 September 2018, there was no basis for the DJ to award damages in terms of loss of rental till end October 2018. The DJ should have at the very maximum awarded damages till the end of September 2018.[124]

169 The Appellant also argued that in any event, mitigation should have been carried out earlier by the 3rd Respondent. In making this argument, the Appellant agreed with the two possible strategies of mitigation which the DJ had suggested – *ie*, the 3rd Respondent seeking to rent out the Vehicle with the assistance of the 1st Respondent, or the 3rd Respondent first paying off the debt allegedly still owed to the Appellant by the 1st and 2nd Respondents under the Hire-Purchase Agreement, before seeking to claim any such sums from the 1st and 2nd Respondents.[125] *Per* the Appellant's argument, the 3rd Respondent should have undertaken either of these options in March 2018 when it first discovered itself unable to effect the transfer of ownership of the Vehicle.[126]

3rd Respondent's Case

170 The 3rd Respondent took the position that the DJ should have awarded damages in terms of loss of rental for a longer period of time. This was because contrary to the DJ's view, the 3rd Respondent had actually continued to pursue the matter actively – albeit in a different way, *ie* through his lawyers.[127] The 3rd

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124 Appellant's Case at Paras 80-81.

125 Appellant's Case at para 85.

126 Appellant's Case at Para 86.

127 3rd Respondent's Case at p38 Para 31.

Respondent contended that the decision to pursue the matter through lawyers represented the 3rd Respondent switching up his strategy after months of pursuing the matter personally had yielded no results.[128] In support of the shift in strategy, the 3rd Respondent also highlighted the numerous difficulties which he had faced in dealing with the 1st Respondent, the 2nd Respondent and the Appellant.[129]

171 Further, the 3rd Respondent contended that since the Appellant had brought the issue of mitigation into play on appeal, the appellate court was at liberty to find that loss of rental should have been awarded for a period longer than that allowed by the DJ, and thereby to increase the quantum of damages awarded.[130] Given its contention that it had continued actively to pursue the matter even after September 2018 (albeit through his lawyers), the 3rd Respondent submitted that damages for loss of rental should be awarded for the period from 15 March 2018 until 20 Nov 2020 (*ie*, 2 years and 7 months).[131]

172 As for the two possible strategies of mitigation suggested by the DJ, the 3rd Respondent submitted that they were not feasible as they would have entailed the 3rd Respondent incurring great expense and/or putting itself to great inconvenience and/or too great a risk of losing its money. In making these submissions, the 3rd Respondent relied on *The Asia Star*, where the CA held (at [47]):[132]

> …[T]he duty to mitigate had its limits. It could not oblige an aggrieved party to incur great expense **or** put itself to great

128 3rd Respondent's Case at p40 Para 42.

129 3rd Respondent's Case at p40-41 Paras 42-46.

130 3rd Respondent's Case at p42 Paras 51-52.

131 3rd Respondent's Case at p42 Para 52.

132 3rd Respondent's Case at p43 Para 55.

> inconvenience in stemming the loss resulting from the defaulting party's breach… it is always a question of fact as to what amounts to too great an expense for the aggrieved party to incur **or** too great a risk of its money.
>
> [emphasis added]

173 For completeness, I note that the 1st and 2nd Respondents elected to make no submissions on the issue of mitigation by the 3rd Respondent, even after seeing the latter's submissions calling for an upward adjustment of the quantum of damages.

My Decision

Mitigation of loss:

(1) Whether the 3rd Respondent should have adopted either of the mitigation strategies suggested by the DJ

174 I start with the last point first. To recapitulate: the DJ found that for the purposes of mitigating its losses, there were two options, either of which the 3rd Respondent could and should have taken. The DJ opined that the 3rd Respondent could have sought the 1st Respondent's help to lease out the Vehicle while the Vehicle remained registered to the 1st Respondent, and that any attendant expenses could have been recovered at a later stage from the 1st and 2nd Respondents. Alternatively, the DJ opined that the 3rd Respondent could have first paid the Appellant an additional sum of $13,301 to cover the balance allegedly still owing under the Hire-Purchase Agreement. The DJ reasoned that this would have allowed the 3rd Respondent to recover the vehicle first, before subsequently seeking to recover from the 1st and 2nd Respondents the monies paid.

175 I disagree with the DJ's findings as to how the 3rd Respondent should have mitigated his loss. My reasons are as follows.

176 It is trite that the reasonableness of a claimant's attempts to mitigate its loss is a question of fact (Andrew Phang *et al*, *The Law of Contract in Singapore*, vol.2, Academy Publishing ("*Phang on Contract vol.2*") at para 22.143), and that the burden of proof is on the promisor-in-breach to show that the claimant's post-breach actions or inaction were or was unreasonable (*Phang on Contract* at [22.144]). In this respect, the standard of proof required of the promisor-in-breach is rather high (*Phang on Contract* at [22.145]): in *The Asia Star* (at [24]), the CA stressed that this burden "is ordinarily one which is not easily discharged".

177 In *The Asia Star*, in a passage cited by the DJ in his grounds of decision, the CA also held (at [47]) that in terms of action taken in mitigation, an aggrieved party should not be expected to incur great expense or to incur too great a risk of its money:

> It is, of course, axiomatic that the duty to mitigate has its limits. It cannot oblige an aggrieved party to incur great expense or put itself to great inconvenience in stemming the loss resulting from the defaulting party's breach. Thus, in *Lesters Leather & Skin Company, Ltd v Home & Overseas Brokers, Ltd* (1948) 82 Ll L Rep 202 at 205, Lord Goddard CJ observed that, where a contract for the sale of goods was breached by the seller failing to deliver the promised goods, the prospective purchaser was not:
>
> … bound to go hunting [all over] the globe to find out where he can get [replacement goods] and then have them shipped, months after the contract time, so that they will arrive [at their intended destination] many months after the date [on] which, had they been shipped in accordance with the contract, they would have arrived.

> In this regard, it is important to bear in mind that it is always a question of fact as to what amounts to too great an expense for the aggrieved party to incur or too great a risk of its money.

178 Similar observations were made by Warren L H Khoo HJ in *Tan Soo Leng David v Lim Thian Chai Charles* [1998] 1 SLR(R) 880 (at [38]):

> I need only make two observations. The rule of mitigation of damages does not require the innocent party to do more than is reasonably required to stem the loss. As it is the party in default who has brought about a situation which calls for measures to mitigate loss, he is in no position to be astute in criticising the adequacy of the mitigating steps taken by the innocent party. As Lord MacMillan said in *Banco de Portugal v Waterlow and Sons, Limited* [1932] AC 452 at 506, the measures which the innocent party may be driven to adopt ought not to be weighed in nice scales at the instance of the defendant whose breach of contract has occasioned the difficulty.

179 Having regard to the above principles, I am unable to agree with the DJ that it would have been reasonable for the 3rd Respondent to adopt either of the two mitigation strategies suggested by him. In respect of the first option suggested by the DJ (*ie*, for the 3rd Respondent to seek the assistance of the 1st and/or 2nd Respondents to lease out the Vehicle before recovering any attendant expenses from the 1st and 2nd Respondents), this was far from being a straightforward process. This option would have entailed the 3rd Respondent putting in considerable effort as well as incurring the risks and the costs of seeking the 1st and 2nd Respondents' assistance to lease out the Vehicle. This would have included incurring the costs and expenses of putting the Vehicle out in the market for leasing, bearing the risk of it not being leased out successfully, and bearing the risks and costs associated with any subsequent attempt to claim such costs and expenses from the 1st and 2nd Respondents. With respect, I do not see how it would have been reasonable for the 3rd Respondent to carry out all these steps for the purposes of mitigation. As Prakash J (as she then was) pointed out in the High Court decision in *The Asia Star* [2009] SGHC 91 (at

[65]), "mitigation principles do not require the injured party to incur extraordinary expenditure or act otherwise than in the ordinary course of business". In my view, the 3rd Respondent could not and should not have been expected to take the above steps in the ordinary course of business.

180 As for the second option suggested by the DJ (*ie*, for the 3rd Respondent to pay an additional $13,301 to the Appellant first in order to get the charge over the Vehicle released and then subsequently to seek recovery of the money from the 1st and 2nd Respondents), I am also of the view that the 3rd Respondent could not and should not have been expected to take such steps in the ordinary course of business. Basically, this second option would have entailed the 3rd Respondent incurring too great a risk of its money, since it required him to be out of pocket for a further $13,301 – despite having paid the full purchase price of $52,200 for the Vehicle – and then to incur yet more costs by undertaking the risky process of claiming the money back from the 1st and 2nd Respondents. As the 3rd Respondent pointed out,[133] if the risk of losing the lawsuit materialised and the 3rd Respondent failed to recover the additional $13,301 paid out, "he would have paid a lot more for the Vehicle than he should [have], which does not make any sense, let alone business sense". The 3rd Respondent's point is all the more forceful when one considers that the sum of $13,301, which the DJ suggested the 3rd Respondent should pay first, would have constituted a significant portion of the entire purchase price of $52,200 – about a quarter of that price, in fact.[134]

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133 3rd Respondent's Case at p 49.

134 3rd Respondent's Case at p 49.

(2) Whether the 3rd Respondent should have already acted earlier in March 2018 by adopting either of the two mitigation strategies suggested by the DJ

181 In its arguments on appeal, the Appellant contended that it was not clear from the DJ's grounds of decision when either of the two mitigation strategies he suggested should have been adopted by the 3rd Respondent. The Appellant argued that the 3rd Respondent should have adopted either of the mitigation strategies by March 2018, when it first found itself unable to effect transfer of ownership of the Vehicle.[135] In making this argument, the Appellant failed to put forward any coherent reasons as to *why* the 3rd Respondent should have done so by *March 2018*. The only faint argument the Appellant appeared to make in this respect touched on the 3rd Respondent's purported ability to carry out such steps as at March 2018[136] – which is wholly irrelevant to the issue of the reasonableness of the 3rd Respondent's attempts to mitigate its loss.

182 In any event, given that I have found the two mitigation strategies suggested by the DJ to be unreasonable, the Appellant's submission on this point has no more force and I reject it accordingly.

(3) Whether the quantum of damages awarded to the 3rd Respondent for loss of rental was correct

183 I next address the parties' submissions on the quantum of damages awarded for loss of rental. To recapitulate: the Appellant contended that the DJ should have awarded at the most damages for the period up till end-September 2018. The Appellant said that this was because the DJ had found insufficient evidence of mitigation by the 3rd Respondent post 25 September 2018: as such,

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135 Appellant's Case at Para 86.

136 Appellant's Case at Paras 86-87.

there was no basis for the DJ to award damages for loss of rental up to end-October 2018.[137] The 3rd Respondent, on the other hand, urged the appellate court to make an upward adjustment in the quantum of damages awarded, by awarding damages for a period longer than that assessed by the DJ. The 3rd Respondent submitted that the DJ was wrong to have found that he failed to pursue the matter actively after September 2018 when in truth his pursuit of the matter had simply taken a different form (*ie*, through his lawyers as opposed to his personal efforts).[138]

184 The Appellant objected to the 3rd Respondent's submission for an upward adjustment in the quantum of damages, arguing that the 3rd Respondent should not be permitted to raise the point in the absence of a cross-appeal.[139]

(A) WHETHER THE APPELLATE COURT MAY ADJUST THE QUANTUM OF DAMAGES IN FAVOUR OF THE 3RD RESPONDENT IN THE ABSENCE OF A CROSS-APPEAL

185 On the issue of whether the appellate court may adjust the quantum of damages in favour of the 3rd Respondent in the absence of a cross-appeal, I find the Appellant's objections to be without merit.

186 The relevant provisions are s 22 read with s 37(5) and (6) of the Supreme Court of Judicature Act (Cap 332, 2007 Rev Ed) ("SCJA") as well as O 55D r 11(2) and (3) ROC. For ease of reference, I reproduce below s 22, s 37(5) and (6) SCJA:

> **Powers of rehearing**
>
> **22.** – (1) All appeals to the High Court in the exercise of its appellate civil jurisdiction shall be by way of rehearing.

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137 Appellant's Case at Paras 80-81.

138 3rd Respondent's Case at p 41-42.

139 Transcript of 2 February 2023 at p 57 ln 3 to p 57 ln 26.

> (2) The High Court shall have the like powers and jurisdiction on the hearing of such appeals as the Court of Appeal has on the hearing of appeals from the High Court.
>
> **Hearing of appeals**
>
> **37.** –
>
> …
>
> (5) The Court of Appeal may draw inferences of facts, and give any judgment, and make any order which ought to have been given or made, and make such further or other orders as the case requires.
>
> (6) The powers in this section may be exercised notwithstanding that the notice of appeal relates only to part of the decision, and such powers may also be exercised in favour of all or any of the respondents or parties, although the respondents or parties have not appealed from or complained of the decision.

187 I also reproduce below O 55D r 11(2) and (3) ROC:

> **General powers of Court (O.55D, r.11)**
>
> **11. –**
>
> (2) The High Court shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been given or made, and to make such further or other order as the case may require.
>
> (3) The powers of the High Court under paragraphs (1) and (2) may be exercised notwithstanding that –
>
> (a) no notice of appeal has been given in respect of any particular part of the decision of the Court below or by any particular party to the proceedings in that Court; or
>
> (b) any ground for allowing the appeal or for affirming or varying the decision of that Court is not specified in any of the Cases filed pursuant to Rule 7 or 9,
>
> and the High Court may make any order, on such terms as the High Court thinks just, to ensure the determination on the merits of the real question in controversy between the parties.

188 Reading s 22, s 37(5) and (6) of the SCJA together, it is clear that this court has the same powers and jurisdiction relating to the hearing of the present

appeal as the CA has on the hearing of appeals from the High Court. The relevant powers and jurisdiction of the CA are that the CA may give any judgment, and make any order which ought to have been given or made – *notwithstanding that the respondents or parties have not appealed from or complained of the decision*. Accordingly, notwithstanding the 3rd Respondent's failure to file a cross-appeal on the issue of quantum of damages, this court has the power and jurisdiction to consider the issue and to make a decision to adjust the quantum in the 3rd Respondent's favour – should the merits of the case warrant such a decision.

189 A reading of O 55D r 11(2) and (3) ROC leads to the same conclusion. Reading O 55D r 11(2) and (3) together, it is clear that the High Court has the power to give any judgment and make such further or other order as the case requires – *notwithstanding that no notice of appeal has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that the court below*.

190 The authorities in this area bear out the above interpretation. In *Hoban Steven Maurice Dixon and another v Scanlon Graeme John and others* [2007] 2 SLR(R) 770 ("*Hoban*"), the CA was concerned with the application of O 57 r 13(3) and (4) ROC – which are a mirror of the provisions in O 55D r 11(2) and (3), save that O 57 r 13(3) and (4) relate to the CA instead of the High Court. In *Hoban*, the CA held (at [30]) that:

> …Neither side appears to have appreciated the implication of a positive answer to our question, which would be that the June 2004 Order would not take effect, with the result that the parties would be restored to the status quo ante and the appellants would be free to litigate the issue of oppression. If they did, they have not articulated it. That would explain why the appellants continued to argue that the trial judge was wrong in not adjusting the nil valuation and that this court should do so, and the First and Second Respondents continued to argue

> that the trial judge was correct in not adjusting the nil valuation, and it would be a great injustice to them if this court were to do so.

191 As the CA went on to find that the June 2004 Order could not be implemented according to its terms, it had to consider whether the court had the power to make an appropriate consequential order. Citing an older version of the SCJA and ROC which were *in pari materia* with the present versions (at [186]-[187]), the CA held noted (at [45]) that:

> In view of our finding that the June 2004 Order cannot be implemented according to its terms, we need to consider how we can give effect to it, and whether we have the power to make an appropriate consequential order. In our view, we have the power to do so pursuant to ss 37(5) and 37(6) of the Supreme Court of Judicature Act (Cap 322, 1999 Rev Ed) ("SCJA") and O 57 rr 13(3) and 13(4) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed) ("ROC"). Sections 37(5) and 37(6) of the SCJA provide as follows:
>
> (5) The Court of Appeal may draw inferences of facts, and give any judgment, and make any order which ought to have been given or made, and make such further or other orders as the case requires.
>
> (6) The powers in this section may be exercised notwithstanding that the notice of appeal relates only to part of the decision, and such powers may also be exercised in favour of all or any of the respondents or parties, although the respondents or parties have not appealed from or complained of the decision.
>
> Order 57 rr 13(3) and 13(4) of the ROC further provide that the power to "make such further or other orders as the case requires" may be exercised even though no notice of appeal has been given in respect of any particular part of the decision of the court below or by any particular party to the proceedings in that court, or no ground for allowing the appeal or for affirming or varying the decision of that court is specified in any of the Cases filed pursuant to O 57 r 9A or r 10 of the ROC.

192 Following from its reasoning, the CA declared the June 2004 Order inoperative – notwithstanding that neither party had made submissions on the order becoming inoperative.

193 For the reasons explained above, therefore, I am satisfied that it is open to me to consider the issue of quantum of damages and to decide this issue in the 3rd Respondent's favour – should the merits of the case warrant such a decision.

(B) POWER OF APPELLATE COURT TO ALTER THE AMOUNT OF DAMAGES AWARDED BY THE JUDGE BELOW

194 In considering this issue, I note that an appellate court may vary the quantum of damages awarded by the judge only if it is shown that the latter: (a) acted on the wrong principles; (b) misapprehended the facts; or (c) had for these or other reasons made a wholly erroneous estimate of the damages (*Minichit Bunhom v Jazali bin Kastari and another* [2018] 1 SLR 1037 at [28]; *Tan Boon Heng v Lau Pang Cheng David* [2013] SGCA 48 at [7]; *Singapore Airlines Ltd v Tan Shwu Leng* [2001] 3 SLR(R) 439 at [11]-[13]).

195 While the cases cited were decisions by the CA, these principles similarly apply to an appeal from the State Courts to the High Court. As I pointed out earlier (at [186]), s 22 SCJA makes it clear that in appeals heard by the High Court in exercise of its appellate civil jurisdiction, the High Court shall have like powers and jurisdiction that the CA has on hearing appeals from the High Court.

(4) Whether the DJ's decision on quantum of damages should be varied

196 I am of the view that the quantum of damages awarded by the DJ should be varied. My reasons are as follows.

197 First, it appears to me the DJ based his inquiry into the issue of mitigation on the wrong principles. The DJ appears to have focused his inquiry on whether *the 3rd Respondent* was able to show that he had carried out reasonable mitigation. For ease of reference, I reproduce below the pertinent passages from the DJ's grounds of decision:[140]

> ***Issue 4: Duty of Mitigation***
>
> 74 The Plaintiff was further under a duty to mitigate. Though the standard required of the innocent party in discharging its duty of mitigation was not high and would not be weighed on fine scales, this standard would be higher where the innocent party chose a path of inaction – see *The Asia Star* [2010] 2 SLR 1154 at [45].
>
> 75 On our facts, while the Plaintiff's Police Incident Report suggested that the Plaintiff took active steps to procure the transfer of the title of the Vehicle to itself up to September 2018, there was very little evidence before me to suggest that the Plaintiff was equally proactive in seeking to effect the transfer of the vehicle after the Plaintiff's Police Incident Report of 24 September 2018 was filed. In the Plaintiff's Police Incident Report, Plaintiff stated that he was informed by LTA that if the Form B were not released by 25 September 2018, LTA would proceed to release the Vehicle to him. The reason why the Vehicle was not released on 25 September 2018, and indeed by end September 2018, was never properly explained.
>
> 76 Further, what the Plaintiff did by way of mitigation post 25 September 2018, when the Form A was supposed to be released by LTA, was also not apparent from the evidence. Based on the documentary evidence, there appeared to be *general inaction* on the Plaintiff's part after 25 September 2018, except for the commencement of various lawsuits – namely (i) MC 13861/2018 against the Plaintiff on 5 March 2019 and (ii) DC/OSS 38/2019 against Auto Lease on 5 March 2019 – which Plaintiff never followed through until the present writ action was filed in March 2020.

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140 Record of Appeal at p 50-51.

> 77 Further, in my mind, *if the Plaintiff were really minded to lease out the Vehicle against the backdrop of a ready rental market for the Vehicle, various steps could have been taken by the Plaintiff to mitigate its losses arising from its inability to transfer the Vehicle to his own name in LTA's records…*
>
> …
>
> 79 *There was also no documentary evidence to suggest that Plaintiff continued to proactively follow up with LTA to resolve the transfer issue post September 2018. Indeed, when asked during cross examination if active steps were taken to effect the transfer in late 2018, as well as in 2019, PW1's reply was that he "could not remember".*
>
> …
>
> [Emphasis added]

198 From the italicised passages, it appears to me that the DJ's focus was on the 3rd Respondent's purported inability to produce evidence to prove he had carried out reasonable mitigation. With respect, this is the wrong approach in principle. The burden of proof is always on the promisor-in-breach – in this case, the 1st and 2nd Respondents – to satisfy the court that the claimant's post-breach actions or inaction were or was unreasonable and worsened the claimant's losses (*Phang on Contract* at para 22.144; *The Asia Star* at [24]).

199 I am also of the view that the DJ appears to have misapprehended the facts. In his grounds of decision, the DJ found that there "appeared to be general inaction on the Plaintiff's part after 25 September 2018". Although the DJ qualified this finding with a reference to "the commencement of various lawsuits – namely (i) MC 13861/2018 against the Plaintiff on 5 March 2019 and (ii) DC/OSS 38/2019 against Auto Lease on 5 March 2019", he nevertheless took the view that there was general inaction by the 3rd Respondent post 25 September 2018 because there was no follow-through in respect of these earlier suits.

200 It should be noted that the timeline of the relevant events was as follows.

201 On 15 March 2018, the Appellant received payment for the Vehicle and issued an official receipt dated that very day.[141]

202 On 28 August 2018, a writ of summons was issued and filed against the 2nd Respondent by the 3rd Respondent.[142] This was accompanied by a statement of claim dated 28 August 2018.[143]

203 On 24 September 2018, the 3rd Respondent made a police report.

204 On 5 March 2019 the 3rd Respondent filed an originating summons against the Appellant. Subsequently, on 29 March 2019, there was a hearing in respect of this originating summons.[144] On 24 May 2019, an Order of Court was made giving directions for this originating summons to be converted to that of an action begun by writ and for the 3rd Respondent to file his statement of claim.[145]

205 On 9 March 2020, the 3rd Respondent filed the present suit against the 1st and 2nd Respondents.[146]

206 As alluded to earlier, the 3rd Respondent has explained that following some six months of unsuccessful attempts to get past the impasse with the first

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141 Record of Appeal at p 675 and p 689-690.

142 Record of Appeal at p 911.

143 Record of Appeal at p 913-915.

144 Record of Appeal at p 917.

145 Record of Appeal at p 919.

146 Record of Appeal at p 806-808.

two Respondents and the Appellant, and after several apparently futile complaints to the LTA and the police, he decided to change strategy by pursuing the matter through lawyers instead of through his personal efforts.[147] This was why, in the next six months between late August 2018 and early March 2019, lawsuits were commenced against the 2nd Respondent and the Appellant. In my view, given the lack of any tangible results from his attempts to pursue the transfer matter with the first two Respondents, the Appellant and even the authorities, there was nothing at all unreasonable about the 3rd Respondent subsequently adopting a strategy of resorting to legal action through his lawyers. Further, once the 3rd Respondent had appointed lawyers and handed over the matter to them, it was not unreasonable for him to refrain from pursuing the other three parties personally and/or continuing to complain to the authorities. It must be remembered, after all, that "the question which the principle of mitigation requires the court to determine is whether the mitigation measures taken by the aggrieved party were reasonable, and not whether the aggrieved party took the best possible measures to reduce its loss." (*The Asia Star* at [44]).

207 What I do find unreasonable, however, is that after directions were given on 24 May 2019 for the conversion of the originating summons against the Appellant to a writ action, the 3rd Respondent failed to comply with the court's directions – or for that matter, to take any further substantive steps in the lawsuits commenced on his behalf. This period of apparent stasis persisted until the filing of the present suit (DC/DC 679/2020) on 9 March 2020 – more than ten months after the filing of the originating summons. The 3rd Respondent has not ventured any explanation on record for this lengthy period of apparent inaction.

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147 3rd Respondent's Case at p40 Para 42.

208 For the reasons set out above, I find that the 3rd Respondent should be awarded damages for loss of rental on the Vehicle for the period between 15 March 2018 and 24 May 2019, and then from 9 March 2020 to 20 November 2020 (when the 3rd Respondent finally acquired title to the Vehicle).[148] The breakdown of the total period of time for which loss of rental is payable by the 1st and 2nd Respondents is therefore as follows:

(a) 14 months for the period of 15 March 2018 to 15 May 2019;

(b) Nine days for the period of 15 May 2019 to 24 May 2019;

(c) Eight months for the period of 9 March 2020 to 9 November 2020;

(d) 11 days for the period of 9 November 2020 to 20 November 2020;

(e) Adding (a), (b), (c) and (d), the total period is 22 months and 20 days.

209 As for the quantum of monthly rental value of the Vehicle, it will be recalled that the DJ estimated this at $2,200 a month (at [162]-[163] above). I am of the view that it was reasonable for him to do so. I have already found that he was justified in accepting Mr Lee's evidence about the monthly rental value of $1,800 a month in respect of the Toyota Harrier Premium 2.0 CVT. As the DJ pointed out, the Toyota Harrier Premium 2.0 CVT has smaller seating capacity than the Vehicle, since it is only a five-seater, whereas the Vehicle is a seven-seater. Given the larger seating capacity of the Vehicle, it was reasonable for the DJ to apply an uplift to the $1,800 figure. The $2,200 figure which he

148 ROA at p118 ln 19 to ln 22.

estimated was in my view not overly generous, as it was lower than the figure which would have been obtained by an application of the "loss of use" benchmark rates in Appendix F of the State Courts Practice Directions (which apply at the rate of $100-$120 a day in motor accident cases involving a claim for damages, for cost of rental of a replacement vehicle and/or loss of use).

210 Factoring in a monthly rental value of the vehicle of $2,200, the breakdown of the rent during the relevant period is as follows:

(a) 22 months of rent at $2,200/month is $48,400;

(b) 20 days of rent at $2,200/month is 20/30 x $2,200 – equalling to $1,467 (rounded up to the nearest dollar);

(c) Adding (a) and (b), the total amount is $48,400 + $1,467= $49,867.

211 In sum, a total amount of $49,867 should be awarded to the 3rd Respondent as damages for loss of rental.

(5) The Appellant's additional argument on mitigation by the 1st and 2nd Respondents

212 Before I leave Issue 6, I note in the interests of completeness that the Appellant has argued that Doris's evidence showed a lack of any attempts by the 1st Respondent – as the registered owner of the Vehicle – to transfer the Vehicle on the LTA system after changes were made to the system in November 2018, which (purportedly) allowed a registered owner to effect transfer even when a vehicle was still under financing. The only attempt Doris made on 20 November 2020 resulted in the successful transfer of the Vehicle to the 3rd

Respondent.[149] According to the Appellant, it was "surprising" that Doris on behalf of the 1st Respondent had not made any earlier attempt to effect the transfer.

213 While the Appellant's point is not entirely clear, I understand it to be saying that the 3rd Respondent could and would have acquired legal title earlier than 20 November 2020[150] but for the 1st Respondent's failure to effect the transfer in the LTA system after changes were made to the system on 26 November 2018 (purportedly) allowing registered owners to effect transfers even if a vehicle continued to be under financing.

214 I do not find any merit in this argument. This point was actually addressed in detail by the 2nd Respondent in its closing submissions at trial.[151] In gist, the 2nd Respondent pointed out that although all parties agreed that *some* changes took place in the LTA system on or about 26 November 2018, even Mr Lim himself was not able to confirm what these changes were.[152] Despite being asked several times about this,[153] Mr Lim was not able to say with any degree of certainty that post 26 November 2018, Form B would *automatically* be lodged in the system and that the Vehicle would be capable of being transferred at any time. In other words, on the evidence available, it was simply not clear that post 26 November 2018, the 1st Respondent would have been able to effect transfer of the Vehicle even without the Appellant lodging a Form B.

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149 Appellant's Case at Para 66.

150 Record of Appeal at p118 ln 16 to ln 18; 3rd Respondent's Case at p42 Para 52.

151 Record of Appeal at p1083 Paras 112-115.

152 Record of Appeal at p515 ln 4 to ln 15.

153 Record of Appeal at p521 ln 5 to ln 9.

215 In any event, the Appellant did not at any point argue in the trial below that the 1st and 2nd Respondents had failed to mitigate their losses vis-à-vis the 3rd Respondent. To permit the Appellant to advance such an argument at this belated stage would cause the 1st and 2nd Respondents irredeemable prejudice, since they have not had the opportunity to adduce any evidence on this point.

Issue 7: Whether the Appellant should be liable to indemnify the 1st and 2nd Respondents for the damages suffered and costs incurred

216 Finally, I address the Appellant's submission that it should not be held liable to indemnify the 1st and 2nd Respondents for the damages and costs payable to the 3rd Respondent. I first summarise below the DJ's decision as well as the argument advanced by the Appellant, the 2nd Respondent and the 3rd Respondent.

Decision below

217 The DJ found the Appellant liable to indemnify the 1st and 2nd Respondents for all damages and costs payable to the 3rd Respondent on the basis that the Appellant had acted in breach of the Hire-Purchase Agreement. The breach was committed by the Appellant appropriating $13,301 from the $49,200.86 paid by the 3rd Respondent towards settlement of the hire-purchase loan and using the amount thus appropriated to pay off debts owed to it by SHB Motoring. The DJ pointed out that the set-off clause under the Hire Purchase Agreement (Clause 20) only permitted set-offs involving the same hirer, *ie* the 1st Respondent.[154] As such, there was no basis for the Appellant to set off the $13,301 against any amounts owed by SHB Motoring, which was an entirely

154 Record of Appeal at p54 Para 85.

separate entity and whose debts to the Appellant arose from an entirely separate contract.

218 The DJ also observed that the Appellant's director Mr Lim had conceded at trial that the 1st Respondent and SHB Motoring were not identical nor related entities, and that there was no basis to appropriate monies paid under the Hire-Purchase Agreement with the 1st Respondent in order to pay off SHB Motoring's debts. In exercising a right of set-off without any basis and failing to lodge a Form B despite having received full payment of the hire-purchase loan, the Appellant had caused the 1st and 2nd Respondents to be unable to effect transfer of full title in the Vehicle to the 3rd Respondent – resulting in the 1st and 2nd Respondents breaching the Sales Agreement with the 3rd Respondent. The Appellant must therefore indemnify the 1st and 2nd Respondents for all sums payable by them to the 3rd Respondent.[155]

Appellant's Case

219 The Appellant claimed that it had refused to file Form B because there were monies outstanding from the 1st and 2nd Respondents to the Appellant. *Per* the Appellant's reasoning, the DJ did not actually rule that the Appellant's claim of a debt owed by the 1st and 2nd Respondents was frivolous. Moreover, in assessing the issue of mitigation, the DJ had suggested that the 3rd Respondent should have paid the outstanding debt of $13,301 to the Appellant and claimed this in turn from the 1st and 2nd Respondents. On this basis, the Appellant argued, it must have had a legitimate right to hold back the filing of the Form B.[156]

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155 Record of Appeal at p55-56 Para 86.

156 Appellant's Case at Paras 89-90.

2nd Respondent's Case

220 The 2nd Respondent essentially agreed with the DJ's reasoning. The 2nd Respondent contended that there was no contractual basis for the Appellant to set off the sum of $13,301 against any debts owed by SHB Motoring, as the set-off clause under the Hire Purchase Agreement only permitted set-offs involving the same hirer.[157] The DJ had rightly found the amount outstanding under the Hire Purchase Agreement to be discharged upon the 3rd Respondent's payment of $49,200.86 to the Appellant;[158] and Mr Lim himself confirmed at trial that all outstanding loans on the Vehicle had been paid off.[159] The Appellant thus had no valid basis for withholding the execution of the Form B.[160] Indeed, Mr Lim had conceded that the Appellant acted as it did in order to place the 1st and 2nd Respondents in a difficult position.[161]

3rd Respondent's Case

221 The 3rd Respondent too agreed with the DJ's reasoning. In particular, the 3rd Respondent submitted that the DJ had correctly found the Appellant to be in breach of the Hire Purchase Agreement as a result of its wrongful use of the sum of $13,301 from the 3rd Respondent's payment of $49,200.86.[162] Since the Appellant had no right to set off the $13,301 against debts owing by SHB Motoring and since there were no monies outstanding under the Hire Purchase Agreement, the Appellant ought to have lodged a Form B to release its charge

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157 2nd Respondent's Case at Para 27.

158 2nd Respondent's Case at Para 26.

159 2nd Respondent's Case at Para 28; Record of Appeal at p502 ln 4 to ln 23.

160 2nd Respondent's Case at Para 29.

161 2nd Respondent's Case at Para 30; Record of Appeal at p506 ln 31 to p507 ln 9.

162 3rd Respondent's Case at p56-57 Paras 100-101.

over the Vehicle. The Appellant's wrongful refusal to do so was the cause of the failed transfer; and the Appellant should accordingly be held liable to indemnify the 1st and 2nd Respondents for all sums payable to the 3rd Respondent.[163]

My views

222 I find the Appellant's arguments in respect of Issue 7 to be entirely without merit. My reasons are as follows.

223 First, the Appellant's argument that monies were outstanding from the 1st and 2nd Respondents to the Appellant is specious. Insofar as the Hire Purchase Agreement was concerned, following the 3rd Respondent's payment of the sum of $49,200.86, the Appellant itself had confirmed full settlement of the hire-purchase loan for the Vehicle by issuing an official receipt dated 15 March 2018.[164] As the 2nd Respondent has pointed out, the Appellant's director Mr Lim also conceded at trial that all outstanding loans on the Vehicle had been paid off.[165] The only reason Mr Lim had for subsequently claiming that the hire-purchase loan had not been fully paid was his own action in appropriating a sum of $13,301 from the 3rd Respondent's payment and using this sum to partially set off debts from SHB Motoring. He had no right to do this. At trial, he admitted in cross-examination that he acted as he did in order to put the 1st and 2nd Respondents in a difficult position.[166] The SHB Motoring debt was a debt owing from a separate entity under a separate contract: the set-off clause in the Hire Purchase Agreement did not permit the Appellant to set off any part of the

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163 3rd Respondent's Case at p57-58 Paras 102-104.

164 Record of Appeal at p696, p708-709.

165 Record of Appeal at p502 ln 4 to ln 23.

166 Record of Appeal at p506 ln 31 to p507 ln 9.

$49,200.86 payment against debts owing from entities other than the 1st Respondent.

224 Second, the Appellant has also sought to rely on the DJ's suggestion that as a mitigation strategy, the 3rd Respondent should have paid the outstanding debt of $13,301 to the Appellant and claimed this amount in turn from the 1st and 2nd Respondents. The Appellant argued that this suggestion somehow gave it a legitimate basis for holding back the filing of a Form B so long as the $13,301 was not paid. I have explained earlier (at [174]-[180] above) why I rejected the DJ's suggestion about the mitigation strategies which the 3rd Respondent should have adopted. There is therefore no basis for the Appellant to claim that the DJ's suggestion provided some sort of basis for its refusal to file a Form B after being paid the outstanding hire-purchase loan amount.

225 I add that it is wrong for the Appellant to say that the DJ did not find its claim of a debt owed by the 1st and 2nd Respondents to be frivolous. Such an argument ignores the DJ's clear findings that the Appellant had received full payment under the Hire Purchase Agreement[167] and that it had no basis for setting off part of this payment against SHB Motoring's debt.[168]

226 Ultimately, as between the Appellant and the 1st and 2nd Respondents, the issue in contention in the third-party proceedings was whether the 1st and 2nd Respondents had any basis for claiming from the Appellant all sums payable by them to the 3rd Respondent. To reiterate: at trial, it was firmly established that the Appellant had received the sum of $49,200.86 outstanding under the Hire Purchase Agreement; that it had no right under the said

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167 Record of Appeal at p55 Para 86.

168 Record of Appeal at p54-55 Para 85.

agreement to appropriate any part of that payment towards setting off SHB Motoring's debt; and that having received the sum of $49,200.86, it had no legitimate reason to refuse to file the Form B that would have released its charge over the Vehicle. Given these facts, the Appellant – as the "Owner" under the Hire Purchase Agreement – was clearly in breach of its contractual obligation to the 1st Respondent (the "Hirer") to "assign and make over" to the Hirer all its "right title and interest" in the Vehicle once full payment had been made of the hire-purchase loan (Clause 13 of the Hire Purchase Agreement).[169] The damage resulting from the Appellant's breach clearly included the judgment sum and costs which the 1st and 2nd Respondents were ordered to pay the 3rd Respondent for their failure to transfer to it full title in the Vehicle free from any encumbrance under the Sales Agreement. The Appellant's conduct in this case was thus analogous to the acts of the third parties in *Eastern Shipping Company, Limited v Quah Beng Kee* [1924] AC 177 ("*Eastern Shipping*") and *Hygeian Medical Supplies Pte Ltd v Tri-Star Rotary Screen Engraving Works Pte Ltd* [1993] 2 SLR(R) 411 ("*Hygeian*"), where "the third party's acts were the primary – indeed, the *only* – cause of the respective defendants' liability to the respective plaintiff" (see *Tan Juay Pah* at [45]).

227 For completeness, I do not think the exclusion clause in clause 5(1) of the Hire Purchase Agreement is relevant to the issue in contention in the third-party proceedings (*ie*, whether there was any basis for the 1st and 2nd Respondents to claim from the Appellant the sums payable by them to the 3rd Respondent). For ease of reference, I reproduce clause 5(1) below:[170]

> **5. (1)** The Hirer hereby agree and declares that under no circumstances whatsoever are the Owners to be held responsible for any delay or non-delivery o [sic] said Goods; and

169 Record of Appeal at p 878.

170 Record of Appeal at p 877.

> any liability the Owners might otherwise incur and any right or immunity the Hirer might otherwise possess in respect of any conditions warranti [sic] representations relating to the condition of the said Goods (whether the same are new or second hand) or its correspondence with description or sample or its merchantable quality of fitness for the particular purpose or any purpose for which it is or may be required whether express or implied and whether arising under this Agreement or under any prior agreement or in oral or written statements made by or on behalf of any person in the course of negotiations in which the Hirer or its representative may have been concerned prior to this Agreement are hereby excluded; and without prejudice to the generality of the foregoing no liability shall attach to the Owners either in contract or in tort for loss injury or damage sustained by reason of any defect in the said Goods whether such defect be latent or apparent on examination and the Owners shall not be liable to indemnify the Hirer in respect of any claim made against the Hirer by a third party for any such injury or damage
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> …

228 It is plain to me that clause 5(1) is intended to exclude any liability on the Owner's (Appellant's) part for any defects in the quality and fitness for purpose of the goods being sold (including any latent defects). Clause 5(1) has nothing to do with the Owner's (Appellant's) obligation under clause 13 to assign and make over to the Hirer (1st Respondent) all its rights, title and interest in the Vehicle when full payment is made of the Hire Purchase loan, and cannot excuse the Owner's (Appellant's) breach of this obligation. This is in line with the trite principle that exemption clauses are to be construed strictly and any exemption must be done in clear words (*Singapore Telecommunications Ltd v Starhub Cable Vision Ltd* [2006] 2 SLR(R) 195 at [52]; *Kay Lim Construction & Trading Pte Ltd v Soon Douglas (Pte) Ltd and another* [2013] 1 SLR 1 ("*Kay Lim*") at [40]; *HSBC Institutional Trust Services (Singapore) Ltd (as trustee of AIMS AMP Capital Industrial REIT) v DNKH Logistics Pte Ltd* [2022] SGHC 248 at [28]).

229 In any event, the Appellant has not sought to rely on clause 5(1) either in the trial below or on appeal.

Conclusion

230 In conclusion, for the reasons explained, I dismiss the Appellant's appeal in entirety. I also order that the quantum of damages awarded to the 3rd Respondent be revised to $49,867. For the avoidance of doubt, interest is to be computed based on this revised quantum; and the Appellant remains liable to indemnify the 1st and 2nd Respondents for the revised judgment sum and interest (as well as the costs and disbursements below) payable by them to the 3rd Respondent.

231 As the Appellant has failed on all the issues it raised in the appeal, costs should follow the event: *ie*, the 1st, 2nd and 3rd Respondents should be paid the costs of the appeal by the Appellant.

232 I will hear parties on the quantum of costs.

Mavis Chionh Sze Chyi
Judge of the High Court

Vijai Dharamdas Parwani and Huang Po Han (Parwani Law LLC) for the Appellant;
Lee Koon Foong Adam Hariz and Shannon Lim Qi (Joseph Tan Jude Benny LLP) for the 1st and 2nd Respondents;
Tan Li Yi Caleb, Ang Stanley and Siow Yi Dong David (JusEquity Law Corporation) for the 3rd Respondent.