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

[2022] SGHC 248

Suit No 90 of 2021

Between

HSBC Institutional Trust Services (Singapore) Ltd (as trustee of AIMS AMP Capital Industrial REIT)

… *Plaintiff*

And

DNKH Logistics Pte Ltd

… *Defendant*

JUDGMENT

[Contract — Contractual terms — Interpretation — Indemnity clause]

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v
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3 October 2022 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The plaintiff in the present action is HSBC Institutional Trust Services (Singapore) Limited, suing as trustee of AIMS AMP Capital Industrial REIT ("the Plaintiff"). The Plaintiff was and remains the landlord of the premises located at 8 Tuas Avenue 20, Singapore 638821 and 10 Tuas Avenue 20, Singapore 638822 ("the Premises"). The defendant is DNKH Logistics Pte Ltd ("the Defendant"). It is a Singapore-incorporated company that provides logistics and warehousing services. The Defendant was the tenant of the Premises from 16 July 2012 to 15 July 2016.[1]

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[1] Agreed Statement of Facts dated 19 August 2022 ("ASOF") at para 1.

2 The Plaintiff's insurer, Great Eastern General Insurance Limited ("GEGI"), brings this action in the name of the Plaintiff pursuant to GEGI's right of subrogation as contained in the insurance policy between the Plaintiff and GEGI for insured losses which GEGI had already paid out to the Plaintiff as a result of a fire at the Premises.[2] The losses and damages which the Plaintiff suffered amounted to about S$3.3m.

3 In HC/ORC 2387/2022, the present action was bifurcated. Therefore, this trial deals only with the issue of liability.

4 GEGI originally commenced this Suit against the Defendant for breach of contract and the tort of negligence. However, on the third day of the trial, counsel for the Plaintiff, applied to withdraw the Plaintiff's claim for the tort of negligence. This was granted and the Plaintiff's sole cause of action is now premised on a contractual indemnity provided under an indemnity clause in the lease between the parties.

Background to the dispute

5 The factual background giving rise to the present action is relatively straightforward and largely undisputed between the parties.

The Defendant's tenancy of the premises

6 The Plaintiff and the Defendant entered into a written agreement dated 31 July 2012 ("the Lease"). The Lease was for the Defendant's rental of the Premises for a term of four years from 16 July 2012 to 15 July 2016.[3] The

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2 ASOF at para 4.

3 ASOF at para 1.

Premises comprised warehouse space and ancillary office space. The Defendant used the Premises for its logistics and warehousing business.[4]

7 At the time of the fire, the Defendant used the Premises to store, amongst others, large quantities of dried black peppercorns.[5] These dried peppercorns, however, did not belong to the Defendant. Instead, they belonged to the Defendant's customer, McCormick Ingredients Southeast Asia Pte Ltd ("McCormick"), who had engaged the Defendant's warehouse storage services to store the peppercorns.

The occurrence of the fire

8 On 9 August 2015, a fire occurred at the Premises.[6] The parties do not dispute that the fire originated from an area where the peppercorns were stored. However, the exact cause of the fire could not be ascertained. Be that as it may, the Defendant did not allege that the fire was caused by the Plaintiff's negligence; neither did the Plaintiff allege that the Defendant had caused the fire. The Singapore Civil Defence Force ("SCDF") investigated the cause of the fire and concluded that "the most probable cause of the fire was accidental and of electrical origin."[7] The parties also do not dispute that no third-party claims were brought against the Plaintiff.[8]

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4 ASOF at para 3.

5 ASOF at para 3.

6 ASOF at para 2.

7 2AB at p 409 para 9(a).

8 ASOF at para 6.

9 As a result of the fire, the Premises sustained physical damage. The Plaintiff also suffered loss of rent for the period from 9 August 2015 to 31 May 2016 as the Plaintiff allowed reduction of the rental due from the Defendant arising from the fire.[9]

The parties' cases

The Plaintiff's case

10 The Plaintiff's present claim is now premised solely on clause 3.18.1 of the Lease ("the Indemnity Clause 3.18.1"), which states:[10]

> 3.18 Indemnity by Tenant
>
> To indemnify the Landlord against (i) all claims, demands, actions, proceedings, judgments, damages, losses, costs and expenses of any nature which the Landlord may suffer or incur as a result of or in connection with or caused by, and (ii) all penalties or fines imposed by any relevant authority resulting from:
>
> 3.18.1 any occurrences in, upon or at the Premises or the use or occupation of the Premises and/or any part of the Property by the Tenant or by any of the Tenant's employees, independent contractors, agents or any permitted occupier;

11 The Plaintiff argues that the Indemnity Clause 3.18.1 "admits of one clear meaning", that "it is a general indemnity that simply covers any loss suffered or incurred by the Plaintiff so long as the loss is a result of any occurrence in or at the Premises".[11] Accordingly, the Defendant is liable to the Plaintiff for the loss and damage suffered by the Plaintiff as a result of the fire

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9 ASOF at para 2.

10 Affidavit of evidence-in-chief of Foo Fook Khang dated 15 June 2022 at pp 74–75.

11 Plaintiff's Closing Submissions dated 25 August 2022 ("PWS") at para 26.

at the Premises, regardless of the cause of the fire and whether the fire is attributable to any negligence on the part of the Defendant.

12 The Plaintiff further submits that the Indemnity Clause 3.18.1 "is wide and there are no words in the text which confine the scope or application of the indemnity in [the Indemnity Clause 3.18.1] to only situations involving third-party claims or situations where there is default on the part of the Defendant".[12] The Plaintiff submits that this is because:

(a) the inclusion of the word "losses" in the Indemnity Clause 3.18.1 suggests that the parties had contemplated that "in the course of the Defendant's use and occupation of the Premises, any losses resulting from damage to the Premises will be directly suffered by the Plaintiff regardless of whether the said losses arise from third-party claims or otherwise" [emphasis in original omitted];[13] and

(b) the inclusion of the words "any nature" suggests that the parties contemplated that the Defendant is liable to indemnify "claims by both the Plaintiff and third parties".[14]

13 In summary, the Plaintiff's case is that the wording of the Indemnity Clause 3.18.1 is wide enough to deal with third-party claims made against the Plaintiff as well as any claims made by the Plaintiff against the Defendant.

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12 PWS at para 12.

13 PWS at para 21.

14 PWS at para 22.

The Defendant's case

14 The Defendant submits that under the Indemnity Clause 3.18.1, the Defendant is only contractually obliged to indemnify the Plaintiff in respect of losses suffered as a result of third-party claims brought against the Plaintiff.[15]

15 In support of its argument, the Defendant relies on various decisions rendered by the Singapore High Court and the Court of Appeal which considered the interpretation of indemnity clauses that are substantively similar to the Indemnity Clause 3.18.1.[16] These decisions, in the Defendant's submission, support the view that the Indemnity Clause 3.18.1 should be interpreted as requiring the Defendant to indemnify the Plaintiff in respect of only third-party claims brought against the Plaintiff. Following these decisions, the Defendant submits that the Plaintiff's reliance on the Indemnity Clause 3.18.1 to sue the Defendant directly is legally unsustainable.[17] This is because the parties accept that this action is not brought as a result of third-party claims against the Plaintiff. Therefore, the Defendant submits that the Plaintiff cannot seek an indemnity from the Defendant in respect of the losses incurred by the Plaintiff as a result of the fire.

16 Case law aside, the Defendant also submits that the context in which the parties entered into the Lease supports a narrow interpretation of the Indemnity Clause 3.18.1.

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15 Defendant's Written Submissions dated 25 August 2022 ("DWS") at para 3.

16 DWS at paras 7–8.

17 DWS at paras 32–49.

17 Finally, the Defendant submits that the *contra proferentem* rule ought to apply in construing the Indemnity Clause 3.18.1 against the Plaintiff as this provision benefits the Plaintiff.[18]

Issues to be determined

18 Clause 3.18.1 is indisputably an indemnity clause. As Audrey Lim JC (as she then was) described in *CIFG Special Assets Capital I Ltd v Polimet Pte Ltd and others (Chris Chia Woon Liat and another, third parties)* [2017] SGHC 22 ("*CIFG* (SGHC)") at [69]–[70]:

> 69 It is not disputed that Clause 12.1 is an indemnity clause, namely an undertaking by the defendants to keep the plaintiff 'harmless against loss' arising from particular transactions or events (see *China Taiping Insurance (Singapore) Pte Ltd (formerly known as China Insurance Co (Singapore) Pte Ltd) v Teoh Cheng Leong* [2012] 2 SLR 1 at [28]).
>
> 70 Such an indemnity often takes the form of a promise by one contracting party (Y) to the other contracting party (X) that if X suffers a loss, whether due to the acts of Y or a third party who is not privy to the contract, then Y is to indemnify X against such loss *as long as the loss falls within the scope of the indemnity*. But there is no reason, as a matter of principle, why an indemnity clause cannot provide for X to be indemnified by Y for a loss caused by another party (Z), who is also a party to the same contract. It all depends on what the parties intend. …
>
> [emphasis in original in italics]

19 The key issue in the present case turns on the scope, application and coverage of the Indemnity Clause 3.18.1. Does the Indemnity Clause 3.18.1 cover only third-party claims against the Plaintiff? Or does it also extend to cover claims made by the Plaintiff against the Defendant for any losses suffered by the Plaintiff arising from any occurrences at the Premises? If it is the latter,

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[18] DWS at paras 53–59.

is the Defendant liable to indemnify the Plaintiff for the losses caused by the accidental fire at the Premises, or is the Defendant only liable to indemnify the Plaintiff for losses caused by any fault attributable to the Defendant?

My decision

20 The trial started with the Plaintiff calling its witnesses. The Plaintiff called four witnesses including its expert, Mr Tan Jin Thong ("Mr Tan"), who disagreed with the findings of the SCDF. Mr Tan opined that the fire could have been the result of spontaneous combustion of the dried black peppercorns stored in the Premises. However, before counsel for the Defendant could complete his cross-examination of Mr Tan, counsel for the Plaintiff decided to abandon the Plaintiff's claims in the tort of negligence and for breach of contract. Thereafter, the parties agreed that the Court should focus only on the interpretation of the Indemnity Clause 3.18.1 in the context of the Lease.

21 I shall first deal with the fundamental issue of whether the Indemnity Clause 3.18.1 applies only to third-party claims made against the Plaintiff. If my conclusion on this issue is in the affirmative, then the Plaintiff's case must fail. This is because this Suit concerns a direct claim by the Plaintiff against the Defendant for the losses arising from the accidental fire at the Premises. The Plaintiff is also not suggesting that it is facing claims made by third parties.

22 I shall then proceed to analyse the situation involving the Plaintiff's submission that the scope of the Indemnity Clause 3.18.1 encompasses *both* third-party claims against the Plaintiff *and* direct claims made by the Plaintiff against the Defendant.

23 In dealing with the key issue, the Court must scrutinise the wording of the Indemnity Clause 3.18.1, both in its plain and literal sense, and take into account the surrounding context of that clause. In addition, the Court will also have to consider the decisions and findings of precedent cases that discussed the scope and application of similar indemnity clauses.

24 I shall now consider the law on the interpretation of contractual terms.

The law on the interpretation of contractual terms

25 I begin the analysis by setting out the applicable rules on the interpretation of the terms of a contract, particularly on the interpretation of an indemnity clause.

26 The principles to be applied in the interpretation of contracts are well established by several salient decisions of the Court of Appeal, notably, *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 ("*Zurich Insurance*"), *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 ("*Sembcorp Marine*"), *Y.E.S. F&B Group Pte Ltd v Soup Restaurant Singapore Pte Ltd (formerly known as Soup Restaurant (Causeway Point) Pte Ltd)* [2015] 5 SLR 1187 ("*YES F&B*"), *Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 ("*Lucky Realty*") and *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 ("*Yap Son On*"). I shall summarise the applicable principles from the above cases on the interpretation of clauses in a contract:

(a) The purpose of contractual interpretation is to give effect to the objectively ascertained expressed intentions of the contracting parties as

it emerges from the contextual meaning of the relevant contractual language: *Yap Son On* at [30].

(b) The Court has to ascertain the meaning which the expressions in a document would convey to a reasonable person having regard to the background knowledge which would reasonably have been available to the parties at the time of contract: *Sembcorp Marine* at [33].

(c) The starting point of contractual interpretation is to look at the text that the parties have used in the wording of the contractual provision: *Lucky Realty* at [2].

(d) Where the text is clearly plain and unambiguous, the Court will usually give effect to the plain meaning of the clause, provided it does not engender an absurd result: *YES F&B* at [31].

(e) Should an interpretation of the clause based on its plain wording lead to an absurd result, this is a strong indication that the text may be inconsistent with the context in which it is interpreted. In this regard, the Court should ordinarily start from the position that the parties did not intend that the term(s) concerned would produce an absurd result. It must be stressed that the context cannot be utilised as an excuse for the Court to rewrite the terms of the contract according to its subjective view of what it thinks the result ought to be. The need to avoid an absurd result cannot be pursued at all costs. Rather, the Court must always base its decision on objective evidence. Therefore, if the objective evidence demonstrates that the parties had contemplated the absurd result or consequence, the Court is not free to disregard this in favour of what may seem to the Court to be a more commercially sensible interpretation

of the contract. In such a situation, although one that would no doubt be extremely rare, the Court must give effect to the meaning contained therein, notwithstanding that an absurd result would ensue: *YES F&B* at [32] and [33].

27 In *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170 ("*CIFG* (SGCA)"), Sundaresh Menon CJ affirmed at [19] that the principles of contractual interpretation apply in construing an indemnity clause:

> 19 We begin with a brief statement of the relevant principles to be applied in the construction of contracts. These are well established in several decisions of this court and before us in the course of the oral arguments there was no real disagreement as to these. Stated briefly, these principles are as follow:
>
> (a) The starting point is that one looks to the text that the parties have used (see *Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [2]).
>
> (b) At the same time, it is permissible to have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties (see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [125], [128] and [129]).
>
> (c) The reason the court has regard to the relevant context is that it places the court in "the best possible position to ascertain the parties' objective intentions by interpreting the expressions used by [them] in their proper context" (see *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [72]).
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> (d) In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear (see, *eg*, *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [31]).

28 Further, in *Kay Lim Construction & Trading Pte Ltd v Soon Douglas (Pte) Ltd and another* [2013] 1 SLR 1 ("*Kay Lim Construction*"), Quentin Loh J (as he then was) held that the principles of construction relevant to exemption clauses are equally relevant to the construction of indemnity clauses (at [41]) . This includes the principle that exemption clauses (and by extension, indemnity clauses) are to be construed strictly, and if a party seeks to exclude or limit his liability (or seeks to have his liability indemnified), he must do so in clear words (*Kay Lim Construction* at [40]–[41], citing *Singapore Telecommunications Ltd v Starhub Cable Vision Ltd* [2006] 2 SLR(R) 195 at [52]).

29 Loh J also affirmed the application of the *contra proferentem* rule of construction to both exemption and indemnity clauses. The *contra proferentem* rule is a well-established canon of interpretation that states "where a particular species of transaction, contract, or provision is one-sided or onerous it will be construed strictly against the party seeking to rely on it" (see *Zurich Insurance* at [131], citing Gerard McMeel, *The Construction of Contracts: Interpretation, Implication, and Rectification* (Oxford University Press, 2007)). In Gerard McMeel, *The Construction of Contracts: Interpretation, Implication, and Rectification* (Oxford University Press, 3rd Ed, 2017), Professor McMeel states the *contra proferentem* rule as applying to the following:

> It is submitted that the rule of construction should apply against either a party responsible for drafting or incorporating a clause for its own benefit, or *where a clause is relied on (regardless of which party was responsible for its incorporation) which benefits or is likely to benefit only the party relying on it.* [emphasis added]

30 The *contra proferentem* rule is especially important when considering indemnity clauses. The strict construction of an indemnity clause is premised on the view that an indemnifier's liability is primary and independent, such that

ordinary businessmen would not be prepared to subject themselves to incurring such liability (see *CIFG* (SGHC) at [74]). Indemnity clauses carry extremely onerous effects, as they pass liability from the indemnified party to the indemnifying party. Clear words must therefore be used to indicate when such liability would accrue to the indemnifying party. That is why Belinda Ang Saw Ean J (as she then was) in *Saatchi & Saatchi Pte Ltd and others v Tan Hun Ling (Clarke Quay Pte Ltd, third party)* [2006] 1 SLR(R) 670 ("*Saatchi & Saatchi*") observed that "[t]here is a presumption in law that an indemnity would not be readily granted to a party against a loss caused by its own negligence" (at [39(e)]). Similarly, Lord Fraser of Tullybelton in *Ailsa Craig Fishing Co Ltd v Malvern Fishing Co Ltd and Securicor (Scotland) Ltd* [1983] 1 All ER 101 ("*Ailsa Craig*") observed in relation to the strict standard of construing an indemnity clause: "[t]he reason for imposing such standards … is the inherent improbability that the other party to a contract including such a condition intended to release the proferens from a liability that would otherwise fall on him" (at 105). The observations of Ang J in *Saatchi & Saatchi* and Lord Fraser in *Ailsa Craig* thus support the improbability that any reasonable person would agree to indemnify his or her contractual counterparty for losses suffered by the latter in the absence of any fault on the former's part.

31 The rule that an indemnity clause must clearly state the extent to which one contracting party is to indemnify the other was discussed in the *locus classicus* of *Canada Steamship Lines Ltd v The King* [1952] AC 192 ("*Canadian Steamship*"). In that case, the Crown leased a freight shed on a wharf in the harbour of Montreal to a lessee. The relevant provisions of the lease, namely clauses 7, 8 and 17, provided as follows:

> 7. That the lessee shall not have any claim or demand against the lessor for detriment, damage or injury of any nature to the

> said land, the said shed, the said platform and the said canopy, or to any motor or other vehicles, materials, supplies, goods, articles, effects or things at any time brought, placed, made or being upon the said land, the said platform or in the said shed.
>
> 8. That the lessor will, at all times during the currency of this lease, at his own cost and expense, maintain the said shed, exclusive of the said platform and the said canopy.
>
> …
>
> 17. That the lessee shall at all times indemnify and save harmless the lessor from and against all claims and demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the execution of these presents, or any action taken or things done or maintained by virtue hereof, or the exercise in any manner of rights arising hereunder.

32 Owing to the negligence of the Crown's servants, a fire broke out at the shed. Both the shed and the goods stored in it were destroyed as a result. The lessee brought an action against the Crown for damages under the tort of negligence. The Crown pleaded clauses 7 and 17 in its defence. The Supreme Court of Canada, by a majority, concurred with the trial judge's finding on negligence but held that clauses 7 and 17 of the lease barred the claims brought against the Crown and entitled the Crown to an indemnity from the lessee.

33 On appeal, the Privy Council reversed the Supreme Court's decision. Lord Morton of Henryton, giving judgment on behalf of the unanimous court, held that clause 17 was unlikely intended to protect the Crown from claims for damage resulting from negligence of its servants in carrying out the very obligations which were imposed by clause 8. Rather, the intention underlying clause 17 was to protect the Crown against the claims of third parties. This was subject to the qualification contained in the concluding part of clause 17 – that the claims and so forth must have been "in any manner based upon, occasioned by or attributable to" one of three matters stated therein. This qualification was

not drafted wide enough to cover the negligent acts of the Crown's servants which caused the damage on those facts. Lord Morton held that this interpretation of clause 17, *ie*, that it applies only in respect of claims made against the Crown by third parties, is the preferred interpretation. Amongst other reasons, such an interpretation accords with the natural construction of the words in the clause. Further, if the Crown had intended to impose such a burdensome obligation on the lessee, *ie*, that the lessee was to be under an obligation to contractually indemnify the Crown in respect of its own wrongdoing, then the Crown ought to express such an obligation in clear terms, such as by inserting an express reference to negligence of the Crown's servants. And finally, to construe the indemnity clause in such broad terms would conflict with the scope of the exclusion clause as set out in clause 7 of the lease (*Canadian Steamship* at pp 213–214).

34 Against the backdrop of the applicable legal principles set out above, I shall now consider the interpretation of the Indemnity Clause 3.18.1.

The scope of the Indemnity Clause 3.18.1

35 It is not disputed that in interpreting the Indemnity Clause 3.18.1, the Court has to consider the Indemnity Clause 3.18.1 in the context of all the terms and conditions of the Lease. The parties also agree that they will not be relying on any evidence other than what is contained in the Lease and the matters set out therein. Finally, the parties agree not to call any further witnesses in these proceedings in dealing with the construction of the Indemnity Clause 3.18.1.[19]

[19] ASOF at para 7.

36 I shall first deal with the issue of whether the Indemnity Clause 3.18.1 is limited to third-party claims only or includes interparty claims, *ie*, claims made by the Plaintiff against the Defendant as in this case. I shall begin my analysis by considering several cases which the parties have referred to this Court, where the courts in those cases had considered similarly worded indemnity clauses on this issue.

The case law on interpreting indemnity clauses

37 The Defendant refers the Court to several cases to support its arguments that the Indemnity Clause 3.18.1 is meant to indemnify the Plaintiff against third-party claims. The Defendant then argues that, following these cases, the Indemnity Clause 3.18.1 cannot be interpreted as requiring the Defendant to indemnify the Plaintiff for losses suffered or incurred by the Plaintiff as a result of the fire at the Premises. The Defendant submits that the Indemnity Clause 3.18.1 is indistinguishable from the indemnity clauses considered by the Court of Appeal in *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR(R) 782 ("*Sunny Metal*") and in *Marina Centre Holdings Pte Ltd v Pars Carpet Gallery Pte Ltd* [1997] 2 SLR(R) 897 ("*Marina Centre Holdings*"). The Court is thus bound by these decisions in interpreting the Indemnity Clause 3.18.1. Accordingly, following the decisions in *Sunny Metal* and *Marina Centre Holdings*, the Indemnity Clause 3.18.1 should be interpreted as being limited to only losses suffered by the Plaintiff arising from third-party claims.

38 On the other hand, the Plaintiff tries to distinguish *Sunny Metal* and urges the Court to follow the interpretation of the indemnity clause considered in *CIFG* (SGHC), which was upheld by the Court of Appeal in *CIFG* (SGCA).[20]

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[20] PWS at paras 19–20, 23–25.

Accordingly, the Plaintiff submits that the scope of the Indemnity Clause 3.18.1 is not limited solely to losses suffered by the Plaintiff as a result of third-party claims, but also is wide enough to indemnify the Plaintiff for all losses of any nature suffered or incurred resulting from any occurrences in or at the Premises. Hence, the Plaintiff argues that the Defendant must indemnify the Plaintiff under the Indemnity Clause 3.18.1 for losses arising from the fire which occurred at the Premises on 9 August 2015.

39 As for the Court of Appeal's decision in *Marina Centre Holdings*, the Plaintiff submits that the central issue in that case was on the construction of the exemption clause in the lease. Accordingly, any pronouncement made by the Court of Appeal on the indemnity clause should be disregarded. The Plaintiff further submits that the Court of Appeal's endorsement as to a wide construction of the exemption clause should be applied to the Indemnity Clause 3.18.1.

40 I shall first consider the cases relied on by the Defendant, starting with the Court of Appeal's decision in *Sunny Metal*.

(1) The decision in *Sunny Metal*

41 The dispute in *Sunny Metal* arose out of a construction project. The main contractor of the project, PMC, failed to fulfil its contractual obligations under a design-and-build contract with the plaintiff, SME. PMC caused numerous delays to the construction works. SME terminated PMC's services as a result of the breach. As PMC was subsequently liquidated, SME commenced an action against the defendant, one Eric Ng, who was the architect employed by PMC, for breach of contractual obligations and tortious duties owed to SME. SME's case was that, amongst others, clause 4 of the deed of indemnity signed between SME and Eric Ng imposed contractual obligations on Eric Ng to undertake

additional duties of supervision. Eric Ng had breached these obligations. Clause 4 of the deed was an indemnity clause which stated as follows:

> The Consultants shall indemnify and keep indemnified the Employer from and against all claims, demands, proceedings, damages, costs, charges and expenses arising out of or in connection with any breach of duty, whether in contract, in tort or otherwise.

42 At first instance, Andrew Phang Boon Leong J (as he then was) found that the language of clause 4, an indemnity clause, was clear and that it was to require Eric Ng to indemnify SME against any claim for damages brought by third parties against SME. Thus, SME could not use clause 4 to seek an indemnity from Eric Ng (see *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric (practising under the name and style of W P Architects)* [2007] 1 SLR(R) 853 at [34]).

43 On appeal, SME argued that clause 4 encompassed two sets of factual situations for which Eric Ng covenanted to indemnify SME. The first was to indemnify SME against third-party claims. The second was to indemnify SME against "damages, costs, charges and expenses arising out of or in connection with any breach of duty, whether in contract or in tort" (at [36]). In response, Eric Ng submitted that a plain reading would show that the words "claims, demands, proceedings" in clause 4 referred to a claim made by third parties against SME in circumstances where there was a genuine dispute between SME and third parties arising from Eric Ng's breach of duty.

44 V K Rajah JA (who delivered the grounds of decision of the court) agreed with Phang J's finding that clause 4 of the deed was an indemnity clause that was "in respect of *third party claims* only" [emphasis in original] (at [37]). Rajah JA held that such an interpretation was clear from the language of clause 4

and further, that nothing in the factual matrix in which the deed was entered into suggested that the parties intended for a different interpretation of clause 4 (at [37]). Finally, this construction was also supported by case law, and Rajah JA referred to the English Court of Appeal's decision in *The Lindenhall* [1945] P 8 ("*The Lindenhall*"). The indemnity clause in *The Lindenhall* reads as follows:

> The owners … of the ship … being towed … agree … to indemnify and hold harmless the Port Authority against all claims for or in respect of … damage of any kind whatsoever and howsoever or wheresoever arising in the course of and in connexion with the towage.

45 The English Court of Appeal in *The Lindenhall* held that the indemnity clause must be construed as being limited to claims made against the port authority by third parties, and that it did not include claims made by the owner of the towed vessel as against the port authority. Since the indemnity clause in *The Lindenhall* was worded similarly to the indemnity clause in *Sunny Metal*, Rajah JA thus held that the interpretation of the indemnity clause in *Sunny Metal* as covering only claims brought by third parties was further supported by the interpretation of the indemnity clause in *The Lindenhall*.

46 It is true that the scope of the indemnity clause in *Sunny Metal* is not entirely the same as the Indemnity Clause 3.18.1. I set out below a table comparing the wording of the Indemnity Clause 3.18.1 with the wording of the indemnity clause in *Sunny Metal*:

The Indemnity Clause 3.18.1	**The indemnity clause in *Sunny Metal***
To indemnify the Landlord against (i) all claims, demands, actions, proceedings, judgments, damages, losses, costs and expenses of any nature which the Landlord may suffer or incur as a result of or in connection with or caused by … 3.18.1 any occurrences in, upon or at the Premises or the use or occupation of the Premises and/or any part of the Property by the Tenant or by any of the Tenant's employees, independent contractors, agents or any permitted occupier.	The Consultants shall indemnify and keep indemnified the Employer from and against all claims, demands, proceedings, damages, costs, charges and expenses arising out of or in connection with any breach of duty, whether in contract, in tort or otherwise.

47 These are the textual differences that I have observed when comparing the indemnity clause in *Sunny Metal* and the Indemnity Clause 3.18.1:

(a) Whereas the indemnity clause in *Sunny Metal* covered "all claims, demands, proceedings, damages, costs, charges and expenses" suffered by SME, the Indemnity Clause 3.18.1 covered "all claims, demands, actions, proceedings, judgments, damages, losses, costs and expenses of any nature". The Indemnity Clause 3.18.1 thus includes the additional words "actions", "judgments", "losses" and "any nature".

(b) Whereas the indemnity clause in *Sunny Metal* required that SME be indemnified in respect of "any breach of duty, whether in contract, in tort or otherwise", the Indemnity Clause 3.18.1 required the Defendant

> to indemnify the Plaintiff in respect of "any occurrences in, upon or at the Premises".

The plain wording of the Indemnity Clause 3.18.1 thus appears broader than the indemnity clause in *Sunny Metal*. The Indemnity Clause 3.18.1 goes further to cover "losses … of any nature" and "any occurrences" at the Premises. Counsel for the Plaintiff submits that, given the differences in the wording of the indemnity clause in *Sunny Metal* as compared to the Indemnity Clause 3.18.1, *Sunny Metal* is not applicable to the present case.

48 With respect, I am unable to agree with counsel for the Plaintiff. Although the Indemnity Clause 3.18.1 is broader than the indemnity clause in *Sunny Metal*, the structure and general wording of the two indemnity clauses remain similar. The fact that the Indemnity Clause 3.18.1 is found in a lease while the indemnity clause in *Sunny Metal* was in a deed, which was entered into between SME and Eric Ng for the provision of architectural and engineering services in respect of a construction project, is in my view immaterial.

49 I am thus satisfied that the interpretative outcome reached in *Sunny Metal* regarding the indemnity clause in that case is equally applicable to the present case. It is clear that the parties objectively intended for the Indemnity Clause 3.18.1 to apply to third-party claims only.

(2) *Marina Centre Holdings*

50 I shall now consider the Court of Appeal's decision in *Marina Centre Holdings*. In that case, the respondent had leased certain premises from the appellant's shopping centre. During the term of the lease, water seeped through

the ceiling above the premises and damaged the respondent's goods. The respondent had insured its goods and obtained a pay-out from the insurers. The insurers, exercising their right of subrogation, brought a claim against the appellant. The insurer argued, amongst other things, that the appellant was negligent at common law. The appellant raised the defence that it was absolved from liability by clause 36.1(b), an exemption clause in the lease, which states as follows:

> It is hereby agreed between the Landlord and the Tenant that the Landlord and its officers, servants, employees or agents shall not be liable or in any way responsible:
>
> …
>
> (b) for any injury or damage to persons or property or any consequential loss resulting from short circuit of electrical wiring, explosion, falling plaster, steam, gas, electricity, water sprinkler, rain plumbing or other pipe and sewerage system, leaks from any part of the SHOPPING CENTRE or MARINA SQUARE, the roof, street, sub-surface or any other place, dampness, or any appurtenances being out of repair unless caused by the wilful misconduct of the Landlord or its officers, servants, employees or agents;
>
> …

51 The issue was thus whether, on a true construction of clause 36.1(b), the appellant was exempted from liability to the respondent. At first instance, the District Judge found, amongst others, that the appellant was negligent. However, the trial judge dismissed the respondent's claim on the ground that clause 36.1(b) exempted the appellant from liability. The respondent brought an appeal to the High Court on the interpretation of clause 36.1(b) of the lease. Warren L H Khoo J allowed the appeal and held that the clause did not absolve the appellant from liability for negligence (see *Pars Carpet Gallery Pte Ltd v Marina Centre Holdings Pte Ltd* [1996] 3 SLR(R) 915). Khoo J held that, applying the *contra proferentem* rule to clause 36.1(b), its scope was to be

confined to third-party claims and liabilities to third parties (at [27]). Khoo J also found this interpretation of clause 36.1(b) to be consistent with the indemnity provision in clause 17.2 of the lease, which states as follows:

> The Tenant shall indemnify and keep indemnified the Landlord from and against:
>
> (a) all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever which the Landlord may suffer or incur in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon or at the PREMISES or the use of the PREMISES or any part thereof by the Tenant or by any of the Tenant's agents, employees or visitors;
>
> (b) all loss and damage to the PREMISES, its adjoining or neighbouring premises, to MARINA SQUARE and to all property therein caused whether directly or indirectly by the Tenant or the Tenant's agents, employees or visitors and in particular but without limiting the generality of the foregoing caused whether directly or indirectly by the use or misuse, waste or abuse of water, fire or electricity or faulty fittings or fixtures of the Tenant.

52 In Khoo J's view, reading clause 17.2 as applying to claims brought by third parties against the landlord would thus be consistent with the parties' intention. In his view, if clause 36.1(b) was to be confined to third-party claims brought against the landlord, then similarly clause 17.2 ought to be confined to third-party claims.

53 On appeal, L P Thean JA (delivering the judgment of the court) held that, on a true construction, clause 36.1(b) exempted the appellant from liability even when the appellant was negligent. Thean JA (at [32]) rejected the argument that clause 36.1(b) was to be construed as being confined only to that of third-party claims. On the contrary, the plain wording of clause 36.1(b) made clear

that it was intended to relieve or absolve the appellant from liability to the respondent for injury, damage and consequential loss resulting from any of the specified events, unless caused by wilful misconduct of the appellant or that of its servants or agents.

54 Further, the Court of Appeal in *Marina Centre Holdings* held that interpreting clause 36.1(b) of the lease as being applied to absolve the appellant from liability as against the respondent would be consistent with the indemnity provision in clause 17.2 of the lease. Thean JA held (at [35]) that clause 17.2 of the lease was intended to provide further protection to the appellant by securing for it an indemnity from the respondent against third-party claims. Reading clauses 17.2 and 36.1(b) in this manner would, in Thean JA's view, render both clauses complementary to each other in so far as clause 36.1(b) dealt with liability as between the parties *inter se*, whereas clause 17.2 dealt with liability incurred by the appellant in respect of claims brought by third parties.

55 The Plaintiff submits that little reliance should be placed on the Court of Appeal's decision in *Marina Centre Holdings*, as the interpretation of the indemnity clause was not a central issue before the Court of Appeal. Thus, it was an *obiter dictum* expressed by the Court of Appeal on the interpretation of the indemnity clause in the context of interpreting the exemption clause in clause 36.1(b) of the lease. *Marina Centre Holdings*, the Plaintiff submits, is therefore not authority on the interpretation of the scope of an indemnity clause. Hence, Thean JA's interpretation of the indemnity provision in clause 17.2 should be disregarded.[21]

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21 PWS at paras 34 and 39.

56 I am unable to agree with the Plaintiff's submission. The fact remains that one of the key reasons that Thean JA had relied upon in his analysis on the interpretation of clause 36.1(b), the exemption clause, was the scope of the indemnity clause in clause 17.2 of the lease. The Court of Appeal had scrutinised the wording of clause 17.2 and concluded that it must have been intended to apply to claims brought by third parties. Given this conclusion, the Court of Appeal reasoned that the exemption provision in clause 36.1(b) of the lease must be interpreted as applying to liabilities as between the parties *inter se*. Accordingly, the interpretation of clause 17.2 was one of the key planks underlying Thean JA's reasoning and his conclusions regarding the interpretation of clause 36.1(b).

57 I find that the indemnity clause in *Marina Centre Holdings* is similar to the Indemnity Clause 3.18.1. I set out below a table comparing the wording of the indemnity clause in *Marina Centre Holdings* and the Indemnity Clause 3.18.1:

The Indemnity Clause 3.18.1	**The indemnity clause in *Marina Centre Holdings***
To indemnify the Landlord against (i) all claims, demands, actions, proceedings, judgments, damages, losses, costs and expenses of any nature which the Landlord may suffer or incur as a result of or in connection with or caused by …	The Tenant shall indemnify and keep indemnified the Landlord from and against:

3.18.1 any occurrences in, upon or at the Premises or the use or occupation of the Premises and/or any part of the Property by the Tenant or by any of the Tenant's employees, independent contractors, agents or any permitted occupier.	(a) all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever which the Landlord may suffer or incur in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, upon or at the PREMISES or the use of the PREMISES or any part thereof by the Tenant or by any of the Tenant's agents, employees or visitors; (b) all loss and damage to the PREMISES, its adjoining or neighbouring premises, to MARINA SQUARE and to all property therein caused whether directly or indirectly by the Tenant or the Tenant's agents, employees or visitors and in particular but without limiting the generality of the foregoing caused whether directly or indirectly by the use or misuse, waste or abuse of water, fire or electricity or faulty fittings or fixtures of the Tenant.

58 I observe the following textual similarities in both the clauses:

(a) The indemnity clause in *Marina Centre Holdings* is worded to cover "all claims, demands, writs, summonses, actions, suits, proceedings, judgments, orders, decrees, damages, costs, losses and expenses of any nature whatsoever". Likewise, the Indemnity Clause 3.18.1 covers "all claims, demands, actions, proceedings, judgments, damages, losses, costs and expenses of any nature".

(b) The indemnity clause in *Marina Centre Holdings* is also worded to include, amongst others, losses suffered by the appellant "arising from or out of any occurrence in, upon or at the PREMISES or the use of the PREMISES".

I am, therefore, satisfied that the Indemnity Clause 3.18.1 is textually and substantively similar to the indemnity clause in *Marina Centre Holdings*, both in terms of its scope and its operation.

59 Further, the commercial context in *Marina Centre Holdings* is the same as in the present case, *ie*, both cases deal with the interpretation of an indemnity clause in a lease agreement between a landlord and a tenant in respect of a commercial property. Thean JA's interpretation of the indemnity clause in *Marina Centre Holdings* is, therefore, highly persuasive in supporting the Defendant's proposed interpretation of the Indemnity Clause 3.18.1. I agree with the Court of Appeal's decision in *Marina Centre Holdings.* Thus, I am of the view that the Indemnity Clause 3.18.1 was intended to apply only in respect of third-party claims brought against the Plaintiff.

(3) *CIFG* (SGHC)

60 I shall now deal with the decision in *CIFG* (SGHC), which the Plaintiff relies on heavily in support of its interpretation that the Indemnity Clause 3.18.1 applies to third-party claims as well as the Plaintiff's claim against the Defendant. The facts of *CIFG* (SGHC) are quite complicated. In the interest of brevity, I shall only set out the relevant salient facts.

61 The dispute in *CIFG* (SGHC) arose from a series of loans which were structured as Convertible Bond Subscription Agreements ("CBSAs"). The first

defendant, Polimet, had entered into the CBSAs with the plaintiff, CIFG. The second to fifth defendants were the initial shareholders of Polimet ("the Initial Shareholders"). CIFG obtained as security, amongst others, personal guarantees from two of the Initial Shareholders, although these personal guarantees were limited to their initial 50% shareholding in Polimet. Each CBSA entered into between the parties contained a general indemnity clause, *ie*, clause 12.1, in favour of CIFG, and it states as follows:

> **12. INDEMNITY**
>
> 12.1 **General Indemnity**. The Initial Shareholders and the Issuer hereby jointly and severally agree and undertake to fully indemnify and hold the Bondholder and its shareholders and their respective fund managers, directors, officers and employees (the '**Indemnified Parties**') harmless from and against any claims, damages, deficiencies, losses, costs, liabilities and expenses (including legal fees and disbursements on a full indemnity basis) directly or indirectly caused to the Indemnified Parties and in particular, but without prejudice to the generality of the foregoing, for any short-fall, depletion or diminution in value of the assets of the Issuer, the Group or any Group Company resulting directly or indirectly from or arising out of any breach or alleged breach of any of the representations, warranties, undertakings and covenants given by the Initial Shareholders and/or the Issuer under this Agreement or for any breach or alleged breach of any term or condition of this Agreement.
>
> [emphasis in original]

62 Polimet eventually defaulted on the terms of repayment under the CBSAs, and CIFG issued letters of demand against the defendants informing them that they were in breach of the CBSAs. CIFG subsequently commenced an action against, amongst others, the Initial Shareholders under clause 12.1 of the CBSAs for all the sums owing by Polimet.

63 CIFG's case was that clause 12.1 imposed a joint and several obligation on the Initial Shareholders to indemnify Polimet against "any … losses" caused

to it by "any breach" of the CBSAs. CIFG further argued that there was nothing in the language of clause 12.1 limiting its scope or excluding the losses caused by Polimet's failure to make repayments.

64 In response, Polimet and the Initial Shareholders argued that clause 12.1 should be interpreted as requiring Polimet and the Initial Shareholders to indemnify CIFG for losses or liabilities caused to CIFG as a result of third-party claims. The Initial Shareholders further argued that clause 12.1 was never intended to operate as a general and unlimited indemnity, such that they could be held personally liable for all of Polimet's liabilities under the CBSAs.

65 The issue in *CIFG* (SGHC) was thus whether the parties had intended clause 12.1 to cover the Initial Shareholders' liability for losses suffered by CIFG as a result of Polimet's debt.

66 At first instance, Lim JC accepted that clause 12.1, based on its plain wording, appeared to be an unlimited and general indemnity which would cover Polimet's failure to make repayments of its debts (at [79]). Lim JC took into account the surrounding language of clause 12.1 and she noted at [81] that clause 12.1 was labelled a "General Indemnity". To her mind, therefore, this indicated that third-party claims were merely a sub-set of the types of losses which would fall within clause 12.1. Further, Lim JC found (at [82]) that the scope of clause 12.1 was very wide, as it sought to indemnify CIFG against not just "claims", "damages", "costs" and so on, but also "losses" and "deficiencies". The latter two categories do not necessarily presuppose a third-party claim.

67 Lim JC also placed emphasis on the fact that clause 12.1 went further to specify the kinds of "losses" and "deficiencies" which CIFG may be expected to suffer. In particular, clause 12.1 specified that such "losses" and "deficiencies" may include "any short-fall, depletion or diminution in value of the assets of" Polimet or the Group Companies (through which the Initial Shareholders had been involved in diode manufacturing) resulting from "any breach or alleged breach of any of the representations, warranties, undertakings and covenants" by the Initial Shareholders or Polimet. In Lim JC's view, this specification strengthened the finding that the "losses" contemplated by clause 12.1 would ordinarily be suffered by CIFG directly, rather than flowing from a third-party claim. Accordingly, Lim JC held that clause 12.1 can be distinguished from the indemnity clause in *Sunny Metal*, which the Initial Shareholders had relied on in advancing the argument that clause 12.1 ought to be construed as an indemnity solely against third-party claims (see *CIFG* (SGHC) at [80] and [82]).

68 The Plaintiff relies on the above observations made by Lim JC in *CIFG* (SGHC) at [82], that the inclusion of the words "losses" and "deficiencies" in the indemnity clause in *CIFG* (SGHC) pointed towards the indemnity clause extending to cover losses suffered directly by the party seeking to be indemnified. The Plaintiff then refers to the Indemnity Clause 3.18.1, which provides for the Defendant's obligation to indemnify the Plaintiff against "losses" of any nature. This word, in the Plaintiff's submission, was not present in the indemnity clause in *Sunny Metal*.[22] Instead, the Plaintiff argues that there is similarity in the scope of the indemnity clause in *CIFG* (SGHC) and the Indemnity Clause 3.18.1, *ie*, the presence of the word "losses". The Plaintiff,

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22 PWS at paras 19–21.

thus, submits that the Court should adopt the distinction which Lim JC drew between the indemnity clause in *Sunny Metal* and the indemnity clause in *CIFG* (SGHC):

> 82 Second, the ambit of Clause 12.1 is very wide. It is an indemnity against not just "claims", "damages", "costs" and so on, but also "losses" and "deficiencies" – the last two of which do not necessarily presuppose a third party claim. The clause also expressly incorporates losses, deficiencies, and so on caused to the plaintiff "for any short-fall, depletion or diminution in value of the assets of" Polimet or the Group Companies resulting from "any breach of the representations, warranties, undertaking and covenants given by the Initial Shareholders". This is a type of loss which would ordinarily be directly suffered by the plaintiff rather than flowing from or even resulting in a third party claim. For instance, a third party may not necessarily be concerned with, let alone bring a claim against the plaintiff for, a deficiency in the value of Polimet's assets. These features of Clause 12.1 distinguish this case from *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric* [2007] 3 SLR(R) 782, which the Initial Shareholders rely on. In that case, the relevant clause necessarily presupposed liability incurred by the indemnified party to a third party (at [37]).

69 I am unable to accept the Plaintiff's submissions on this point. It is clear from the above passage that Lim JC's conclusion on the interpretation on the scope of the indemnity clause in *CIFG* (SGHC) was premised on specific words used in the clause. It is important to highlight that the indemnity clause in *CIFG* (SGHC) referred to losses, deficiencies, *etc*, caused to the Plaintiff "for any short-fall, depletion or diminution in value of the assets of" Polimet resulting from "any breach or alleged breach of the representations, warranties, undertakings and covenants given by the Initial Shareholders". The inclusion of these specific words widens the coverage of the indemnity clause in *CIFG* (SGHC) significantly, in that the clause contemplated liability on the Initial Shareholders to indemnify CIFG in respect of wrongdoings committed by the Initial Shareholders against CIFG. Hence, the breadth of the indemnity clause in *CIFG* (SGHC) played a crucial role in shaping Lim JC's interpretation of

clause 12.1 in the CBSAs. Lim JC relied heavily on the wording of the indemnity clause in *CIFG* (SGHC) in concluding that, at least on its plain wording, the type of loss for which the Initial Shareholders was liable to indemnify CIFG included losses suffered by CIFG as a result of the Initial Shareholders' fault. This explains why Lim JC readily drew the distinction between the indemnity clause in *CIFG* (SGHC) and the indemnity clause in *Sunny Metal*.

70 In contrast, the Indemnity Clause 3.18.1 does not contain such specific words to the effect of contemplating the Defendant indemnifying the Plaintiff in respect of liability as between the parties. Therefore, the Plaintiff erred in relying heavily on *CIFG* (SGHC), and in taking the position that Lim JC's interpretation of the indemnity clause ought to apply here, *ie*, that the scope of the Indemnity Clause 3.18.1 covers not only claims made by third parties, but also claims made by the Plaintiff against the Defendant. Rather, I am satisfied that the Indemnity Clause 3.18.1 is similar to the indemnity clause in *Sunny Metal* and in *Marina Centre Holdings*.

71 I should also emphasise that the commercial context surrounding the transaction in *CIFG* (SGHC) is very different from the present case. Whereas it is difficult to envisage a situation where the Initial Shareholders in *CIFG* (SGHC) may be liable to indemnify CIFG for third-party claims, this is very different from the present case. In a commercial lease arrangement, the commercial setting arising from the landlord-tenant relationship may more easily give rise to third-party claims against the Plaintiff. An example of this may include injuries suffered by third parties in the Premises arising from the unsafe premises or fixtures.

72 Accordingly, the interpretation of the indemnity clause in *CIFG* (SGHC) is not applicable in the present case.

The findings of the Court from its analysis of the cases on indemnity clauses

73 Given the similarity between the Indemnity Clause 3.18.1 and the indemnity clauses in *Sunny Metal* and *Marina Centre Holdings*, I am satisfied that the Indemnity Clause 3.18.1 and clause 3.18 as a whole refer to situations involving third-party claims made against the Plaintiff. Indeed, the parties acknowledged in their oral closing submissions that there are no other provisions in the lease agreement that deal with an indemnity to the Plaintiff that arises from third-party claims.[23] I note, for instance, that there are provisions in the Lease that allow the Plaintiff to claim directly from the Defendant for losses arising from the fault of the Defendant. During the oral closing submissions, counsel for the Defendant referred the Court to the following clauses:[24]

(a) clause 3.7, which concerns the Defendant's obligations in respect of the maintenance and management of the various aspects of the Premises;

(b) clause 3.8, which concerns the Defendant's obligations in respect of works carried out on the Premises;

(c) clause 3.9, which concerns the Defendant's obligations in respect of structural alterations to the Premises; and

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23 26 August 2022 Transcript at p 65 (lines 7–22).

24 26 August 2022 Transcript at p 65 (lines 9–16).

(d) clause 3.14, which prescribes a list of obligations of the Defendant in relation to the use of the Premises.

74 These clauses, in my view, only govern the parties' obligations *inter se*, and a breach of the Defendant's contractual obligations under these clauses would attract contractual liability on the Defendant's part. To interpret the Indemnity Clause 3.18.1 as further covering liability between the contracting parties *inter se* would therefore be duplicative and hence inconsistent with the obligations imposed by these other clauses. The remedy open to the Plaintiff, should there be a breach of the above clauses, would have been a claim premised on breach of contract. Accordingly, I find that the Indemnity Clause 3.18.1 deals only with third-party claims.

75 Finally, I should also mention that there is a similarly worded indemnity provision under clause 3.8.8 of the Lease which relates to Tenant's Works, which states as follows:

> 3.8.8 The Tenant shall indemnify and keep the Landlord indemnified against all claims, demands, actions, proceedings, judgments, damages, losses, costs and expenses which the Landlord may suffer or incur as a result of or in connection with:
>
> (i) any breach, non-observance or non-performance of this Clause 3.8; or
>
> (ii) the Tenant's Works.

76 In the parties' oral closing submissions, counsel for the Plaintiff submitted that clause 3.8.8 of the Lease, like the Indemnity Clause 3.18.1, was also intended to apply to claims brought by third parties against the Plaintiff as well as claims brought by the Plaintiff against the Defendant.[25] Clause 3.8.8 is

[25] 26 August 2022 Transcript at p 64 (lines 11–19).

much narrower in scope when compared to the Indemnity Clause 3.18.1. The indemnity to the Plaintiff in Clause 3.8.8 is limited to the Tenant's Works. Clause 3.8.8 of the Lease states the Defendant's obligation to indemnify the Plaintiff in respect of, amongst others, losses suffered by the Plaintiff as a result of: (i) any breach, non-observance or non-performance of clause 3.8 by the Defendant (clause 3.8.8(i)); or (ii) the Tenant's Works, which is defined in clause 3.8.1 as meaning "any fitting-out, renovations, alterations, additions, erection of new buildings or any other kinds of works" (clause 3.8.8(ii)).

77 If the Indemnity Clause 3.18.1 were to be interpreted widely as suggested by the Plaintiff, *ie*, that the Plaintiff can seek an indemnity directly from the Defendant for any losses suffered by the Plaintiff at the Premises, there would have been no need for clause 3.8.8 to be in the Lease as it would have been otiose. This is because the Plaintiff's interpretation of the Indemnity Clause 3.18.1 would be sufficiently broad to capture the situation contemplated in clause 3.8.8.

78 The wide interpretation of the Indemnity Clause 3.18.1 would also be inconsistent with the scope and intention behind the exemption clauses, *ie*, clauses 5.1 and 5.2 of the Lease. These are essentially exemption clauses which seek to exempt the Plaintiff from liability for any damage or loss occasioned to the Defendant by reason of any of the events specified in those clauses, unless the Plaintiff is wilfully negligent:

> 5 LANDLORD NOT LIABLE
>
> 5.1 Notwithstanding anything contained in this Lease and to the fullest extent permitted by Law, the Landlord is not liable to the Tenant and the Tenant must not claim against the Landlord for any death, injury, loss or damage (including indirect, consequential and special losses) which the Tenant may suffer in respect of any of

> the following (whether caused by negligence or other causes):
>
> …
>
> unless such death, injury, loss, or damage suffered by the Tenant is caused directly and solely by the wilful negligence of the Landlord.
>
> 5.2 Without prejudice to the provisions of Clause 5.1 and to the fullest extent permitted by Law, the Landlord is not responsible to the Tenant or to its employees, independent contractors, agents or permitted occupiers nor to any other persons for any death, injury, loss or damage sustained at or originating from the Premises and/or any part of the Property directly or indirectly caused by, resulting from or in connection with:
>
> …
>
> unless such death, injury, loss, or damage suffered by the Tenant is caused directly and solely by the wilful negligence of the Landlord.

79 In my view, the presence of clauses 5.1 and 5.2 is consistent with the interpretation of the Indemnity Clause 3.18.1 that I have reached, *ie*, that the Indemnity Clause 3.18.1 only covers third-party liability incurred by the Plaintiff. Indeed, having exempted itself from liability, the Plaintiff would have sought to further protect itself by seeking an indemnity from the Defendant for claims made against the Plaintiff by third parties. It is important to note that the parties agree that there is no provision in the Lease that deals with third-party claims against the Plaintiff. Perhaps the only exception is clause 3.8.8 which is similarly worded as the Indemnity Clause 3.18.1. Clause 3.8.8, however, only deals with Tenant's Works and is therefore limited in scope.

80 Therefore, I am unable to accept the Plaintiff's contention that the Indemnity Clause 3.18.1 should be interpreted as covering both third-party claims *and* the Plaintiff's direct claim against the Defendant. Instead, I find that the Indemnity Clause 3.18.1 was intended to cover only third-party claims made

against the Plaintiff. Hence, the Plaintiff's claim against the Defendant for the losses arising from the accidental fire on the basis of the Indemnity Clause 3.18.1 cannot succeed. Accordingly, I dismiss the Plaintiff's claim on this ground alone.

81 However, for completeness, I shall address the Plaintiff's argument that the Indemnity Clause 3.18.1 also requires the Defendant to indemnify claims made by the Plaintiff against the Defendant. In the present case, the issue is whether the Plaintiff can succeed in its claim for losses arising from the accidental fire against the Defendant, on the basis of the Plaintiff's own interpretation of the Indemnity Clause 3.18.1.

The Plaintiff's claim that the Indemnity Clause 3.18.1 covers claims made by the Plaintiff against the Defendant

Plain wording of the Indemnity Clause 3.18.1

82 The Plaintiff relies on the following portion of the Indemnity Clause 3.18.1: "all … *losses … of any nature which [the Plaintiff] may suffer or incur* as a result of … *any occurrences in, upon or at the Premises*" [emphasis added] to argue that the Defendant is liable to indemnify the Plaintiff for the fire at the Premises, notwithstanding the SCDF's opinion that the Defendant was not at fault as it was an accidental fire.[26]

83 A plain and literal reading of the Indemnity Clause 3.18.1 entitles the Plaintiff to a very wide coverage or protection for almost all kinds of losses. The only requirement is that the losses must have occurred at the Premises. The literal reading of the Indemnity Clause 3.18.1, therefore, means that regardless

[26] PWS at paras 11–12.

of whether the Defendant is at fault, the Defendant must indemnify the Plaintiff. Even if the losses are the result of the Plaintiff's negligence, misconduct, wilful act or fault, the Defendant has to indemnify the Plaintiff. In other words, a literal reading of the Indemnity Clause 3.18.1 simply provides that the Defendant is contractually obliged to indemnify the Plaintiff for any losses that the Plaintiff may suffer, regardless of whether there is any fault on the Defendant's part. Therefore, the Indemnity Clause 3.18.1 is broad enough to encompass a great deal of situations, including the present situation involving the fire at the Premises, the cause of which was through no fault of any party. This is the contention of the Plaintiff, notwithstanding that the losses to the Plaintiff, for which it had been compensated by its insurer, GEGI, arose from a fire, the cause of which was nobody's fault. The Plaintiff, on the advice of the insurer's investigators, accepted that the Defendant was not liable for the fire at the Premises and granted the Defendant a rent reduction arising from the fire.

84 The issue thus arises whether this was what the parties objectively intended, *ie*, that the Defendant must indemnify the Plaintiff for all losses regardless of any fault on the Defendant's part and even if the Plaintiff is negligent or at fault. In my view, this surely cannot be the case. No reasonable tenant would have signed such an onerous, completely one-sided and unfair Lease, much less the Defendant.

85 The Plaintiff submits that "there is an in-built limitation" in the Indemnity Clause 3.18.1,[27] whereby the Defendant does not have to indemnify the Plaintiff when the losses are the result of the Plaintiff's own negligence.[28]

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27 26 August 2022 Transcript at p 13 (lines 16–17).

28 PWS at para 40.

However, nothing in the text of the Indemnity Clause 3.18.1 states that the Defendant is not liable to indemnify the Plaintiff in respect of – and only in respect of – losses suffered as a result of the Plaintiff's own negligence. The Indemnity Clause 3.18.1, in its plain and ordinary meaning, is therefore *prima facie* wide enough to cover a situation where the Plaintiff's loss arises from the Plaintiff's own negligence. There is thus no in-built limitation contrary to what the Plaintiff suggests.

86 Counsel for the Plaintiff submits that the in-built limitation is what he reads into the Indemnity Clause 3.18.1. In his submission, there is a presumption, from case law, that the Plaintiff cannot be indemnified if the losses are a result of the Plaintiff's negligence.[29] As I have canvassed at [30] above, the reason for this presumption is a matter of fairness, equity and logic, *ie*, that the Plaintiff cannot claim for losses arising from its own negligence. Be that as it may, this is a presumption that ultimately arises by operation of case law. The fact remains that the *plain* wording of the Indemnity Clause 3.18.1 is broadly worded.

87 If the parties had truly intended for any such carve-outs or exclusions in the Indemnity Clause 3.18.1, they would have expressly provided for such exclusions. Indeed, an example of such express exclusions can be seen in clauses 5.1 and 5.2 of the Lease (see [78] above). Both clauses 5.1 and 5.2 exempt the Plaintiff from liability even if the Plaintiff is merely negligent. However, the exemption clauses will not protect the Plaintiff if the loss or damage is "caused directly and solely by the wilful negligence" of the Plaintiff. In other words, clauses 5.1 and 5.2 do not protect the Plaintiff if the losses are

[29] 26 August 2022 Transcript at pp 57 (line 3) to 58 (line 13).

due to wilful negligence. Accordingly, if, indeed, as the Plaintiff suggests, the Indemnity Clause 3.18.1 was intended to exclude situations involving the Plaintiff's negligence, then surely an exception similar to those found in clauses 5.1 and 5.2 would have been drafted into Clause 3.18.1. Instead, no such exception is found on the face of the Indemnity Clause 3.18.1.

88 The literal and plain reading of the Indemnity Clause 3.18.1 thus renders it extremely broad and would give rise to absurdity in its application. This could not have been the objective intention and the contemplation of the parties at the time they signed the Lease. To demonstrate its potential width and hence the potential absurdity of a broad construction of the Indemnity Clause 3.18.1 as suggested by the Plaintiff, I gave counsel for the Plaintiff three scenarios for his consideration during the oral closing submissions:[30]

(a) The Plaintiff takes a loan from an illegal moneylender and the Plaintiff defaults in its repayment of the debt. The illegal moneylender harasses the Plaintiff by damaging or setting fire to the Premises. In this scenario, counsel for the Plaintiff acknowledged that the Defendant does not have to indemnify for the damages to the Premises, even though the literal reading of the Indemnity Clause 3.18.1 could require the Defendant to indemnify the Plaintiff.[31]

(b) The Plaintiff exercises its contractual right of inspection and repair (as the Plaintiff is contractually entitled to under clause 3.10 of the Lease) and sends its employees to the Premises to inspect and examine the state and condition of the Premises. While undertaking the

30 26 August 2022 Transcript at pp 51 (line 1) to 54 (line 4).

31 26 August 2022 Transcript at pp 51 (line 1) to 52 (line 5).

relevant inspection, the Plaintiff's employee smokes a cigarette, but disposes of the lighted cigarette butt negligently. Subsequently, a fire is started which results in extensive damage to the Premises. Counsel for the Plaintiff claims that under the Indemnity Clause 3.18.1, the Defendant must indemnify the Plaintiff as the former has possession and control over the Premises.[32] Counsel for the Plaintiff cannot be right as this scenario is no different from scenario (a) as mentioned above. In both these scenarios, the losses are as a result of the Plaintiff's or its agent's fault or negligence. In scenario (a), the Plaintiff's fault is a direct result of the Plaintiff's failure to repay the illegal moneylender. In scenario (b), it was the Plaintiff's agent who was negligent in the disposal of the lighted cigarette butt. In both scenarios, the Defendant is faultless as the losses are not caused by the Defendant. But a literal reading of the Indemnity Clause 3.18.1 will require the Defendant to indemnify the Plaintiff. This reading of the Indemnity Clause 3.18.1 leads to an unfair outcome and gives rise to inequity. This cannot be the objective intention of the parties. The Defendant would not have signed the Lease if it had known the effects and wide extent of the Indemnity Clause 3.18.1.

(c) In the third scenario, the employees of McCormick deliver sacks of dried peppercorns to the Premises for storage. While McCormick's employees are in the Premises, one of them negligently disposes of a lighted cigarette butt and starts a fire. It is clear that the fire is not started by the Defendant. However, counsel for the Plaintiff argued that the Defendant is likewise liable to indemnify the Plaintiff under the

[32] 26 August 2022 Transcript at pp 52 (line 6) to 53 (line 3).

> Indemnity Clause 3.18.1.[33] As in the above scenario (b), the losses are not attributable to the Defendant. The literal reading of the Indemnity Clause 3.18.1 will lead to inequity and an unfair outcome. This again could not be the objective intention of the parties, especially when clauses 3.18.2 and 3.18.3 of the Lease are grounded on the fault or misuse of the Premises by the Defendant. I shall consider this point in greater detail at [96]–[103] below. The Defendant would not have agreed to the wide and unreasonable literal reading of the Indemnity Clause 3.18.1 if the Defendant knew that it would have to indemnify the Plaintiff even for losses not due to its fault.

89 It is imperative to underscore the importance of sanctity of contract. I emphasise that the Court cannot simply rewrite the contract that the parties have concluded. And as I have set out at [26(e)] above, the mere fact that an absurd outcome arises from a plain reading of the contractual provision in question does not necessarily mean that the Court ought to reject such a reading, if in fact this was what the parties intended. The Court must carefully scrutinise the Indemnity Clause 3.18.1 against the relevant context of the Lease and ascertain whether the parties, objectively speaking, could have intended this outcome. If, having examined the context, the Court is satisfied that this was what the parties had truly intended, then the Court is bound to give effect to the parties' commercial and contractual intentions. In the present case the objective intention of the parties, particularly the Defendant's, was not in favour of the literal reading of the Indemnity Clause 3.18.1.

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[33] 26 August 2022 Transcript at pp 53 (line 19) to 54 (line 24).

90 Indeed, this approach towards interpreting the scope of an indemnity clause is one which the Court of Appeal in *CIFG* (SGCA) had endorsed. The Court of Appeal unanimously upheld Lim JC's findings on the interpretation of clause 12.1. Beginning with the plain wording of clause 12.1, Menon CJ, delivering the *ex tempore* judgment, observed at [21] and [22] that the wording of clause 12.1 was extremely broad. Clause 12.1 extended to persons who were not parties to the CBSAs and appeared to be unlimited as to the matters covered by the indemnity. This rendered the construction of the clause on its plain wording absurd and it was necessary to turn to the contextual evidence to shed light on the scope of clause 12.1. The relevant contextual evidence, in Menon CJ's view, included, amongst others, the entirety of the CBSAs and the way the CBSAs as a whole was drafted (at [23]). Looking at the entirety of the CBSAs, the parties had included provisions for specific allocation of risks to various parties. Menon CJ thus held that this made it even more unlikely that clause 12.1 should be intended to override the parties' allocation of risks under the CBSAs (at [25]). Accordingly, Menon CJ rejected CIFG's interpretation that clause 12.1 was intended to make Polimet and each of the Initial Shareholders liable for any loss suffered or claimed by CIFG arising from the breach of any provision of the CBSAs (at [29]).

91 I am thus fortified in my approach towards analysing the scope of the Indemnity Clause 3.18.1, and I shall now consider the relevant context in interpreting the Indemnity Clause 3.18.1.

Context surrounding the Indemnity Clause 3.18.1

92 The Plaintiff submits that there are three contextual factors which have to be considered:[34] (a) the nature of the transaction in question; (b) the sub-clauses surrounding the Indemnity Clause 3.18.1; and (c) the other clauses in the Lease. I shall now examine each contextual factor in turn.

(1) The nature of the transaction

93 The first contextual factor relates to the nature of the transaction between the parties. The Plaintiff emphasises that the present transaction involves a Lease entered into between itself and the Defendant for the exclusive possession of the entire Premises by the Defendant. Since the commercial purpose of the Lease involves the Plaintiff conferring onto the Defendant exclusive possession, it follows that the Plaintiff has "relinquished control over the Premises to the Defendant".[35] Accordingly, the "risk of damage to the Premises arising from a cause not attributable to the default of either party would lie with the party who had exclusive possession of the Premises"[36] and in the present case, the Defendant. The Plaintiff, thus, contends that, by virtue of the Defendant's exclusive control over the Premises, the Defendant must be responsible for and must be liable to the Plaintiff for any losses arising from the Premises, regardless of whether the Defendant is at fault.

94 In my view, the mere fact that the present case involves a lease arrangement which confers upon the Defendant exclusive possession over the

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34 PWS at paras 41–59.

35 PWS at para 46.

36 PWS at para 47.

demised premises does not serve to advance the Plaintiff's case meaningfully. The Plaintiff's submissions rest on the assumption that the exclusive control can be equated to the passing of risk. That, however, does not represent the commercial reality associated with the allocation of risks between parties in a commercial lease. The Plaintiff's submissions, taken to the logical conclusion, would mean that every tenant of a commercial property becomes a *de facto* insurer of the landlord's property and liable to the landlord for all losses regardless of fault. That would impose on every tenant an extremely onerous obligation if that were indeed true. If this were truly the objective intention and contemplation of the Plaintiff and the Defendant at the time when they entered into the Lease, it has to be clearly stipulated, without any ambiguity, in the Lease.

95 Accordingly, it would be a leap of logic to conclude that the Defendant has to indemnify the Plaintiff for any losses at the Premises simply because the Defendant had exclusive possession over the Premises. This could not have been the objective intention or contemplation of the parties, particularly not the Defendant's. The Plaintiff's assertion that the Defendant is liable for all losses at the Premises on the basis of the Defendant's exclusive possession of the Premises would have marginalised the requirement of both parties to take up appropriate insurance as required by the Lease, *eg*, in clauses 3.6 and 4.3.2 of the Lease.

(2) The sub-clauses in Clause 3.18

96 The second contextual factor relates to the other sub-clauses located in clause 3.18, *ie*, clauses 3.18.2 and 3.18.3, which state as follows:

> 3.18 To indemnify the Landlord against (i) all claims, demands, actions, proceedings, judgments, damages,

> losses, costs and expenses of any nature which the Landlord may suffer or incur as a result of or in connection with or caused by, and (ii) all penalties or fines imposed by any relevant authority resulting from:
>
> …
>
> 3.18.2 the Tenant or its employees, independent contractors, agents or any permitted occupier to the Premises, the Property or any property in them (including those caused directly or indirectly by the use or misuse, waste or abuse of Utilities or faulty fittings or fixtures); or
>
> 3.18.3 any default by the Tenant, its employees, independent contractors, agents or any permitted occupier in connection with the provisions of this Lease.

97 The Plaintiff submits that a narrow interpretation of the Indemnity Clause 3.18.1, *ie*, that the Indemnity Clause 3.18.1 would only apply where there is any fault on the Defendant's part, would render clauses 3.18.2 and 3.18.3 otiose. These sub-clauses provide for the Defendant to indemnify the Plaintiff in the following circumstances:

(a) Where the Plaintiff's loss was caused by the misuse or abuse of the utilities arising from the conduct of the Defendant or those of its employees, independent contractors, agents or any permitted occupier *ie*, clause 3.18.2.

(b) Where the losses are the result from the Defendant's default under the Lease, *ie*, clause 3.18.3.[37]

98 Therefore, the Plaintiff submits that the Indemnity Clause 3.18.1 covers a situation where the Plaintiff's loss is not attributable to any party. The Plaintiff

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37 PWS at para 50.

argues that this interpretation is consistent with the existence of clauses 3.18.2 and 3.18.3 and also congruous with the commercial context underlying the Lease.[38]

99 With respect, I am unable to agree with the Plaintiff's submissions. As I have found at [88] above, the literal and plain reading of the Indemnity Clause 3.18.1, and in particular the words "any occurrences", will lead to an absurdity. It is, therefore, necessary to construe the Indemnity Clause 3.18.1 in the context of the whole of clause 3.18.

100 In this regard, I shall consider the *noscitur a sociis* canon of interpretation. In *Compania Naviera Aeolus, SA v Union of India* [1964] AC 868, Lord Guest at 898, citing Lord Halsbury LC in *Thames and Mersey Marine Insurance Co v Hamilton, Fraser do Co* (1887) 12 App Cas 484, described the *noscitur a sociis* canon of interpretation as prescribing that "words, however general, may be limited with respect to the subject-matter in relation to which they are used". This canon of interpretation emphasises the importance of construing a word in light of the context, and the other words with which it is associated.

101 In the present case, the words "any occurrences" taken on their own may be very wide and cover situations involving the absence of fault on either the Plaintiff's or the Defendant's part, as well as situations where the cause for the occurrence is not attributable to any party. It becomes clear, however, that this broad interpretation could not have been what the parties objectively intended

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38 PWS at para 51.

when the Indemnity Clause 3.18.1 is read with clauses 3.18.2 and 3.18.3 of the Lease.

102 Clause 3.18.2 provides that the Defendant shall indemnify the Plaintiff for, amongst others, losses suffered by the Plaintiff as a result of the fault of the Defendant and the Defendant's employees, independent contractors or agents "including those caused directly or indirectly by the use or misuse, waste or abuse of *Utilities or faulty fittings or fixtures*" [emphasis added]. Clause 3.18.3, on the other hand, deals with the tenant's default "in connection with the provisions of the Lease." Clauses 3.18.2 and 3.18.3 therefore provide for the Defendant to indemnify the Plaintiff in circumstances where the Defendant has misused or abused utilities or has defaulted on a provision of the Lease and caused the Plaintiff to suffer losses, respectively.

103 Both these clauses, therefore, contemplate some element of fault on the part of the Defendant, such that the Defendant is liable to indemnify the Plaintiff for the losses suffered. It would, therefore, be consistent with this reading of clauses 3.18.2 and 3.18.3 for the Indemnity Clause 3.18.1 to cover a situation where the loss to the Plaintiff at the Premises arises from any fault of the Defendant that is not covered by clauses 3.18.2 and 3.18.3. Logically, this must be the objective intention of the parties regarding the scope of the Indemnity Clause 3.18.1 when they signed the Lease. It could not be the objective intention or contemplation of the parties, particularly not the Defendant's, to have the Indemnity Clause 3.18.1 applied broadly as to cover situations where the Plaintiff suffers loss in the absence of fault on the part of any of the contracting parties. The Plaintiff has not adduced any evidence to dispute this.

(3) Other clauses in the Lease

104 The final contextual factor which the Plaintiff relies on are three clauses contained in the Lease reflecting the contractual obligations which the Defendant undertook in relation to its use and occupation of the Premises:[39]

(a) The first is clause 3.14.25 of the Lease, which deals with the Defendant's obligation in relation to the safety and the security of the Premises:

> 3.14.25 Security
>
> To be responsible for the safety and security of the Premises at all times during the Term (including, but not limited to, taking all steps to ensure that access to the Premises is secured when the Premises is not occupied) at the Tenant's cost and expense.

(b) The second is clause 3.14.22, which relates to the Defendant's obligation to keep the Premises safe from an outbreak of fire:

> 3.14.22 Fire Safety
>
> (i) To keep the Premises, including its fixtures, fittings, installations and appliances, in a safe condition by adopting all necessary measures to prevent an outbreak of fire in the Premises, and to this end, the Tenant must comply with all requirements of the Landlord, the Fire Safety Bureau, JTC and/or other relevant body or authority. In addition, the Tenant shall designate one or more employees as fire-safety officers as required under applicable regulations.
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> (ii) To install and maintain, at the Tenant's own cost and expense, all exit lightings and exit signs at staircases, exit passageways and the exits of the Premises in accordance with the requirements of the relevant authorities.

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39 PWS at para 54.

> (iii) At all times to provide sufficient access to all fire-fighting installations and equipment
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> (iv) If applicable and without prejudice to the generality of Clauses 3.14.11 and 3.14.13, to carry out such modification work on the existing fire alarm wirings, heat detectors and fixtures in the Premises as shall be necessary to suit its operation, including the installation of additional wiring and connections of the heat detectors and fixtures to the Landlord's common fire alarm system, to the satisfaction of the Landlord and all at the Tenant's own cost and expense.

(c) The final clause is clause 3.7.1(ii) of the Lease, which imposes on the Defendant an obligation to keep the Premises and all fixtures, fittings and installations in good and tenantable repair and condition:

> 3.7 Maintenance and Repair
>
> 3.7.1 The Tenant shall at all times, at the Tenant's sole cost and expense, be responsible for the maintenance and management of the following:
>
> …
>
> (ii) keep the Premises and all fixtures, fittings and installations in it and the Conducting Media which exclusively serves the Premises (whether within the Premises or not), in good and tenantable repair and condition (fair wear and tear excepted);

105 The Plaintiff submits that these clauses support the view that the parties intended to allocate the risk of damage resulting from an occurrence at the Premises, the cause of which is not attributable to the default of either party, to the Defendant.[40] Accordingly, a wide interpretation of the Indemnity Clause 3.18.1 would be consistent with such an allocation of risk.

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[40] PWS at para 55.

106 I am unable to agree with the Plaintiff's submissions. These clauses which the Plaintiff relies upon are clauses found under clause 3 of the Lease, which prescribes the various obligations that the Defendant, as the tenant of the Premises, agrees to covenant with the Plaintiff, as the landlord of the Premises. They are, therefore, simply contractual obligations which the Defendant agreed to undertake in leasing the property, a breach of which would entitle the Plaintiff to the remedies available under contract law, including terminating the Lease and suing the Defendant for any breach. Nothing in the plain wording of these clauses suggests that the parties intended for the Defendant to still bear responsibility for and to indemnify the Plaintiff for any losses suffered by the Plaintiff for any damage arising from an occurrence at the Premises, especially when the cause is not attributable to the fault of either party. To the contrary, the presence of these clauses in the Lease supports the finding that, in so far as the Defendant had performed its tenant's obligations under the Lease, no further liability should be visited upon the Defendant, the cause of which was through no fault on the Defendant's part. It is, therefore, illogical to conclude that the mere presence of these clauses in the Lease suggests that the parties objectively intended to allocate the risk of damage to the Defendant who had assumed such responsibilities for and over the Premises, such that the Defendant is contractually obliged to indemnify the Plaintiff regardless of any fault on its part.

107 The Plaintiff further refers to clause 3.6.1(ii) of the Lease, *ie*, the insurance which the Defendant took out to protect itself from the risk of an occurrence at the Premises where the cause was not attributable to its default, and for which the Plaintiff had suffered loss. The Plaintiff contends that this is another clause which indicates the parties' intention to allocate the risks arising from the Lease to the Defendant, despite the absence of fault on the Defendant's

part.[41] Clause 3.6.1(ii) of the Lease deals with the Defendant's obligations to purchase insurance policies in the joint names of the Plaintiff and the Defendant and it states as follows:

> 3.6 Insurance
>
> 3.6.1 At all times during the Term … the Tenant shall, without demand and at its costs and expense, take out and keep in force the following insurance policies …:
>
> …
>
> (ii) an insurance policy in the joint names of the Landlord and the Tenant … against all risks and damage to the Premises … and all parts thereof which the Tenant is obliged to keep in repair under the provisions of this Lease in such amounts and covering such risks as may from time to time be specified by the Landlord.

108 Clause 3.6.1(ii) of the Lease simply prescribes the Defendant's obligation to take up insurance in the joint names of the parties against all risks and damage to the Premises. In the absence of evidence as to the surrounding contractual context, it is difficult to discern the parties' intention as regards their purported allocation of risks, based simply on the plain reading of clause 3.6.1(ii) of the Lease.

(4) Summary of the contextual factors

109 Even on the Plaintiff's interpretation that the Indemnity Clause 3.18.1 can be applied to situations involving liability between the parties *inter se*, the Plaintiff will not succeed. The objective intention of the parties under the Indemnity Clause 3.18.1 was to require the Defendant to indemnify the Plaintiff

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41 PWS at para 58.

in respect of losses suffered by the Plaintiff which can be attributed to the Defendant's fault.

The contra proferentem *rule*

110 The Defendant also relies on the *contra proferentem* rule in support of its case that the Indemnity Clause 3.18.1 should be construed strictly against the Plaintiff.[42] The Plaintiff submits, on the other hand, that the absence of any ambiguity in the text of the Indemnity Clause 3.18.1 means that there is "no room for the operation of any canon of interpretation which favours a strict construction that restricts the operation of [the Indemnity Clause 3.18.1]".[43]

111 As the authorities cited at [29] above show, the *contra proferentem* rule is engaged where, amongst others, one contracting party seeks to rely on a clause which is onerous and would benefit the party seeking to rely on it. It is, however, necessary for there to be an ambiguity in the clause, and such ambiguity may arise from the absurdity which a plain reading of the clause yields. Indeed, both parties accept the legal principle.[44]

112 The text of the Indemnity Clause 3.18.1 is, in my view, ambiguous. It is unclear whether the Indemnity Clause 3.18.1 indemnifies the Plaintiff against third-party claims only, or whether it extends to allowing the Plaintiff to seek indemnity directly from the Defendant, or both, *ie*, to seek an indemnity from the Defendant directly as well as to indemnify the Plaintiff against third-party claims. It is also unclear whether the Indemnity Clause 3.18.1 permits the

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42 DWS at para 53.

43 PWS at para 27.

44 26 August 2022 Transcript at p 50 (lines 6–25).

Plaintiff to claim from the Defendant all losses regardless of whether the parties bore fault or were negligent. Further, adopting the Plaintiff's interpretation would lead to a particularly onerous obligation on the Defendant to indemnify the Plaintiff for any loss that occurred at the Premises. This would surely lead to an uncommercial and absurd outcome. Hence, the *contra proferentem* rule of construction should apply against the Plaintiff, such that the Plaintiff is not entitled to rely on the broad wording of the Indemnity Clause 3.18.1 in its favour.

113 Applying the *contra proferentem* rule of construction and interpreting the Indemnity Clause 3.18.1 in the context of the entirety of clause 3.18 and the Lease, the parties must have objectively intended for the Defendant to be at fault, directly or indirectly, before the Defendant is liable to indemnify the Plaintiff for the losses which the latter suffered arising from any occurrences at the Premises.

The Court's finding on the Plaintiff's submissions that the Indemnity Clause 3.18.1 permits the Plaintiff to seek indemnity directly from the Defendant

114 In the present case, the losses suffered by the Plaintiff at the Premises are as a result of the fire which occurred through no fault of any parties. As I have found at [8] above, the parties do not dispute that the cause of the fire remains unknown. Therefore, the Plaintiff cannot seek an indemnity from the Defendant for the losses caused by the fire through the Indemnity Clause 3.18.1. Hence, the Plaintiff's direct claim against the Defendant for losses arising from the accidental fire under the Indemnity Clause 3.18.1 must also fail. The losses will have to be borne by the insurer, *ie*, GEGI.

Conclusion

115 The scope of the Indemnity Clause 3.18.1 cannot be interpreted in the manner which the Plaintiff has suggested. It is clear from the wording of the Indemnity Clause 3.18.1 that the Defendant is required to indemnify the Plaintiff only in situations where the Plaintiff has suffered loss as a result of claims brought by third parties.

116 I also find the indemnity clauses considered by the Court of Appeal in *Sunny Metal* and *Marina Centre Holdings* to be similar in nature and substance to the Indemnity Clause 3.18.1, although they are not worded the same. The Court of Appeal in those two cases concluded that the indemnity clauses applied to third-party claims only. I agree with the Court of Appeal's reasoning and findings in those two cases.

117 As for the indemnity clause in *CIFG* (SGHC), the wording and structure of the indemnity clause there are completely different from *Sunny Metal* and *Marina Centre Holdings* as well as the Indemnity Clause 3.18.1. In my view, the wording of the indemnity clause in *CIFG* (SGHC) expressly allows CIFG to seek an indemnity from the Initial Shareholders for losses suffered by the former as a result of the latter's conduct. Further, the scope and usage of the indemnity clause in *CIFG* (SGHC) must be seen in its specific context, which is that the indemnity clause was curated for the purpose of the CBSAs. On this ground alone, the Plaintiff's case is dismissed as it is undisputed that the Plaintiff's claim is not a third-party claim.

118 For completeness, I turn to consider whether the Plaintiff can succeed on a direct claim against the Defendant for the losses arising from the accidental fire which occurred through no fault of the parties, based on the Plaintiff's

contended interpretation of the Indemnity Clause 3.18.1. The plain reading of the Indemnity Clause 3.18.1 reveals that its scope is extremely broad. As I have found at [88] above, to consider the Indemnity Clause 3.18.1 solely on its plain wording, without also considering the relevant context, would engender a commercially absurd outcome. It is, therefore, necessary to consider the context surrounding the Indemnity Clause 3.18.1 to understand the parties' objective intention. In doing so, I do not agree with the Plaintiff's submissions that the mere fact of the Defendant having exclusive possession of the Premises suggests that the Defendant must bear all the risks associated with the Premises. The interpretation of the Indemnity Clause 3.18.1 must also be considered together with its sub-clauses. Reading the Indemnity Clause 3.18.1 alongside clauses 3.18.2 and 3.18.3 of the Lease, the objective intention of the parties is to require the Defendant to indemnify the Plaintiff in respect of losses suffered by the Plaintiff that are attributable to the fault of the Defendant.

119 Finally, given the ambiguities contained in the plain wording of the Indemnity Clause 3.18.1 and that the Plaintiff is seeking to advance an interpretation of the Indemnity Clause 3.18.1 that would only serve to benefit itself, it is necessary to apply the *contra proferentem* rule. Accordingly, the Indemnity Clause 3.18.1 should be construed against the Plaintiff.

120 Even if the Indemnity Clause 3.18.1 can be applied to require the Defendant to indemnify the Plaintiff in respect of claims made by the Plaintiff against the Defendant, I nevertheless find that the Plaintiff fails in its direct claim against the Defendant under the Indemnity Clause 3.18.1. This is because the losses arising from the fire that was accidentally caused were not attributable to the fault of any parties. Accordingly, the Plaintiff is not entitled to rely on the Indemnity Clause 3.18.1 to make a direct claim against the Defendant.

121 For the above reasons, I dismiss the Plaintiff's claim against the Defendant. The Plaintiff is to pay the Defendant costs to be agreed or taxed.

Tan Siong Thye
Judge of the High Court

S Selvam Satanam and Julia Emma DCruz (Ramdas & Wong) for the plaintiff;
Aqbal Singh s/o Kuldip Singh and Tan Yee Pin Jeff (Pinnacle Law LLC) for the defendant.