Tan Bee Hock
v
F G Builders Pte Ltd
(United Overseas Insurance Ltd, third party)

[2016] SGHC 37

High Court — Suit No 686 of 2014
Kannan Ramesh JC
26, 27 November 2015; 11 March 2016

Tort — Negligence

16 March 2016 Judgment reserved.

Kannan Ramesh JC:

Introduction

1 The Plaintiff, Tan Bee Hock, is a regular serviceman with the Singapore Armed Forces ("SAF"). On 12 March 2012, he went for a medical test. Following the test, he fatefully detoured to visit a show unit in a condominium development known as Parc Rosewood ("the Development") instead of returning directly to his camp. His mode of transportation was his motorcycle. En-route, he skidded on one of two metal plates placed by the Defendant, F G Builders Pte Ltd, on the road at the entrance to the Development and fell, sustaining injuries to his left leg and damaging his motorcycle as a result. The Plaintiff sued for the injuries suffered and damage caused, alleging various acts

and omissions on the part of the Defendant in connection with the metal plates amounting to negligence. This is the pith of this action.

Background facts

2 As noted above, the Plaintiff is a regular serviceman with the SAF. His vocation at the time of the accident was "Combat Fit Commando". He was based at the Hendon Camp in Changi.

3 The Defendant is the main contractor for the Development. The Development is located on Rosewood Drive off Woodlands Avenue 1. Rosewood Drive is a "two-lane" and "two-way" road, and a cul-de-sac. At the time of the accident, the Development was under construction.

4 The Plaintiff purchased a unit in the Development off the plans in February 2012 apparently on the advice of his brother.[1] Accordingly, he did not visit a show unit prior to the purchase. This perhaps was the motivation for his fateful and ultimately unfortunate detour on 12 March 2012.

5 The Plaintiff was on duty on 12 March 2012. That morning, he reported to Sembawang Camp, which is located at Admiralty Road West, for a medical test described as a "Dive Medical Check". The test was over sometime between 11.45am to 11.50am. He was required to report to his superiors at Hendon Camp at 1.30pm that afternoon for a training exercise which he described as "Close Quarters Battle Training". Assessing that he had sufficient time, he detoured to the Development to view the show unit.

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[1] NE Day 1, pg 78.

6 Around noon, while travelling on Rosewood Drive towards the Development, he noticed two large metal plates ("the Plates") on the road at the entrance to the Development. The weather and visibility were good. There was no traffic either behind or before the Plaintiff in the lane in which he was travelling.

7 The Plates were both rectangular in shape, of even size, and of substantial weight and strength. They were placed beside each other and took up the full width of the lane on which the Plaintiff was riding. The Defendant's sole witness, its Project Director, Tan Yit Poh ("Mr Tan"), testified that the Plates were meant to facilitate ingress and egress of heavy vehicles to and from constructions sites and for travel within the sites by such vehicles. The weight and strength of the Plates were therefore a function of their purpose. According to Mr Tan, each plate weighed approximately two tonnes.

8 The Plates were placed with their length running in the direction of the road and their breadth running vertical to the pavement. I shall describe the individual plates as the "Left Plate" and the "Right Plate", the former being the plate closer to, and the latter being the plate further from, the pavement. For ease of understanding, the Left Plate and the Right Plate are identified in a photograph of the Plates, reproduced below, taken by the Plaintiff shortly after the accident ("the Photograph"):

9 The front wheel of the Plaintiff's motorcycle hit the edge of the breadth of the Left Plate ("the Left Edge") slightly off centre to the right. This resulted in the Plaintiff losing control of the motorcycle and skidding on the Left Plate, eventually falling on his right side in between the Plates. There was some controversy as to whether the Plates were wet at the time of the accident. There was also controversy as to whether the Plates were flush with each other or placed at a "V" to each other as seen in the Photograph ("the V Placement"). However, for reasons that will be apparent later, the V Placement did not cause the accident. It was common ground that there were no eye-witnesses to the accident.

10 The Plaintiff was assisted by three workers in the Development to a security post at the entrance to the Development after the accident. After recovering somewhat, the Plaintiff had the presence of mind to take two photographs – one of the Plates (*ie*, the Photograph) and the other of the signboard that contained details of the Development and its various stakeholders. This act is important in the assessment of the evidence as to the cause of the accident.

11 Thereafter, the Plaintiff travelled to Hendon Camp on his motorcycle. He sought medical treatment from Changi General Hospital that evening because of pain and swelling in his left knee. On 19 March 2012, the Plaintiff emailed the National Environmental Agency ("NEA") to notify them of the accident and to lodge a complaint that the Plates had been placed on the road.[2] A police report of the accident was lodged on 15 August 2012[3] ("the Police Report") and an injury report was made to the SAF on 6 September 2012.[4] The Plaintiff was eventually diagnosed with a longitudinal tear in the posterior cruciate ligament in his left knee, and underwent surgery at the National University Hospital on 16 October 2012.

12 Meanwhile, on 13 March 2012, the Defendant applied to the Land Transport Authority ("LTA") for approval to carry out milling and patching work on that portion of road that the Plates covered. This appeared to be a reaction to the accident. Pending approval, on 15 March 2012, the Defendant removed the Plates.[5] Approval for the said works was granted by the LTA on 21 March 2012, and the works were carried out thereafter.

The Plaintiff's Case

13 The Plaintiff's causes of action are in the tort of negligence and breach of statutory duty under the Code of Practice for Traffic Control at Work Zone (2006 Edition) ("the Code") issued by the LTA under Regulation 12 of the

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[2] DCB pg 49.

[3] DCB pg 55–56.

[4] DCB pg 60–65.

[5] Mr Tan Yit Poh's AEIC, para 20.

Street Works (Works on Public Streets) Regulations 1995 (Cap 320A, Rg 2, 1995 Rev Ed) ("the Regulations"). The particulars pleaded in support of both causes of action are common. In the main, the particulars can be classed in two categories:

(a) the condition and/or manner of placement of the Plates; and

(b) the failure to implement adequate safeguards for motorists, as a result of placing the Plates on the road, purportedly required either by the Code or as a matter of a duty of care owed by the Defendant to motorists.

14 As regards the first category, the principal complaints were that:

(a) the Plates were warped or placed unevenly on the road;

(b) the Defendant failed to implement a regime to inspect the condition of the Plates; and

(c) the Defendant failed to ensure that the Plates were fully aligned or flush with each other.

15 As regards the second category, the complaints were that:

(a) the Defendant failed to provide traffic signs to warn motorists of the Plates;

(b) the Defendant failed to take sufficient steps to ensure that motorists would avoid risks associated with the Plates being placed on the road; and

(c) the Defendant breached the Code by failing to indicate to motorists with appropriate signage a bypass route that would avoid the Plates.

16 The Plaintiff also pleaded that the Plates constituted a nuisance, and that the accident was caused by such nuisance.

The Defence

17 The principal defences were that:

(a) the Left Plate was not warped;

(b) the Plates were connected to or flush with each other;

(c) it was necessary to place the Plates on the road because the road had undergone milling and patching works on 24 February 2012 as a result of damage caused by heavy vehicles entering and leaving the construction site;

(d) the Plaintiff's negligence caused or contributed to the accident in that the Plaintiff: (i) drove at an excessive speed; (ii) failed to slow down near the construction site; (iii) failed to pay attention to road conditions; (iv) failed to slow down to bypass the Plates; and, (v) failed to exercise proper control over his motorcycle; and

(e) the Code did not apply to the placement of the Plates; alternatively, the Defendant was not in breach of any statutory duty under the Code.

Preliminary observations

18 The action was bifurcated. Though the Defendant issued Third Party Proceedings against United Overseas Insurance Ltd, that was not pursued. Therefore, only the issue of liability in the parent proceedings was before me.

19 The elements of the tort of negligence have been comprehensively articulated in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100 ("*Spandeck*"). In order for the Plaintiff to succeed in the tort of negligence, the Plaintiff must show that (a) the Defendant owed the Plaintiff a duty of care; (b) the Defendant breached this duty of care; and, (c) the Defendant's breach caused the Plaintiff damage. While the tort of breach of statutory duty is a separate and independent tort from that of negligence, claimants often bring concurrent claims in negligence and breach of statutory duty. The Plaintiff may sue the Defendant for breach of statutory duty only in circumstances where he has a private right of civil action against the Defendant for the breach of a *statutory duty* in the first place. Thus, there must be a statutory duty which the Plaintiff has breached as a consequence of which, a right of private action arises because the Plaintiff is one of a class of persons upon whom Parliament intended to confer such a right (see Gary Chan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) ("*Gary Chan*") at para 9.007). This requires an examination of whether there is such a statutory duty on the present facts to begin with. Additionally, the Plaintiff must also establish that (a) the breach caused the Plaintiff to suffer damage; and (b) that damage is within the scope of protection of the statute (see *Gary Chan* at para 9.009).

20 I make three observations on the pleadings and evidence. First, though the complaint in the Statement of Claim was that the Plates were warped, it

became apparent early in the trial and from the Plaintiff's submissions that the focus was in fact on the Left Plate, and in particular the Left Edge. From the Plaintiff's oral testimony, it was clear that his position was that the front wheel of his motorcycle came into contact with the Left Edge. The Left Edge was allegedly tilted upwards from the ground, albeit slightly ("the Tilt"). It was alleged that the contact of the front wheel of the Plaintiff's motorcycle with the Tilt caused the Plaintiff to lose control of the motorcycle.

21 Second, it was accepted by the Plaintiff that the V Placement did not cause the accident.[6] The Plaintiff testified that he had seen the V Placement and made an effort to – and did – avoid it.[7] The alleged cause of the accident was, as mentioned earlier, the Tilt.

22 Third, the Plaintiff did not plead and therefore does not rely on the placement of the Plates on the road *per se* as an act of negligence or breach of statutory duty. Counsel for the Plaintiff conceded this in the course of the trial and during the oral hearing of the closing submissions.[8] The Plaintiff's written closing submissions are also consistent with this position. At trial, the Plaintiff had also testified that he had ridden over many metal plates but had never met with any accidents.[9] That being the case, the Plaintiff's causes of action were framed on the basis that the Defendant's duty to take reasonable care *vis-à-vis* the Plaintiff required the Defendant to ensure that: (a) the Plates were in a safe condition and flush with the road; (b) motorists were sufficiently warned of their

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[6] NE Day 1, pg 100; pg 139.

[7] NE Day 1, pg 99-101.

[8] NE Day 2, pg 41.

[9] NE Day 1, pg 85–86.

placement; and, (c) a bypass route was organised around the Plates for motorists, and the Defendant was culpable in negligence for failing to discharge the requisite standard of care in each instance. Indeed, it is clear from the Plaintiff's closing submissions that the crux of the Plaintiff's case in negligence is the presence of the Tilt. Accordingly, to succeed in negligence, the Plaintiff would have to establish the presence of the Tilt as a fact. If there was no Tilt, the Plaintiff would need to show in the alternative that the failure to warn motorists of the Plates or organise a bypass route were breaches of duty on the Defendant's part that caused or contributed to the accident. In this connection, it was common ground that the Defendant had not organised a bypass route or warned motorists through appropriate signage that the Plates had been placed on the road.

The issues before the court

23 Based on the foregoing, the issues before me are as follows:

(a) whether the Plaintiff has a right of action against the Defendant in the tort of breach of statutory duty;

(b) whether the Defendant owed a duty of care to the Plaintiff at common law or in statute;

(c) the standard of care expected of the Defendant and whether the Defendant breached its duty of care to the Plaintiff by the various acts and omissions alleged;

(d) whether the Defendant's breach of duty caused the Plaintiff's loss and damage; and

(e) whether the Plates constituted a nuisance.

24 I approach the issues by dealing first with the Plaintiff's action in negligence and nuisance before coming to the Plaintiff's cause of action in the tort of breach of statutory duty.

Negligence

The duty of care

25 The test to be applied in Singapore to ascertain whether a duty of care arises has been comprehensively set out by the Court of Appeal in *Spandeck*. It comprises a threshold question of factual foreseeability, followed by a two-stage test of (a) proximity and (b) policy considerations. Applying the *Spandeck* test to the facts, I am prepared to accept that the Defendant owed the Plaintiff a duty to take reasonable care to ensure that the Plates were properly placed and in a safe condition so that motorists would not suffer harm by reason of their placement. It is certainly reasonably foreseeable that if the Defendant was negligent in this regard, motorists such as the Plaintiff could suffer harm when traversing the Plates. Also, the relationship between the Defendant and the Plaintiff is sufficiently proximate in terms of physical proximity, circumstantial proximity and causal proximity. Finally, there are no policy considerations which militate against the imposition of a duty of care in these circumstances.

Standard of care and breach of duty

26 The crucial question in the present case is whether the Defendant has discharged its duty to take reasonable care *vis-à-vis* the Plaintiff. It is well-established that a defendant will be regarded as having breached the duty if his standard falls below what the law requires of him. The standard of care a defendant is required to demonstrate is normally that of a reasonable and prudent man. The famous formulation of the standard of care may be found in

the words of Baron Alderson in *Blyth v The Company of Proprietors of the Birmingham Waterworks* (1856) 11 Exch 781 at 784:

> Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do; or doing something which a prudent and reasonable man would not do.

27 In *BNJ (suing by her lawful father and litigation representative, B) v SMRT Trains Ltd and another* [2014] 2 SLR 7 at [55], Vinodh Coomaraswamy J stated that the question of whether a defendant has breached the standard of care required cannot be analysed in a vacuum. Rather, the question of breach must be analysed in light of the "nature of the specific risk that has eventuated". Coomaraswamy J cited with approval the following passage from *Walker v Northumberland County Council* [1995] ICR 702 at 711:

> It is reasonably clear from the authorities that once a duty of care has been established the standard of care required for the performance of that duty must be measured against the yardstick of reasonable conduct on the part of a person in the position of that person who owes the duty. The law does not impose upon him the duty of an insurer against all injury or damage caused by him, however unlikely or unexpected and whatever the practical difficulties of guarding against it. It calls for no more than a reasonable response, what is reasonable being measured by the nature of the neighbourhood principle, the magnitude of the risk of injury which was reasonably foreseeable, the seriousness of the consequence for the person to whom the duty is owed of the risk eventuating and the cost and impracticability of preventing the risk.

28 The risk in the present case is this: that a motorcyclist traversing the Plates would be jolted to the extent of losing control of his motorcycle and suffering injury as consequence. As stated above, the Plaintiff pleads that in order for the Defendant to discharge his duty of care, the Defendant ought to have (a) ensured that the Plates were in a safe condition and evenly placed; (b)

warned road users of the presence and condition of the Plates; and (c) organised a bypass route around the Plates so that motorists could avoid the Plates.

29 The Plaintiff drew inspiration from the Code, in particular Chapter 2. The Plaintiff's purpose in referring to the Code here is that it reveals what precautions a reasonable and prudent person would have taken in the circumstances. I set out salient portions of Chapter 2 for ease of reference:

> **2-1 General**
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> 2-1.1 This Chapter elaborates on the fundamental principles in ensuring a good and proper ***traffic control system*** is provided in a work zone. ***It is not possible to provide standards and applications to cover all conditions***. … Complying with fundamental principles shall take precedence over standard details and typical applications.
>
> **2-2 Safe Road Environment**
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> 2-2.1 Safe passages should be provided for both motorists and pedestrians going through the work zone. This can be achieved by:
>
> (1) *Warning* road users in advance of changing road environment;
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> (2) *Informing* road users of the condition to be encountered;
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> (3) *Guiding* road users through unusual sections of road;
>
> (4) *Controlling* road users at conflict point; and
>
> (5) *Forgiving* road users' mistakes when accidents happen.
>
> **2-3 Minimum Risk**
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> 2-3.1 Risks for road users going through the work zone can be mitigated by ensuring:
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> (1) No surprises;
>
> (2) No hidden traps;
>
> (3) Free of unforgiving hazards;

> (4) Controlled release of information;
>
> (5) Consistent messages and repeats if necessary to reinforce; and
>
> (6) Good visibility under all road conditions.
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> [emphasis in original in italics; emphasis added in bold italics]

30 It is immediately apparent that Chapter 2 of the Code contains broad general guidelines for the design of a traffic control system in a work zone and may not be squarely relevant in the present case. Nevertheless, it may offer some useful guidance in ascertaining the Defendant's standard of care for the purposes of its liability in negligence. In my view, the common thread that can be extracted from the portions of the Code quoted above is the need for persons who carry out works near or on roads to ensure a *safe road environment* that *minimises risks* to motorists. As the Code acknowledges, there are a variety of ways in which one may discharge a duty to ensure the same. These are all dependent on the facts and circumstances. Where the work conducted is extensive and involves a high risk of accidents, such as excavation works, one would expect a higher degree of care to be taken, for example, by employing traffic marshals to direct traffic in the appropriate direction. However, where the "work" consists of the laying of metal sheets on the ground, the scope of the duty imposed on the Defendant to ensure a safe environment that minimises risk to motorists may not extend to enlisting the assistance of traffic marshals.

31 The Defendant's purpose of placing the Plates on the road was to smoothen out the uneven tarmac surface at the entrance to the Development. Mr Tan deposed in his Affidavit of Evidence-In-Chief ("AEIC") that the Plates were placed at the entrance to the Development as a "temporary measure to protect other road users from the uneven tarmac surfaces and to prevent the road

condition of uneven tarmac surface from worsening".[10] In this regard, a basic facet of the duty of care of any person who places objects on public roads is to ensure that the objects placed on the roads are safe. In this case, the Defendant was required to ensure that the Plates were sufficiently safe to allow motorists to travel across them unscathed. The safety of the Plates would include ensuring that motorists would be able to traverse the Plates without incident whether the Plates were wet or dry, making sure that the Plates were strong enough to take the weight of vehicles and that they were not be warped or tilted such that a vehicle would be jolted when coming into contact with them. If the Defendant is able to discharge this basic duty, I find that there is no further need for the Defendant to have warned motorists of the Plates by enlisting the assistance of traffic marshals or organising a bypass route around the Plates. Indeed, it would be counterintuitive to argue that a bypass route was necessary when the very purpose of the Plates was to ensure safe passage over that stretch of the road that they covered. Similarly, to require traffic marshals to warn motorists of the presence of the Plates would be counterintuitive as the Plates were there precisely to improve motorists' safety.

32 I note that it is the Plaintiff's evidence that he has ridden across many metal sheets without incident.[11] It is also significant that the Plaintiff's position was that the placement of metal sheets on the road *per se* was not a dangerous or risky matter in and of itself. This is also echoed in the Plaintiff's written submissions:[12]

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[10] Mr Tan Yit Poh's AEIC, para 19.

[11] NE Day 1, pg 85.

[12] Plaintiff's closing submissions, para 25 and 34.

> [The Plaintiff] was an experienced rider and had rode over metal sheets on roads on previous occasions without mishap. It is common knowledge that one would occasionally come across metal sheets on the roads. *This particular metal sheet was warped and caused an accident.* The preponderance of the evidence strongly suggests that the metal sheet was warped or uneven.
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> …
>
> The Plaintiff was riding slowing and safely. He rode over the said metal sheet in the same manner as with all his previous encounters with metal sheets placed on roads. He had no reason to think that *this particular metal sheet* was warped or uneven and different from the others that he had encountered.
>
> [emphasis added]

33 Inherent in the Plaintiff's submissions above is the notion that if the Plates were safe like the other sheets which the Plaintiff had previously encountered, no accident would have or ought to have occurred. The danger which the Defendant had created was in leaving a *warped* or *tilted* metal plate on the road. Accordingly, it is necessary to determine if the condition of the Plates was indeed unsafe in the manner alleged. In this regard, as noted earlier, the primary question is whether the Tilt existed. It is to this factual question that I now turn.

Did the Tilt exist?

34 As mentioned earlier, the thrust of the Plaintiff's case, as framed by the pleadings, was that the condition of the Plates and the manner in which they were placed caused the accident. The allegations concerned the Tilt and the V Placement.

35 However, in the Plaintiff's AEIC, his oral testimony, and his closing arguments, the Plaintiff distilled his position down to one factor – the Tilt – as the real cause of the accident. He testified that his motorcycle was severely

jolted when the front wheel came into contact with the Left Edge, somewhere off centre to the right of the Left Plate, because it was tilted upwards.[13] This in turn caused him to lose balance and control of the motorcycle, which was exacerbated by the wet surface of the Left Plate. Consequently, he skidded for four metres and fell, eventually nestling in the gap between the Plates. The Defendant did not challenge the Plaintiff's assertion that the Plates were wet. Also, from the Photograph taken by the Plaintiff shortly after the accident, it seems reasonably apparent that the Plates were indeed wet at the time of the accident. This being the case, I will have to consider if the Tilt existed. In this regard, the Plaintiff's testimony and the Photograph were the principal evidence proffered by the Plaintiff of the Tilt.

36 It is important to first understand what the Plaintiff means when he asserts that there was the Tilt. In his AEIC, he said that "[t]he metal sheet edge was protruding way above the road surface".[14] On the stand, he testified that the Left Edge tilted or warped upwards, though he conceded that the tilt was slight.[15] In his submissions, he stated that there was a "gap between the road surface and the metal sheet [which] was about the size of three fingers thick at the edge of the left metal sheet which [the Plaintiff's] motorcycle had made contact with".[16] The Tilt was something he perceived when he examined the Plates following the accident.[17] The Plaintiff's position therefore appears to be that the Left Edge

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[13] NE Day 1, pg 165.

[14] Plaintiff's AEIC, para 4.

[15] NE Day 1, pg 120.

[16] Plaintiff's Closing Submissions, para 20.

[17] NE Day 1, pg 141.

was not flush with the road and had a slight upward tilt along its entire length. This is the sum of the Plaintiff's description of the Tilt.

37 I have carefully examined the Photograph. The Tilt is not clearly discernible to me. At best, the right-hand corner of the Left Edge (*ie*, the corner closer to the Right Plate) may be said to be slightly tilted upwards. Counsel for the Plaintiff also stated during the oral hearing of the closing submissions that a tilt was discernible at the right-hand corner of the Left Edge. But that is not where the Plaintiff asserts that the front wheel of his motorcycle caught the Left Edge.

38 It is unfortunate that the Photograph does not shed clear light on what is a critical aspect of the Plaintiff's claim. It is also strange that it does not. In his AEIC and oral testimony, the Plaintiff testified that he realised that the cause of the accident was the Tilt when he examined the Plates shortly after the accident. The Plaintiff took two photographs thereafter – the Photograph and another of particulars of the Development.[18] It is evident that the Plaintiff took the photographs to capture what he believed was the cause of the accident (*ie*, the Tilt) and the particulars of the potential defendant. Despite this, it is surprising that the Plaintiff did not attempt to effectively and fully capture the Tilt through photographic means. Indeed, it is surprising that the Plaintiff did not take more photographs of the Tilt from a variety of angles.

39 I have considered whether some allowance ought to be given for the fact that the Plaintiff was in shock and therefore would not have the presence of mind to document the Tilt fully. However, accepting that an allowance ought to

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[18] PCB 1.

be made does not gel with the fact that the Plaintiff had the presence of mind in the first place to attempt to document the cause of the accident by taking the Photograph. That the Plaintiff could think about capturing evidence of the accident's cause would suggest he had regained sufficient composure after the accident. I make three points in this respect. First, the photographs were taken after the Plaintiff had rested by the security post following the accident. He had sufficient time to recover. Second, the photographs were taken after he had examined the Plates carefully to identify what aspect of the Plates had caused or contributed to his mishap. This would again suggest composure and a clear focus of mind. Third, that the Plaintiff was sufficiently settled and comfortable is evidenced by his ability to ride his motorcycle back to Hendon Camp after he had taken the photographs. Collectively, these are indicia of the Plaintiff having regained his composure and focus after the accident. He was in fact able to apply his mind to the issue of what caused the accident and the person or persons who could be responsible for the same. This being the case, if indeed the Tilt was the cause of the accident, or more importantly, if the Plaintiff felt that it was the cause, it is perplexing that he did not do more to document it through photographic evidence. This does raise a fundamental question: did the Tilt exist at all?

40 The Statement of Claim and the Plaintiff's AEIC alleged that the Tilt existed. The Statement of Claim was filed on 26 June 2014, more than two years after the accident; the AEIC was obviously later in time. It is thus salient to examine documents that were generated closer to the date of the accident to understand what the Plaintiff believed and articulated was the cause of the accident. The Plaintiff's recollection of the accident would have been fresher and far more vivid then. I note that in his AEIC, the Plaintiff had vividly described the Tilt. If his recollection was that vivid when the AEIC was

affirmed, it should have been significantly sharper shortly after the accident. If the Tilt had indeed caused the accident (or if the Plaintiff thought that it had caused the accident), it is only reasonable to assume that the Plaintiff would have asserted so in the documents that he had written soon after the accident. Surprisingly, this was not the case.

41 Four documents stand out in this regard. The first is the complaint that the Plaintiff made to the NEA by email on 19 March 2012, just a week after the accident. In paragraph 5 of his AEIC, the Plaintiff explained that the email was sent to the NEA to complain about the danger posed by the Plates. The danger that the Plaintiff would have had in mind must surely have been the Tilt if the Plaintiff's testimony is to be accepted. In drafting the email, the Plaintiff must have applied his mind to what he believed was the root cause of the accident, as that would have been the "danger" that he was raising a complaint about. The Photograph must have been referred to when the email was drafted. The facts would have been fresh and fully sorted out in his mind given the purpose and timing of the email. Given the Plaintiff's allegations at trial, one would expect that the email would unequivocally assert that the Tilt was the cause of the accident. Unfortunately, this was not what the Plaintiff said in the email. The Plaintiff alleged that the V Placement had caught the wheel of his motorcycle, thus causing the accident. It is useful to set out the relevant portions of the email:

> On 12/3/12 approximate 1200hrs, I am on my way to the show room [flat] of Parc Rosewood riding into Rosewood Drive. I happened to come [along] this construction site on my left and out of a sudden my bike was *caught onto the metal plates lying on the floor*. I fell to the ground together with my bike and [skidded] for at [least] 4 meter[s]. …
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> After seeing the placement of the plates on the road, I came to realise that the plates were not in proper placement. *It forms a V shape right in the middle of the road causing my bike wheel to be caught and filtered in between the plate.* …

> [emphasis added]

The Plaintiff submitted that this email was not inconsistent with his evidence at trial. However, to accept this submission would be to give an unduly technical and, I should say, generous reading to the words in the email. The inconsistency lies in the fact that no mention was made of the Tilt in this email. The focus of the email was on the V Placement. It seems evident from a plain reading that the reference to the motorcycle catching the metal plates is tied to the reference to the V Placement. It should be noted again that the Plaintiff conceded during the course of his testimony that the V Placement did not cause or contribute to the accident.

42 The second document is the Police Report which the Plaintiff lodged on 15 August 2012 where the Plaintiff stated as follows:

> On the 12/03/2012 at about 1200hrs, I was riding my white [motorcycle] along Rosewood Drive. I wish to state that there's a construction site on my left and there's metal plates on the said road. After which my motorcycle skidded about 4 meters and I fell to the ground. I wish to state that the weather at that point of time was clear and traffic was clear. … *I realised that the said metal plates which was placed on the road is not properly placed. … The said plates were placed in a V-shape in the middle of the road.*
>
> [emphasis added]

Again, there was no mention of the Tilt; the complaint focussed on the V Placement. It is difficult to understand how the Tilt could have been left out given that the purpose of the Police Report was to pinpoint the cause of the accident.

43 The third document is the letter of demand dated 29 August 2012 from Messrs Kurup & Co, the Plaintiff's solicitors, to the Defendant ("the Demand Letter"). In the Demand Letter, it was alleged that the placement of the Plates

caused the accident. There was no assertion that the Tilt caused the accident. It is reasonable to presume that the Plaintiff's solicitors would have taken sufficient steps to understand the true cause of the accident before issuing the Demand Letter. The absence of a specific reference to the Tilt is therefore glaring. The Demand Letter was written just two weeks after the Police Report which alleged that the V Placement was the cause of the accident. It would be fair to conclude that the allegation in the Demand Letter was the same, although there was no direct reference to the V Placement.

44 The fourth and final document is an accident report prepared by the Plaintiff's employers, the SAF. They appointed an investigating officer, one Captain Chen Zhengxin ("Captain Chen"), who prepared a report dated 10 September 2012 ("the SAF report"). In this report, Captain Chen recorded the details of the accident and the Plaintiff's injury based on the information which he had gathered from the Plaintiff. This was filed for the purpose of recording the Plaintiff's injuries and setting out how or why they were caused. In the SAF report, there was a reference to the uneven placement of the Plates on the road and the Plates being wet and slippery, which allegedly collectively contributed to the skidding of the motorcycle. While it is conceivable that the allegation that the Plates were placed unevenly could be a reference to the Tilt, given the proximity in time of the SAF report to the Police Report and the Demand Letter, it would be more reasonable to read it as referring to the V Placement. Indeed, if the Plaintiff felt that the accident had been caused by the Tilt, the Plaintiff could have simply said so in unambiguous terms to Captain Chen, rather than use equivocal language. It must not be forgotten in this regard that the SAF report was a declaration being made by the Plaintiff to his employers. The importance of ensuring accuracy must have been apparent to him.

45 Examining these documents collectively and holistically, the Plaintiff's consistent position in the immediate aftermath of the accident and in the six months thereafter appeared to be that the accident was caused by the V Placement. These were not documents written casually. They were prepared with thought and for the specific purpose of notifying the relevant parties – the NEA, the police, the Plaintiff's employer, and the Defendant – of the cause of the accident. The Plaintiff had the benefit of legal advice on one occasion and on another, the document was prepared after the services of lawyers had been retained. If the Plaintiff's evidence is to be accepted, one would expect these documents to contain a strident complaint that the accident was caused by the Tilt. The silence regarding the Tilt in the four documents is therefore somewhat deafening.

46 Indeed, the Plaintiff's original position that the cause of the accident was the V Placement is demonstrated by the fact that he only took one photograph of the scene of the accident. The Photograph clearly documents the V Placement, but any tilt, let alone the Tilt, is difficult to discern. It does seem strange that a much closer photograph of the Left Edge was not taken to capture the Tilt if it had been identified as the cause of the accident. Instead, the Photograph was taken at a distance and captures the Plates and the V Placement. In my opinion, the Plaintiff clearly thought that the Photograph was sufficient to document the accident scene and support his theory that the V Placement caused the accident. He must have felt that it was not necessary to secure any further photographic evidence as there were no other aspects of the Plates that he believed, at that time, caused or contributed to the accident. In fact, the evidence goes a step further – the fact that the Plaintiff, after examining the scene, came to the conclusion that it was the V Placement that caused the accident indicates on the balance of probabilities that the Tilt did not exist and

was not the cause of the accident. The position that he had taken at trial is therefore a *volte-face* from his earlier position.

47 Counsel for the Plaintiff urged me not to consider the inconsistency of the Plaintiff's oral evidence with the documents produced after the accident as some of the specific documents referred to above had not been put before the Plaintiff during cross-examination. This is a submission premised on the rule in *Browne v Dunn* (1893) 6 R 67 ("*Browne v Dunn*"). In my view, this is not a proper application of the rule in *Browne v Dunn*. It is well-established that the rule in *Browne v Dunn* is ultimately one of fairness (see *eg*, *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2007] 1 SLR(R) 292 at [42]). The rule does not require every point and every document to be put to the witness unless the submission was "at the very heart of the matter". The Defendant adhered to this rule, having put its case to the Plaintiff in cross-examination that the Tilt did not exist.[19] It would not have been necessary for the Defendant's counsel to have put each of these documents to the Plaintiff to satisfy the rule as they were in fact adduced by the Plaintiff in support of his case. They were relevant for the court's assessment of the credibility of the Plaintiff's testimony on the cause of the accident. It was for the Plaintiff, who had the burden of proving his case on a balance of probabilities, to explain away the inconsistencies in his position, and he did not manage to do so.

48 The question that remains, though not strictly relevant to the disposal of this matter, is why the Plaintiff departed at trial from the documentary evidence concerning the V Placement to the Tilt as the cause of the accident. In my opinion, the likely reason why the Plaintiff's case shifted was because of the

[19] NE Day 1, pg 143.

realisation that maintaining the V Placement as the cause of the accident would mean that the Plaintiff had deliberately ridden through the gap in the Plates instead of over one of them. To do so would arguably have been the riskier and less prudent option and the Plaintiff may have believed that such a case in negligence would be weaker. The *volte-face* therefore ensued.

Conclusion on the Defendant's breach of duty

49 In these circumstances, I am inclined to conclude that there was no Tilt as alleged by the Plaintiff. I therefore do not accept the Plaintiff's evidence on a balance of probabilities that the Tilt existed. Instead, I am satisfied that the Plates were safe for vehicles, including motorcycles, to pass over, even if the Plates were wet at the time of the accident. As the Plates were not inherently dangerous or in an unsafe condition, there was no need for the Defendant to take further precautions either by warning motorists of the presence of the Plates or organising a bypass route around the Plates. The Defendant had discharged its duty of taking reasonable care towards motorists by ensuring that the Plates were safe for motorists to drive over. Consequently, the Plaintiff's cause of action in negligence failed.

Causation

50 In the event that I am wrong on the issue of breach, I deal also with the question of causation for completeness. Having found above that there was no Tilt as alleged by the Plaintiff, it must follow that the Tilt did not cause the accident. Nor can it be said that any failure by the Defendant to implement a regime to inspect the *condition* of the Plates caused or contributed the accident.

51 However, it does raise the issue of whether there were any other causes of the accident or whether it was the Plaintiff's conduct that resulted in or caused the accident. I deal first with the Plaintiff's argument that the Defendant's omission to warn motorists of the Plates or organise a bypass route caused or contributed to the accident, before considering whether it was the Plaintiff's conduct that was the effective cause of the accident.

Did the Defendant's failure to warn motorist about the Plates cause or contribute to the accident?

52 The Plaintiff alleged that the Defendant failed to warn motorists of the placement of the Plates. I find it difficult to accept that this in and of itself could have caused or contributed to the accident. The Plaintiff could see the Plates clearly as he approached them. That is evident. It was also the Plaintiff's evidence that he saw the Plates and slowed down as he approached the Plates.[20] Visibility was clear and the weather was good. It is also evident that there was no traffic in front of or behind the Plaintiff (on the same lane). Accordingly, it would seem that the failure to warn motorists of the placement of the Plates played no part in causing or contributing to the accident. The Plaintiff could see the Plates clearly and did not suddenly come upon them. He hardly needed to be warned that the Plates were on the road. I am therefore of the view that the failure to warn motorists of the Plates did not cause or contribute to the accident. The real issue is not whether the Plaintiff was warned but whether the Plates were in an unsafe condition.

[20] NE Day 1, pg 20, 85.

Did the Defendant's failure to organise a bypass route cause or contribute to the accident?

53 The Plaintiff alleged that the failure to organise a bypass route was an act of negligence that caused or contributed to the accident. This was premised on the existence of the Tilt, such that motorists should have been redirected to avoid the Plates. On top of my earlier observation that this argument is counterintuitive to the very purpose of placing the Plates, I have also found that the Tilt did not exist. Therefore, the basis for the Plaintiff's allegation falls away.

54 I make some further observations. The Plaintiff, having seen the Plates, was well capable of avoiding them without any assistance from the Defendant. The Plaintiff made much of the presence of a car in the adjacent lane travelling in the opposite direction as a reason why he could not have bypassed the Plates. The Plaintiff's point was that the car was close to the Plates as the he approached them, thereby making it not possible for the Plaintiff to make a detour around the Plates without waiting for the car to pass.

55 I have difficulty with this position for two reasons. First, I see no reason why the Plaintiff could not have stopped to allow the car to pass so that he could bypass the Plates if he had wanted to do so. That is certainly one scenario if there was an organised detour. Temporary traffic controls would have been put in place to allow motorists to bypass the Plates given that only one lane was available for use. Accordingly, if there was a car in the adjacent lane, it is entirely possible that the Plaintiff would have to stop to allow the car to pass before he could continue his journey. That there was a car in the next lane would not have been an impediment to slowing down to let it pass in order to bypass the Plates. It must again be noted that the car had passed the Plaintiff very

quickly suggesting that the Plaintiff could have readily and with little inconvenience circumvented the Plates. The presence of the car or the absence of an organised detour is therefore a red herring in the scheme of things. The decision to traverse the Plates was a conscious decision made by the Plaintiff.

56 Second, I am not altogether convinced that there was in fact a car in the adjacent lane. This was an assertion that surfaced in the course of the Plaintiff's oral testimony. It is not found in his AEIC. This is surprising given that it was specifically asserted in the Defence that the Plaintiff could have avoided coming into contact with the Plates by slowing down, stopping or swerving. It would seem that if the presence of a car on the adjacent lane prevented the Plaintiff from swerving to avoid the Plates, it would have been specifically addressed in his AEIC. Its absence does raise doubt as to the credibility of the assertion. In the circumstances, however, given my views on why the presence of the car is a non-factor, I do not see the necessity to make a finding on whether there was in fact a car in the adjacent lane.

Did the Plaintiff's conduct cause or contribute to the accident?

57 Having considered all the evidence, I am inclined to believe that the accident was caused by the Plaintiff not proceeding with sufficient caution when riding over the Left Plate.

58 The Plaintiff was on duty when the accident occurred. Instead of heading straight to Hendon Camp from Sembawang Camp following his medical examination, he detoured to view a show unit at the Development. While the Plaintiff steadfastly maintained on the stand that the detour was permissible notwithstanding that he was on duty because it was undertaken during the period allowed for his lunch, I am not convinced by the explanation. In this regard, the

SAF report is important. It is telling that it makes no mention of a detour to view the show unit in the Development. The Plaintiff agreed that he did not inform Captain Chen that the purpose of the detour was to visit the Development.[21] Instead, he mentioned that he had detoured, *not for the purpose of viewing the show apartment*, but for refuelling. It is relevant to reproduce what was stated in the SAF report: [22]

> On 12 Mar at around 1200hrs, serviceman was on his way back [to] camp to report for training from his Dive Medical Check in Sembawang Camp Medical Centre. On the way, he stopped to refuel. After which his motorbike skidded outside a construction site, due to the wet and slippery metal boards placed unevenly on the road.
>
> …
>
> Serviceman was returning to camp to report for official training. He used the *most direct route* back, but *had to detour to refuel.* The accident happened due to the bad condition of the road.
>
> [emphasis added]

59 The unequivocal representation was that the Plaintiff took the direct route from Sembawang Camp to Hendon Camp so that he could report for duty but had to detour to refuel. In other words, the sole purpose of the detour was to refuel. To say that the Plaintiff was being economical with the truth would be to view his statement to Captain Chen with a huge dose of benevolence. The Plaintiff was not taking the most direct route back to Hendon Camp. He did not deviate for the primary purpose of refuelling. The Plaintiff took a convoluted route to Hendon Camp because he in fact detoured to view the show unit.

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[21] NE Day 1, pg 39.

[22] DCB 64.

60 When questioned on why he did not mention the detour in the SAF report, the Plaintiff repeatedly said that he felt that it was not relevant. I found the explanation completely unconvincing. Clearly, the Plaintiff had to explain in the SAF report why the accident took place at a location which was not on the direct route back to Hendon Camp, since he was supposed to be on duty at the material time. In my view, the Plaintiff did not wish to disclose the detour to his employers as he was concerned that such disclosure might be met with disapproval and expose him to a disciplinary issue.

61 The Plaintiff testified that he had to report for the "Closed Quarter Battle Training" exercise at 1.30pm on the day of the incident. That exercise involved 18 other servicemen.[23] When queried on the implications of reporting late, he said he would receive a verbal warning. When further queried on whether the result would be same if he were to tell his commanders that he was late because he had detoured to view a show unit, he said that his commanders would have accepted the reason. I find the Plaintiff's response difficult to accept. The Plaintiff was a Combat Fit Commando in the commando unit. It is cannot be gainsaid that discipline and punctuality are key pillars of any armed forces, but more so in Special Forces units such as a commando unit. It is difficult to believe that the Plaintiff could have reported late for a designated training exercise without an acceptable excuse. It is equally difficult to believe that a detour to view a show unit would be regarded as an acceptable excuse. The Plaintiff's contrived attempt to explain the implications of being late for the training exercise served only to underscore my conclusion that the detour would not have been seen favourably by his superiors.

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[23] NE Day 1, pg 161–162.

62 The Plaintiff left Sembawang Camp between 11.45am to 11.50am. According to the Plaintiff, the accident occurred at about noon. He had to report to Hendon Camp by 1.30pm. Hendon Camp was some distance from the Development. Taking the Plaintiff's case at its highest, when the accident occurred, he had barely 1.5 hours to reach the Development, conduct the viewing, have his lunch and travel to Hendon Camp. Time was tight. Given that any tardiness would not be perceived favourably, the Plaintiff must have been under some pressure and perhaps even anxiety when the accident occurred. This would suggest that he proceeded with haste and did not pay sufficient regard to road conditions, in particular the presence of the Plates on the road.

63 The Plaintiff testified that he was travelling at between 20 to 30 km/h as he approached the Plates and at about 20 km/h when he reached the Left Plate. He also testified that he could not have been travelling fast as there was a road hump some distance before the Plate which would have caused him to slow down. While the presence of the road hump could have caused him to slow down, it is entirely possible that he would have sped up as soon as he went over the same especially if he was in a hurry. Further, it is difficult to understand how a motorcycle travelling at 20 km/h and slowing down could have been severely jolted when its front wheel came into contact with the Left Edge (which, as I have found, was not tilted). In this regard, I note that the Plaintiff is an experienced motorcyclist and has been riding a motorcycle since 2003.[24] I am therefore not inclined to accept the Plaintiff's evidence that he was travelling at the speed of 20 km/h when he attempted to traverse the Left Plate. Given the circumstances, there is a real possibility that the Plaintiff was travelling at a

[24] NE Day 1, pg 76.

faster speed than he cared to admit when his motorcycle came into contact with the Plates.

64 On the whole, I am of the view that the direct and proximate cause of the accident was the Plaintiff's conduct in travelling over the Plates with haste and without paying sufficient regard to the road conditions, in particular the presence of the Plates.

Nuisance

65 The issue of nuisance may be dealt with briefly. The Plaintiff's counsel confirmed during the oral hearing of the closing submissions that the Plaintiff's cause of action in nuisance was based on the fact that the Plates were placed on the ground in an unsafe condition *ie*, with the Tilt. Even if I were to assume that the placement of the Plates could be regarded as an act that attracts the tort of nuisance, given my factual finding that the Tilt did not exist, the Plaintiff's cause of action in nuisance fails.

Breach of statutory duty

66 It should be noted that the parties' submissions, both written and oral, on the scope and ambit of the Code for the purposes of the tort of breach of statutory duty were thin. Crucially, there were no submissions as to (a) whether a right of private action existed at law which allowed the Plaintiff to sue for breach of statutory duty; and, (b) whether the Code imposed *statutory* duties on the Defendant or was instead more of a general guide which identified good practices. In the light of my conclusion that the Plates were in a safe condition and the Defendant's acts and omissions did not cause the accident, I do not have

to consider whether the Code applies. However, for completeness, I make some brief observations.

67 The Code, as its name suggests, is issued under reg 12 of the Regulations. The Regulations are in turn made under the s 53 of the Street Works Act (Cap 320A) ("the Act"). It is clear that the Code is not a part of either the relevant primary or secondary legislation, but is issued by the LTA pursuant to its powers under the Act and the Regulations. It is therefore questionable whether the Code, not being a statutory enactment, imposes *statutory duties* at all.

68 Regulation 12(1) provides that:

> 12.—(1) The Authority may, from time to time, issue a Code of Practice on the carrying out of works on public streets, *setting out therein such standards, procedures and other requirements* pertaining to the carrying out of such works as the Authority thinks fit.
>
> [emphasis added]

It is also useful to refer to the scope of the Code as stipulated by para 1-1.1 of the Code:

> This Code of Practice *sets out the standards and procedures for Temporary Traffic Control when carrying out works on public streets*. It gives *practical guidance* to users of the code when implementing temporary traffic control needed to do work on public streets and road related facilities. Work activities include but are not limited to bore-hole exploration, excavation, construction, maintenance, utility works and stationing associated construction vehicles and equipment. [emphasis added]

69 In my opinion, the above indicates that the Code was meant to offer practical guidance as to how traffic may be controlled safely and efficiently in a work zone. It was not meant to impose strict legal obligations, much less

statutory obligations that would give rise to a private right of action for breach of statutory duty. Thus, the Plaintiff has failed to even establish a threshold element of his claim in breach of statutory duty, *viz*, the presence of a relevant statutory duty. Additionally, the Plaintiff has also failed to prove that Parliament intended to confer a private right of action of breach of statutory duty on motorists like the Plaintiff. The Plaintiff's cause of action in breach of statutory duty thus fails *in limine*.

70 Separately, I am also doubtful that the Code applies to the Defendant's act of placing the Plates on the road at the entrance to the Development. The Code deals specifically with the planning and design of traffic control plans (Chapter 3), the design and application of traffic control devices (Chapter 4) and the implementation, operation, maintenance and removal of traffic control devices (Chapter 5), which appears to contemplate more major works such as excavation and construction, rather than the relatively simple act of laying metal sheets on the roads.

71 For the foregoing reasons, I find that the Plaintiff is not entitled to sue for breach of statutory duty in reliance upon the Code. In any event, the cause of action in breach of statutory duty also fails on the basis of my finding at [52]–[64] above that it was the Plaintiff's conduct that caused the accident.

Conclusion

72 In these circumstances, I find that:

(a) the Defendant did not breach its duty to take reasonable care *vis-à-vis* the Plaintiff as the Plates were safe for the Plaintiff to ride over and were not tilted or warped as alleged;

(b) the accident was a result of the Plaintiff's conduct in proceeding with haste over the Left Plate and without regard to presence of the Plates.

73 Even if I am incorrect in my conclusion that the accident was caused by the Plaintiff's conduct, the burden is on the Plaintiff to show that the Defendant's acts and omissions were a breach of a duty of care or statutory duty and that these breaches caused the Plaintiff's injuries and damage. In the light of my conclusions above, the Plaintiff has failed to discharge that burden.

74 For these reasons, I dismiss the Plaintiff's claim with costs to be taxed if not agreed.

Kannan Ramesh
Judicial Commissioner

Teo Choo Kee (CK Teo & Co) (instructed), Kurubalan s/o Manickam Rengaraju (Kuru & Co) for the Plaintiff;
Kris Chew Yee Fong (Zenith Law) for the Defendant;
Pak Waltan (United Legal Alliance LLC) for the Third Party.