IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 85

Suit No 1118 of 2017

Between

Huatraco Singapore Pte Ltd

… *Plaintiff*

And

Hua Rong Engineering Pte Ltd

… *Defendant*

JUDGMENT

[Contract] — [Breach]

Huatraco Singapore Pte Ltd
v
Hua Rong Engineering Pte Ltd

[2020] SGHC 85

High Court — Suit No 1118 of 2017 of 2020
Choo Han Teck J
4, 5, 6 February, 31 March 2020

28 April 2020 Judgment reserved.

Choo Han Teck J:

1 The plaintiff is a Singapore-incorporated company that sells and leases scaffolding and formwork products. The defendant is a Singapore-incorporated company, and is a general construction contractor. On 1 June 2016, the parties entered into a written contract ("Contract") for the defendant's rental of various equipment from the plaintiff's C60 Table Forms and Shoring System (the "Equipment") for a period of 5 months at a total rental price of $55,000. The said contract comprised a letter of contract for the hire of equipment dated 1 June 2016 ("Letter"), a quotation dated 1 June 2016, and the plaintiff's standard terms and conditions ("standard T&C").

2 The defendant paid a deposit of $11,000 ("Deposit") to the plaintiff pursuant to the Contract. From June to November 2016, the plaintiff made 33 deliveries (through third party transporters) of various quantities of the Equipment to the defendant. Each delivery was recorded in a delivery order

("DO") issued by the plaintiff. From February to June 2017, the defendant returned various quantities of the Equipment to the plaintiff, and the returns were recorded in 54 Equipment Receipt Notes ("ERNs"), which were signed by both parties.

3 In the present suit, the plaintiff claims that the defendant failed to return some of the Equipment that had been delivered, and returned others in a damaged state (which necessitated repairs), or in an irreparably damaged state (such that they needed to be replaced altogether). The plaintiff claims that under the Contract, the defendant is liable to it for $369,214.78, being the sum total of:

(a) the replacement costs for the missing or irreparably damaged Equipment, based on the rates listed in Schedule 2 of the Letter; and

(b) the repair costs for the damaged Equipment, based on the rates listed in Schedule 3 of the Letter.

4 The plaintiff claims that the defendant failed to pay this sum in breach of the Contract, and that it is therefore entitled to late payment interest at 1.5% per month. The plaintiff also claims, as an alternative, that the defendant had converted the missing Equipment, and is therefore liable for damages to be assessed. The plaintiff further pleaded that from August to December 2016, it had issued five rental invoices totalling $58,850. The plaintiff claims that the defendant did not pay the outstanding sum of $23,540 and is liable for late interest thereon at 1.5% per month ("Rental Claim").

5 The defendant has two counterclaims against the plaintiff. First, the defendant counterclaims for the return of the Deposit, and further and alternatively, that it is entitled to set-off the Deposit against any amount it owes

to the plaintiff. Second, the defendant claims that the parties had entered into an agreement on or about 29 March 2017, under which the plaintiff hired labour from it. The defendant claims that under this agreement, the plaintiff is liable for an outstanding sum of $20,032.54 ("Labour Costs Claim").

6 In the trial before me, parties informed the court that the Rental Claim and Labour Costs Claim were no longer in issue, as the plaintiff was granted summary judgment for its Rental Claim (including late interest) on 31 May 2018, with a stay of execution for the amount of the Labour Costs Claim.

7 I start by dealing with the plaintiff's claim for breach of contract. The plaintiff pleaded that in failing to pay the sum of $369,214.78, the defendant had breached clauses 9(a) and 10 of the Letter, as well as clauses 7.1 and 8.2 of the standard T&C. The plaintiff also pleaded that the defendant dealt with the missing Equipment in breach of clauses 8.5 and 10.2.1 of the standard T&C.

8 It is clear to me that under clause 2 of the Letter, the Equipment which was the subject of the Contract was that actually delivered under the 33 deliveries. The defendant's assertion that there were pre-determined quantities is not borne out by the documentary evidence, and is inconsistent with the evidence of its sole shareholder and director, Mr Huang Zhiguo. The main issues of fact here thus concern the quantities and condition of the Equipment which was originally delivered and then returned.

9 In respect of the returns, parties do not dispute the quantities and condition of the Equipment recorded in 49 out of the 54 ERNs. Each ERN comprised an Account's Sheet (kept by the plaintiff) and a Customer's Sheet (kept by the defendant), which are identical save for a marking identifying the sheet in question. For the remaining five disputed ERNs, certain item

descriptions on the Account's Sheet had been amended so that it was different from the original descriptions as reflected in the Customer's Sheet. The defendant alleges that the plaintiff had tampered with the documents. The plaintiff's general manager, Mr Lim Wee Tian, explained that the amendments were made because the original descriptions were wrong. He testified that the plaintiff did not supply equipment with the exact measurements described, but with measurements that were within 1cm of that agreed and listed in Schedule 2 of the Letter. Mr Lim said that this difference in measurement of 1cm is within the acceptable margin of error in the construction industry. Mr Lim's explanation seems to be borne out by the documentary evidence, and nothing to the contrary was produced by the defendant. I therefore find that for the five disputed ERNs, the quantities and condition of the Equipment stated in the Account's Sheets are accurate.

10 Turning to the deliveries, each DO comprised a Supplier's Sheet and a Customer's Sheet. When a DO is generated, the contents of both sheets (including the list of equipment and quantities) are identical save for a textbox identifying which sheet it is. The plaintiff's case is that the quantities of the Equipment delivered are as stated in the 33 DOs, and all the Equipment delivered were in a satisfactory condition, or if not, any issues with their condition had eventually been resolved after delivery. The plaintiff says that it has sufficiently evidenced its claim with either originals and/or copies of all 33 DOs (bearing the defendant's company stamp and/or its representative's signature), as well as with contemporaneous supporting documents such as lorry chits. It should be noted here that any reference in this judgment to a DO being "signed" or "stamped" should be taken to mean signed or stamped (as the case may be) by the defendant's representatives.

11 The defendant rejects the plaintiff's entire claim for breach of contract. The defendant avers that all the Equipment delivered had been returned to the plaintiff and their condition (as recorded in the ERNs) was the same as when they had been delivered. This was despite the defendant's own pleading that it was not practically possible for it to check the quantities and condition of Equipment delivered at the relevant time, and its admission that its own records are inaccurate. The nature of the defendant's case shifted in the course of proceedings, and became convoluted by the end of the trial. Essentially, the defendant made allegations of "forgery", "falsification" and/or "copying and pasting" in respect of two partially overlapping groups of DOs – a group of seven DOs (referred to as the "Alleged Reproduced DOs") and a group of ten DOs (referred to as the "Differing Versions DOs"). This raised issues over the authenticity of the documents. More importantly, the defendant generally disputed the accuracy of the quantities of the Equipment stated in all 33 DOs (relied upon by the plaintiff) and the condition of the Equipment delivered thereunder (the "General Dispute"). It also made further allegations in respect of two groups of DOs, referred to as the "3 Customer's Sheet DOs" and "6 Chinese Handwriting DOs". I now consider each of the defendant's allegations in turn.

12 In respect of the seven Alleged Reproduced DOs, the defendant alleged that the plaintiff had adduced Supplier's or Customer's Sheets bearing a signature or stamp of the defendant which had been "reproduced" or "copied and pasted" from either another source or another Alleged Reproduced DO, indicating that the sheets had been "forged" or "falsified". A party who makes an allegation of forgery (or falsification) bears the burden of proving it on a balance of probabilities.

13 To discharge its burden, the defendant adduced an expert report ("HSA Report") prepared by Ms Nellie Cheng from the Health Sciences Authority. The plaintiff did not adduce any expert evidence of its own. The defendant provided Ms Cheng with signed and stamped copies of the Supplier's Sheet for five DOs and the Customer's Sheet for another five DOs. For each of the seven Alleged Reproduced DOs, the HSA Report found that the Supplier's or Customer's Sheet (as the case may be) bore a signature/stamp that was almost identical to the signature/stamp in one or more of the other sheets provided. It concluded that it was highly likely that either the almost identical signatures/stamps were all reproduced from the same source, or one of them was the source of reproduction for the other(s).

14 The HSA Report is not conclusive because certain parts of the defendant's signature and stamp in the sheets provided overlapped with handwriting, and Ms Cheng only compared the non-overlapping parts. Further, she was only given copies (and not originals) of the sheets, meaning that some details were missing (*ie,* whether the signatures were produced by pen ink or by printing). Even so, the findings of the HSA Report are undoubtedly unusual. Ms Cheng also gave evidence at trial that even when the same person consecutively signs his/her signature by hand, the signatures would not be identical. But the plaintiff did not present any explanation or evidence to address this point.

15 Ms Yuan Bai Lin and Mr Yan Gui Chun, both employees of the defendant and the persons whose signatures were alleged to have been forged, are not witnesses in these proceedings and gave no evidence on this issue. Further, as the plaintiff's counsel, Ms Lee Bik Wei argued, the purpose of the HSA Report was only to compare the similarities between the sheets, not to assess whether there had been any forgery or falsification. In the absence of the

original, to find that a signature or stamp was "copied and pasted" from somewhere else cannot exclude the possibility that it was the defendant's representatives who made the signature or stamp in question. As such, I am not satisfied that the defendant has discharged its burden of proving forgery or falsification in respect of the seven Alleged Reproduced DOs. The parties also question whether the sheets which were the subject of examination in the HSA Report were adduced by the plaintiff or by the defendant, and whether they had been handed to the former by the latter at a meeting on 13 July 2017. Given my preceding view, and the paucity of evidence, it is neither necessary nor possible to make a finding on these questions on a balance of probabilities. The burden of proof simply has not been discharged.

16 I now turn to the 10 Differing Versions DOs. The plaintiff disclosed signed and stamped copies of the Supplier's Sheet for these DOs. The defendant disputed them on the basis that there are unsigned and unstamped originals of the same Supplier's Sheets, indicating that the said copies had been falsified. In my view, the mere fact that there are unsigned and unstamped originals and signed and stamped copies of the same Supplier's Sheet does not prove falsification. In this regard, Mr Loh Chee Weng (the plaintiff's accounts and operations manager at the relevant time) gave evidence that post-delivery, the plaintiff's third party transporters would return to it signed and stamped hardcopy DOs by hand or post, or scanned softcopies via email. If the third party transporter returned an unsigned/unstamped DO, Mr Lim explained that the plaintiff's staff would either send an unsigned copy and request for a signed copy over email, or print another hardcopy of the same DO for the customer's signature/stamp to be obtained at a later date. There would hence sometimes be signed and stamped, as well as unsigned and unstamped, originals and copies of the same Supplier's Sheet for a single DO.

17 The plaintiff did not produce any emails from its third party transporters to support its explanation. Nonetheless, the defendant's own witness, Mr Sim Yong Heng (who was the plaintiff's sales executive at the material time), acknowledged on affidavit that the third party transporters did sometimes email scanned softcopies of the signed and stamped DOs to the plaintiff. Nothing significant emerged at trial, and I therefore accept the plaintiff's explanation as to the existence of multiple versions of the DOs. I have also considered the evidence adduced in respect of the Alleged Reproduced DOs and the Differing Versions DOs together, and they fortify my view that the defendant has not made out its allegations against either group. I am therefore satisfied as to the authenticity of the documents relied upon by the plaintiff.

18 I now consider the defendant's General Dispute that the quantities and condition of the Equipment stated in the 33 DOs (relied upon by the plaintiff) are inaccurate, and that the Equipment delivered was not in a satisfactory condition. In support of this, the defendant's counsel, Ms Lim Kim Hong, submitted that based on the 54 ERNs, the defendant had "over-returned" several types of equipment to the plaintiff, some of which were not even part of the Contract. The defendant's original case was that since the plaintiff was its only formwork supplier, the "over-returns" indicated that the quantities of Equipment listed in the DOs must be inaccurate. It emerged at trial, however, that the defendant also had another formwork supplier. Although Ms Lim hoped to distinguish this other supplier's equipment from the plaintiff's, her valiant effort was hampered by a lack of evidence. In any case, even if I were to accept that the plaintiff was the defendant's only supplier of the specific type of formwork system that the Equipment was, any inference to be drawn about the inaccuracy of all 33 DOs is not particularly strong. In particular, the "over-

returns" would only show that the plaintiff tended to understate, rather than overstate, the Equipment delivered.

19 The defendant also relied on WhatsApp chats and emails it had exchanged with the plaintiff to show that from June 2016 to February 2017, it had notified the plaintiff multiple times about various issues with the quantities and condition of the Equipment delivered. In the midst of trial, Mr Sim also produced WhatsApp group chat messages between the plaintiff's staff discussing those issues.

20 Ms Lee argues that under Note (a) of every DO, the defendant was legally bound to notify the plaintiff in writing of any "discrepancies" within seven days of receipt of the Equipment, failing which "the account [would] be consider[ed] as correct". Based on a reasonable construction, I think that the term "discrepancies" clearly covers both issues with the quantities and condition of the Equipment delivered. She submitted that most of the defendant's alleged notifications were unlikely to have complied with Note (a). Note (a) was contained in the DOs issued after the Contract had already been concluded, but Ms Lim did not raise any objection on this point. She merely submitted that first, the plaintiff's reliance on Note (a) had not been properly pleaded; second, the provision should be struck down under the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed); and third, that in any event, the defendant's notices were in compliance. In my view, the first and second responses lack merit. The first is a matter of evidence refuting the defendant's case. As to the second, the evidence is too weak to raise the Unfair Contract Terms Act (Cap 396, 1994 Rev Ed) in defence – seven days, in my opinion, is not unreasonable at all. Since there is no other basis on which the defendant disputes the binding effect of Note (a) in law, I hold that the defendant is bound by it.

21 As to the third response, the defendant attributed (without explanation) individual notices in the parties' correspondence to specific DOs. Looking at the correspondence itself, it is entirely unclear which DO each notice refers to. Therefore, the defendant cannot prove that the notices complied with the requisite time period. But even if there is compliance, it makes no difference to my findings concerning the DOs, save in respect of the 6 Chinese Handwriting DOs.

22 It is clear from the correspondence that there were some issues with the quantities and condition of the Equipment delivered under some of the DOs. It is equally clear that the plaintiff's staff at the time (including Mr Sim) would take steps to resolve these issues (*ie,* by arranging for replacements). What is not so evident is whether all of those issues were eventually resolved as the plaintiff claimed. Although the documentary evidence is thin in this regard, it appears from the evidence of Mr Huang and Mr Sim that any issue raised would usually have been resolved in the normal course of things. In particular, Mr Huang agreed that any issues with the deliveries would be raised to Mr Sim, who would then resolve the issues for him. Based on the parties' correspondence, I certainly do not think, as the defendant alleged, that the issues with the Equipment were so widespread that all of the 33 DOs can be said to be inaccurate. That being said, I note that in an email dated 20 February 2017, the defendant stated to the plaintiff that some Equipment (which it was trying to return at the time) already had defects upon delivery.

23 Although most issues with the quantities and condition of the Equipment delivered were likely to have been eventually resolved, there might have been some left outstanding. It is, however, not possible to specify what exactly was outstanding, mainly because the defendant itself did not particularise its own dispute. In this case, the plaintiff has produced signed and/or stamped originals

and/or copies of all 33 DOs. The defendant complains that for some of these DOs, there are no original signed and stamped Supplier's Sheets, but I do not think that this is fatal to the plaintiff's claim when there is at least a signed and stamped copy of either the Supplier's or Customer's Sheet. That being the case, I agree with Ms Lee that it is incumbent upon the defendant to particularise its dispute by stating what the alleged shortfalls in quantities are, the nature of the alleged defects and the alleged quantities of defective Equipment delivered. This is especially since the defendant's case is not that it had received no Equipment at all under any of the 33 deliveries, just that it had received lower quantities than stated in the DOs and defective equipment.

24 The defendant has not specified these details, despite the fact that some of the correspondence adduced actually identified them. Although Ms Lim argued that it was neither practical nor possible for the defendant to check the large quantities of Equipment at the time of delivery, I do not think that this argument has much merit. As shown in the correspondence it adduced, the defendant could, and did, raise issues over the quantities and condition of the Equipment sometime after delivery. Mr Huang also confirmed this under cross-examination (contrary to his affidavit evidence).

25 In the circumstances, I find on the balance of probabilities that the quantities of the Equipment stated in the DOs (relied upon by the plaintiff) are accurate, and that the Equipment delivered was in a satisfactory condition. This finding, however, excludes two groups of DOs – namely, the 3 Customer's Sheet DOs and 6 Chinese Handwriting DOs. Specific allegations were made in respect of each group, which require examination.

26 For the 3 Customer's Sheet DOs, the plaintiff relied on signed and stamped copies of the Customer's Sheet. In addition to its General Dispute, the

defendant complained about the absence of original signed and stamped Supplier's Sheets. As alluded to earlier, I do not think that that is fatal to the plaintiff's case. The plaintiff acknowledged that it is the Supplier's Sheet which should have been signed and stamped by the customer, and retained by it. Mr Loh explained, however, that in practice, owing to the fast-paced reality of the construction industry, the identical letterhead of both sheets and the illiteracy of some of the third party transporter's staff, there would be occasions where the Customer's Sheet would be signed and stamped instead, and returned to the plaintiff. This explanation was consistent with Mr Loh's and Mr Lim's evidence at trial. Considering also the other evidence underlying the defendant's General Dispute, I am satisfied that these DOs are accurate, and that the Equipment delivered thereunder was in a satisfactory condition.

27 Moving on, there are signed and/or stamped Supplier's and Customer's Sheets with Chinese handwriting (as well as English handwriting in one case) for the 6 Chinese Handwriting DOs, indicating that the defendant had raised issues with both the quantities and condition of the Equipment delivered. The Chinese handwriting stated "Many are spoiled, got problem, quantity got problem". I agree with Ms Lim that the plaintiff did not satisfactorily explain these annotations, or adduce sufficient evidence to show that the issues raised were eventually resolved, but the fatal difficulty for the defendant lies in Note (a) of the DOs. Since, as I have found, the defendant is bound by that provision, I agree with Ms Lee that it is for the defendant to show that in the first place, it had complied with Note (a) when notifying the plaintiff of issues with the deliveries. In this regard, Mr Sim stated on affidavit that he was present during all six deliveries and had made the annotations on the spot. But, as Ms Lee pointed out, Mr Sim admitted at trial that he was not even in Singapore for at least three deliveries and could not in fact remember when he made the

annotations in question (save that he did so after being told of the issues by the defendant's site foreman). In my view, Mr Sim's evidence on this point lacks credibility. Furthermore, there is no written record of the defendant notifying Mr Sim or the plaintiff's other staff of the issues mentioned in the annotations, and there is also no other evidence that the notifications were made during the requisite 7-day time period. I am therefore not satisfied that the defendant had complied with Note (a) when raising the issues mentioned in the annotations.

28 Based on the parties' correspondence, my impression is that in practice, Note (a) was not strictly observed and the plaintiff had never challenged the defendant at the material times (including in respect of the 6 Chinese Handwriting DOs) on the basis of non-compliance with the provision. However, Ms Lim made no submission that the plaintiff had waived its rights under Note (a) as it might have. Apart from the annotations, the only remaining evidence supporting the defendant's case is that underlying its General Dispute. Having also taken that into account, I find that by virtue of Note (a), the quantities of the Equipment stated in the 6 Chinese Handwriting DOs are deemed to be correct and the Equipment are all deemed to have been delivered in a satisfactory condition.

29 To summarise, I find that the quantities of the Equipment stated in all 33 DOs (relied upon by the plaintiff) are accurate, and that the Equipment delivered thereunder was in a satisfactory condition. The quantities and condition of the Equipment returned is as recorded in the 49 undisputed ERNs and the Account's Sheet of the remaining five disputed ERNs ("Accepted ERNs"). The defendant is thus liable under the Contract for any Equipment which was delivered to it under the 33 DOs, which it failed to return, or returned in a damaged or irreparably damaged state, as recorded in the Accepted ERNs.

30 The plaintiff pleaded that under clauses 9(a) and 10 of the Letter, the defendant is liable to pay the replacement costs for the missing or irreparably damaged Equipment based on the rates listed in Schedule 2 of the Letter, and the repair costs for the damaged Equipment based on the rates listed in Schedule 3. Ms Lim contended that both schedules are penalty clauses which are unenforceable. I do not think that the defendant has discharged its burden of proving this. It relied on quotations from three formwork suppliers. As Ms Lee pointed out, the question of whether a clause is a penalty is to be judged at the time of the making of the contract, which was in June 2016. The quotations given by two of these suppliers were, however, only obtained in 2018 and 2019. The defendant also failed to call witnesses from these two suppliers to give evidence at trial. The only quotation obtained for replacement costs in 2016 was that from the third supplier, Zulin (S.E.A. Pte Ltd) ("Zulin"). I am not, however, convinced that its quotation was for products that are sufficiently comparable to the plaintiff's Equipment. Further, the methodology behind the quotation was suspect. Zulin's general manager, Mr Chen Ming, revealed at trial that the replacement costs quoted were not actually those used by Zulin in its own contracts, but were derived based on his estimates of the prices of raw materials and the weight of the plaintiff's Equipment. I am thus of the view that the evidential basis for Ms Lim's submission is wholly lacking.

31 In the premises, I find the defendant liable under the Contract for the liquidated sum of $369,214.78 ("Liquidated Sum"). It is clear that in refusing to pay this sum, the defendant would be in breach of clauses 9(a) and 10 of the Letter. The plaintiff also pleaded that in relation to the missing, irreparably damaged and damaged Equipment, the defendant had breached clauses 7.1, 8.2, 8.5 and 10.2.1 of the standard T&C. I agree, but will not award any damages for

these breaches as the plaintiff has already been awarded the Liquidated Sum above, and the plaintiff did not evidence any further losses.

32 Additionally, the plaintiff also relied on clauses 3.2 and 3.2.1 of the standard T&C, and Note (c) of an invoice issued to the defendant (dated 6 September 2017), to claim late payment interest on the Liquidated Sum at 1.5% per month. Ms Lim curiously did not point out that the said clauses only refer to "outstanding rental", and not any replacement or repair costs. It is also unclear how the plaintiff purports to unilaterally impose late payment interest through an invoice issued more than a year after the Contract had already been entered into. I therefore reject the plaintiff's claim for such late payment interest.

33 As to its pleaded claim in conversion, the plaintiff no longer pursued it in closing submissions and it is hence unnecessary for me to deal with. I should mention, however, that I would have found the defendant liable for converting any Equipment that had been delivered to it and which it did not return. That said, I would have at most awarded nominal damages to the plaintiff, because it did not adduce any evidence on the market value or replacement costs of such equipment (both being the usual measure of damages for conversion), or on the consequential damages it claimed.

34 I now turn to the defendant's counterclaim for the return of the Deposit. The plaintiff's defence relied on the following clauses in the standard T&C:

> 1.2 …
>
> 1.2.2 *"the Expiry Date" shall mean the date on which all* and every of *the Equipment delivered* to the Hirer for the duration of the Agreement *are returned* and redelivered to the Owner's Premises.
>
> …

> 4.1 *The Deposit* in the sum as stipulated in the *Agreement shall be paid* by the Hirer to the Owner upon execution of the Agreement by way of deposit and *as security for the due performance and observance of the Agreement* and the term and conditions contained herein.
>
> …
>
> 4.3 The Deposit shall be *refunded to the Hirer* free of interest *upon the Expiry Date*, less any sum due and payable to the Owner pursuant to the terms of the Agreement, including but not limited to arrears or rental and replacement costs for loss, damage and/or destruction for the Equipment.
>
> [emphasis added]

35 The plaintiff pleaded that pursuant to clause 4.3 read with 1.2.2 of the standard T&C, the Deposit need not be refunded until all the Equipment delivered to the defendant has been returned (and they have not). While that is correct, I have already ordered the Liquidated Sum to be paid to the plaintiff in respect of its claim under the Contract. Clause 4.1 of the standard T&C makes clear that the Deposit is meant only as "security for the due performance of the Agreement". Given that the defendant's payment of the Liquidated Sum would satisfy the plaintiff's claim under the Contract, I will allow the defendant to set off the Deposit against the Liquidated Sum.

36 In conclusion, I grant judgment for the plaintiff against the defendant for the amount of $358,214.78 (being the Liquidated Sum of $369,214.78, less the Deposit of $11,000). Under s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed), interest thereon will run from the date on which the writ was issued to the date of this judgment, at 5.33% per annum.

37 Finally, I deal with the issue of costs. Ms Lim submitted that costs be awarded to the defendant for both the plaintiff's claims and its own counterclaim. Ms Lee submitted the plaintiff be awarded costs on a full

indemnity basis. She relied on clause 8.1 of the standard T&C, which is set out below:

> The Hirer hereby covenants that *throughout the term and for the duration of the Agreement* that is [*sic*] shall:-
>
> 8.11 to *pay the Owner* all costs and expenses (including *legal costs on a full indemnity basis) incurred by* or on behalf of *the Owner* in ascertaining the whereabouts, taking possession, of preserving, insuring and storing the Equipment *and of any legal proceedings by* or on behalf of *the Owner to enforce the provisions of the Agreement.*
>
> [emphasis added]

38 Ms Lim made no arguments as to the applicability of the said clause, and since I accept Ms Lee's submission, I order that the defendant pay the plaintiff's costs on an indemnity basis, to be taxed if not agreed. The costs shall include the costs order for Summons No 2172 of 2019 (*ie,* the plaintiff's application for summons for directions).

- Sgd -
Choo Han Teck
Judge

Lee Bik Wei, Chong Xue Er Cheryl, Alisa Toh Qian Wen and Toh Jia Jing Vivian (Allen & Gledhill LLP) for the plaintiff;
Lim Kim Hong and Nadiah Li Feng Binte Mahmood (Kim & Co) for the defendant.