IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 231

Suit No 415 of 2015

Between

Sea-Shore Transportation Pte Ltd

… *Plaintiff*

And

Technik-Soil (Asia) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

[Tort] — [Conversion]
[Damages] — [Measure of damages] — [Tort] — [Identity of goods in issue]

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Sea-Shore Transportation Pte Ltd
v
Technik-Soil (Asia) Pte Ltd

[2018] SGHC 231

High Court — Suit No 415 of 2015
Audrey Lim JC
26–29 June, 3, 10 July, 26 September 2018

24 October 2018

Audrey Lim JC:

Introduction

1 The plaintiff ("Sea-Shore"), is in the business of providing storage and handling services for machinery and equipment. The defendant ("Technik-Soil"), is in the business of general construction work and wholesale trade. On 28 October 2010, Sea-Shore and Technik-Soil entered into an agreement ("the Service Agreement") for Technik-Soil to rent approximately 10,000 sq ft of storage space at Sea-Shore's premises to store Technik-Soil's equipment for a monthly rent of $7,490. The parties do not dispute that the terms of the Service Agreement governed the relationship between them, and that Technik-Soil owed Sea-Shore arrears of rent totalling $266,110 (as of 30 September 2014) ("the Debt").[1]

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[1] 26/6/18 NE 4–5 and 15–16; Statement of Claim (Amendment No 1) ("SOC") at para 3.

2 In November 2014, after the parties had exchanged various correspondence regarding the repayment of the Debt, including several letters of demand by Sea-Shore, Sea-Shore proceeded to dispose of the equipment which Technik-Soil had stored at Sea-Shore's premises for a net sum of $40,000, and applied this $40,000 towards the partial discharge of the Debt.

3 In January 2015, Sea-Shore commenced this suit against Technik-Soil to claim the remaining unpaid rent of $226,110 for Technik-Soil's rental of Sea-Shore's premises to store its goods. In turn, Technik-Soil counterclaimed in tort for conversion, detinue and negligence, as well as for breach of contract, alleging that Sea-Shore had sold or removed the goods it had stored at Sea-Shore's premises without its consent.

4 Sea-Shore subsequently applied for judgment on admission. When this application was heard, Technik-Soil did not dispute that it owed the Debt. As such, on 11 May 2018, I entered judgment for Sea-Shore in the sum of $226,110 (after deducting the $40,000 which Sea-Shore had obtained from selling Technik-Soil's equipment).

5 The trial thus proceeded only on Technik-Soil's counterclaim. Technik-Soil claimed that it had stored a vast number of equipment on Sea-Shore's premises, far in excess (in quantity and value) of the equipment that Sea-Shore had disposed of. At the conclusion of the trial, I found Sea-Shore liable in tort for conversion as it had no right to sell Technik-Soil's equipment to discharge the outstanding Debt. However, I found that Technik-Soil failed to prove its allegations about the quantity and value of the equipment that was the subject of the conversion, and awarded Technik-Soil $60,000 in total as damages. Technik-Soil has since appealed against my decision, and I now give the full grounds of my decision.

Sea-Shore's case

Balan's testimony

6 Balan Vijayarahavan Pillai ("Balan"), the Chief Operating Officer ("COO") of Sea-Shore, testified on its behalf. Until 2014, when Balan joined Sea-Shore as its COO, one Sharafdeen ("Deen"), a director of Sea-Shore, had been the primary person managing its affairs. At the time of the trial, Balan was managing Sea-Shore's operations, including its storage business. Sea-Shore's premises located at No 14 Pioneer Sector 2 ("the Premises") comprised of one building surrounded by a large fenced-up open yard.

7 The Service Agreement was signed by Deen on Sea-Shore's behalf and by Shin Young Kyun ("Shin") for Technik-Soil. It was undisputed that Technik-Soil ceased to pay the monthly rent from July 2011 onwards.[2] Deen told Balan that he had spoken to Shin on numerous occasions to chase Technik-Soil to pay the rent arrears but Shin requested more time to make payment because Technik-Soil was facing cash flow issues.

8 Deen informed Balan that, sometime in April 2013, he had told Shin to pay the outstanding rent and vacate the Premises. In a letter to Sea-Shore dated 26 April 2013 ("2013 Letter"), Shin asked Deen for more time to make payment, explaining that Technik-Soil was facing financial difficulties. In this letter, Technik-Soil requested that it be given until 31 May 2013 to relocate its equipment, failing which Sea-Shore could "scrap sale off [Technik-Soil's] equipment".[3] Yet, by 31 May 2013, Technik-Soil was still in default on the rent arrears and had not removed its equipment from the Premises. Nonetheless, Deen did not immediately scrap sell Technik-Soil's equipment because

2 26/6/18 NE 22.

3 Balan's affidavit of evidence-in-chief ("AEIC") at p 76.

Technik-Soil subsequently made partial repayment of the outstanding rent in June and July 2013.[4]

9 When Balan became COO in 2014, he discovered Technik-Soil's rent arrears to be around $286,000 and found that Technik-Soil had not replied to the numerous invoices and statements of accounts issued by Sea-Shore. Hence, on 8 October 2014, Sea-Shore's lawyers issued a letter of demand for the rent arrears to be paid within seven days, failing which it would issue legal proceedings to claim the outstanding sum ("the 1st Demand Letter").[5] Technik-Soil did not respond to the 1st Demand Letter.

10 On 15 October 2014, Sea-Shore's lawyers sent another letter ("the 2nd Demand Letter") to demand that Technik-Soil settle its outstanding debt, failing which Sea-Shore would dispose of Technik-Soil's equipment and apply the sale proceeds towards payment of the outstanding debt.[6] Technik-Soil replied on 17 October 2014 to ask for more time to make payment and undertook to pay all rent arrears by July 2015.[7] On 20 October 2014, Sea-Shore replied to state that it was willing to consider an extension of time for repayment provided that certain conditions were met, asserting that it would be at liberty to enter judgment for the entire rent in arrears if those conditions were breached ("the 3rd Demand Letter").[8] Sea-Shore also informed Technik-Soil to respond with its agreement to the conditions by 21 October 2014. Technik-Soil did not reply to the 3rd Demand Letter or pay any part of the rent arrears.[9]

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4 Balan's AEIC at para 24 and pp 78–79.

5 Balan's AEIC at p 93.

6 Balan's AEIC at p 98.

7 Balan's AEIC at p 101.

8 Balan's AEIC at p 103.

9 26/6/18 NE 52.

11 Hence, in November 2014, as Sea-Shore was itself experiencing cash flow issues, Balan decided to dispose of the equipment which Technik-Soil had stored at the Premises. He did not inform Technik-Soil of this disposal at that time, as he was of the view that it had been given adequate notice by way of Sea-Shore's 3rd Demand Letter and that Technik-Soil itself had acknowledged Sea-Shore's right to scrap sell the equipment in Technik-Soil's 2013 Letter. On 15 November 2014, Sea-Shore sold all of Technik-Soil's equipment to Metal Recycle Pte Ltd ("Metal Recycle") for a net total of $40,000. A total of 20 units of equipment was sold to Metal Recycle, as reflected in Metal Recycle's Purchase Order ("the PO").[10] At that time, Balan did not know how much the equipment was worth but he claimed that they were old and corroded. Balan had invited a few potential buyers to the Premises to view the equipment and Metal Recycle had made the highest bid.[11]

12 Balan explained that he had identified the equipment for sale on the basis that all equipment found within the area of the Premises demarcated for Technik-Soil belonged to it. Sea-Shore sold all the equipment found within that area to Metal Recycle.[12] Sea-Shore did not keep an inventory of the equipment stored at the Premises and did not restrict Technik-Soil's movement of its equipment in and out of the Premises as, under the agreement between them, Technik-Soil was responsible for monitoring and keeping track of its own equipment at the Premises.[13] Balan stated that, contrary to Technik-Soil's claim, there was no other equipment belonging to Technik-Soil on the Premises apart from what Sea-Shore had sold to Metal Recycle.

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10 Defendant's Bundle of Documents ("DB") at p 38.

11 Balan's AEIC at para 52; 26/6/18 NE 100–101; DB at p 38.

12 Balan's AEIC at para 43; 26/6/18 NE 81–82.

13 27/6/18 NE 11–12.

Verlachamy's testimony

13 Verlachamy was Sea-Shore's yard manager and was present daily at the Premises to supervise the movement of goods and people in and out of the Premises. Verlachamy stated that the agreement between the parties was that Sea-Shore would not exercise oversight over Technik-Soil's equipment stored at the Premises as Technik-Soil wanted flexibility in moving its equipment in and out of the Premises. Hence he allowed Technik-Soil's staff to enter and exit the Premises and to deposit or remove items without having to inform Sea-Shore.[14]

Technik-Soil's case

14 Technik-Soil's case was narrated by Shin, its general manager and the main person running its business. Shin was also one of Technik-Soil's three shareholders.[15] Technik-Soil undertook construction projects and imported and rented equipment for that purpose. As part of its business operations, it required storage space for its equipment when not deployed for use, and hence it entered into the Service Agreement with Sea-Shore.

15 After entering into the Service Agreement, Technik-Soil proceeded to relocate a total of 198 units of various equipment from its previous storage location at Jalan Papan to the Premises between 29 October and 2 November 2010 ("the Relocated Equipment"). Shin claimed that the Relocated Equipment was missing from the Premises between November 2014 and January 2015.[16] According to Shin, Technik-Soil never removed the Relocated Equipment from

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14 Verlachamy's AEIC at paras 8–9.

15 Shin's AEIC at paras 1 and 3.

16 Shin's AEIC at para 14 and the tables therein.

the Premises, save for a few items which it deployed at construction sites and subsequently returned to the Premises for storage.[17]

16 In 2012, Technik-Soil was facing severe financial problems and fell into arrears on the rental charges due to Sea-Shore. Nevertheless, Deen allowed Technik-Soil to continue storing its equipment at the Premises and to pay the rent later. In 2013, in the midst of negotiations on the outstanding rent, Technik-Soil agreed to Sea-Shore's request that it relocate its equipment. Technik-Soil notified Sea-Shore of its agreement by way of the 2013 Letter, requesting at the same time for more time to arrange for the relocation. As Technik-Soil could not find an alternative storage location in time, Shin claimed that Deen subsequently agreed to allow Technik-Soil to continue storing its equipment on the Premises on the condition that Technik-Soil made partial payment of the outstanding rent. It was not disputed that Technik-Soil made three payments totalling $20,000 in June and July 2013 as partial repayment of its rent arrears[18] and that Sea-Shore continued to allow Technik-Soil to store its equipment at the Premises. From August 2013 to October 2014, Shin continued to assure Deen that the outstanding rent would be paid in due course. Deen was sympathetic to Technik-Soil's situation and was prepared to defer the payment of its outstanding rent while allowing Technik-Soil to continue storing its equipment at the Premises. Hence, Shin was surprised to receive the 1st and 2nd Demand Letters. Technik-Soil then wrote to Sea-Shore with a counter-proposal on 17 October 2014, which Sea-Shore responded with the 3rd Demand Letter.

17 On 22 October 2014, Deen acceded to Technik-Soil's request to store additional equipment at the Premises. Technik-Soil thus moved more equipment

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17 Shin's AEIC at para 15 and the tables therein.

18 Shin's AEIC at para 23 and Annex B of SYK-1 pp 13–14.

(totalling 16 units) to the Premises on 25 October 2014 ("the Additional Equipment").[19] Whilst doing so, Shin discovered that some of the Relocated Equipment previously stored at the Premises was missing. He discovered more equipment missing when he returned to the Premises on 28 November and 15 December 2014. By 13 January 2015, Shin found that all of the Relocated Equipment and the Additional Equipment had completely disappeared. On 8 January 2015, Technik-Soil's lawyers wrote to Sea-Shore to inform them of the missing equipment. On 16 January 2015, Sea-Shore's lawyers replied to say that Sea-Shore had disposed of Technik-Soil's equipment to settle Technik-Soil's rent arrears. It was only upon receipt of this letter that Technik-Soil discovered that Sea-Shore had disposed of its equipment.

18 Technik-Soil alleged that Sea-Shore was not entitled to dispose of its equipment without its permission. It claimed that apart from the equipment that Sea-Shore had purportedly sold to Metal Recycle, there were many other pieces of equipment comprising the Relocated Equipment and Additional Equipment stored at the Premises that subsequently disappeared. Technik-Soil thus counterclaimed for negligence, conversion and detinue. It also claimed that Sea-Shore had breached its implied contractual duty to keep Technik-Soil's equipment (*ie*, the Relocated Equipment and Additional Equipment) safe at the Premises and not to remove and dispose of them without its consent.

Issues for consideration

19 The main issues to be considered are as follows:

(a) What equipment was stored by Technik-Soil at the Premises at the material time?

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[19] Shin's AEIC at para 33 and the tables therein.

(b) Did Sea-Shore sell Technik-Soil's equipment to Metal Recycle?

(c) Did Sea-Shore have the right to dispose of Technik-Soil's equipment in satisfaction of the unpaid rental?

(d) What damages are to be awarded, whether or not Sea-Shore had the right to dispose of Technik-Soil's equipment?

The equipment stored by Technik-Soil at the Premises

20 Technik-soil has mounted a claim for 198 pieces of Relocated Equipment and 16 pieces of Additional Equipment (which I will refer to collectively as "the Equipment").[20] However, it was far from clear whether each specific piece of equipment was indeed stored at the Premises at the material time, *ie*, between October 2014 and January 2015 when Shin allegedly discovered that the equipment had gone missing. It was necessary for me to first determine what equipment Technik-Soil had stored on the Premises immediately prior to Sea-Shore's alleged dealings with the equipment as my findings on this point would have a bearing on the rest of the issues.

21 It was not disputed that Technik-Soil was allowed to move its equipment in and out of the Premises freely[21] and that Sea-Shore did not keep an inventory of the equipment stored by Technik-Soil at the Premises. There was also no evidence that Sea-Shore was obliged to maintain an inventory of Technik-Soil's equipment at the Premises at any point in time.

22 According to Balan, all of Technik-Soil's equipment on the Premises on the date of sale (*ie*, 15 November 2014) was sold and was reflected in Metal

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20 Shin's AEIC at paras 14 and 33.

21 29/6/18 NE 48.

Recycle's PO of even date. None of Technik-Soil's equipment remained on the Premises thereafter. Technik-Soil however claimed that the Equipment (comprising 214 units of Relocated Equipment and Additional Equipment) was stored at the Premises until Sea-Shore wrongfully dealt with them and they were subsequently found to be missing.[22]

23 On balance, I found that Technik-Soil failed to prove that all of the Equipment was at the Premises at the material time, *ie*, when Shin allegedly began discovering that the equipment had gone missing. I was not satisfied that all of the Equipment was delivered to the Premises for storage in 2010 as Technik-Soil claimed. Even if they were, I was not satisfied that they were all still stored at the Premises until October 2014, when Shin purportedly began to discover that equipment was missing due to Sea-Shore's dealings with them.

24 First, Technik-Soil's own documents could not substantiate its claim as to *what equipment had been placed at the Premises*. This was not disputed by Technik-Soil's counsel, Mr Magintharan.[23] The documents produced by Technik-Soil comprised mainly bills of lading and invoices for the purchase or rental of the items of equipment claimed. While these documents may show that Technik-Soil owned, leased or used various equipment, they did not prove that such equipment was stored at the Premises. Technik-Soil also produced invoices for transportation services, allegedly for trips made to deliver various pieces of equipment from and to the Premises. However, these invoices only showed that Technik-Soil had engaged vehicles for transportation services to and from the Premises, but did not identify the specific pieces of equipment carried on them.

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22 Shin's AEIC at paras 14, 33 and 57; 26/6/18 NE 75.

23 26/6/18 NE 87.

25 Second, Technik-Soil's documents for the initial deposit of the Relocated Equipment at the Premises were not reliable. Technik-Soil claimed to have moved the Relocated Equipment from Jalan Papan to the Premises from 29 October to 2 November 2010.[24] Shin produced Mobilisation Checklists ("the Checklists") listing the items of equipment transported. He signed against each item of equipment as it was moved out from Jalan Papan. Shin's son (a director of Technik-Soil) then signed against each item that arrived at the Premises using another copy of the Checklists.[25] The Checklists were the only documents in evidence that drew a link between specific items of equipment and their presence at the Premises. Shin claimed that apart from certain items which were removed from and then returned to the Premises between November 2010 and October 2014,[26] the rest of the Relocated Equipment was left at the Premises throughout until they disappeared in October 2014 to January 2015.

26 Prima facie, the Checklists showed that the Relocated Equipment was moved *into* the Premises between 29 October and 2 November 2010. However, I found that the Checklists did not comprehensively substantiate Technik-Soil's claim for the Relocated Equipment because there was no notation on the Checklists to indicate that various items, such as the following, *arrived at the Premises* from Jalan Papan as Technik-Soil claimed:

(a) a turbo mixer (Italy, 20hp, 1991) allegedly transported to the Premises on 29 October 2010;[27]

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24 Shin's AEIC at para 14 and the tables therein.

25 28/6/18 NE 12–13.

26 Shin's AEIC at para 15.

27 Shin's AEIC at para 14, 29 October 2010, item 2 and Annex B of SYK-1 at pp 248–253.

(b) six units of drill rotary allegedly transported to the Premises on 30 October 2010;[28]

(c) an auger motor (D60K) and 11 screw rods allegedly transported to the Premises on 1 November 2010;[29]

(d) a drill rig (SSD1000) allegedly transported to the Premises on 2 November 2010;[30] and

(e) 70 units of JGP rods allegedly transported to the Premises on 2 November 2010.[31]

27 For all these items, Shin had signed against them on the Checklists when they were moved out of Jalan Papan but there was no corresponding signature or notation made to indicate their purported arrival at the Premises. This was despite Shin's insistence that the Checklists were "100% accurate".[32] Shin attempted to explain that some of these items were not listed or checked off on the Checklists upon arrival at the Premises because they were "minor" items, but I found his evidence inconsistent with his own valuations of these items. Shin agreed that the drill rig (SSD1000) was a major item valued by him at $80,000,[33] while the 11 screw rods were worth some $38,500.[34] The six units of

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28 Shin's AEIC at para 14, 30 October 2010, items 10 and 11 and Annex B of SYK-1 at pp 451–454.

29 Shin's AEIC at para 14, 1 November 2010, items 1 and 2 and Annex B of SYK-1 at pp 20–25, 28, 30; 28/6/18 NE 62.

30 Shin's AEIC at para 14, 2 November 2010, item 1 and Annex B of SYK-1 at pp 93–98; 28/6/18 NE 64.

31 Shin's AEIC at p 13, 2 November 2010, items 2–5 and Annex B of SYK-1 at pp 328–353.

32 28/6/18 NE 55 and 66.

33 Shin's AEIC at para 57, item 10; 28/6/18 NE 64.

34 28/6/18 NE 63.

drill rotary and the 70 units of JGP rods were also valued by Shin at a total of $140,000 and $66,488 respectively.[35] On the contrary, various items worth less than the screw rods were recorded in the Checklists and notations were duly made on their departure from Jalan Papan *and arrival* at the Premises. It is not disputed that Shin did not personally verify that the equipment itemised in the Checklists had actually arrived at the Premises.[36] I also add that, in relation to the turbo mixer (Italy, 20hp, 1991) mentioned at [26(a)] above, there is no evidence that this equipment was even purchased by Technik-Soil in the first place (see [35] below).

28 Indeed, an item that Technik-Soil is claiming for *is not even reflected on any of the Checklists*. In his affidavit of evidence-in-chief ("AEIC"), Shin claimed that a pump (model JP300) was first moved to the Premises on 1 November 2010.[37] However, the 1 November 2010 Checklist reflected only pumps with models JP600 and JP800 being transported to the Premises.[38] In line with the Checklist, Technik-Soil's Defence and Counterclaim claimed that one unit of JP600 pump and two units of JP800 pumps were missing.[39] On the stand, Shin explained that he included a pump with model JP300 in the list of Relocated Equipment in his AEIC because, whilst checking the catalogue and model numbers when preparing his AEIC, he realised that the missing pumps should be reflected as one unit of JP300 pump and two units of JP600 pump.[40] I disbelieved Shin's explanation. If it were true, he would have corrected the error by explaining it in his AEIC. Yet, it was not until Mr Kamil, Sea-Shore's

35 Shin's AEIC at para 57, items 37–40, 56–57.

36 29/6/18 NE 44.

37 Shin's AEIC at para 14, 1 November 2010, item 11.

38 Shin's AEIC at Annex B of SYK-1 at pp 35–36, items 30–31.

39 Defence and Counterclaim at Annex A, items 17 and 18.

40 28/6/18 NE 30.

counsel, highlighted this discrepancy in cross-examination that Shin tried to explain the discrepancy. The Checklist, which Shin had consistently maintained was "100% accurate" had clearly reflected the pumps as being of models JP600 and JP800 (and not JP300), and it was signed *and countersigned* by Shin and his son. If Shin was "very familiar" with all his equipment as he claimed,[41] it would have been odd for him to have signed off on the Checklist against a JP600 pump when he meant a JP300 pump, or against two units of JP800 pump when he meant two units of JP600 pump. Moreover, Shin did not produce the catalogue that he claimed to have used to verify the pump model.

29 Third, even if I accept Technik-Soil's claim, based on the Mobilisation Checklists, that all of the Relocated Equipment had been placed at the Premises, *this did not foreclose the possibility that some or all of the Relocated Equipment was subsequently removed from the Premises*. Whilst the Checklists prima facie showed that the Relocated Equipment was first moved into the Premises, they did not record the subsequent movements of any of the Relocated Equipment out of the Premises. Even going by Shin's evidence, some of the equipment initially stored at the Premises *were* indisputably removed from the Premises between November 2010 and October 2014[42], and Technik-Soil had scant evidence to show that all the Relocated Equipment it was claiming for remained on the Premises until October 2014.

30 The crucial evidentiary gap here was that Technik-Soil did not keep any contemporaneous records showing what equipment was moved out of and back into the Premises. Shin claimed that among the Relocated Equipment, only certain specific items had been moved out of and into the Premises between

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41 28/6/18 NE 4 and 30.

42 Shin's AEIC at para 15.

November 2010 and October 2014. These movements were purportedly evidenced by "Machine Out and Return Situation" documents ("MOR documents") recording the movement of specific pieces of equipment on specified dates to and from specified locations. However, Shin admitted that the MOR documents were *reconstructions prepared for the purposes of this suit*.[43]

31 Furthermore, to prepare the MOR documents, Shin relied on transportation invoices for the vehicles hired to deliver items of equipment from the Premises to various worksites and back. However, the transportation invoices did not show what equipment was carried on the vehicles. It is unclear how Shin could, simply relying on the transportation invoices, recall that a particular piece of equipment was moved from and to the Premises on specified dates, when many of the invoices dated back to 2011 and 2012. In some instances, the MOR documents were not even substantiated by any transportation invoices or detailed different movements from those shown in the transportation invoices. For example:

(a) Shin claimed that two mixer plants (model KS60) were removed from and returned to the Premises on 2 and 6 April 2011 respectively.[44] However the transportation invoices produced to support these movements related to vehicles hired to *enter* the Premises on *both* dates, and both invoices seemed to be dated 6 April 2011.[45] The MOR document also noted that the mixer plants (model KS60) were subsequently removed from the Premises on 1 December 2011 and again in August 2014 but there were no documents such as transportation invoices produced to substantiate these movements. Hence, it is unclear

43 28/6/18 NE 13–14.

44 Shin's AEIC at para 15, Mixer Plant KS60, item 1.

45 Shin's AEIC at Annex B of SYK-1 at pp 224–225; 29/6/18 NE 54–55.

if the mixer plants were returned to the Premises prior to these dates or subsequently (if they were indeed removed).[46]

(b) The MOR document showed that a water tank was removed from and returned to the Premises on 2 and 6 April 2011 respectively.[47] Again the transportation invoices showed vehicles going *into* the Premises on *both* dates and both invoices were dated 6 April 2011.[48] Pertinently, Shin claimed that the water tank was removed from the Premises and transported to various locations before being returned to the Premises on 15 January 2013 and removed again on 20 January 2013, but no documents (such as transportation invoices) were produced to substantiate these movements on 15 and 20 January 2013.[49]

(c) The MOR document showed that a pump (model MP7-680S) was returned to the Premises on 6 April 2011,[50] but the transportation invoice showed a vehicle making a trip *out* of the Premises "to Sinaran Drive".[51]

(d) A drill rig (model PX600) was purportedly returned to the Premises on 22 January 2011,[52] but the transportation invoice from SNL Logistics Pte Ltd showed that the trip was cancelled and this was confirmed by its director, Lim Hong Liang, who testified for Technik-Soil.[53]

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46 Shin's AEIC at p 15, Mixer Plant KS60, item 2.

47 Shin's AEIC at p 15, Water Tank, item 1.

48 Shin's AEIC at Annex B of SYK-1 at pp 465–466; 29/6/18 NE 56–57.

49 Shin's AEIC at pp 15–16, Water Tank, items 4 and 5.

50 Shin's AEIC at p 16, Pump MP7-680S, item 2.

51 Shin's AEIC at Annex B of SYK-1 at pp 140–141; 29/6/18 NE 59.

52 Shin's AEIC at p 16, Drill Rig PX600, item 1.

(e) Various other movements of equipment (*eg*, a drill rig (model PX600) and a cement silo) out of the Premises were also not supported by any documents.[54]

32 Crucially, there was evidence suggesting that the movement of equipment out of the Premises was not limited to those instances recorded in the MOR documents prepared by Shin.

(a) For instance, the Checklists recorded that three units of swivel (South Korea, 89mm, one- way) were moved into the Premises on 2 November 2010 (forming part of the Relocated Equipment).[55] Technik-Soil claimed that they were moved into the Premises (again) on 25 October 2014.[56] If so, the swivels must have been removed from the Premises between November 2010 and 25 October 2014. Yet Shin did not include the swivels in his list of equipment which were moved out of and into the Premises in this period. This contradicted Shin's assertion that, other than the items particularised in his list of equipment that were removed and returned, all the other items of Relocated Equipment had been left at the Premises from the time they were moved there and were never removed from the Premises.

(b) In the case of the JP600 pumps, Shin initially stated in his AEIC that they were only removed *once* from the Premises and then returned.[57] He then subsequently stated on the stand that they had actually been

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53 Shin's AEIC at Annex B of SYK-1 at p 59; 29/6/18 NE 77–78.

54 Shin's AEIC at pp 16–17.

55 Shin's AEIC at para 14, 2 November 2010, item 6.

56 Defendant's further and better particulars dated 11 January 2017, last answer and table therein, item 6.

57 Shin's AEIC at p 17, Pump JP600.

moved in and out of the Premises on *multiple* occasions.[58] Thus the MOR document and his evidence about the movement of this item were clearly incomplete.

(c) Indeed, Shin admitted that there were other equipment moved from Jalan Papan to the Premises and subsequently removed by Technik-Soil and sold off.[59] These were not listed as part of the Relocated Equipment, but were reflected in the same Checklists as having been moved from Jalan Papan to the Premises. Hence the Relocated Equipment could also have been dealt with in the same way, since Technik-Soil's documents were incomplete and did not reliably evidence the movement of the Relocated Equipment to and from the Premises from November 2010 to October 2014 or show that all of the Relocated Equipment remained on the Premises even in October 2014.

33 In the round, the supporting documents evidencing the movement of the various equipment were incomplete and unreliable. It was also unclear how Shin could recall that specific equipment was moved when such movements were unsubstantiated by any documents and the documents did not specify the equipment being carried. As Shin admitted, there were other equipment that were also moved from Jalan Papan to the Premises but subsequently removed by Technik-Soil from the Premises, and there was little evidence to show that Technik-Soil had not done likewise with the Relocated Equipment that it was claiming for.[60]

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58 29/6/18 NE 12–14.

59 26/6/18 NE 95; 28/6/18 NE 23–25 and 27.

60 29/6/18 NE 22–23.

34 Fourth, two data loggers (which Shin included in his summary list of all the Equipment he was claiming for and valued at $80,000)[61] *were not even shown to have been transported to the Premises in the first place*. Shin had not listed these data loggers as part of the Relocated Equipment moved into the Premises in October and November 2010 or as part of the Additional Equipment moved into the Premises on 25 October 2014.[62]

35 Fifth, some items in Technik-Soil's list of Equipment were not even supported by any documents showing that *Technik-Soil had acquired these items in the first place*, let alone that they were placed at the Premises. This included a power pack (Korea, 20hp), three units of rock drill bits (Korea, Tricon 250mm), a chain (Italy, ASA120/5) and a turbo mixer (Italy, 20hp, 1991),[63] and one of two JP600 pumps (for which the invoice produced by Shin showed that *only one* unit had been purchased).[64] Further, while Shin claimed that the Equipment included two mixer plants (South Korea, KS60, 2007), the documents showed that he had obtained only one set of that mixer plant.[65]

36 Sixth, Technik-Soil could not have transported some of the Relocated Equipment into the Premises between 29 October and 2 November 2010 as it claimed because the documents showed that Technik-Soil *only acquired them after November 2010*. It claimed that a screw rod formed part of the Relocated Equipment delivered to the Premises on 1 November *2010* and relied on the Checklist of that date.[66] However, Shin conceded that this screw rod was

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61 Shin's AEIC at para 57, items 60 and 61.

62 Shin's AEIC at para 14 (see the tables therein) and para 33 (see the table therein).

63 Shin's AEIC at para 57, items 27, 31, 58 and 63; 28/6/18 NE 68–69; 29/6/18 NE 2–3.

64 Shin's AEIC at para 57, item 23 and Annex B of SYK-1 at p 207A; 29/6/18 NE 9 and 12.

65 Shin's AEIC at para 5, item 24; para 57, item 24 and Annex B of SYK-1 at p 216A.

purchased by Technik-Soil only in June *2014*, and attempted to explain (without any supporting evidence) that the screw rod was actually delivered to the Premises in 2014.[67] Likewise, a JP600 pump – which Shin claimed was moved to the Premises on 1 November 2010[68] – was purchased by Technik-Soil only in April 2012.[69] Shin tried to explain that this pump was initially rented from an entity related to the vendor before it was purchased by Technik-Soil in 2012 but did not produce any documents to support this explanation.[70]

37 Seventh, Shin produced photographs of what he claimed to be the Relocated Equipment to show that they were all stored at the Premises before they disappeared, and Mr Magintharan claimed that the photographs were taken at the Premises.[71] These photographs were taken between 2010 and June 2014. I was not satisfied that the photographs were taken at the Premises, and even if they were, they did not show that the Relocated Equipment remained at the Premises throughout and were not removed by Technik-Soil after they were photographed.

(a) Mr Magintharan conceded that two of the photographs were not and could not have been taken at the Premises, as they were taken before the date that any of the Relocated Equipment was (on Technik-Soil's own case) moved to the Premises.[72]

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66 28/6/18 NE 57; Shin's AEIC para 57, item 4 and Annex B of SYK-1 at pp 35–38.

67 28/6/18 NE 58–59.

68 Shin's AEIC at p 13, item 12.

69 Shin's AEIC, Annex B of SYK-1 at p 207A; 29/6/18 NE 5.

70 29/6/18 NE 5–7.

71 26/6/18 NE 126, 129 and 130; 27/6/18 NE 2–3.

72 DB73 and DB88; 27/6/18 NE 2.

(b) As for the other photographs, Shin was *silent on the location* at which they were taken. It was unclear whether the photographs depicted the equipment at the Premises or at some other venue. Both Balan and Verlachamy testified that there were many similar-looking premises in the vicinity of the Premises at Pioneer Sector 2.[73] Indeed, Shin conceded that one of the two photographs showing 11 screw rods was not taken at the Premises *but at the previous storage location at Jalan Papan*. He also clarified that he had produced the photographs for the purposes of showing that these were the items he owned[74] – and not to show that the items were present at the Premises.

(c) Shin claimed that a photograph of pump JP600 was taken on 8 May 2012.[75] However he claimed that this pump was moved from and back to the Premises on 10 April 2012 and 21 July 2012 respectively.[76] If so, either the pump could not have been photographed at the Premises on 8 May 2012 or Shin's claim about the movement of this pump from and back to the Premises was not to be believed.

(d) A substantial number of photographs were outdated as they were taken at least one to two years before 25 October 2014 (the date on which Shin claimed he first discovered some items of the Equipment missing).

(e) In some instances, there were no photographs at all: *eg*, for a mixer plant (KS60), a drill rig (HD60), a pump (PG100A), numerous

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73 27/6/18 NE 14, 19 and 56.

74 29/6/18 NE 15.

75 Shin's AEIC, Annex B of SYK-1 at p 206.

76 Shin's AEIC at para 15, Pump JP600.

items of JGP rods, various swivels, various monitors, two 20-ft containers, six counts of drill rotary and two data loggers.

38 Pertinently, Shin claimed that when he discovered that Technik-Soil's equipment was gradually going missing between 25 October 2014 and January 2015, he took photographs of the remaining equipment on the Premises, and even took a photograph in January 2015 of the last remaining equipment before it disappeared.[77] Yet, Shin did not produce any of these photographs. This is a curious omission given that these photographs would have been material to Technik-Soil's case as that they could have shown the existence of equipment that it claimed were on the Premises between 25 October 2014 and January 2015 and subsequently gradually went missing.[78]

39 For these reasons, I found the photographs to be of no assistance in showing that the Equipment was *stored at the Premises* at any time prior to or around October and November 2014 when the alleged tort occurred. Even if the photographs were taken on the Premises and could show that the equipment depicted were present on the Premises at the date of the photograph, this did not mean that the equipment depicted could not have been removed by Technik-Soil at any time after the photographs were taken.

40 In addition to my findings above, I found that Technik-Soil had not shown, on balance, that the Additional Equipment was transported to the Premises on 25 October 2014. Even if they were, Technik-Soil could have subsequently removed them from the Premises. Unlike the Relocated Equipment, Technik-Soil did not produce any documents such as a Mobilisation Checklist to show that the Additional Equipment was first transported to the

[77] 29/6/18 NE 36–37.

[78] 29/6/18 NE 36, 38–39.

Premises on 25 October 2014.[79] There were also no photographs of the Additional Equipment. Next, the Additional Equipment were apparently transported on two vehicles by SAM Transportation supported by invoice numbers 001595 and 001611.[80] However these two invoices were produced by Shin to also show five other pieces of equipment (from the list of Relocated Equipment) that were apparently returned to the Premises (after they were allegedly removed from the Premises).[81] It is unclear how Shin could recall so clearly what items were transported on that day to the Premises when the invoices do not state the items transported by those vehicles on that occasion. In fact, SAM Transportation's general manager, Lim Kek Hian, stated that on 25 October 2014, the items transported to the Premises were a power pack, a water tank and a silo,[82] none of which were listed as part of the Additional Equipment. Shin has also not called Deen, whom he claimed to have spoken to about storing the Additional Equipment at the Premises, to support his claim.

41 Based on the totality of the evidence, I was not satisfied on balance that all the Equipment claimed by Technik-Soil was stored at the Premises at the time prior to 25 October 2014 and accordingly did not believe Shin's claim that he gradually discovered the Equipment to be missing from the Premises on 25 October 2014, 28 November 2014, 15 December 2014 and 13 January 2015.

42 I add that if Shin's account were true, it is highly unusual that Shin did not take any concrete action the first time he allegedly discovered various equipment (apparently worth more than $180,000)[83] missing from the Premises

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79 29/6/18 NE 49.

80 Shin's AEIC at para 33.

81 Shin's AEIC at para 15, Mixer Plant KS60 (two units), Water Tank (one unit), Pump MP7-680S (one unit) and Cement Silo (one unit).

82 29/6/18 NE 64–65.

on 25 October 2014. Again, on 28 November 2014 when he discovered most of the equipment missing (as he claimed), he did not take any concrete action despite his assessment that by this time "the situation had… wholly deteriorated".[84] By then, all of the Equipment (save for only two drills) – which Shin claimed were worth about $2m – had apparently gone missing. Shin's own actions were inherently contradictory as he agreed, in court, that if he found $2m worth of missing equipment, he would have quickly made a police report.[85] It was not until he allegedly discovered one of the two remaining drills missing on 15 December 2014 that he lodged a police report on 24 December 2014. By then, Sea-Shore had sent Technik-Soil three demand letters for outstanding rent.

43 If the situation had "wholly deteriorated" by 28 November 2014, and the missing items were worth about $2m, it is puzzling that Shin did not take concrete action sooner, whether by writing to Sea-Shore or reporting the matter to the police immediately. Shin purportedly first discovered missing items barely five days after Sea-Shore's 3rd Demand Letter; one would have thought that given the contemporaneity of the 3rd Demand Letter, Technik-Soil would have immediately replied to remonstrate with Sea-Shore regarding the loss of its equipment, but it did not. Notably, Sea-Shore had sent three demand letters in October 2014 (including the 3rd Demand Letter) well before Technik-Soil finally made its police report on 24 December 2014 and wrote to Sea-Shore on 8 January 2015 regarding the allegedly missing equipment.

44 Although Shin claimed that he had confronted Deen on each occasion shortly after discovering that equipment was missing, Technik-Soil did not call

83 29/6/18 NE 34.

84 Shin's AEIC at para 37; 29/6/18 NE 34.

85 29/6/18 NE 34.

Deen to support its claim. I did not accept Shin's feeble attempts to explain that he had not called Deen as he was under the impression that Sea-Shore would do so.[86] In my view, and taking the evidence in totality, Technik-Soil's claim that various items of equipment had disappeared was no more than an afterthought concocted after Sea-Shore began to pressure Technik-Soil for payment of the rent arrears. It must be remembered that Technik-Soil was at the material time facing financial problems and had even sold some of its equipment.[87]

45 Mr Magintharan conceded that Technik-Soil bore the burden to show that the Equipment was in fact stored at the Premises at the material time.[88] Based on the above, I was not satisfied that Technik-Soil had proved on a balance of probabilities that all of the Equipment was stored at the Premises and, more pertinently, were stored there *at the material time* just before Technik-Soil had allegedly discovered them missing. While the Relocated Equipment was purportedly transported to the Premises some four years before they allegedly disappeared, they could have been removed by Technik-Soil at any time. Shin admitted at trial that there were in fact instances in which Technik-Soil had transported various equipment out of the Premises and had even gone on to sell such equipment.

46 Mr Magintharan cited *Supreme Leasing Sdn Bhd v Lee Gee and others* [1989] 1 MLJ 129 and submitted that, by disposing of the Equipment and thereby depriving Sea-Shore of the opportunity to "verify and confirm the full contents of the equipment stored at [the Premises]", Sea-Shore was "cocking a snook" against Technik-Soil.[89] I found the case to be of no assistance. In that

86 29/6/18 NE 51–52.

87 29/6/18 NE 45.

88 Defendant's Closing Submissions at para 32.

89 Defendant's Closing Submissions at para 32.

case, the defendant-hirers of a tractor complained that the plaintiff (which had brought the suit claiming for hire arrears) had failed to mitigate its damage by not repossessing the tractor. The court observed that, by making such a submission, the defendants appeared to be "cocking a snook" against the plaintiff, since it was the defendants who were in possession of the tractor and who had failed to disclose its whereabouts to the plaintiff. In the present case, the very existence of the goods on the Premises at the material time was in dispute and Technik-Soil had not shown me that all of the Equipment claimed were present at the Premises at the material time, much less that Sea-Shore had disposed of them or that they had gone missing due to Sea-Shore's act or omission. All that was shown, from Sea-Shore's evidence, was that Technik-Soil had *some* equipment at the Premises in November 2014 and that these had been scrap sold by Sea-Shore (see [47] and [48] below). Technik-Soil could not prove which particular pieces of equipment (from among the Equipment or otherwise) had been disposed of by Sea-Shore. This would have been well within Technik-Soil's ability to prove and it was incumbent on Technik-Soil to keep proper and complete records of the movement of its equipment in and out of the Premises.

47 In the round, I found that the only pieces of equipment belonging to Technik-Soil which were at the Premises at the material time were the items that Sea-Shore had sold to Metal Recycle, as reflected in Metal Recycle's PO. I will deal with the issue of the precise identity of each piece of equipment later.

Did Sea-Shore sell Technik-Soil's equipment?

48 Mr Magintharan suggested to Balan that Sea-Shore did not sell Technik-Soil's equipment to Metal Recycle and that they were sold to someone else for a higher price.[90] This was a bare assertion, which Balan denied. I accepted that

Sea-Shore had sold what was left of Technik-Soil's equipment on the Premises to Metal Recycle. Sea-Shore produced Metal Recycle's PO dated 15 November 2014. It was not disputed that Metal Recycle is a genuine entity as evident from an ACRA business profile search done by Technik-Soil itself,[91] and there is no evidence that Metal Recycle was in any way related to Balan or Sea-Shore so as to suggest any suspicious dealings between them in relation to the sale of Technik-Soil's equipment. Balan had also stated that the sale was recorded in Sea-Shore's accounts, which Technik-Soil has not challenged.[92]

Sea-Shore's right to sell Technik-Soil's equipment

49 The next question is whether Sea-Shore had a right to sell or dispose of Technik-Soil's equipment to discharge the unpaid rent. It was not disputed that the Service Agreement did not expressly provide for a right of sale. Also, such a right cannot be implied based on the test in *Sembcorp Marine Ltd v PPL Holdings Pte Ltd and another and another appeal* [2013] 4 SLR 193 of giving the contract business efficacy. In any event, this is not Sea-Shore's pleaded case.[93]

50 Sea-Shore premised its right to sell on Technik-Soil's 2013 Letter. The 2013 Letter states as follows:

> In our last meeting, you mentioned to scrap sale our equipment by end of this month. We faced difficulties in collecting payment from our main contractor despite our desperate plead.
>
> Kindly allow us until 31.5.13 to full relocate of our equipments. My promised, if we fail to do so by 31.5.13, you can scrap sale off our equipment.

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90 26/6/18 NE 71 and 104.

91 DB 569–570.

92 26/6/18 NE 102–103.

93 10/7/18 NE 32.

Sea-Shore's case is that the 2013 Letter was Technik-Soil's offer to allow Sea-Shore to scrap sell its equipment to satisfy its rent arrears, an offer which Sea-Shore accepted by conduct, namely, by refraining from scrap selling the equipment until 31 May 2013. Consideration was furnished through Sea-Shore's forbearance to scrap sell its equipment until that date ("the Purported Scrap Sale Agreement").[94]

51 Mr Kamil relied on *Ang Sin Hock v Khoo Eng Lim* [2010] 3 SLR 179 ("*Ang Sin Hock*") to show that Sea-Shore had accepted Technik-Soil's offer contained in the 2013 Letter by conduct. In *Ang Sin Hock*, acceptance by conduct was demonstrated by the plaintiff's forbearance to sue and the plaintiff's reply letter to the defendant. The plaintiff had evinced an intention to sue the defendant, and the defendant thereafter promised to pay the plaintiff what was owing to him ("the defendant's offer"). The Court of Appeal found that the plaintiff had accepted the defendant's offer by refraining from commencing legal proceedings and that this was evidenced by a subsequent letter from the plaintiff to the defendant accepting the defendant's offer. Hence a valid, fresh contract had been entered into between the parties and there was sufficient consideration through the plaintiff's forbearance to sue.

52 The present case was distinguishable from *Ang Sin Hock*. To begin with, the formation of a contract is assessed objectively and a party's acceptance of a contract must be sufficiently clear and unequivocal (*Compaq Computer Asia Pte Ltd v Computer Interface (S) Pte Ltd* [2004] 3 SLR(R) 316 at [36]; *Midlink Development Pte Ltd v The Stansfield Group Pte Ltd* [2004] 4 SLR(R) 258 at [48]–[52]). Whilst Technik-Soil may have, in the 2013 Letter, stated that Sea-Shore could scrap sell the equipment if Technik-Soil could not relocate them by

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94 Plaintiff's Closing Submissions at para 13; 10/7/18 NE 31.

31 May 2013, there was no evidence that Sea-Shore had accepted this proposal. Sea-Shore did not reply to the 2013 Letter and its conduct in allowing Technik-Soil to continue storing its equipment at the Premises until 31 May 2013 is equivocal. Even without an agreement, Sea-Shore could simply allow Technik-Soil to continue storing its equipment with rent accruing, as indeed happened until November 2014. Moreover, as Sea-Shore did not have a right to scrap sell the equipment in the first place (other than its reliance on the 2013 Letter), its forbearance to scrap sell cannot be consideration.

53 Sea-Shore did not point to any correspondence after the 2013 Letter in which the Purported Scrap Sale Agreement was reached. None of the demand letters that Sea-Shore sent in 2014 referred to the Purported Scrap Sale Agreement. Even after Technik-Soil's lawyers wrote to Sea-Shore's lawyers on 8 January 2015 to inform Sea-Shore that its equipment was missing from the Premises and that Sea-Shore should return Technik-Soil's equipment failing which Technik-Soil would commence legal proceedings, Sea-Shore's lawyers' reply on 16 January 2015 made no mention whatsoever of this Purported Scrap Sale Agreement.

54 Indeed, the Purported Scrap Sale Agreement (and any acceptance by conduct of the 2013 Letter) was inconsistent with Sea-Shore's subsequent conduct. Not only did it not proceed to scrap sell Technik-Soil's equipment after May 2013, it continued to allow Technik-Soil to store its equipment at the Premises for well over another year (while charging further rental). I accepted Shin's evidence that Deen had agreed to allow Technik-Soil to continue storing its equipment at the Premises on condition that Technik-Soil made some partial repayments to the outstanding rent, which Technik-Soil did in June and July 2013. Hence, going by Shin's evidence, the initial plan to relocate the equipment outside the Premises (and hence to give Sea-Shore the right to scrap sell the

equipment if Technik-Soil failed to do so by 31 May 2013) was no longer afoot. As Balan confirmed, Sea-Shore did not immediately order a scrap sale of Technik-Soil's equipment even in June and July 2013 because Technik-Soil had made the three payments totalling $20,000.

55 Balan also admitted that even after the 1st Demand Letter in October *2014* (in which Sea-Shore's right to scrap sell was not raised), Sea-Shore continued to allow Technik-Soil to store its equipment at the Premises.[95] He also admitted that Deen informed him to give Technik-Soil a chance to pay up as it was a long-time customer – hence Sea-Shore's 2nd Demand Letter which was sent thereafter.[96] Whilst Sea-Shore had, in the 2nd Demand Letter, informed Technik-Soil to pay the outstanding arrears failing which Sea-Shore would "take such appropriate actions as [it] deem[s] fit to sell/dispose of [Technik-Soil's equipment] without any further notice", Sea-Shore did not mention the Purported Scrap Sale Agreement, nor argue that this constituted a fresh agreement (as to Sea-Shore's entitlement to scrap sell Technik-Soil's equipment).[97] Technik-Soil's request on 17 October 2014 for an extension of time to pay did not acknowledge or accept that Sea-Shore had a right to dispose of its equipment in satisfaction of the outstanding rent, and Sea-Shore did not re-assert its right of sale in the 3rd Demand Letter.

56 The evidence above showed, on balance, that the Purported Scrap Sale Agreement was never formed in 2013 and, even if it were, that the parties had subsequently conducted themselves in a manner that suggested that they no longer intended to be bound by it. Hence I found that Sea-Shore had no right to sell Technik-Soil's equipment to discharge Technik-Soil's rent arrears.

95 26/6/18 NE 49.

96 Balan's AEIC at para 31.

97 Plaintiff's Closing Submissions at paras 17–26.

Sea-Shore's liability

57 As I found that Sea-Shore had no right to sell Technik-Soil's equipment to discharge the rent arrears, Sea-Shore was liable in conversion, as there has been an unauthorised dealing with Technik-Soil's equipment (which title remained with Technik-Soil under cl 6 of the Service Agreement): *Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 at [45]. I stress that the converted equipment is limited to those listed on Metal Recycle's PO, since I found that Technik-Soil failed to prove that there were other pieces of equipment at the Premises at the material time. Technik-Soil's claim in detinue substantially overlaps with its claim in conversion, but its claim for relief for delivery up of its equipment is no longer available as whatever equipment remained at the Premises at the material time has been sold off.

58 In its closing submissions, Technik-Soil no longer relied on a claim for breach of contract. I also did not have to consider whether Sea-Shore had a duty to look after Technik-Soil's equipment stored at the Premises; Mr Magintharan agreed that this issue would not arise if I was not satisfied that any of Technik-Soil's equipment (apart from the equipment sold to Metal Recycle) was missing as it claimed.[98] In any event, cll 2.6 and 4.1 of the Service Agreement expressly state that Technik-Soil is to maintain adequate insurance coverage (at its own cost and expense) for its equipment "against loss or damage by flood, fire[,] riot, burglary and all other risks" and that Sea-Shore "shall not be held liable for any loss or damage to… [Technik-Soil's equipment] unless such loss or damage… is caused by the breach or negligence of [Sea-Shore]…".

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98 10/7/18 NE 36–37.

Damages

59 I come to the issue of the damages to be awarded. Technik-Soil claimed in its pleadings a sum of $2,557,045 as the value of the Equipment, based on Mr Shin's own estimated valuation of the Equipment using information on the internet and other sources.[99] However, Technik-Soil later revised its claim to $2,090,800 as the market value of the Equipment based on the valuation of its expert valuation consultant, Mario Mendoza ("Mario").

60 Technik-Soil also claimed in its pleadings "loss of business revenue from the usage of the equipment".[100] However this was not raised in closing submissions and in any event Technik-Soil did not adduce any evidence pertaining to this limb of damages, and I need say no more.

61 In assessing damages, I was only concerned with the equipment that was sold to Metal Recycle on 15 November 2014, as I had found that Technik-Soil had not made out a case that of the Equipment claimed were at the Premises at the material time and had gone missing as a result of Sea-Shore's action or fault. Confining the inquiry to the equipment sold to Metal Recycle, Technik-Soil's case is that they should be valued at $875,000.[101] Crucially, Mr Magintharan conceded that Technik-Soil did not know which equipment Sea-Shore had sold to Metal Recycle; this could not be ascertained since the equipment was no longer available for inspection. Its valuation is based on the *assumption* that the items reflected on Metal Recycle's PO correspond with certain items of the same description in Technik-Soil's list of the Equipment. Mario assessed the value of the items in Technik-Soil's list of the Equipment in his valuation report,

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99 Defence and Counteclaim (Amendment No 1) at para 11a; 28/6/18 NE 39.

100 Defence and Counterclaim (Amendment No 1) at para 11b.

101 26/6/18 NE 84–86.

and for the purposes of the assessment of damages I will refer to the items as they are labelled in his report.[102] I set out in table form Mr Magintharan's case as to which items in Mario's report corresponded to the items sold by Sea-Shore:

Item	**Description on Metal Recycle's PO**	**Price Metal Recycle paid**	**Item of Mario's report, as assumed by defendant *[Corresponding item at para 57 Shin's AEIC]***	**Mario's valuation**
1	Used pantel boring machine (5 units) ("PO Items 1–5")	$15,000 in total	A1 to A5 – Drilling rig DHJ40 (Japan), auger motor, screw rods and screw bit *[Items 1, 2, 3, 4 and 5]*	$68,000
2			B1 – Drilling rig PX600 (Italy) *[Item 6]*	$50,000
3			B2 – Drilling rig PX608 (Italy) *[Item 7]*	$74,000
4			B3 – Drilling rig SS200 (Korea) *[Item 8]*	$6,000
5			B4 – Drilling rig SS300 (Korea) *[Item 9]*	$7,000
6	Used boring machine (spoilt engine and hydraulics) ("PO Item 6")	$5,000	B5 – Drilling rig SS1000 (Korea) *[Item 10]*	$74,000
7	Loose maintenance tools / water pump unit and accessories (4 units) ("PO Items 7–10")	$10,000 in total	B10 – Grouting pump MP7-680S (Italy) *[Item 15]*	$$238,000
8			B11 – Grouting pump 4T250 (Italy) *[Item 16]*	$140,000
9			B12 – Grouting pump PG-100A (Japan) *[Item 17]*	$30,000
10			B13 – Drilling pump MG-50 (Japan) *[Item 18]*	$64,000
11	Silo tanks and	$10,000	B28 – Cement Silo 70m^3	$33,000

[102] 3/7/18 NE 2.

	water tank (5 units) ("PO Items 11–15")	in total	capacity (Korea) *[Item 33]*	
12			B29 – Cement Silo 60m^3 capacity (Korea) *[Item 34]*	$26,000
13			B30 – Cement Silo 50m^3 capacity (Korea) *[Item 35]*	$23,000
14			B31 – Cement Silo 30m^3 capacity (Korea) – two units *[Item 36]*	$34,000 (total)
15			B54 – Water tank (Singapore) *[Item 59]*	$8,000
			Total value:	**$875,000**

Table 1: Technik-Soil's list of items sold to Metal Recycle

62 For convenience, I will refer to the equipment itemised in Metal Recycle's PO as "PO Item(s) [serial number]" as reflected in Table 1 above. It is relevant to note that in Technik-Soil's full list of the Equipment, Technik-Soil actually had a total of 12 drill rigs (which were matched to the description of PO Items 1–5 and PO Item 6), but six of these were *assumed* to be the ones sold to Metal Recycle so as to match the quantity stated on the PO. Likewise, Technik-Soil had a total of 12 grouting pumps (which were matched to the description of PO Items 7–10) but four of these were *assumed* to be the ones sold to Metal Recycle so as to match the quantity stated on the PO. It is important to note that each of these items of equipment, even within the same class of item, were of different models and specifications, different years of manufacture (where such information was available), and accordingly different values (according to Mario's opinion).

63 I next outline briefly the basis of Mario's valuation:

(a) No physical inspection of the equipment was done as the equipment was no longer available.

(b) The equipment was presumed to be operational.

(c) Each piece of equipment is ascribed a Base Value derived either from (i) the cost of a new item of the same specification if that particular piece of equipment was practically new at the time of valuation (the "Cost of Replacement, New" or "CRN"); or (ii) the cost of a used item of the same specification if such pricing information was available (the "Used Cost" or "Market Data" approach). The Base Value is obtained from the website or by checking with manufacturers.[103]

(d) As a general rule, construction equipment lasts for 15 to 20 years.[104] For any equipment which has reached or exceeded its useful life of 15 years and is still operational, a residual value of 15% to 20% of the CRN is ascribed.[105]

(e) The value ascribed to each item of equipment was based on the fair market value at 28 November 2014 ("current value").[106]

(f) The current value of each equipment is based on its Base Value, to which a percentage of depreciation is applied based on the asset's year of manufacture and life span.[107] Where the Base Value was derived from a Used Cost, the percentage of depreciation would take into account the depreciation already factored into the Used Cost.[108]

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103 3/7/18 NE 27.

104 3/7/18 NE 17.

105 Mario's AEIC at p 16.

106 3/7/18 NE 11 and 19.

107 3/7/18 NE 15 and 24.

108 3/7/18 NE 30.

64 Additionally, Technik-Soil's case is also that it did not have five "compressor units" which are reflected on Metal Recycle's PO (and reflected as being sold for $20,000 in total), and that the reference should be to five "turbo mixer plants" instead.[109] I will return to this item later.

65 Sea-Shore argued, on the other hand, that the equipment that were left on its premises were only worth $60,000, the price at which Sea-Shore sold them to Metal Recycle for scrap. Sea-Shore does not admit that any of the equipment listed by Shin and valued in Mario's report correspond to the equipment that Sea-Shore sold. Sea-Shore called Mohamed Ali B Darius ("Mohamed Ali") as its valuer. Mohamed Ali merely opined that Mario's report did not comply with the International Valuation Standards ("IV Standards") for valuing assets as no physical inspection of the assets were carried out and Mario had simply assumed that the equipment was operational when he valued them.

Applicable principles

66 The measure of damages is essentially the market value of the converted equipment at the date of conversion or the cost of replacing the converted equipment (*Marco Polo Shipping Co Pte Ltd v Fairmacs Shipping & Transport Services Pte Ltd* [2015] 5 SLR 541 at [28]–[33]). However, in proving its entitlement to damages, Technik-Soil must show both the fact of damage and its amount, and there must be sufficient evidence of the quantum of loss suffered even if Technik-Soil would otherwise have been entitled to such quantum (*Biofuel Industries Pte Ltd v V8 Environmental Pte Ltd* [2018] SGCA 28 at [41]).

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109 Defendant's Closing Submissions at para 31.

67 If it is clear that some substantial loss has been incurred, that an assessment is difficult because of the nature of the damage is ordinarily no reason to award no damages or merely nominal damages. In *Robertson Quay Investment Pte Ltd v Steen Consultants Pte Ltd and another* [2008] 2 SLR(R) 623, the Court of Appeal accepted that the proof of damage requires a flexible approach, with different occasions calling for different evidence with regard to certainty of proof, depending on the circumstances of the case and the nature of the damages claimed (at [30]). Where the plaintiff has attempted its level best to prove its loss and the evidence is cogent, the court should allow recovery.

68 Such guidance is readily applicable where uncertainty is inherent in the nature of the damages sought; for instance, where the head of damages involves postulating about the effects of a counterfactual scenario, isolating the effects of the tortious cause, or postulating about the future. But the difficulty before me is a different one: uncertainty surrounds the very *identity* of the equipment to be valued, and its *nature and condition*. Technik-Soil faced difficulty in even identifying what items of equipment were converted in the first place, and this was largely due to the fact it had failed to keep proper records of what equipment was at the Premises at the material time.

69 At first blush, the difficulty faced by Technik-Soil (in identifying what equipment had been converted by Sea-Shore and in proving the condition and value of such equipment) appeared to be the result of Sea-Shore's wrongful sale of the equipment. This would appear to trigger the maxim *omnia praesumuntur contra spoliatorem* – that everything is presumed against the spoiler or wrongdoer. There are authorities that suggest that a person who, having converted property, refuses to produce it such that its exact value may be known is liable for the greatest value that such an article could have (*Coldman v Hill* [1919] 1 KB 443 at 458; *Armory v Delamirie* (1722) 1 Stra 505, 93 ER 664)

("the *Armory* principle"). In modern authorities, the *Armory* principle has been accepted and restated by the English courts as raising an evidential presumption in the claimant's favour, giving him the benefit of any relevant doubt where the defendant has made it difficult or impossible for him to adduce relevant evidence (see *Browning v Brachers* [2005] EWCA Civ 753; *Glenbrook Capital LP v Hamilton* [2014] EWHC 2297 (Comm) ("*Glenbrook Capital LP*") at [42]–[44]). Likewise, the High Court of Australia has affirmed a principle that "[t]he trial judge … may think it proper to draw inferences in favour of the appellants, if it is concluded that the respondent's wrong itself made quantification difficult" (*Murphy v Overton Investments Pty Ltd* [2004] HCA 3 at [74], citing *Armory v Delamirie* at footnote 48).

70 Although the authorities do not necessarily speak with one voice on the application of the *Armory* principle, it is clear that the principle is subject to some qualifications. First, the full rigour of an adverse presumption applies only where a party has intentionally and in bad faith destroyed or refused to produce the subject matter in question so as to prevent the claimant from adducing evidence that could prove his case (see, *eg*, *Zabihi v Janzemini & Ors* [2009] EWCA 851 ("*Zabihi*") *per* Moore-Bick LJ). Next, it should only apply where the wrongdoer's acts make it difficult or impossible for the innocent party to prove its loss or where the facts needed to prove the loss are known solely by the wrongdoer and he does not disclose these facts to the innocent party (*Ticketnet Corporation v Air Canada* (1997) 154 DLR (4th) 271 at [85]–[86]), cited in *Bangle v Lafreniere*, 2012 BCSC 256 at [38]). Further, any presumption must still be consistent with the rest of the facts of the case and founded on the evidence that has been presented (*Colbeck v Diamanta (UK) Ltd* [2002] EWHC 616; *Glenbrook Capital LP* at [44]; *Double G Communications Ltd v News Group International Ltd* [2011] EWHC 961 at [8]). In other words, the *Armory*

principle is not a licence for the court to engage in pure guesswork. Bearing in mind that the identity of the converted equipment is disputed in the present case, I note in particular that in *Zabihi*, Blackburne J at first instance (whose decision was affirmed by the Court of Appeal) declined to apply the *Armory* principle in its fullest force because it must be "temper[ed]… to the fact that [the claimant was] not able to establish *just what the goods were*" (emphasis added). It must be noted that in *Zabihi*, it was not disputed that the plaintiff claimant had handed over certain jewellery to the defendant tortfeasor and had informed the defendant of the price he expected the defendant to sell them for.

71 With these qualifications in mind, I was not satisfied that any evidential presumption should be raised against Sea-Shore. There was no evidence that it had wilfully sold the equipment or refused to produce them in order to prevent Technik-Soil from giving evidence. Sea-Shore had believed (albeit erroneously) that it was entitled to sell Technik-Soil's equipment to discharge the rental arrears that Technik-Soil owed to Sea-Shore. Furthermore, although the sale of Technik-Soil's equipment has made it difficult for Technik-Soil to prove the condition of the equipment as a physical inspection was no longer possible, it was its responsibility to keep track of the identity of its equipment and their movement into and out of the Premises. Sea-Shore was not obliged to keep an inventory of Technik-Soil's equipment. The specifications of each equipment were also within Technik-Soil's knowledge, as evidenced by its ability to particularise details such as the model, make and year of manufacture of some 65 types of equipment (totalling more than 200 units) it claimed for.[110] Therefore, Technik-Soil bore the legal and evidential burden of proving first, what particular equipment was on the Premises at the material time when they were converted by Sea-Shore and second, the value of that equipment.

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110 Shin's AEIC at para 57 (see table therein).

72 In relation to expert evidence, a judge should not substitute his own views for those of an uncontradicted expert (*Saeng-Un Udom v Public Prosecutor* [2001] 2 SLR(R) 1 at [25]–[27]). On the other hand, a court must not unquestioningly accept unchallenged evidence. Evidence must be weighed and evaluated in the context of the factual matrix and the objective facts, and an expert's opinion "should not fly in the face of proven extrinsic facts relevant to the matter". In reality, substantially the same rules apply to the evaluation of expert testimony as they would to other categories of witness testimony (*Sakthivel Punithavathi v Public Prosecutor* [2007] 2 SLR(R) 983 at [76]). Hence, while a judge is not obliged to accept the opinion of an expert, even where there is no contrary opinion, such rejection must be based on sound grounds (*Lo Sook Ling Adela v Au Mei Yin Christina and another* [2002] 1 SLR(R) 326 at [48]).

My decision on the value of the equipment

73 I first summarise my decision on the quantum of damages before explaining my grounds in detail. To prove its entitlement to damages, Technik-Soil had to prove:

(a) the identity, specifications and condition of the equipment present at the Premises at the time Sea-Shore sold them to Metal Recycle; and

(b) the valuation of these equipment.

74 As I had found that the only items of equipment that Sea-Shore had converted were those reflected on Metal Recycle's PO, it was only relevant to assess Technik-Soil's claim that selected items among the Equipment corresponded to those reflected in the PO (see Table 1).

75 I rejected Technik-Soil's valuation of the drill rigs, water pumps, silo tanks and water tank (which were said to correspond to the PO Items 1–15). I found that Technik-Soil could not reliably identify which equipment these were and what condition they were in. There was no perceptible basis for its assumption that a selected few of its drill rigs and water pumps corresponded to PO Items 1–10 or that the silo tanks and water tank corresponded to PO Items 11–15. This was a fatal flaw because Technik-Soil claimed that even within the same class of equipment (*eg*, among the drill rigs), each particular item differed in make, model, year of manufacture and value, and the range of fair market value (on Technik-Soil's own case) was wide. Technik-Soil also did not have a defensible basis for its valuation, particularly because the valuation was undertaken on the premise that the equipment was operational when there was no evidential foundation for such a premise. Pertinently, Technik-Soil claimed that after all the Relocated Equipment was moved to the Premises in October and November 2010, only *eight of the 198* units of the Relocated Equipment was removed from the Premises for use,[111] leaving 190 units on the Premises for some four years (*ie*, up to October 2014 when Technik-Soil first claimed that some of its equipment was missing). As such, it is unclear whether the 190 units forming the bulk of the Relocated Equipment left at the Premises for such a long time were even operational or functional (even if I accepted that any or all of them were at the Premises at some point in time).

76 Therefore, given the state of the evidence, I accepted that the price paid by Metal Recycle to Sea-Shore was the best evidence of the value of the equipment at the time of conversion. I now explain in detail the findings summarised above.

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111 Shin's AEIC at para 15 (see table therein).

PO Items 1–5 and PO Item 6 ("Used Pantel boring machines" and "Used boring machine (spoilt engine and hydraulic)")

77 PO Items 1–5 were described on Metal Recycle's PO as "Used Pantel boring machines" while PO Item 6 was described as a "used boring machine (spoilt engine and hydraulic)". For Technik-Soil to prove that it is entitled to damages exceeding the price paid by Metal Recycle for these items, it had to prove a higher valuation of the same equipment. This required first proving the factual foundation for its higher valuation, *ie*, what equipment is being valued, of what specifications and in what condition. For PO Items 1–6, Technik-Soil claimed that Items A1 to A5 (drill rig, auger motor, screw rods and screw bit) in Mario's list together corresponded to one of these six units, while the drill rigs itemised by Mario as Items B1 to B5 corresponded to the remaining five. I found no reliable evidence of which particular items in Mario's list corresponded to PO Items 1–6.

78 First, Technik-Soil's selection of equipment as those corresponding to PO Items 1–6 was completely arbitrary. Technik-Soil claimed to have lost 12 drill rigs;[112] these are Items A1 (to A5), B1 to B9, C1 and C2 of Mario's report. However, it had chosen to *assume* that PO Items 1–6 corresponded to the first six of the 12 drill rigs (*ie*, Items A1 (to A5) and B1 to B5). I was unable to accept this method of attribution. The 12 drill rigs were not of the same make, model, capacity or even year of manufacture, and Mario had assigned a different market value to each of them, ranging from $6,000 to $149,000. Without proper documentation of which drill rigs remained on the Premises at the time of the tort (or whether the drill rigs that Sea-Shore had sold were even from the list of the Equipment), Technik-Soil's approach in randomly selecting six out of 12 drill rigs and making a claim for those drill rigs was arbitrary.

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112 Shin's AEIC at para 57, items 1, 6–14, 64–65.

79 Next, I had difficulty accepting that certain drill rigs were even present at the Premises at the time of the tort because there was inadequate documentation supporting the acquisition, presence or movement of these drill rigs (including the six assumed to have been the ones converted):

(a) Based on the Checklists, it was doubtful whether Item A2 (auger motor) and Item A3 (11 screw rods) had even arrived at the Premises on 1 November 2010 as Technik-Soil had claimed (see [26] above). It was also doubtful whether Item A4 (screw rod) was delivered to the Premises on 1 November 2010 as Technik-Soil claimed, because Shin admitted that Technik-Soil only purchased this item in June *2014* (see [36] above).

(b) Second, it was unclear whether Item B1 (drill rig PX600), which Technik-Soil claimed was moved in and out of the Premises on numerous occasions, was indeed returned to the Premises eventually. The documents Shin produced to support the movement of Item B1 were unreliable and incomplete. At best they showed the movement of *vehicles* but not the equipment transported, and documentation was also missing for certain trips to and from the Premises (see [31] above). I also add that Shin's supporting documents on Item B1 showed that the item was owned by Soiltec Ital, Korea Co Ltd (of which Shin happened to be a director) and not by Technik-Soil[113] and there was no evidence to show that Item B1 was leased or loaned to Technik-Soil at the material time. Without an interest as hirer or owner of the goods, Technik-Soil had no right to claim in the tort of conversion for Item B1.

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113 Shin's AEIC at para 5, item 6; para 57, item 6 and Annex B of Exhibit SYK-1 at p 50.

(c) Third, it was doubtful whether Item B5 (drill rig SSD1000) was moved to the Premises on 2 November 2010, as the item reflected on the Checklist (by way of a handwritten notation by Shin) was not countersigned to show that it had arrived at the Premises, although Shin maintained that the Checklist was 100% accurate (see [27] above). There were also no documents to show that Technik-Soil had acquired or leased Item B5. Even if Item B5 was first moved to the Premises on 2 November 2010, it is unclear if (as Shin claimed) Item B5 was transported back to the Premises on 26 July 2012 after it was removed from the Premises on 10 April 2012[114] – again the documents produced merely showed movement of a vehicle on 26 July 2012 to the Premises but not what it transported.

(d) Fourth, as for Item B8 (drill rig GT1001) which formed part of the Additional Equipment, I had found that there was no evidence that Technik-Soil had first moved this equipment to the Premises on 25 October 2014 (see [40] above).

(e) As for Items B3, B4 and B7 (drill rigs SS200, SS300 and YBM-3), Technik-Soil did not produce any documents supporting its acquisition (or lease) of the items, save that they were itemised in the Checklist for their move to the Premises on 30 October 2010.

80 Therefore, I was unable to accept Technik-Soil's assumption that Items A1 to A5 and B1 to B5 correspond with PO Items 1–6, because I was not satisfied that all these items were at the Premises at the material time. Even if six drill rigs must have been on the Premises because they were sold to Metal Recycle, there was no evidence as to which six these were among Technik-

114 Shin's AEIC at para 15, Drill Rig SSD 1000.

Soil's 12 drill rigs (or whether the six rigs were even from these 12 rigs). Technik-Soil's documentation of the movement of equipment to and from the Premises was inadequate and the transportation invoices did not state the equipment transported.

81 Further, even if I were prepared to consider awarding Technik-Soil the *minimum* value of six drill rigs among its list of 12 drill rigs, I was not prepared to rely on Mario's valuation, for the following reasons:

(a) There was no basis for Mario's assumption that the equipment was operational, as no inspection was done, and he relied only on Technik-Soil's assertion that they were operational. However, Technik-Soil had not produced any evidence that the equipment was regularly maintained or serviced or any reliable evidence of recent use of the equipment. Based on Technik-Soil's own case, only two of the 12 drill rigs moved to the Premises (*ie*, drill rigs PX600 and SSD1000) were ever deployed for construction projects and hence there was no evidence that the other 10 were even operational.

(b) Mario's valuation was based on photographs of the equipment provided to him by Technik-Soil. As earlier noted, some of the photographs were dated and could not have provided him with an accurate picture of the condition of the equipment in November 2014.

(c) Mario's ascription of the Base Value of the equipment was sourced from the internet or inquiries with suppliers, but he did not provide supporting documentation so that the Base Value could be verified. Further, even where Technik-Soil had provided evidence of its actual cost of acquisition of a particular equipment, Mario did not utilise that figure. I found this especially problematic for Item B8 (jet grouting

machine GT1001), for which the invoice for purchase states that Technik-Soil acquired it at a price of $4,800.[115] In contrast, Mario obtained a Base Value of $67,317 and a valuation of $43,000 after depreciation.

(d) For several items (*eg*, Items B3, B4, B5, B6), Mario was unable to ascertain the year of purchase or manufacture, and Technik-Soil did not supply any documentation of the same. It was thus unclear how Mario could assess the condition of the equipment and the appropriate depreciation value. Even where he specified a year of purchase or manufacture, he admitted that he was making an assumption based on his internet searches on the equivalent model numbers and it was not clear that these particular models were produced in only one production run.[116]

(e) For Items A1 to A5, which Technik-Soil claimed corresponded to PO Item 1, Mario provided a composite valuation without a breakdown of the values ascribed to the individual items. Since I had doubts that Items A2 to A4 were at the Premises at the time of the tort, I would have only considered the value of Items A1 and A5, if at all. But there was no evidence as to how Items A1 and A5 would be individually valued.

82 Therefore, for PO Items 1–6, I accepted that the price paid by Metal Recycle was the best evidence of the value of these items. I accepted that there were some weaknesses in Sea-Shore's evidence of the value of these items. For example, Sea-Shore did not call for an open auction or obtain a valuation from

115 Shin's AEIC, Annex B of Exhibit SYK-1 at p 118.

116 3/7/18 NE 15–16.

an experienced valuer. Its method of sale was rather more haphazard; in Balan's words, Sea-Shore simply "invited many people [to view the equipment at the Premises] and took the highest bid".[117] Balan did not give evidence about the profile of potential buyers that Sea-Shore invited, such as whether they were all scrap dealers or used machinery dealers. Nonetheless, the value obtained on Sea-Shore's sale was based on a physical inspection of the equipment's condition at the time of sale. Sea-Shore adduced photographs showing the condition of some of Technik-Soil's equipment remaining on site as of August 2014, and Balan explained, using the photographs, why the equipment was not in serviceable condition. On balance, the price paid by Metal Recycle was the best evidence of the equipment's value at the time of the tort.

PO Items 7–10 ("Loose maintenance tools / water pump unit and accessories")

83 Turning to PO Items 7–10, the "loose maintenance tools / water pump unit and accessories (4 units)". Technik-Soil asked the court to assume that PO Items 7–10 correspond with Items B10 to B13 (grouting pumps and drilling pumps) in Mario's report. For similar reasons as those given in relation to the drill rigs, I had difficulty in coming to such a conclusion.

84 First, Shin claimed to have lost 12 units of pumps – see items 15 to 23 of the table to para 57 of his AEIC, which correspond to Items B10 to B18 of Mario's report. Again, given that the 12 pumps are not of the same make, model, capacity or even year of manufacture, and that Mario had assigned different market values to each of them (from as little as $5,000 to as much as $238,000), I had difficulty in accepting Mr Magintharan's method of attribution. As with the drill rigs (or boring machines as described in Metal Recycle's PO), Technik-

117 26/6/2018 NE 100.

Soil did not identify which pumps Sea-Shore had sold to Metal Recycle. Moreover, Sea-Shore had assumed that this category of items comprised of *only* grouting and drilling pumps, which is at variance with the description on Metal Recycle's PO, which refers to "loose maintenance tools" and "accessories" as well.

85 Second, I had difficulty accepting that certain pumps were even present at the Premises at the time of the tort:

(a) It was unclear from Technik-Soil's own document whether Item B10 (grouting pump MP7-680S), which it claimed was first removed from the Premises on 20 January 2011 was ever returned to the Premises eventually. Shin's record of movements to and from the Premises for Item B10 was unreliable (see [31] above). Also, the transportation invoice from SAM Transportation which showed a vehicle going to the Premises on 25 October 2014 (which Technik-Soil relied on to show that that was the last time that Item B10 was moved back to the Premises) did not state the items transported to the Premises. Lim Kek Hian from SAM Transportation did not mention a grouting pump being transported on that day (see [40] above).

(b) For Item B16 (one IPC1000 pump) the text of the air waybill produced by Technik-Soil to prove its purchase of the said item[118] was illegible and failed to show what equipment Technik-Soil had purchased.

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118 Shin's AEIC, Annex B of SYK-1 at p 192; DB 242.

(c) For Item B17 (one JP300 pump), I had earlier found that this pump was not even moved to the Premises in the first place on 1 November 2010 as it was not listed in the Checklist (see [28] above).

(d) For Item B18 (two JP600 pumps) which Technik-Soil claimed were on the Premises at the material time, I had earlier found that one pump was unaccounted for and the other pump was not even moved to the Premises in 2010 in the first place (see [28] and [36] above).

86 I also add that for Items B13, B14 and B15 (one MG50 pump, two MG10 pumps and two IPC800 pumps respectively), no documents supported Technik-Soil's acquisition of these items save that they were itemised in the Checklist dated 1 November 2010.

87 Given the above, I was unable to accept Technik-Soil's assumption that Items B10 to B13 corresponded with PO Items 7–10. Even if four units of "loose maintenance tools/accessories and water pump" must have been on the Premises because they were sold to Metal Recycle, the evidence was not clear as to whether all the four units were water pumps and whether and which four pumps these were among Technik-Soil's 12 pumps.

88 Further, even if I were prepared to award the minimum value of four water pumps (relying on the four lowest values among the 12 pumps), I had difficulty accepting Mario's valuation of the water pumps for similar reasons I have given in relation to the boring machines/drill rigs at [81(a)]–[81(c)] above. I add that for B13, B14, B15 and B16, there was no evidence of the year of manufacture or year of purchase, so there was no factual foundation upon which the depreciation of the equipment could be assessed.

89 Therefore, for PO Items 7–10, I also accepted that the price paid by Metal Recycle was the best evidence of the value of these items.

PO Items 11 – 15 ("Silo tanks" and "water tank")

90 Finally, I turn to PO Items 11–15, which were "five units silo tanks and water tank". Technik-Soil submitted that these were Items B28 to B31 and Item B54 (water tank) of Mario's report. Again, I found that Technik-Soil had not shown, on balance, that Items B28 to B31 corresponded with what was stated in Metal Recycle's PO, and in any event, I found Technik-Soil's valuation of the silo tanks and water tank to be unpersuasive.

91 For a start, Mr Magintharan referred to B28 to B31 as the four cement silos corresponding to Metal Recycle's PO.[119] However, B31 actually comprised two cement silos of 30m^3 capacity each, so Technik-Soil's list contained five cement silos in total. Since the quantity of five units was specified in Metal Recycle's PO against the description of "silo tanks and water tank" combined, I found, on balance, that Metal Recycle purchased four silo tanks and one water tank as reflected in the PO. If so, there was again no reliable evidence of which particular silo tanks (from among the five that Technik-Soil claimed to have moved into the Premises or otherwise) corresponded with the four silo tanks in Metal Recycle's PO. As with the drill rigs and water pumps, this was problematic because each of the five silos that Technik-Soil claimed were on the Premises were of different capacities and year of manufacture.

92 In fact, in the Checklists dated 29 and 30 October 2010, a total of seven silos were apparently transported from Jalan Papan to the Premises,[120] and there

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119 26/6/18 NE 82.

120 Shin's AEIC at para 13; Annex B of Exhibit SYK-1 at pp 52, 54, 289 and 291.

was no indication of what happened to the additional two (or three) silos that Technik-Soil was not claiming for. I reiterate that, even if I accepted what was stated in the Checklists and that there were seven silos in total placed at the Premises for the first time on 29 and 30 October 2010, this did not mean that some of them were not subsequently removed from the Premises and this is supported by the fact that Technik-Soil is not making a claim for all seven silos. So the four silos that Metal Recycle purchased could have been from any of these seven, not just from the five that Technik-Soil had chosen to particularise.

93 As for the water tank, Technik-Soil made a claim for one unit. However, the Checklist of 29 October 2010 showed two water tanks transported from Jalan Papan to the Premises and another eight water tanks transported out of Jalan Papan.[121] Shin claimed that the Checklists showed *all* the equipment transported from Jalan Papan *to the Premises* over five days from 29 October to 2 November 2010.[122] It was doubtful that all the water tanks had arrived at the Premises on 29 October 2010 (as no corresponding signature or record was made for some of the water tanks entering the Premises) and, in any event, Shin also stated that some items were eventually sold. Ultimately, the Checklist suggested that Technik-Soil had a number of water tanks, but only one was left on the Premises at the time of the tort. It was unclear if the water tanks were generic, and Technik-Soil did not produce any documents to show the specifications or model of the particular water tank that it was making a claim for. Hence there was no factual basis for Mario's valuation of the water tank. Although Lim Kek Hian of SAM Transportation testified that a vehicle from his company had transported a cement silo and a water tank to the Premises on 25

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121 Shin's AEIC, Annex B of SYK-1, p 289 (items 52, 53, 57, 60 and 62).

122 Shin's AEIC at para 13.

October 2014,[123] this did not assist me in ascertaining the specifications of the water tank or the four cement silos that were sold to Metal Recycle.

94 Further, even if I accept that Sea-Shore had sold five (and not four) silo tanks to Metal Recycle (in addition to one water tank), I did not accept Technik-Soil's valuation.

95 For the water tank (Item B54), Technik-Soil did not provide any evidence of its specifications and condition to enable the court to assess its value. This is problematic as there is no factual basis to accept Mario's valuation and also because, as stated above, Technik-Soil's own Checklist suggested that Technik-Soil owned numerous water tanks at the material time. There was no documentary evidence of the year of purchase or manufacture, or of the dimensions and model of the water tank. Therefore, there was no factual foundation for Mario's assessment of the water tank's value and the depreciation value (30%) accorded to the water tank, and I thus rejected the value put forth by Mario. Given the paucity of evidence, I accepted that the price paid by Metal Recycle was the best evidence of the water tank's value.

96 For the cement silos (Items B28 to B31), Technik-Soil had produced documents evidencing their purchase or lease. The documents state the capacity of four cement silos and the year that Technik-Soil acquired or leased them. However, Mario's valuation was not based on cement silos of the same dimensions and capacity. I set the different specifications out in the table below:

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123 29/6/18 NE 65.

Cement silo	**Specifications in Shin's documentation**	**Specifications used for Mario's valuation**	**Mario's valuation (after depreciation)**
B28[124]	70.07m^3 capacity (dimensions 9.72m x 2.7m x 2.67m) Purchased in 2005	70m^3 capacity (dimensions 2.5m x 2.5m x 12m) Lifespan calculated from year 2005	$33,000
B29[125]	66.94m^3 capacity (dimensions 10m x 2.47m x 2.71m) Purchased in 2002	60m^3 capacity (dimensions 2.5m x 2.5m x 11m)	$26,000
B30[126]	50 ton Purchased in 2006 (Model year reflected as 1998)[127]	50m^3 capacity (dimensions 2.4m x 2.4m x 10m)	$23,000
B31[128]	Two units of 30 ton each Leased in 2010	30m^3 capacity (2.4m x 2.4m x 8m)	$34,000 (total)

97 It was unclear whether, for Items B30 and B31, a 50-ton and 30-ton cement silo are equivalent to 50m^3 and 30m^3 in capacity respectively. The documentation for Item B28 described the goods as "Cement Silo 50Ton" but it was 70m^3 in capacity. Technik-Soil did not adduce evidence of the actual dimensions and capacity (in cubic metres) of Items B30 and B31. There was

124 Shin's AEIC p 287B.

125 Shin's AEIC p 295.

126 Shin's AEIC p 303.

127 Shin's AEIC p 303.

128 Shin's AEIC p 315.

also no evidence supporting the dimensions and capacity that Mario used to value all the cement silos. Further, as Item B31 was leased in 2010, it was likely to have been manufactured before that date; without evidence of its year of manufacture, it was not possible to reliably assert a depreciation value. In addition, Mario did not apply a consistent method in arriving at the depreciation ratio for the cement silos. Though Item B28 was a year older than Item B30, the asset condition of Item B28 was valued at 35% of the cost of a new cement silo of its specification, whereas the asset condition of Item B30 was valued at 30%. Similarly, though Item B29 and Item B30 were purchased in 2002 and 2006 respectively, the asset condition of both Items B29 and B30 were valued at 30% of the cost of a new cement silo of their respective specifications. Finally, Mario's valuation of the cement silos suffers from the same general deficiencies observed at [81(a)]–[81(c)] above, *ie*, an unsubstantiated assumption that the silos were in working condition, photographs that were outdated or not probative, and a lack of supporting documents for the Base Value that Mario sourced from the internet.

98 Therefore, I was unable to accept Mario's assessment of the value of the cement silos. I reiterate that it is for Technik-Soil to prove its loss and the quantum of such loss. Given the state of the evidence, I accepted that the price paid by Metal Recycle for the cement silos was the best evidence of their value.

Conclusion on damages

99 Given the deficiencies in the evidence presented by Technik-Soil, I accepted that the price paid by Metal Recycle to Sea-Shore was the best evidence of the value of the equipment at the time of conversion. Technik-Soil is entitled to $40,000, the price which Metal Recycle paid for PO Items 1–15.

100 The PO also states that five "compressor units / hydraulic units" were sold to Metal Recycle for $20,000. In its closing submissions, Technik-Soil asserted that this reference to "compressor units" (which Technik-Soil never owned any of) referred to five units of "turbo mixer plants" in the list of the Equipment.[129] Its assertion was not supported by any evidence. Sea-Shore's case is that the items sold to Metal Recycle were found in the area of the Premises designated for Technik-Soil's equipment and it has credited these items as belonging to Technik-Soil. As the physical existence of the equipment in that designated area was not in doubt (as Balan was present when the equipment was sold to Metal Recycle) and I accepted that the price Metal Recycle paid was the best evidence of the value of the equipment that Technik-Soil had on the Premises at the material time (even if the type of equipment cannot now be determined with certainty), the amount of $20,000 (in Metal Recycle's PO) paid for this category of equipment should be credited to Technik-Soil. In any event, Sea-Shore was not making a claim to "re-set" this amount.

101 Finally, I noted that in the PO, Sea-Shore allowed Metal Recycle a deduction of $20,000 from the total purchase price for transportation and repairs. According to Balan, the repairs were to be carried out on PO Item 6, the boring machine which was stated to be "spoilt".[130] The remaining pieces of equipment, according to him, were beyond repair and were to be scrapped, as reflected in the lower value paid for them. For starters, Sea-Shore should not be allowed to claim for any transportation costs against Technik-Soil for Metal Recycle to transport the items that Sea-Shore had wrongfully converted. Second, as Metal Recycle had paid Sea-Shore what the former thought was fair value for the items, it is unclear why it should be allowed to deduct further costs

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129 Defendant's Closing Submissions, para 31.

130 26/6/18 NE 115–116.

to repair PO Item 6 and how such costs should then be off-set against the price it paid for the items. In any event, such cost should not be borne (ultimately) by Technik-Soil. Hence, no amount should be deducted for transportation and repair costs.

102 Accordingly, I awarded Technik-Soil $60,000 in total on its counterclaim. As Sea-Shore had set off $40,000 against the outstanding rent, I ordered a further sum of $20,000 to be paid by it to Technik-Soil, with such sum to be set off against the judgment debt that Technik-Soil owed Sea-Shore in the main claim – Mr Kamil confirmed that Sea-Shore did not object to such set-off.

103 In the final analysis, it must be remembered that Technik-Soil chose to mount its case on the basis that there were 214 units of Equipment on the Premises that Sea-Shore had converted. I had found this to be dubious. Technik-Soil could not in the alternative simply assume certain items of Equipment as the items sold to Metal Recycle when it had not reliably produced evidence of which particular items of equipment (whether from the list of Equipment or otherwise) were actually on the Premises at the material time. Such evidence would have been within Technik-Soil's possession and knowledge.

Costs

104 Mr Kamil submitted that Sea-Shore should be awarded the costs for the application for judgment on admission at $6,000, and 50% of the cost of the action. Mr Magintharan submitted that each party should bear its own costs. I ordered the costs of the application for judgment on admission be awarded to Sea-Shore fixed at $6,000 (inclusive of disbursements) as Sea-Shore had succeeded on that application. I further ordered that each party bear its own costs of the action. Whilst Sea-Shore had succeeded on its claim for the rental

arrears (being a straightforward claim), I had found Sea-Shore to be liable in conversion of Technik-Soil's equipment and thus Technik-Soil had succeeded on its counterclaim, albeit the damages awarded were not substantial.

Audrey Lim
Judicial Commissioner

Mohamed Nawaz Kamil and Wong Joon Wee (Providence Law Asia LLC) for the plaintiff;
S Magintharan, Vineetha Gunasekaran and Tan Xiyun Benedict (Essex LLC) for the defendant.