Neo Siong Chew *v* Cheng Guan Seng and others
[2013] SGHC 93

Case Number : Suit No 326 of 2011

Decision Date : 30 April 2013

Tribunal/Court : High Court

Coram : Lai Siu Chiu J

Counsel Name(s) : Vijay Kumar (Vijay & Co) for the plaintiff; The first defendant in person; Appoo Ramesh (Just Law LLC) for the second defendant; Lee Yoon Tet Luke (Luke & Co) for the third defendant.

Parties : Neo Siong Chew — Cheng Guan Seng and others

Tort – Breach of Statutory Duty

Tort – Negligence

Tort – Negligence – Contributory Negligence

Tort – Occupier's Liability

30 April 2013 Judgment reserved.

Lai Siu Chiu J :

Introduction

1 This was a claim by Neo Siong Chew ("the plaintiff") against Cheng Guan Seng ("the first defendant"), Sim Lian-Koru Bena JV Pte Ltd ("the second defendant") and Kim Ting Landscape (Pte) Ltd ("the third defendant") for injuries that the plaintiff sustained arising out of an accident involving an excavator operated by the first defendant on 2 November 2008.

The facts

2 The second defendant was the main contractor for the construction of a 16-storey office building at Lorong 6 Toa Payoh ("the Site"). The second defendant appointed Hock Po Leng Landscape & Construction Pte Ltd ("Hock Po Leng") to cut and uproot trees at the Site ("the job"). Hock Po Leng in turn subcontracted the job to the third defendant.

3 The third defendant hired an excavator from Gim Soon Heng Engineering Contractor ("Gim Soon Heng") to do the job. Since Gim Soon Heng had no excavators available for hire, it sub-contracted the work to the first defendant who was an independent excavator operator.

4 On 2 November 2008, the plaintiff was supervising and working with the third defendant's workers to carry out the job at the Site. At or around 2:15pm, the excavator operated by the first defendant reversed into the plaintiff. The plaintiff sustained fractures to his lower body and was hospitalised.

The pleadings

5 The plaintiff alleged that the first defendant was negligent and breached his statutory duty when he drove the excavator at an extremely fast and unsafe speed without keeping a proper lookout. It was also alleged that the first defendant was in breach of ss 15(3) and 17(4)(a) of the Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed) ("WSHA") for endangering the safety of others and failing to ensure that the machine was maintained in a safe condition. The plaintiff claimed special damages totalling $273,925.92 which included the loss of pre-trial earnings of $179,280.00. He also claimed general damages.

6 The first defendant did not deny that a collision had occurred between his excavator and the plaintiff. However, he denied that he was negligent or had breached his statutory duty under the WSHA. He averred that a signal man named Rakkappan Suresh ("Suresh") from the second defendant was directing the backward movement of his excavator when the plaintiff suddenly dashed across the back of the excavator and collided into it. The first defendant further alleged that the injury and loss sustained by the plaintiff from the accident was wholly caused or contributed to by the plaintiff's own negligence.

7 Similarly, the plaintiff alleged that the second defendant was negligent and breached its statutory duty because it failed to instruct the first defendant to carry out the excavation work and the levelling of hard core in a safe manner. The second defendant also failed to cordon off the walkway and ensure that the excavator did not encroach on the walkway. In addition, the plaintiff contended that the second defendant breached ss 11(a) and 11(b) of the WSHA because it failed to ensure that there was a safety supervisor on site to regulate a safe system of work.

8 The second defendant denied giving instructions to the first defendant to carry out the excavation work and the levelling of hard core. The second defendant further alleged that the injury and loss sustained by the plaintiff from the accident was wholly or substantially caused by the negligence of the first defendant, third defendant and the plaintiff. The second defendant further contended that it was not in breach of its duties as occupier of the Site.

9 The plaintiff alleged that the third defendant was negligent and breached its statutory duty because it failed to ensure that the plaintiff was working in a safe environment. Also, the plaintiff contended that the third defendant breached ss 12(2) and 12(3) of the WSHA because it failed to take reasonable safety measures to ensure that the excavator would not collide with the plaintiff.

10 The third defendant denied employing the plaintiff as a supervisor. It contended that the plaintiff was engaged as its partner and was an independent contractor at all times and that the plaintiff's injuries were not caused by any negligence or breach of statutory duty on the third defendant's part. The third defendant further contended that the plaintiff was responsible to himself in the performance of his job and that adequate precautions were taken to prevent accidents. In addition, the third defendant pleaded that the accident was wholly caused or contributed to by the negligence of the plaintiff in failing to take adequate care of his own safety.

The evidence

11 The trial was only to determine liability with the issue of damages (should the plaintiff succeed) held over to a later date to be dealt with by the Registrar.

The plaintiff's case

12 In the plaintiff's affidavit of evidence-in-chief ("AEIC"), he deposed that on 2 November 2008, he arrived at the Site with some workers to remove tree parts, trunks and roots from the Site. At

2:30pm, he noticed the first defendant's excavator as he was walking along the Site's cemented path towards the side gate to purchase drinks for the workers. According to him, the excavator was stationary and did not produce any engine sounds or exhaust smoke. All of a sudden, the excavator reversed in the direction of the plaintiff at an extremely fast speed. The plaintiff attempted to avoid the excavator by running out of its path but fell down in the process of doing so. The excavator went over his feet, legs and waist before moving forward and releasing the plaintiff.

13 The plaintiff further deposed that the excavator had no rear view mirror. Also, a signal man, who could have prevented the accident, was not present.

14 Under cross-examination by counsel for the second defendant, the plaintiff denied that his back was facing the excavator (while assisting the third defendant's director to reverse his lorry into the Site) when the accident happened.

The first defendant's case

15 The first defendant's AEIC was brief and has been substantially set out earlier at [6]. He further deposed that he had no time to react to the sudden movement of the plaintiff nor did he receive any warning from a signal man. During cross-examination by counsel for the second defendant, the first defendant admitted that he reversed the excavator even though he could not actually see if there was anyone behind. However, he testified that he sounded the excavator's horn before reversing.

16 Upon further cross-examination by counsel for the plaintiff, the first defendant admitted that there was no signal man guiding him on 2 November 2008.

The second defendant's case

17 The project manager for the second defendant, Ong Chin Chye Ronald ("Ronald"), deposed in his AEIC that the plaintiff, first and third defendants had organised and carried out work at the Site on 2 November 2008. He further deposed that the second defendant's workers were not involved in the job at the Site on 2 November 2008.

18 During cross-examination by counsel for the plaintiff, Ronald testified that he did not inform the second defendant's safety manager about the work to be carried out at the Site on 2 November 2008.

19 The safety manager for the second defendant, Lew Peng Kong ("Lew"), deposed in his AEIC that he filed a report with the Ministry of Manpower ("MOM") regarding the accident on 2 November 2008. He further deposed that the MOM did not find the second defendant responsible for the accident in any way.

20 During cross-examination by counsel for the plaintiff, Lew admitted that he did not interview the first defendant before putting up the accident report to the MOM. He revealed that the second defendant paid the fine of $1,000 imposed by MOM without knowing what the fine was for.

21 Suresh, a construction worker employed by the second defendant, deposed in his AEIC that he was stationed at the Site on 2 November 2008 as a representative of the second defendant and that he was not required to give instructions to the contractors at the Site. He did not witness the accident because he was in the toilet at the time of the accident.

The third defendant's case

22 The director for the third defendant, Oh Tiong Beng ("Ben"), deposed in his AEIC that the plaintiff had always been engaged as the third defendant's partner or sub-contractor and never as the third defendant's employee.

23 During cross-examination by counsel for the plaintiff, Ben testified that he saw the plaintiff signalling him to reverse his lorry before the accident. Subsequently, he did not see the plaintiff or the accident taking place. Ben further testified that he considered the plaintiff his worker.

24 On further cross-examination by counsel for the second defendant, Ben testified as follows:

Q: Did you speak to the plaintiff after the accident and gather his version of how the accident occurred?

A: I did ask after the accident, however it's been too long so I can't really remember.

...

Q: Do you recollect what he said to you about the accident?

A: He said he was going to buy coffee.

Q: Okay. What else?

A: He said he was going to buy coffee and ask Sukri to give me signal. I only heard this little bit.

The issues

25 The issues for the court's determination are:

(a) Was the first defendant negligent?

(b) Did the first defendant breach its statutory duty under the WSHA?

(c) Was the second defendant negligent?

(d) Did the second defendant breach its statutory duty under the WSHA?

(e) Was the second defendant liable as the occupier of the Site?

(f) Was the third defendant negligent?

(g) Did the third defendant breach its statutory duty under the WSHA?

(h) Was the plaintiff contributorily negligent?

The decision

The claims against the first defendant

The negligence claim

26 Having considered the oral and documentary evidence presented in court, I am of the view that

the first defendant was negligent in causing the accident at the Site.

27 I find the first defendant's version of how the accident took place to be less credible than the plaintiff's version. The first defendant deposed in his AEIC that Suresh had acted as his signal man and look-out. However, during cross-examination, he contradicted himself and admitted that there was no such person acting as his signal man. Furthermore, Suresh himself testified that he did not witness the accident because he was in the toilet at the material time. I also find the plaintiff's version more credible because it was corroborated by Ben during cross-examination.

28 The first defendant candidly admitted during cross-examination that he could not actually see if anyone was behind the excavator when he was reversing the excavator. This meant that the first defendant could not have seen the plaintiff "suddenly dashing across the back of the excavator".

29 Applying the two stage test in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100, I find that the first defendant owed a duty of care to the plaintiff as one of the workers at the Site. I also find that the first defendant breached this duty to take reasonable care in operating the excavator at the Site because:

(a) He could not see whether anyone was behind when he was reversing the excavator;

(b) He failed to repair his excavator's broken side mirror;

(c) He failed to enlist the assistance of a signal man to check if anyone was behind his excavator when reversing;

(d) He failed to take any other precautionary measures to avoid colliding into and injuring workers at the Site.

30 Therefore, I find that the first defendant was negligent in operating the excavator and causing injury to the plaintiff.

The breach of statutory duty claim

31 The plaintiff contended that the first defendant was in breach of his statutory duty under ss 15(3) and 17(4) of the WSHA for endangering the safety of others and failing to maintain the excavator in a safe condition respectively. Section 15(3) of the WSHA states:

> Any person at work who, without reasonable cause, wilfully or recklessly does any act which endangers the safety or health of himself or others shall be guilty of an offence.

32 Section 17(4) of the WSHA states:

> Where any machinery moved by mechanical power is used in any workplace, then notwithstanding anything in this Act, it shall be the duty of the owner of the machinery to ensure —
>
> (a) so far as is reasonably practicable, that the machinery is maintained in a safe condition; and
>
> (b) that the precautions (if any) to be taken for the safe use of the machinery and the health hazards (if any) associated with the machinery are available to any person using the machinery.

33 It is my view that the first defendant was in breach of s 17(4) of the WSHA because he failed to ensure that the side mirror of his excavator was in a usable condition. He acknowledged that "the mirror was hanging there without the glass". The first defendant was also in breach of s 15(3) of the WSHA for operating the excavator without a working side mirror or a signal man. The unfortunate accident which eventuated goes some way in showing that the first defendant's actions had endangered the health and safety of the workers at the Site on that fateful day.

34 However, a breach of statutory duty *per se* does not automatically give rise to a right of private action (*Manickam Sankar v Selvaraj Madhavan (trading as MKN Construction & Engineering) and another* [2012] SGHC 99 at [77]; *Animal Concerns Research & Education Society v Tan Boon Kwee* [2011] 2 SLR 146 at [24]). The plaintiff also has to prove that Parliament had intended to confer on the plaintiff (as a member of a limited class) a private right of action for breach of the duty (*Tan Juay Pah v Kimly Construction Pte Ltd and others* [2012] 2 SLR 549 ("*Tan Juay Pah*") at [54]).

35 Both the plaintiff and the first defendant did not advance any submissions on whether Parliament intended to provide a right of private action for a breach of statutory duty in the present circumstances. In the light of my finding (at [30] above) that the first defendant was negligent, it is not necessary for me to go further and consider whether the claim for breach of statutory duty had been made out.

The claims against the second defendant

The negligence claim

36 The crucial question to be answered in this claim is whether the second defendant (as the main contractor) owed a duty of care to the plaintiff who was engaged by the third defendant for landscaping work.

37 It is established that a main contractor owes a workman a duty of care even if the workman was not employed by him but by a subcontractor if the main contractor exercised or had the right to exercise control over the workman in respect of the work which he was engaged to perform (*Awang bin Dollah v Shun Shing Construction & Engineering Co Ltd and other appeals* [1997] 2 SLR(R) 746 at [20]; *Ma HongFei v U-Hin Manufacturing Pte Ltd and another* [2009] 4 SLR(R) 336 at [48]–[49]).

38 On the present facts, the second defendant did not owe a duty of care to the plaintiff because it did not exercise nor had the right to exercise control over the plaintiff. Although Suresh from the second defendant was stationed at the Site on 2 November 2008, he did not give the plaintiff any instructions on the manner and execution of landscaping work to be done. His consistent testimony in court was that he was at the Site to open the Site's gate and answer telephone calls in the office. I accorded little weight to the plaintiff's inconsistent testimony in court because it wavered from not receiving any instructions from Suresh to being instructed to clear the rootballs by the end of the day.

39 Even if I were to accept that Suresh had indeed given such an instruction, this instruction alone is insufficient to establish that the second defendant had the right to exercise control over the plaintiff because the plaintiff had already been instructed by Ben to clear the rootballs by the end of that day. In the circumstances, Suresh's subsequent instruction was merely a reminder of the job's stipulated time frame.

40 Therefore, the plaintiff's claim against the second defendant in negligence fails.

The breach of statutory duty claim

The breach of statutory duty claim

41 The plaintiff contended that the second defendant was in breach of its statutory duty under s 11(a) and 11(b) of the WSHA for failing to take reasonably practicable measures to ensure that the workplace and access to it was safe. The relevant provisions state:

> **Duty of occupier of workplace**
>
> 11. It shall be the duty of every occupier of any workplace to take, so far as is reasonably practicable, such measures to ensure that —
>
> (a) the workplace;
>
> (b) all means of access to or egress from the workplace; and
>
> (c) ...
>
> are safe and without risks to health to every person within those premises, whether or not the person is at work or is an employee of the occupier.

42 A fine of $1,000 had been imposed on the second defendant by MOM for breaching s 11(a) of the WSHA. The Charge against the second defendant stated:

> Failed to take reasonably practicable measures to ensure that the workplace was safe and without risks to health to every person within the premises, to wit, you failed to assess the risk involved during the backfilling of the staircase area using the excavator and implement measures to warn persons working in close proximity with the excavator.

43 Although the date in the MOM notice (5March 2009) does not correspond to the date of the accident (2 November 2008), I accept the MOM officer's explanation that the date was an error. I also accept that the fine was the result of MOM's investigations into the 2 November 2008 accident. In my opinion, the second defendant also breached s 11(b) of the WSHA because the path leading to the side gate was part of the Site.

44 As pointed out earlier in [34], in addition to establishing a breach of statutory provisions, the plaintiff has to show that Parliament intended to confer on the plaintiff (as a member of a limited class) a private right of action for breach of the duty (*Tan Juay Pah* at [54]). However, both the plaintiff and the second defendant did not advance any submissions on whether Parliament intended to provide a right of action for a breach of statutory duty.

45 After considering the WSHA and the relevant parliamentary materials, I am of the view that Parliament did not intend to confer such a private right of action for a breach of statutory duty. The WSHA itself is silent on the question of parliamentary intention to confer a private right of action. Section 60 of the WSHA does not confer or take away any right to bring a private claim in respect of a breach of statutory duty under the WSHA (*Tan Juay Pah* at [63]).

46 Similarly, parliamentary materials on the WSHA including the second reading of the Workplace Safety and Health Bill 2005 (*Singapore Parliamentary Debates*, *Official Report* (17 January 2006) vol 80 ("*Singapore Parliamentary Debates* vol 80")) are silent on the question of parliamentary intention. Although Parliament intended to protect workers at the workplace through the imposition of a more direct liability regime (*Singapore Parliamentary Debates* vol 80 at col 2209), this alone is insufficient to establish that Parliament intended to confer a private right of action (*Tan Juay Pah* at [54]).

47 I am fortified in my conclusion by the existence of a criminal penalty which is generally a factor which militates against the finding that Parliament intended to confer a civil remedy (*Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another suit* [2009] 4 SLR(R) 788 at [210]). The breach of s 11 of the WSHA in this case attracts criminal penalties (see s 20 read with s 50 of the WSHA).

48 Accordingly, the breach of statutory duty claim against the second defendant is dismissed.

The occupier's liability claim

49 An occupier owes a duty of care to prevent injury to an invitee from unusual dangers which the occupier knows or ought to have known about (*Mohd bin Sapri v Soil-Build (Pte) Ltd and another appeal* [1996] 2 SLR(R) 223 at [47] ("*Sapri*")). Critically, this duty only pertains to the physical condition of the premises and not the operations at the site (*Sapri* at [47]).

50 I accept the second defendant's submission that the accident arose out of the operations at the Site. Obviously, the operation of the plaintiff's excavator at the Site did not relate to the physical condition of the premises. Therefore, the plaintiff's claim against the second defendant based on occupier's liability fails. In any event, the plaintiff cannot rely on this cause of action because he has not pleaded it.

The claims against the third defendant

The negligence claim

51 The third defendant submitted that the plaintiff was not an employee of the third defendant but an independent contractor who was responsible to himself for the performance of his job. Further, the accident was caused by the plaintiff's own negligence.

52 On a balance of probabilities, I am of the opinion that the plaintiff was an independent contractor for the following reasons:

(a) The plaintiff's name is conspicuously absent from the CPF's list of employees who have received CPF contributions from the third defendant;

(b) Contrary to the plaintiff's claims in his affidavit, the third defendant did not submit the plaintiff's income tax returns on his behalf;

(c) One of the third defendant's employees, Sukri, testified that he had a letter of appointment. The plaintiff was unable to produce a similar letter of appointment.

53 The finding that the plaintiff was an independent contractor does not automatically absolve the third defendant from liability in negligence (*Sapri* at [32]). In *Sapri*, the question under consideration was whether a person who appointed a sub-contractor could be liable in negligence to the sub-contractor's employees. The Court of Appeal held that such a person may still be liable where the working conditions are inherently dangerous, thereby requiring the exercise of a significant degree of supervision and control over the employees (*Sapri* at [32]). Even though the facts of the present case are not *in pari materia* with those in *Sapri*, the principles laid down in *Sapri* are nonetheless relevant in deciding the present case of whether the third defendant owed a duty of care to the plaintiff as an independent contractor.

54 I find there was nothing inherently dangerous about the landscaping work carried out by the plaintiff that required a significant degree of supervision and control from the third defendant. The evidence shows that the plaintiff himself exercised supervision and control over the landscaping work and the third defendant's workers at the Site. The third defendant's director, Ben, was only at the Site to carry out driving duties because the regular driver was on leave on 2 November 2008.

55 Therefore, the plaintiff's claim in negligence against the third defendant fails.

The breach of statutory duty claim

56 The plaintiff contended that the third defendant was in breach of its statutory duty under s 12(2) and 12(3) of the WSHA for failing to take reasonably practicable measures to ensure the health and safety of persons at the Site and for failing to provide a safe work environment. The relevant provisions state:

> **Duties of employers**
>
> 12.—(1) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of his employees at work.
>
> (2) It shall be the duty of every employer to take, so far as is reasonably practicable, such measures as are necessary to ensure the safety and health of persons (not being his employees) who may be affected by any undertaking carried on by him in the workplace.
>
> (3) For the purposes of subsection (1), the measures necessary to ensure the safety and health of persons at work include —
>
> (*a*) providing and maintaining for those persons a work environment which is safe, without risk to health, and adequate as regards facilities and arrangements for their welfare at work;
>
> (*b*) ensuring that adequate safety measures are taken in respect of any machinery, equipment, plant, article or process used by those persons;
>
> (*c*) ensuring that those persons are not exposed to hazards arising out of the arrangement, disposal, manipulation, organisation, processing, storage, transport, working or use of things —
>
> (i) in their workplace; or
>
> (ii) near their workplace and under the control of the employer;
>
> (*d*) developing and implementing procedures for dealing with emergencies that may arise while those persons are at work; and
>
> (*e*) ensuring that those persons at work have adequate instruction, information, training and supervision as is necessary for them to perform their work.

57 In my opinion, there were no reasonably practicable measures that the third defendant could have implemented to prevent the excavator from colliding into the plaintiff. It is unclear whether the measures suggested by counsel for the plaintiff (Mr Vijay Kumar) such as conducting a safety briefing and coordinating with the second defendant would have prevented the accident. Also, the other

measures suggested such as inspecting the excavator and barricading the pathway were not reasonably practicable in the light of the routine and uncomplicated nature of the landscaping work. I should add that the plaintiff himself admitted that he did not discuss any safe working methods with Ben because he was responsible for the applicable safe working methods and coordination of work at the Site.

58 Therefore, the plaintiff's claim for a breach of statutory duty against the third defendant similarly fails.

The plaintiff's contributory negligence

59 All three defendants had pleaded that the collision was caused wholly or substantially by the plaintiff's contributory negligence. The concept of contributory negligence was pithily explained by Lord Denning MR in *Froom and others v Butcher* [1976] 1 QB 286 at 291:

> …Contributory negligence is a man's carelessness in looking after *his own* safety. He is guilty of *contributory* negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable prudent man, he might be hurt himself: see *Jones v Livox Quarries Ltd* [1952] 2 Q.B 608 … [emphasis in original]

60 After considering the evidence as a whole, I find the plaintiff was contributorily negligent, to the extent of 30% for the injuries sustained by him as a consequence of the accident. The plaintiff's warning to the third defendant's workers to "keep away from the excavator" showed that he appreciated the danger posed by working in close proximity with the excavator. Given the size of the excavator and the noise it generated, the plaintiff must have noticed the excavator as he was making his way to the side gate. A reasonably prudent man in the plaintiff's position would have kept a close eye on the excavator and given the excavator a wide berth. The plaintiff was careless in failing to keep a safe distance and a proper lookout for the excavator, thereby contributing to the accident.

Conclusion

61 For the foregoing reasons, I find that the plaintiff is liable for the accident to the extent of 30%, with the first defendant bearing 70% liability. The Registrar shall assess the plaintiff's claim for damages at a later date with costs of such assessment to be reserved to the Registrar.

Costs

62 A plaintiff may be awarded costs in the form of a *Bullock* or *Sanderson* order if he brings claims against multiple defendants and succeeds against one defendant but fails against the other defendants. In a *Bullock* order, the plaintiff is liable to pay the costs of the successful defendant but is entitled to recover those costs and his own costs from the unsuccessful defendant (*Bullock v The London General Omnibus Company and others* [1907] 1 KB 264). In a *Sanderson* order, on the other hand, the plaintiff will recover his own costs from the unsuccessful defendant who will also have to pay the plaintiff's costs payable to the successful defendant directly (*Sanderson v Blyth Theatre Company* [1903] 2 KB 533).

63 The rationale for the *Bullock* and *Sanderson* order was considered by our Court of Appeal in *Chua Teck Chew Robert v Goh Eng Wah* [2009] 4 SLR(R) 716 at [40]:

> The purpose of a Sanderson order (and likewise a *Bullock* order) is to avoid the injustice of a successful claimant having what he recovers in damages eroded by an order to pay costs to

successful defendants whom it was reasonable for him, when he does not know which of the defendants to sue, to join (see *Irvine v Commissioner of Police for The Metropolis* [2005] C P Rep 19 at [22]). In deciding whether to grant a Sanderson order, the court's principal consideration is whether it would be fair and reasonable for the unsuccessful defendant to bear the costs of the successful defendant(s) (see *Denis Matthew Harte v Dr Tan Hun Hoe & Gleneagles Hospital Ltd* [2001] SGHC 19 at [7] (*Harte*")).

64 In my opinion, it was not unreasonable for the plaintiff to have sued all three defendants in this case because the first defendant was the excavator driver and main tortfeasor, the second defendant was the occupier of the Site and the third defendant had engaged the plaintiff to carry out the job at the Site.

65 A *Bullock* order for costs would be appropriate in this case. The plaintiff shall be entitled to recover from the first defendant the costs he has to pay (to be taxed or otherwise agreed) to the second and third defendants. In addition, the first defendant shall pay the plaintiff's own costs (either taxed or agreed).