Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd
[2009] SGCA 42

Case Number : CA 203/2008

Decision Date : 11 September 2009

Tribunal/Court : Court of Appeal

Coram : Chao Hick Tin JA; Andrew Phang Boon Leong JA; V K Rajah JA

Counsel Name(s) : Subhas Anandan, Irving Choh and Lim Bee Li (KhattarWong) for the appellant; Prem Gurbani and Bernard Yee (Gurbani & Co) for the respondent

Parties : Tat Seng Machine Movers Pte Ltd — Orix Leasing Singapore Ltd

Bailment – Bailors – Rights of – Whether bailor had immediate right to possession if bailee behaved repugnant to terms of bailment – Whether contractual rights restricted bailor's rights under common law

Civil Procedure – Pleadings – Whether defendant should plead facts showing it acted in ordinary course of business – Whether plaintiff should plead facts to show that defendant had actual notice of impropriety or was not acting in ordinary course of business

Evidence – Proof of evidence – Burden of proof – Evidence required to show transaction in ordinary course of business – Proof of impropriety – Evidence required to displace presumption of good faith

Tort – Conversion – Whether act of removing machine from premises and delivering as instructed amounted to conversion of machine – Whether act of storing machine at warehouse amounted to conversion of machine – Whether act of redelivering machine to purported owner amounted to conversion of machine

11 September 2009 Judgment reserved.

V K Rajah JA (delivering the judgment of the court):

1 This is an appeal from the decision of a High Court judge ("the Judge"), who found (*inter alios*) Tat Seng Machine Movers Pte Ltd ("Tat Seng"), the appellant in the present appeal, liable for conversion of a Heidelberg 4-colour off-set press machine ("the Heidelberg 4C"). The appeal raises a number of interesting issues about the extent of the potential liability of a carrier and/or bailee transporting and/or handling goods belonging to a third party. Some of the legal points considered here may also have wider significance to carriers and those in the logistics business such as warehouse operators. For the avoidance of doubt, we should also state that our references to the term 'carriers' in this judgment is meant to refer to all businesses who ordinarily transport, hold or convey goods by any means.

Dramatis Personae

2 Given the maze of facts in the instant case, it might be helpful if we first introduce the key players in this matter. Orix Leasing Singapore Ltd ("Orix"), the respondent in this appeal, is in the business of providing hire-purchase services for heavy equipment. In 2005, Orix let three printing machines to Rav Graphics Pte Ltd ("RGPL") on hire-purchase terms[note: 1]. These three machines were the Heidelberg 4C, a Mitsubishi 4-color sheetfed off-set press machine ("the Mitsubishi 4C") and a Mitsubishi 5-Color sheetfed off-set press machine (collectively, "the Three Machines")[note: 2]. The present appeal concerns only the Heidelberg 4C, a large printing machine with impressive physical dimensions of approximately 30 ft by 6 ft by 6 ft and weighing around ten tons. Tan Kim Seng Crispian

("Crispian"), a director and shareholder of RGPL, took centre-stage as the key person in an intrigue that eventually caused Orix to lose the entire security of the hire-purchase arrangements it had with RGPL.

3 The alleged acts of conversion took place between 31 August 2006 and 4 September 2006 when RGPL shifted its office to new premises. To facilitate the shift, Crispian hired Kenzone Logistics Pte Ltd ("Kenzone") to transport RGPL's equipment. Kenzone's operational director was Heng Khim Soon ("Mr Heng"), a business partner of Crispian, but the key person in charge of the move on Kenzone's behalf was Mark Yap Leng Huat ("Mark Yap"), an operational manager. Kenzone approached Tat Seng to transport the Heidelberg 4C as only the latter had the necessary equipment to move heavy machinery. We should emphasise here that Tat Seng had no prior relationship with RGPL, Crispian or even Kenzone. Tat Seng's annual filings with the Accounting & Corporate Regulatory Authority indicate that it was an established business with a turnover that exceeded a million dollars in 2006.[note: 3] Siew Kian Nam ("Mr Siew") and his daughter, Siew Shu Ping ("Ms Siew") (collectively, "the Siews"), were the managing director and manager of Tat Seng respectively. Then, Chiew Nyet ("Kylie"), was a staff member of Tat Seng. Mark Yap's initial instructions to Tat Seng were to move the Heidelberg 4C to a warehouse belonging to Hock Cheong Transport Co (Singapore) Pte Ltd ("Hock Cheong"), whose director was Colin Lim Beng Young ("Colin Lim"). Colin Lim had prior business dealings with both Crispian and Mr Heng and had known them for at least ten years.[note: 4]

4 Sometime in September 2006, Orix discovered that the Three Machines were missing from RGPL's premises and engaged Cisco Security Pte Ltd ("Cisco") to locate the missing machines. Henry Tay Beng Hui ("Henry"), who was then an employee of Cisco, had carriage of the investigations.

Facts leading to the dispute

5 We pause now to outline how the evidence unfolded during the course of the trial proceedings. Unsurprisingly, not all the relevant individuals who played a part in these events testified. The key witnesses who testified on both Kenzone's and Tat Seng's behalf were Crispian, Mark Yap, Ms Siew and Kylie. Crispian orchestrated the delivery, storage and redelivery of the Heidelberg 4C up to the moment it disappeared. During the trial, Crispian readily acknowledged that he had acted dishonestly as "a thief" with respect to the Heidelberg 4C.[note: 5] The Judge, for reasons we entirely agree with, considered Crispian's evidence to be dubious on some material points though it must be also noted that his evidence, quite rightly, was not entirely rejected. As such, some of the facts pertaining to the conversion cannot now be outlined with certainty. With that important caveat in mind, we now turn to examine the facts in detail.

6 At the material time, RGPL was operating out of its premises at Toh Guan Road ("the Toh Guan premises"). RGPL's lease for the Toh Guan premises was due to expire on 31 August 2006.[note: 6] It procured a new lease with JTC Corporation for premises located at Bendemeer Road ("the Bendemeer premises") but the new lease was due to commence only on 10 September 2006.[note: 7] To facilitate the move from the Toh Guan premises to the Bendemeer premises, Crispian contacted Mr Heng to ask if Kenzone was able to shift RGPL's office equipment (such as furniture, machines, raw materials and finished goods) from its Toh Guan premises to the Bendemeer premises.[note: 8] This call took place sometime in early August 2006. Mr Heng asked Mark Yap to liaise with Crispian with respect to the proposed job.[note: 9] Mark Yap proceeded to provide RGPL with quotes for the move which RGPL eventually accepted. In due course, Kenzone's vehicles made 12 trips from the Toh Guan premises to the Bendemeer premises between 19 August 2006 and 30 August 2006.[note: 10]

7 Sometime in August 2006, Crispian claimed that he had negotiated with a Malaysian man named Mani for the sale of the Heidelberg 4C. Crispian testified that Mani had agreed that his workers would dismantle the Heidelberg 4C while RGPL would arrange to remove and store the machine until Mani could arrange for the transportation of the machine.[note: 11] However, as Mani did not testify in the proceedings below, these assertions cannot be verified.

8 After the sale of the Heidelberg 4C was allegedly struck, Crispian contacted Colin Lim to ask if Hock Cheong was able to store the machine for about a week.[note: 12] Colin Lim asked for the machine's dimensions and Crispian responded that it would not amount to much – just a few pallets of machine parts.[note: 13] Colin Lim then verbally confirmed that he was able to store the machine parts at his warehouse at Kallang Distripark.

9 Mr Heng (and Mark Yap) testified that Crispian had contacted him (*ie*, Mr Heng) to inquire if Kenzone would be able to move the Heidelberg 4C together with a smaller folding machine (collectively, "the Two Machines").[note: 14] He asked Mark Yap to handle the move of the Two Machines, suggesting that Mark Yap could contact specialist movers (such as Tat Seng) because Kenzone did not have the requisite moving equipment.[note: 15] Crispian subsequently informed Mark Yap that the Two Machines had to be moved to Hock Cheong's warehouse on or before 31 August 2006.[note: 16]

10 Following this, Mark Yap contacted Kylie to enquire if Tat Seng was interested in securing the job. Mark Yap also told Kylie that Tat Seng's representatives could go down to the Toh Guan premises on 28 August 2006 to inspect the Two Machines, if it was interested.[note: 17] Kylie confirmed with Mark Yap that the Siews would attend the meeting at the Toh Guan premises on 28 August 2006.[note: 18]

11 On 28 August 2006 at 9.00am, the Siews met Mark Yap and Chua Soon Meng ("Mr Chua"), a supervisor of RGPL, at the Toh Guan premises.[note: 19] According to Ms Siew, this was the first time the Siews had met Mark Yap or Mr Chua.[note: 20] The Siews inspected the Two Machines and were told that the machines had to be shifted to Hock Cheong's warehouse at Kallang Distripark on or before 31 August 2006.[note: 21] Ms Siew's evidence on this point was not challenged by Orix's counsel. Mr Siew informed Mark Yap that Tat Seng did not have the expertise to dismantle the Heidelberg 4C but was prepared to transport the dissembled machines.[note: 22] The Siews also indicated that they would revert with a quote later.

12 Later that day, Kylie contacted Mark Yap to inform him that Tat Seng's quote for transporting the Two Machines (excluding dismantling) was $3,500.[note: 23] Kylie requested for cash payment as this was the first time Tat Seng had dealt with Kenzone and RGPL[note: 24]. Mark Yap then checked with Crispian who agreed to the quote and instructed Mark Yap to proceed with the move.[note: 25] According to Mr Chua, the Heidelberg 4C was dismantled by "a crew of 3 Malaysian Chinese men" on or around 29 August 2006, with Mark Yap being present at the Toh Guan premises at the time of dismantling.[note: 26] It is not clear who employed these men but there has been no suggestion that they were acting on Tat Seng's behest.

13 On 31 August 2006, Tat Seng sent three lorries to the Toh Guan premises to load the Two Machines, with two of the lorries arriving in the morning and a third in the afternoon.[note: 27] There

was a record maintained by the Toh Guan premises' security guards of Tat Seng's lorries entering the Toh Guan premises on that day.[note: 28] By then, the Heidelberg 4C had already been dismantled into its various component parts.[note: 29] Even then, the entire loading process took some five to six hours. Mark Yap was present during the entire process.[note: 30] After the loading was completed, the three lorries left the Toh Guan premises at about 5.00pm and made their way to Hock Cheong's warehouse.[note: 31] Mark Yap returned to his office as he thought that the job had been completed.[note: 32]

14 However, when Tat Seng's lorries arrived at Hock Cheong's warehouse, Colin Lim refused to accept the Two Machines on the basis that there was insufficient space to store three lorry loads of machine parts.[note: 33] One of Tat Seng's drivers called Mark Yap at about 6.00pm to inform him about Hock Cheong's refusal to accept the cargo. Mark Yap immediately contacted Colin Lim, who maintained his position. Mark Yap then phoned Crispian to update him about this unexpected turn of events. Crispian said that he would contact Hock Cheong to directly resolve the problem. Shortly thereafter, he got in touch with Mark Yap, requesting him to look for alternative storage space.[note: 34]

15 Mark Yap later called Ms Siew. He informed her about Hock Cheong's refusal to accept the Two Machines and asked if Tat Seng was able to provide any temporary storage space (for about a week) for the Two Machines.[note: 35] Half an hour later, Ms Siew responded to Mark Yap, offering to store both machines at an open yard area in Tat Seng's Kallang Distripark premises (which was in the same vicinity as Hock Cheong's warehouse).[note: 36] However, Mark Yap was concerned about storing the Heidelberg 4C in an open yard as the machine would get wet if it rained. Ms Siew, after checking with Mr Siew, later confirmed with Mark Yap that she could store the folding machine indoors at Tat Seng's other warehouse in Eunos but had no other alternative space to store the Heidelberg 4C. Ms Siew agreed to Mark Yap's request for the Heidelberg 4C to be wrapped with canvas and stored on pallets to protect it from rainwater and groundwater.[note: 37] Mark Yap, after obtaining Crispian's clearance on this matter[note: 38], instructed Tat Seng to proceed with the new storage arrangements.[note: 39]

16 On 3 September 2006, Crispian alleged that he received a call from Mani, informing him that Mani's movers were ready to transport the Heidelberg 4C on 4 September 2006. The Heidelberg 4C was thus stored by Tat Seng for four days until 4 September 2006, when Crispian contacted Mark Yap, requesting that the machine be returned to him.[note: 40] It is pertinent, for reasons that we shall elaborate on later (at [72] below), that Mark Yap's confirmatory testimony on this point was not directly challenged by counsel for Orix. Neither did Orix meaningfully take issue with the fact that the Heidelberg 4C had been stored at Tat Seng's premises during those four days. Crispian also promised to make payment to Tat Seng when the Heidelberg 4C was returned.[note: 41] Mark Yap then informed Ms Siew that RGPL intended to collect the Heidelberg 4C and would make payment on the same day. Ms Siew agreed with Mark Yap that the handover could take place at about 6.00pm that day.[note: 42]

17 Kylie prepared two delivery orders for the Two Machines, *viz*, delivery order no 22174 in respect of the folding machine and delivery order no 22230 in respect of the Heidelberg 4C.[note: 43] Both delivery orders were dated 31 August 2006 and were addressed to Kenzone. The conditions of the delivery order stated[note: 44]:

2. The customer warrants that he is either the owner or the authorized agent, of the owner of the load and that he is authorized to accept and accepting these conditions not only for himself but also as agent for and on behalf of the owner of the load.

…

6. [Tat Seng] act only as agents for the transportation companies, movers and other principals and all jobs are undertaken subject to those contracts under which such transportation and other services are provided. …

18 At about 5.00pm on 4 September 2006, Mark Yap met Crispian at Kallang Distripark (where the Heidelberg 4C was stored).[note: 45] Crispian inspected the Heidelberg 4C and handed Mark Yap $3,500 in cash to pay Tat Seng.[note: 46] It also bears mention that Mark Yap's evidence on this sequence of events has not been disputed. After this act of handing over took place, Malaysian-registered trailers arrived at about 6.00pm to pick up the Heidelberg 4C.[note: 47] Mark Yap left before the loading took place as he had no further role to play. The Siews were also not personally present during the loading process. According to Crispian, five or six of Tat Seng's workers, at his request, later helped to load the Heidelberg 4C onto the trailers.[note: 48]

19 Mark Yap reached Tat Seng's office in Eunos at about 7.00pm and paid Mr Siew, on RGPL's behalf, the agreed fee in cash. However, Mark Yap did not bring his company stamp and was unable to stamp the delivery orders at Tat Seng's office. Mark Yap told Ms Siew that he would send or fax the delivery orders back to Tat Seng once they were stamped.[note: 49] However, nothing further was done to complete the documentation until 20 October 2006, when Mark Yap supposedly contacted Ms Siew, enquiring if she could fax the delivery orders to him for Kenzone's official acknowledgment as he had misplaced the original documents.[note: 50] Ms Siew agreed to do so and Mark Yap faxed the delivery orders back to her after he signed them and affixed Kenzone's company stamp. The faxes were transmitted at about 3.00pm to 4.00pm on that day.

20 This belated attempt to regularise the documentation is better understood when a concurrent development is mentioned. At about 7.00pm, on the same day (*ie*, 20 October 2006), Henry interviewed Mr Siew. During this meeting, Mr Siew told Henry that he had received a call from Mark Yap to transfer (*inter alia*) the Heidelberg 4C "out to his site office at Blk. 1050 #01-47 Eunos Avenue 7".[note: 51] Mr Siew also stated that two container trailers from Malaysia collected the Heidelberg 4C on 31 August 2006[note: 52] from his site office and produced the delivery orders which Tat Seng had issued to Kenzone. Mr Siew emphasised that he did not know that Tat Seng was transporting items that had been illegally sold to other parties, and mentioned that he was still holding on to the folding machine.

21 As for the small folding machine, Crispian testified that he had called the bank (which let the machine to RGPL on hire-purchase terms) to inform it that the folding machine was at Tat Seng's warehouse and asked the bank to collect it from the warehouse.[note: 53] The machine was stored at Tat Seng's warehouse in Eunos for more than two years until it was handed over to the bank just before the trial.[note: 54] Tat Seng charged Kenzone rent of $300 per month for the storage of the folding machine.

Procedural history

22 On 28 September 2006, Orix commenced Suit No 645 of 2006 against RGPL, Crispian and Tan Soi Ngoh (who was a director and shareholder of RGPL). Orix sought to recover its losses from RGPL, pursuant to the terms of the hire-purchase agreements for the Three Machines, and from Crispian and Tan Soi Ngoh under the personal guarantees that each of them had given. However, RGPL was placed into liquidation before judgment was entered against it. Judgment was entered against Crispian and Tan Soi Ngoh on 7 November 2006 but the two were later made bankrupt by their other creditors. As a result, Orix had not recovered any amount in respect of the Three Machines before it commenced Suit No 739 of 2006 ("Suit 739") and Suit No 740 of 2006 ("Suit 740") (see *Orix Leasing Singapore Ltd v Koh Mui Hoe* [2008] SGHC 211 at [4] ("the Suit 739 Judgment")).

23 In Suit 739, Orix brought an action in conversion against four defendants in respect of the Mitsubishi 4C machine. Briefly, it alleged that Koh Mui Hoe (the first defendant in Suit 739), acting on his own or as director of Ink Trading Pte Ltd ("ITPL") (the second defendant in Suit 739), had unlawfully caused the Mitsubishi 4C to be removed from the Toh Guan premises by arranging with Kenzone (the third defendant in Suit 739) and/or Kim Heng Mechanic (the fourth defendant in Suit 739) to do so. It further pleaded that Kenzone had removed the machine from the Toh Guan premises and delivered it to persons unknown (see the Suit 739 Judgment at [6]). These events allegedly occurred in March 2006. At the time of the trial, the claims against the third and fourth defendants were discontinued and the action proceeded against Koh Mui Hoe and ITPL only (see *id* at [7]).

24 In Suit 740, Orix sued Koh Mui Hoe, ITPL, Kenzone and Tat Seng for conversion of the Heidelberg 4C. During the course of the trial, Orix dropped its claim in Suit 740 against Koh Mui Hoe and ITPL and proceeded against Kenzone and Tat Seng only (see *Orix Leasing Singapore Ltd v Koh Mui Hoe* [2008] SGHC 212 ("the Judgment") at [6]). Suit 739 and Suit 740 were heard together by the Judge below and the parties were given leave to use the evidence adduced in Suit 739 for Suit 740 and *vice versa* (*ibid*). Orix's amended statement of claim ("SOC") in respect of Suit 740 stated[note: 55]:

> 5. On a date unknown to [Orix], but sometime in August/September 2006, [Koh Mui Hoe], acting on his own or as a director of [ITPL] unlawfully caused the [Heidelberg 4C] to be removed from [RGPL]'s premises at 50 Toh Guan Road East, #02-01, Quek Industrial Building, Singapore 608587
>
> ~~, by arranging with the [Kenzone] and/or [Tat Seng] to do so~~.
>
> PARTICULARS
>
> a. On or about the end of August 2006, the [Heidelberg 4C] was dismantled at [RGPL]'s premises.
>
> b. [Koh Mui Hoe] was present in the premises on his own behalf and/or on behalf of [ITPL].
>
> c. [Orix] aver[s] that [Koh Mui Hoe] and/or [ITPL] converted the [Heidelberg 4C] as the dismantling of the [Heidelberg 4C] was carried out by at least one person who had also carried out the dismantling of [Orix's] [Mitsubishi 4C] that was unlawfully sold by [RGPL] in March 2006, which [Orix] say[s] was converted by [Koh Mui Hoe] and/or [ITPL], and which is the subject matter of [Suit 739].
>
> 6. Further or in the alternative, [Kenzone] and/or [Tat Seng]
>
> ~~then proceeded to~~ removed the [Heidelberg 4C] from [RGPL]'s premises on or about 31st August 2006

and delivered the same to persons unknown.

7. In the premises, [Koh Mui Hoe], [ITPL], [Kenzone] and [Tat Seng] have converted the [Heidelberg 4C] to their own use.

[underlining in original]

The Judge's findings

25 With respect to Suit 739, the Judge found ITPL liable for conversion of the Mistubishi 4C and ordered it to pay Orix $800,000 with interests and costs (see the Suit 739 Judgment at [71]).

26 As this appeal pertains only to Tat Seng's liability, we shall focus primarily on the aspects of the Judge's decision that relate to this. The Judge accepted Orix's contention that since Kenzone and/or Tat Seng (collectively, "the Defendants") had taken the Heidelberg 4C away without Orix's authority and the machine had subsequently vanished, it was for the Defendants to prove that they did not convert it. Therefore, in the Judge's view, the only issue was whether the Defendants had proved that they had acted in good faith on a balance of probabilities (see the Judgment at [14]).

27 After considering the evidence and parties' submissions, the Judge concluded that the Defendants had not succeeded in proving that they had acted in good faith (see the Judgment at [85]). First, the Judge found that Crispian was not a truthful witness and did not accept several aspects of his evidence (*id* at [73]). The Judge gave the following examples of Crispian's dubious testimony:

(a) Crispian stated that he had asked Kenzone to arrange for the transportation of the Two Machines on 26 August 2006. However, on 20 November 2006 (when Crispian was aware that Orix was investigating the disappearance of the machines), Crispian wrote a letter confirming (*inter alia*) that he had requested Kenzone to arrange with Tat Seng to deliver "a printing machine to Tat Seng's premises" on 21 August 2006. While Crispian maintained that the version he had told the court was correct, the Judge highlighted that there were contradictions in that version and that it was therefore impossible to tell where the truth lay or whether the truth had been told at all (see the Judgment at [74]).

(b) Crispian said he had told Colin Lim that he needed space to store a few pallets' worth of machinery. However, the Heidelberg 4C was an enormous machine. Crispian could not have made such a big mistake about its dimensions. It was more probable that Colin Lim had rejected Crispian's request to store the machine parts because Colin Lim suspected that "something was wrong and did not wish to be involved" (see the Judgment at [75] and [77]).

(c) It was unlikely that Crispian had not asked Kenzone to shift the Heidelberg 4C as well when he contacted the latter to shift the office equipment in early August 2006. Crispian must have known that the Heidelberg 4C had to be moved and stored somewhere before it could be moved to the Bendemeer premises. He had promised to give up the Toh Guan premises by 31 August 2006, and would have known that it was not possible to shift the machine directly to the Bendemeer premises because the tenancy of the new premises would only take effect on 10 September 2006. Further, to move the Heidelberg 4C into the Bendemeer premises, it was necessary to enlarge the entry way, and such enlargement required JTC Corporation's prior approval. However, no evidence of approval for enlarging the entry way was produced by Crispian. As such, the Judge postulated that it was most probable that Crispian had lied to portray a last-minute transaction to assist the Defendants in their case that they were mere carriers helping their customers out (see the Judgment at [76]).

28 Second, the Judge found Tat Seng's documentation and administrative procedures to be lacking and a matter for concern. There was no written quotation, acceptance of the quotation or invoice for the job even though Tat Seng (as a GST-registered company) was required by law to issue a tax invoice. There was no acceptable explanation for this lapse. The Judge further rejected the Defendants' explanation as to why the delivery orders were signed by Mark Yap on 20 October 2006 for the following reasons (see the Judgment at [80]):

(a) The delivery orders were not in running order and were unlikely to have been issued on the same day. Tat Seng could have but did not produce other delivery orders issued from the same two books to show that the material invoices were issued on the same day from different books.

(b) The story that Mark Yap had taken the delivery orders back to his office to stamp them and forgot to return them until reminded on 20 October 2006 was not credible. Kenzone admitted that the documents were important for its records. Ms Siew testified that she had duplicate copies of the delivery orders on her desk and if so, she would have been constantly reminded to chase Mark Yap. She asserted that Tat Seng had indeed done so, but Mark Yap denied it and claimed that it was he who had asked for further copies of the delivery orders so that his account department could close the file.

29 Third, the Judge also noted that Tat Seng's quote of $3,500 was only in respect of a single journey to Hock Cheong's warehouse. Tat Seng had not charged for the further services it rendered later, *viz*, storage charges and charges for manpower and equipment used to store or load the Heidelberg 4C (see the Judgment at [81]).

30 Fourth, the Judge found it odd that Tat Seng did not find the manner in which Crispian repossessed the Heidelberg 4C unusual. Crispian did not employ Tat Seng to deliver the machine to the new premises, even though Tat Seng had taken care of the machine for him. Further, Tat Seng did not complain about being deprived of the opportunity to earn more money from transporting the Heidelberg 4C. Instead, Tat Seng voluntarily assisted in loading the machine onto someone else's trailers for free. Given that it was the first time that Tat Seng had done a job for Kenzone, it was hard to believe that Tat Seng would have provided its labour and lorry crane for free when it was not awarded the onward carriage contract (see the Judgment at [82]).

31 Fifth, the Judge observed that the account of events which Mr Siew gave Henry was different from that which Tat Seng had given to the court and it was not clear which version was true. The fact that the interview of Mr Siew by Henry (see [20] above) took place shortly after Tat Seng's delivery orders were sent to Kenzone (after weeks of inactivity) suggested that the documents were hastily prepared before the meeting. It was "too coincidental" for Mark Yap to have voluntarily asked for the documents on the same day that Tat Seng needed signed delivery orders to show Henry (see the Judgment at [83]). There was no evidence that either of the Defendants had asked the other for such documents. As a result, the Judge inferred that the Defendants had acted dishonestly and could not have reasonably believed that RGPL was entitled to deal with the Heidelberg 4C in the manner that it did. The Defendants moved the machine away from RGPL's factory and Tat Seng had concealed it under canvas and shrink wrap. Even if the Defendants' story was to be believed, the fact that Tat Seng later returned the machine to Crispian to send to wherever he pleased was odd, since RGPL was supposed to have new premises and Tat Seng could have sent the Two Machines there in due course. The fact that the folding machine remained with Tat Seng for years thereafter was odd too (see the Judgment at [84]).

32 In the result, the Judge found both Kenzone and Tat Seng liable to Orix for $600,000 (the

second-hand value of the Heidelberg 4C at the time of conversion), with interest at court rate from the date of writ, and costs (see the Judgment at [87]). We shall analyse these inferential findings made by the Judge in detail at [77]–[83] below.

Tat Seng's arguments on appeal

33 The crux of Tat Seng's appeal was that the Judge had erred in finding that it had not acted *bona fide* in dealing with the Heidelberg 4C. Tat Seng's argument was three-fold. First, Tat Seng argued that it did not have the requisite intention to negate Orix's rights as true owner of the machine. It did not know or have the opportunity to know that Orix was the true owner and the Heidelberg 4C was kept at RGPL's premises without any indication that it was on hire-purchase. Tat Seng also did not know that RGPL had intended to dispose of the machine. Tat Seng maintained that its role was only that of an intermediary acting according to instructions and that its acts only changed the physical location of the machine. Since its conduct was not inconsistent with Orix's rights as the machine's true owner, it was not liable for conversion. Tat Seng further highlighted that it would have sold the other folding machine if it intended to convert the Heidelberg 4C, but the folding machine remained on its premises for two years after the alleged conversion of the Heidelberg 4C took place.

34 Next, Tat Seng contended that Crispian's and Mark Yap's evidence on how Tat Seng's role was to merely deliver the machine to Hock Cheong and later, to store the machine temporarily, ought not to be disregarded. Tat Seng did nothing more than was required of them, and its witnesses' evidence was corroborative in this aspect.

35 Finally, Tat Seng argued that the Judge erred in placing excessive emphasis on the flaws in Tat Seng's documentation and procedures. It emphasised that Tat Seng was a small company that specialised in moving heavy equipment and that administrative lapses were not all that unusual. Further, there was nothing dubious about it providing extra services to Kenzone and RGPL to attract more business in future. For good measure, it was also suggested by Tat Seng that Orix's case had not been properly pleaded.[note: 56]

Orix's arguments on appeal

36 Orix argued that Tat Seng could be held liable for conversion even if it did not intend to convert the machine. What mattered was whether the conduct was deliberate and not accidental (citing *Kuwait Airways Corpn v Iraqi Airways Co (Nos 4 and 5)* [2002] 2 AC 883 ("*Kuwait Airways*")). Tat Seng, by removing the Heidelberg 4C from the Toh Guan premises, storing it and later assisting to load it onto someone else's trailers, had taken an active part in the delivery of the Heidelberg 4C. In any case, Tat Seng ought to have known that the machine did not belong to RGPL given the extremely clandestine nature of the entire operation.[note: 57]

37 Furthermore, Tat Seng did not challenge the finding that Crispian was not a credible witness and there was no basis for it to argue that the Judge should accept that part of Crispian's evidence on Tat Seng's role in the entire operation (see [34] above). Further, the weight of the evidence was against Crispian's evidence that Tat Seng was a mere carrier, especially given the lack of documentation.

38 Orix also contended that the Judge's finding on the inadequate documentation should not be disturbed, highlighting the Judge's reasons. Given the above, Orix argued that Tat Seng had failed to prove that it (*ie*, Tat Seng) had acted in *bona fide* ignorance of Orix's title.

Issues arising on appeal

39 The ultimate issue for us to decide in this appeal is whether Tat Seng is liable for conversion of the Heidelberg 4C. This requires us to examine closely the several factual and legal controversies that have been intertwined in the matrix of this case. The Judge adopted a broad-brush approach and proceeded on the basis that Tat Seng's liability was dependent on its ability to prove (on a balance of probabilities) that it had acted in good faith (see the Judgment at [14]). However, the Judge did not specifically identify which of Tat Seng's act(s) constituted conversion or when such act(s) occurred. Instead, the Judge appeared to take an all embracing approach, finding there was sufficient basis to affix liability on Tat Seng as it had assisted in removing the Heidelberg 4C from RGPL's premises and that machine could not be later accounted for. Can this be the correct approach in law? In our view, there are three possible acts that could conceivably constitute conversion in the instant case: (a) Tat Seng's removal of the Heidelberg 4C from RGPL and delivery of the machine to Hock Cheong's warehouse; (b) Tat Seng's storage of the Heidelberg 4C at its premises; or (c) the redelivery of Heidelberg 4C by Tat Seng to Crispian. The other issue of whether Orix has the requisite title to sue for conversion of the Heidelberg 4C under the hire-purchase agreement entered into in respect of the Heidelberg 4C ("the Hire-Purchase Agreement") had also not been considered as counsel for Tat Seng below had failed to raise this to the Judge's attention. In addition, during the course of arguments, it became apparent to us that the question of just who bore the burden of proving that Tat Seng had acted in good faith or otherwise had been less than adequately developed by counsel. We therefore invited counsel to make further submissions on these issues. These further submissions have been considered by us.

40 At the end of the day, three specific issues arise for our determination. They are:

(a) whether Orix had the requisite title to sue for conversion of the Heidelberg 4C under the Hire-Purchase Agreement;

(b) whether the conversion of the Heidelberg 4C took place, by reason of Tat Seng delivering the machine to Hock Cheong, storing the machine at its premises for a few days and/or redelivering the machine on 4 September 2006; and

(c) if (b) is answered in the positive, whether Tat Seng had acted in good faith when it handled the Heidelberg 4C.

Basis for review by an appellate court of a trial judge's findings of fact

41 Given that this appeal largely involves the evaluation of the Judge's finding of facts below, it is apposite that we remind ourselves of an appellate court's role with respect to the finding of facts made in the course of a trial. The appellate court's power of review with respect to finding of facts is limited because the trial judge is generally better placed to assess the veracity and credibility of witnesses, especially where oral evidence is concerned (*Seah Ting Soon v Indonesian Tractors Co Pte Ltd* [2001] 1 SLR 521 at [22]). However, this rule is not immutable. Where it can be established that the trial judge's assessment is plainly wrong or against the weight of the evidence, the appellate court can and should overturn any such finding (see *Alagappa Subramanian v Chidambaram s/o Alagappa* [2003] SGCA 20 at [13] and *Jagatheesan s/o Krishnasamy v PP* [2006] 4 SLR 45 at [34]–[36]). Furthermore, where a particular finding of fact is not based on the veracity or credibility of the witness, but instead, is based on an inference drawn from the facts or the evaluation of primary facts, the appellate court is in as good a position as the trial judge to undertake that exercise (*Tan Chin Seng v Raffles Town Club Pte Ltd (No 2)* [2003] 3 SLR 307 at [54] and *Ho Soo Fong v Standard Chartered Bank* [2007] 2 SLR 181 at [20]). In so doing, the appellate court will evaluate the cogency

of the evidence given by the witnesses by testing it against inherent probabilities or against uncontroverted facts (*Peh Eng Leng v Pek Eng Leong* [1996] 2 SLR 305 at 310, [22]).

42 With these guiding principles in mind, we turn to examine the relevant legal principles as well the substantive issues at hand.

Our analysis of the law and the facts

A brief overview of the law on conversion

43 We start by examining the origins of the tort of conversion and the underlying policy reasons that gave rise to it. The tort of conversion is a unique legal remedy with deep historical roots in the common law of England. While it is usually classified as a tortious cause of action, in reality, it is an action "primarily … for the protection of ownership" (United Kingdom, Law Reform Committee ("the UK Law Reform Committee"), *Eighteenth Report (Conversion and Detinue)* (Cmnd 4774, September 1971) ("the Law Reform Report") at para 13). Given the exalted status that the common law accorded to property rights, the tort soon evolved into one of strict liability, with the fault of the defendant becoming largely irrelevant in the legal analysis. However, wise judicial minds in due course came to recognise that the rigorous and unthinking application of such a rule of strict liability could lead to injustice, and perhaps even constrict the growth and flow of commercial dealings; especially among those involved in the transportation and storage of goods industries. Such businesses routinely deal with goods belonging to other parties, often without having the practical means to ascertain and verify ownership of the goods received. Indeed, we can add, if the tort is not sensibly circumscribed in the context of present day commerce, it could end up raising business costs by necessitating increased insurance coverage and premiums and, perhaps, even stultifying trade flow. Given that trade is the life blood of any modern economy, the pressing need for the law to maintain a rational and harmonious equilibrium between the competing tensions of adequately protecting the sanctity of property rights and the pressing need to ensure the uninhibited free flow of trade and commerce are obvious.

44 To better understand the rationale, nature and application of the tort of conversion, it will be helpful to briefly engage in some legal archaeology. In England, during the fifteenth century, the primary defined remedies associated with protection of a person's property were that of trespass and detinue (S F C Milsom, *Historical Foundations of the Common Law* (Butterworths, 2nd Ed, 1981) at pp 367–368). However, these remedies were not without their own practical difficulties. The remedy of trespass was not suited to all cases, for example, where the owner voluntarily put his goods into another's possession and the other refused to redeliver them (see W V H Rogers, *Winfield And Jolowicz on Tort* (Sweet & Maxwell, 17th Ed, 2006) at p 746). While such a situation was covered by the remedy of detinue (*ibid*), there were likewise practical difficulties associated with the remedy of detinue in that a defendant sued in detinue could exercise his option of returning the damaged goods or wage his law to the disadvantage of the plaintiff (see A W B Simpson, "The Introduction of the Action on the Case for Conversion" (1959) 75 LQR 364 ("The Introduction of Conversion") at pp 364–365; see also Sir Edward Coke *et al*, *The First Part of the Institutes of the Laws of England* (1794) at section 514). Given the serious gap in the law posed by the practical difficulties of trespass and detinue, the courts developed and adopted a new device of pleading known as conversion (as an action on the case) to fill this gap (see *Clerk & Lindsell on Torts* (Anthony M Dugdale & Michael A Jones gen eds) (Sweet & Maxwell, 19th Ed, 2006) ("*Clerk & Lindsell*") at para 17-06 and The Introduction of Conversion at 370–361). Although conversion and detinue provided concurrent remedies, the procedural disadvantages associated with the remedy of detinue meant that the remedy was seldom used until reforms were made in the 19th century. As a result, conversion gradually evolved over the years to fill the gaps left by detinue, to the extent that it now covers

almost the whole of the ambit of the original remedy of detinue (the Law Reform Report at para 7). Indeed, in the United Kingdom, the remedy of detinue has since been abolished and subsumed under the remedy of conversion with the introduction of the Torts (Interference with Goods) Act 1977 (c 32) (UK). This sensible reform to the common law has yet to be adopted in Singapore.

45 Given the piecemeal case law development of the remedy of conversion, it is not surprising that the acts or circumstances which constitute, or do not constitute conversion have not been defined with hard-edged precision. It was this uncertainty associated with the tort that led Bramwell LJ to lament that he "never did understand with precision what was a conversion" (*Hiort v The London and North Western Railway Company* (1879) 4 Ex D 188 at 194; see also Norman Palmer and Ewan McKendrick, *Interests in Goods* (LLP, 2nd Ed, 1998) at p 825). Complex rules continue to govern its application even today. For example, the action lies only if the claimant has possession or a right to *immediate possession* of the goods and this means that an owner who does not have such a right (say, because of the terms of the bailment) cannot bring an action for conversion. The following propositions are nevertheless now regarded as established. Generally, an act of conversion occurs when there is unauthorised dealing with the claimant's chattel so as to question or deny his title to it (*Clerk & Lindsell* at para 17-06). Sometimes, this is expressed in the terms of a person taking a chattel out of the possession of someone else *with* the "intention of exercising a permanent or temporary dominion over it" (R F V Heuston and R A Buckley, *Salmond & Heuston on the Law of Torts* (Sweet & Maxwell, 21st Ed, 1996) ("*Salmond & Heuston on Torts*") at p 99). For example, it has been held in New Zealand that the unlawful taking of a car for a joy-ride was an intentional assertion of a right inconsistent with the rights of the owner and therefore constituted conversion (see *Aitken Agencies Limited v Richardson* [1967] NZLR 65 at 66). Inconsistency is the gist of the action, and thus there is no need for the defendant to know that the goods belonged to someone else or for the defendant to have a positive intention to challenge the true owner's rights (*Halsbury's Laws of England* vol 45(2) (Butterworths, 4th Ed Reissue, 1999) at para 548).

46 Where the defendant takes or uses the goods as his own, or sells goods not belonging to the person who transferred possession of the goods to him, the intention to do an act inconsistent with the owner's right is necessarily present, even if the defendant does not know or intend to challenge the property or possession of the owner (*Salmond & Heuston on Torts* at p 98 and *R H Willis and Son v British Car Auctions Ltd* [1978] 1 WLR 438 ("*R H Willis*") at 442 (*per* Lord Denning MR). This principle is illustrated in two cases. In *Wilson v New Brighton Panelbeaters Ltd* [1989] 1 NZLR 74, the defendant, a towing company, received instructions from a man called Walters to tow a vehicle (which Walters claimed to have bought) from the plaintiff's home to another location for delivery to Walters. The company duly did so as instructed. Walters and the vehicle went missing thereafter and the plaintiff sued the defendant. The New Zealand High Court held that the act of handing the car over to Walters constituted conversion.

47 In *Moorgate Mercantile Co Ltd v Finch* [1962] 1 QB 701, the second defendant borrowed a car under a hire-purchase agreement to transport un-customed watches, leading the customs authority to forfeit and sell the car. The plaintiff, a hire-purchase company, successfully sued the second defendant in conversion. The court dismissed the argument that the second defendant did not intend that the car be confiscated by the customs authority and was therefore not liable for conversion. Danckwerts LJ stated (at 706):

> It seems to me that whether the second defendant intended that consequence to follow or not—presumably he did not intend it, but hoped he would not be found out—nonetheless, he must be taken to intend the consequences which were likely to happen from the conduct of which he was guilty, and which did in fact result in the loss of the car to the plaintiffs. To my mind, there is no doubt whatever that there was a conversion by the second defendant.

48 At this stage, it may be useful for us to point out that an intermediary who stores goods, such as a forwarding agent who packs and ships goods or a warehouse operator, does not render himself liable in conversion merely because his employer has no title, if he acts in good faith (see *Clerk and Lindsell* ([44] *supra*) at para 17-71). However, where an intermediary agent, such as an auctioneer, interferes with the title of the true owner by making a sale on behalf of a person without title or proper authority, altogether different considerations apply. In the former instance, there is a long line of established authority that accepts that the temporary possession by the carrier or warehouse operator does not *sufficiently interfere* with the title to the goods to warrant liability for conversion (see [57]–[64] below). It will be readily appreciated that in the latter case the involvement of the agent is not merely ministerial. An auctioneer's conduct goes beyond the mere transport or storage of goods and constitutes a *substantial and real interference* with title as he is asked to sell the goods (see [65] below). However, it is not always easy to draw a distinction between justifiable handling and acts of conversion when different types of intermediaries handle goods. In the ultimate analysis, the degree of involvement is crucial, as is the question of whether the intermediary was acting in the ordinary course of business. We will return to discuss this issue in further detail below (at [57]).

Whether Orix had the requisite title to sue

49 It is trite that only a person who has actual possession or the immediate right to possess the goods concerned can sue for conversion (see *The Cherry* [2003] 1 SLR 471 at [58]). However, having title to the goods concerned does not necessarily mean having the immediate right to possession (*id* at [64]). In the present case, Orix did not have actual possession of the Heidelberg 4C at the material time.

50 Tat Seng's further submissions on this point were, charitably put, somewhat muddled. It first argued that Orix did not have the immediate right to possession of the Heidelberg 4C unless RGPL or Orix had issued a notice of termination, citing *North General Wagon & Finance Co Ld v Graham* [1950] 2 KB 7 ("*North General Wagon*") as authority. However, Tat Seng then concluded that "it appears that [Orix] has the right to sue [Tat Seng] for conversion"[note: 58]. It cannot be readily understood what Tat Seng's actual position on this issue was. On the other hand, Orix forcefully contended that since this issue was not pleaded or raised below, it would be highly prejudicial to now raise the issue on appeal. Further, Orix contended that it had the immediate right of possession under the Hire-Purchase Agreement as RGPL had failed to observe the terms and conditions of that agreement.[note: 59] Orix also pointed out that the Hire-Purchase Agreement did not make the giving of a written notice of termination a condition precedent to terminating the agreement.[note: 60] Given that the issue of whether Orix had the right to possession under the Hire-Purchase Agreement was a question of construction of the agreement and all the material facts were already on record, we were not impressed by Orix's pleading objections. However, for the reasons given below, we nevertheless accept Orix's assertion that it had an immediate right to possession.

51 In the present case, the salient terms of the Hire-Purchase Agreement were as follows[note: 61]:

> **9. Default**
>
> 9.1 If:-
>
> …

b) [RGPL] fails to observe or perform any of the terms and conditions of this Agreement whether express or implied; or

…

then and in any such event the [RGPL] shall be deemed to have repudiated this Agreement and it shall be lawful for [Orix] (but without prejudice to any pre-existing liabilities of [RGPL] to [Orix]) by notice in writing to [RGPL] forthwith determine this Agreement and thereupon this Agreement and the hiring hereby constituted shall for all purposes determine subject to Clause 9.3 hereof, and thereafter [RGPL] shall no longer be in possession of the [Heidelberg 4C] with [Orix]'s consent.

52 Under the common law, the right of possession revests in the bailor if the bailee behaves in a manner that is utterly repugnant to the terms of the bailment (*North General Wagon* at 11 (per Asquith LJ)). Generally, where the terms of the agreement make special provisions as to the rights of the parties in the event of particular breaches, the court will take these into account (*ibid*). However, the terms of the contract will not invariably deprive the bailor of his rights under the common law. In *Union Transport Finance Ltd v British Car Auctions Ltd* [1978] 2 All ER 385 ("*Union Transport*") at 390, Roskill LJ opined that:

> [I]t seems to me, following the reasoning in [*North General Wagon*], that even if there be room in principle for the existence of a contract which may contract out of the basic common law rule, *it would require very clear language to deprive the bailor, of his common law rights in circumstances such as these*. [emphasis added]

53 In *North General Wagon*, the relevant clause in the hire-purchase agreement was silent as to any notice requirement. Asquith LJ had little difficulty holding that the plaintiff-bailor had the immediate right to possession of the car when the car was wrongfully sold by the defendant-auctioneer. In *Union Transport*, the hire-purchase agreement stated that "the owner shall have the right at any time to declare the hiring to be terminated by forwarding a notice of default" (at 388). The defendant argued that since there was an express right to bring the contract to an end after notice of termination, the common law rule was inapplicable. Roskill LJ rejected this argument, taking the view that the language used in the contract was not strong enough to deprive the bailor of his common law rights (at 390).

54 In the present case, cl 9 of the Hire-Purchase Agreement (see [51] above) is similarly phrased to the material provision in *Union Transport*. In both cases, the requirement for notice was not absolute. We are of the view that cl 9 of the Hire-Purchase Agreement does not restrict Orix's rights under the common law. Under the Hire-Purchase Agreement, Orix can issue a notice in writing to make clear that it is determining the Hire–Purchase Agreement. However, it is not a condition precedent for a notice in writing to be issued for the Hire-Purchase Agreement to be determined. As such, we hold that Orix had the immediate right to possession of the Heidelberg 4C when the machine was removed from the Toh Guan premises and has the requisite standing to sue for conversion of the machine.

Whether Tat Seng had converted the Heidelberg 4C on the facts of the case

55 We note that it was not pleaded that Tat Seng was involved in the sale of the Heidelberg 4C, or had at any time appropriated the machine as its own (see [24] above). None of the material facts leading to the alleged conversion were pleaded and it is not clear to us why no objections on Orix's pleadings were raised below. As this pleading point arises most directly in relation to the issue of redelivery of the machine, we will explicate this point below (at [74]–[76] below).

56 As we alluded earlier (at [39]), Tat Seng's involvement in the handling of the Heidelberg 4C comprises of three distinct elements and/or acts. First, Tat Seng followed the original instructions to deliver the Heidelberg 4C from the Toh Guan premises to Hock Cheong's warehouse. Second, when Colin Lim refused to allow the Heidelberg 4C to be stored at his warehouse, Tat Seng agreed to store the Heidelberg 4C for a period of about four days, before returning it on 4 September 2006. Third, on 4 September 2006, the Heidelberg 4C was redelivered to Crispian. We now turn to consider more closely if any of the above elements and/or acts, on the evidence adduced, amounted to conversion of the Heidelberg 4C by Tat Seng.

Taking and delivering another's goods

(1) The law on taking and delivering another's goods

57 The act of taking the machine alone does not amount to conversion, although it may amount to trespass (*Fouldes v Willoughby* (1841) 8 M&W 540 ("*Fouldes*") at 544–545). What is determinative is the intention behind the taking. If the taking is accompanied by an intention to exercise temporary or permanent dominion over the chattel, the person taking it will be liable for conversion. Therefore, in *Fouldes*, the court held that the defendant's act of removing horses carried onto a ferry-boat by the plaintiff and leaving the horses on shore did not amount to conversion, even though the defendant had wrongfully refused to allow the horses on board. As to the ingredients of the tort of conversion, Lord Abinger noted that (at 547):

> … it is necessary either that the party taking the goods should intend some use to be made of them, by himself or by those for whom he acts, or that, owing to his act, the goods are destroyed or consumed, to the prejudice of the lawful owner. … But it has never yet been held, that the single act of removal of a chattel, independent of any claim over it, either in favour of the party himself or any one else, amounts to a conversion of a chattel. In the present case, therefore, the simple removal of these horses by the defendant, for a purpose wholly unconnected with any the least denial of the right of the plaintiff to the possession and enjoyment of them, is no conversion ...

58 However, in the case of handlers who also store or deliver goods, it is not always easy to draw a bright line and state affirmatively when an act of conversion has been committed. The seminal case of *Francis Hollins v George Fowler* (1874-5) LR 7 HL 757 ("*Fowler*") continues to be the starting point of any serious analysis given its indisputable legal pedigree. There, Blackburn J recognised the compelling need to ameliorate the hardship engendered by the remedy of conversion. As the law then stood, a defendant was liable for the full value of the goods if what he had done technically amounted to conversion, even if done innocently (*Fowler* at 764). While Blackburn J reluctantly accepted that the court "cannot act on any notions of hardship" in deciding a case of conversion (*ibid*), the eminent judge thought that some protection for intermediaries who deal with the goods in good faith must be accorded by the common law (*Fowler* at 766–767):

> I cannot find it anywhere distinctly laid down, but I submit to your Lordships that on principle, *one who deals with goods at the request of the person who has actual custody of them, in the* bona fide *belief that the custodier is the true owner, or has the authority of the true owner, should be excused for what he does if the act is of such a nature as would be excused if done by the authority of the person in possession, if he was a finder of the goods, or intrusted with their custody*. [emphasis added]

59 Blackburn J provided a number of examples of cases where protection could be accorded to intermediaries. For those involved in the storage of goods, he gave the following example (*Fowler* at

767):

> *[A] warehouseman with whom goods have been deposited is guilty of no conversion by keeping them, or restoring them to the person who deposited them with him, though that person turns out to have had no authority from the true owner*: see *Heald v. Carey*; *Alexander v. Southey*. [emphasis added]

60 With respect to those involved in transporting goods, he said (*Fowler* at 767–768):

> ***And the same principle would apply to the cases ... of persons "acting in a subsidiary character, like that of a person who has the goods of person employing him to carry them***, or a care-taker, such as a wharfinger." … It was said: "Suppose that the Defendant had sent the delivery order to *Micholls*, who had handed it to the railway company, requesting them by means of it to procure the goods in *Liverpool* and carry them to *Stockport*, and the railway company had done so, would the railway company have been guilty of a conversion?
>
> I apprehend the company would not, for merely to transfer the custody of goods from a warehouse at *Liverpool* to one at *Stockport*, is *prima facie* an act justifiable in any one who has the lawful custody of the goods as a finder, or bailee, and the railway company, in the case supposed, would be in complete ignorance that more was done. ***But if the railway company, in the case supposed, could have been fixed with knowledge that more was done than merely changing the custody, and knew that the company's servants were transferring the property from one who had it in fact to another who was going to use it up, the question would be nearly the same as that in the present case. It would, however, be very difficult, if not impossible, to fix a railway company with such knowledge***.
>
> And on the same principle I take it the ruling of Lord *Tenterden* in *Greenway v. Fisher* may be supported; for the packer was merely giving the facilities for the transport of the goods from one place to another, and was ignorant of the circumstances which made it wrong against the true owner to remove the goods …
>
> [emphasis in original; emphasis added in bold italics]

61 These pragmatic and astute observations of Blackburn J have long been regarded as correctly restricting the indiscriminate application of the tort of conversion (see *R H Willis* ([46] *supra*) at 443 (*per* Lord Denning)). However, as stated earlier, the precise ambit of the protection cannot always be easily delineated (see also the observations of the Law Reform Report ([43] *supra*) at para 46). We now turn to examine various scenarios involving intermediaries handling goods with or without notice of whom the true ownership of those goods might reside in.

62 In *National Mercantile Bank Limited v Rymill* (1881) 44 LT 767 ("*Rymill*"), the defendant-auctioneer was given horses to sell by a rogue. Before the auction, the rogue managed to sell the horses by private contract in the defendant's yard. The defendant received a commission from the sale, paid the balance to the rogue and delivered the horses to the purchaser. However, the court held that the defendant was not involved in the sale of the horses and was not liable for conversion of the horses. Bramwell LJ declared (*Rymill* at 767):

> The defendant has received the horses and harness from [the rouge] and has delivered them back to the person to whom [the rouge] had given a delivery order. That is all that he has done; he has not claimed to transfer the title, and he has not purported to sell; all the dominion he exercised over the chattels was to re-deliver them to the person to whom the man from whom he

had received them had told him to redeliver them.

In Brett LJ's judgment, it appeared to be a significant consideration that the rouge was in a position to withdraw the horses at any time, and that the rouge retained control over the horses until it was actually sold (*ibid*).

63 A similar outcome was reached by the English Court of Appeal in *Marcq v Christie Manson & Woods Ltd* [2004] QB 286 ("*Marcq*"). There, the plaintiff owned a painting which was later stolen. The painting was reported as stolen on the Arts Loss Register. A prospective seller ("S") handed over the painting to the defendant-auctioneer for sale at an auction. The defendant catalogued, advertised and offered the painting for sale. However, the painting remained unsold and was returned to S. The plaintiff sued the defendant for conversion. The court held that there were no reasonable grounds for the plaintiff to bring the claim in conversion and agreed with the lower court's decision to strike out the plaintiff's statement of case. Tuckey LJ, delivering the judgment of the Court of Appeal, set out the relevant principles as follows (at [24]):

> [T]he authorities indicate that an auctioneer who receives goods from their apparent owner and simply redelivers them to him when they are unsold is not liable in conversion provided he has acted in good faith and without knowledge of any adverse claim to them. … The auctioneer intends to sell and if he does so will incur liability if he delivers the goods to the buyer. But his intention does not make him liable; it is what he does in relation to the goods which determines liability. ***Mere receipt of the goods does not amount to conversion. In receiving the goods from and redelivering them to their apparent owner the auctioneer in such a case has only acted ministerially. He has in the event merely changed the position of the goods and not the property in them***. This I think is a just conclusion, although I realise it may be dangerous to test issues of strict liability in this way. Nevertheless I think it would be unduly harsh if auctioneers were to be held liable in circumstances such as these. [emphasis in original; emphasis added in bold italics]

64 The plaintiff in *Marcq* argued that the terms of the contract, which entitled the defendant-auctioneer to various rights (to withdraw the painting from sale, to sell the painting privately and being able to collect charges for carriage, insurance and expenses), had intruded on its right to immediate possession of the painting. The Court of Appeal was quick to reject this argument (*Marcq* at [33]– [35]):

> 33 I think the simple answer to this point is that the duration of Christies' possession is of itself of no consequence*. Mere possession, for however long, is immaterial*. It all depends upon what else, if anything, Christie's do and if that encroaches on the claimant's title. ...
>
> 3 4 *The fact that Christie's catalogued and offered the picture for sale and did so for reward adds nothing to the claimant's case*; that is an auctioneer's business.
>
> 35 At common law an auctioneer has a lien over the goods for his costs and commission: see *Williams v Millington* (1788) I H Bl 8I. Under clause 9(d) the seller is not entitled to collect his goods until all outstanding charges are met. As I have already said, in this case it is not alleged that Christie's exercised any lien or similar right under clause 9(d) over the picture. The need for such a right to be exercised was made clear by Millett J in *Barclays Mercantile Business Finance Ltd v Sibec Developments Ltd* [1992] 1 WLR 1253, 1257–1258:
>
> > "Demand is not an essential precondition of the tort: what is required is an overt act of withholding possession of the chattel from the true owner. Such an act may consist of a

refusal to deliver up the chattel on demand, but it may be demonstrated by other conduct, for example, by asserting a lien. Some positive act of withholding, however, is required; so that, absent any positive conduct on the part of the defendant, the plaintiff can establish a cause of action in conversion only by making a demand."

[emphasis added]

65 At the other end of the spectrum is the case of *R H Willis* ([46] *supra*). There, the defendant-auctioneer received a car from the seller for sale by auction. The car was subject to a subsisting hire-purchase arrangement. The auction was unsuccessful, but a sale was successfully arranged at the highest bid via the auctioneer's "provisional bid" practice. As the seller had defaulted on his hire-purchase instalments, the plaintiff sued the auctioneer for conversion. If the sale had been concluded directly under the hammer, both the purchaser and the auctioneer would be liable in conversion regardless of how innocent their conducts were (at 442). Although the sale here was by way of "provisional bid" practice, the Court of Appeal had little difficulty finding the auctioneer liable for conversion. The court regarded sales by "provisional bid" to be similar to sales under the hammer because in either case, the auctioneer would act as an intermediary to bring two parties together to agree to a price (*ibid*). Further, Lord Denning regarded the decision in *Rymill* to be of questionable authority, taking the view that (at 443):

… [the court there was] anxious to protect the auctioneer, as an innocent handler, from the strictness of the law. In doing so they introduced fine distinctions which are difficult to apply. I do not think we should follow those two cases today, especially when regard is had to the insurance aspect …

66 The issue of the innocent handler has also been authoritatively considered by the UK Law Reform Committee in the Law Reform Report ([43] *supra*), which considered whether any changes to the law on conversion and detinue were desirable. On the extent of the protection accorded by Blackburn J's guidelines in *Fowler* ([58] *supra*), the UK Law Reform Committee took the following view (the Law Reform Report at paras 46–47):

46 It has been said that a merely ministerial handling of goods at the request of an apparent owner having the actual control of them is not a conversion and that a handling is ministerial where it merely changes the position of the goods and not the property in them. It has been also suggested by Blackburn, J. in [*Fowler*] that the test to be applied is that "one who deals with goods at the request of the person who has actual custody of them in the *bona fide* belief that the custodier is the true owner, or has the authority of the true owner, should be excused for what he does if the act is of such a nature as would be excused if done by the authority of the person in possession, if he was the finder of the goods or entrusted with their custody".

47 *Where the handler, having received goods from an apparent owner and without knowledge of any adverse claim, merely re-delivers them to the same person, we consider that all the above tests can fairly be said to have been satisfied, and we think that the same applies where the handler delivers the goods at the direction of the apparent owner to a third party without knowledge of any adverse claim or that any question of title is involved*.

[emphasis added]

67 The UK Law Reform Committee also considered *Rymill* ([62] *supra*) and acknowledged that the decision was inconsistent with the test suggested by Blackburn J (*ie*, whether the defendant's act can fairly be said to have changed no more than the position of the goods). However, the Committee

took the pragmatic view that "on a balance of the conflicting considerations involved, [we do not] recommend a statutory reversal of this decision" (the Law Reform Report at para 47).

(2) Whether Tat Seng was liable for conversion by removing the Heidelberg 4C from the Toh Guan premises and attempting to deliver the machine to Hock Cheong

68 On the facts of the case, all that was involved at this stage (from Tat Seng's perspective) was the removal of the Heidelberg 4C from the Toh Guan premises and the delivery of the machine to Hock Cheong's warehouse for storage. The Judge accepted that Tat Seng had received instructions to deliver the machine to Hock Cheong (see the Judgment at [77]). Instructions to move the machine to Hock Cheong were given by Crispian via Mark Yap and there was nothing on the machine or in the circumstances of the move to indicate that a third party's rights were being interfered with. Why should Tat Seng, which had no previous relationship with RGPL, entertain suspicions about the propriety of the move? There was no evidence that the move itself was not conducted in the ordinary course of business. It was conducted in broad daylight. The movements of Tat Seng's lorries were not made surreptitiously, but instead, were recorded by the security personnel at the Toh Guan premises (see [13] above and [84] below). It appears to us that the present circumstances were rather similar to that in *Marcq* ([63] *supra*). In both cases, the defendants (here, Tat Seng) had dealt with and delivered only goods *apparently* belonging to their clients. Tat Seng's conduct was purely ministerial as it had merely changed the location of the Heidelberg 4C entrusted to it and did not assist in the sale of the machine or take any step that amounted to the transfer or interference of ownership. Significantly, it was not pleaded that Tat Seng was part of a wider conspiracy to profit from the sale of the Heidelberg 4C (see [24] above) and, in any case, there is absolutely no evidence of this. As such, we determine that the act of removing the Heidelberg 4C from the Toh Guan premises and delivering the machine to Hock Cheong on 31 August 2006 did not amount to conversion of the machine.

Storing another's goods

(1) The law on storing the goods of another

69 The mere retention of another's property on its own is not conversion, unless the defendant has shown an intention to keep the thing in defiance of the true owner (*Clayton v Le Roy* [1911] 2 KB 1031 at 1052; see also [64] above). Neither is possession of a chattel without title considered to be either conversion or a tort (see *Salmond & Heuston on Torts* ([45] *supra*) at p 99 and *Caxton Publishing Company Limited v Sutherland Publishing Company* [1939] AC 178 at 202). Where detention of goods is concerned, the plaintiff suing in conversion will usually prove that the defendant's detention of the chattel is adverse to its interests by showing that the defendant had refused or neglected to comply with the demand made by it for the delivery of the chattel, though the making of such a demand is not a prerequisite in every case (*Salmond & Heuston on Torts* at p 100, *Clerk & Lindsell* ([44] *supra*) at para 17-22 and *London Jewellers Limited v Sutton* (1934) 50 TLR 193; see further *Kuwait Airways* ([36] *supra*) and [70] below). For clarity, we should also state for good measure that the defendant's refusal to comply with the demand will not necessarily constitute conversion (*Salmond & Heuston on Torts* at p 100).

70 The application of the tort of conversion to the retention and usage of goods is clearly illustrated by the illuminating case of *Kuwait Airways*. There, the defendant argued that mere possession by it of the aircraft in question was not an act of conversion, and emphasised the fact that the plaintiff had made no demand for the aircraft. Further, the defendant argued that none of its acts had deprived the plaintiff of use or possession of the aircraft. The House of Lords made short shrift of this argument. Lord Nicholls observed (at [43]):

> Here, on and after 17 September 1990 IAC was in possession and control of the ten aircraft. This possession was adverse to KAC. *IAC believed the aircraft were now its property, just as much as the other aircraft in its fleet, and it acted accordingly. It intended to keep the goods as its own. It treated them as its own. It made such use of them as it could in the prevailing circumstances, although this was very limited because of the hostilities. In so conducting itself IAC was asserting rights inconsistent with KAC's rights as owner*. This assertion was evidenced in several ways. In particular, in September 1990 the board of IAC passed a resolution to the effect that all aircraft belonging to the (dissolved) KAC should be registered in the name of IAC and that a number of ancillary steps should be taken in relation to the aircraft. In respect of nine aircraft IAC then applied to the Iraqi Directorate of Air Safety for certificates of airworthiness and reregistration in IAC's name. IAC effected insurance cover in respect of five aircraft, and a further four after the issue of the writ. Six of the aircraft were overpainted in IAC's livery. IAC used one aircraft on internal commercial flights between Baghdad and Basra and for training flights. The two Boeing 767s were flown from Basra to Mosul in mid-November 1990. [emphasis added]

(2) Whether Tat Seng's act of storing the Heidelberg 4C amounted to conversion

71 The Judge found two suspicious instances with respect to the storage of the Heidelberg 4C. First, the Judge found it strange that Tat Seng did not charge for storage or for the labour and materials associated with wrapping the machine (see the Judgment at [81]). Next, the Judge suggested that the wrapping had been done to "conceal" the machine, which was placed in an open yard (*id* at [84]), even though paradoxically, she had earlier accepted that the wrapping was done to protect the machine from the elements (*id* at [81]). However, unlike the Judge, we think the fact that Tat Seng had not charged for the wrapping or the storing of the machine was not probative of an intention to do an act inconsistent with the right of the true owner. The machine was stored in an open yard in front of Tat Seng's warehouse. What it did was not unusual as Mark Yap had requested that the machine be protected from the elements (see [15] above). As such, it cannot be inferred that Tat Seng, having wrapped and placed pallets under the machine to protect it from rain without charging for it, somehow knew that the Heidelberg 4C had not been removed *bona fide*. This inference is one step too far. Further, no evidence was led by Orix to suggest that the wrapping itself was so costly or time-consuming as to justify the Judge's inference that it was odd that Tat Seng had not charged for it. In these circumstances, we do not see how the act of storing the machine temporarily for a few days without charge could be said to constitute an act of conversion. Further, we consider it pertinent that there was plausible evidence that Tat Seng had a practice of not charging its customers for short-term storage and that this was not the first time such a gratuitous service had been provided.[note: 62] As Tat Seng was dealing with both Kenzone and Crispian for the first time, it seems quite probable to us that Tat Seng was also rendering these additional services to build up goodwill. The act of storage can therefore be said to have been in the ordinary course of its business. Tat Seng's acts were very far from what the defendant in *Kuwait Airways* had done while the planes were being stored (we are, however, not suggesting that the facts of *Kuwait Airways* constitute the threshold). There was no evidence or suggestion that Tat Seng had intended to use or keep the machine as its own or to withhold the machine from the true owner.

Redelivery of goods to bailor

(1) Redelivery of goods to bailor not conversion in law

72 It remains for us to decide whether the circumstances in which Tat Seng returned the Heidelberg 4C amounted to an act of conversion. A bailee who delivers goods to his bailor without title is not liable for conversion (see [59] above) and the Law Reform Report ([43] *supra*) at para 6(c)).

Similarly, it has been persuasively suggested on good authority that a bailee who delivers goods to a third party without knowledge of any adverse claim will not be liable for conversion (the Law Reform Report at para 47 (quoted at [66] above) and *Clerk and Lindsell* ([44] *supra*) at para 17-73). However, we need not decide the latter point as the Judge had found as a fact that Crispian "took [the Heidelberg 4C] over in the evening at the yard" (see the Judgment at [82]). In *Salmond & Heuston on Torts*, the learned authors clearly explain why the bailee is not liable for redelivering the chattel to the person whom he had received the chattel from (at p 104):

> [I]f he who innocently acquires possession of another's goods by way of deposit redelivers them to him from whom he got them, *before he has received notice of the plaintiff's claim to them*, he is free from responsibility. *He has not deprived the plaintiff of his property, for that property is now in exactly the same position as if the defendant had never interfered with it at all*. [emphasis added]

73 As the above passage from *Salmond & Heuston on Torts* suggests, this rule is not of unbounded applicability. The protection accorded to intermediaries is not applicable in two cases (*Clerk & Lindsell* at para 17-74):

> First, it only protects a bailee who has no notice of his bailor's lack of title. *Once the bailee has notice of the existence of competing claims to the goods, he delivers to either claimant at his peril*: his only safe course is to interplead. *Secondly, protection is limited to the bailee who delivers to his actual bailor (or to his order)*. A bailee who delivers, even without negligence, to an imposter, or to anyone else who is not in fact the bailor's representative, is liable in the ordinary way. [emphasis added]

Where there is actual notice of competing claims, the tortfeasor will be liable for conversion. On the other hand, where a carrier had acted reasonably in the ordinary course of business (there being no reason for it to make further inquiries), for example, by returning goods to a customer without title, without notice of competing claims, he ought not to be liable. After all, the carrier has done nothing to interfere with ownership and has merely restored the original *status quo* (see [72] above). There is a third possibility, which is where constructive notice of competing interests exists. *Clerk & Lindsell* suggests, rightly in our view, that the bailee is usually under no duty to make enquiries as to title (at para 17-73, fn 19). Indeed, the general applicability of the equitable doctrine of constructive notice is not always clear (see for example, Tan Sook Yee and Kelvin Low Fatt Kin, "Equity and Trust" (2003) 4 SAL Ann Rev 225 at para 12.14 (in the context of applying the doctrine of constructive notice to undue influence)). In any case, we would observe that for historical reasons the scope of the doctrine of constructive notice (if applicable) will be much narrower when it involves transactions other than land (see John McGhee QC, *Snell's Equity* (Sweet & Maxwell, 31st Ed, 2005) at para 4-39), though this view may need further clarification at some point of time. On our part, we do not see why a carrier should ordinarily be expected to query its clients as to the purpose of movements of the latter's goods if it *reasonably* does not have a practice of doing so ordinarily. It would be quite different if the circumstances of the move are plainly suspicious. For example, if goods are clandestinely being removed from premises that are apparently not occupied by its client during the dead of night, one would ordinarily expect the carrier to make some enquiries as to whether there is indeed proper authority to remove the goods. *Even then, impropriety should not be lightly inferred* (see [60] above). For the purposes of the present appeal, given our finding that much of what happened took place in the ordinary course of business and did not involve anything suspicious (at [78]–[84] below), it is unnecessary for us to decide whether the doctrine of constructive notice is applicable to Blackburn J's dictum. We therefore now turn to consider whether Tat Seng had notice of RGPL's lack of title or of any competing claims when it redelivered the machine to Crispian.

(2) Whether Tat Seng's act of redelivering the goods amounted to conversion

(A) THE PARTICULARS OF A CLAIM FOR CONVERSION MUST BE EXPRESSLY PLEADED

74 We would first observe that Orix's SOC, which is a model of brevity (not clarity), tersely stated at para 6 that Kenzone and Tat Seng had (see also [24] above):

> … removed the [Heidelberg 4C] from [RGPL]'s premises on or about 31 August 2006 and delivered the same to persons unknown. [underlining in original]

75 In *Marcq* ([63] *supra*), the court proceeded on the basis that the defendant had acted in good faith and without notice since the claimant there had disclosure of the defendant's documents, had ample opportunity to plead his case about notice, but did not do so (at [4]; see [76] and [91] below). Here, in rather similar fashion, Orix made no allegation whatsoever, in any of its pleadings, as to whether Tat Seng had notice or did not act in good faith. It cannot be said that Orix did not have sufficient knowledge about the facts, as Henry, its private investigator, was told by Mr Siew that two Malaysian-registered trailers had collected the Heidelberg 4C. Henry also had sight of the two delivery orders which Orix alleged was falsely prepared and therefore indicative of Tat Seng's want of good faith.

76 Since Orix had both ample opportunity as well as the means to plead that Tat Seng did not act in good faith or had notice of its rights and failed to do so, we are of the view that Orix should not have been allowed to allege at trial that Tat Seng had acted in bad faith. Whether a person acts in good faith or not is a fact (see ss 3(1) (especially illustration (d) to the definition of "fact", which includes good faith) and 14 of the Evidence Act (Cap 97, 1997 Rev Ed)). It is trite pleading practice that all material facts (including that relating to a party's lack of good faith) should be expressly pleaded and particularised. Such material facts are not limited only to those which establish a cause of action or defence (see *Singapore Court Practice 2006* (Jeffrey Pinsler gen ed) (LexisNexis, 2006) at para 18/7/2). A finding that a party has not acted in good faith is always a grave matter as it relates to that party's probity and is often tantamount to a finding of dishonesty. As such, due process requires that adequate notice of such an allegation be given to the party allegedly implicated. It has long been settled that the purpose of pleadings is to properly *demarcate the parameters of each party's case* and to prevent parties from being *caught by surprise* at trial. Here, we note that Orix did not even deign to file a reply, when, on the contrary, it should have particularised how Tat Seng had notice of the competing claims *vis-à-vis* the lack of or inadequacies in the documentation or in the manner in which the Heidelberg 4C was redelivered. The view we have adopted is amply supported by the approach articulated in *Marcq* where the claim was struck out on the basis of an inadequately pleaded claim. We have found the following observations of Tuckey LJ (at [4]) to be particularly apposite:

> Before Judge Hallgarten QC and Jack J the claimant was able to keep open the possibility of being able to allege want of good faith and notice against Christie's although no such case had been pleaded. *Both judges held that, irrespective of where the burden of proof lay, the claimant had to plead any case he had on these issues*. He was given a final chance to do this by Jack J's order of 29 October 2002… No such application was made and on 28 November 2002 the claim was dismissed. Mr Palmer maintains that it is still open to the claimant to contend that Christie's had notice of the theft of the picture in answer to Christie's assertion that they did not. I do not agree. *The claimant has had disclosure of all Christie's documents and more than ample opportunity to state his case about notice and has not done so. We must proceed therefore on the basis that Christie's acted in good faith and without notice*. [emphasis added]

Even after the claimant in that case was given a final chance by Jack J to plead the want of good faith or notice in its reply, it failed to do so. The lower courts decision to strike out the claim was unhesitatingly affirmed by the Court of Appeal. Here, Orix had similarly decided not to place any of its cards face up on the table in its pleadings and should not have been allowed to run a positive case that attacked Tat Seng's *bona fides* (see [24] above). Even if the burden of proof to affirm good faith lay on Tat Seng, once Tat Seng had specifically denied it in its defence (which it did), Orix should have particularised its response why it was contending that Tat Seng was not acting in the ordinary course of business or in good faith in its reply (see O 18 r 7(3) of the Rules of Court (Cap 322, R 5, 2006 Rev Ed)). It has not escaped our attention that every finding of fact which the Judge relied on to find Tat Seng liable for conversion (set out at [77(a)]–[77(e)] below) was not pleaded by Orix.

(B) THE JUDGE'S INFERENTIAL FINDINGS ARE NOT THE ONLY FINDINGS TO BE MADE IN THE PREVAILING CIRCUMSTANCES

77 Even assuming that the pleading deficit is not fatal to Orix's case, we are of the view that Tat Seng's acts clearly fall within the embrace of the protection contemplated by Blackburn J's dictum (stated at [58] above). It is clear, from the findings above, that Tat Seng had acted according to the instructions given by Crispian, through Mark Yap. In order for Tat Seng to be found liable, it is necessary to establish that Tat Seng had notice of the existence of competing claims to the Heidelberg 4C at the material time. To support her inference that Tat Seng had "acted dishonestly and … could not have reasonably believed that RGPL was entitled to deal with the Heidelberg 4C in the way that it did" (see the Judgment at [84]), the Judge had relied on a number of factual findings which we categorise as follow:

(a) the lack of credibility surrounding Crispian's evidence (see the Judgment at [73]– [77]; see also [27] above);

(b) that Colin Lim did not wish to be involved as he suspected that something was wrong when he saw the machine (see the Judgment at [77]; see also [27(b)] above);

(c) the lack of and inadequacies in Tat Seng's documentary evidence (see the Judgment at [80]; see also [28] above);

(d) the absence of payment for the additional services provided for by Tat Seng (see the Judgment at [81]; see also [29] above); and

(e) the manner in which the Heidelberg 4C was taken back by Crispian on 4 September 2006 (see the Judgment at [82]; see also [30] above).

78 We shall now address each of the Judge's findings, in turn, as they collectively form the cornerstone of her decision. First, the Judge's finding (at [77(a)]) that Crispian's evidence was lacking in credibility was one made, *inter alia*, from her observation of the witness's demeanour at trial (see the Judgment at [73]). Since Tat Seng did not challenge this finding of the Judge, there is no reason for us to disturb this finding, especially in the light of our observations about the appellate court's limited powers of review with respect to credibility and veracity of a witnesses' evidence above (see [41] above). However, as it has not been suggested or even pleaded how Tat Seng (which had no prior relationship with either Crispian or Kenzone) stood to benefit from being involved in Crispian's scheme, Crispian's lack of credibility ought not to have been a decisive consideration towards determining Tat Seng's liability. It was more important to ascertain where and in what circumstances Tat Seng's involvement began and ended.

79 Next, even if Colin Lim rejected the machine because he had thought that something was not quite right (at [77(b)] above), we think that little weight (if any) should be accorded to that fact *vis-à-vis* Tat Seng's liability. Quite plainly, this does not establish that Tat Seng had notice of any competing claims to the Heidelberg 4C. Colin Lim had known Crispian for a long time and had prior business dealings with Crispian. By virtue of his relationship and business connections with Crispian, one can infer that Colin Lim was in a position to assess whether something was amiss when he saw the size of the machine parts to be stored at his warehouse. In contrast, Tat Seng did not have any prior dealings with Crispian and RGPL. It therefore had little or no reason to suspect that the move was not in the ordinary course of business. The reason given to it for the move was, on its face, credible. There was, in our view, no obvious reason for Tat Seng to suspect any wrongdoing merely from the fact that Colin Lim had declined to store the goods, because at that time, the ostensible reason given by Colin Lim was that he did not have enough space to store those machine parts.

80 With respect to the missing or incomplete documentary evidence (at [77(c)] above), we readily accept that Tat Seng could have better managed its documentation trail. We do not condone any of Tat Seng's administrative or accounting lapses. Companies should seek, in their own interests, to ensure that all paper-work is in order to protect themselves from being embroiled in needless disputes or litigation.

81 However, the lapses in providing written quotations or a written invoice or stating the wrong information on the delivery orders do not, on its own, suggest that Tat Seng was aware, at the material time, of any competing claims to the Heidelberg 4C. Further, we do not think that these administrative lapses were probative of any lack of good faith on Tat Seng's part, taking into account the practical realities of running small family companies which often tend to be less rigorous with their paperwork and administration. While we accept that the delivery orders were very "coincidentally" signed just before Mr Siew's interview with Henry took place, this fact must be considered alongside with the candour evident in Mr Siew's responses. He could have declined to respond to Henry's searching queries. Instead, Henry's report of the interview revealed that Mr Siew was straightforward with the information he then had. Mr Siew informed Henry that the Malaysian trailers had come on the day of redelivery and acknowledged that he was still holding on to the folding machine.[note: 63] The latter fact was significant, as there was no reason for Mr Siew to continue holding on to the folding machine (or to acknowledge the same) if he was involved in Crispian's scheme. He would have immediately taken steps to dispose of the folding machine or returned it to Crispian if Tat Seng was complicit. Therefore, even if the Siews had hurriedly taken steps on 20 October 2006 to ensure that the delivery orders were finalised for the purposes of the interview, one cannot and should not thereby infer that the Siews had, at the material time, notice of any competing claims or any suspicions of any wrongdoing having taken place.

82 Further, we do not think that Tat Seng's act of providing extra services without receiving payment in the hope of obtaining further business should be construed as being out of the ordinary (at [77(c)]–[77(d)] above). The services provided (*viz*, hoisting, loading, wrapping and storing the machine) were either very simple in nature or were services that it was accustomed to providing in the ordinary course of its business. Furthermore, we cannot fault the reason Tat Seng gave (that it was done in hope of creating goodwill to obtain further business), especially since this was the first time Tat Seng had done business with both RGPL and Kenzone. One can readily understand why Tat Seng was keen to develop new business relationships, particularly with Kenzone through whom all instructions were being conveyed. The fact that it had no previous relationship is a cogent factor militating against the Judge's finding that it was complicit in Crispian's scheme (see [31] above). By all accounts, Tat Seng had an established and reputable business as movers, having been in the business for more than twenty years.[note: 64] *What did Tat Seng stand to gain by being involved in a*

solitary cloak-and-dagger operation with Crispian, especially when its peripheral involvement could be so easily traced by the movement of its lorries in and out of the Toh Guan premises? Orix could not even begin to answer this crucial question. There was also no suggestion that Tat Seng was ever in the business of "fencing" improperly acquired goods.

83 Finally, we deal with the finding (at [77(e)] above) that Tat Seng should have found the manner in which the goods were taken back to be "peculiar" (see the Judgment at [82]). From Tat Seng's perspective, it may have felt let down at not being entrusted with the return trip but there was nothing unusual in the way the machine was redelivered which might have indicated to Tat Seng that the machine did not belong to RGPL or that there were competing interests involved. It was returned to the possession of Crispian. At that juncture, when parting with possession of the machine to Crispian, even if Tat Seng acquired knowledge that the machine was to be taken out of the country, how could that "fix" it with knowledge that something more sinister was involved? Having handed the machine back to Crispian, why would it have any further interest in what was intended to be done with the machine? Why should it have responsibility for how its client, the apparent owner, dealt with the machine once it was handed back to him?

Conclusion

84 We now summarise our views. First, Tat Seng had made no attempt to cover its role in the transportation of the Heidelberg 4C. The loading, transportation and redelivery all took place during the day. Tat Seng also used vehicles which boldly bore its name in the transportation and their vehicle numbers were recorded at the security guard post of the Toh Guan premises.[note: 65] These facts, in our view, militate against the view that Tat Seng knew it was entangled in some impropriety. Secondly, apart from generally inferring that Tat Seng had acted "dishonestly" and "could not have reasonably believed that RGPL was entitled to deal with the Heidelberg 4C" (see the Judgment at [84]) in the way that it did, we observe that the Judge had made no finding on the extent of Tat Seng's alleged knowledge of Crispian's scheme to convert Orix's property. Thirdly, we are satisfied on our analysis of the facts for the reasons given above that Tat Seng's involvement was ministerial. The terms and conditions (especially cl 2 thereof) on Tat Seng's delivery orders suggest that it was not in its ordinary course of business to verify the ownership of the goods transported (see [17] above). On our part, we think it is highly unlikely that others in the same business would have made any enquiries in similar circumstances. As no evidence has been led by Orix to show what enquiries a carrier would make in the prevailing circumstances, we need say no more on this. In our view, Tat Seng's practice and conduct was reasonable in the present circumstances as there was nothing to indicate to it that competing interests were involved. Fourthly, as the Heidelberg 4C was returned to Crispian's possession, no act of conversion had taken place. Finally, it appears to us that findings of dishonesty were made against Tat Seng in the face of inadequate pleadings and inconclusive facts. We therefore respectfully differ from the Judge's findings and hold that Tat Seng is not liable for redelivering the Heidelberg 4C to Crispian.

85 For all the reasons above, we therefore allow the appeal. The appellants are to have the costs here and below with the usual consequential orders.

***Coda*: Some observations on the burden of proof**

86 Since we are satisfied that it was improbable that Tat Seng had notice of any competing claims or failed to act in good faith, the issue of on precisely whom the burden of proof lies on the issue of good faith is a moot point. Nevertheless, as this is an important point of practical significance, we think it will be useful to the legal community for us to express our views on this point. At this juncture, it should be pertinent to note that the issue of whether Tat Seng had acted in good faith

only arises in the context of Tat Seng's role as a carrier of goods and our observations should be read in this context. As mentioned earlier, the Judge placed a composite burden of proof to show good faith on Tat Seng without reference to authority. On the facts, she held (the Judgment at [85]):

> The defendants [*ie*, Tat Seng] have not proved, on a balance of probabilities, that they acted *bona fide* in their dealings with the machine *and were not aware that they were aiding RGPL in disposing of it*. They admittedly had the machine in their possession and thereafter it was lost. *They had the burden of showing that their actions were limited to changing the physical location of the machine and did not affect its ownership or interfere with the rights of the owner*. They have not been able to discharge that burden. [emphasis added]

87 In our view, this approach ought to be further clarified. The judge may have overstated the evidential requirements imposed on a defendant in a conversion claim. These are our reasons. Once it is satisfied that a carrier has acted in good faith, or had, in the words of Blackburn J in *Fowler* ([58] *supra*) (at 767), a "*bona fide belief that the custodier is the true owner, or has the authority of the true owner*", the carrier's acts (which the claimant is seeking to impugn) are treated as having been done ministerially, that is to say, done without affecting the ownership of the goods or interfering with the rights of the true owner. The converse way of stating this same proposition is to say that the carrier has "only changed the physical location of the machine" (see the observations in *Salmond & Heuston on Torts* ([45] *supra*) at 105). It is then immaterial that the action of the carrier, which has been engaged to change the physical location of the goods, may have the consequence of affecting title unless it can be fixed with knowledge of some impropriety by the claimant. It is pertinent to recall here the celebrated dictum of Blackburn J in *Fowler* (at 767) (quoted at [60] above):

> But if the railway company, in the case supposed, could have been fixed with knowledge that more was done than merely changing the custody, and knew that the company's servants were transferring the property from one who had it in fact to another who was going to use it up, the question would be nearly the same as that in the present case*. It would, however, be very difficult*, ***if not impossible****, to fix a railway company with such knowledge*. [emphasis added]

In that sense, there are no *further* requirements, as the Judge had held, for a carrier to prove that they "were not aiding [their customer] in disposing of [the goods]" or that their actions "were limited to changing the physical location of [the goods]" (see the Judgment at [85]). We have not been referred to any authority that supports the Judge's triple barrelled approach. To so require would place an onerous burden which most carriers involved (assuming the burden rests on them) in delivering goods to third parties would find almost impossible to discharge given the limited nature of their work, narrow terms of engagement and lack of knowledge of the objectives of employing them.

8 8 *Clerk & Lindsell* ([44] *supra*) (at para 17-73, fn 19) appears to suggest that it is actually the claimant that bears the burden of proving notice:

> "Notice" here seems to mean actual knowledge of facts indicating a lack of right in the *soi-disant* owner. The Court of Appeal in [*Marcq*] … made it clear that a bailee in such a case (here an auctioneer) was under no duty to make enquiries as to title. *Jack J. in the same case at first instance ([2002] 4 All E.R. 1005 …) stated that the true owner bears the burden of proof that the bailee did have notice*. [emphasis added]

89 This particular attribution to Jack J by the learned editors appears to be mistaken. That reference should actually have been to the decision of the county court judge, Judge Hallgarten, who had at first instance adopted such an approach. In *Marcq v Christie Manson & Woods Ltd* [2002] 4 All

ER 1005 (QBD), Jack J had, on the contrary, held that the burden was on the defendant to show that it acted without notice. We think it will be helpful if we set out the relevant portions of his judgment in full (at [55]– [59]):

> [55] *Judge Hallgarten held that it was for the true owner to establish that a bailee was not acting in good faith or had notice*. He distinguished the positions under s 2 of the Factors Act 1889 and under ss 24 and 25 of the Sale of Goods Act 1979, where in each case the equivalent burden is on the purchaser rather than the true owner, on the ground that those sections extended to purchaser's title and defences where there would otherwise be none. Here, he said, Christie's were merely returning the painting to their client: they did not need to show their good faith. He stated that, if he had been with the claimant on burden of proof, he would have required a properly particularised reply.
>
> [56] In addition to the sections to which I have referred Professor Palmer relied by analogy on ss 3 and 4 of the Limitation Act 1980, and on the law that a bailee who has lost or damaged goods has the burden of explaining their loss and rebutting negligence. In all of these situations the purchaser or bailee has the knowledge of what occurred and how he came to do what he did. The owner does not. That is the justification for placing the onus on him. Professor Palmer submitted that this was also the position here.
>
> [57] I should mention *Whitehorn Bros v Davison* [1911] 1 KB 463, [1908–10] All ER Rep 885 where the Court of Appeal held that under the predecessor of s 23 of the 1979 Act (sale under a voidable title) the burden lay on the true owner to show bad faith or notice. The decision has been criticised: see *Benjamin's Sale of Goods* (4th edn, 1992) p 307, para 7-031.
>
> [58] … There is also now the following passage of Lord Nicholls of Birkenhead in [*Kuwait Airways*] at [103]… :
>
> > 'You deal with goods at the risk of discovering later that, unbeknown to you, you have not acquired a good title. That is the strict common law principle. The risk is that, should you not have acquired title, you will be liable to the owner for the losses he can expect to have suffered as a result of your misappropriation of his goods. That seems the preferable approach, *in the case of a person who can prove he acted in the genuine belief the goods were his. A person in possession of goods knows where and how he acquired them. It is up to him to establish he was innocent of any knowing wrongdoing*. This is the approach Parliament has taken in s 4 of the 1980 Act.'
>
> [59] In my judgment it is in accordance with principle and leads to consistency to hold that *the burden is here on Christie's to establish that they dealt with the picture in good faith and without notice*. *On this I differ from Judge Hallgarten*.
>
> [emphasis added]

90 We acknowledge that persuasive arguments can be made in favour of either view on the issue of whom the burden of proof lies on to show notice of an act of conversion. Jack J has ably summarised the arguments in favour of placing the burden of proof on the defendant, especially given that the defendant is better placed and is more likely to have the requisite knowledge surrounding the acts of alleged conversion. It may be said with some force that it is always easier for a party to prove an affirmative fact than a negative one (see *Phipson on Evidence* (Sweet & Maxwell, 16th Ed, 2005) at para 6-06; see further s 108 of the Evidence Act). On the other hand, Blackburn J in *Fowler* had, with his customary insightfulness, carefully chosen his words in declaring that the railway

company would likely be liable for conversion if it "could have been *fixed with knowledge* that more was done than merely changing the custody" [emphasis added] (at 767). By choosing the word 'fix', Blackburn J appears to have taken the view that the burden is on the true owner to show that the defendant was not acting in good faith or had notice. Blackburn J's choice of words is especially crucial, given that it was in that very same judgment that the very protection in question was first formulated, and further, the example given was an elaboration of the protection accorded.

91 In addition, we note that Tuckey LJ in *Marcq* ([63] *supra*) (at [4]) made the following rather incisive observations (for convenience, we set out the relevant passage from [4] (quoted at [76] above) here again):

> Mr Palmer maintains that it is still open to the claimant to contend that Christie's had notice of the theft of the picture in answer to Christie's assertion that they did not. I do not agree. *The claimant has had disclosure of all Christie's documents and more than ample opportunity to state his case about notice and has not done so. We must proceed therefore on the basis that Christie's acted in good faith and without notice*. [emphasis added]

92 The above passage, while not expressly dealing with this point, does have as its inarticulate premise, the notion that the burden is on the claimant to plead and therefore satisfy the burden of proving that the defendant had not acted in good faith. Further, we note that Tuckey LJ had stated that (at [13]– [15]):

> 13 … in the latest case, [*Kuwait Airways*], 1084, para 39, Lord Nicholls of Birkenhead said: "Conversion of goods can occur in so many different circumstances that framing a precise definition of universal application is well nigh impossible." He went on to add however:
>
> > "In general, the basic features of the tort are threefold. First the defendant's conduct was inconsistent with the rights of the owner (or other person entitled to possession). Second, the conduct was deliberate, not accidental. Third, the conduct was so extensive an encroachment on the rights of the owner as to exclude him from use and possession of the goods. The contrast is with lesser acts of interference."
>
> In the instant case the first and second of these features are present. *It is the third which gives rise to the argument. Was there a sufficient encroachment on the claimant's rights as owner to amount to conversion?*
>
> 14 *… [there is] a long line of authority which shows that possession of goods by an agent on the instructions of their apparent owner for the purpose of carrying out what have been described as ministerial acts such as storage or carriage does not amount to conversion. The possession in such cases is inconsistent with the rights of the true owner and is deliberate but does not encroach sufficiently on the owner's title to the goods. This principle was stated by Blackburn J in* [*Fowler*], 766–767:
>
> > "I cannot find it anywhere distinctly laid down, but I submit to your Lordships that on principle, one who deals with goods at the request of the person who has the actual custody of them, in the bona fide belief that the custodier is the true owner, or has the authority of the true owner, should be excused for what he does if the act is of such a nature as would be excused if done by the authority of the person in possession, if he was a finder of the goods, or intrusted with their custody. …"
> >
> > [emphasis added]

93 The thrust of Tuckey LJ's judgment in the passage above suggests that the protection accorded by Blackburn J's dictum was an integral element of the third requirement in an action in conversion (as defined by Lord Nicholls in *Kuwait Airways* ([36] *supra*) at [39]), which in turn, points towards the burden of proof resting on the true owner to show that the handling was not in good faith or ministerial in nature.

94 We recognise that Jack J did not have the benefit of fully considering this alternative view as it was only expressed in the appellate decision in the same case. However, there certainly is force in the view that at the very least, the true owner bears *the evidential burden* to show that the defendant had notice or acted in bad faith once the carrier or bailee shows that it had a *bona fide* belief that it was dealing with the true owner or with his authority. As a matter of policy and principle, we feel that the plaintiff should generally bear the *evidential* burden of proving its case once the defendant has shown that it has acted in the *bona fide* belief that it was dealing with an owner or with his authority. We do not think it is either right on principle or desirable in practice to allow the plaintiff to merely allege the bare bones of the elements of the tort of conversion against any carrier or intermediary handler of the property, without having to plead or explain why their conduct was wrong, leaving that party guessing the case it has to meet.

95 The Evidence Act expressly defines a person's good faith as a fact (see [76] above). The rules of pleading require a claimant to plead all material facts. As a claimant is required to plead the absence of an intermediary's good faith, at the very least in its reply, it stands to reason that once the defendant has adduced some facts to show that it acted in the ordinary course of business, the evidential burden to displace this is immediately transferred to the claimant. It is also a significant consideration that our procedural rules now permit a party to obtain the necessary facts or documents in relation to a carrier's role at the outset, by applying for pre-action discovery or interrogatories under O 24 r 6 or O 26A of the Rules of Court. Further, as good faith is inextricably linked to a party's probity, it is only right that the party alleged to be lacking in good faith is given notice of the case it has to meet. Otherwise, we may have situations where, on the basis of the barest of pleadings by a claimant, an intermediary may find its probity impugned without any prior knowledge of the case it has to meet. This is precisely what has happened here.

96 The correct position in the Singapore context, taking into account the provisions of the Evidence Act and the Rules of Court, is as follows:

(a) When an allegation of conversion is made against a carrier (which includes, in the present summary of principles, a bailee such as a warehouse operator), typically, the carrier will be able to absolve itself from a finding of actual notice by showing that it *reasonably* acted in the ordinary course of business. The defendant-carrier must therefore plead in its defence the relevant facts it intends to rely on to show that it reasonably acted in the ordinary course of business. To discharge this burden of proof, we think that the defendant-carrier will need to adduce a modest amount of facts to show that the transaction was of the type usually undertaken by it in the course of its ordinary business. What will usually be important is the nature of the defendant-carrier's business, how it is normally engaged and the particular circumstances in which it received and carried out the terms of the relevant engagement.

(b) Once the defendant-carrier has adduced credible evidence that it has acted in the ordinary course of business, the evidential burden of proof to establish conversion is then transferred back to the claimant. The claimant has to show that the defendant-carrier had notice of some sort of impropriety or was otherwise not acting in the ordinary course of business. If the claimant intends to dispute the defendant-carrier's assertion that it acted in the ordinary course of business, the claimant must plead in its reply, all the facts that it intends to rely on to show

that the defendant-carrier had actual notice of some impropriety or was otherwise not acting in the ordinary course of business. This can be done, *inter alia*, by pleading facts that point towards the defendant-carrier's knowledge that the goods which it was dealing with were the subject of competing claims or that the circumstances in which the engagement was either received or carried out were unusual. If the claimant does not both plead and prove these facts, its claim against the defendant-carrier will fail.

[note: 1]Tay Chin Liang Vincent's ("Vincent Tay") affidavit of evidence-in-chief ("AEIC") at para 5, Record of Appeal ("RA") Vol III Part A at p 103.

[note: 2]Vincent Tay's AEIC at paras 5 and 9, RA Vol III Part A at pp 103 and 104.

[note: 3]RA Vol IV Part B at p 1628.

[note: 4]Notes of Evidence ("NE") of hearing on 25 March 2008 at p 513, lines 16–18, RA Vol III Part C at p 954.

[note: 5]NE of hearing on 22 November 2007 at p 370, lines 15–26, RA Vol III Part C at p 804.

[note: 6]RA Vol III Part A at p 389.

[note: 7]RA Vol III Part A at p 390.

[note: 8]Mr Heng's AEIC at para 4, RA Vol III Part A at p 267; Crispian's AEIC at para 28, RA Vol III Part A at p 355.

[note: 9]Mr Heng's AEIC at para 7, RA Vol III Part A at p 268.

[note: 10]Mark Yap's AEIC at para 15, RA Vol III Part A at p 295.

[note: 11]Crispian's AEIC at paras 34–35, RA Vol III Part A at pp 356–357.

[note: 12]Crispian's AEIC at para 36, RA Vol III Part A at p 357.

[note: 13]Crispian's AEIC at para 37, RA Vol III Part A at p 357.

[note: 14]Mr Heng's AEIC at paras 11, RA Vol III Part A at p 269; Mark Yap's AEIC at paras 16–18, RA Vol III Part A at pp 296–297.

[note: 15]Mr Heng's AEIC at para 12, RA Vol III Part A at pp 269–270.

[note: 16]Mark Yap's AEIC at paras 18–19, RA Vol III Part A at p 297.

[note: 17]Mark Yap's AEIC at para 20, RA Vol III Part A at pp 297–298.

[note: 18]Kylie's AEIC at para 6, RA Vol III Part A at p 237; Mark Yap's AEIC para 21, RA Vol III Part A at p 298.

[note: 19]Mark Yap's AEIC at paras 22–23, RA Vol III Part A at p 298.

[note: 20]Ms Siew's AEIC at para 7, RA Vol III Part A at p 215.

[note: 21]Ms Siew's AEIC at paras 10 –11, RA Vol III Part A at p 216.

[note: 22]Ms Siew's AEIC at para 10, RA Vol III Part A at p 216.

[note: 23]Mark Yap's AEIC at para 27, RA Vol III Part A at p 299.

[note: 24]*Ibid*.

[note: 25]Mark Yap's AEIC at para 28, RA Vol III Part A at p 300.

[note: 26]Mr Chua's AEIC at paras 16–18, RA Vol III Part A at p 190–191.

[note: 27]Ms Siew's AEIC at para 16, RA Vol III Part A at p 217; Mark Yap's AEIC at paras 32 and 34, RA Vol III Part A at pp 300 and 301.

[note: 28]Henry's AEIC at para 20, RA Vol III Part A at p 162

[note: 29]Mark Yap's AEIC at paras 31 and 33, RA Vol III Part A at pp 300 and 301.

[note: 30]Mark Yap's AEIC at para 28, RA Vol III Part A at p 300.

[note: 31]Mark Yap's AEIC at para 35, RA Vol III Part A at p 301.

[note: 32]*Ibid*.

[note: 33]Colin Lim's AEIC at paras 8–12, RA Vol III Part A at p 263–264; Crispian's AEIC at para 42–44, RA Vol III Part A at p 359.

[note: 34]Mark Yap's AEIC at paras 36–38, RA Vol III Part A at p 301–302.

[note: 35]Ms Siew's AEIC at para 17, RA Vol III Part A at p 218.

[note: 36]Mark Yap's AEIC at para 40, RA Vol III Part A at p 302.

[note: 37]Ms Siew's AEIC at paras 21–22, RA Vol III Part A at pp 218–219; Mark Yap's AEIC at para 42, RA at p 303; Crispian's AEIC at para 46, RA Vol III Part A at pp 359–360.

[note: 38]Crispian's AEIC at para 48, RA Vol III Part A at p 360.

[note: 39]Mark Yap's AEIC at para 43, RA Vol III Part A at p 303.

[note: 40]Mark Yap's AEIC at para 44, RA Vol III Part A at p 303.

[note: 41]*Ibid*; Crispian's AEIC at para 53, RA Vol III Part A at p 361.

[note: 42]Ms Siew's AEIC at paras 23–24, RA Vol III Part A at p 219.

[note: 43]RA Vol III Part A at pp 233–234.

[note: 44]RA Vol II at pp 99–100; RA Vol III Part A at p 235.

[note: 45]Mark Yap's AEIC at para 46, RA at p 304.

[note: 46]*Ibid*; Crispian's AEIC at para 53, RA Vol III Part A at p 361; NE of hearing on 26 March 2008 at p 589, lines 7–32, RA Vol III Part D at p 1034.

[note: 47]Crispian's AEIC at para 54, RA Vol III Part A at p 361; NE of hearing on 22 November 2007 at p 448, lines 30–32 and p 449, lines 1–2, RA Vol III Part C at pp 886–887 and NE of hearing on 23 November 2007 at p 456, lines 22–25, RA Vol III Part C at p 894.

[note: 48]NE of hearing on 23 November 2007 at p 448, lines 1–15, RA Vol III Part C at p 886.

[note: 49]Ms Siew's AEIC at para 26, RA Vol III Part A at p 220; Kylie's AEIC at para 14, RA Vol III Part A at p 239,; Mark Yap's AEIC at para 47, RA Vol III Part A at p 304.

[note: 50]Mark Yap's AEIC at para 51, RA Vol III Part A at p 305.

[note: 51]Henry's AEIC at para 48, RA Vol III Part A at p 170.

[note: 52]Henry's AEIC at para 49, RA Vol III Part A at p 170.

[note: 53]NE of hearing on 23 November 2007 at p 451, lines 3–6, RA Vol III Part C at p 889.

[note: 54]Appellant's Case at para 78.

[note: 55]Statement of Claim (Amendment No 1) at paras 5–7, RA Vol II at pp 86–87.

[note: 56]See the appellant's Further Submissions at para 3.

[note: 57]Respondent's Case at para 38.

[note: 58]Appellant's Further Submissions at para 5.4.

[note: 59]Respondent's Further Submissions at paras 25–28.

[note: 60]Respondent's Further Submissions at para 36.

[note: 61]RA Vol IV Part A at p 1256.

[note: 62]NE of hearing on 26 March 2008 at p 646, lines 16–19, RA Vol III Part D at p 1091.

[note: 63]Henry's AEIC at para 49, RA Vol III Part A at p 170.

[note: 64]Ms Siew's AEIC at para 3, RA Vol III Part A at p 214.

[note: 65]Henry's AEIC at para 20, RA Vol III Part A at p 162.

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