IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 13

Suit No 459 of 2016

Between

Singapore Rifle Association

… Plaintiff

And

(1) The Singapore Shooting Association
(2) Michael Vaz Lorrain
(3) Yap Beng Hui
(4) Chen Sam Seong Patrick

… Defendants

And

The Singapore Shooting Association

… Plaintiff in Counterclaim

And

Singapore Rifle Association

… Defendant in Counterclaim

GROUNDS OF DECISION

[Contract] — [Breach] — [Indemnity clauses]
[Tort] — [Conspiracy]
[Unincorporated Associations and Trade Unions] — [Friendly societies] — [Management]

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v
Singapore Shooting Association and others

[2019] SGHC 13

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24 January 2019

Pang Khang Chau JC:

Introduction

1 In this action, the Singapore Rifle Association ("SRA") claims that a resolution passed by the council of the Singapore Shooting Association ("SSA"), purporting to suspend SRA's privileges at the National Shooting Centre ("NSC"), is *ultra vires* and should be declared null and void. SRA also claims that the president, secretary-general and treasurer of SSA (respectively the second, third and fourth defendants and collectively the "Individual Defendants") conspired to cause SRA damage by procuring the passing of that resolution. SSA in turn brings a counterclaim, claiming an indemnity for the cost that it incurred in demolishing a structure which it describes as having been illegally built by SRA at the NSC.

2 I have allowed SRA's claim, granting a declaration that the resolution is null and void and ordering the Individual Defendants to pay damages to compensate SRA for the costs of investigating and responding to their conspiracy. I have also dismissed SSA's counterclaim on the basis that SSA acted in breach of contract when it demolished the structure. It therefore cannot claim an indemnity for the cost of that demolition from SRA under the indemnity clause in the said contract.

3 The defendants have appealed against my decision. I now set out my reasons in full.

Background

The parties

4 The plaintiff, SRA was founded in 1862 as a recreational sports club dedicated to the sport of shooting. It has maintained that purpose since, and is today a registered society under the Societies Act (Cap 311, 2014 Rev Ed). Since August 2015, its chairman has been Mr Eng Fook Hoong.[1] Mr Eng is assisted by Mr Conrad Chung, who is SRA's honorary secretary.[2] Before Mr Eng took office, SRA was chaired by Mr Loo Woei Harng.

5 Like SRA, the Singapore Gun Club ("SGC") is a recreational sports club dedicated to the sport of shooting. It was founded in the 1950s, and its president today is Mr Michael Vaz Lorrain, the second defendant. Mr Yap Beng Hui, the third defendant, is one of SGC's two vice-presidents, and Mr Patrick Chen, the fourth defendant, is SGC's honorary secretary. Mr Vaz, Mr Yap and Mr Chen are the second, third and fourth defendants respectively.

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1 Eng Fook Hoong's AEIC at para 89.

2 Conrad Chung Kong Wann's AEIC at para 1.

6 SRA and SGC are the two founding members of SSA, the first defendant, which is Singapore's national authority or "national sports association" ("NSA") for the sport of shooting.[3] SSA is a registered charity and an institution of a public character under the Charities Act (Cap 37, 2007 Rev Ed) as well as a registered society under the Societies Act. Its objects include coordinating, regulating, advising and administering all matters relating to the sport of shooting, and safeguarding the interests of the shooting sport.[4]

7 Mr Vaz was elected president of SSA in May 2013,[5] and he has held that office ever since. His deputies in SGC, Mr Yap and Mr Chen, have also been secretary general and treasurer of SSA respectively since September 2014.[6] SSA has an advisor in BG (Ret) Lim Kim Lye, who was invited by Mr Vaz to join the SSA council in that capacity in 2013.[7] Mr David Lieu has been SSA's general manager since December 2014.[8] At the material time, Mr Loo Woei Harng was SRA's representative on the SSA council.

The National Shooting Centre

8 Shooting activities for SRA took place at the NSC, which is a complex of shooting ranges located at Old Chua Chu Kang Road.[9] At the NSC, SRA and SGC each had an armoury, where the firearms, ammunition and other shooting equipment belonging to each club were respectively stored.[10] BG Lim had once

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3 Michael Vaz Lorrain's AEIC at para 4.

4 Michael Vaz Lorrain's AEIC at para 4.

5 Eng Fook Hoong's AEIC at para 89.

6 Chen Sam Seong Patrick's AEIC at para 1; Yap Beng Hui's AEIC at para 1.

7 Lim Kim Lye's AEIC at para 1.

8 Lieu Da-Yan David's AEIC at para 1.

9 Lieu Da-Yan David's AEIC at paras 8 and 9(c).

10 See Patrick Chen's AEIC at para 49.

proposed that all firearms in the NSC be stored in one armoury and all ammunition be stored in another. This proposal was never implemented, but it later became something of a flashpoint.

9 The NSC is built on land which is owned by the state and leased to the Singapore Sports Council, a statutory board whose responsibility is to oversee and promote sports generally in Singapore.[11] Following a rebranding exercise in 2014, the Singapore Sports Council adopted the new name "Sport Singapore". For convenience, I shall refer to it by its new name. At the material time, Sport Singapore sub-leased the NSC to SSA,[12] and SSA was, in turn, entitled to manage and develop the NSC and enter into arrangements with SSA's constituent members in relation to the use of the NSC.

10 One set of such arrangements prevailed between SSA and SRA. In March 2011, SSA granted SRA a licence to be the sole and exclusive operator and manager of all the pistol and rifle ranges at the NSC.[13] After Mr Vaz assumed the presidency of SSA, he decided that SSA should take over from SRA the operation and management of all ranges at the NSC, and that in exchange, SRA would have one range for its exclusive use. So the licence was superseded by another contract between them titled "Proprietary Range Agreement" and executed in November 2014 ("the Agreement").[14] Under the Agreement, SRA was granted the right to construct a shooting range within a specified area of the NSC, called "Range X", for SRA's exclusive use, subject to certain agreed exceptions. In return, SRA had to pay an annual fee of $10,000 to SSA. The Agreement refers to the proposed shooting range for SRA's

11 Lim Chuan Lye's AEIC, p 32 at cl 1.1.

12 Lim Chuan Lye's AEIC at para 4.

13 Lieu Da-Yan David's AEIC at para 12.

14 Agreed Bundle Vol 1 at pp 40–55.

exclusive use as the "Club Range".[15] The Club Range is also referred to by various witnesses during the trial as "Range 3", given its location next to the two existing rifle ranges at the NSC known as "Range 1" and "Range 2". In the Agreement, SRA also undertook to bear all necessary costs of the construction and to indemnify SSA against any loss caused by SRA's activities on the land.[16]

The construction of the Club Range

11 Led by Mr Conrad Chung, who is an architect, SRA's construction of the Club Range began promptly after the conclusion of the Agreement. At the time the Agreement was signed, the location known as Range X was not an empty plot of land. There was already a disused and dilapidated shooting range there. Instead of tearing down the existing structure and building a new one in its place, SRA's plan for the construction of the Club Range was to refurbish the existing range.[17] Mr Chung's plan had two phases. The first phase would involve replacing the dilapidated pre-existing structures, including overhead steel trusses and old target structures. It would also involve minor works such as the installation of a lightning protection system. The second phase would involve the construction of a metal roof over a resting area. SRA's understanding was that only the second phase needed approval from the relevant authorities, including building plan approval from the Building and Construction Authority of Singapore ("BCA") and planning approval from the Urban Redevelopment Authority ("URA").[18] I shall refer to these approvals as "regulatory approvals" for convenience.

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15 Lieu Da-Yan David's AEIC, p 176 at cl 3.2.

16 Lieu Da-Yan David's AEIC, p 179 at cl 10.

17 Conrad Chung Kong Wann's AEIC at para 59.

18 Conrad Chung Kong Wann's AEIC at para 14.

12 The first phase began in December 2014.[19] Progress was interrupted that month by preparations for the 2015 South-East Asian Games,[20] but the works resumed and the first phase was completed by March 2015.[21] Throughout that period, SRA kept SSA and Sport Singapore updated on the project by email and letter.[22]

13 However, from April to October 2015, SSA secretly complained first to Sport Singapore and then to BCA about SRA's construction work at Range X. Thus, on 15 September 2015, Mr Vaz, without SRA's knowledge, sent an email to BCA and Sport Singapore to report that SRA had constructed "illegal structures". The email also and "urgently ask[ed] that BCA calls for the demolition of the structures before anyone is seriously hurt".[23] BCA investigated the matter and conducted a site visit at Range X on 21 September 2015, which was attended by only Mr Vaz, Mr Lieu and two BCA officers.[24] SRA was neither informed of the site visit nor invited to send any representative to attend. The BCA officers observed, at the time of inspection, that the structures "posed no immediate danger".[25] Undeterred, Mr Vaz sent another email to BCA after the site visit to offer his personal opinion that the wall of the original Range X was "never designed to take the loading" of what Mr Vaz regarded as "heavy beams" erected by SRA across the width of Range X. Mr Vaz expressed concern that the "excess loads" (in Mr Vaz's words) could "lead to structural failure".[26] SRA

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19 Conrad Chung Kong Wann's AEIC at para 18.

20 Conrad Chung Kong Wann's AEIC at para 18.

21 Conrad Chung Kong Wann's AEIC at para 65.

22 Conrad Chung Kong Wann's AEIC at paras 17–82.

23 Agreed Bundle Vol 1 at p 495.

24 Lu Ji Ju's AEIC at para 17.

25 Lu Ji Ju's AEIC at para 18.

26 Agreed Bundle Vol 1 at p 501.

would not find out about these complaints until much later.

14 During this period, SRA was plagued by other troubles at the NSC. In late December 2014,[27] the basement of the NSC main building was flooded with water that had overflowed from an obstructed drain in the compound. As a result, equipment that was being kept in SRA's armoury, including ammunition and target papers, was damaged. A second flood in the same place occurred in May 2015.[28] Although it was less severe, SRA had to incur cleaning costs. In September 2015, SSA sought to evict SRA from SRA's armoury in the NSC's main building. After giving notice to SRA on 4 September 2015 to vacate within 30 days, SSA sued SRA on 16 October 2015, demanding that SRA deliver vacant possession of the SRA armoury[29] in order that SSA could renovate the armoury and other facilities in the NSC.[30] I shall refer to this as the Eviction Suit.

15 After completing its investigations, BCA issued Sport Singapore an order on 6 November 2015 requiring the structures that SRA had built on Range X be demolished because the structures had been erected without building plan approval.[31] This demolition order was, however, accompanied by a letter which set out the steps that could be taken to regularise those structures if it was desired that they be retained ("the regularisation letter").[32] There was no indication in any of BCA's communications that the structures were unsafe. Sport Singapore conveyed both the demolition order and the regularisation letter

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27 Eng Fook Hoong's AEIC at para 124.

28 Eng Fook Hoong's AEIC at para 124.

29 Eng Fook Hoong's AEIC at para 14.

30 Statement of Claim in Suit 1057 of 2015 at para 7.

31 Lu Ji Ju's AEIC at para 27; Lieu Da-Yan David's AEIC at para 49(a).

32 Lu Ji Ju's AEIC at para 29.

to SSA, leaving both the option of demolition and the option of regularisation open to SSA, without directing SSA to take any particular course of action.[33] Mr Vaz promptly decided that SSA should opt for demolition. By 12 November 2015, SSA's executive committee had approved this decision,[34] and it was later formalised through an SSA council resolution on 14 November 2015.[35] Mr Vaz did not tell SRA about the option of regularisation,[36] nor did anyone from SSA disclose the regularisation letter to SRA.[37]

16 Unsurprisingly, SRA, having spent nearly $300,000 on the Club Range,[38] was unwilling to go along with the SSA council's decision to demolish it. Foreseeing that SRA was not going to be persuaded otherwise, Mr Vaz asked Mr Lieu to find a demolition contractor for the job.[39] In the event, SSA appointed Pikasa Builders Pte Ltd ("Pikasa") to demolish the Club Range for $24,800.[40] The eventual cost was $26,536.[41]

17 In the meantime, on 9 November 2015, SRA filed its defence and counterclaim in the Eviction Suit.[42] Part of its defence was the assertion that because the parties had agreed that SRA would carry out upgrading works at SRA's armoury to enhance its security, SSA had implicitly granted SRA a

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33 Lim Chuan Lye's AEIC at paras 29–30.

34 Agreed Bundle Vol 2 at p 607.

35 Agreed Bundle Vol 2, p 983 at para 10(a).

36 Certified Transcript, 26 January 2018, p 140 at line 14 to p 141 at line 11 and p 148 at lines 18-22.

37 Defendants' lead counsel's statement, p 6 at para 10.

38 Certified Transcript, 2 February 2018, p 89 at lines 5–9.

39 Lieu Da-Yan David's AEIC at para 58.

40 Lieu Da-Yan David's AEIC at para 61; Agreed Bundle Vol 2 at p 917.

41 Agreed Bundle Vol 4 at p 1697.

42 Eng Fook Hoong's AEIC at para 15.

contractual licence to occupy the armoury which SSA could not unilaterally revoke.[43] In its counterclaim, SRA claimed damages for the loss it had suffered as a result of the floods, alleging that the loss had been caused by SSA's failure to maintain the premises.[44] On 25 November 2015, SSA filed its reply, in which it averred that it was SSA, not SRA, whom the parties had agreed would be responsible for upgrading the security of the NSC armouries, including by implementing BG Lim's idea of storing firearms in one armoury and ammunition in another.[45]

The circular resolution and the demolition of the Club Range

18 Then, on 30 November 2015, Mr Vaz convened a meeting of the SSA council to ratify the following five resolutions that had been passed earlier that year:

(a) a resolution adopted on 14 March 2015 that BG Lim's two-armoury idea be implemented;

(b) a resolution adopted on 9 May 2015 that the existing armoury doors be replaced with better ones called Chubb Doors;

(c) a resolution adopted on 4 September 2015 that SRA be given notice to vacate their armoury;

(d) a resolution adopted on 26 September 2015 that SSA institute the Eviction Suit; and

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43 Agreed Bundle Vol 2, p 561 at para 28 and p 563 at paras 31 and 34.

44 Agreed Bundle Vol 2, pp 573–579 at paras 57–71.

45 Reply in Suit 1057 of 2015 at para 22(a).

(e) a resolution adopted on 14 November 2015 to demolish the structures built by SRA at Range X in compliance with BCA's demolition order.[46]

SRA's representative on the SSA council, Mr Loo, was absent from the meeting.[47]

19 These resolutions were not originally adopted by voting through a show of hands. Mr Vaz explained that he had received legal advice that the resolutions ought to have been passed that way under SSA's constitution, and that he should call a meeting to have the resolutions voted on again by way of show of hands.[48] SRA, on the other hand, suggested that Mr Vaz convened the meeting because SRA's lawyers had written on 8 October 2015, in response to the eviction notice, to seek details of the SSA council resolutions mentioned in that notice, including how those resolutions were passed and who voted for them.[49] SRA had also in its defence and counterclaim in the Eviction Suit alleged that the eviction notice and Eviction Suit were issued and commenced without proper authority or approval.[50]

20 Palpable acrimony had developed between SSA and SRA by this time.[51] SRA made several attempts to prevent the demolition of the Club Range, but none of them succeeded. Just a week before the SSA council met to ratify the five resolutions, SRA met with BCA and discovered to its surprise that the Club

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46 Eng Fook Hoong's AEIC, pp 470–472 at paras 6–10.

47 Eng Fook Hoong's AEIC at p 468.

48 Certified Transcript, 30 January 2018, p 51 at lines 7–24.

49 Agreed Bundle Vol 1 at p 511.

50 Agreed Bundle Vol 2, p 554 at para 11 and p 563 at 36–38.

51 Certified Transcript, 1 February 2018, p 107 at line 22 to p 108 at line 6.

Range could be regularised, and that this option had been communicated by BCA to Sport Singapore but was concealed from SRA.[52] It was also at this time that SRA discovered that someone had gone behind its back to complain to BCA about the irregularities of the Club Range.[53] BCA directed SRA to Sport Singapore because Sport Singapore was the owner of the NSC, and BCA would act on a request to regularise only if it came from the land owner. As late as 27 November 2015, BCA offered to facilitate a meeting with SSA and SRA,[54] but SSA declined to attend. On 10 December 2015, SRA's lawyers wrote to SSA, BCA and Sport Singapore, asking all parties not to act on the order and stating that SRA intended to make representations to BCA.[55]

21 The second defendant Mr Vaz then decided that he had had enough. The very next day, he wrote to Mr Yap, the third defendant, indicating his intention for the SSA council to suspend the privileges of SRA at the NSC with effect from 1 January 2016 for SRA's refusal to comply with the resolutions that the SSA council had earlier passed and subsequently ratified on 30 November 2015.[56] Mr Vaz did not call a physical meeting of the council. Instead, he asked Mr Yap to put the resolution in writing and to circulate it by email to the council for a vote, which Mr Yap did on 16 December 2015. That is why the resolution has been referred to by the parties as the "circular resolution". The resolution was seconded by Mr Chen, the third defendant. On the same day, SRA got wind of the circular resolution through Mr Loo and instructed its lawyers to send a letter to SSA's lawyers to object to the resolution and demand its retraction.[57]

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52 Conrad Chung Kong Wann's AEIC at para 205–207.

53 Conrad Chung Kong Wann's AEIC at para 208.

54 Agreed Bundle Vol 2 at p 978.

55 Lu Ji Ju's AEIC at para 41.

56 Agreed Bundle Vol 3 at p 1151.

57 Agreed Bundle Vol 3 at pp 1170–1171.

Despite this letter, Mr Vaz, Mr Yap and Mr Chen proceeded to vote in favour of the resolution. Mr Loo voted against the resolution while the remaining three council members either abstained or did not respond.[58] The circular resolution was therefore passed.

22 On 18 December 2015, Mr Vaz started making arrangements to convene a board of inquiry ("BOI") apparently to investigate SRA's breaches and for SRA to explain its reasons for not complying with SSA's resolutions. Thus, shortly after the circular resolution was passed, Mr Vaz appointed BG Lim to chair the BOI.[59] Two others, who were from another member club of SSA, were also appointed to the BOI.[60] At around the same time, on 21 December 2015, Pikasa began the demolition of the Club Range at the NSC.[61] A month later, the demolition was complete.[62]

The board of inquiry hearings

23 The BOI's first set of hearings took place on 1 and 4 February 2016.[63] At this hearing, the BOI determined, based on the materials before it, that SRA had committed the breaches alleged in the circular resolution. The BOI then adjourned the proceedings until 17 February 2016, where it expected to hear SRA on the breaches.

24 While the first set of hearings was underway, the police was auditing the armouries at the NSC. The police discovered that the armouries contained

58 Michael Vaz Lorrain's AEIC at paras 101–102.

59 Lieu Da-Yan David's AEIC at paras 78.

60 Lieu Da-Yan David's AEIC at para 78.

61 Lieu Da-Yan David's AEIC at para 46.

62 Lieu Da-Yan David's AEIC at para 65.

63 Lieu Da-Yan David's AEIC at para 79.

firearms which had no proper records because they belonged to members who had died, quit their respective clubs or left Singapore. As a result, the police seized 75 firearms from the SRA armoury and two firearms from the SGC armoury.[64] Following this discovery, Sport Singapore decided on 6 February 2016 to terminate its sub-lease with SSA, and resumed control of the NSC premises.[65] The NSC was also shut down pending further investigation and a review of processes.

25 These events led the BOI to postpone the second set of hearings on SRA's breaches to 16 March 2016. This set of hearings was ostensibly for the purpose of hearing SRA's answers to allegations against it. Before this set of hearings took place, the SSA council met on 13 February 2016. BG Lim attended, and informed the SSA council that the BOI had *concluded* that SRA had indeed committed the four alleged breaches as stated in the circular resolution. Mr Vaz then proposed a motion to suspend SRA, with the specific terms of the suspension to be decided later. The motion was carried with three votes in favour and two abstentions. The three votes in favour were cast by the three Individual Defendants.[66] SRA's representative on the SSA council, Mr Loo, was not present at this meeting.

26 At the resumed hearing of the BOI on 16 March 2016, Mr Timothy Ngui and Mr Kevin Leong of SRA were in attendance, and they presented a set of objections on behalf of SRA. They objected to BG Lim's appointment as chairman of the BOI, contending he was in a position of conflict because it was he who had proposed the idea of consolidating firearms and ammunition into separate armouries.[67] They also submitted that a majority of SRA's alleged

64 Patrick Chen's AEIC at para 49.

65 Patrick Chen's AEIC at paras 49–50.

66 Agreed Bundle Vol 4, p 1682 at para 13.

breaches were live issues before the High Court in the Eviction Suit and therefore inappropriate for determination by the BOI.[68] The BOI did not accept these objections, and proceeded to affirm its conclusion at the first set of hearings that SRA had indeed committed the alleged breaches.[69]

27 After that, on 23 March 2016, SSA discontinued its claim for vacant possession of the SRA armoury in the Eviction Suit because SSA no longer held the lease to those premises.[70] SRA maintained its counterclaim in that suit. At the time of my writing, the suit had run its course. In July 2017, the High Court dismissed SRA's claim in respect of the first flood and allowed SRA's claim in respect of the second flood: see *Singapore Shooting Association v Singapore Rifle Association* [2017] SGHC 266. SRA's appeal was subsequently dismissed by the Court of Appeal: see *Singapore Rifle Association v The Singapore Shooting Association* [2018] 2 SLR 616.

28 In April 2016, the SSA council re-convened. BG Lim presented the conclusions of the BOI. Mr Vaz then proposed a motion to suspend SRA as a member club of SSA and to suspend SRA's privileges at the NSC. The only voting members of the SSA council present at this meeting were the three Individual Defendants. Mr Loo was again absent from the meeting. The motion was passed unanimously by the votes of the three Individual Defendants.[71]

The present suit

29 In May 2016, SRA brought the present suit against SSA, Mr Vaz, Mr

67 Agreed Bundle Vol 4, p 1752 at para 3.

68 Agreed Bundle Vol 4, p 1752 at para 7.

69 Lieu Da-Yan David's AEIC at para 95.

70 Eng Fook Hoong's AEIC at para 20.

71 Lieu Da-Yan David's AEIC at paras 97–98.

Yap and Mr Chen, seeking a declaration that the circular resolution is null and void, and claiming damages for loss suffered as a result of an alleged conspiracy involving Mr Vaz, Mr Yap and Mr Chen to injure SRA. SSA in turn counterclaimed damages in the amount of the cost of demolishing the Club Range.

Parties' pleaded cases

30 SRA's case has two main parts. First, it claims that the circular resolution is *ultra vires* and should be declared null and void on a number of grounds. These include the fact that SSA has no power under its constitution to suspend the privileges of SRA, the fact that the resolution was passed in breach of the proper procedure for passing a resolution under SSA's constitution, and the fact that SRA was not given a reasonable opportunity to be heard on the allegations made in the resolution against SRA.

31 Secondly, SRA claims that Mr Vaz, Mr Yap and Mr Chen conspired to injure SRA. SRA asserts that they did so by working together as members of the SSA council to procure the passing of an *ultra vires* resolution purporting to suspend the privileges of SRA at the NSC. SRA claims damages for loss arising from its investigation into and response to this alleged conspiracy.

32 The defendants deny that the circular resolution is *ultra vires* and that Mr Vaz, Mr Yap and Mr Chen were involved in any conspiracy to injure SRA. They also mount a counterclaim, alleging that SRA breached its obligation under cl 10 of the Agreement by refusing to indemnify SSA for costs incurred in engaging Pikasa to demolish the Club Range. SSA claims that it was acting in compliance with an order issued by BCA when it demolished the Club Range, and that SRA, having built the range, is responsible under cl 10 for the cost of

demolition.

33 SRA resists SSA's counterclaim on the basis that SSA has not suffered any loss for which SRA is liable to indemnify SSA under cl 10. SRA contends that the cost of demolition resulted from SSA's breach of an implied term in the Agreement, which means that SSA cannot claim an indemnity for that loss. SRA also submits that in any event, the Agreement should be set aside on the ground of unilateral mistake and misrepresentation, with the effect that cl 10 does not apply.

Issues to be determined

34 Having regard to the evidence, the law and the parties' cases, I consider that there are three main issues to be determined:

(a) First, is the circular resolution of 16 December 2015 *ultra vires*?

(b) Second, are Mr Vaz, Mr Yap and Mr Chen liable to SRA in the tort of conspiracy?

(c) Third, is SRA liable under cl 10 of the Agreement to pay SSA the cost of demolishing the Club Range?

35 I shall consider these questions in turn.

Issue 1: Validity of the circular resolution

36 I accept SRA's case that the circular resolution is *ultra vires*. This is for three independent reasons. First, under SSA's constitution, the SSA council has no power to suspend the privileges of a member of SSA. Secondly, SSA's constitution also does not empower the SSA Council to make decisions by

circular resolution. Finally, the circular resolution was in any event passed without SRA being given a chance to be heard, and is therefore void for being in breach of natural justice. I turn now to explain each of these reasons.

Power of suspension

37 In a leading English treatise on unincorporated associations, it is stated that "[a]ny rule relating to discipline, including expulsion, suspension, or any other penalty, should be framed in plain and unambiguous language": Nicholas Stewart QC et al, *The Law of Unincorporated Associations* (Oxford University Press, 2011) at para 6.06. This is only to be expected because the consequences of disciplinary action, especially in the form of expulsion or suspension, can be severe and drastic, and it is only fair that members of the association have the assurance that the power to impose such consequences are clearly defined and limited.

38 The starting point therefore is to examine SSA's constitution for provisions on the suspension of members' privileges. As SRA correctly points out, none of the 18 articles in the constitution concern disciplinary action, let alone provide for a power of suspension (with one exception, which relates to non-payment of membership fees).[72] SRA also correctly observes that there are no by-laws, guidelines or written procedures in the constitution for that purpose.[73]

39 SSA argues that Arts 6.4, 8.1 and 16.1 of the constitution, read together, empower SSA to suspend the privileges of SRA.[74] These provisions read:[75]

72 Plaintiff's Closing Submissions at para 52.

73 Plaintiff's Closing Submissions at para 52.

74 Defendants' Closing Submissions at para 154.

75 Agreed Bundle Vol 1 at pp 31 and 34.

> 6. MEMBERSHIP FEES
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> …
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> 6.4 If a member falls into arrears with its subscriptions or other dues, it shall be informed immediately by the Treasurer. If it fails to settle its arrears within 4 weeks of their becoming due, the President may order that its name be posted on the Association's notice board and that if be denied the privileges of membership until the account is settled. If arrears are overdue for more than 3 months, the organisation will automatically cease to be a member and the Council may take legal action against the organisation.
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> …
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> 8. MANAGEMENT AND COUNCIL
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> 8.1 The administration and management of the Association shall be entrusted to a Council consisting of the following to be elected at alternate Annual General Meeting:
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> President
>
> 1st and 2nd Vice-President
>
> Secretary-General
>
> Honorary Treasurer
>
> 10 Ordinary Council
>
> The President and two-Vice President must be representatives of 3 different Founder or Ordinary members.
>
> …
>
> 16. INTERPRETATION
>
> 16.1 In the event of any question or matter arising out of any point which is not expressly provided for in this Constitution, the Council shall have the power to use its own discretion. The decision of the Council shall be final unless it is reversed at a General Meeting of members.

40 To begin, nothing on the face of these provisions empowers SSA to suspend SRA's privileges. Art 6.4 refers to suspension of a member's privileges only on the ground that the member falls into arrears with its subscription or other dues. That ground is not engaged in this case. Art 8.1 merely entrusts the council with the administration and management of SSA. Clearly, this must be

performed in accordance with the constitution, and cannot be read as allowing the council to create powers for itself which the constitution does not confer. Art 16.1 also makes no express reference to any power of suspension. In fact, a provision very similar to art 16.1 was considered in *Chee Hock Keng v Chu Sheng Temple* [2015] SGHC 192 ("*Chee Hock Keng*"), where it was held at [52] *per* Aedit Abdullah JC (as he then was) that:

> That provision appears to be primarily geared to allow the management committee to have facilitative powers for the continued running and operation of the Defendant. The expulsion of a member is a drastic and serious action; it cannot be easily founded on a broad provision of this nature. It is also noteworthy that the titled of Article XIII is "Interpretation"; while not determinative, that description further reinforces the conclusion that the article is merely facilitated and does not give any power to expel.

I agree fully with the foregoing passage, and consider that what it says about expulsion applies equally to suspension. After all, both are penal in nature and both involve deprivation of the privileges of membership.

41 This leaves the argument from the implication of terms to be considered. In *Chee Hock Keng*, the court declined to imply a power of expulsion, following the Court of Appeal's decision in *Foo Jong Peng and others v Phua Kiah Mai and another* [2012] 4 SLR 1267 ("*Foo Jong Peng*"). In *Foo Jong Peng*, the Court of Appeal held that a term conferring a power on the management committee of a club to remove office bearers could not be implied. Such a term failed the "business efficacy" test as it was not necessary for the effective management of the club. It also failed the "officious bystander" test as such a power could not be said to be so obvious that members of the club would have considered that it would go without saying that the management committee itself should be free to remove an office bearer. In the present case, I would follow the approach adopted in *Chee Hock Keng* and *Foo Jong Peng* and

similarly hold that it is neither necessary to imply a power of suspension for the effective management of SSA nor is the power of suspension so obvious that members of SSA would consider that it goes without saying that the SSA council should have the power to suspend members of SSA.

42 Accordingly, the circular resolution is *ultra vires* because the SSA council was not authorised under SSA's constitution to suspend the privileges of SRA at the NSC.

Power to pass circular resolutions

43 I also consider that the constitution does not empower the SSA council to make decisions by way of circular resolution. The starting point, again, must be SSA's constitution. The relevant provision are arts 8.6, 8.8, 8.9 and 8.11, which provide:[76]

> 8 MANAGEMENT AND COUNCIL
>
> …
>
> 8.6 Elections and resolutions at the Council meeting shall be by secret ballot, unless agreed unanimously by those attending that it be done by show of hands.
>
> …
>
> 8.8 A Council Meeting shall be held at least once every quarter after giving seven days' notice to the Council Members. The President may call a Council Meeting at any time by giving five days' notice.
>
> 8.9 Any member of the Council absenting himself from three meetings consecutively without satisfactory explanations shall be deemed to have resigned from the Council wand a replacement may be appointed as provided for in Article 8.4.
>
> …
>
> 8.11 At least one half of the Council members shall form a quorum. If a quorum is not present, the meeting shall stand

[76] Agreed Bundle Vol 1 at pp 31–32.

> adjourned for half an hour, and therefore, those present shall form a quorum.

44 SSA argues that notwithstanding art 8.6, the constitution does not preclude other forms and means of passing a resolution.[77] Specifically, it does not require that all resolutions be passed at a council meeting.[78] SSA relies again on arts 8.1 and 16.1, making the same argument as it does in support of SSA's power to suspend its members, that those provisions give the SSA council unrestricted powers to address any issue or matter arising out of any point not expressly provided for in SSA's constitution. According to the defendants, this entails that the council may determine and use other means of passing a resolution, including circular resolutions of the kind used in this case.[79]

45 I have no hesitation in rejecting SSA's argument. On the one hand, I accept that *on its face*, art 8.6 appears only to regulate how resolutions are to be passed at meetings and does not specify that all resolutions must be passed at meetings. On the other hand, the overall tenor of the provisions quoted at [43] above indicates that decisions of the SSA council are to be made in meetings. Art 8.8 requires the council to meet at least once every quarter, and allows additional council meetings to be convened at short notice. Art 8.9 emphasises the importance of attendance at council meetings. Art 8.11 prescribes the quorum for council meetings and makes provision for how meetings may proceed if the attendance is below quorum. Art 8.6 makes rather prescriptive provisions for how resolutions are to be passed at meetings (by *secret* ballot unless there is unanimous agreement for voting to be done by show of hand) while no provision is made for how resolutions may be passed without a meeting. These provisions taken together, including the requirement for secret

77 Defendants' Closing Submissions at para 151.

78 Defendants' Reply Submissions at para 12.

79 Defendants' Closing Submissions at para 151.

ballot at council meetings, are inconsistent with the notion that the SSA council could, in the absence of specific provisions empowering it to do so, make decisions by circular resolution.

46 I do not accept that art 16.1, which has become SSA's last refuge in this series of arguments, empowers the council to make decisions by circular resolution. Art 16.1 is entitled "Interpretation" and empowers the council to use its discretion on "any question or matter arising out of any point which is not expressly provided for in this Constitution". The purpose of art 16.1 is to allow the council to use its discretion on matters *not expressly provided* for in the constitution. Art 16.1 cannot be read to give the SSA council *carte blanche* to create new powers for itself or create new modes of exercising its powers, especially when these matters (*eg* how council resolutions are passed) have already been expressly provided for in the constitution. More importantly, art 16.1 makes clear that the invocation of art 16.1 involves a "decision of the Council". SSA is not able to point to any previous resolution of the SSA council deciding that the council could henceforth make decisions by circular resolution.

47 The defendants' last argument here is that the court should imply a term in SSA's constitution that enables SSA to pass circular resolutions.[80] The defendants say firstly that there is a "gap" because the council meets only once every two to three months, and so a term must be implied to allow the council a means of deciding matters between each meeting, such as by way of circular resolution.[81] Secondly, the defendants say that although allowing circular resolutions pose an alleged risk to board governance standards, circular resolutions are not illegal, and good governance is preserved by the fact that

80 Defendants' Reply Submissions at para 15.

81 Defendants' Reply Submissions at para 15(a).

physical council meetings would still take place regularly.[82]

48 I reject these submissions. I do not accept that there is a gap in the constitution in the sense that the drafters failed to address their minds to how the council would make decisions between regular meetings. That is because while art 8.8 requires a council meeting to be held at least once every quarter, it also empowers the president of SSA to call a council meeting "at any time", as long as he gives five days' notice. Since there are already express provisions for the making of urgent decisions in between regular meetings (*ie* by convening additional meetings at short notice) there is no gap to be filled by SSA's proposed implied term. Even if there were a gap, the proposed implied term would not satisfy the "business efficacy" test because the ability of the president of SSA to call a council meeting at any time at short notice renders it unnecessary, for the effective operation of SSA, to imply a term enabling the SSA council to pass circular resolutions.

49 Finally, the proposed term also fails the "officious bystander" test as I do not accept that an obvious term to be implied to fill that gap would be a term empowering the council to make circular resolutions. This is because the mechanism of circular resolutions has been famously criticised for promoting bad corporate governance, a criticism that the defendants appear to acknowledge at some level.[83] My conclusion is also supported by the fact that never in SSA's history has there been an attempt to pass a circular resolution.[84]

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82 Defendants' Reply Submissions at para 15(b).

83 Defendants' Reply Submissions at para 15(b).

84 Certified Transcript, 1 February 2018, p 105 at lines 15-19 and 2 February 2018, p 26 at lines 3-9..

50 For the reasons above, the circular resolution is *ultra vires* because the SSA council was not authorised under the SSA constitution to make decisions by circular resolutions.

Right to be heard

51 Finally, even if I am wrong that the circular resolution is *ultra vires*, I hold that it was passed in breach of the rules of natural justice, in that the circular resolution was passed without giving SRA a reasonable opportunity to be heard.

52 It is not disputed that SRA has a right to be heard and that SRA was not given an opportunity to be heard prior to the passing of the circular resolution.[85] SSA's explanation is that SRA need not be given such an opportunity because SRA was not suspended pursuant to the circular resolution.[86] Instead, the circular resolution was merely a preliminary measure for gauging the level of support for SRA's suspension. If there were sufficient support, then SSA would proceed to convene a BOI to investigate SRA's failures to comply with the council's resolutions, and to hear SRA's reasons for those failures. Only after that would the council make a decision to suspend SRA's privileges at the NSC. SRA was therefore afforded an opportunity to be heard at the hearing of the BOI held on 16 March 2016.[87]

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85 Defendants' Reply Submissions at para 10.

86 Defendants' Reply Submissions at para 10.

87 Defendants' Closing Submission at para 155.

53 The issue here therefore is one of fact. Assuming that the circular resolution was not *ultra vires*, did the SSA council intend, by the circular resolution, to suspend SRA's privileges at the NSC? The answer must be discerned from the terms of the resolution itself. The relevant terms are reproduced below:[88]

> BY CIRCULAR RESOLUTION
>
> RESOLUTION:
>
> Proposed by : Michael Vaz
>
> Seconded by: Patrick Chen
>
> The Council of the Singapore Shooting Association (SSA) hereby resolves by Circular Resolution, to suspend the privileges of the Singapore Rifle Association (SRA) in the premises known as the National Shooting Centre (NSC) from January 1st 2016.
>
> …
>
> TERMS OF THE SUSPENSION
>
> The suspension will be a limited action whereby,
>
> a. SRA will not be allowed to block book any ranges for SRA Activities.
>
> b. All SRA staff and SRA endorsed coaches currently registered will not be recognised as coaches or approved supervisors.
>
> c. SRA staff and SRA endorsed coaches will not be allowed to book individual lanes for instructing members or walk in guests.
>
> d. SRA will not be allowed to book any NSC facilities for SRA functions or meetings.
>
> This action is not targeted at the SRA members who for the most part are oblivious to the actions of the SRA Council.
>
> …

54 For the following reasons, I reject SSA's argument that the resolution was not intended to be the instrument to effect the suspension of SRA's privileges at the NSC. First, the terms of the circular resolution clearly indicate

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88 Agreed Bundle Vol 3 at pp 1156–1157.

otherwise. The council, it says, "resolves by Circular Resolution, to suspend the privileges of [SRA]". And the resolution gives a specific date for the suspension to take effect, *ie* 1 January 2016. Nothing is mentioned in the resolution about any need to convene a BOI. It does not say that the suspension would come into effect after a BOI has made its finding, or after formal adoption of a decision to suspend in a subsequently convened council meeting.

55 Second, there is no reference to a BOI hearing in any of the emails that preceded the passing of the circular resolution. Nor do these emails bear out SSA's explanation that the circular resolution was merely some sort of straw poll to gauge the level of support for a suspension within the SSA council before the formal process for suspension is initiated. In particular, I note that there was no mention by SSA of a BOI until after SSA received the letter dated 16 December 2015 from SRA's lawyers objecting to the circulation (see [21] above) and complaining that, among other things, SSA had failed to respect SRA's right to due process.[89] (The first written reference to a BOI was in Mr Vaz's e-mail of 18 December 2015 to the Vice-President of SSA, Mr Peter Teh.[90]) In my view, therefore, the defendants' explanation that they had all along intended to convene a BOI is a mere afterthought.

56 In fact, when Mr Vaz wrote to Mr Yap on 11 December 2015 proposing the terms of the resolution, he could not have put it in clearer terms that the resolution was the means by which SSA would penalise SRA for its alleged breaches and, as quickly as possible, regain "control of the situation" in the light of SRA's recourse to legal action against SSA. Mr Vaz wrote:[91]

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89 Agreed Bundle Vol 3, p 1171 at paras 8–10.

90 Agreed Bundle Vol 3, p 1254.

91 Agreed Bundle Vol 3 at pp 1153–1154.

> Dear Beng Hui,
>
> Events over the past three months have clearly demonstrated to the SSA Council Members that SRA has no intention to comply with the resolutions passed by the SSA Council. *It was SRA who fired the first salvo with two legal demands from their lawyers on October 7th and 8th.* SSA was clearly defensive when it was forced to appoint its own lawyers on October 10th 2015.
>
> SRA has committed so many breaches that *SSA needs to take control of the situation.*
>
> …
>
> I am truly dismayed that a member of SSA can act in this manner and get away with it. *In any civilised club, the member would have been expelled.* Unfortunately, we have members in the SSA Council who are sympathetic towards SRA and I am hesitant to call for SRA's expulsion at this time.
>
> *I am tabling a resolution to suspend SRA from all privileges at the NSC commencing January 1st.* It is not SSA's intention to disadvantage the innocent members of SRA so the suspension I am proposing is a limited suspension.
>
> …
>
> I am asking you as Secretary General to send a Circular Resolution to the SSA Council to the SSA Council Members with the above arguments. Please ask each Council Member for the reasons that they object to the *motion to suspend SRA* in writing so we can discuss it at the council meeting I intend to call to officially *ratify this resolution before Christmas.*
>
> [emphasis added]

57 This email shows firstly that Mr Vaz was serious about suspending SRA's privileges at the NSC. He would have expelled SRA if he could, but he did not think it would sit well with some in the SSA council. He therefore opted for a less drastic course. In fact, he had been thinking of expelling SRA since at least 1 October 2015, as an email he sent that day shows.[92] Secondly, the email of 11 December 2015 shows that he was eager to impose the suspension. He wanted the suspension to take effect on 1 January 2016. Thirdly, given this tight timetable, there was simply no time to convene any BOI to conduct any hearing

92 Agreed Bundle Vol 1 at p 508.

on or investigation into SRA's alleged breaches during the short two weeks between the passing of the circular resolution and the date it was supposed to take effect. From this, the inference is clear that the BOI hearings – all of which were conducted after January 2016 – were an empty formality intended only to create the impression that SRA was given some kind of due process when in fact suspension was but a *fait accompli*.

58 There are two further points I should deal with for completeness. First, I consider that the reference in the 11 December 2015 email to having the circular resolution ratified at a council meeting before Christmas does not detract from the notion that the effective instrument for bringing about the suspension of SRA's privileges was the circular resolution. The email does not speak of passing a fresh resolution or a definitive resolution at the council meeting to be held before Christmas. Instead, the purpose of the meeting was to ratify *the circular resolution*, thus confirming that the circular resolution was intended to be the operative instrument. If anything, the intended timing of the council meeting (before Christmas) further confirms that the convening of the BOI was never on the cards, so to speak, until after SSA received SRA's lawyers' letter of 16 December 2015. Second, although Mr Yap remarked in cross-examination that he and Mr Vaz had "discussed a little" the convening of a BOI when they met on 30 November 2015,[93] I did not give much weight to this remark. This point was not mentioned in Mr Yap's affidavit of evidence-in-chief, not corroborated by any of the other defendants and not borne out by any documents.

59 I therefore find that SSA intended the circular resolution to be the effective instrument for bringing about the suspension of SRA's privileges at

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93 Certified Transcript, 1 February 2018, p 123 at lines 15 to 20.

the NSC, and that there was never any intention on the part of SSA to convene a BOI until after SRA got wind of the circular resolution and got its lawyers to write to SSA protesting the circular resolution. Accordingly, in so far as the circular resolution purported to suspend SRA's privileges at the NSC, it must be invalidated because SRA was not given a fair hearing before the circular resolution was passed.

Mootness of the challenge

60 It remains for me to deal with SSA's submissions that SRA's challenge against the validity of the circular resolution is moot. SSA's first submission in this regard is built on the fact that SRA is no longer a member of SSA. I do not see how this assists SSA's case. When this suit was commenced, SRA was still a member of SSA. The purported expulsion of SRA by SSA six months after the commencement of this suit cannot deprive this court of the jurisdiction to rule on a dispute which was clearly extant and relevant at the time the suit was brought. I also note that, up till today, SRA has not accepted the legality of its expulsion and continues to contest it. Although SSA makes the point that no formal legal proceedings have been brought by SRA to contest the expulsion, I note that the time limit for bringing such legal action has not expired.

61 SSA's second submission is that SRA never had privileges to use the NSC under SSA's constitution.[94] Instead, any such privilege stemmed solely from the Agreement. I reject this submission. As SRA correctly highlights, the Agreement dealt only with the Club Range.[95] The Agreement does not spell out any other rights or privileges SRA enjoys at the NSC. Those other rights or privileges pre-date and are independent of the Agreement. Hence, they must

94 Defendants' Closing Submissions at paras 156–157.

95 Plaintiffs' Reply Submissions at para 12.

arise as a result of SRA's relationship with SSA as a member of the latter. Moreover, not even Mr Vaz himself believed that he was acting in vain in proposing the circular resolution. As president of SSA, he believed that SRA had been accorded privileges at the NSC as a result of its membership of the SSA, and SSA was therefore entitled to suspend those privileges as a matter of SSA's internal discipline. Hence, SSA's case on the true source of SRA's privileges at the NSC is incorrect in law and contrary to the evidence.

62 A final point to be addressed here relates to two motions passed respectively at the SSA council meeting on 13 February 2016[96] and at the SSA council meeting on 9 April 2016.[97] The motion of 13 February 2016 provided for the suspension of SRA "as a Member Club of SSA" without indicating the specific terms of suspension. It was adopted with three votes in favour, zero votes against and two abstentions. The three votes in favour were cast by Mr Vaz, Mr Yap and Mr Chen. The motion of 9 April 2016 provided for the suspension of SRA "as a Member Club of SSA with no privileges on the use of all ranges and armouries in NSC". It was adopted with three votes in favour, zero votes against and zero abstentions. The only voting members of the SSA council present at this meeting were Mr Vaz, Mr Yap and Mr Chen, and all three voted in favour of the motion. Did the passing of these two motions cure the irregularities identified in respect of the circular resolution? In my judgment, the answer is "no".

63 The fact remains that SSA has no power under its constitution to suspend a member or a member's privileges, as I have concluded at [42] above. The fact also remains that at the time the circular resolution was passed, SRA had not been given a fair hearing on the cause for suspending its privileges, as I have

96 Agreed Bundle Vol 4, p 1682 at para 13.

97 Agreed Bundle Vol 4, p 1844 at para 20.

concluded at [59] above. In fact, the motion of 13 February 2016 was also passed without the BOI having heard from SRA:[98] see [23]–[25] above. Although the motion of 9 April 2016 was passed after the BOI held its second hearing, during which SRA was invited to make representations but declined for reasons outlined at [26] above, I am not persuaded that this would have cured any concerns over breach of natural justice, given my finding at [57] above that the BOI was an empty formality intended only to create the impression that SRA was given some kind of due process when in fact suspension was but a *fait accompli*.

64 For all the reasons above, I hold that the circular resolution was *ultra vires* and invalid.

Issue 2: Conspiracy to injure

65 I turn now to SRA's claim in conspiracy. For the reasons below, I accept SRA's case that Mr Vaz, Mr Yap and Mr Chen are liable in the tort of conspiracy by agreeing to injure SRA's interests through procuring an *ultra vires* resolution of the SSA Council with the intention of causing such injury. I begin with the applicable principles.

Applicable principles

66 Both sides relied on *SH Cogent Logistics Pte Ltd and another v Singapore Agro Agriculture Pte Ltd and other* [2014] 4 SLR 1208 ("*SH Cogent*") as authority for the elements of the tort of conspiracy. In that case, Woo Bih Li J stated that the essence of conspiracy is an agreement between two or more persons to act in a manner that is intended to injure, and that does injure another (at [17]). He then set out the elements of the tort as follows (at [18]):

98 Agreed Bundle Vol 4, p 1682 at para 11.

(a) There must be an agreement between two or more persons to do certain act.

(b) If the conspiracy involves:

(i) unlawful means, then the conspirator must have intended to cause damage to the claimant;

(ii) lawful means, then the conspirators must additionally have had the predominant purpose of causing damage to the claimant.

(c) Acts must have been performed in furtherance of the agreement.

(d) Damage must have been suffered by the claimant.

67 As for the ambit of "unlawful means", in *EFT Holdings, Inc and another v Marineteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860 ("*EFT Holdings*") the Court of Appeal considered (at [91] *per* Sundaresh Menon CJ) whether Singapore should follow the House of Lord's rejection in *Revenue and Customs Commissioners v Total Network SL* [2008] 1 AC 1174 ("*Total Network*") of the notion that "unlawful means" are confined to actionable civil wrongs of the kind enunciated by the majority in *OBG Ltd v Allan* [2008] 1 AC 1 ("*OBG*"). While expressing a preference for the *Total Network* approach, the Court of Appeal in *EFT Holdings* held that it need not reach a conclusion on the point as there was no dispute in that case over the element of unlawfulness. What is clear from *EFT Holdings* is that in Singapore, the ambit of "unlawful means" comprises *at least* civil wrongs which are actionable by the claimant: see *OBG* at [49] *per* Lord Hoffmann. In the present case, the SSA council's passing of an *ultra vires* resolution, in breach of SSA's constitution, to suspend SRA's privileges at the NSC, is actionable by SRA. The passing of

that resolution therefore constitutes unlawful means. Hence, the applicable species of the conspiracy tort here is unlawful means conspiracy.

Whether unlawful means conspiracy is established

68 Having regard to these principles, the issues I need to address are:

(a) whether the Individual Defendants committed acts pursuant to an agreement among themselves;

(b) whether the Individual Defendants intended to cause damage to SRA; and

(c) whether SRA suffered damage.

Whether the Individual Defendants committed acts pursuant to an agreement among themselves

69 As the alleged unlawful means is the passing of the circular resolution to suspend SRA's privileges at the NSC, the overt acts alleged to be committed in furtherance of the conspiracy would be the acts of the Individual Defendants in drafting, promoting and voting for the circular resolution. There is no dispute that the Individual Defendants carried out such acts. The question which remains is whether these acts were committed by the Individual Defendants *pursuant to an agreement among themselves.*

70 In this regard, it was observed by the Court of Appeal in *EFT Holding* (at [113]) that the existence of an agreement is often inferred from the circumstances and acts of the alleged conspirators (citing *Asian Corporate Services (SEA) Pte Ltd v Eastwest Management Ltd (Singapore Branch)* [2006] 1 SLR(R) 901 ("*Asian Corporate Services*") and *The "Dolphina"* [2012] 1 SLR 992). In *Asian Corporate Services*, the Court of Appeal noted at [19] *per* Chao

Hick Tin JA that "[i]t is not often that the victim of a conspiracy will be able to obtain direct evidence to prove the allegation. Proof of a conspiracy is normally to be inferred from other objective facts." Similarly, it was observed in *The Dolphina* (at [264] *per* Belinda Ang J) that, because direct evidence of a combination is unlikely to be forthcoming:

> … proof of the agreement or combination is usually gathered from the unlawful acts committed, for such acts are often sufficient (when taken with any relevant surrounding circumstances) to justify the inference that their commission was the product of concert between the alleged conspirators.

71 Finally, as observed in *Chung Cheng Fishery Enterprise Pte Ltd v Chuan Hern Hsiung and Another (Lin Chao-Feng and Another, Third Parties)* [2008] SGHC 135 at [79]–[82] *per* Andrew Ang J, citing *Kuwait Oil Tanker Co SAK v Al Bader* [2000] 2 All ER Comm 271 at 312 *per* Nourse LJ:

(a) the common intention to injure may be forged expressly or tacitly;

(b) participation in a conspiracy can be active or passive;

(c) the agreement of a participant can be inferred if it is proved that he knew what was going on, and the intention to participate is also established by his failure to stop the unlawful activity; and

(d) the close confidence shared between participants may lead to the inference that one participant would have known another participant's reason for wanting particular acts to be done.

72 Before the circular resolution was disseminated to all members of the SSA council on 16 December 2016, Mr Vaz, Mr Yap and Mr Chen had been working together to procure a suspension of SRA's privileges. On 11 December

2015, Mr Vaz sent an email to Mr Yap indicating his intention to table a resolution to suspend SRA's privileges at the NSC commencing 1 January 2016. In the email, Mr Vaz stated that he would be "pleased to assist in writing the circular".[99] On 14 December 2015, Mr Yap replied with a draft circular resolution,[100] which Mr Vaz amended and sent by email on the morning of 16 December 2015 to the SSA council (less Mr Loo of SRA) and representatives of Sport Singapore. Besides explaining the intended suspension in his email, Mr Vaz took care to emphasise the need to "play by the book" since SRA would receive the resolution.[101] He also instructed Mr Yap to get a seconder for the resolution. Mr Yap obtained Mr Chen's agreement to act as the seconder sometime between 10:29 am and 11:59 am on 16 December 2015. (Mr Yap sent an e-mail to Mr Chen at 10:29 am asking Mr Chen to second the resolution, to which Mr Chen responded only at 4:27 pm.[102] The finalised draft circular resolution was sent to all SSA Council members at 11:59 am on 16 December 2015 naming Mr Chen as the seconder.[103] It was Mr Yap's and Mr Chen's evidence that there was a telephone conversation between them sometime between 10:29 am and 11:59 am during which Mr Chen agreed to second the resolution.[104])

73 If further evidence of the existence of an agreement is needed, reference may be made to the way Mr Vaz tabulated the votes. On 18 December 2015, before Mr Yap had recorded his own vote, Mr Vaz sent an email to the SSA

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99 Agreed Bundle Vol 3 at p 1154.

100 Agreed Bundle Vol 3 at pp 1149–1150.

101 Agreed Bundle Vol 3 at p 1151.

102 Exhibit D2

103 Agreed Bundle Vol 3 at p 1155.

104 Certified Transcript, 1 February 2018, p 145 at line 14–p 146 at line 3 and 2 February 2018, p 112 at lines 4–11.

council's vice-president, Mr Peter Teh, to say that the council had the votes to suspend SRA.[105] At that time, there were only two positive votes, namely, those of Mr Vaz and Mr Chen. Apart from Mr Yap who had not voted and SRA's Mr Loo who had objected, the other council members had either abstained or not responded. The only explanation for this is that there was already an understanding between Mr Vaz and Mr Yap that the latter would support the resolution. Mr Yap conceded this during cross-examination:[106]

> Q Did you ever reply with your vote to this resolution? I think you know that question was going to be asked because you've been sitting in court. So, having thought through and knowing that I'm going to ask this question, please tell me now.
>
> A I did not reply.
>
> Q Okay.
>
> A Yes.
>
> Q You did not reply but you heard what Mr Vaz said. Right?
>
> A Yes.
>
> Q He counted your vote as a 'yes'.
>
> A Yes.
>
> Q Coincidence? It's not right? It's not coincidence that Mr Vaz has telepathic understanding with you because Mr Vaz always knew that you were going to say 'yes' to his resolution. Correct?
>
> A That it will be 'yes' unless I tell him otherwise so. I didn't indicate any otherwise, so I expect him, yes, to expect a 'yes' from me.
>
> Q But that means you guys stitched it all up, you know, Mr Yap, because by your very answer, it means you had told Mr Vaz and you had talked to him and he knew you were going to say 'yes'. So it was just an administrative slip that you forgot to reply on email.

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105 Agreed Bundle Vol 3 at p 1254.

106 Certified Transcript, 1 February 2018, p 152 at line 3 to p 153 at line 4.

A Yes.

74 In fact, the existence of the agreement among the Individual Defendants can be traced back to the SSA council meeting of 30 November 2015, during which Mr Vaz, Mr Yap and Mr Chen all voted to ratify previous SSA council resolutions whose alleged breach by SRA would later form the basis of the circular resolution to suspend SRA. As SRA highlighted in its closing submission, in convening the meeting on 30 November 2015 for the purpose of the ratification exercise, Mr Yap kept the meeting's agenda deliberately vague. Nothing was mentioned about any intention on Mr Vaz's part to table previous resolutions for ratification. The agenda simply stated:[107]

> 1. Confirmation of Minutes of Last Meeting on November 14, 2015
>
> 2. Matters Arising
>
> 3. Secretary's Report and Follow-Ups
>
> 4. Any Other Business
>
> 5. Next Meeting – 1/2016 SSA Council Meeting
>
> January 9, 2016 (Saturday)
>
> 10am – 12 pm
>
> Conference Room, National Shooting Centre

It was Mr Yap's evidence that Mr Vaz had, on the sidelines of the 30 November 2015 meeting, discussed with him a plan to get SRA suspended, and according to his recollection Mr Chen "could be" present at this conversation.[108]

75 On one view, the agreement among the Individual Defendants was reached by 16 December 2015 when Mr Chen agreed to second the resolution drafted by Mr Yap and amended by Mr Vaz. Pursuant to that agreement, the

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107 Plaintiff's Closing Submission at para 182.

108 Certified Transcript, 1 February 2018, p 123 at line 14 to p 124 at line 24.

Individual Defendants promoted and voted in favour of the circular resolution. On another view, the Individual Defendants had agreed on or before 30 November 2015 to work towards suspension of SRA and, pursuant to that agreement, the Individual Defendants procured the ratification of the five resolutions subsequently used to justify the passing of the circular resolution, followed by subsequent acts of the Individual Defendants in drafting, promoting and voting for the circular resolution.

76 On either view, I am satisfied that there was an agreement among the Individual Defendants to procure the suspension of SRA, and that they acted in furtherance of this agreement.

Whether the Individual Defendants intended to cause damage to SRA

77 The next question is whether the Individual Defendants acted with the requisite intention. Given my finding that the present case involves unlawful means conspiracy, the relevant test is whether the Individual Defendants had the *intention* to injure SRA. It is not necessary, in cases of unlawful means conspiracy, to prove that the alleged conspirators acted with the predominant purpose of injuring the claimant.

78 To establish the requisite intention for unlawful means conspiracy, the claimant must show that the unlawful means and the conspiracy were targeted or directed at him. It is not sufficient that harm to the claimant would be a likely, or probable or even inevitable consequence of the defendant's conduct. Injury to the claimant must have been intended as a means to an end or as an end in itself. As Lord Hoffmann observed in *OBG* at [62] (which is cited with approval by the Court of Appeal in *EFT Holdings* at [104]):

> … it is necessary to distinguish between ends, means and consequences. One intend to cause loss even though it is the

> means by which one achieved the end of enriching oneself. On the other hand, one is not liable for loss which is neither a desired end nor a means of attaining it but merely a foreseeable consequence of one's actions.

79 As the circular resolution was aimed at suspending SRA's privileges, there is no doubt that the conspiracy was "targeted or directed" at SRA. The intention of the conspirators can be easily gathered from the terms of the circular resolution, which suspended SRA's privileges in the following manner:

> The suspension will be a limited action whereby,
>
> a. SRA will not be allowed to block book any ranges for SRA Activities.
>
> b. All SRA staff and SRA endorsed coaches currently registered will not be recognised as coaches or approved supervisors.
>
> c. SRA staff and SRA endorsed coaches will not be allowed to book individual lanes for instructing members or walk in guests.
>
> d. SRA will not be allowed to book any NSC facilities for SRA functions or meetings.
>
> This action is not targeted at the SRA members who for the most part are oblivious to the actions of the SRA Council.[109]

80 Each of these four ways in which SRA's privileges were to be suspended would have been injurious to SRA, as it would have impeded SRA's ability to carry out its activities and prevented SRA from providing coaching and instructional services. The final sentence in the passage quoted above, in attempting to explain that the measures were not targeted at the individual SRA members, merely serves to confirm that the measures were targeted at SRA as an organisation. During cross-examination, Mr Vaz tried to put a gloss on this by maintaining that he was targeting only the SRA council, and not SRA.[110] This attempt by Mr Vaz to draw a distinction between SRA and its council is artificial

[109] Agreed Bundle Vol 3 at pp 1156–1157.

[110] Certified Transcript, 30 January 2018, p 103 at line 19 to p 104 at line 1; p 105 at line 4 to p 106 at line 3.

and unsustainable. It ignores the fact that the SRA council is not only an integral part of SRA, but also the governing body of SRA. Actions which harm and impede the SRA council would necessarily harm and impede SRA. In the end, Mr Vaz could not deny that the circular resolution was intended to injure SRA.[111]

81 The Individual Defendants explained in their respective affidavits of evidence-in-chief, in identical words, that they sought SRA's suspension "without any intention to injure SRA, but in good faith for the purpose of promoting, forwarding and/or defending the best interest of SSA".[112] Although this is a bare assertion devoid of particulars, the defendants elaborated in their closing submissions that:

> (a) SRA's breaches of the relevant SSA council resolutions had put SSA at risk of liabilities for breach of the terms of the NSC sub-lease; and
>
> (b) the purpose of the circular resolution was therefore to get SRA to comply with the said SSA council resolutions, so as to protect SSA from such liabilities.[113]

82 My first comment is that the defendants' explanation that the circular resolution's purpose was to get SRA to comply with certain SSA council resolutions does not ring true. The explanation is not borne out by the terms of the circular resolution, which contains no provision for the suspension to be lifted or stayed if SRA were to comply with the said SSA council resolutions. My second comment is that, as this case concerns unlawful means conspiracy,

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111 Certified Transcript, 30 January 2018, p 118 at lines 7–19.

112 Michael Vaz Lorrain's AEIC at para 144; Yap Beng Hui's AEIC at para 45; Patrick Chen's AEIC at para 45.

113 Defendants' Closing Submission at para 251(c).

such an explanation, even if true, would not assist the Individual Defendants. This is because even if I accept that the ends which the Individual Defendants hoped to attain through SRA's suspension is the promotion and defence of SSA's interests, the injury which would be caused to SRA by the proposed suspension would nonetheless constitute the means of attaining those ends. That, according to the principles discussed at [78] above, would be sufficient to satisfy the element of intention to injure in unlawful means conspiracy.

83 In any event, for completeness, I note that SRA proffers a different explanation for the Individual Defendants' motive behind the conspiracy. SRA submits that Mr Vaz bears a longstanding grudge against SRA which had originated in 2012. SRA alleges that in 2012, Mr Vaz was embroiled in a power struggle with Mr Laurence Wee, the then chairman of SRA, for the presidency of SSA. When Mr Wee was elected to that office in September 2012, Mr Vaz publicly stated his intention to contest the result in the courts. Mr Wee later stepped down, and Mr Vaz was elected President of SSA. SRA alleges that Mr Vaz's "bad blood" with SRA's leadership continued into Mr Eng's chairmanship of SRA. Mr Vaz also made direct reference to this in his email dated 16 December 2015 proposing the circular resolution, claiming that "since the time of SRA President Laurence Wee, SRA has consistently acted against SSA's mission to open the NSC facilities to all Singaporeans".[114] When confronted with this email in cross-examination, Mr Vaz appeared to acknowledge that his animosity towards SRA played a role in his proposal to suspend SRA:[115]

> Q Not yet. Because, you see, you are trying to instill a certain spin in your email at page 1151. You are trying to tell the story as you can see it because you said:

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114 Agreed Bundle Vol 3 at p 1151.

115 Certified Transcript, 30 January 2018, p 116 at lines 7–18.

> "Since the time of SRA President Laurence Wee …" You are dredging up the past. Right?
>
> A Yes.
>
> Q You are reminding people of that animosity that you had with Laurence, if I can call him that, Mr Laurence Wee, during his tenure, isn't it?
>
> A Yes.

84 As I have found that Mr Vaz, Mr Yap and Mr Chen possessed the requisite intention for the purposes of the tort of conspiracy by unlawful means, it is not necessary for me to decide on SRA's submission on this point. However, to appreciate more fully the context of this case, it seems to me relevant to note that there appears to be some support for SRA's contention that Mr Vaz's actions in this case may be explained in part by a longstanding animosity between him and SRA's leadership.

Whether SRA suffered Damage

85 Finally, SRA needs to show that it has suffered damage. Damage in the tort of conspiracy is proved if the plaintiff is able to show that some pecuniary loss has been suffered by him; he need not prove precisely that loss, because damages are at large: *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd and others* [2018] 2 SLR 159 ("*JTrust*") at [61] *per* Steven Chong JA. In this case, SRA pleaded that the conspiracy resulted in (a) loss arising from and related to the investigation and detection of the said conspiracy; and (b) loss arising from and related to the undertaking of steps to redress the said conspiracy. It argues that it has suffered pecuniary loss in that it incurred costs to investigate, respond to and unravel the conspiracy. In this regard, SRA relied on:

(a) *Ong Han Ling v American Insurance Assurance Co Ltd* [2018] 5 SLR 549 ("*Ong Han Ling*"), where Belinda Ang J held that costs of

investigation can constitute a head of loss in a conspiracy claim so long as there is a causal link between the costs of investigating the conspiracy and the tort itself (at [14]); and

(b) *Clearlab SG Pte Ltd v Ting Chong Chai* [2015] 1 SLR 163 ("*Clearlab*"), where Lee Seiu Kin J awarded damages for the costs of investigating confidential documents that had been removed pursuant to a conspiracy to injure the plaintiff on the basis that those costs "flowed from the conspiracy" (at [243]).

86 The defendants submit that in the absence of other types of pecuniary loss over and above the costs of investigating, detecting and responding to the conspiracy, the court should not accept that the costs of investigating, detecting and responding to the conspiracy could, *by themselves*, satisfy the "damage" element of the tort of conspiracy. Were it otherwise, the defendants reason, the requirement of damage would be rendered otiose as a claimant would always be able to establish the "damage" element of the tort by claiming that it had incurred costs in investigating, detecting and responding to the conspiracy.[116] The defendants further submit that the foregoing principle is applicable here as SRA has suffered no other damage because the suspension pursuant to the circular resolution was never carried into effect. In this regard, the defendants point out that in *SH Cogent*, Woo J "declined to determine" whether such costs could, by themselves, satisfy the requirement of damage in the tort of conspiracy.[117] The defendants also suggest that *Ong Han Ling* was mistaken in its reliance on the English High Court case of *R+V Verscherung AG v Risk Insurance and other* [2006] EWHC 42 (Comm) ("*R+V Verscherung*") because the English High Court, in that case, "declined to make any determination as to

116 Defendants' Closing Submissions at para 228.

117 Defendants' Closing Submissions at para 226.

whether or not there was a need to prove other pecuniary loss in addition to investigation costs".[118]

87 My first observation is that *SH Cogent* is a case which pre-dates both *Ong Han Ling* and *Clearlab*. So, to the extent that the law in Singapore on this point was unclear at the time *SH Cogent* was decided, the law has since been clarified by *Ong Han Ling* and *Clearlab*. In any event, *SH Cogent* contains no statements which could be construed as casting doubt on the point. All that Woo J stated was that, on the facts, he did not need to decide the point (at [169]). I also reject the defendants' suggestion that *Ong Han Ling* misread *R+V Verscherung*. Although Gloster J made a finding of fact in *R+V Verscherung* that the plaintiff suffered other pecuniary loss besides investigation costs, thus rendering merely *obiter* his comments on whether investigation costs, by themselves, constitute damage for the tort of conspiracy, Gloster J did not decline to express a view on the issue. On the contrary, Gloster J opined at [64] and [77] as follows:

> 64 The reference, however, to the potential need to prove some other pecuniary loss in addition to the time spent remedying or mitigating the damage is perhaps difficult, with respect, to understand. Either the claim for wasted employee time amounts to recoverable loss or it does not. Why should it make a difference whether there is another clearly recoverable head of loss?
>
> …
>
> 77 In my judgment, as a matter of principle, such head of loss (i.e. the cost of wasted staff time spent on the investigation and/or mitigation of the tort) is recoverable, notwithstanding that no additional expenditure "loss" or loss of revenue or profit can be shown. …

And it was [77] of *R+V Verscherung* which was cited by Ang J at [14] of *Ong Han Ling*.

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118 Defendants' Closing Submissions at paras 224 to 225, read with para 220.

88 In my judgment, the law in Singapore on this point is clearly laid down in *Ong Han Ling* and *Clearlab* as well as in *Li Siu Lun v Looi Kok Poh and another* [2015] 4 SLR 667. I therefore hold that costs of investigating, detecting and responding to the conspiracy are sufficient to satisfy the "damage" element of the tort of conspiracy if there is a causal link between such costs and the tort itself.

89 In conclusion, the conspiracy which led to the passing of the circular resolution was a cause of SRA's investigation into the circumstances in which the resolution was passed. The costs of that investigation, including legal fees and disbursements, are therefore recoverable. Accordingly, SRA succeeds in establishing the tort of conspiracy against the Individual Defendants.

Quantum of damages

90 I turn now to the quantum of damages to be awarded for the loss that SRA suffered as a result of this tort. SRA claims damages for the following heads of loss:

(a) legal fees and disbursements paid to SRA's solicitors for the purpose of obtaining advice on and investigating the conspiracy, in the sum of $63,200; and

(b) costs incurred in scheduling SRA council meetings in relation to the investigation of the conspiracy, in the sum of $16,180, the breakdown of which is as follows:

(i) $1,100 in respect of Mr Eng Fook Hoong;

(ii) $3,080 in respect of Mr Simon Ng;

(iii) $3,850 in respect of Mr Conrad Chung;

(iv) $2,200 in respect of Mr Timothy Ng;

(v) $1,050 in respect of Mr Kevin Leong;

(vi) $1,100 in respect of Mr Ong Eng Chong;

(vii) $2,100 in respect of Mr Ricky Cheung;

(viii) $1,700 in respect of four other council members; and

(ix) $500 in disbursements.

91 In my view, SRA is entitled to recover from the Individual Defendants the legal fees and disbursements that SRA paid to its solicitors for the purpose of seeking advice on and investigating and responding to the conspiracy. I am satisfied that this is loss that was caused by the Individual Defendants' tort. I order that the quantum of damages for this head of loss be taxed if not agreed.

92 However, I do not think that SRA is entitled to recover the costs which its council members incurred in scheduling meetings to respond to the conspiracy. That is because SRA did not suffer loss in this regard. These were losses suffered by SRA council members (not SRA), and SRA was not obliged to pay its council members for their efforts in relation to the investigation of the conspiracy, given that they were volunteers. Mr Eng accepted this during cross-examination, and as he put it, "When we act as volunteers, we don't expect payment."[119] If any of the SRA council members involved had also been SRA's salaried staff, I would have considered allowing recovery if it can be shown they were diverted from the usual activities for which they were being paid by SRA. The distinction is between (a) salary which SRA is obliged to pay its staff and which is "wasted" because the time of the staff so paid was diverted from SRA's

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119 Certified Transcript, 25 January 2018, p 39 at line 8.

usual business towards responding to the conspiracy, and (b) honorariums or voluntary payments which SRA makes to council members to compensate their loss. The former is a pecuniary loss resulting directly from the conspiracy. The latter depends on SRA's decision to be compassionate to its council members.

93 As none of SRA members listed at [90(b)] above were SRA's salaried staff, I do not allow SRA's claim for costs of time incurred by its members in investigating and responding to the conspiracy.

Section 32A of the Charities Act

94 Finally, the Individual Defendants rely on s 32A of the Charities Act, which provides that the court may relieve a person on the governing board of a charity from liability for negligence, default, breach of duty or breach of trust if "it appears to the court" that "the person has acted honestly and reasonably and, having regard to all the circumstances of the case, he ought fairly to be excused for the negligence, default or breach." Having regard to my finding that the Individual Defendants acted with intention to harm SRA and, in the process of doing so, not only acted in breach of the SSA constitution but also acted in breach of natural justice, I consider that this is *not* a case where those governing the relevant charity – in this case, the Individual Defendants in relation to SSA – had acted reasonably. A necessary condition for the invocation of s 32A is therefore not met. Therefore, no relief ought to be granted under to that provision.

Issue 3: Cost of demolition

95 I come now to the defendants' counterclaim. This is a claim for a sum of $26,536, which is the amount that the defendants paid Pikasa to demolish the Club Range. The contractual basis for this claim is cl 10 of the Agreement.

Clause 10, in essence, obliges SRA to indemnify SSA for losses caused by SRA's activities at the NSC.

96 SRA resists this claim on four main grounds:

(a) SSA has not suffered any loss for which SSA may claim to be indemnified by SSA under cl 10.[120]

(b) SSA in demolishing the Club Range breached an implied term to use reasonable efforts to assist SRA in obtaining the necessary regulatory approvals, and breached an implied term to refrain from demolition without first using reasonable efforts to assist SRA in regularising the Club Range.[121] SRA contends that this implicates the principle that a person cannot be permitted to take advantage of his own wrong, and on this principle, SSA cannot rely on its on breach of contract to claim an indemnity under the same contract under cl 10.[122]

(c) At the time SRA entered into the Agreement, it was mistaken that the pre-existing structures at Range X had been built with regulatory approvals, and this mistake renders the Agreement void, with the effect that cl 10 is not binding on SRA.[123]

(d) SRA was induced to enter into the Agreement by SSA's misrepresentation that those pre-existing structures had been built with the relevant regulatory approvals, and for that reason, SRA is entitled to

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120 Plaintiff's Closing Submissions at paras 296–297.

121 Plaintiff's Closing Submissions at paras 378.

122 Plaintiff's Closing Submissions at para 359–361.

123 Plaintiff's Closing Submissions at paras 442–444.

rescind the Agreement, with the effect that cl 10 is not enforceable against SRA.[124]

97 In brief, dealing first with the third and fourth grounds as they go to the very subsistence of the Agreement, I do not agree that the Agreement is liable to be set aside on the ground of unilateral mistake or misrepresentation, and I therefore do not think that these grounds are for SRA valid grounds for resisting SSA's claim for an indemnity. I do, however, hold that SSA cannot rely on cl 10 to be indemnified of the loss it sustained as a result of paying Pikasa to demolish the Club Range. This is because that loss was sustained as a result of SSA's breach of the Agreement. I turn now to explain my reasons in order.

Unilateral mistake

98 To set the context, I begin by mentioning BG Lim's testimony that the pre-existing structures at Range X were constructed around 2002 or 2003.[125] He was not contradicted by SRA in this regard. It is also not disputed that the pre-existing structures had been constructed without regulatory approval. SRA argues that at the time it entered into the Agreement, it was mistaken that these structures at Range X had been built with approval. This mistake, SRA says, renders the Agreement void, with the effect that cl 10 is not binding on SRA. In my view, this argument is without merit because the mistake in question was not fundamental to the Agreement, and because SSA did not know that SRA made that mistake at the time the Agreement was entered into.

99 The law on setting aside a contract at common law on the ground of a mistake on the part of one of the parties at the time the contract was entered

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124 Plaintiff's Closing Submissions at para 486–488.

125 Certified Transcript, 7 February 2018, p 152 at lines 9–10.

into, otherwise called a unilateral mistake, is well settled. First, the claimant must have made a mistake in entering into the contract. Second, the mistake must have been fundamental or must relate to an essential term of the contract. Third, it must be shown that the other party had actual knowledge that the claimant was labouring under that mistake at the time the parties entered into the contract. In this regard, the court is entitled to find actual knowledge where the non-mistaken party is shown to have been wilfully blind to the mistaken party's error. These propositions were elaborated in the Court of Appeal's decision in *Chwee Kin Keong and others v Digilandmall.com Pte Ltd* [2005] 1 SLR(R) 502 at [34], [42]–[43] and [53] *per* Chao Hick Tin JA.

100 As regards the first requirement, I am satisfied that in entering the contract, SRA was mistaken that the pre-existing structures at Range X had been built with regulatory approval. I note that SSA alleges that it was SRA who built those structures in the first place because SRA had charge of Range X before it fell into disuse.[126] By this, SSA sought to imply that SRA, being the party responsible for the construction of the original structures at Range X, must have known that the structures had been erected without regulatory approval. While there is some force to this submission, I find, for the reasons given in the next paragraph, that at the time the Agreement was signed, SRA was not aware of this fact.

101 I accept the evidence of Mr Loo Woei Harng – who signed the Agreement on SRA's behalf – that at that time, he "believe[d] that the … structures were erected with the approval of the relevant authorities".[127] Mr Chung also testified to having held the same view then,[128] and I accept his

126 Defendants' Closing Submissions at para 29.

127 Certified Transcript, 24 January 2018, p 117 at lines 2–6.

128 Certified Transcript, 23 January 2018, p 16 at line 25 to p 17 at line 6.

evidence. Even if the structures were originally built by SRA, this would have been done more than a decade before the Agreement was signed during which period there would have been significant changes in SRA's personnel. Hence, the management of SRA at the time the Agreement was signed probably had no recollection or other information of what had occurred back then. Moreover, as SRA submits, the fact that they held this mistaken belief is supported by the fact that the pre-existing structures were large and highly visible. SSA and Sport Singapore representatives walked the grounds of the NSC on a regular basis, and no one ever said that the structures were illegal.[129] So no reasonable suspicion to that effect was ever raised.

102 As regards the second requirement, I do not think that SRA's mistake was a fundamental mistake or a mistake that relates to an essential term of the Agreement. What SSA promised SRA under the Agreement was that the latter would be entitled to construct a range on a piece of land designated in the Agreement, *ie* the land on which Range X stood. While the approval status of the pre-existing structures on Range X could affect the specific steps which SRA would take towards the construction of the Club Range, it would not have affected SRA's decision whether to enter into the Agreement to construct the Club Range. Indeed, while Mr Chung stated that he was surprised when he first discovered from BG Lim in June 2015 that the pre-existing structures may not have been authorised,[130] SRA did not from that moment attempt to extricate itself from the Agreement. All it proceeded to do was to further its efforts to build the Club Range in compliance with the regulatory requirements.

103 Finally, I also do not think that SSA had actual knowledge of SRA's mistake. SRA submits that the pre-existing structures were known by SSA to be

129 Plaintiff's Closing Submissions at para 460.

130 Conrad Chung Kong Wann's AEIC at paras 520–521.

illegal, and that SSA was attempting to whitewash this lapse through the regulatory approvals which SSA had expected SRA to obtain in the course of constructing the Club Range. In my view, given the loose structure which prevailed between SSA and member clubs at the time Range X was originally constructed, it is unlikely that SSA would have knowledge of what was done in relation to Range X at the time of its construction. BG Lim, who was the vice-president of the SSA from about 2003 to 2013,[131] testified to this effect, and I have found no reason to doubt his evidence:[132]

> Q Okay, Mr Lim, that means by your evidence you accept that SSA also has the prerogative, right, SSA must know if you are handing over one structure from SSA to SRA, SSA must know whether it's handing a legal or illegal structure ot SRA, agree?
>
> A I would say – I would like to hazard the answer because – let me explain that, your Honour.
>
> Because at that time, the operation of the ranges were such that gun club [*ie* SGC] did whatever it want with the gun club range and SRA did whatever it want. So SSA actually had very little oversight. That I don't think anybody in SSA would know whether that was illegal or legal.

104 The evidence that SRA relies on to establish SSA's actual knowledge of SRA's mistake is also unpersuasive. In this regard, SRA refers to Mr Vaz's statement during cross-examination that at the time the Agreement was signed, he had assumed that SRA thought that the pre-existing structures had been erected with regulatory approval.[133] SRA also refers to an email that Mr Vaz sent in January 2015 asking Mr Loo to remove a roof that SRA had prematurely constructed over a shed at Range X, and indicated that if that were done, the range's gross floor area would remain intact and SRA could begin using the

131 Certified Transcript, 7 February 2018, p 145 at lines 7–8.

132 Certified Transcript, 7 February 2018, p 147 at lines 6–18.

133 Plaintiff's Closing Submissions at para 471.

Club Range while approvals for the shed were being sought (thus implying that no further regulatory approvals were required before the Club Range could be used).[134] Contrary to SRA's submissions, however, I do not think that this evidence shows that SSA had known since the time the Agreement was signed that SRA was mistaken about the approval status of the pre-existing structures. Rather, the evidence is equally consistent with the view that, like SRA, SSA genuinely assumed that the pre-existing structures had been erected with approval.

105 For these reasons, I do not think that the Agreement is void by reason of a unilateral mistake on the part of SRA.

Misrepresentation

106 I turn next to SRA's argument from misrepresentation, beginning with the applicable principles. Once it is established that a contract has been induced by a misrepresentation, whether innocent, negligent or fraudulent, the party induced by the misrepresentation to enter into the contract may elect to rescind or affirm it: see s 1 of the Misrepresentation Act (Cap 390, 1994 Rev Ed). It is also clear that a misrepresentation which would justify rescission of a contract may be used as a defence to an action brought by the representor against the representee: *Chitty on Contracts* (Hugh Beale gen ed) (Sweet & Maxwell, 32nd Ed, 2015) at para 7-117. To establish an actionable misrepresentation, the claimant must show that (a) the defendant made a false representation; and (b) the claimant was induced by that representation to enter into the contract which he seeks to rescind.

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134 Plaintiff's Closing Submissions at paras 474–477.

107 Applied to the present case, these principles require SRA to show that (a) SSA made a false representation that the pre-existing structures had been built with regulatory approval; and (b) SRA was induced by that false representation to enter into the Agreement. SRA argues that both elements are made out and, for this reason, that it is entitled to rescind the Agreement. And this right to rescind, SRA contends, would have afforded SRA a defence against SSA's claim under cl 10. I reject this argument because I am not persuaded that SSA made the alleged misrepresentation.

108 SRA contends that before it entered into the Agreement, SSA made an implied representation to SRA that the pre-existing structures on Range X had been built with approval. SRA relies on three facts in support of this contention: (a) the pre-existing structures looked like dilapidated structures from a previously operational range; (b) SSA did not tell SRA that the pre-existing structures needed regulatory approval; and (c) Mr Vaz told Mr Loo that the range was "already physically there".[135]

109 I reject this submission. The evidence referred to is nothing more than evidence that the pre-existing structures existed – a fact that nobody ever doubted. Nothing was said by SSA about its approval status at the time the Agreement was entered into. That is not enough to constitute a misrepresentation, not even an implied one. As the Court of Appeal held in *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 ("*Broadley Construction*"), the law is always cautious not to ascribe significance to a party's silence, which is "passive conduct" and "inherently lack[s] the definitive quality of an active statement" and is therefore "rarely considered sufficient to amount to a representation" (at [28] *per* Steven Chong

135 Plaintiff's Closing Submissions at para 496.

JA). Of course, silence can acquire positive content, but only where there is a duty to speak on the part of the alleged representor, such that his failure would speak would, in the circumstances, lead a reasonable person to think that a certain representation has been made: *Broadley Construction* at [28], citing the Court of Appeal's decision in *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 at [61] *per* Steven Chong JA. But I do not see how a reasonable person would infer from the mere existence of the pre-existing structures and from SSA's silence that SSA meant to convey positively that the structures had been erected with approval. Equally plausible is the message that the structures are ripe for replacement or that they are of no value to SSA. In the circumstances, SRA in my judgment fails to satisfy the first requirement to establish a claim in misrepresentation.

110 This being the case, it is not necessary for me to consider whether the representation was made innocently, negligently or fraudulently, or whether it induced SRA to enter into the Agreement. The conclusion is that I do not accept that SRA would have been entitled to rescind the Agreement for misrepresentation. Accordingly, SRA's submission that it can raise misrepresentation as a defence to SSA's claim falls away.

Types of loss indemnifiable under cl 10

111 Having dealt with the submissions premised on SRA's claim to be entitled to set aside the Agreement, I turn to examine the submissions which were premised on cl 10 being valid and binding on the parties. The first of these submissions may be summarised as follows:

(a) An indemnity clause only applies to claims by a third party against the indemnified party and not losses suffered by the indemnified party itself.

(b) Since SSA's loss refers solely to the cost of demolition incurred *by* SSA, it is merely a loss suffered by SSA itself, and thus outside the scope of cl 10.

(c) To the extent that SSA claims that the cost of demolition was incurred in fulfilment of contractual obligations owed by SSA to Sport Singapore under to cl 5.15 of the NSC sub-lease, this also falls outside the scope of cl 10 of the Agreement as Sport Singapore had not made any claims against SSA for breach of cl 5.15 of the sub-lease.

112 In support of the proposition at [111(a)] above, SRA cited *BR Energy (M) Sdn Bhd v KS Energy Services Ltd* [2013] 2 SLR 1154 ("*BR Energy*"), where Belinda Ang J found at [149] that the indemnity clause in that case only applied to claims by third parties against the indemnified party. While I have no doubt that indemnity clauses often cover only third party claims, I do not think *BR Energy* laid down any general proposition that all indemnity clauses would, as a rule, apply only to third party claims. Ultimately, the types of loss covered by an indemnity clause must depend on the actual words used in the clause, properly construed in context.

113 In the present case, cl 10 of the Agreement reads:

> **10. INDEMNITY**
>
> The Club shall indemnify and keep indemnified the SSA from and against all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, penalties, costs (*including repair costs to reinstate the Club Range*), losses and expenses of any nature whatsoever which the *SSA may suffer or incur* for any death, injury, loss and/or damage caused directly or indirectly by its activities, including the activities of its members, employees, independent contractors, agents, invitees or other permitted occupier at the Property, including all losses and expenses which the SSA may incur arising from the Insurance Policy not being in force for

> any reason, or if in force, if inadequate to cover all losses and expenses.
>
> [emphasis added]

By contrast, the indemnity clause considered in *BR Energy* reads:

> BRE shall indemnify [KSE] against all claims, proceedings, liabilities, losses, damages, costs and expenses (including legal costs on a full indemnity basis) arising in connection with the Charter Agreement and the Petronas Contract and their respective performance.

114 It is not difficult to appreciate why Ang J held that the indemnity clause in *BR Energy* applied only to third party claims. Apart from the term "losses" which is equivocal, all the other terms used in the clause (*ie* "claims", "proceedings", "liabilities", "damages" and "costs and expenses (including legal costs on a full indemnity basis)") clearly connote third party claims. In comparison, while cl 10 of the Agreement also contains terms referring to third party claims ("claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, penalties"), there are terms in cl 10 for which no equivalents could be found in the *BR Energy* clause, such as "costs (including repair costs to reinstate the Club Range)" and "expenses of *any nature whatsoever* which the SSA may *suffer or incur*" [emphasis added].

115 In my view, the phrase "the SSA may suffer or incur" clearly encompasses losses suffered by SSA. Further, the reference to "costs (including repair costs to reinstate the Club Range)", while making clear that SSA could be indemnified under cl 10 for repair costs it incurred independently of any third party claims, also makes clear that the word "costs", which was partially defined by the phrase "including repair costs to reinstate the Club Range", is not limited to costs arising from third party claim. For these reasons, I do not accept SRA's submission that cl 10 applies only to claims by third parties against SSA and not to losses suffered by SSA itself.

116 Having found that cl 10 covers losses suffered by SSA itself, there is no need for me to go on to consider the final limb of SRA's submission outlined at [111(c)] above.

Breach of implied term

117 SRA's final submission is along these lines:

(a) SSA is not entitled to claim an indemnity under cl 10 for a loss stemming from SSA's own breach of the Agreement.

(b) There is an implied term in the Agreement that SSA would use reasonable efforts to allow and/or assist SRA to obtain the necessary regulatory approval. Further or in the alternative, there is an implied term that SSA would not demolish the structures erected by SRA pursuant to the Agreement without first using reasonable efforts to allow and/or assist SRA to regularise the structures.

(c) The demolition of the structures stemmed from SSA's breach the said implied term or terms.

The proposition at (a) above is uncontroversial and is not disputed by SSA. Examples of local cases where this principle was applied include *BR Energy* at [149] and *Kay Lim Construction & Trading Pte Ltd v Soon Douglas (Pte) Ltd* [2013] 1 SLR 1 at [45] *per* Quentin Loh J. It is, in essence, an application of the oft-cited canon of construction that a contract will be interpreted, so far as possible, in such a manner as not to permit one party to take advantage of his own wrong: see Kim Lewison, *The Interpretation of Contracts* (Sweet & Maxwell, 6th Ed, 2015) at pp 404–408. Instead, the contest between the parties is on the existence of the implied term contended for by SRA.

Implying the term

118 The implication of terms in a contract involves three steps, as laid down by the Court of Appeal in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 ("*Sembcorp Marine*") at [101] *per* Sundaresh Menon CJ. First, the court must ascertain how the gap arises. Implication will be considered only if the court discerns that the gap arose because the parties did not contemplate the issue at all. Second, the court must consider whether it is necessary in the business or commercial sense to imply a term to give the contract efficacy. Third, the court must consider the specific term to be implied. This must be one which the parties, having regard to the need for business efficacy, would have responded, "Oh, of course!" had the proposed term been put to them at the time of the contract. In my judgment, SRA satisfies this test in relation to its submission that there is an implied term that SSA would use reasonable efforts to assist SRA with obtaining planning and building approval for the purpose of constructing the Club Range.

(1) First step: Determining how the gap arose

119 To apply the first step, it is first necessary to ascertain whether there is a gap to be filled by the term sought to be implied. It can be inferred from the term which SRA sought to imply that, at least on SRA's case, the gap to be filled is the absence of provisions in the Agreement concerning SSA's role in relation to the regulatory approval process for the Club Range.

120 It is undisputed that the Agreement is silent on SSA's role and responsibilities in relation to the regulatory approval process for the construction of the Club Range. The closest that the Agreement comes to dealing with the regulatory approval process is in cl 3.2, which provides that:

> [SRA] shall bear all costs, including *inter alia*, architect fees, BCA fess, GFA levies, construction costs and all costs required to obtain approvals and to meet the safety requirements of the SSA in relation to the construction of the Club Range.

As is evident from the above quotation, cl 3.2 merely provides that SRA is to bear all costs required to obtain relevant approvals. No provision is made on which party is responsible for obtaining regulatory approvals. I therefore accept that there is a gap in the Agreement concerning SRA's and SSA's respective roles and responsibilities in relation to the regulatory approval process.

121 The next question is whether the parties addressed themselves to this gap when they entered into the Agreement. As explained in *Sembcorp Marine* at [94], there are at least three ways in which a gap could arise:

(a) the parties did not contemplate the issue at all and so left a gap;

(b) the parties contemplated the issue but chose not to provide a term for it because they mistakenly thought that the express terms of the contract had adequately addressed it; or

(c) the parties contemplated the issue but chose not to provide any term for it because they could not agree on a solution.

122 The Court of Appeal stated in *Sembcorp Marine* that only scenario (a) amounts to a "true" gap, in that it is "the only instance where it would be appropriate for the court to even consider if it will imply a term into the parties' contract" ([95]). In contrast, scenarios (b) and (c) are cases where parties' *actual* intentions can be ascertained, thus leaving no room for implication of terms (at [95]–[96]). In the present case, there is no evidence that either scenario (b) or scenario (c) applies. SSA gave the draft Agreement to SRA on a Thursday or Friday afternoon for SRA to sign by Tuesday noon, failing which SSA would

offer the Agreement to other clubs.[136] There is no evidence that the parties negotiated over the text of the Agreement, much less that they had contemplated the issue and decided not to provide for it. Nor is there any evidence that, at the time the Agreement was signed, the parties mistakenly believed that the issue had already been provided for in the Agreement. In the absence of evidence that either scenario (b) or (c) applies, I find that scenario (a) applies and that the present case involves a "true" gap.

(2) Second step: Considering whether implication of a term is necessary to give the contract efficacy

123 As there is a "true" gap arising from the absence of provisions in the Agreement on SSA's role in the approval procedure, the next step is to consider whether it is necessary to imply a term to fill this gap in order to give the contract efficacy. I begin by observing that the central purpose of the Agreement is for the construction of the Club Range at the NSC. To the extent that such construction involves regulatory approvals, the acquisition of such approvals would be necessary for achieving the intended purpose of the Agreement.

124 Next, it is undisputed that given SSA's position both as lessee of the NSC from Sport Singapore and as the NSA for the sport of shooting, it was not possible for SRA to obtain regulatory approvals or even communicate with authorities such as BCA or URA in relation to the Club Range without SSA's cooperation. In fact, SSA concedes in its closing submissions that SSA had to act as a conduit between SRA on the one hand and Sport Singapore and the regulatory authorities on the other hand.[137] The following exchange during the cross-examination of Mr Vaz is also instructive: [138]

136 Certified Transcript, 24 January 2018, p 119 at line 2 to p 120 at line 14.

137 Defendants' Closing Submissions at para 116.

138 Certified Transcript, 26 January 2018, p 5 at line 25 to p 6 at line 22.

Q. I'm moving on to the next area. Your approval procedure that you have articulated in your AEIC in evidence, it goes like this, doesn't it: SRA to you, SSA; SSA to SportSG; SportSG to BCA and whichever other government agency. Correct?

A. Correct.

Q. By that process, *you accept that SRA would need your help in order to submit any plans to the next level, which is SportSG and then BCA*. Correct?

A. Correct.

Q. Because *without your help intrinsic in that structure, SRA can never get any approvals*?

A. Correct.

Q. Likewise, if that is the upstream, *the reverse must be true*. In other words, if submissions have been made to BCA, intrinsic in your structure of approval is if BCA had any problems, they will need to communicate that to SportSG. Correct?

A. Yes.

Q. SportSG will communicate that to you, SSA?

A. Yes.

Q. SSA will communicate that to SRA?

A. Yes.

…

Q. So your answer is SRA cannot even talk to SportSG without your permission?

A. Oh, let me make it a little clearer. *They can talk, but they cannot get clearances or approvals.* They were in constant communication with Selvam.

Q. All right, so they can talk. Can SRA talk to SportSG on any issues relating to the works at Range-X?

A. Yes. Yes.

Q. Can SportSG assist SRA and talk to SRA as well, if they needed any assistance either way?

A. They can, *but they need our clearance. You must understand, as an NSA -- Sport Singapore only deals with the NSA and nobody else*. With the presence of Mr Loo,

> who is NSA, the NSA facilities manager, SportSG was happy to talk to whoever it was.
>
> [emphasis added]

In the foregoing exchange, Mr Vaz agreed that, without SSA's help, SRA could never obtain any regulatory approvals. Mr Vaz also agreed that any problems which BCA had with the Club Range would not come to SRA's notice without SSA's help.

125 Since it is undisputed that SRA could obtain the relevant regulatory approvals *only with* SSA's cooperation, and that SSA had to play the role of "middle-man"[139] or "conduit"[140] between SRA on the one hand and Sport Singapore and BCA on the other, I hold that the gap concerning SSA's role in the approval process is one that is necessary to be filled in order to give the Agreement efficacy.

(3) Third step: Determining the specific term to be implied

126 Finally, I must determine the content of the term that ought to be implied. The question is whether the term proposed would elicit a "Oh, of course!" from the parties if it had been put to them by an officious bystander at the time of the drafting the Agreement.

127 As outlined at [117(b)] above, SRA asks the court to imply two separate terms – an implied term that SSA would use reasonable efforts to allow and/or assist SRA to obtain the necessary regulatory approvals for the construction of the Club Range and an implied term that SSA would refrain from demolishing the structures which SRA erected towards the construction of the Club Range

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139 Plaintiff's Closing Submissions at para 312.

140 Defendants' Closing Submissions at para 116.

without first using reasonable efforts to allow and/or assist SRA to regularise the structures.

128 In my view, SRA's submission for the implication of two separate terms concerning two different stages of the approval process unnecessarily complicates the issues. I see the two implied terms proposed by SRA as two sides of the same coin – they both relate to the need for SSA's assistance to obtain the necessary regulatory approvals at whatever stage it is sought. This would include approvals before commencement of construction as well as retrospective approvals during or after construction (such retrospective approval would fall within the ambit of "regularisation" as that term was used by parties during the trial and in their submissions). In this regard, I am of the view that it is sufficient to imply a single term into the Agreement that SSA would use reasonable efforts to assist SRA in obtaining any necessary regulatory approval at any stage of the construction process.

129 SSA submits that its role in the approval procedure "was merely as a conduit".[141] If by this is meant that SSA was responsible only for transmission of documents and information up and down the chain without giving its own input or being involved in discussions or meetings with Sport Singapore or the regulatory authorities where needed, I think it would fail the officious bystander test for setting too low a standard. In any event, even if SSA is right that SSA's obligation under the term to be implied is limited to that of being a mere conduit of information, it will be apparent from the discussion at [143] below that SSA had breached even this more limited obligation when it failed to inform SRA that BCA had offered the option of regularisation.

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141 Defendants' Closing Submissions at para 116.

130 In this regard, it is instructive that Mr Vaz himself thought that the Agreement imposed certain obligations on SSA in relation to the approval process. In an email to Sport Singapore dated 20 April 2015, about five months *after* the Agreement was signed, Mr Vaz wrote:[142]

> *Under the terms of the Proprietary Range Agreement,* SRA needs to present all plans *to the SSA for approval by the SSA Council.* Upon approval by the SSA Council, *SSA would seek SportsSG approval and proceed with the necessary approvals to commence construction.* [emphasis added]

131 Given the nature of the gap discussed at [124]–[125] above, the efficacy in the performance of the contract that would be promoted by filling the gap, as well as Mr Vaz's acceptance that SRA could not obtain the necessary regulatory approvals without SSA's help, I am persuaded that, if parties were asked at the time of the contract whether SSA was obliged to use reasonable efforts to assist SRA in obtaining the necessary regulatory approvals, the only answer they would have given was "Oh, of course!".

(4) Relevance of the entire agreement clause

132 SSA submits that no terms should be implied because of cl 15 of the Agreement, which reads:

> **15. Entire Agreement**
>
> 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.*

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142 Agreed Bundle Vol 1 at p 354.

> [emphasis added]

133 The effect of an entire agreement clause on the implication of terms was considered by the Court of Appeal in *Ng Giap Hon v Westcomb Securities Pte Ltd* [2009] 3 SLR(R) 518 ("*Ng Giap Hon*"). The entire agreement clause in *Ng Giap Hon* (cl 18), as reproduced at [29] of the judgment, reads:

> Entire Understanding
>
> 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. [emphasis added]

134 Despite the clause expressly stating that "there are no … terms …, expressed or implied, other than those contained herein", the Court of Appeal in *Ng Giap Hon* held that the entire agreement clause did *not* preclude the implication of terms into the agreement. The Court of Appeal's reasoning is captured at [30] of the judgment, which reads (*per* Andrew Phang Boon Leong JA):

> We find the appellant's argument to the effect that *cl 18 itself contemplates the existence of implied terms* persuasive. Indeed, that clause refers expressly to implied terms, as the italicised words in the clause (as reproduced in the preceding paragraph) clearly demonstrate. This is, in fact, sufficient to dispose of the First Main Issue [*whether the entire agreement clause in cl 18 of the Agency Agreement precludes the implication of terms into that agreement*] in the present appeal.
>
> [emphasis in original]

135 It would appear from the foregoing passage that the Court of Appeal read the phrase "expressed or implied, other than those contained herein" to be an acknowledgment that there existed implied terms which were "contained herein". In other words, the Court of Appeal in *Ng Giap Hon* appeared to have

accepted that certain implied terms could be regarded as terms "contained" within the agreement, with the result that such implied terms would not be caught by a clause seeking to excluding matters not contained within the agreement.

136 The Court of Appeal then went on to make the following observations (at [31]–[32]):

> However, we would also pause to observe that, even if there is no reference to implied terms in an entire agreement clause, it is arguable that the presence of such a clause in a contract would not, as a matter of general principle, exclude the implication of terms into that contract for several reasons. 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 when they entered into the contract. Secondly, if a term were implied on, so to speak, 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 parties for, as we shall see below (at [38]), a term which is implied "in law" (unlike a term which is implied "in fact") is not premised on the presumed intention of the contracting parties as such. Thirdly, it is clearly established law that a term *cannot* be implied if it is *inconsistent with* an *express* term of the contract concerned. This principle is, of course, both logical as well as commonsensical. Finally, as pointed out by Nigel Teare QC (sitting as a deputy judge of the English High Court) in *Exxonmobil Sales and Supply Corp v Texaco Ltd* [2004] 1 All ER (Comm) 435 at [27]:
>
> > It [is] … arguable 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. [emphasis added]
>
> That having been said, we are *not* prepared to state that an entire agreement clause can never exclude the implication of terms into a contract. However, 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 renders the 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 (reference may also be made to Elisabeth Peden & J W Carter, "Entire Agreement – and Similar – Clauses" (2006) 22 JCL 1 at 8–9; *cf* (not surprisingly, perhaps) a similar approach towards the utilisation of the factual matrix of a contract as an interpretative tool where the contract contains an entire agreement clause (see [27] above)). However, this was clearly not the situation in the present appeal.
>
> [emphasis in original]

137 Two comments may be made about this passage. First, the Court of Appeal observed that, for an entire agreement clause to preclude the implication of terms, it must express such effect in clear and unambiguous language. Secondly, the Court of Appeal's citation of the English High Court's decision in *Exxonmobil Sales and Supply Corp v Texaco Ltd* [2004] 1 All ER (Comm) 435 ("*Exxonmobil*") is further indication of the Court of Appeal's acceptance of the notion that certain implied terms should be regarded as terms found *in* the contract.

138 Deputy Judge Nigel Teare QC's opinion at [27] of *Exxonmobil*, which was quoted only in part in *Ng Giap Hon* at [31], sheds light on this second point. It reads:

> The entire agreement clause was also relied upon by Exxonmobil in seeking to defeat the argument that a term should be implied based upon business efficacy. *I have not, on that account, rejected Texaco's argument that a term should be implied on the grounds of business efficacy.* It seems to me arguable 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 the 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. *The same cannot be said of an implied term based upon usage or custom.*
>
> [emphasis added]

139 In this passage, the learned Deputy Judge draws a distinction between terms implied based on business efficacy, which are regarded as intrinsic to the

agreement, and terms implied based on usage or custom which are extrinsic to the agreement. This distinction between intrinsic implied terms and extrinsic implied terms was also recognised subsequently in the English Court of Appeal's decision in *Axa Sun Life Services Plc v Campbell Martin Ltd* [2011] 2 Lloyd's Rep 1, where the court noted at [41]–[42] *per* Stanley Burton LJ that:

> None of the orders specifies the basis for the implication of the terms alleged by the defendants. It is apparent, however, that the defendants allege that they are to be *implied in order to give business efficacy to the agreements*. In other words, *the implied terms are said to be intrinsic to the agreements*, and true implications. In my judgment, such terms, if otherwise to be implied, are not excluded by clause 24. *As intrinsic provisions of the agreement, they are within the expression "This Agreement and the Schedules and documents referred to herein"* in the first sentence, and they are not "prior" to the agreement, and therefore are unaffected by the second sentence. The agreement might have included, but does not include, an express specific exclusion of such implied terms.
>
> On the other hand, terms that might be implied as a result of matters *extrinsic* to the written agreements would, in my view, be excluded by clause 24.
>
> [emphasis added]

140 The following principles may be derived from the foregoing cases:

(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.

141 Here, as the term sought to be implied is based on business efficacy, it is intrinsic to the Agreement and not 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). As for the presence in cl 15 of the phrase "all conditions, warranties or other terms implied by statute or by common law are hereby excluded to the fullest extent permitted by law", the phrase could be read to refer only to terms implied in law, to the exclusion of terms implied in fact. (Terms implied in fact would include terms implied based on business efficacy.) While I appreciate that in some contract law textbooks, the phrase "terms implied at common law" is used to refer to both terms implied in fact and terms implied in law, this manner of classification is by no means universally adopted. In the circumstances, it cannot be said that the phrase "terms implied by statute or by common law" *clearly and unambiguously* refers to terms implied based on business efficacy as a *specific* category of terms to be excluded. It is therefore my conclusion that the term sought to be implied in the present case is not precluded by cl 15.

Whether SSA breached the implied term

142 SRA submits that SSA breached the implied term or terms when:

(a) SSA failed to inform SRA that the plans submitted by SRA to SSA were not in the right format for seeking regulatory approvals or that SRA required further approvals;

(b) SSA reported to Sport Singapore and BCA surreptitiously that SRA had constructed "illegal structures", without SRA's knowledge;

(c) after SSA received the demolition order from BCA together with the regularisation letter, SSA unilaterally withheld the regularisation letter and the option of regularisation from SRA;

(d) SSA presented a false state of affairs to SRA which impeded SRA's regularisation efforts;

(e) SSA engaged in deliberately obstructive conduct in refusing to collaborate with SRA's effort in engaging BCA on the regularisation process; and

(f) SSA unilaterally sought demolition of the Club Range when there were no immediate safety concerns.

143 In my judgment, the operative breaches for present purposes comprise items (c) to (e) above. In relation to item (c), it is common ground between SRA and SSA that, at the minimum, SSA had to act as a conduit of communication between SRA on the one hand and Sport Singapore and BCA on the other hand. SSA's failure to communicate the regularisation letter and the option of regularisation to SRA is therefore a clear breach of the implied term.

144 In relation to item (d), Mr Vaz said, at the SSA council meeting held on 14 November 2015, that "the window of opportunity to regularise the Range had closed as BCA had issued the Demolition Order".[143] This statement is clearly untrue as BCA, through the issuance of the regularisation letter, kept the window for regularisation open. Further, when SRA's representative at the meeting asked if there was a complaint about the Club Range which led to

[143] Agreed Bundle Vol 2, p 655 at para 47.

BCA's demolition order, Mr Vaz did not admit to having made any complaints to BCA. Instead, he deceitfully suggested that:[144]

> … after a series of poison letters to various organisations and authorities including MCCY, Sport SG, NEA, PUB, CPIB etc. from anonymous authors, many people had visited NSC for inspection and could have picked up the issues surrounding the Range.

These lies on the part of Mr Vaz are inconsistent with SSA's obligation to assist SRA. On the contrary, Mr Vaz's misrepresentation of the situation impeded SRA's ability and effort to seek regularisation by causing SRA, firstly, not to understand that BCA was open to regularisation and, secondly, not to appreciate the nature of the complaints and concerns which led to BCA's demolition order.

145 In relation to item (e), after SRA found out from BCA that regularisation of the structures was possible, SSA deliberately obstructed SRA's efforts to seek regularisation. By 27 November 2015, BCA was willing to provide guidance on the regularisation process and offered to host a meeting with SRA and SSA.[145] Instead of cooperating with SRA and BCA towards regularisation, SSA flatly refused to attend the meeting, thereby cutting off SRA's hope of regularising the Club Range and salvaging the more than $300,000 of members' moneys invested by SRA in constructing the Club Range. Mr Vaz sought to explain during trial that he did this to protect Sport Singapore from possible prosecution by BCA.

146 This explanation is illogical. As it was BCA who first offered the option of regularisation by issuing the regularisation letter and subsequently offered to host discussions on regularisation, it is inconceivable that SSA's participation

144 Agreed Bundle Vol 2, p 656 at para 49.

145 Agreed Bundle Vol 2 at p 978.

in such discussions *with BCA*, *at BCA's invitation*, could somehow put Sport Singapore in jeopardy of prosecution by BCA. In the end, Mr Vaz conceded during cross-examination that the decision not to collaborate with SRA and BCA on regularisation was taken solely by SSA, and without any order from or consultation with Sport Singapore.

147 In conclusion, SSA was obliged to take reasonable efforts to assist SRA in obtaining building approval from BCA. These efforts include informing SRA of the regularisation option offered by BCA and assisting SRA with its communications and engagements with BCA towards regularisation. SSA did exactly the opposite. In doing so, it breached an implied term under the Agreement. The effect of SSA's breach was to render the demolition the Club Range the only possible outcome. In the circumstances, it is clear that the cost of the demolition stems from SSA's breach of the implied term. I therefore hold that SSA cannot rely on cl 10 to claim an indemnity for that cost. For this reason, I dismiss SSA's counterclaim.

An alternative analysis

148 I should also mention that even if SRA did not rely on the argument that SSA breached an implied term of the Agreement, there would still be sufficient basis to dismiss SSA's counterclaim on the ground that SSA's unilateral decision to demolish the structures broke the chain of causation between SRA's actions and the cost incurred for demolishing the structures, thereby bringing such costs outside the scope of cl 10. As this was not a point on which the parties submitted, I will only deal with it briefly for completeness.

149 As noted at [113] above, cl 10 requires SRA to indemnify SSA for "losses and expenses of any nature whatsoever which the SSA may suffer or

incur for any death, injury, loss and/or damage *caused directly or indirectly by its activities*, including the activities of its members, employees, independent contractors, agents, invitees or other permitted occupier at the Property" (emphasis added). I consider that SSA's loss was not "caused directly or indirectly" by SRA's building of the Club Range within the meaning of cl 10 of the Agreement. The evidence is clear that demolition of the Club Range was never a forgone conclusion for anyone other than Mr Vaz. It will be recalled that on 6 November 2015, BCA wrote to Sport Singapore and asked it either to tear down the Club Range or to take steps to regularise it. BCA left the choice to Sport Singapore and did not require Sport Singapore to prefer demolition over regularisation. Sport Singapore communicated those two options to SSA, and similarly did not require SSA to prefer demolition over regularisation. It was Mr Vaz who, within a day of receiving that information, promptly and unilaterally decided on 11 November 2015 that SSA would choose the option of demolishing the Club Range.[146]

150 Also significant is the fact that BCA itself displayed no urgency about having the Club Range demolished. Indeed, BCA was of the view that the Club Range posed no immediate danger.[147] BCA was ready to talk, and SRA was prepared to take steps to regularise. Thus, not only did BCA offer the option of regularisation, as of 27 November 2015, which was after the deadline of 20 November 2015 for responding to the regularisation letter, BCA was still initiating a meeting with SSA and SRA so that the parties could discuss the matter.[148] But SSA declined to attend. And as SRA correctly highlights, there is

146 Agreed Bundle Vol 2 at p 586.

147 Lu Ji Ju's AEIC at para 18.

148 Agreed Bundle Vol 2 at p 978.

no evidence that Sport Singapore told SSA to proceed directly with demolishing the Club Range and not attend the meeting.[149]

151 Mr Vaz's other reasons for unilaterally deciding to demolish the Club Range are also unsustainable. First, he relied on the fact that the demolition order was stated to require strict compliance,[150] but this simply ignores the context of the accompanying regularisation letter. Second, Mr Vaz claimed that as SRA, for much of 2015, had not been forthcoming with documents necessary for regulatory approvals, there was no reason to believe that SRA could meet BCA's 20 November 2015 deadline for regularisation.[151] SRA's response to this claim is that SSA never made it clear to SRA that the documents it had submitted to SSA were inadequate for the purpose of obtaining regulatory approval. While I accept that SRA may have been dilatory in its approach towards obtaining regulatory approval, there is no evidence that SRA was unwilling to cooperate to obtain such approval at what SRA believed (rightly or wrongly) was the appropriate time. The persons involved in the project on SRA's side are professionals in the construction industry who are familiar with the planning and building approval process, and it is clear from the correspondence that they were working towards obtaining the relevant approvals. Consequently, there was no basis for Mr Vaz's supposition that SRA would be dilatory in responding to the regularisation letter accompanying the demolition order. Had SRA been informed of the regularisation letter, it would have known that acting promptly pursuant to the regularisation letter would be the way to avoid the $300,000 of members' money poured into the construction

149 Plaintiff's Closing Submissions at para 410.

150 Certified Transcript, 26 January 2018, p 139 at lines 3–4.

151 Agreed Bundle Vol 2 at p 586.

of the Club Range going to waste. Unfortunately, SSA deprived SRA of this opportunity.

152 The truth is that Mr Vaz jumped the gun. He was unhappy that SRA did not do things in exactly the way he wanted. It is also relevant that, at about this time, there were brewing disputes between SSA and SRA on other fronts, including the implementation of further security measures for the armouries. As I have mentioned, SSA blew the whistle on SRA by writing secretly to BCA to complain of the structures. Unhappy with BCA's lack of response, Mr Vaz wrote personally to ask BCA urgently to order the demolition of the new structures built by SRA. Mr Vaz used the phrase "illegal structures" to describe these structures when there appeared to be no solid ground at that time for Mr Vaz to conclude that the structures were illegal: see [13] above. When BCA acted, and SRA asked who could have alerted BCA, Mr Vaz did not claim responsibility. Instead, he deceitfully claimed that anyone could have written the letter, thus hiding his role from SRA. Mr Vaz also hid the regularisation letter from SRA, showing it only the demolition order.

153 It was Mr Vaz's course of conduct, and those in the SSA council who supported it, that were the cause of the cost SSA incurred in demolishing the Club Range. SRA's building of the Club Range was at most a "but for" cause, in the sense that it merely provided the occasion for that cost to be incurred. It was not an effective or proximate cause of that cost, and thus not a cause coming within the ambit of cl 10. Even if SRA's building of the Club Range had been a cause of the incurring of that cost, SSA broke the chain of causation through Mr Vaz's orchestration of the events described at [149]–[153] above. Had SSA not written secretly to BCA, there would very likely not have been a demolition order, and SRA would very likely have succeeded in obtaining the regulatory approvals it planned to obtain at the time it planned to obtain them. Further, had

SSA not hidden BCA's regularisation letter from SRA and not deliberately obstruct SRA's efforts at regularisation, SRA would very likely have succeeded in obtaining regularisation since it was BCA's opinion that the structures posed no danger.

154 In conclusion, even when the facts are analysed purely in terms of causation, without taking into account possible implied terms, it is clear that the cost of demolition was not caused by SRA's activities but by SSA's actions. SSA's attempt to rely on cl 10 to claim the cost of demolition from SRA must therefore fail.

155 There is one other question I should address before concluding the discussion on causation: Does the fact that the same legal conclusion on SSA's counterclaim could be reached by a causation analysis without reliance on implied terms mean that the implied term which I have found at [127] above is not "necessary" for the purpose of giving business efficacy to the Agreement? The answer, in my view, is "no", as the business efficacy test asks whether it is necessary to imply a term to give business efficacy to the operation of a contract as a whole, and not whether it is necessary to imply a term to allow or defeat a specific legal claim arising from a particular set of facts. In any event, the two analyses do not lead to identical legal results. While both the implied term analysis and the causation analysis would afford SRA a defence against SSA's claim, the implied term analysis would, in addition, afford SRA a claim against SSA for breach of contract.

Conclusion

156 For all the reasons above, I accept SRA's claim and reject SSA's counterclaim. I therefore make the following declarations:

(a) The circular resolution suspending SRA's privileges at the NSC is null and void.

(b) SSA has no power to suspend the rights of its members save as expressly provided for in SSA's constitution.

(c) Unless and until SSA's constitution is amended to provide otherwise, the SSA council does not have the power to make decisions by circular resolution.

157 I make no order on SRA's application for declarations that SSA has no right to seek armoury licences and no right to regulate the usage or mode of the storage of firearms. SSA purports to exercise such rights through various terms in the circular resolution. SRA therefore claims that SSA does not have any such rights, and that is yet another reason why the circular resolution is void. It is not necessary for me to decide this issue given my conclusion on the resolution's validity. In any event, I do not think that it properly arises in this case because apart from SSA's power to suspend a member, SSA's other powers are not genuinely in issue in this case.

158 Finally, I also order that:

(a) Mr Vaz, Mr Yap and Mr Chen are to pay SRA damages in the amount equivalent to the legal fees and disbursements incurred by SRA in investigating and responding to the conspiracy, such fees and disbursements to be taxed if not agreed.

(b) SSA's counterclaim is dismissed.

Pang Khang Chau
Judicial Commissioner

Wong Hin Pkin Wendell, Teo Ying Ying Denise and Tan Si Ying Evelyn (Drew & Napier LLC) for the plaintiff;
Lee Hwee Khiam Anthony and Huineng Clement Chen (Bih Li & Lee LLP) for the defendants.
