IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 266

Suit No 1057 of 2015

Between

Singapore Shooting Association

… *Plaintiff*

And

Singapore Rifle Association

… *Defendant*

GROUNDS OF DECISION

[Tort] — [Negligence] — [Duty of care]

[Tort] — [Negligence] — [Breach of duty]

[Tort] — [Negligence] — [Causation]

[Tort] — [Occupier's liability] — [Duty of care]

Singapore Shooting Association
v
Singapore Rifle Association

[2017] SGHC 266

High Court — Suit No 1057 of 2015
Debbie Ong J
14–16, 20–23 February; 6 April; 3 July 2017

30 October 2017

Debbie Ong J:

1 This suit was initially brought by the plaintiff, the Singapore Shooting Association ("SSA"), against the defendant, the Singapore Rifle Association ("SRA") to, amongst other things, recover vacant possession of the land and premises at 990 Old Choa Chu Kang Road Singapore 699814 ("the Premises"), known as the National Shooting Centre ("NSC"). The SRA counterclaimed against the SSA to seek compensation for losses caused by two floods that occurred on the Premises on 24 December 2014 and 3 May 2015 (the "1st Flood" and the "2nd Flood" respectively), allegedly through the SSA's negligence. Subsequently, the SSA withdrew its claim against the SRA, such that only the SRA's counterclaim remained.

2 On 3 July 2017, I dismissed the counterclaim in relation to the 1st Flood but found the SSA liable to the SRA for losses of $4,708 expended on cleaning

works as a result of the 2nd Flood. The SRA has appealed against my decision and I now set out the full written grounds for my decision.

Background facts

3 The SSA is the National Association for the sport of shooting in Singapore. At the material time, the SSA was leasing the Premises from Sport Singapore (then known as the Singapore Sports Council) under a lease agreement dated 29 December 2008.

4 The SRA is one of the founding member clubs of the SSA. Since 2000, the SSA has allowed the SRA to occupy and manage part of the NSC, including two areas known as the SRA Armoury and the SRA Office. The SRA Armoury was one of two armouries located in the basement of the NSC main building. The SRA Armoury stored firearms and ammunition owned by the SRA, individual members of the SRA, the Home Team Sports and Recreation Association and the Singapore Armed Forces Sports Association Shooting Club. The SRA Office was located in the NSC main building. The SRA also operated the pistol and rifle shooting ranges at the NSC.

5 There were no contracts between the SSA and the SRA formalising this arrangement for the SRA's use of the Premises for approximately 10 years. This arrangement was agreed upon at General Meetings of the SSA's member clubs or at meetings of the SSA's Council. On 19 March 2011, the parties entered into an Operator Agreement under which the SRA was appointed the sole and exclusive operator and manager of parts of the NSC, including the SRA Armoury, the SRA Office and the pistol and rifle shooting ranges. On 18 November 2014, the parties signed a Proprietary Range Agreement which terminated the Operator Agreement and, in its place, granted the SRA rights to

an area specified in a schedule for the purposes of constructing and operating a club range. It is undisputed that the SRA continued to occupy and use the SRA Armoury even though the SRA Armoury was not part of the specified area in the schedule to the Proprietary Range Agreement. The SSA accepted that at the material time, the SRA was granted a gratuitous licence to occupy the SRA Armoury at least up to the time of the two floods. The SRA contended that it was granted a sub-lease, but this distinction was not material to the issues before me.

6 For the purposes of the following discussion, it will help to bear in mind a rough layout of the Premises. The NSC main building, which houses the SRA Armoury, was located at the south-eastern end of the Premises. An unlined earth drain ("the unlined drain") ran north-west across the Premises. Three crossings had been built over the unlined drain. Each crossing carried a culvert underneath, *ie*, a drainage pipe through which water could flow from one section of the unlined drain to the next. The three culverts were marked out as Culverts A, B and C, with Culvert A being closest in distance to the SRA Armoury. Barring any obstruction in water flow, water would flow downstream in the direction from Culvert A to Culvert C and onwards out of the Premises. A diagram of the Premises may be found in the annex to these grounds of decision.

Renovation works on the Premises

7 Members of the SRA claimed that between August 2013 and December 2014, trucks carrying full loads of earth fill material and debris frequently entered the Premises. These trucks were observed unloading and dumping the earth fill material at various parts of the Premises and then leaving the Premises empty. The SSA and Sport Singapore each claimed the other had engaged the trucks to dump the material on the Premises. The SSA pleaded that the earth fill

material was dumped on the Premises to build stop-butts for a new 25m range, increase the height of existing stop-butts and fill the trench between the existing ranges A and B to build a third range. The SRA's representatives disputed this because they observed the trucks dumping earth fill material in areas other than where the said stop-butts and trench were situated.

8 On 30 October 2013, the SSA and Sport Singapore handed over the Premises to a contractor for refurbishment and renovation works to be carried out for the Southeast Asian Games ("SEA Games"). It was not disputed that it was Sport Singapore who had engaged the contractor to carry out these renovation works and that such works included at least some drainage infrastructure works. The Premises were handed back by the contractor to Sport Singapore and in turn to the SSA on 1 December 2014.

9 The parties disputed the exact areas of the Premises that were handed over to Sport Singapore and the scope of works that Sport Singapore had authorised on the Premises. The SSA's case was that it had handed over the whole of the Premises (save for the NSC main building) to Sport Singapore for the purposes of the renovation and did not itself authorise or pay for any works on the unlined drain between 30 October 2013 and 1 December 2014. In contrast, the SRA contended that Sport Singapore did not take over the whole Premises but only the parts of it where works were carried out. In particular, Sport Singapore did not control or authorise any works to be carried out at the embankment along the unlined drain between Culverts B and C. Mr Lenard Pattiselanno, currently the director of the National Sports Association Partnership Division in Sport Singapore, testified pursuant to a subpoena issued by the SRA.

The floods

10 On 24 December 2014, less than a month after the completion of the SEA Games renovation, the 1st Flood occurred at the Premises. The basement of the NSC main building was flooded to a height of approximately 1m. Mr Conrad Chung from the SRA and Mr David Lieu from the SSA traced the source of the water from further downstream along the unlined drain. They noticed that somewhere near Culvert C, there was what Mr Chung termed a "failed slope" or "landslide". From photographic evidence, I gathered that the soil from the slope lining one side of the unlined drain had slid into the unlined drain. It appeared to Mr Chung that the soil that had slid into the unlined drain was preventing water in the unlined drain from flowing through Culvert C and out of the NSC. He observed a backflow of water towards the NSC main building. After requisitioning two water pumps to pump water out of the basement of the NSC main building as well as a long arm excavator to clear the failed slope, the water level receded. However, ammunition and target papers had been submerged in water for hours.

11 To investigate the cause of the 1st Flood, the SRA engaged Professor Vladan Babovic, an expert in hydrology, to give an expert opinion on the cause of the flood and advise the SRA on steps to prevent future flooding. Professor Babovic produced a Flood Assessment Report in January 2015. He testified as an expert witness for the SRA in this trial.

12 On 10 January 2015, the SSA's Council convened a Board of Inquiry ("BOI") chaired by Mr Lim Kim Lye. The BOI was tasked to determine the probable cause of the flood, identify contributing factors, review the effectiveness of the remedies implemented by the SRA after past floods and propose remedies to prevent the recurrence of a flood. The BOI considered

photographs, site visits and Professor Babovic's Flood Assessment Report. In its report dated 12 March 2015, the BOI concluded that the 1st Flood was caused by a combination of (a) unforeseen and unprecedented heavy rains; (b) a "landslip" at the unlined drain approximately 320m downstream from the SRA Armoury, which was described as a "failure of the newly constructed embankment between Culverts B and C"; and (c) debris swept upstream which clogged the pipe at Culvert A such that water flowed back upstream. Amongst other solutions, the BOI recommended that a waterway survey be done by a professional agency to assess the drainage infrastructure and soil composition of the Premises and recommend rectification works. Mr Lim conceded under cross-examination that the BOI's members were not experts in hydrology and engineering and would not be able to identify the "real cause", ascertain the intensity and frequency of the rainfall event on 24 December 2014, or assess the cause and effect of the landslip.

13 Subsequently, the Public Utilities Board ("the PUB") surveyed the Premises on 26 March 2015 and 16 April 2015. The PUB advised Sport Singapore that the 1st Flood was caused by the silting of the unlined drain and the obstruction by the crossings. It pointed out that the crossings at Culverts A and C had not been approved by authorities. It recommended adding additional pipes at the culverts or replacing the unauthorised crossings with footbridges. In the short term, regular maintenance of the unlined drain was advised to prevent blockage. Sport Singapore forwarded these recommendations on to the SSA for the SSA to regularise the waterway works at the SSA's own costs after proper approvals from the authorities and Sport Singapore.

14 On 3 May 2015, the 2nd Flood occurred. The basement of the NSC main building was flooded to a height of approximately 30cm. Mr Marcus Kung from the SRA traced the source of the water and noticed a "landslide" of the unlined

drain, which apparently caused a blockage of the unlined drain and resulted in backflow of the water towards the NSC main building. The SRA's ammunition and target papers were not affected but it incurred cleaning costs. Professor Babovic was later engaged to prepare an addendum report on the 2nd Flood.

The parties' cases

15 The SRA argued that the SSA, as the lessee and occupier of the Premises, owed a duty of care to the SRA to ensure proper maintenance and supervision of the Premises. The SRA was a lawful entrant and the SSA had consented to and was aware of the SRA's operations on the Premises. The SRA pleaded that the SSA had breached its duty of care because the SSA:

(a) failed to properly maintain the Premises;

(b) failed to adequately monitor, supervise, take necessary measures to ensure safety with any alteration to the Premises;

(c) failed to adequately monitor, supervise, take necessary measures to prevent damage to the SRA Armoury and its contents therein;

(d) failed to design, construct and/or maintain the water drainage infrastructure at the shotgun construction range in compliance with various sections of the PUB Code of Practice on Surface Water Draining (6th ed, 2011) (as amended by Addendum No 1 (June 2013)) ("the PUB Code") and to ensure that it was hydraulically adequate, structurally sound and geotechnically stable;

(e) failed to seek the approval of the relevant government authorities before altering or interfering with the water drainage infrastructure and/or carrying out the dumping of the earth fill material at the Premises; and

(f) failed to engage qualified persons to plan, design and install earth control measures and erosion control measures, and to

implement soil stabilisation methods to ensure the stability and structural integrity of the drainage infrastructure; and

(g) in respect of the 2nd Flood, failed to take adequate and/or reasonable steps to remedy the causes of the 1st Flood.

16 The SRA alleged that in respect of both floods, these breaches resulted in a "failed slope or landslide at the water drainage embankment" between Culverts B and C, in turn leading to a backflow of water towards the NSC main building, which caused a flood in the SRA Armoury. The SRA submitted on the basis of its experts' evidence that the main cause of the 1st Flood was the landslip at the unlined drain between Culverts B and C. The landslip occurred because the slope lining the unlined drain was constructed using unsuitable soil. The SRA submitted that the 2nd Flood was caused by the choking of Culvert B by debris, which likewise caused a backflow. The SRA thus suffered losses in the form of damaged ammunition, target papers that were no longer fit for their purpose, and cleaning costs.

17 In its defence to the counterclaim, the SSA pleaded that the 1st Flood could not have been caused by a landslip or failed slope between Culverts B and C, but was instead caused by unforeseen and unprecedented heavy rains and debris, swept in from an adjacent range, which obstructed Culvert A. In its closing submissions, however, the SSA conceded that the 1st Flood was caused by a landslip because the embankment at the unlined drain was poorly constructed. The SSA denied that it owed the SRA a duty of care as it did not have control over the works done on the unlined drain. It claimed that control of the *whole* Premises had been handed over to Sport Singapore, which was responsible for authorising the works and obtaining all necessary approvals. Even if it owed a duty of care to the SRA, the SSA argued that it did not breach its duty as it was justified in relying on Sport Singapore to ensure that the

unlined drain was properly constructed. The SSA also disputed the SRA's proof of loss and damage in respect of the 1st Flood. As for the 2nd Flood, the SSA pleaded that it had not acted unreasonably as it had looked into the causes of the earlier flood but was unable to remedy them before the 2nd Flood occurred. Finally, the SSA submitted that the SRA was contributorily negligent in respect of both floods because the SRA had failed to seal the windows of the SRA Armoury in spite of earlier recommendations.

Issues

18 The law on occupiers' liability is subsumed under the tort of negligence (*See Toh Siew Kee v Ho Ah Lam Ferrocement (Pte) Ltd and others* [2013] 3 SLR 284 ("*See Toh*") at [76]). The SRA's counterclaim was analysed under the tort of negligence. The issues before me were:

(a) whether the SSA owed a duty of care to the SRA;

(b) if so, whether the SSA breached its duty of care in respect of the 1st Flood and/or the 2nd Flood;

(c) if it did, whether the breach caused the 1st Flood and/or the 2nd Flood; and

(d) if it did, whether the 1st Flood and/or 2nd Flood caused the damages claimed by the SRA.

Duty of care in respect of both floods

19 The test for the duty of care in negligence is set out in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR (R) 100 ("*Spandeck*") (at [77] and [83]):

> 77 The *first* stage of the test to be applied to determine the existence of a duty of care is that of proximity, *ie*, that there must be sufficient *legal* proximity between the claimant and defendant for a duty of care to arise. The focus here is necessarily on the closeness of the relationship between the parties themselves …
>
> …
>
> 83 Assuming a positive answer to the preliminary question of factual foreseeability and the first stage of the legal proximity test, a *prima facie* duty of care arises. Policy considerations should then be applied to the factual matrix to determine whether or not to negate this duty. Among the relevant policy considerations would be, for example, the presence of a contractual matrix which has clearly defined the rights and liabilities of the parties and the relative bargaining positions of the parties.
>
> [emphasis in original]

20 The factual foreseeability test is readily met in the case of occupiers. This is because it is eminently foreseeable that entrants will suffer damage if occupiers do not take reasonable care to eliminate danger on their premises (*See Toh* at [77]).

21 Legal proximity includes physical, circumstantial and causal proximity, as well as reliance and voluntary assumption of responsibility (*Spandeck* at [78]). In the case of lawful entrants, the vast majority of occupiers with control of the property and/or the activities carried out there *de jure* owe a *prima facie* duty of care to take reasonable care to avoid harm to lawful entrants. As V K Rajah JA explained in *See Toh* at [80]:

> In so far as cases of *lawful* entrants are concerned … circumstantial proximity is tautologically present in the occupier-lawful entrant relationship. To elaborate, the hallmark of a lawful entrant's presence on an occupier's premises is consent to his presence on the part of the occupier; it is this consent, which grounds the occupier-lawful entrant relationship and justifies a legal finding that there is proximity between the occupier and the lawful entrant. **I thus hold that under the first limb of the *Spandeck* approach, the *vast majority* of occupiers having control of the property which they occupy and/or the activities carried out there *de jure* owe a *prima facie* duty of care to lawful entrants.** At the same time, it bears emphasis that not all "occupiers" … owe a *prima facie* duty of care to lawful entrants – essentially, this turns on the degree of control which an occupier has over the property concerned and/or the activities carried out there. …
>
> [emphasis in original]

22 Nonetheless, I was also careful to note that this is not a blanket rule and the finding of a duty of care should ultimately turn on the facts of each individual case. Indeed, Sundaresh Menon CJ preferred a different approach (at [130]):

> … Rajah JA has said at [80] above that in so far as *lawful* entrants are concerned, in ordinary circumstances, subject to the element of control, occupiers will *de jure* owe them a *prima facie* duty of care as there will be sufficient legal proximity between occupiers and lawful entrants. While this may well be correct as a matter of how the great majority of cases will *in fact* be resolved, I prefer to leave this as something to be worked out by reference to the specific facts that will arise on future occasions, rather than by articulating any legal rule or principle to this effect. …
>
> [emphasis in original]

In assessing the facts, the degree of control which an occupier has over the property concerned and/or the activities carried out there must be considered (*See Toh* at [80]).

23 I was of the view that there was legal proximity between the SSA and the SRA. I found the SRA to be a lawful entrant to the Premises. Significantly, as mentioned at [5] above, the SSA accepted in pleadings and in evidence that at least a gratuitous licence had been granted to the SRA to use the SRA Armoury at the material time. It is a fact that since 2000, the SRA has occupied and used the SRA Armoury, the SRA Office and the pistol and rifle shooting ranges. The SRA continued to do so even after the termination of the Operator Agreement. The parties were therefore not mere strangers brought together only by the alleged negligent act. They had a long relationship which was directly relevant to the question of proximity.

24 It was not disputed that the SSA had entire control of the Premises on the dates of the two floods. Regardless of whether and to what extent the SSA had handed over control of parts of the Premises to Sport Singapore for the purposes of the SEA Games renovation in any prior period, it was undisputed that by 1 December 2014, the SSA had recovered possession of the entire Premises from Sport Singapore.

25 In my view, the SSA's claim, on the basis of *See Toh*, that it did not owe any duty of care to the SRA because it did not construct the failed slope and was not in control of the Premises when it was constructed, is misconceived. The alleged cause of the 1st Flood was the static condition of the Premises at the time of the 1st Flood, not any dynamic activities or risky operations being carried on by a third party on the Premises. The present case is thus distinguishable from *See Toh*. In *See Toh*, HAL was the lessor and Lal Offshore

the sub-lessor of a part of the premises. It was undisputed that "the Mooring Operation which led to [the plaintiff's] injuries was conducted by Asian Lift, and that HAL and Lal Offshore had no part to play in that operation or in supervising it" (at [134]). The Court of Appeal held that HAL and Lal Offshore did not owe the plaintiff a duty of care. Even if they did, their duty in such a context would only consist of keeping unauthorised persons out of the premises. In contrast, the 1st Flood occurred due to the condition of the Premises. The SSA was occupying the Premises as lessee and had control over the condition of the Premises at the time of the 1st Flood. The alleged negligent act did not arise from a third party's dynamic activities over which the SSA had no or little control.

26 I therefore found that there was sufficient legal proximity between the SRA and the SSA. I did not find any policy considerations to negate a finding of a duty of care. Thus, the SSA owed the SRA a duty to take reasonable care of the Premises so as to avoid causing harm to the SRA.

The 1st Flood

27 Before I turn to examine the SSA's alleged breaches leading up to the 1st Flood, I first consider the evidence on what aspect of the Premises was poorly maintained, designed or constructed.

Expert evidence on the cause of the 1st Flood

28 The SRA called two expert witnesses, Professor Babovic, who as mentioned is an expert in hydrology, and Professor Tan Siew Ann, an expert in geotechnical engineering.

29 Professor Babovic gave evidence that the intensity of rainfall experienced on 24 December 2014 occurred approximately once in two years. It was a rainfall event that the Premises should have been designed to withstand (without flooding), and could not be said to be unprecedented.

30 In Professor Babovic's assessment, the main cause of the 1st Flood was the failed slope between Culverts B and C. I quote from his Flood Assessment Report:

> The main reason for the flood was [the] failed slope at a bank of the unlined drain. The earth fill material blocked the flow of water in the unlined drain, causing backwater to propagate upstream and eventually flood [the] armoury of the [SRA].

Professor Babovic observed that the slopes of the unlined drain were steep and constructed using non-compacted material which was not secure. He also opined that, based on the SRA's account of earth fill material being dumped at the Premises, the dumping of earth fill material has "undoubtedly altered local surface hydrology, resulting in altered runoff processes". However, Professor Babovic did not draw a conclusive link between these altered runoff processes and the 1st Flood, concluding only that the "changes in local drainage properties due to earth fill works should have been assessed before the commencement of the works, since they may lead to an increase in flooding risks".

31 Professor Tan studied the landslip (which he termed a "soil slip") that had occurred between Culverts B and C, resulting in soil blocking the water flow in the unlined drain. In his opinion, the soil slip occurred because the slope along the sides of the unlined drain was too steep and the strengths of the soil had reduced over time. He also concluded that the slopes of the unlined drain had been constructed using soils which were unsuitable for embankment fills. Three out of four bags of sample soil from the slopes of the unlined drain did

not meet the specifications for suitable embankment fill materials. I am however sceptical about the evidence of his assessment that the slopes were inadequately maintained as they were lacking in grass cover. The photographs from which he drew this conclusion were taken by Professor Babovic *after* the 1st Flood, and were therefore not indicative of the state of the grass cover prior to the 1st Flood. Nonetheless, apart from the issue of maintenance, Professor Tan was of the view that the construction of the slopes of the unlined drain did not comply with the PUB Code.

32 Although the cause of the floods took centre stage in this suit, there was ultimately little dispute between the parties about it. The SRA canvassed various contributing technical causes of the 1st Flood – that the dumping of earth fill material caused an altered surface hydrology that resulted in altered run off processes; that the crossings at Culverts A and C were unauthorised by the PUB and impeded water flow. In closing submissions, both parties were of the same view that the main cause of the 1st Flood was a landslip caused by the slope failure between Culverts B and C. I accepted Professor Babovic's evidence that this was the main cause, as well as Professor Tan's evidence that the unlined drain was constructed using unsuitable soil and the slope failed because it was too steep and the strengths of the soil reduced over time.

Breach of duty in respect of the 1st Flood

33 The SSA's duty is to exercise reasonable care to see that the Premises are reasonably safe and do not cause injury to persons and property on the Premises (see *See Toh* at [57]). At [15] above, I set out the breaches pleaded by the SRA in detail. In essence, the alleged breaches consisted of an alleged failure to properly construct the unlined drain and a more general failure to maintain and supervise the Premises. Given the evidence that the main cause was the

failed slope between Culverts B and C, my focus was on any breaches by the SSA in the construction and maintenance of the slopes or embankment of the unlined drain.

Construction of the new embankment

34 It was common ground that the failed slope between Culverts B and C formed part of an embankment along the unlined drain that was newly constructed during the period of Sport Singapore's renovation works for the SEA Games. The embankment did not exist prior to the time of the renovation works. This was accepted by the SSA's Mr Michael Vaz, the SRA's Mr Chung as well as the BOI (based apparently on information from the SSA's personnel) in its report. Both of the SRA's experts also observed that the embankment along the unlined drain was relatively newly constructed.

35 Although much emphasis was placed by the SRA on the rampant dumping of earth fill material on the Premises, I was of the view that the state of the newly constructed embankment along the unlined drain could not have come about as a result of indiscriminate dumping of earth fill material. The photographs of the embankment showed slopes that were deliberately cut and spruced with grass cover. In any event, since the SSA and Sport Singapore each disclaimed responsibility for the dump trucks, there was no convincing evidence as to who had engaged the dump trucks, for what purpose, and whether the dumping was carried out specifically to fill the embankment. It was mere conjecture by the SRA's personnel that the SSA had received payment for allowing dump trucks to unload material at the Premises.

36 As I outlined at [17] above, the SSA denied that it had breached its duty of care on the basis that it had handed over control of the Premises to Sport

Singapore and was entitled to assume that Sport Singapore would ensure that the construction was properly done. On the other hand, the SRA asserted that Sport Singapore did not authorise any works beyond Culvert B. In their submission, it followed that the SSA retained control and supervision over the embankment where the landslip occurred, and hence, the SSA was responsible for the poor structural integrity and soil quality of the slope which failed.

37 The issue of breach in relation to the construction of the new embankment therefore turned on whether and to what extent the SSA had control and oversight over the construction of the embankment between Culverts B and C. Another way of framing the issue is whether and to what extent Sport Singapore, instead of the SSA, was in control of the works done on the embankment between Culverts B and C.

38 The SRA subpoenaed Mr Pattiselanno from Sport Singapore. In a letter responding to the SRA's queries dated 23 January 2017, Sport Singapore claimed that it had not requested the SSA to surrender the whole of the Premises to it for the SEA Games renovation. It stated that it had conducted works relating to an unlined drain only at the area between the 25m and 50m ranges. Culverts A to C were situated along a different stream from the unlined drain described in the letter. To be clear, the scope of works described in Sport Singapore's letter did not include the unlined drain between Culverts B and C. During the trial, when presented with two chains of emails marked "P2" and "P3", Mr Pattiselanno agreed that the works on the Premises were not confined to the area between the 25m and 50m ranges but went beyond, as "consequential work was required at the main drain" (*ie*, the unlined drain where Culverts A to C were situated). However, Mr Pattiselanno only agreed that Sport Singapore in fact "carried out backfilling works along the unlined earth drain at least up to culvert B". Mr Pattiselanno also agreed that the works were not restricted to backfilling

but involved upgrading works, whereby the embankment was re-constructed. He conceded that the initial response in its letter was inaccurate since the area handed back to the SSA on 1 December 2014 also included the unlined drain at least up to Culvert B, since works had been done there.

39 Nonetheless, Mr Pattiselanno maintained that Sport Singapore did not authorise the construction of the embankment between Culverts B and C where the landslip occurred. He clarified that Sport Singapore did not engage or authorise any contractor to do any works *beyond* Culvert B. Therefore, if the embankment was indeed built by the contractor engaged by Sport Singapore, it was apparently done without the authority or instructions of Sport Singapore. Mr Pattiselanno had no personal knowledge of the works but based his evidence on an email chain marked "P2" between Sport Singapore and its contractor. To indicate where the consequential backfilling works were required to be done, the contractor had highlighted on a map the unlined drain only up to Culvert B. This was accompanied by a cross-sectional diagram of the profile of the unlined drain after the proposed embankment works. Mr Pattiselanno had no personal knowledge as to whether works beyond Culvert B were in fact carried out by this contractor or any other contractor. No invoices, contracts or variation orders were produced to substantiate whether Sport Singapore's contractor had in fact carried out works between Culverts B and C. However, Mr Vaz gave unchallenged evidence that there was only one contractor on site.

40 I accepted that the SSA did not authorise, propose or contract for the construction of any new water drainage infrastructure in the period leading up to the 1st Flood, including the works on the embankment between Culverts B and C. In fact, I noted that pursuant to cl 5.12 of the lease agreement between the SSA and Sport Singapore, the SSA had to prepare plans and specifications and obtain the requisite planning and other consents when proposing alteration

works for Sport Singapore's approval. The SSA could not have carried out any alteration works to the Premises without the prior written consent of Sport Singapore.

41 Additionally, it appeared that Sport Singapore was itself operating on the understanding that it had authority or permission to carry out or extend works to any part of the Premises as was necessary during the period when it had control over the Premises for the SEA Games renovation (*ie*, between October 2013 and December 2014). Although Sport Singapore claimed to have taken over control only of areas where renovation works were planned, when consequential works were required at the unlined drain – which included areas where no works were initially planned – Sport Singapore authorised the contractor to commence these extended works in January 2014 without first seeking the views or permission of the SSA. It seemed to me that the scope and quality of any works done to the water drainage infrastructure came under the direct responsibility of Sport Singapore which had engaged the contractor and was in direct communication with the contractor. Professor Babovic advised the SRA as follows in a memo adduced as evidence:

> … one cannot upgrade only one part of the drain and ignore the other sections … The drain needs to be looked at as one integrated piece of infrastructure. … By implication, if one wishes to upgrade the drain, he/she must upgrade the entire drain to make sure that the changes meet [the PUB Code] requirements.

42 I clarify that I made no findings on Sport Singapore's conduct or liability, because this suit only concerned the SSA's liability. But regardless of whether the upgrading of the embankment between Culverts B and C was in fact authorised by Sport Singapore, the SSA did not have immediate oversight over any construction of or improvements to the water drainage infrastructure in the period leading up to the 1st Flood. It was reasonable for the SSA to rely

on Sport Singapore to ensure that the water drainage infrastructure was designed and constructed in accordance with all regulations and with the proper advice of qualified persons, and that all alterations to the Premises were structurally safe and adequate. This reliance is similar to that in *See Toh* where HAL and Lal Offshore were entitled to believe that the highly experienced operator of the Mooring Operation would have taken all necessary precautions during the Mooring Operation to avoid danger to those present at and near the Operations Site (at [106]). Therefore, I was of the view that the SSA did not breach any duty in relation to the poor construction of the slopes and the failure to comply with the PUB Code.

Maintenance and checks after Premises were handed back to the SSA

43 Nonetheless, it did not follow that the SSA's duty of care to the SRA was necessarily discharged. I was prepared to go further to consider the SSA's duty to maintain the Premises, including the unlined drain, after it had regained control of the Premises on 1 December 2014. As the lessee and occupier, the SSA was responsible for taking reasonable steps to ensure that the Premises remained safe after the renovation works. The SSA occupied the Premises after the completion of the works. It knew that the SRA remained on the Premises and would continue to do so after the completion of the works. The SSA could therefore be expected to have made reasonable inquiries to satisfy itself of the scope and soundness of the works that Sport Singapore had carried out on the Premises. At the time that the renovation works were completed, the SSA could be expected to have checked that the works had been completed to a satisfactory standard and that no unauthorised work had been undertaken during the renovation period. This was the extent of its duty, as the occupier, to monitor and supervise the condition of the Premises arising from the alterations to the land effected by its landlord.

44 I would hasten to add that this did not necessarily mean that the SSA had to personally test the site and hire professionals to offer their opinions on the state of the land. Given that the works had been proposed and commissioned by Sport Singapore, who was the SSA's landlord, I accepted that it would have been reasonable for the SSA to rely on the representations or assurances by Sport Singapore that the works did not affect the structural integrity and drainage effectiveness of the Premises.

45 In the present case, however, there was no evidence showing that the SSA had inquired about or ascertained the scope of works that had been carried out on the Premises (including the drainage works), or the impact of those works on the land and its drainage effectiveness. Mr Vaz testified that when he noticed the newly constructed embankment, he was satisfied that it was aesthetically pleasing but made no effort to ask who was responsible for it and whether it was structurally sound and compliant with regulations. It appeared from the email chain marked as "P3" that the SSA questioned the contractor about the impact of the embankment works on the drainage system only when a member of the Singapore Gun Club (another member club of the SSA and a lawful user of the Premises) asked about whether the backfilling works would choke a specific pipe servicing the upper skeet and trap drainage pipes. Even then, it seemed that the SSA's clarification extended only to the impact of the backfilling work on those specific pipes and not about the soundness of the backfilling and upgrading of the embankment at the unlined drain.

46 It seemed to me that the SSA was content to simply recover control of the Premises after the works were completed without conducting any checks on the quality of the works that had been carried out. The SSA showed a disregard for the alterations to the Premises, the condition of the Premises, and what the alterations meant for the SSA's maintenance of the Premises in the future. The

SSA had noticed that works were being done on the unlined drains (at least between Culverts A and B). But there was no evidence that the SSA had asked Sport Singapore if the necessary approvals from the PUB had been obtained for those works. I noted that on 13 December 2014, the SSA's General Manager, Mr David Lieu, asked Sport Singapore about any follow-up actions after the contractor handed over the Premises to Sport Singapore on 1 December 2014, so as to plan his daily management of the facilities. He also asked about the schedule of any maintenance work and the arrangement between Sport Singapore and the SSA in that regard. This was the only indication that the SSA had showed concern about the impact of the alterations on its maintenance. However, none of the follow-up actions listed by the contractor in its handover form concerned the drainage facilities, and the SSA could have inquired earlier about the scope of the drainage works. Sport Singapore acknowledged Mr Lieu's email on 22 December 2014 but did not furnish a substantive reply.

47 I found that by failing to inquire and conduct checks on the Premises' drainage capabilities after the works on the unlined drain, the SSA had breached its duty to maintain and supervise the condition of the Premises.

Causation in respect of the 1st Flood

48 To succeed in its counterclaim, the SRA must show not only a breach of duty, but also that the breach caused its alleged loss. The SRA's loss must not have been one that would have occurred anyway in the absence of the SSA's breach. The test for causation in the tort of negligence is the "but for" test. The question here was whether, but for the SSA's negligence, the 1st Flood would still have occurred. In other words, even if the SSA had exercised reasonable care in inquiring and checking on the drainage infrastructure after the alteration works, could it have discovered its inadequacies and made the necessary

rectifications by the time of the 1st Flood? This was to be satisfied on a balance of probabilities.

49 On a balance of probabilities, I found that it had not been proved that if the SSA had exercised reasonable care, it would have prevented the 1st Flood from occurring due to the landslip. In drawing the causal link, it is crucial to bear in mind the nature of the SSA's breach. As explained before, the SSA's breach of duty consisted of its failure to make reasonable inquiries and checks on the state of the Premises when the renovation works were completed and, where necessary, make rectifications to ensure the safety of the Premises' condition. Mr Vaz accepted that there was sufficient time and opportunity between 1 December 2014 and the time of the 1st Flood to inspect the grounds and raise any concerns. He conceded that the SSA's facilities manager "should have checked" the grounds in that time. If indeed the works at the embankment between Culverts B and C had not been authorised by Sport Singapore or the SSA (see [39] above), Sport Singapore might have clarified so if the SSA had made reasonable inquiries and checks on the scope of the works done. If so, this would have alerted the SSA to the need to make further investigations into, for example, who constructed the new embankment, why it was constructed, as well as the fitness of its design, structure and materials. This may have involved investigations to determine the structural integrity of the embankment.

50 However, it was not shown that if these steps had been taken by the SSA, the 1st Flood would not have occurred. The SRA's evidence focused on the inadequacies in how the slope was constructed (namely using unsuitable soil) and the failure to engage qualified persons and procure approvals in the construction process; however, for the reasons explained at [40]–[43] above, the SSA had no direct oversight over the construction of the water drainage infrastructure. There was no suggestion before me as to the types of checks that

the SRA expected the SSA to have conducted as part of its regular maintenance (as opposed to during the process of construction) or its reasonable inspection after the renovation works. It was not proved that such checks, if conducted, would have detected the poor structural integrity of the embankment and its propensity to erode and obstruct the drain. Given that it was common ground that the embankment was newly constructed, there was also no evidence that the 24-day period between 1 December 2014 and the 1st Flood would have provided sufficient time for the SSA to raise inquiries, appoint drainage management and soil erosion consultants, and complete the requisite rectification works.

51 In other words, even if the SSA had exercised reasonable care to make inquiries, raise concerns and start investigations and rectifications after it regained control of the Premises, the rectification works between Culverts B and C (or on the whole unlined drain) would likely have taken some time. Perhaps, had the 1st Flood occurred much later, the SRA might have been better able to show that the SSA could have made the checks and rectification works in time to prevent such a flood.

52 I therefore found that the SSA's breach of its duty to maintain and supervise the Premises in the particular manner I have outlined could not be said to have caused the 1st Flood. I held that the SSA was not liable to the SRA for the alleged losses arising from the 1st Flood.

The 2nd Flood

53 I turn to the 2nd Flood. The SRA submitted that the 2nd Flood occurred because Culvert B had been choked by debris. This was supported by Professor Babovic's addendum report. Professor Babovic assessed that the rainfall event

on 3 May 2015 was, like the rainfall event on 24 December 2014, an event that would occur approximately once in two years, which was well within the drainage capacity expected of the Premises. He found that the main reason for the 2nd Flood was the blockage of a pipe at Culvert B connecting the two sections of the drain. This led to backwater flooding upstream. A failed slope was also observed at a similar location as before, between Culverts B and C, but the debris at Culvert B was assessed to be the main contributing factor. The state of the Premises at the time of the 2nd Flood reinforced Professor Babovic's view that the drainage system had been inadequately designed and constructed. Professor Tan did not offer an opinion on the cause of the 2nd Flood.

54 After the 2nd Flood, the PUB conducted site investigations and found that the undersized culverts were badly choked with debris and that there was an extended stretch of landslide into the unlined drain between Culverts B and C. In the PUB's view, these were the main causes of the flooding. The landslide was in turn caused by poor slope stabilisation work and poor reinstatement works to the slope.

55 The SSA argued that the SRA had failed to prove the cause of the 2nd Flood but did not proffer an alternative suggestion as to what may have caused it. The only attack on Professor Babovic's expert opinion was that he had relied on photographs not personally taken by him to arrive at his conclusion. The SSA also pointed out Mr Kung's contrary view that it was a landslide into the unlined drain that caused the 2nd Flood.

56 I accepted Professor Babovic's evidence that the main cause was the clogging of Culvert B by debris, although the landslide that could be seen further downstream may also have been a contributing factor.

57 In my view, the SSA breached its duty of care by failing to maintain the Premises and to undertake adequate rectification or precautionary measures to avoid another flood, despite being alert to the inadequacy of the drainage infrastructure. By 3 May 2015, it was clear that the SSA was in control of the Premises. By 24 February 2015, the SSA had been furnished Professor Babovic's expert opinion, which raised issues about the unsafe design and construction of the drainage system at the Premises. The SSA would also have been made aware of the propensity of the unlined drain to be washed down with debris. It had also been notified by Sport Singapore of the PUB's concerns about the undersized culverts and the need to carry out frequent maintenance to ensure that the inert water level was regular. It was a clear failure of maintenance that led to the clogging of the unlined drain with debris. Mr Vaz conceded during the trial that the SSA was responsible for the upkeep of the premises including dealing with the clogging of the unlined drain:

> Q: What was, to the best of your knowledge, the reason for the second flood on 3 May 2015?
>
> A: The clogging of culvert A.
>
> …
>
> Q: Who is responsible for culvert A?
>
> A: At that point in time it was probably SSA.
>
> …
>
> Q: So by your case, it's the clogging of the drain, right? Who was responsible for the upkeep of the clogging of the drain?
>
> A: Probably SSA.

58 This was a failure to take reasonable care in its maintenance of the Premises, which directly caused loss to the SRA because the 2nd Flood was mainly caused by the clogging of Culvert B. Even if the landslide had contributed to the 2nd Flood, the SSA's duty of care at that time extended to addressing the poor soil stabilisation between the time of the 1st Flood and the

2nd Flood. This was because, after the 1st Flood, the SSA was aware that there were issues with the water drainage infrastructure and that rectification works were necessary to ensure that a flood did not occur again.

59 Therefore, I found the SSA liable to the SRA for losses of $4,708 expended on cleaning works after the 2nd Flood.

Costs

60 The SSA submitted that it was entitled to costs because it had succeeded in defending the main claim in respect of the 1st Flood. The SRA had claimed $454,678.28 in damages for the 1st Flood but only $4,708 in damages for the 2nd Flood.

61 On the other hand, the SRA submitted that it was entitled to costs (including all disbursements incurred for procuring the two experts) because it had obtained judgment against the SSA and succeeded on the issues of duty and breach in respect of the 1st Flood. The SRA relied on *Tullio Planeta v Maoro Andrea G* [1994] 2 SLR(R) 501 ("*Tullio*") and the issue-based approach discussed in *Khng Thian Huat and another v Riduan bin Yusof and another* [2005] 1 SLR(R) 130 ("*Khng Thian Huat*"). The SRA submitted that it had incurred necessary time and expense in establishing the SSA's duty and breach as well as in calling expert evidence to establish the cause of both floods. It also claimed that the SSA did not succeed on any of its pleaded defences. Thus it urged the court not to split costs between the two floods on a "technical win-loss comparison".

62 I awarded costs to the SSA fixed at $85,600 plus reasonable disbursements. I applied a daily tariff of $16,000 with 100% applied for the first five days of trial and 80% for the remaining two days of trial. I then deducted

one day's tariff to take into account the award to the SRA in respect of the 2nd Flood and for the SRA's leading expert evidence on the cause of the 1st Flood, which the SSA initially disputed but later conceded in submissions. A further $4,000 was deducted for costs incurred by the SRA in dealing with the SSA's dispute over the authenticity of certain invoices.

63 In making this costs order, I considered that the SSA had succeeded in defending the SRA's main and largest claim in respect of the 1st Flood while the SRA had succeeded in its claim in respect of the 2nd Flood which was much smaller in quantum. An appropriate costs award should reflect any split outcome. Further, the trial centred on the evidence relating to the 1st Flood.

64 In *Khng Thian Huat*, the court considered an issue-based approach, being one where the judge considers "issue by issue … where the costs on each distinct or discrete issue should fall … [and] which party has been successful on that issue" (at [19], citing *Summit Property Ltd v Pitmans* [2001] EWCA Civ 2020 at [27]). An issue-based approach should only be adopted in an exceptional or unusual case, *eg*, where there is no clear demarcation as to which party had been successful on an overall basis (*Khng Thian Huat* at [21]). In my view, the SRA's submissions were premised on an erroneous understanding of the issue-based approach. According to the principles applied in both *Tullio* and *Khng Thian Huat*, the successful party to whom costs are awarded is the party who has succeeded in the *cause of action*. Even where an issue-based approach is adopted, the issues refer to the separate claims for relief and *not discrete elements* of a cause of action such as duty or breach. That I found the elements of duty and breach in the SRA's favour in respect of the 1st Flood did not provide a basis for the SRA to be awarded costs overall.

65 Moreover, I did *not* find that the SSA had breached its duty in the manner argued by the SRA. In fact, I agreed with the SSA that the SSA was not responsible for the proper construction of the unlined drain when the renovation works were being carried out by Sport Singapore. I went further to find that the SSA did act negligently in failing to properly maintain and supervise the Premises after the Premises were returned to it, but in any case the breach of duty as I found it did not cause the 1st Flood.

66 In *Tullio*, the Court of Appeal held that costs always follow the event unless there are special reasons for depriving the successful litigant of his costs in part or in full (at [21]). This general rule does not cease to apply simply because the successful party raised issues or made allegations that failed (at [24]). However, a successful party may not only be deprived of costs but may also be ordered to pay the whole or part of the unsuccessful party's costs where he raised issues or made allegations improperly or unreasonably (at [24]). Considering that the SSA succeeded on the 1st Flood, it could not be said that the SRA was the successful party even though it obtained judgment. As the successful party, the SSA should not be deprived of its costs simply because it had run arguments that failed on certain issues. It did not act unreasonably in running its defences. However, I noted that the SSA initially disputed the expert evidence that a landslip arising from a slope failure was the cause of the 1st Flood and conceded the position only in its closing submissions. I therefore reduced its costs award to reflect the time and work unnecessarily expended by the SRA as a result of the SSA's contesting the expert evidence.

Conclusion

67 In conclusion, my orders were as follows:

(a) The SRA's claim in respect of the 1st Flood is dismissed;

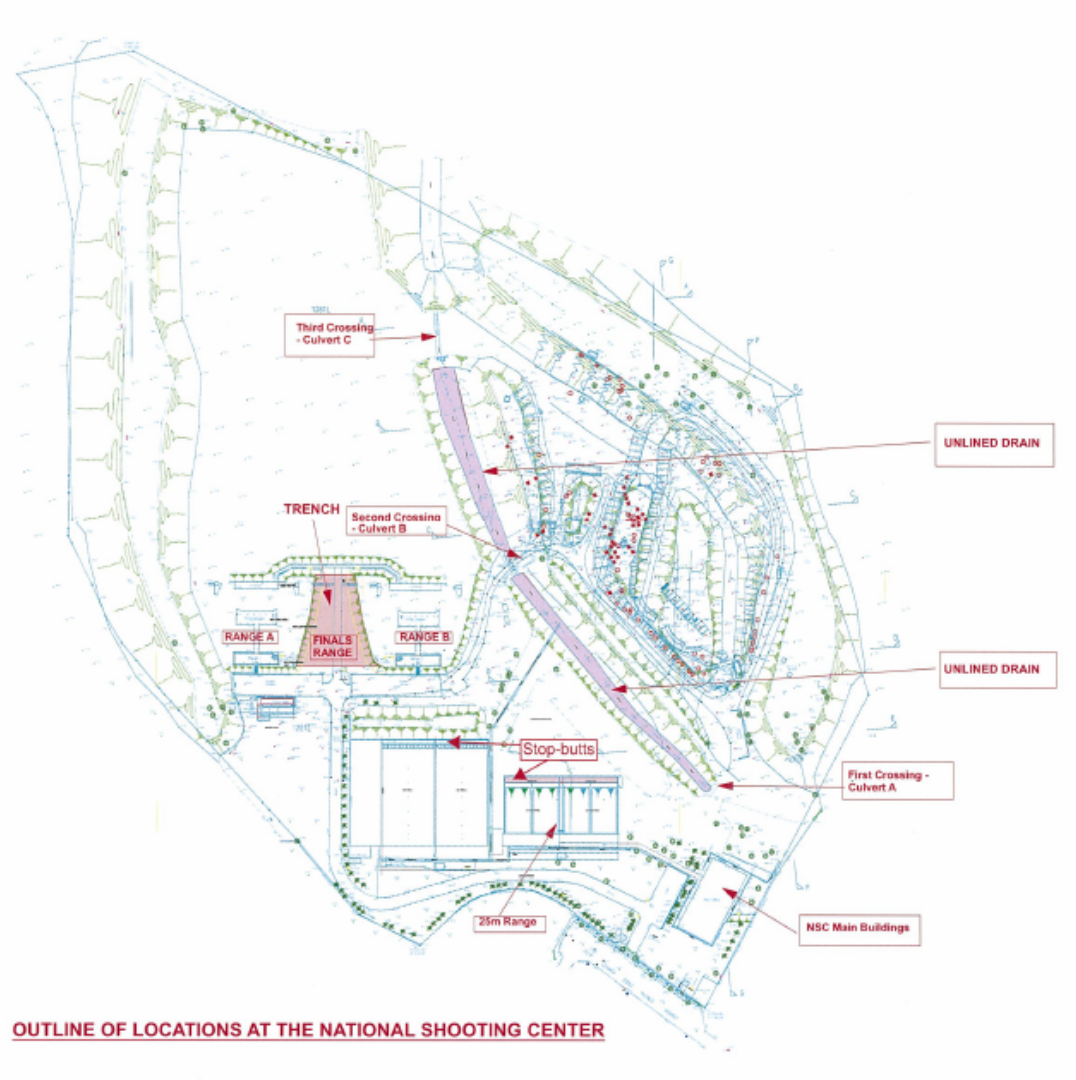
(b) The SSA is liable to the SRA for losses of $4,708 expended on cleaning works for the 2nd Flood; and

(c) The SRA shall pay to the SSA costs fixed at $85,600 plus reasonable disbursements.

Debbie Ong
Judge

Lee Hwee Khiam Anthony and Ms Angelyn Cheng (Bih Li & Lee LLP) for the plaintiff;
Wendell Wong, Denise Teo, Lim Yao Jun (Drew & Napier LLC) for the defendant.

Annex


Third Crossing - Culvert C
UNLINED DRAIN
TRENCH
Second Crossing - Culvert B
RANGE A
FINALS RANGE
RANGE B
UNLINED DRAIN
Stop-butts
First Crossing - Culvert A
25m Range
NSC Main Buildings
OUTLINE OF LOCATIONS AT THE NATIONAL SHOOTING CENTER