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

[2022] SGHC 202

Suit No 1028 of 2020

Between

Chiap Seng Productions Pte Ltd

… Plaintiff

And

Newspaper Seng Logistics Pte Ltd

… Defendant

JUDGMENT

[Landlord and Tenant — Agreements for leases]
[Landlord and Tenant — Creation of tenancy — Contract]
[Landlord and Tenant — Capacity to grant tenancies — Companies]
[Landlord and Tenant — Distress for rent — Illegal distress]

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Chiap Seng Productions Pte Ltd
v
Newspaper Seng Logistics Pte Ltd

[2022] SGHC 202

General Division of the High Court — Suit No 1028 of 2020
Tan Siong Thye J
18–20 May, 24–27 May, 22 July 2022

22 August 2022 Judgment reserved.

Tan Siong Thye J:

Introduction

1 The plaintiff, Chiap Seng Productions Pte Ltd, is in the business of supplying and installing scaffolding and seats for spectator events, such as the Formula 1 ("F1") night race held in Singapore.[1] The defendant, Newspaper Seng Logistics Pte Ltd, is in the business of newspaper recycling and manufacturing.[2] It was formerly known as Hup Eng Wooden Cases Co Pte Ltd ("Hup Eng").[3]

2 The dispute arises out of a Service Agreement signed between the plaintiff and the defendant on 1 November 2019 ("the Service Agreement").

[1] Agreed Facts ("ASOF") at para 3.

[2] Defendant's Opening Statement ("DOS") at para 5.

[3] ASOF at para 4.

Under the Service Agreement, the plaintiff and the defendant agreed that the plaintiff would store its assets ("the Assets") at 33 Defu Lane 6, Defu Industrial Park A, Singapore 539381 ("the Premises") for a monthly fee payable to the defendant. The defendant was at the material time occupying the Premises. It had leased the Premises from the main landlord, JTC Corporation ("JTC").[4]

3 On 24 September 2020, after the plaintiff was in arrears of its monthly fees, the defendant seized all of the Assets which were stored within the Premises. Although the plaintiff's business was adversely affected by the restrictions imposed due to the COVID-19 pandemic, it was prepared to pay the arrears if the defendant had informed the plaintiff of the correct Statements of Accounts ("SOAs"). On 5 October 2020, the defendant sold the Assets for scrap at a price of $42,800 (inclusive of Goods and Services Tax ("GST")) to Yew Huat Scaffolding & Construction Pte Ltd ("Yew Huat").[5]

4 The plaintiff claims against the defendant for damages arising out of the defendant's intentional disposal of the Assets which were stored at the Premises.[6] The plaintiff claims for restitution, payment and/or recovery of the monies for which the Assets were sold.[7] The plaintiff also claims against the defendant for theft and/or criminal misappropriation. This was on the grounds that the defendant knew and had actual knowledge that the plaintiff did not

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4 DOS at para 5.

5 DOS at para 19.

6 Statement of Claim (Amendment No. 5) ("SOC") at para 1(a).

7 SOC at para 1(b).

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consent to the sale of the Assets.[8] Based on the above, the plaintiff seeks, *inter alia*, the following:[9]

(a) a declaration that the defendant had:

(i) trespassed against the Assets;

(ii) unlawfully sold and/or disposed of the Assets without the plaintiff's consent;

(iii) unlawfully misappropriated the Assets;

(iv) unlawfully converted the Assets;

(b) a declaration that the plaintiff is and was at all material times the lawful owner of the Assets and/or that title to the Assets vests in the plaintiff;

(c) a declaration that any sale and/or disposal of the Assets to any other person, and in particular to Yew Huat, is unlawful and any such arrangements, contracts and/or agreements between the defendant and these other persons are null and void;

(d) an account and/or itemisation of the Assets which were sold and/or disposed of by the defendant;

(e) an order for immediate delivery to the plaintiff of all of the Assets within the control and/or possession of the defendant;

(f) an order for the plaintiff to recover from Yew Huat the Assets;

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8 SOC at para 3.

9 SOC at para 93.

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(g) an order for the defendant to recover from Yew Huat the Assets at its own expense;

(h) an assessment of damages in respect of the Assets sold and disposed of by the defendant;

(i) an indemnity from the defendant in the event of claims made against the plaintiff arising from the defendant's actions in respect of the Assets; and

(j) damages to be assessed.

5 The defendant counterclaims against the plaintiff for the sum of $6,750, this being the balance of the outstanding arrears due from the plaintiff after taking into account the sale proceeds of the Assets.[10]

Background to the dispute

The parties' contractual relationship

6 The defendant wanted to sublet part of its premises to a tenant. It engaged a real estate agent from ERA Realty Network Pte Ltd to seek for a tenant. On 23 October 2019, the defendant accepted the Letter of Intent ("LOI") from the plaintiff. In the LOI, the defendant agreed to lease 10,400 square feet of the Premises to the plaintiff to store the Assets comprising scaffolding for multi-tiered seating galleries and for the F1 night race. The LOI indicated that the rental was for a period of 24 months at $10,400 per month, and also indicated that the plaintiff was to pay two months of security deposit, *ie*, $20,800.[11] Subsequently, the plaintiff and the defendant executed and entered into the

10 DOS at para 69; Transcript (24 May 2022) at p 32 lines 11–14.

11 Amended Agreed Bundle of Documents ("ABOD") at p 1.

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Service Agreement on 1 November 2019. The main terms of the Service Agreement are as follows:[12]

(a) The plaintiff was allowed to use a portion of the Premises measuring about 10,400 square feet ("the Service Area") for a period of 12 months from 1 November 2019 to 31 October 2020. The duration of the lease in the Service Agreement was changed from 24 months as stated in the LOI to 12 months.

(b) The monthly service fee was $10,400 per month plus GST ("the Service Fee").

(c) The use of the Premises was for storage.

(d) Should JTC, the main landlord of the Premises, disallow the Service Agreement or the use of the Service Area by the plaintiff for storage, the Service Agreement shall be deemed terminated and the plaintiff is to vacate the Premises within the time set out by JTC.

7 Following the signing of the Service Agreement, the plaintiff moved the Assets comprising scaffolding for multi-tiered seating galleries and for the F1 night race to the Service Area. The other occupier of the Premises was the defendant.[13]

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12 SOC at para 16.

13 ASOF at para 5.2.

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The COVID-19 Act

8 On 3 April 2020, the Singapore Government announced the "Circuit Breaker" measures, which lasted from 7 April 2020 to 1 June 2020.[14] Large audience events were prohibited during this period. This resulted in a significant fall in the plaintiff's income.[15] The COVID-19 (Temporary Measures) Act 2020 (Act 14 of 2020) ("the COVID-19 Act") was passed during this period to support businesses like the plaintiff, which were adversely affected by the COVID-19 pandemic and the "Circuit Breaker" measures.

Events from December 2019 to June 2020

9 On 1 December 2019, the defendant issued an invoice for $10,400 to the plaintiff for the use of the Service Area.[16] On 26 December 2019, Mr Lau Poh Seng ("Mr Lau") purchased a 49% share in the defendant and became the defendant's managing director.[17]

10 In January 2020, before the COVID-19 pandemic, the parties agreed to reduce the Service Area to 9,000 square feet.[18] Correspondingly, the Service Fee was also reduced to $9,000 per month with effect from 1 January 2020.[19] However, this reduction was only reflected in the invoices issued by the defendant from June 2020 onwards. The invoices issued by the defendant to the plaintiff from January 2020 to May 2020 are as follows:

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14 SOC at paras 19–20.

15 SOC at paras 23–24.

16 ASOF at para 5.3.

17 ASOF at para 5.4.

18 ASOF at para 5.5; SOC at para 17.

19 SOC at para 18.

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(a) 2 January 2020: invoice for $10,400;[20]

(b) 2 February 2020: invoice for $10,400 plus GST;[21]

(c) 2 March 2020: invoice for $10,400 plus GST;[22]

(d) 1 April 2020: invoice for $10,400 plus GST;[23] and

(e) 2 May 2020: invoice for $10,400 plus GST.[24]

11 On 6 February 2020, the defendant sent a letter to the plaintiff demanding payment of the Service Fees for January and February 2020 amounting to $22,256 including GST ("the 1st LOD").[25] The 1st LOD was received by the plaintiff at its office.[26]

12 On 13 February 2020, the plaintiff paid $10,400 to the defendant according to the invoices issued by the defendant for January and February 2020.[27]

13 The defendant issued the following SOAs to the plaintiff from April to June 2020:

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20 ASOF at para 5.6.

21 ASOF at para 5.7.

22 ASOF at para 5.9.

23 ASOF at para 5.10.

24 ASOF at para 5.12.

25 ABOD at p 14.

26 Transcript (20 May 2022) at p 60 lines 7–12.

27 ASOF at para 5.8.

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(a) On 30 April 2020, the defendant issued its SOA as at 30 April 2020 in the sum of $54,912.[28]

(b) On 9 June 2020, the defendant issued its SOA stating that the outstanding amount owed by the plaintiff was $57,150.[29]

14 On 1 June 2020, the defendant issued two credit notes of $1,400 and $5,992 to offset the overcharged amount from January 2020 to May 2020 ("the Credit Notes").[30]

15 On 29 June 2020, the defendant's solicitors sent a letter of demand to the plaintiff for arrears in rental from December 2019 to June 2020 amounting to $57,150 ("the 2nd LOD").[31] The 2nd LOD was also faxed to xxxx3492.[32]

Events from July 2020 to September 2020

16 The defendant issued the following invoices to the plaintiff from July 2020 to September 2020:

(a) 1 July 2020: invoice for $9,000 plus GST;[33]

(b) 2 August 2020: invoice for $9,000 plus GST;[34] and

(c) 1 September 2020: invoice for $9,000 plus GST.[35]

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28 ASOF at para 5.11.

29 ASOF at para 5.15.

30 SOC at para 18.

31 ABOD at p 40.

32 ASOF at para 5.16; DOS at para 10(b).

33 ASOF at para 5.17.

34 ASOF at para 5.19.

35 ASOF at para 5.22.

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17 The plaintiff paid the following amounts to the defendant from July 2020 to August 2020:

(a) On 15 July 2020, the plaintiff paid the defendant two months of the Service Fees totalling $18,000 plus GST.[36]

(b) On 19 August 2020, the plaintiff paid the defendant one month of the Service Fee amounting to $9,000 plus GST.[37]

18 On 31 August 2020, CHBC Integrated Builders Pte Ltd ("CHBC"), a representative of JTC, issued a letter addressed to the defendant informing the defendant that its subletting of the Premises to the plaintiff was not authorised and that there were unapproved structures present on the Premises ("the CHBC Letter").[38]

19 On 9 September 2020, the defendant's solicitors sent the plaintiff a letter of demand for $37,120 in arrears as at June 2020 ("the 3rd LOD").[39] The 3rd LOD was faxed to xxxx3492.[40] In the 3rd LOD, the defendant's solicitors also mentioned that JTC had found that the defendant's lease of the Premises to the plaintiff was unapproved and requested that the plaintiff vacate the Premises by 14 September 2020.[41] On 15 September 2020, the defendant's solicitors sent the plaintiff a reminder copy of the 3rd LOD.[42]

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36 ASOF at para 5.18.

37 ASOF at para 5.20.

38 ASOF at para 5.21.

39 ASOF at para 5.23.

40 ABOD at p 49.

41 ABOD at p 49.

42 ASOF at para 5.24.

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20 On 18 September 2020, the defendant's solicitors sent the plaintiff a letter of demand for the sum of $37,120 in arrears ("the 4th LOD"). In the 4th LOD, the defendant's solicitors also mentioned that JTC had found that the defendant's lease of the Premises to the plaintiff was unapproved and that JTC requested that the plaintiff vacate the Premises by 22 September 2020.[43]

21 On 24 September 2020, the Assets began to be transported out of the Premises.[44] This was observed by Ms Isabel Tan ("Ms Tay"), the plaintiff's accounts executive, who had gone down to the Premises attempting to make payment with a cheque for $20,000.[45] Ms Tay spoke to a man in pink, whom Mr Lau identified in Court as "Patrick", one of the defendant's managers ("Mr Patrick").[46] However, before the trial, Mr Lau, had in his answer to the plaintiff's interrogatories, denied knowing "the man in pink " to whom Ms Tay had referred to.[47] Mr Patrick was supervising the removal of the Assets. He told Ms Tay that based on the 4th LOD, the defendant had the right to sell the Assets as they had not been removed by 22 September 2020.[48]

22 On 25 September 2020, the defendant's solicitors sent the plaintiff a letter informing the plaintiff that the defendant had removed the Assets from the Premises and sold them.[49]

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43 ASOF at para 5.25; ABOD at p 51.

44 ASOF at para 5.26; Answer to Interrogatories dated 17 November 2021 at para 11.

45 Reply & Defence to Counterclaim (Amendment No. 3) ("RDCC") at para 9(a).

46 Transcript (26 May 2022) at p 75 line 22.

47 Set Down Bundle at pp 172–173.

48 RDCC at para 10(b).

49 ASOF at para 5.27; ABOD at p 58.

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23 From 25 September 2020 to 30 September 2020, the plaintiff sent numerous e-mails to the defendant containing, *inter alia*, the plaintiff's creditor statement and a letter informing the defendant that it had unlawfully trespassed against the plaintiff's property.[50] On 29 September 2020, the plaintiff also arranged for its employees to retrieve the remainder of the Assets from the Premises, but Mr Patrick refused to allow them to do so.[51] On 30 September 2020, the plaintiff's employees witnessed a transport company removing the remainder of the Assets from the Service Area.[52]

24 On 30 September 2020, the defendant issued its SOA as at 30 September 2020 showing:[53]

(a) a one-month deposit of $10,400;

(b) an outstanding sum of $46,750; and

(c) the Credit Notes dated 1 June 2020 for $1,400 and $5,992.

25 It is undisputed that the defendant failed to do the following when it removed the Assets and sold them for scrap:

(a) The defendant did not obtain any Court order for the disposal of the Assets.[54]

50 ASOF at sub-paras 5.28–5.33; ABOD at pp 65–66 and 68–69.

51 RDCC at para 10(c).

52 RDCC at para 10(d).

53 ASOF at para 5.34.

54 ASOF at para 6.

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(b) The defendant did not carry out an inventory of the Assets before disposing of them.[55]

(c) The defendant did not carry out any valuation of the Assets before disposing of them.[56]

The IRAS Grant

26 On 18 February 2021, the Inland Revenue Authority of Singapore ("IRAS") issued a letter to the defendant with the title "NOTICE OF CASH GRANT AND RENTAL WAIVER (RENTAL RELIEF FRAMEWORK)", informing the defendant that it would be issued a cash grant amounting to $5,760 ("the Notice of Cash Grant"). The Notice of Cash Grant named the plaintiff as a subtenant eligible for a two-month rental waiver.[57]

The parties' cases

The plaintiff's case

27 The plaintiff submits that the Service Agreement is a tenancy agreement, or at the very least a license agreement.[58] The plaintiff relies on IRAS' direction for the plaintiff to pay stamp duty on the Service Agreement. This direction was given following the plaintiff's application under the COVID-19 Act for a waiver of two months' rental.[59] On 30 October 2020, the plaintiff was also informed by the Registrar of Assessors that its application for rental waiver fell within

55 ASOF at para 7.

56 ASOF at para 8.

57 ASOF at para 5.36; ABOD at pp 82–87.

58 SOC at para 92C.

59 SOC at para 92A.

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Part 2A of the COVID-19 Act. Part 2A of the COVID-19 Act prohibits landlords, *ie* the defendant, from taking enforcement actions described in s 19G(2) of the COVID-19 Act against the prescribed tenant-occupier ("PTO"), *ie*, the plaintiff.[60]

28 Further and/or in the alternative, the plaintiff submits that the Service Agreement being a tenancy agreement is governed by the Distress Act (Cap 84, 2013 Rev Ed) ("Distress Act"). This is because IRAS considers the Service Agreement to be a tenancy agreement.[61] The defendant, therefore, breached the Distress Act by:[62]

(a) failing to give the plaintiff sufficient reasonable notice to make payment of the arrears in rental, particularly during the COVID-19 lockdown;

(b) failing to secure a Judgment in its favour;

(c) failing to apply for a Writ of Possession; and

(d) disposing of the Assets which relate to the plaintiff's business or work.

29 The plaintiff maintains that it did not install the illegal structures. However, before the trial started, the defendant alleged that the plaintiff had erected the "illegal structures" highlighted by CHBC when the latter inspected the Premises.[63]

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60 SOC at para 92D.

61 SOC at para 92F.

62 SOC at para 92G.

63 AB at pp 46–47; SOC at paras 58–59.

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30 The plaintiff claims that the 2nd LOD, the 3rd LOD and the 4th LOD issued by the defendant were defective on the following grounds:

(a) The plaintiff did not receive or have sight of the 2nd LOD dated 29 June 2020. The plaintiff also denies that the amount outstanding as at 29 June 2020 was $57,150 as alleged in the 2nd LOD.[64]

(b) The amount claimed by the defendant in the 3rd LOD dated 9 September 2020 is $37,676.[65] This is erroneous. The plaintiff submits that the correct amount following the reduction in the Service Area and Service Fees should be $36,350.[66] The 3rd LOD also demanded vacant possession by 14 September 2020. However, the plaintiff only received the 3rd LOD on 15 September 2020 when the plaintiff's staff were allowed to return to the office to work in accordance with the COVID-19 restriction measures imposed by the Government.[67] The defendant's counsel wrongly faxed the 3rd LOD to xxxx3492 when the plaintiff's correct fax number was and is xxxx2991.[68]

(c) The 4th LOD dated 18 September 2020 was not sent to the plaintiff's active managing director, Mr Heng Lee Kiang ("Mr Heng").[69] The 4th LOD was addressed to Mr Heng but the address stated therein was one Mr Heng Nge Guan's registered address.[70] Mr Heng Nge Guan

64 RDCC at para 4(a).

65 SOC at para 31.

66 SOC at para 32.

67 SOC at para 31.

68 SOC at para 33; Transcript (20 May 2022) at p 59 lines 9–12.

69 RDCC at para 8(a).

70 RDCC at para 8(a).

was the plaintiff's other registered director. He was, however, not active in the running and management of the plaintiff.[71] Thus, the plaintiff was unaware that it had to vacate the Premises before 22 September 2020 as it only had sight of the 4th LOD on 24 September 2020, *ie*, past the deadline of 22 September 2020.[72]

31 The plaintiff further argues that the defendant fabricated "an artificial situation and artificial excuse" to dispose of the Assets with no regard to the interests of the plaintiff. The plaintiff also argues that the defendant "was disingenuous in sending letters of demand which the [d]efendant knew or ought to have known would most probably be missed".[73] The defendant was also uncontactable or refused to accept payment of outstanding rental arrears when the plaintiff attempted to do so.[74]

32 Finally, the plaintiff submits that the defendant had unilaterally sold off the Assets without authority.[75] The defendant also failed to itemise the Assets such that the plaintiff had no information to ascertain if the price at which the Assets were sold ($40,000) was a fair price.[76] The plaintiff claims that as at 30 September 2020, the Assets were worth $3,153,118.64.[77]

33 Alternatively, the plaintiff submits that, in late June to early July 2020, the defendant's manager, Mr Alex Ang ("Mr Ang"), called Mr Heng and

71 SOC at para 4.

72 RDCC at para 8(b).

73 SOC at para 53.

74 RDCC at para 10(a).

75 SOC at para 55.

76 SOC at para 56.

77 SOC at para 27.

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requested a payment of only two months of rental fees. This payment was made by the plaintiff soon thereafter.[78] Given that the Circuit Breaker measures were in force at the time, the plaintiff was under the impression that the payment of two months of rental fees was sufficient for the defendant not to enforce any rights or penalties against the plaintiff.[79] Accordingly, the defendant represented that the payment of two months of rental fees was satisfactory and/or the defendant is estopped from acting against the plaintiff and the Assets.[80]

The defendant's case

34 The defendant submits that the Service Agreement was a mere contract for the provision of services and was not a lease or licence for the use of the Service Area. First, the defendant argues that it did not have proprietary or ownership rights in the Premises. Therefore, the defendant could not have granted a lease or licence to the plaintiff to use the Service Area.[81] Second, the defendant avers that the parties had fully intended to enter into a mere agreement for services and not a tenancy agreement and/or licence agreement for the use of the Premises.[82] The defendant argues, among others, that the Service Agreement is not a lease agreement as the plaintiff did not have exclusive possession of the Premises.[83] For example, the defendant had a right to conduct random inspections of the Premises without giving notice and the plaintiff was

78 SOC at para 29B.

79 SOC at para 29D.

80 SOC at para 29E.

81 Defendant's Closing Submissions ("DCS") at paras 10–44; Transcript (20 May 2022) at p 107 lines 6–12.

82 DCS at paras 45–61.

83 DOS at para 59.

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forbidden from displaying any signboards and notices under any circumstances.[84]

35 The defendant avers that the Service Agreement does not fall within the ambit of the Distress Act or Part 2A of the COVID-19 Act.[85] The defendant also argues that the plaintiff's conduct removes it from seeking protection under s 19G of the COVID-19 Act. Section 19G of the COVID-19 Act stipulates that the moratorium only applies in relation to "non-payment of rent". However, the defendant's termination of the Service Agreement was *not only* due to the plaintiff's non-payment of the Service Fees, but also due to the installation of illegal structures found on the Premises as stated in the CHBC Letter.[86]

36 The defendant further submits that it was contractually entitled to dispose of the Assets due to the plaintiff's repudiation of the Service Agreement under Clause 3(cc) of the Service Agreement.[87] The defendant argues that the plaintiff breached the Service Agreement as follows:[88]

(a) the Service Fee for January 2020 was only paid on 13 February 2020;

(b) the Service Fees for February and March 2020 were only paid on 15 July 2020;

(c) the Service Fee for April 2020 was only paid on 19 August 2020; and

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84 DOS at sub-paras 60(d) and 60(h).

85 DCS at paras 62–94.

86 DOS at para 68.

87 DCS at paras 95–107; DOS at para 26.

88 DOS at para 9.

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(d) the Service Fees for May 2020 to September 2020 were completely unpaid.

37 Finally, the defendant avers that the plaintiff may not rely on estoppel to establish its claim as (a) the plaintiff has not properly pleaded its case on estoppel; and (b) in any event, there was no actionable representation made.[89]

Issues to be determined

38 The main issues are as follows:

(a) Was the Service Agreement, in substance, a tenancy agreement between the plaintiff and the defendant?

(b) If the Service Agreement was a tenancy agreement, was the plaintiff protected under the COVID-19 Act from enforcement actions taken by the defendant as its landlord?

(c) If the Service Agreement was a tenancy agreement, was the defendant's intentional disposal of the Assets in breach of the Distress Act?

(d) If the defendant's intentional disposal of the Assets was wrongful either under the COVID-19 Act or the Distress Act, what is the appropriate remedy to be awarded to the plaintiff?

(e) Regarding the defendant's counterclaim, is the defendant entitled to the sum of $6,750 being the balance outstanding arrears due from the plaintiff?

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89 DOS at para 41.

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My findings

39 I shall confine my findings to the issues pertaining to liability as the parties have agreed to bifurcate and defer the issues relating to quantum of damages after the Court has ascertained the issues on liability.

Was the Service Agreement a tenancy agreement?

The parties' intention was to enter into a landlord-tenant relationship

(1) The LOI

40 The LOI is an important document as it is the first instrument agreed between the parties and it discloses their intention and purpose in entering into a legal relationship. The LOI clearly shows that the parties intended to enter into a landlord-tenant relationship. First, the LOI expressly refers to the plaintiff as the "Tenant" and the defendant as the Landlord. Mr Keh Eng Hong ("Mr Keh"), the majority shareholder of the defendant,[90] signed the LOI as the defendant's representative. He affixed the defendant's then-named Hup Eng's company stamp beside his signature under the "Signature of Landlord" field on the second page of the LOI.[91] The LOI makes no mention of any "Service Fee". Instead, it refers to payment of a "Monthly Rental".[92] Numerous other references to a landlord-tenant relationship are also present:[93]

> (a) Clause 1 of the LOI provides that the "lease shall be for a term of 24 months".

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90 Transcript (24 May 2022) at p 49 lines 3–8.

91 ABOD at p 2.

92 ABOD at p 1.

93 ABOD at p 1.

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(b) Clause 8 of the LOI confers a "rent-free fitting-out period" to the "Tenant", *ie* the plaintiff.

(c) Clause 10 of the LOI expressly refers to a "Tenancy Agreement" and provides that the "cost of stamping [the tenancy agreement is] to be borne by the Tenant".

41 It is patently clear from the language of the LOI that the LOI was intended by the parties to reflect a landlord-tenant relationship. The defendant's attempt to suggest that the LOI did not create a landlord-tenant relationship is completely misconceived. Further, the fact that the LOI is specified to be "Subject To Contract"[94] does not change the inference that the parties had intended to create a landlord-tenant relationship.

(2) The Service Agreement

42 The Service Agreement may not have explicitly referred to the parties as landlord and tenant unlike in the LOI. But the substance of the Service Agreement reflects that of a tenancy agreement. The defendant argues that if the plaintiff intended for the Service Agreement to be a tenancy agreement, it was always open to the plaintiff to insist that it be reworded to follow the LOI.[95] However, when the Service Agreement was signed, the plaintiff thought the Service Agreement was, in substance, a tenancy agreement as expressed in the LOI which was a template completed and filled in by the defendant's real estate agent. The Service Agreement was also prepared by the defendant. The plaintiff was unaware of the sinister motive of the defendant in calling it a Service

94 ABOD at p 2.

95 Defendant's Reply Submissions dated 20 June 2022 ("DRS") at para 6.

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Agreement to avoid seeking approval from JTC to sublet the Service Area to the plaintiff.

43 The focus of an analysis in identifying the nature of an agreement is one of substance and not form. From a reading of the Service Agreement, it is, *in substance,* a tenancy agreement. There are tell-tale signs that the Service Agreement was a tenancy agreement. This is most clear from the manner in which the Service Agreement describes the subject matter in question, as well as the nature of the obligations. For instance, the Service Area was referred to as the "rental premises" (see para 3(d)), "Demised Premises" (see para 3(l)), "DEMISED SERVICE AREA" (see para 3(n)), with no unauthorised subletting (see para 3(t)). Further, the plaintiff's responsibilities in paragraphs 3(l), (m), (o), (q)–(s) and (aa) and the defendant's duties in paragraphs 4(a) and (b) suggest that the Service Agreement was in substance a tenancy agreement.

44 Further, it looks like the only service provided by the defendant in the Service Agreement was to allow the plaintiff to use the Service Area for the storage of the Assets. The physical arrangement at the Premises pursuant to the Service Agreement also echoes this finding. I shall deal with the specific clauses of the Service Agreement and the physical arrangement at [98]–[107] below. Even taking the defendant's case, *ie* that this was a service agreement, I do not see the defendant providing any form of service other than an area for storage. Indeed, the counsel for the plaintiff points out in his oral closing submissions that the only purported "service" that the defendant offered was to provide a space for the plaintiff to store the Assets, and no other forms of benefits were conferred.[96] As I informed the counsel for the defendant (Ms Lim) in her oral closing submissions that it would be to overstretch and do violence to the

96 Transcript (22 July 2022) at p 30 lines 8–18.

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common-sensical understanding of a "service agreement" if the Court were to accept the defendant's position:[97]

> COURT: Are you stretching the word "service" to the extent of corrupting the word "service" and you are saying that the service is to allow the plaintiff to store the assets in the premises?
>
> MS LIM: Your Honour, my client's case can only go insofar as what the service agreement states and –
>
> COURT: That's precisely my point. I have to construe the terms and conditions of the service agreement and come to a decision as to whether it is a service agreement or was it a tenancy agreement. If it is a service agreement, the fundamental question that I need to address is what is the service? The only service I can see is to allow the plaintiff to store their assets and you confirmed that that is the only service provided. If that is the only service, are you not corrupting the word "service"? There is no service whatsoever. It is just to allow the plaintiff to put the assets there.

45 Be that as it may, the evidence and the witness' testimony adduced at trial support my finding that the Service Agreement was, in substance, a tenancy agreement.

46 The starting point is to note that the plaintiff would not know whether the Premises was leased to them legally or otherwise. This is because the plaintiff was given the impression that the defendant was the landlord in the LOI. The defendant was described categorically as the landlord in the LOI and Mr Keh, in his personal capacity, was not a party in the LOI. The cover page of the Service Agreement refers to the defendant and the plaintiff as parties to the Service Agreement. Similarly, Mr Keh was not a party to the Service Agreement. Mr Keh signed the Service Agreement on behalf of the then-named

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97 Transcript (22 July 2022) at pp 42 line 18 to 43 line 10.

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defendant, Hup Eng. This is consistent with Ms Tay's answers given in court during her cross-examination. Specifically, Ms Tay was questioned by counsel for the defendant (Ms Lim) on why she inserted Mr Keh's name as the landlord of the Premises instead of the defendant's when she submitted the plaintiff's application for rental relief to the Ministry of Law. In response, she said that Mr Keh represented the defendant in signing the Service Agreement:[98]

> MS LIM: Yes, my question is, Ms Tay, based on this rental detail form, *plaintiff had always known that the landlord is Keh Eng Hong*; correct?
>
> A. *No, from my understanding Keh is represent defendants*, so when I see the landlord's name, so he -- the one I fill is the name.
>
> [emphasis added]

Therefore, from the plaintiff's perspective, it is clear that the plaintiff viewed the defendant as its landlord and Mr Keh as the defendant's representative.

47 Further, Mr Lau had given inconsistent evidence during cross-examination by counsel for the plaintiff (Mr Loh) as to whether the Service Agreement was a tenancy agreement. Initially, Mr Lau admitted that the plaintiff was paying "rental" and stated *multiple times* that the Service Fees and rental fees were one and the same:[99]

> A. Yes, even though it's meant for storing, it is -- *it is still considered renting* because *they need to pay rental*, they need to pay money.
>
> Q. Okay. So, Mr Lau, you just told the court that Chiap Seng needs to pay rental; correct?
>
> A. *Service fee, rental is the same.*
>
> Q. It's the same?

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98 Transcript (24 May 2022) at p 9 lines 1–6.

99 Transcript (24 May 2022) at p 89 line 16 to p 90 line 9.

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A. It's all money.

Q. Mr Lau, please be careful. Rental and service fee are different things. I will ask you one last time. Chiap Seng paid rental or Chiap Seng paid a service fee?

A. Service fee.

Q. Okay then.

A. *It's the same, it's all money.*

Q. Beg your pardon?

A. *It's the same, it's all money.*

COURT: What?

A. *It's the same, your Honour, it's all money.*

[emphasis added]

48 However, he later changed his evidence that the Service Agreement was not a tenancy agreement:[100]

COURT: … when you receive a letter from JTC stating about the subletting -- before I go into that, I am not sure of your evidence when you were asked about the service agreement. You mentioned something like service agreement, tenancy agreement also the same, payment of money. Is that how you understand it to be?

A. *For service it is only temporary*, they must complete -- service is only temporary and they must -- for the contract they must fulfil one year. Otherwise they have to pay for losses.

COURT: Tenancy is also the same, right, you can have a one-year tenancy, you can have a two-year tenancy, you can have a three-year tenancy?

A. Mr Keh said if we put the word "service", then we would not be fined.

…

COURT: So your thinking as far, Mr Lau, is whether it is a service agreement or a tenancy agreement, it is

100 Transcript (27 May 2022) at p 34 line 20 to p 38 line 19.

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	the same, because it's about payment of money. Is that correct? Your thinking.
A.	Mr Keh told me it was different.
COURT:	Mr Lau, did I ask you what is Mr Keh's thinking?
A.	But to me it is also different, to my mind.
COURT:	Yes, but why did you tell the court a few days ago that tenancy agreement or service agreement is the same? You pay money.
…	
COURT:	So, Mr Lau, now you are saying that service agreement is different from tenancy agreement?
A.	*Privately it's the same, but when we talk about the government, it's different.*
COURT:	Why? How do you know the government is different?
A.	Because it cannot be rented out. That was why we put "service".

[emphasis added]

49 From the above exchanges, it is clear that Mr Lau vacillated repeatedly in his evidence on the central issue of this Suit: were the parties in a landlord-tenant relationship? Mr Lau accepted that the Service Agreement and a tenancy agreement were one and the same where it suited him, *ie*, as the defendant would get paid either way. However, Mr Lau adamantly denied that the Service Agreement and a tenancy agreement were the same where it would disadvantage the defendant, *ie*, where it would mean the defendant was in breach of its main lease agreement with its landlord, JTC. Mr Lau's inconsistent evidence on this central and critical issue was plainly unsatisfactory.

50 It can be inferred from the evidence that Mr Lau accepted that there was a tenancy agreement. Although the contract was termed as the Service Agreement, in reality, it was in fact a tenancy agreement. The defendant thought that by calling it a Service Agreement instead of a tenancy agreement, it could

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overcome JTC's prohibition against subletting the Premises without approval from JTC. However, it is clear from the language of the LOI that the plaintiff and the defendant were tenant and landlord respectively. The characterisation of the agreement as a Service Agreement was simply to conceal from JTC that the defendant was subletting to the plaintiff without JTC's approval. I shall elaborate on this below.

Was the defendant the tenant of JTC?

(1) The defendant's arguments

51 The defendant argues that it was not JTC's tenant of the Premises[101] and, therefore, had no authority to grant a lease or licence to the plaintiff for the plaintiff's use of the Service Area.[102] Accordingly, the Service Agreement is not a lease agreement.[103] The defendant's case is three-fold.

52 First, the defendant avers that the joint tenants of the Premises were Mr Keh and his wife, Mdm Tan Chwee Gnoh ("Mdm Tan").[104] Mr Keh and Mdm Tan are also reflected as joint tenants of the Premises in the Singapore Titles Automated Registration System ("STARS").[105] The title search on the Premises, which the defendant relies on, reads as follows:[106]

Lot Number	: MK22-3510T
Property Address	: 33 DEFU LANE 6 SINGAPORE 539381

101 Transcript (20 May 2022) at p 79 lines 3–4.

102 DCS at para 10.

103 Transcript (20 May 2022) at p 107 lines 6–12.

104 Defence (Amendment No. 4) ("Defence") at para 19R(a).

105 Bundle of Exhibits Admitted During Trial at D1, p 4.

106 Bundle of Exhibits Admitted During Trial at D1, p 1 and p 4.

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Lot Area	: 3600.0 SqM
Final Plan	: CP 18659
	CP 20011
Approved On	: 05/07/1982

CT (SUB) VOL 479 FOL 76

Private Leasehold Details

Land Tenure	: LEASEHOLD ESTATE
Lease Duration	: 30 Years
Commencement Date	: 01/12/1978
Instrument	: LEASE I/18433E
	VARIED VIDE I/32901M

…

=========== PARTICULARS OF PROPRIETOR AND ADDRESS ===========

JOINT TENANTS

ID No	: S[xxxxx]31H
Name	: KEH ENG HONG
Address	: [address redacted]
	Noted vide TOTAL DISCHARGE OF MORTGAGE I/88582P Registered on 27/06/2001
Citizen of /	: SINGAPORE
Place Incorpd	
Instrument	: LEASE I/18433E Registered on 24/08/1988

ID No	: S[xxxxx]49B

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Name	: TAN CHWEE GNOH
Address	: [address redacted] Noted vide TOTAL DISCHARGE OF MORTGAGE I/88582P Registered on 27/06/2001
Citizen of / Place Incorpd	: SINGAPORE
Instrument	: LEASE I/18433E Registered on 24/08/1988

53 On the face of the title search on the Premises, it states that Mr Keh and Mdm Tan held the Premises as joint tenants and were the registered proprietors of the Premises. Counsel for the defendant emphasised in her closing submissions that this status, *ie*, that Mr Keh and Mdm Tan were the registered proprietors of the Premises, has remained unchanged since 2001 to date.

54 The defendant, thus, argues that, according to s 164(3) of the Land Titles Act 1993 (2020 Rev Ed) ("LTA"), the STARS title search constitutes *prima facie* evidence that, as between 27 June 2001 and 23 May 2022, it was Mr Keh and Mdm Tan, and not the defendant, who were the registered proprietors of the Premises.[107]

55 Therefore, since November 2019, the plaintiff must have known that the defendant was not the landlord of the Premises and that accordingly, the defendant could not grant a tenancy or licence for the Premises.[108] The defendant also argues that the plaintiff was aware that Mr Keh was the true owner of the Premises and not the defendant, as the plaintiff had stated the landlord of the

107 DCS at paras 22–25.

108 Transcript (24 May 2022) at p 11 lines 1–6.

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Premises to be "Keh Eng Hong" when it submitted its rental details form to the Ministry of Law for rental relief.[109]

56 Second, the defendant argues that since the STARS title search shows Mr Keh and Mdm Tan to be the registered proprietors of the Premises, it follows that there could not have been an assignment of a valid leasehold interest to the defendant. Accordingly, the defendant would not have been able to grant a lease or licence to the plaintiff.[110]

57 In support of its case that the assignment of the leasehold for the Premises was invalid, the defendant, during the trial, introduced email correspondence between the defendant's solicitors and JTC, along with other signed documents between the defendant and JTC. These documents are as follows:

(a) JTC's Offer of Lease Extension to "Hup Eng Wooden Case Co" dated 4 December 2018 for the period 1 December 2018 to 30 November 2023;[111]

(b) JTC's consent to the proposed assignment of the lease from Hup Eng Wooden Case Co to the defendant dated 25 January 2019;[112] and

(c) the acceptance of terms of the assignment of lease dated 28 January 2019 that was executed by Mr Keh and a "Keh Woon

109 Bundle of Exhibits Admitted During Trial at P1, p 13.

110 DCS at paras 28–31.

111 Bundle of Exhibits Admitted During Trial at D5, pp 15–20.

112 Bundle of Exhibits Admitted During Trial at D5, pp 5–10.

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Ping" as assignors[113] and the defendant as an assignee ("the Assignment Acceptance").[114]

58 The defendant refers to the STARS title search and submits that Mr Keh and Mdm Tan were listed as the Premises' joint tenants (see [53] above). The defendant contrasts this to the documentary evidence, which shows that Mr Keh and Keh Woon Ping were the ones who executed the assignment to the defendant.[115] Keh Woon Ping was not a registered proprietor of the Premises as shown in the STARS title search. Accordingly, the defendant argues that the purported assignment by Mr Keh and Keh Woon Ping to the defendant is "ineffective and legally impossible to pass any proprietary rights to the defendant".[116]

59 Finally, and following from the argument that there was no proper assignment of any proprietary rights in the Premises to the defendant, the defendant argues that the agreement between the parties can only be a mere contract for the provision of storage services on the Premises, and not a lease or licence for the use of the Premises. In support of this proposition, the defendant refers the Court to Vinodh Coomaraswamy J's observations in the High Court decision of *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 ("*Ritzland*") at [63] which states as follows:

> The fact that a putative landlord does not have any or any sufficient proprietary right out of which he can carve and convey a valid leasehold interest to a putative lessee affects only the *proprietary* right which ought to arise under the lease. It does not affect the parties' *contractual* rights. ***Therefore a lack***

113 Bundle of Exhibits Admitted During Trial at D5, at p 11.

114 Bundle of Exhibits Admitted During Trial at D5, at p 12.

115 DCS at paras 27–31; DRS at paras 13–17.

116 DCS at paras 29–31.

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> ***of sufficient title may prevent the parties from having a lease.*** But it will not prevent the parties from having a *contract*. For the defendant to succeed in showing that the parties did not have a *contract*, the defendant must establish one of the vitiating factors under the law of contract.
>
> [emphasis in original in italics; emphasis added in bold italics]

60 According to the defendant, the proposition laid down by Coomaraswamy J in *Ritzland* is that there is a difference between a mere contract conferring only personal rights that may appear to be in the character of a lease or licence, and an actual lease or licence that was granted by the proper owner of the land which may confer proprietary rights.[117] Indeed, counsel for the defendant emphasised, in her oral closing submissions, the distinction which Coomaraswamy J drew in *Ritzland* between a contractual right and a proprietary right.[118] This distinction, in her submissions, means that if the defendant was not the actual owner of the Premises, it could not have granted any leasehold interest to the plaintiff.[119] It also follows that the defendant could also not have permitted the plaintiff to use the Premises under a licence. She says, however, that this would not preclude the parties' contractual rights under the tenancy agreement from being recognised and enforced.[120]

(2) The plaintiff's arguments

61 The plaintiff submits that the documentary evidence shows that the defendant was, at all times, a tenant of JTC.[121] In particular, counsel for the plaintiff clarified in his closing remarks that the STARS title search is irrelevant.

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117 DCS at para 17.

118 Transcript (22 July 2022) at p 42 lines 2–4.

119 Transcript (22 July 2022) at p 57 lines 20–25.

120 DCS at para 18.

121 PCS at para 14; PRS at para 30.

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This is because the lease as indicated on the STARS title search was for 30 years, and since the lease was recorded to have commenced on 1 December 1978, it would have expired on 1 December 2008. Further, the defendant had renewed the lease agreement with JTC.[122] The plaintiff further argues that, if indeed the defendant is not a tenant of JTC in respect of the premises, then JTC would not have offered the defendant an extension of the lease from 1 December 2018 to 30 November 2023.[123] The fact that the defendant continued to pay rent to JTC amounting to around $16,000, in the plaintiff's submission, strengthens the view that the defendant was a tenant of JTC.[124] Finally, counsel for the plaintiff stressed in his oral closing submissions that the defendant has admitted, in its first set of unamended pleadings, that JTC was the landlord and it was the lessee.[125]

62 Counsel for the plaintiff also made the point in his oral closing submissions that there was an evidential gap between December 2008 when the initial lease recorded on the STARS title search ended and December 2018 when JTC offered the defendant an extension of the lease. He submits that if the defendant seeks to maintain its position that Mr Keh and Mdm Tan remained JTC's tenants in respect of the Premises, the onus is on them to adduce documentary evidence stating as such. In the absence of this, counsel for the plaintiff submits that the defendant's position should not be accepted.[126]

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122 Transcript (22 July 2022) at pp 4 lines 14–21.

123 PRS at para 34.

124 PRS at paras 40–42.

125 Transcript (22 July 2022) at pp 16 lines 10–17.

126 Transcript (22 July 2022) at p 17 line 10 to p 22 line 8.

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63 Accordingly, the plaintiff submits that the defendant continues to maintain a proprietary interest in respect of the Premises, out of which it could carve a sublease to be granted to the plaintiff. In so far as the decision of *Ritzland* is concerned, I understood counsel for the plaintiff as making the submission that Coomaraswamy J's observations which I have stated at [59] above, are *obiter* in nature. This is because *Ritzland* concerned an application for summary judgment and the simple issue was whether the defendant in that case had showed that it had raised a triable issue, such that unconditional leave ought to be granted to the defendant in that case to proceed to trial.[127]

(3) The defendant has a valid proprietary interest

64 The arguments raised above by the defendant, in so far as they rely entirely on the STARS title search to show that Mr Keh and Mdm Tan were the lessees of the Premises *vis-a-vis* JTC in 2019, are completely misconceived. This last-minute defence is decisively rebutted by the contemporaneous evidence. It is clear on the face of the evidence that the defendant was indeed JTC's tenant of the Premises. Accordingly, the defendant possessed a proprietary right in respect of the Premises which it could carve out or sublease to the plaintiff. Thus, the defendant cannot rely on *Ritzland* to argue that there was no lease or licence as it lacked the ability to grant a lease or licence.

65 At the outset, I reproduce s 164(3) of the LTA, which reads as follows:

> **Certified copies: Value as evidence**
>
> **164**.— …
>
> …
>
> (3) A print-out of any information (other than computer folios) stored in a computer in the Land Titles Registry issued by the

[127] Transcript (22 July 2022) at p 61 line 20 to p 62 line 15.

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> Registrar and bearing a facsimile of the Registrar's seal shall be received in evidence in any court, or before any person having authority by law or by consent of parties to receive evidence, *as prima facie proof of all the matters contained in or entered on any instrument filed in the Land Titles Registry.*
>
> …
>
> [emphasis added]

66 I note that while s 164(3) of the LTA states that such Land Titles Registry searches constitute "*prima facie* proof of all matters contained in or entered on any instrument" [emphasis added], that is all it is – *prima facie* proof. Nothing in s 164(3) of the LTA states that the information contained in such instruments is final, conclusive or irrebuttable. I accept that the matters contained in such Land Titles Registry searches may be rebutted if the evidence available before the Court shows otherwise. Therefore, even though the STARS title searches may constitute *prima facie* proof that legal interest in the Premises vested in Mr Keh and Mdm Tan, this may be rebutted by the evidence available before the Court. The objective contemporaneous evidence *and* the in-court testimony of the defendant's sole witness, Mr Lau, contradicts the information as stated in the land titles searches on the Premises shown in STARS, *ie*, that Mr Keh and Mdm Tan were the registered lease proprietors of the Premises.

67 The land titles searches on the Premises as shown in STARS state that the lease duration of the Premises granted by JTC to Mr Keh and Mdm Tan is for a period of 30 years. The lease commenced on 1 December 1978 and thus would have expired on 1 December 2008. Hence, it is erroneous and misleading for the defendant to submit that this STARS title search on the Premises indicates that Mr Keh and Mdm Tan were still the lessees (*vis-à-vis* JTC) of the Premises in 2019 when the plaintiff and the defendant entered into the Service Agreement. Unfortunately, the defendant fails to raise this important point in its

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written submissions – that the STARS title search is silent as to whether Mr Keh and Mdm Tan were still the lessees of JTC in 2019.

68 The defendant's reliance on the 30-year lease which expired in 2008 is therefore completely irrelevant to this case. There is clearly an evidentiary gap in the STARS title search as to the lease status of the Premises with JTC between 2 December 2008 and 2019. In fact, the other objective contemporaneous evidence clearly indicates that JTC had leased the Premises to the defendant in 2019.

69 First, the main lease with JTC as attached to the STARS title search defined Hup Eng Wooden Cases Company as the lessee.[128] It is not disputed that Hup Eng Wooden Cases Company was the previous lessee of the Premises before the assignment of the lease to the defendant. In any event, this put to rest the defendant's claim that Mr Keh and Mdm Tan were joint tenants and that Hup Eng Wooden Cases Company, and hence the defendant, had no legal interest in the Premises to sublet. On the contrary, the evidence shows that Hup Eng Wooden Cases Company, as the lessee of the Premises, had sufficient proprietary interest in the Premises. When Hup Eng Wooden Cases Company assigned the lease to the defendant[129] under its previous name, Hup Eng Wooden Cases Company's proprietary interest in the Premises would likewise have been assigned to the defendant. Second, the defendant admitted that it leased the Premises to the plaintiff. The defendant's previous solicitors informed the plaintiff in the 3rd LOD and the 4th LOD that "the *lease* of the Premises to to [*sic*] [the plaintiff] is without approval" [emphasis added].[130] Third, in the

128 Bundle of Exhibits Admitted During Trial at D4, p 7.

129 Bundle of Exhibits Admitted During Trial at D4, pp 12–13.

130 ABOD at pp 49–50.

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Notice of Cash Grant, IRAS stated "the property owner" of the Premises to be the defendant and the defendant's subtenant as the plaintiff.[131] These went uncorrected and unchallenged by the defendant.[132] I shall elaborate further on the Notice of Cash Grant at [93]–[97] below. Fourth, the defendant's company stamp, which bore its then-name Hup Eng, is affixed next to Mr Keh's signature in the LOI.[133] This shows that Mr Keh signed and entered into the LOI on behalf of the defendant. During the trial, counsel for the defendant also accepted that Mr Keh had entered into the Service Agreement "in the capacity of the defendant".[134] Fifth, the CHBC Letter is addressed to the "Managing Director" of *the defendant* and refers to the Terms of Agreement of Lease signed between *the defendant* and JTC.[135] The CHBC letter was not addressed to Mr Keh and Mdm Tan. Hence, JTC leased the Premises to the defendant and not Mr Keh and Mdm Tan. Mr Lau does not dispute this.[136]

70 In fact, during cross-examination by counsel for the plaintiff (Mr Loh), Mr Lau confirmed that the defendant is the tenant of the Premises as it had leased the Premises from JTC:[137]

> MR LOH: ... Is it your evidence that from November 2019 to September 2020 Newspaper Seng is not the tenant of 33 Defu Lane 6 from JTC?
>
> A. We are the tenant. If not, how could we operate?
>
> Q. I see, so you confirm that Newspaper Seng is the tenant from JTC of 33 Defu Lane 6?

131 ABOD at p 82–87.

132 Transcript (25 May 2022) at p 44 lines 19–21.

133 ABOD at p 2.

134 Transcript (20 May 2022) at p 103 lines 23–25.

135 ABOD at p 44.

136 Transcript (24 May 2022) at p 52 line 13.

137 Transcript (24 May 2022) at p 52 lines 10–16.

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A. Yes, correct.

71 Mr Lau then changed his evidence and averred that Mr Keh was the tenant or "owner" in his words and had allowed the defendant to use the Premises:[138]

Q.	Okay then, I will give you an opportunity. So regarding Mr Keh, what is Mr Keh regarding 33 Defu Lane 6, owner, tenant, sub-tenant, what?
A.	He is the owner.
Q.	He is the owner?
A.	Yes, he and his wife are the owners.
Q.	I see.
COURT:	Owner of what?
A.	Owners of 33 Defu Lane 6 your Honour.
MR LOH:	Okay, just for the record, can I confirm, according to you Mr and Mrs Keh are the owners, your words, of 33 Defu Lane 6, that's what you say, correct?
A.	Yes.
Q.	And you also say that Newspaper Seng is the tenant from JTC regarding 33 Defu Lane 6 as well; correct?
A.	So Mr Keh, who is the owner, allowed the then Hup Eng, which is the now Newspaper Seng, to use this space.
COURT:	Sorry?
A.	Mr Keh, who is the owner, allowed the then Hup Eng who, which is the now Newspaper Seng, to use this space, your Honour. There was just a change of name.
…	
MR LOH:	… Mr Lau, who is the landlord of Newspaper Seng?

[138] Transcript (24 May 2022) at p 52 line 17 to p 56 line 21.

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COURT: Mr Lau, listen to the question, the question is a very simple question. Who is the landlord of 33 Defu Lane 6?

A. Mr Keh, your Honour.

72 However, when questioned further, Mr Lau admitted that the defendant had "illegally sublet" the Premises to the plaintiff:[139]

Q. … Now, my next question is this: if you didn't write to JTC to explain about your legal action if you started, how do you know that JTC will reject?

A. I've used JTC's land for 40-plus years. Every time we were late in paying, they will call and kick up a fuss. How could Newspaper Seng still write an appeal letter to JTC *when Newspaper Seng had illegally -- Newspaper Seng had sublet to Chiap Seng?*

Q. So you admit Newspaper Seng sublet to Chiap Seng, yes?

A. This is wrong.

Q. I know it may be wrong, that's not my question. You admit Newspaper Seng sublet to Chiap Seng, "yes" or "no"?

A. No.

Q. Okay, my next question. *You had illegally sublet to Chiap Seng, "yes" or "no"?*

A. *Yes, the previous director illegally sublet to Chiap Seng.*

Q. Legal or illegal, Mr Lau, it's still subletting, is that your evidence?

A. We were not allowed to, that was why JTC kicked up a fuss.

Q. All right, but you did use the word "sublet"; correct?

A. (No interpretation).

139 Transcript (25 May 2022) at p 91 line 24 to p 93 line 8.

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Q.	No, Mr Lau, my question is, you are using the word "sublet"; correct?
A.	(No interpretation).
Q.	No, Mr Lau, my question is, you used the word to Mr Interpreter being "sublet"; correct?
A.	I said was not allowed to lease or were not allowed to rent out this land.

[emphasis added]

73 In my view, Mr Lau's responses in cross-examination are germane. First, Mr Lau confirms that the defendant is the tenant, *vis-a-vis* JTC, of the Premises. Second, and more pertinently, Mr Lau's Freudian slip discloses the defendant's true knowledge that it was not allowed to sublet without the approval of JTC. Implicit in this is the admission that the defendant is a lessee of the Premises with respect to JTC. If this were otherwise, and if indeed the defendant does not have a valid lease, Mr Lau would not have acknowledged that the subletting of the Premises to the plaintiff without JTC's approval was illegal. This showed that Mr Lau understood that the substance of the plaintiff's and the defendant's relationship was one of a landlord and tenant. It follows, therefore, that the defendant must have a valid proprietary interest. His inconsistent and feeble attempts to refute this were futile.

74 From the above, it is clear that the defendant had rented the Premises from JTC and, therefore, had a proprietary interest when it sublet a portion of the Premises to the plaintiff. Indeed, even in her oral closing submissions, the counsel for the defendant was unable to refer to any objective or reliable documentary evidence to show that the leasehold interest remained with Mr Keh and Mdm Tan in 2019. Yet the defendant urges the Court to draw the inference

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that Mr Keh and Mdm Tan were the lessees of the Premises in 2019 and not the defendant. The evidence is totally against the drawing of this inference.[140]

75 I now refer to the defendant's argument on the invalidity of the assignment of the leasehold interest to the defendant. I emphasise that the defendant's argument on the invalidity of the assignment is premised entirely on the leasehold interest remaining with Mr Keh and Mdm Tan, such that the Assignment Acceptance which was executed by Mr Keh and Keh Woon Ping would be defective as only Mr Keh and Mdm Tan could have executed the assignment.

76 I shall begin by reiterating, as I held above at [65], that the STARS title search only constitutes *prima facie* proof as to title. Given that the defendant had rented the Premises from JTC and in the absence of any evidence that the leasehold interest remained with Mr Keh and Mdm Tan after 2008, the assignment was not defective. On the contrary, my finding that the assignment was valid is fortified for the following reasons.

77 First, JTC had, in a letter dated 4 December 2018, offered to extend the lease of the Premises from 1 December 2018 to 30 November 2023 to Hup Eng Wooden Cases Company, prior to the assignment to the defendant in January 2019.[141] The defendant, Hup Eng Wooden Cases Company and JTC subsequently discussed, and eventually secured an assignment of the leasehold interest to the defendant as evidenced by the Assignment Acceptance.[142] This showed that the offer for the extension of the lease for the Premises was

140 Transcript (22 July 2022) at pp 45 line 8 to 46 line 25.

141 Exhibit D5 at p 15.

142 Exhibit D5 at p 12.

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accepted. Indeed, Hup Eng Wooden Cases Company must have had extended its lease with JTC, before JTC would agree to the assignment. Second, the Assignment Acceptance specifically states that Mr Keh and Keh Woon Ping executed the Assignment Acceptance in their capacity as directors, "[f]or and on behalf of" the defendant as the assignee, and in their capacity as partners for Hup Eng Wooden Cases Company as the assignor.[143] Further, it is crucial to note that JTC had in fact agreed to the assignment of the lease.[144] This would not have been the case if the leasehold interest which JTC has granted was defective. Third, the fact that the CHBC Letter is addressed to the "Managing Director" of *the defendant* and refers to the Terms of Agreement of Lease signed between *the defendant* and JTC supports the view that there was a proper assignment of the leasehold interest to the defendant. Finally, the fact remains that the defendant paid JTC a rent of $16,000 per month for the lease of the Premises for the year of 2020, as Mr Lau confirmed in cross-examination.[145] This would not have been the case, if the defendant genuinely believed that it did not have any proprietary interest. Indeed, counsel for the defendant could not offer any satisfactory response when queried on this point.[146]

78 The evidence, therefore, shows that there was a valid assignment of the leasehold interest of the Premises to the defendant. I cannot accept the defendant's suggestion that the Court should infer that there was a defective proprietary right arising from the allegedly defective assignment.

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143 Exhibit D5 at pp 11–12.

144 Exhibit D5 at p 5.

145 Transcript (27 May 2022) at p 41 line 2 to 8.

146 Transcript (22 July 2022) at pp 47 line 1 to 49 line 25.

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79 Finally, I do not accept that the High Court's decision in *Ritzland* supports the defendant's case. In that case, the plaintiff had leased a plot of land from the head lessor for a period of three years, with an expectation that it would be able to renew the master lease for two more consecutive terms of three years each. The plaintiff duly renewed the master lease for two subsequent terms for a total of nine years. The second master lease that the plaintiff executed was for the term of January 2011 to January 2014. During the tenure of the second master lease, on February 2012, the plaintiff and the defendant entered into a sublease for the premises for a duration of 1 April 2012 to 31 March 2015. Crucially, this sublease extended beyond the tenure of the plaintiff's second master lease. The plaintiff brought a summary judgment action against the defendant for unpaid arrears. In resisting the plaintiff's summary judgment action, the defendant raised several possible defences, one of which was that the sublease was "bad in law" as the plaintiff "did not have a leasehold title to [the premises] out of which it could carve the sublease granted to the defendant [over the premises]" (*Ritzland* at [59]).

80 Coomaraswamy J dismissed part of the summary judgment application on the basis that the defendant was able to show the existence of triable issues owing to some of the defences raised (*Ritzland* at [8]). However, in so far as the defendant's defence was that the plaintiff did not have a valid leasehold out of which it could carve the sublease to the defendant, Coomaraswamy J rejected this defence. The master lease was not defective, nor did it impose any restriction on the duration for which a sublease could be granted (*Ritzland* at [60]–[61]).

81 Similarly in the present case, given that the defendant had a valid proprietary interest out of which it could carve a sublease for the plaintiff, I do not think that the defendant has a lack of sufficient title. Accordingly,

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Coomaraswamy J's observations at [63] of *Ritzland* would not apply to the present case.

82 In any event, I observe that it may be possible for the facts of the present case to accommodate a tenancy by estoppel. In *Ritzland*, Coomaraswamy J, rendered the following observations on the doctrine of tenancy by estoppel at [67] and [68] as such:

> 67 [Section 118(1) of the Evidence Act (Cap 97, 1997 Rev Ed)] gives effect to one half of the doctrine of tenancy by estoppel at common law. Furthermore, it enacts that half of the doctrine as it was understood at the time of its enactment in 1893. The full doctrine of tenancy by estoppel is bilateral: applying both to the landlord and the tenant. Wee Chong Jin J (as he then was) put the doctrine in this way in *Methani v Perianayagam* [1961] 1 MLJ 5, relying on English common law:
>
>> The doctrine is that a tenant may not question his landlord's title and, conversely, that a landlord having by his offer of a tenancy induced a tenant to enter into (or remain in) occupation and to pay rent, cannot deny the validity of the tenancy by alleging his own want of title to create it (see Harman J delivering the judgment of the Court of Appeal in *EH Lewis & Son Ltd v Morelli* [1948] 2 All ER 1023 at p 1024).
>
> 68 The principles underlying tenancy by estoppel are summarised by the learned authors of Tan Sook Yee, Tang Hang Wu and Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) ("*Principles of Singapore Land Law*") at para 17.23 as follows:
>
>> The principle of estoppel as it applies in this context is that it precludes a person who has held out that a certain state of facts exists, thereby inducing the other party to act on this to his detriment, from denying the truth of the state of facts. In the context of landlord and tenant relationship, it means that a landlord, who may in fact have no title or estate that would support the lease he had purported to grant, is precluded from denying that he had such a right. Likewise, the tenant in such a case, provided his possession is undisturbed, is precluded from denying that the landlord has the title to create the tenancy. The estoppel arises either by deed or by the landlord's [unambiguous] representation as to his title which the tenant relies upon when he takes the

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> lease. Thus, where the parties accept that there is a landlord and tenant relationship between them even though the landlord may not have the interest to generate the tenancy, a tenancy by estoppel arises …

83 Coomaraswamy J also observed that the common law doctrine of tenancy by estoppel is consistent with s 118(1) of the Evidence Act 1893 (2020 Rev Ed) ("EA"), and that both operate in tandem (at [65] and [89]):

> 65 In any event, I accept the plaintiff's submission that the defendant is estopped from denying the plaintiff's leasehold title to 231 Mountbatten Road. For this submission, the plaintiff relied on s 118(1) of the Evidence Act (Cap 97, 1997 Rev Ed). That section provides that a tenant is estopped during the continuance of a tenancy from denying that the landlord had title to the immovable property at the beginning of the tenancy. I set out s 118 in full:
>
>> **Estoppel of tenant and of licensee of person in possession**
>>
>> **118.**—(1) No tenant of immovable property, or person claiming through such tenant, shall *during the continuance of the tenancy* be permitted to deny that the landlord of the tenant had at the beginning of the tenancy a title to the immovable property.
>>
>> [emphasis added]
>
> …
>
> 89 On that view, s 118(1) prescribes a rule of evidence which applies to a tenant during the continuance of the tenancy. That rule of evidence says nothing about any estoppel which may or may not apply to a tenant after the determination of the tenancy, whether by effluxion of time or otherwise. Section 118(1) is not, on that view, inconsistent with the common law rule which provides that the estoppel "continues to operate and bind the parties even after the term has ended except where the tenant is dispossessed by a third party with a superior title to his landlord" (per Belinda Ang Saw Ean J in *Thode Gerd Walter v Mintwell Industry Pte Ltd* [2009] SGHC 44 at [10]). Indeed, on this view, the common law rule of evidence complements s 118(1) rather than contradicting it. The result of taking this approach is that the same principle applies whether it is raised against a landlord or a tenant, whether it arises out of court or in the context of litigation and whether it arises in *viva voce* evidence at trial or in affidavit.

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84 Applying s 118(1) of the EA, Coomaraswamy J found that the defendant in *Ritzland* was precluded from denying the plaintiff's title to the demised premises (at [90]–[91]).

85 In the present case, given my findings above in relation to (a) the manner in which the defendant had given the plaintiff the impression that the defendant had the requisite leasehold interest (at [43]–[46] above); and (b) the circumstances surrounding the assignment of the leasehold interest to the defendant (at [67]–[77] above), it is likely that the defence of tenancy by estoppel may be made out. However, counsel for the defendant had argued that this was not pleaded by the plaintiff.[147] Accordingly, I say no more on this point.

86 Lastly, I should also point out that the first time the defendant raised this point, *ie*, that it is not the tenant of the Premises *vis-à-vis* JTC and had no authority to lease out the Premises, was at the start of the trial. The defendant did not raise this point in its pleadings filed before trial, or at any other time since the Suit was commenced in late 2020. Counsel for the defendant sought to argue that this point was raised in response to the plaintiff's late amendments to its Statement of Claim on the eve of the trial.[148] However, this claim is patently incongruous with the substance of the defence and the defendant's admissions in the latest version of its Defence (Amendment No. 4). I shall now elaborate. The defendant's argument that it is not the tenant of the Premises in the first place would go to the heart of its defence against the plaintiff's claim for wrongful disposal of the Assets. If this was indeed the true state of affairs, the defendant would have raised it at the first opportunity and not during the trial itself. Further, the defendant admits to the following:

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147 Transcript (22 July 2022) at p 53 lines 8–11.

148 Transcript (24 May 2022) at p 57 lines 19–25.

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(a) In the latest version of its Defence (Amendment No. 4), the defendant admits to being "the [p]laintiff's direct landlord of the Premises".[149]

(b) In the defendant's Opening Statement, the defendant admitted that it "was at the material time the tenant of the Premises and the master landlord of the tenant was Jurong Town Council [*sic*]".[150]

(c) In the 2nd Agreed Statement of Facts, the parties acknowledge that the LOI described the defendant and the plaintiff as landlord and tenant respectively.[151]

87 It was also not put to Mr Heng when he took the stand whether he was aware the defendant did not have a legal interest in the Premises and/or that the defendant had no authority to lease out the Premises.[152]

88 If the defendant now claims that it did not have the proprietary interest to sublet the Service Area to the plaintiff, why did it represent to the plaintiff and its own ERA housing agent that it had the proprietary interest in 2019 to sublet the Service Area? Furthermore, the defendant signed the LOI and the Service Agreement, which was in reality a tenancy agreement, with the plaintiff.

89 In these circumstances, the defendant's attempt to deny that it was the landlord of the Premises (*vis-à-vis* the plaintiff) and the tenant of the Premises (*vis-à-vis* JTC) is factually unsustainable. On the contrary, I find that for all

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149 Defence at para 9; SOC at para 9.

150 DOS at para 5.

151 2nd Agreed Statement of Facts at p 1 para 1.

152 Transcript (24 May 2022) at p 16 line 22 to p 17 line 17.

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intents and purposes, the defendant conveyed to the plaintiff that it had the authority to lease a portion of the Premises to the plaintiff on payment of a monthly rental.

The IRAS' determination

90 The defendant's argument that the Service Agreement was not a tenancy agreement is decisively rebutted by IRAS's determination that the Service Agreement was a tenancy agreement.

91 First, on 2 October 2020, the plaintiff applied for a determination by the Registrar of Assessors that it was entitled to a waiver of two months' rental fees under the COVID-19 Act. Ms Tay, the plaintiff's employee in charge of the accounts, made the application to IRAS and she submitted the LOI as a supporting document. IRAS requested the plaintiff to submit the Service Agreement for its consideration. The Service Agreement was accordingly sent to IRAS. On 1 December 2020, IRAS sent an email to the plaintiff. In that email IRAS considered the Service Agreement to be a tenancy agreement and required it to be stamped.[153] The relevant portions of the email read as follows:[154]

> We have noted that you had executed a tenancy agreement on 1/11/2019 to rent the property at 33 Defu Lane 6 from 1/11/2019 to 30/10/2020 at a rental of $9,000 per month.
>
> However, based on e-stamped records, we have noted the aforesaid tenancy agreement was not stamped.
>
> …
>
> For audit review purpose, please let us know reason for not stamping the tenancy agreement.

153 Bundle of Exhibits Admitted During Trial at P1, pp 9–10.

154 Bundle of Exhibits Admitted During Trial at P1, p 10.

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> Please do not proceed to stamp the tenancy agreement at your end as we have already commenced the audit on the non-stamping.
>
> Upon receiving the reason for non-stamping from you, we will review the case and inform you on the stamp duty and penalty amounts payable on the tenancy agreement.
>
> …
>
> [emphasis in original]

92 The plaintiff, however, had stamped the LOI which indicated the tenancy was for 24 months. Thus, the plaintiff paid the stamp duty and penalty on the basis that it was for a lease for two years. The total payment came to $1,996.[155] Subsequently, the plaintiff realised that it had overpaid the stamp duty as the rental term was only for a period of 12 months as reflected in the Service Agreement.[156] Ms Tay testified that on 8 April 2021, the plaintiff forwarded the Service Agreement to IRAS and received a refund of one year's stamp duty fees.[157] The email from IRAS at [91] clearly shows that IRAS accepted the Service Agreement to be a valid tenancy agreement.

93 Second, on 18 February 2021, IRAS sent the Notice of Cash Grant to the defendant. The Notice of Cash Grant confirmed that:[158]

(a) the defendant would receive a cash grant of $5,760 which would be credited to the defendant by 19 February 2021; and

(b) up to two months of the defendant's subtenants' rent must be waived in accordance with the COVID-19 Act.

155 SOC at paras 92A–92C; PBOD at p 2.

156 ABOD at p 4.

157 Transcript (24 May 2022) at p 24 lines 12–25, p 26 line 19 to p 27 line 17.

158 ABOD at p 82.

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94 Annex 1 of the Notice of Cash Grant explicitly named the plaintiff as the "Eligible Tenants/Sub-Tenants for Rental Waiver of Up to 2 months".[159] The defendant accepted the Notice of Cash Grant and did not write to IRAS to correct this or to reject the cash grant.[160] That being the case, the defendant cannot now claim the Notice of Cash Grant identifying the plaintiff as an eligible tenant/subtenant to be erroneous.[161] That the Notice of Cash Grant expressly identifies the plaintiff as an eligible tenant/subtenant for rental waiver also decisively negates Mr Lau's claim that the cash grant was meant as a rebate for the rental payable *from the defendant to JTC*.[162] And crucially, the defendant's acceptance of the Notice of Cash Grant also cuts against its claim that the Service Agreement was merely a contract for *services*.

95 It is clear from the above that the Government authorities considered that the Service Agreement was a tenancy agreement and that accordingly, the plaintiff was protected under the COVID-19 Act. The defendant has not provided cogent reasons to raise doubts as to the findings of these authorities. In fact, Mr Lau testified that he accepted the findings of the authorities that the Service Agreement was a tenancy agreement. The COVID-19 Act was enacted to help entities like the plaintiff who had suffered significantly due to the restrictive measures implemented by the Government, which were aimed at protecting the people of Singapore from the contagious and deadly coronavirus. Indeed, this was confirmed by the Minister for Law Mr K Shanmugam in his Speech when he introduced the COVID-19 Act for debate in Parliament (see

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159 ABOD at p 83.

160 Transcript (25 May 2022) at p 39 lines 6–13.

161 DCS at para 43.

162 Transcript (25 May 2022) at p 38 lines 4–11.

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Singapore Parliamentary Debates, Official Report (7 April 2020) vol 94 at col 130):

> Turning then to COVID-19, the Government has had to impose border constraints, direct most businesses to shut down, get their people to work from home, and if that is not possible, no work can be done. Imposing a whole variety of restrictions on travel and movement, these were not foreseeable. Their impact on the supply chain – many businesses could not procure the supplies they needed. The impact on flow of manpower – sectors that depended heavily on foreign manpower like construction were seriously affected.
>
> …
>
> The first category covered leases, licences of non-residential property. A tenant who seeks relief must show that he is unable to pay rent during the prescribed period and that the inability to pay is to a material extent caused by a COVID-19 event. If he can show, that then the lease or licence cannot be terminated on the basis that rent has not been paid; and legal proceedings cannot be commenced against tenants on the basis that rent has not been paid.
>
> This is help in real terms because the *tenants will get breathing space, to adjust their businesses, survive in the medium term: it is liquidity for them.* And these measures, of course, should be seen together with other measures that the Government and the financial industry have announced.
>
> [emphasis added]

96 When Mr Lau was asked during cross-examination whether he thought the Government authorities could have made a mistake in disbursing money to the defendant, he denied the possibility. However, when put on a spot, he claimed that the authorities were incorrect in naming the plaintiff as the defendant's subtenant:[163]

> Q. I put it to you the reason why Newspaper Seng Logistics Pte Ltd did not write a letter to IRAS after 18 February 2021 to clarify that Chiap Seng Productions Pte Ltd is not the sub-tenant was because Newspaper Seng accepted IRAS'

163 Transcript (25 May 2022) at p 47 line 1 to p 50 line 7.

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recognition of Chiap Seng as a tenant of Newspaper Seng. "Yes" or "no"?

A. Disagree.

Q. I put it to you that if you disagree, Newspaper Seng Logistics should have written a letter to IRAS to set the record straight about Chiap Seng Productions, yes? "Yes" or "no"?

A. If the lawyer had reminded us, we would have written to IRAS.

…

Q. So you do not need to write to IRAS to clarify, is that your answer?

A. (No interpretation).

Q. "Yes" or "no"?

A. Yes.

Q. So as far --

COURT: Sorry, "yes" what? "Yes" what?

A. Yes, we do not need to write to IRAS to clarify, your Honour. *Because the government wouldn't have made a mistake in disbursing the money.* …

…

A. Your Honour, Chiap Seng wrote to IRAS saying that they were occupying the premises and requesting the grant, only after their goods were auctioned off. Otherwise, they wouldn't have -- *IRAS wouldn't have made a mistake with the money*, it would have gone to Chiap Seng and not Newspaper Seng.

Q. I'll leave the rest for submissions, the record is clear. *You just said that the government cannot be wrong in paying the money to Newspaper Seng Logistics. My question to you, in the same way, the government cannot be wrong in describing Chiap Seng Productions as your sub-tenant for 2020. Yes?*

A. Because Chiap Seng --

Q. "Yes" or "no"?

A. *Disagree.*

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Q. So the government cannot make a mistake when it suits you. But the government can make a mistake when it doesn't suit you; is that correct?

A. No, that's not what I mean.

Q. I'll ask you again. You just said the government cannot make a mistake in paying Newspaper Seng Logistics the money in this letter, yes?

A. Yes.

Q. And this payment of the money from this letter is related to Chiap Seng Productions being a sub-tenant, in the letter, do you agree?

A. Disagree.

Q. So you are saying that the government was wrong or IRAS was wrong in referring to Chiap Seng Productions as a sub-tenant, is that your answer?

A. (No interpretation).

Q. No, "yes" or "no"?

A. No, it is not correct to refer to them as sub-tenant.

Q. I put it to you, Mr Lau, since you have not -- sorry, since Newspaper Seng has not written anything to the government or IRAS to tell them that page 82 is wrong, that you and/or Newspaper Seng has accepted the contents of this letter from IRAS as true, correct and accurate; "yes" or "no"?

A. It's an accounts mistake.

…

Q. So you did not pay attention to page 82, I put it to you that you are just giving the court a convenient answer to hide behind to explain why Newspaper Seng logically should have written a letter of objection to IRAS.

A. We didn't write a letter to IRAS.

[emphasis added]

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97 Mr Lau's attempt to cast aspersions on the accuracy of IRAS' determination speaks volumes. If the defendant did not view the plaintiff as its subtenant at the time of the Notice of Cash Grant on 18 February 2021, the logical reaction would have been to write to IRAS to clarify the error. This was not done. The evidence clearly weighs in favour of a finding that there was a tenancy agreement. The defendant's feeble attempt to deny this is implausible.

Exclusive possession

98 In *NTUC Foodfare Co-operative Ltd v SIA Engineering Co Ltd and another* [2018] 2 SLR 588, the Court of Appeal held at [33] that "the two distinctive features of exclusive possession are (i) the exclusory power of the occupier, and (ii) the occupier's immunity from supervisory control" (citing Tan Sook Yee, Tang Hang Wu & Kelvin F K Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) at para 17.38).

99 The defendant maintains that there was no tenancy agreement as the plaintiff did not have exclusive possession of the Service Area due to, *inter alia*, certain clauses in the Service Agreement, namely:[164]

(a) Clause 3(h) conferred on the defendant a right to conduct random checks of the Premises to ensure that the plaintiff was not using illegally hired workers on the Premises. Clause 3(h) also conferred on the defendant an entitlement to terminate the Service Agreement with immediate effect if such illegally hired workers were found on the Premises. The defendant argues that, according to *Re Tan Tye, deceased; Tan Lian Chye v British & Malayan Trustees Ltd* [1965–1967] SLR(R) 226 ("*Re Tan Tye*"), the inclusion of such a clause in the Service

[164] DOS at para 60.

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Agreement means that the Service Agreement "clearly did not grant exclusive possession to the [p]laintiff and the Service Agreement cannot be deemed to be a tenancy".[165]

(b) Clause 3(i) prohibited the plaintiff from making structural or other alterations or additions to the Premises without the prior consent of the defendant.

(c) Clause 3(k) forbade the plaintiff from allowing any person to reside or sleep on the Premises.

(d) Clause 3(o) forbade the plaintiff from displaying any signboards, notices, *etc,* under any circumstances.

100 In my view, the presence of these clauses does not necessarily mean that the agreement was not a tenancy agreement. Rather, such clauses could also be inserted into a tenancy agreement. I do not agree with the defendant that *Re Tan Tye* stands for the proposition that the inclusion of a clause like Clause 3(h) in the contract necessarily means that the parties intended there to be no exclusive possession and thus it was not a tenancy agreement. The Federal Court in *Re Tan Tye* observed at [14] that it is "established law that the relationship between the parties is determined by the law and not by the label which parties to a contract choose to put on it." The ultimate question is one of *substance*, *ie*, what was the substance of the parties' relationship as intended when they signed the Service Agreement?

101 The only "service" provided by the defendant in the Service Agreement was the permission to use a space of 10,400 square feet which was subsequently

165 DCS at paras 59–61.

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reduced to 9,000 square feet for the storage of the plaintiff's Assets. This agreement between the parties granting the plaintiff an exclusive use of the said space means that the agreement is, in substance, a tenancy agreement. In fact, Mr Lau testified that when he became the managing director in December 2019, he knew that the Service Agreement was in reality a tenancy agreement and he raised this issue with Mr Keh, the other director and majority shareholder. Mr Lau was concerned as he knew that JTC would not permit subletting of the Premises. Mr Keh assured him that it was alright as it was not called a tenancy agreement but a Service Agreement. Hence, from the very beginning the term "Service Agreement" was used to mask what was really a tenancy agreement. That was why when JTC, through CHBC,[166] accused the defendant of subletting to the plaintiff, Mr Lau did not write to JTC to explain that it was not subletting and that the Service Agreement was not a tenancy agreement. In fact, Mr Lau accepted the finding of JTC that the plaintiff was its subtenant without question. I reproduce the relevant portion of the transcript where Mr Lau testified as described:[167]

> COURT: So how do you look at Chiap Seng? Is he your tenant? Or should I say was he your tenant at that time in your thinking in December 2019.
>
> A. No, your Honour, when I came in on 26 December, in the first two days I already asked them to move.
>
> COURT: To?
>
> A. To move.
>
> COURT: To move out?
>
> A. Yes, your Honour. *Because this premises cannot be rented out*, we wanted to use it for newspapers, we didn't have enough space to use.

166 ABOD at pp 44–45.

167 Transcript (27 May 2022) at p 31 line 2 to p 35 line 10.

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COURT: Did you write a letter to them to tell Chiap Seng that please move out? In December?

A. I discussed with Mr Keh. Mr Keh said they had signed a service contract for a year.

COURT: *So the reason why you wanted Chiap Seng to move is because at that time your thinking was that he was a tenant and you cannot sublet, right?*

A. *Yes, because the land was not approved for subletting*, I wanted to buy from Mr Keh, but he could not sell 100 per cent.

…

COURT: So, in other words, in December 2019 you already knew that you cannot sublet?

A. Yes, on the second day of my joining the company I already knew that I could not sublet.

COURT: So why didn't you send a letter to Chiap Seng to say that, you know, we cannot sublet, so therefore can you vacate the premises?

A. My partner, Mr Keh, had discussed with Chiap Seng.

COURT: No, no, my question is not about discussing with Chiap Seng. Anyway, what is it that you discussed with Chiap Seng?

A. Mr Keh asked Chiap Seng to move but Chiap Seng said they signed one year.

…

A. Mr Keh said if we put the word "service", then we would not be fined.

[emphasis added]

102 The evidence that surfaced during the trial showed that, for all intents and purposes, the plaintiff was granted exclusive possession over the Service Area. During cross-examination on 25 May 2022, Mr Lau stated *multiple times* that the Service Area was separated from the rest of the Premises by a gate or

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fence which could be locked by the plaintiff. The plaintiff could also separately enter or leave the Premises as they wished:[168]

> Q. … If Chiap Seng from January 2020 had paid in full every month on time, Mr Lau, number 1, Chiap Seng can enter 33 Defu Lane 6 at any time to store or to take out their assets; correct?
>
> A. Yes.
>
> Q. All right. There is no time limit like business hours for Chiap Seng to come in or go out of 33 Defu Lane 6; is that correct?
>
> A. They have a door of their own.
>
> Q. I see. So *Chiap Seng has a door that they can open at any time to enter the 9,000 square feet for their assets; is that correct?*
>
> A. *Correct.*
>
> Q. *Can the door be locked?*
>
> A. *They lock it themselves.*
>
> Q. So they lock it themselves?
>
> A. Yes.
>
> …
>
> MR LOH: … Mr Lau, before lunch you had given evidence that you know that there was a door which the plaintiffs use to go in and out of the storage area. Do you remember?
>
> A. Yes.
>
> Q. *And you said that the plaintiffs were the people who locked the door, do you remember?*
>
> A. *Yes, they lock it themselves.*
>
> Q. *So once the door is locked, nobody else can go into the 9,000 square feet* because it is within a wall area perhaps or within some sort of a barrier perhaps?
>
> A. *Yes, there's a fence.*

168 Transcript (25 May 2022) at p 29 line 12 to p 30 line 3, p 56 line 19 to p 57 line 6.

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[emphasis added]

103 On 26 May 2022, Mr Lau backtracked on his position and claimed that the Service Area was not separated from the rest of the Premises by a fence:[169]

MR LOH:	Mr Lau, can I ask you to turn to page 49 of the agreed bundle which is the sketch map that you drew on.
A.	Yes.
Q.	You drew a box in red on the top right-hand corner of the square of the sketch map, do you remember?
A.	Yes.
Q.	You said that Chiap Seng occupied this square; correct?
A.	Yes, 20-plus per cent.
Q.	Yes, so since Chiap Seng is within this area after the main gate, it's natural and commonsense that Newspaper Seng's assets would not be within the same square, correct?
A.	Okay, the whole compound is fenced, but within the compound it connects, *there is no fence within the compound.*
Q.	Now your story has changed.
A.	It's not that I have changed my story.
Q.	You didn't say this earlier, you just said it now to protect your evidence. Correct?
A.	The factory naturally would have a fence. But Chiap Seng didn't put up a fence, inside there's no fence.
Q.	That's not the impression you gave the court in your in [sic] evidence in the past few days. You drew a square, I asked you a question, you said, yes, there was a fence around it with a main gate. Now you are changing your evidence to say that apart from the main gate, there is no fence

169 Transcript (26 May 2022) at p 72 line 21 to p 74 line 6.

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separating Chiap Seng's 9,000 square feet and the rest of 30 Defu Lane 6; is that correct?

A. It cannot be fenced because it's JTC's land, you cannot just fence as you like.

Q. I put it to you, Mr Lau, you've changed your evidence today. "Yes" or "no"?

A. No.

[emphasis added]

104 Evidently, Mr Lau vacillated significantly in his evidence on whether the Service Area was separated by a fence. He unequivocally confirmed in court *twice* on 25 May 2022 that the Service Area was separated from the rest of the Premises by a locked gate and a fence. On 26 May 2022, however, Mr Lau changed his evidence and alleged that there was no fence. Be that as it may, although Mr Lau changed his evidence that there was no fence, he said that the plaintiff's use of the 9,000 square feet compound was demarcated and the plaintiff was to keep within that compound for his exclusive use. Mr Lau also admitted that he could not enter the Service Area:[170]

Q. Okay, but just now Mr Lau when I asked you whether you went to take a look or inspect, you said you took a look and inspected the [A]ssets and now you say that you didn't go inside the enclosed area. Your answers are different, do you know that?

A. We only took a look from the outside. There was no way we could go into the area to take a look.

105 The plaintiff's Service Area was further enclosed with a separate gate which would be locked by the plaintiff. This clearly shows that the plaintiff had exclusive use of the rented compound and further, that it had exclusory power and immunity from supervisory control from the defendant.

170 Transcript (26 May 2022) at p 57 lines 17–23.

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106 The defendant attempted to camouflage the lease agreement as a "Service Agreement" and included the clauses at [99] above to mask the true nature of the Service Agreement which was a tenancy agreement. This was deliberately done by the defendant with the hope of circumventing the prohibition against subletting the Premises in its main lease with JTC and to avoid being detected by JTC for subletting the Premises without approval. Essentially, the defendant was trying to have its cake and eat it too. Mr Lau admitted as such when questioned:[171]

> A. Mr Keh said if we put the word "service", then we would not be fined.

107 Having regard to the totality of the evidence, I, therefore, find that the plaintiff had exclusive possession of the Service Area. Accordingly, the avalanche of evidence leads to a finding that there was a lease agreement between the plaintiff and the defendant, notwithstanding that it was called a Service Agreement.

Summary on the tenancy agreement

108 Calling a spade a spade, the substance of the Service Agreement is that of a lease. The physical arrangement at the Premises, with the Service Area being separated from the rest of the Premises by a locked gate and a defined demarcation of the Service Area, clearly shows that the plaintiff had exclusive possession of the Service Area. This supports my finding that the LOI and the Service Agreement were clearly intended to create a landlord-tenant relation as between the plaintiff and the defendant. The defendant had called the Service Agreement a "Service Agreement" instead of a tenancy agreement to (a) evade its rights and obligations as a landlord to the plaintiff as its tenant; and (b) mask

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171 Transcript (27 May 2022) at p 35 lines 9–10.

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its breach of the terms of its lease agreement with JTC, which prohibited it from subletting the Premises without approval. The defence seeks, impermissibly, to elevate form over substance. On the contrary, the nature of the clauses located within the Service Agreement further supports my finding that that agreement is a lease.

109 I also do not accept the defendant's argument that there was no valid leasehold interest out of which the defendant could grant the plaintiff a sublease over the Premises. Given that the STARS title search which the defendant seeks to rely on is outdated, it is irrelevant in ascertaining the nature of the leasehold interest over the Premises in 2019. On the contrary, the evidence before the Court points clearly to the conclusion that there was a valid leasehold which was assigned to the defendant, and that the assignment was valid.

The defendant's wrongful disposal of the Assets

110 Having found that the Service Agreement was a tenancy agreement, I shall turn to consider whether the defendant's disposal of the Assets was wrongful under the COVID-19 Act and the Distress Act.

The defendant had no contractual entitlement to dispose of the Assets

111 I shall first consider the defendant's argument that it was contractually entitled to dispose of the Assets. The defendant argues that the plaintiff had repudiated the Service Agreement as it did not make the outstanding monthly payments to the defendant and did not take steps to vacate the premises by 22 September 2020.[172] Accordingly, the defendant was entitled to dispose of the

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172 DOS at para 34.

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Assets pursuant to Clause 3(cc) of the Service Agreement, which reads as follows:[173]

> If the Service Recipient [*ie*, the plaintiff] fails to remove his assets and properties from the Service area upon the termination of the service period, the Provider [*ie*, the defendant] shall have the right to dispose or deal with them in whatever way the Provider thinks fit. The Service Recipient shall not have the right to make any claim against the Provider for compensation or otherwise but shall indemnify the Provider against all liability due to any wrongful disposal of the assets or properties belonging to third parties. All expenses incurred by the Provider pursuant to this clause shall be borne by the Service Recipient, and may be deducted from the Service Deposit.

112 In *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 ("*RDC Concrete*") at [113], the Court of Appeal laid down the framework setting out the situations that entitle an innocent party to terminate a contract at common law ("the *RDC* framework"). The *RDC* framework is as follows:

SITUATION	**CIRCUMSTANCES IN WHICH TERMINATION IS LEGALLY JUSTIFIED**	**RELATIONSHIP TO OTHER SITUATIONS**
I *EXPRESS* REFERENCE TO THE RIGHT TO TERMINATE **AND** WHAT WILL ENTITLE THE INNOCENT PARTY TO TERMINATE THE CONTRACT		
1	The contractual term breached clearly states that, in the event of certain event or events occurring, the innocent party is entitled to terminate the contract.	None – it operates *independently of all other* situations. In other words — Situations 2, 3(a) and 3(b) (*ie*, all the situations in II, below) are *not* relevant.

173 DOS at para 26; Affidavit of Evidence-in-Chief of Lau Poh Seng at p 23.

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II *NO* EXPRESS REFERENCE TO THE RIGHT TO TERMINATE **AND** WHAT WILL ENTITLE THE INNOCENT PARTY TO TERMINATE THE CONTRACT		
2	Party in breach ***renounces*** the contract by clearly conveying to the innocent party that it ***will not perform*** *its contractual obligations* ***at all***. ***Quaere*** whether the innocent party can terminate the contract if the party in breach *deliberately* chooses to perform its part of the contract in a manner that amounts to a *substantial breach.*	None – it operates *independently of all other* situations. In other words — Situation 1 is *not* relevant. Situations 3(a) and 3(b) are *not* relevant.
3(a)	Condition-warranty approach – Party in breach has breached a *condition* of the contract (as opposed to a *warranty*).	Should be applied ***before*** the "*Hongkong Fir* Approach" in Situation (3)(b). Situation 1 is *not* relevant. Situation 2 is *not* relevant.
3(b)	*Hongkong Fir* approach – Party in breach which has committed a breach, the **consequences** of which will **deprive the innocent party of substantially the whole benefit** which it was intended that the innocent party should obtain from the contract.	Should be applied only ***after*** the Condition-warranty approach in Situation (3)(a) *and* if the term breached is *not* found to be a *condition.* Situation 1 is *not* relevant. Situation 2 is *not* relevant.

[emphasis in italics, bold and bold italics in original]

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113 The defendant claims that the plaintiff's failure to pay the Service Fee falls within Situations 3(a) and/or 3(b) of the *RDC* framework. Situation 3(a) of the *RDC* framework applies where the "[p]arty in breach has breached a *condition* of the contract (as opposed to a *warranty*)" (*RDC Concrete* at [113]) [emphasis in original]. Situation 3(b) of the *RDC* framework applies where the consequences of the breach "will **deprive the innocent party of substantially the whole benefit** which it was intended that the innocent party should obtain from the contract" (*RDC Concrete* at [113]) [emphasis in original]. According to the defendant, "[t]he payment of the Service Fee was the sole consideration" that the defendant was receiving from the plaintiff. The defendant's ability to receive regular payments was therefore "the most fundamental term in the contract".[174] The plaintiff, in failing to pay the defendant, committed a "serious" breach that would be captured under either Situation 3(a) or Situation 3(b) of the *RDC* framework.[175]

114 The defendant's submission that the plaintiff breached the Service Agreement by failing to pay the Service Fees is flawed. During the course of the trial, it became abundantly clear that the plaintiff intended to pay and attempted to pay the defendant. This was even though the defendant's invoices were erroneous and the defendant's SOAs were inaccurate. However, the defendant refused to accept payment from September 2020. The defendant's refusal to accept payments from the plaintiff and its determination to evict the plaintiff are largely attributed to the defendant's receipt of the CHBC letter dated 31 August 2020 which highlighted, *inter alia*, the unapproved subletting to the plaintiff.

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174 DOS at para 32.

175 DOS at para 32.

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115 On 23 September 2020, Ms Tay sent a WhatsApp message to Mr Ang, one of the defendant's managers, conveying the plaintiff's intention to make payment of the rental arrears.[176] Mr Ang did not reply. On 24 September 2020, Ms Tay wrote an email to Mr Ang asking for an SOA.[177] She also brought a cheque for $20,000 to the Premises on 24 September 2020 to pay the defendant.[178] However, Mr Patrick, who was one of the defendant's managers, refused to accept the cheque.[179] Subsequently, Ms Tay wrote a second cheque for $37,676 as she was under the impression that the defendant wanted full payment.[180] Ms Tay then called Ms Lim, the defendant's solicitor, intending to pay the outstanding amount with both cheques. Ms Lim responded that she would revert to Ms Tay. However, Ms Lim did not.[181] Subsequently, Ms Tay also sent a WhatsApp message to Mr Ang informing him that the defendant's solicitor had instructed her to contact him. However, she again received no response from Mr Ang.[182]

116 This being the case, the defendant cannot now argue that the plaintiff's failure to pay the Service Fees amounts to a "serious" breach of the terms of the Service Agreement falling either within Situation 3(a) or Situation 3(b) of the *RDC* framework. The fact remains that the plaintiff was at all times willing and able to perform its contractual obligation by making payment of the Service Fees. The plaintiff's failure to make payment can thus only be attributed to the

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176 ABOD at p 276.

177 Transcript (26 May 2022) at p 83 lines 17–24.

178 Transcript (24 May 2022) at p 33 line 25 to p 34 line 24.

179 Transcript (24 May 2022) at p 35 lines 2–13.

180 Transcript (24 May 2022) at p 38 lines 4–21.

181 Transcript (24 May 2022) at p 37 line 16 to p 38 line 21.

182 ABOD at p 276.

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defendant's refusal to accept payment. I, therefore, find that the defendant has no contractual right to dispose of the Assets. I shall now consider the defendant's reasons for refusing to accept payment at [118] below.

117 I should note at this juncture that Mr Lau gave materially inconsistent evidence on why Mr Ang was not called to testify on behalf of the defendant. In Mr Lau's affidavit of evidence-in-chief, Mr Lau stated that Mr Ang "had left my employment and I am not able to contact [Mr Ang and another employee, Patrick Siah,] at all".[183] This turned out to be false as Mr Lau admitted in court that he had Mr Ang's contact number saved in his mobile phone and could "call him now".[184] Mr Lau then explained that Mr Ang was not called as a witness as he had told the defendant's solicitors that he did not want to be contacted.[185] This is inadmissible hearsay evidence.

In September 2020 the defendant insisted that the plaintiff pay the arrears in cash or cashier's orders

118 On the issue of payment of the arrears in September 2020, Mr Lau raised a whole host of reasons why the defendant refused to accept payment from the plaintiff. The defendant was happy to accept payment of the rental arrears by way of cheques in July and August 2020. However, Mr Lau averred during his cross-examination that he would have only accepted payment in the form of cash or cashier's orders in September 2020.[186] This unreasonable demand was, however, not mentioned in any correspondence to the plaintiff and was also not communicated to the plaintiff at all. Mr Lau could not give any good reason as

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183 Affidavit of Evidence-in-Chief of Lau Poh Seng at para 4.

184 Transcript (26 May 2022) at p 24 lines 13–18.

185 Transcript (26 May 2022) at p 25 line 24 to p 26 line 20.

186 Transcript (26 May 2022) at p 85 line 6.

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to why this was so when the plaintiff had all along been making payments by way of cheques: [187]

Q. Okay, but you already said if Chiap Seng can pay even on the 24th, you can still stop Yew Huat from taking away the [A]ssets and give it back to Chiap Seng; correct?

A. Chiap Seng could have brought cash to Defu, but that did not happen. We were there for three days.

Q. So you wanted cash, is it?

A. Definitely.

Q. But you never said in any of your letters you only wanted cash, right?

A. Definitely I would want cash, otherwise what would I want?

Q. My question is this, you did not say in any of your lawyer's letters cash only, correct? "Yes" or "no"?

A. There's no need to mention.

Q. If you don't mention it, how is Chiap Seng to know.

A. It's either cash or cashier's order.

…

Q. … "Yes" or "no", you did not tell your lawyers to write in their letters cashier's order only, "yes" or "no"?

A. No, I did not.

Q. Okay, no you did not tell your lawyers. If that's the case, Chiap Seng also will not know to bring a cashier's order as well, "yes" or "no"?

A. There's no need to say.

Q. I'm sorry, Mr Lau --

A. Because it is over the date.

Q. I'm sorry, Mr Lau, if you don't say it it's not Chiap Seng's fault if they don't know, yes?

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187 Transcript (26 May 2022) at p 84 line 15 to p 85 line 25.

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A. The fact that they started a company they should know, there's no need for me to say.

119 When questioned further, Mr Lau affirmed that the plaintiff's cheques were never dishonoured.[188] Considering that the plaintiff's cheques were never dishonoured, I find it difficult to believe that Mr Lau adamantly required the plaintiff to pay in cash or cashier's orders. Furthermore, why was the plaintiff not informed of this new mode of payment in cash or cashier's orders? In these circumstances, it appears that Mr Lau's claim that he would only accept cash or cashier's orders from the plaintiff in September 2020 is an afterthought.

The plaintiff wanted to pay the defendant

120 The plaintiff was not able to make full payment to the defendant as the latter's invoices from January to June 2020 were incorrect. The rental was not $10,400 per month as it had been mutually reduced by the parties to $9,000 starting January 2020 (at [10] above).[189] Furthermore, the two months' deposit of $20,800 based on $10,400 per month for a duration of two years, which was paid by the plaintiff when the LOI was signed, should have been reduced to one month's deposit of $9,000. This is because the two-year lease was reduced to a year. The defendant also did not seek to regularise the accounts even when Ms Tay brought it to the attention of the defendant's housing agent, Kim, in January 2020.[190] This was not done until June 2020 when the defendant attempted to regularise the monthly fee through the issuance of credit notes.

121 Further, when the defendant asked the plaintiff to pay two months' fees in June and July 2020, the plaintiff obliged and paid the defendant on 15 July

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188 Transcript (27 May 2022) at p 45 lines 13–19.

189 ASOF at para 5.5.

190 Transcript (20 May 2022) at p 23 lines 12–17.

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2020. This was despite the plaintiff facing financial difficulty because of the COVID-19 pandemic.[191] In August 2020 when the defendant asked the plaintiff to pay a further one-month fee, the plaintiff again obliged, and payment was made on 19 August 2020.[192] The plaintiff's conduct clearly indicated that it was willing to settle the outstanding monthly arrears.

122 In September 2020, the plaintiff continued wanting to settle the monthly arrears with the defendant. The defendant, however, was not interested to entertain the plaintiff. By this time, the defendant was more interested to evict the plaintiff. This was because of JTC's discovery of the unapproved subletting to the plaintiff. Thus, the defendant was afraid of the consequences that JTC could impose if the plaintiff continued to remain in the Premises. The plaintiff was contractually entitled to remain in the Premises as the tenancy agreement had not expired then.

The defendant's failure to ensure that the 3rd LOD and the 4th LOD were correctly addressed to the plaintiff

123 I should also mention that there were issues relating to the receipt of the defendant's 3rd LOD and the 4th LOD by the plaintiff. The 3rd LOD dated 9 September 2020 was wrongly faxed by the defendant to xxxx3492 when the plaintiff's correct fax number was xxxx2991. In the 3rd LOD, the defendant demanded that the plaintiff pay $37,676 which the plaintiff alleged was erroneous as the correct amount should have been $36,350.[193] The 3rd LOD also demanded vacant possession by 14 September 2020. However, the plaintiff only received the 3rd LOD on 15 September 2020 when the plaintiff's staff were

191 ASOF at para 5.18.

192 ASOF at para 5.20.

193 SOC at para 32.

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allowed to return to the office to work in accordance with the COVID-19 restriction measures which were imposed by the Government.[194] Thus, it was not the fault of the plaintiff that it did not receive the 3rd LOD timely.

124 The 4th LOD dated 18 September 2020 was also sent to the wrong address. Although the 4th LOD was addressed to Mr Heng Lee Kiang, the plaintiff's managing director, it was sent to Mr Heng Nge Guan's registered address.[195] Mr Heng Nge Guan was the plaintiff's other registered director who was not active in the running and management of the plaintiff.[196] As a result, the 4th LOD did not reach the plaintiff. Thus, the plaintiff was unaware that it had to vacate the Premises before 22 September 2020 as it only had sight of the 4th LOD on 24 September 2020, *ie*, past the deadline of 22 September 2020.[197] The plaintiff also cannot be faulted for not attending timely to the 4th LOD when it was the defendant who had sent the 4th LOD to the wrong address.

125 Hence, the defendant's failure to issue the correct SOA and the errors surrounding the issuance of LODs with an ultimatum to vacate the Premises by certain deadlines cannot be held against the plaintiff as a failure to pay the arrears promptly.

The defendant's failure to secure the best price for the Assets

126 Apart from refusing to accept payment from the plaintiff who was prepared to pay the outstanding monthly arrears, the defendant also took no steps to mitigate its losses. The defendant failed to conduct proper and adequate

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194 SOC at para 31.

195 RDCC at para 8(a).

196 SOC at para 4.

197 RDCC at para 8(b).

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due diligence to ascertain the fair market value of the Assets. Instead, the defendant sold the Assets for scrap. The defendant also failed to value the Assets before the sale,[198] nor did it advertise the sale or auction the Assets.[199] It is no coincidence that the defendant sold the Assets for $40,000, which is close to the amount of outstanding rental arrears ($46,750).

127 Evidently, the defendant's sole interest was to evict the plaintiff as quickly as possible and to sell the Assets at a sum which would enable the defendant to quickly recoup what Mr Lau believed he was owed by the plaintiff.

The defendant was keen on evicting the plaintiff in September 2020

128 It is strange that the defendant considered the plaintiff as an enemy and their disputes as a war. During cross-examination, Mr Lau openly admitted that he saw the plaintiff as "the enemy":[200]

> MR LOH: *The cheque payment in July for the two months payment and the cheque month payment in August for the one-month payment. Newspaper Seng accepted them, yes?*
>
> COURT: Two payments, what? Two months payment what?
>
> MR LOH: Two months payment by cheque in July and a one-month payment by cheque in August 2020.
>
> A. *That was before the battle began.*
>
> COURT: That was what?
>
> A. That was before the battle began. Sorry, *before the war began*, your Honour, sorry.
>
> …

198 Transcript (27 May 2022) at p 48 lines 3–7.

199 Transcript (27 May 2022) at p 48 lines 8–18.

200 Transcript (26 May 2022) at p 86 line 11 to p 87 line 24.

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A.	The war -- your Honour, I was referring to *on the 24th the two companies were already fighting with each other, so definitely they would have to bring cash.*
COURT:	Mr Loh.
MR LOH:	*So, by the 24th you considered Chiap Seng the enemy, yes?*
A.	*Definitely, because they didn't pay, they're definitely the enemy.*
Q.	So whatever they do to ask for help, to ask to pay, you would reject; correct?
A.	We would not reject them if they had asked to pay.
Q.	I quote Ms Isabel's email: "We would like to make the outstanding payment to your company." Mr Alex must have told you what Ms Isabel wrote in the email; correct?
A.	There's no use for her to write such things because I want cash or cashier's order.

[emphasis added]

129 This explains the defendant's hostile disposition in September 2020. The defendant's unresponsiveness to the plaintiff who wanted to pay the monthly arrears (at [115] above) and the unreasonable demands that payment of the monthly arrears had to be either in cash or cashier's order (at [118] above) can be attributed to an intention to evict the plaintiff. Indeed, it is evident that, by September 2020, the defendant had already made up its mind to evict the plaintiff from the Premises and ultimately did so in an unacceptably abrupt and high-handed manner through capitalising on the plaintiff's alleged failure to pay the monthly rental and arrears. The non-payment of the monthly arrears by the plaintiff was thus an excellent opportunity or excuse for the defendant to evict the plaintiff.

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130 The defendant, by its own unreasonable behaviour, refused to accept the plaintiff's payment of the arrears in September 2020. This can be contrasted to the situation before the defendant received the CBHC letter dated 31 August 2020 in which JTC threatened to take action against the defendant for the illegal structures and the unapproved subletting to the plaintiff. Before 31 August 2020, the defendant had received and accepted payments of the arrears in July and August 2020 from the plaintiff. The reality is that the defendant refused to accept payment of the arrears from the plaintiff who wanted to pay despite not knowing the correct SOAs from the defendant. This being the case, and in the absence of any reasonable explanation at the defendant's end, the defendant cannot now claim that the plaintiff's failure to pay the defendant amounted to a repudiatory breach of the Service Agreement.

131 Having regard to the above, I find that the defendant had no contractual entitlement to dispose of the Assets under Clause 3(cc) of the Service Agreement (see [111] above).

The COVID-19 Act

132 In any case, the COVID-19 Act prohibits the defendant from taking enforcement actions against the plaintiff on the ground of the plaintiff's non-payment of rent. I turn to consider the plaintiff's rights as a PTO under the COVID-19 Act.

133 Since the Service Agreement is a tenancy agreement, it undoubtedly qualifies as a "lease agreement" protected by Part 2A of the COVID-19 Act. Section 19B(1) in Part 2A of the COVID-19 Act defines a lease agreement as follows:

> "lease agreement", for any property, includes a lease or licence for that property;

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134 The relevant portions of s 19G of the COVID-19 Act read as follows:

> **Moratorium on rent recovery**
>
> **19G.**—(1) Despite any law or anything in any lease agreement in a PTO chain for a prescribed property, a PTO's landlord or a prescribed landlord in the PTO chain (called in this section the applicable landlord) *may not take any of the actions described in subsection (2)* in respect of the applicable landlord's tenant during the moratorium period described in subsection (3) in relation to the *non-payment of rent* under the lease agreement between the applicable landlord and the tenant.
>
> (2) The actions mentioned in subsection (1) are —
>
> …
>
> (*h*) the commencement or levying of execution, distress or other legal process against any property of the tenant or the tenant's guarantor or surety;
>
> (*i*) the termination of the lease agreement;
>
> (*j*) the exercise of a right of re-entry or forfeiture under the lease agreement, or the exercise of any other right that has a similar outcome;
>
> …
>
> (3) The moratorium period mentioned in subsection (1) starts on the date of commencement of section 15 of the COVID-19 (Temporary Measures) (Amendment) Act 2020 and ends on the earlier of the following:
>
> (*a*) the date a notice of cash grant pertaining to the PTO is issued by the Authority to the owner of the prescribed property under the terms of the public scheme;
>
> (*b*) the prescribed date.
>
> [emphasis added]

135 Section 19G of the COVID-19 Act imposes a moratorium on all enforcement actions for rental arrears taken by landlords against PTOs. The moratorium under s 19G of the COVID-19 Act against landlords' enforcement actions requires no notice. Thus, there was no requirement for the plaintiff to notify the defendant that it is protected from enforcement actions under s 19G of the COVID-19 Act. Section 9(1) of the COVID-19 Act only requires

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notification where the party intends to seek relief under s 5, 5A or 7 of the COVID-19 Act:

> **Notification for relief**
>
> **9.**—(1) If a party to a scheduled contract (called in this section *A*) intends to seek relief under section 5, 5A or 7, *A* must, within the period specified in regulations made under section 19, and whether with or without prior demand for performance, serve a notification for relief that contains the prescribed information on —
>
> > (*a*) the other party or parties to the contract;
> >
> > (*b*) any guarantor or surety for *A*'s obligation in the contract; and
> >
> > (*c*) such other person as may be prescribed.

136 The moratorium under s 19G of the COVID-19 Act remained in force until IRAS issued the notice of cash grant or, if no such notice was issued, until 31 December 2020.[201] The Notice of Cash Grant was only issued on 18 February 2021. The moratorium was thus in force when the defendant entered the Premises and took away the Assets from 24 to 30 September 2020. Therefore, the defendant's seizure and disposal of the Assets are in clear breach of s 19G of the COVID-19 Act. The defendant, by selling the Assets as scrap in order to recover the rental arrears, did the very thing the COVID-19 Act prohibited.

137 The Notice of Cash Grant provides that up to two months of the plaintiff's rent must be waived in accordance with the COVID-19 Act.[202] Thus, it is clear that the plaintiff was deemed to be a PTO within the meaning of the COVID-19 Act. The defendant's attempt to argue otherwise is unsustainable.[203]

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201 PBOD at pp 15–17; SOC at para 92D.

202 ABOD at p 82.

203 DOS at para 56.

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(1) Automatic termination clause

138 The defendant disputes the applicability of s 19G of the COVID-19 Act. Section 19G(1) of the COVID-19 Act confines its applicability to where there was "*non-payment of rent* under the lease agreement between the applicable landlord and tenant" [emphasis added]. The defendant relies on Clause 5(c) of the Service Agreement to argue that it was entitled to terminate the Service Agreement on grounds unrelated to the non-payment of the Service Fees, namely JTC's alleged "refusal to approve the Service Agreement".[204] Clause 5(c) of the Service Agreement reads as follows:

> DISALLOWED BY AUTHORITIES
>
> *Should the JTC Corporation* and/or any Government or quasi-Government body for any reason ***disallow*** *this service agreement and/or the use of the service area by the Service Recipient* for the purposes. *This Agreement shall be deemed to be terminated* and the Service Recipient shall vacate the service area within the period of time stipulated by the body concerned and neither party shall have any claim against the other whatsoever.
>
> [emphasis added]

Accordingly, the defendant submits that s 19G of the COVID-19 Act is inapplicable.

139 This argument fails as Clause 5(c) of the Service Agreement was not engaged on the facts. The condition precedent in Clause 5(c) is that JTC must *disallow* the Service Agreement or the use of the Service Area by the plaintiff. It is clear from the wording of the CHBC Letter that JTC did not go so far as to *disallow* the Service Agreement or the use of the Service Area by the plaintiff.

[204] DOS at para 68.

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JTC merely required that the defendant regularise its unapproved actions and seek the necessary approvals. This is clear from the CHBC Letter:[205]

> 4 *If you should decide to retain the above structures, please submit the necessary building plans* through a Qualified Person (QP) to JTC's Land Planning Division (LPD) for its consent by 30 October 20 and then subsequently to the URA, BCA and other government agencies *for approval.* …
>
> 5 We noticed that Chiap Seng Contractors Pte Ltd is occupying the premises without obtaining JTC's approval. You are required to cease the unapproved subletting within 2 months from the date of this letter. *Alternatively, to submit an application to JTC within 2 months from the date of this letter.* Uppon [*sic*] approval, liquidated damages for the unapproved subletting period will be payable.
>
> 6 If no action is taken by you to either rectify or regularize the items that have been mentioned by 30 October 20, we will have to consider referring your case to the government agencies for enforcement action.
>
> [emphasis in original omitted; emphasis added in italics]

140 When JTC discovered that the defendant had sublet the Service Area to the plaintiff without prior approval, the defendant was not directed by JTC to evict the plaintiff within two months without any other alternative or option open to the defendant. JTC gave the defendant an alternative to evicting the plaintiff, *ie*, to submit an application to JTC to allow the plaintiff to continue as a tenant. Should JTC's approval be given, the defendant would then have to pay liquidated damages to JTC for the unapproved subletting period. The defendant was not prepared to pay liquidated damages to JTC for its wrongful act of subletting to the plaintiff without seeking JTC's prior approval. Thus, the defendant had to evict the plaintiff from the Premises as otherwise JTC would take punitive action against the defendant.

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205 ABOD at pp 44–45.

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141 Thus, the CHBC Letter did not disallow the "[S]ervice [A]greement and/or the use of the [S]ervice [A]rea" by the plaintiff as specified by Clause 5(c) of the Service Agreement. This is not a case where JTC discovered the unauthorised subletting of the Premises by the defendant and directed the defendant to evict the plaintiff within two months of JTC's letter. Rather, the defendant voluntarily terminated the Service Agreement as it did not wish to pay JTC the stipulated liquidated damages for the period of unauthorised subletting. The defendant knew that it was not permitted to sublet the Premises without approval from JTC but, nevertheless, went ahead to sublet the Service Area to the plaintiff. The latter was unaware of the unauthorised subletting by the defendant. In this situation, JTC was not even given the opportunity to consider the Service Agreement. It, therefore, cannot be said that JTC had "disallowed" the plaintiff's use of the Service Area. At best, the defendant may, in accordance with the CHBC Letter, argue that any disallowance on JTC's part would be after 30 October 2020. But even this does not help the defendant's case. I, therefore, find that Clause 5(c) was not engaged and the defendant was not entitled to terminate the Service Agreement on this basis.

(2) Illegal structures on the Premises

142 The defendant also cannot argue that it terminated the Service Agreement because the plaintiff had erected the illegal structures on the Premises. In both the 3rd LOD and the 4th LOD, the defendant's solicitors stated as follows:[206]

> On 25 August 2020, JTC attended at the Premises to conduct an inspection. During the inspection, it was discovered that there are *illegal structures which you had fitted to the Premises.*
>
> [emphasis added]

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206 ABOD at pp 49–50.

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143 However, Mr Lau conceded in court that the illegal structures mentioned in the CHBC Letter were not within the Storage Area and had "nothing to do with" the plaintiff:[207]

> MR LOH: … So, Mr Lau, since you have drawn in red the area that Chiap Seng occupies in 33 Defu Lane 6, and from your own drawing, this area is outside of CHBC's area A and area B. Clearly the unapproved structures have nothing to do with Chiap Seng, correct?
>
> A. *Yes, it has nothing to do with Chiap Seng.*
>
> Q. Thank you. So you don't blame Chiap Seng for building the illegal structures then at 33 Defu Lane 6?
>
> A. I did not blame them.
>
> [emphasis added]

144 I, therefore, find that Clause 5(c) of the Service Agreement was not engaged on the facts. The defendant's hurried and haphazard termination of the Service Agreement following the CHBC Letter, and its subsequent and sudden disposal of the Assets, was a drastic, unreasonable and high-handed act. The defendant did not have any right, whether in contract or in law, to terminate the Service Agreement and dispose of the Assets.

The CHBC Letter

145 Mr Lau's evidence on his knowledge of the CHBC Letter was also contradictory. The CHBC Letter was addressed to the managing director of the defendant and was dated 31 August 2020, by which time Mr Lau had been the defendant's managing director for around eight months. Yet, Mr Lau denied that

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[207] Transcript (25 May 2022) at p 63 line 18 to p 64 line 3.

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he had sight of the CHBC Letter and claimed that he had not seen the CHBC Letter before the trial:[208]

> Q. This is a letter issued by CHBC dated 31 August 2020; correct?
>
> A. Yes.
>
> …
>
> Q. So on page [44 of the ABOD] are you there?
>
> A. Yes.
>
> Q. When CHBC on behalf of JTC addresses the letter to Newspaper Seng Logistics Pte Ltd, it is correct?
>
> A. What is CHBC?
>
> Q. Mr Lau, this is Newspaper Seng's evidence.
>
> A. So, okay, I guess, that means yes.
>
> Q. *Are you saying you've not seen this document before?*
>
> A. *I have not seen this document.*
>
> [emphasis added]

146 Mr Lau eventually showed that he was aware of the contents of the CHBC Letter when he explained why the defendant was in a hurry to sell off the Assets:[209]

> COURT: What is the hurry for selling away Chiap Seng's [A]ssets?
>
> A. JTC said we had to move out between the beginning of August to the end of October. They also spoke of the illegal structures. So when the government say so, we have to take action.

147 It can be inferred that the defendant, upon receipt of the CHBC Letter, jumped to the conclusion that it would have to evict the plaintiff from the

208 Transcript (24 May 2022) at p 73 line 3 to p 74 line 20.

209 Transcript (27 May 2022) at p 45 lines 20–25.

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Premises or face enforcement action by JTC. Mr Lau admitted that he was aware since December 2019 that the defendant was prohibited from subletting the Premises without JTC's approval.[210] The plaintiff was also in arrears for seven months before the CHBC Letter dated 31 August 2020, *ie*, from as early as February 2020.[211] Yet, it was only *after* the receipt of the CHBC Letter that the defendant sprang into action to evict the plaintiff. Following the receipt of the CHBC Letter, the defendant was put on notice that JTC was aware that it had sublet the Premises to the plaintiff without JTC's approval and was desperate to fix the situation. Thus, in a hurried bid to save its own skin, the defendant acted without a single thought for the plaintiff's interests. The defendant then capitalised on the plaintiff's failure to pay rent to evict the plaintiff from the Premises and to then sell the Assets to Yew Huat.

148 The evidence also suggests that the sale of the Assets to Yew Huat was done in an extremely rushed manner. Mr Lau testified that the defendant reached an agreement to sell the Assets to Yew Huat "between 15 and 20 September" 2020.[212] This means that the defendant had already agreed to sell the Assets for scrap to Yew Huat even *before* 22 September 2020, which was the deadline given to the plaintiff to vacate the Premises in the 4th LOD.[213] The plaintiff avers that Yew Huat is its competitor.[214] According to Mr Lau, Yew Huat "had always known that [the Assets] actually belonged or belongs to Chiap Seng".[215] Mr Lau also testified that he showed Yew Huat the letters of demand

210 Transcript (27 May 2022) at p 32 lines 8–11.

211 RDCC at para 3(d).

212 Transcript (26 May 2022) at p 13 lines 13–17.

213 ABOD at p 50 para 5.

214 Transcript (25 May 2022) at p 97 lines 2–3.

215 Transcript (25 May 2022) at p 98 lines 19–23.

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sent from its solicitors to the plaintiff.[216] In these circumstances, it can be inferred that the defendant had approached Yew Huat knowing that Yew Huat was likely to buy the Assets. This would allow the defendant to quickly dispose of the Assets and remedy its illegal subletting.

149 It is, therefore, no coincidence that (a) the disposal and sale of the Assets came less than a month after the CHBC Letter dated 31 August 2020; and (b) the Assets were sold for $40,000, almost the same amount of rental arrears owed by the plaintiff to the defendant at that time. The defendant's conduct is plainly unacceptable and inconsistent with the spirit of the COVID-19 Act, which was specifically enacted to protect tenants who were badly affected by the COVID-19 pandemic from enforcement actions by their landlords. Indeed, the plaintiff's business came to a standstill as a result of the Government's COVID-19 restrictive measures. In these circumstances, it is clear that the defendant took such drastic action against the plaintiff in order to save its own skin and stave off enforcement action by JTC. The defendant's seizure and disposal of the Assets were extremely high-handed.

The Distress Act

150 As I have found that the Service Agreement is a tenancy agreement, the Distress Act is applicable to this case. It is undisputed that the defendant did not comply with the Distress Act as it did not consider the Service Agreement to be a tenancy agreement. Thus, the defendant committed multiple breaches of the Distress Act in its imperious and abrupt disposal of the Assets.

216 Transcript (25 May 2022) at p 97 line 24 to p 98 line 7.

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151 First, the Distress Act requires that the defendant apply for a writ of distress. This the defendant had failed to do. The defendant thus acted contrary to the relevant sections of the Distress Act, which read as follows:

> **No distress otherwise than under this Act**
>
> **4.** No landlord shall distrain for rent except in the manner provided by this Act.
>
> **Application for writ of distress**
>
> **5.**—(1) A landlord or his agent duly authorised in writing may apply ex parte to a judge or registrar for an order for the issue of a writ, to be called a writ of distress, for the recovery of rent due or payable to the landlord by a tenant of any premises for a period not exceeding 12 completed months of the tenancy immediately preceding the date of the application; and the judge or registrar may make such order accordingly.
>
> (2) Such authority may be in the prescribed form, with such variations as circumstances require, and shall be produced at the time of the application.
>
> (3) Arrears of rent may be distrained for after the determination of the tenancy, provided that either the tenant is still in occupation of the premises in respect of which the rent is claimed to be due, or any goods of the tenant are still on the premises.
>
> …
>
> **Writ of distress**
>
> **7.** A writ of distress shall be addressed to the sheriff, directing him forthwith to distrain any movable property found by him on the premises named therein, or such part of the property as may in his judgment be sufficient, when sold, to realise the amount of rent therein stated to be due to the applicant, together with such sum as may be due to the applicant by way of costs and to the sheriff for his fees and expenses.

152 Second, the defendant's seizure of the Assets comprising scaffolding for multi-tiered seating galleries and for the F1 night race were the plaintiff's main tools of trade. Thus, the defendant's seizure of the Assets was in breach of s 8(*d*) of the Distress Act. Section 8(*d*) of the Distress Act reads as follows:

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> **Property exempted from seizure**
>
> **8.** Property seizable under a writ of distress shall not include —
>
> …
>
> (*d*) goods in the possession of the tenant for the purpose of being carried, wrought, worked up, or otherwise dealt with in the course of his ordinary trade or business;

153 Having regard to the above, I find that the defendant's actions of seizing and disposing of the Assets without a writ of distress were in breach of the Distress Act.

Estoppel

154 Given that I have already found the defendant's intentional disposal of the Assets to be wrongful under the COVID-19 Act and the Distress Act, it is not necessary for me to deal with the plaintiff's claim that the defendant was estopped from disposing of the Assets. I also note that much of the plaintiff's estoppel claim rests on the representations made by Mr Ang, who in any event was not called as a witness.[217]

Summary on the defendant's wrongful disposal of the Assets

155 In summary, I make the following findings:

(a) The defendant had no contractual entitlement to dispose of the Assets as it had, by its own accord, refused to accept the payment of the arrears from the willing plaintiff.

(b) The defendant's disposal of the Assets was in breach of s 19G of the COVID-19 Act.

217 SOC at paras 29B–29E.

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(c) The defendant's disposal of the Assets without obtaining a writ of distress was in breach of the Distress Act.

156 I, therefore, find that the defendant was not entitled to dispose of the Assets, and is liable for damages payable to the plaintiff. I shall not consider the extent of damages due to the plaintiff as parties agreed to bifurcation.

The defendant's breach of trust

157 According to the plaintiff, the defendant held the Assets on trust for the plaintiff when the defendant took possession of the Assets.[218] The defendant therefore owed a duty to act in the plaintiff's best interests,[219] which encompasses, *inter alia*, not disposing of the Assets or, if the defendant was entitled to dispose of the Assets, to sell them at fair market value.[220]

158 It is not necessary to deal with the issues of whether the defendant held the Assets on trust for the plaintiff and acted in breach of trust as I have found above that the defendant was not entitled to dispose of the Assets and is liable for damages payable to the plaintiff.

The defendant's counterclaim

159 I find that the defendant is not entitled to its counterclaim for the sum of $6,750 as it had failed to mitigate its losses.

160 Mr Lau's evidence on how he sold the Assets suggests that he did not conduct due diligence to secure the best prices for the plaintiff's Assets. Mr Lau

218 SOC at paras 64A and 76.

219 Plaintiff's Closing Submissions at paras 172–175.

220 SOC at para 64A.

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claimed that he verbally invited two or three buyers to inspect the Assets before selling them.[221] The defendant failed to call the purported potential buyers to testify before the Court. Mr Lau initially claimed that the potential buyers said "they [had] to weigh the scrap metal".[222] However, this was not done by the potential buyers. Mr Lau averred that as the potential buyers were in the scrap metal business, they would "be able to tell the weight of the assets based on the area the assets occupied. They will know that it's scaffolding, racks and it is hollow".[223] Mr Lau also claimed that it was the *defendant* who then weighed the Assets using a weighing scale on the Premises and showed the prospective buyers the weight of the Assets.[224] No objective evidence was produced to support any of Mr Lau's claims as the above was all allegedly done verbally.[225]

161 In these circumstances, Mr Lau's claim that he negotiated the price with other buyers before eventually selling the Assets to Yew Huat is suspect. As I noted at [148] above, the objective circumstances indicate that the defendant sold the Assets in a hurried and rushed manner. This being the case, it was unlikely that the defendant had taken steps to mitigate the losses that form the subject of its counterclaim. If the defendant had, to the contrary, taken the time to ascertain the fair market value of the Assets, it may have been able to recover all or even an amount in excess of the plaintiff's rental arrears.

162 I, therefore, find that the defendant failed to mitigate its losses and dismiss the defendant's counterclaim.

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221 Transcript (26 May 2022) at p 10 lines 11–18.

222 Transcript (26 May 2022) at p 10 lines 19–22.

223 Transcript (26 May 2022) at p 12 lines 7–11.

224 Transcript (26 May 2022) at p 10 line 11 to p 12 line 22.

225 Transcript (26 May 2022) at p 13 lines 11–12.

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Assessment of the witnesses

163 The plaintiff called three witnesses: Mr Heng, Ms Tay and Mr Ponnusamy Anbarasan, one of the plaintiff's truck drivers. Their evidence was largely consistent and contained no serious discrepancies.

164 The defendant's sole witness was Mr Lau. Mr Lau's evidence was contradictory, confusing and unreliable. I have pointed out multiple occasions when Mr Lau vacillated in his evidence on critical issues (at [47]–[49], [145]–[146] and [160]–[161] above). Further, the defendant's counsel argues that Mr Lau's opinions on the nature of the Service Agreement must be treated with caution because he was not involved in the negotiations leading up to the execution of the Service Agreement. Thus, Mr Lau would not have known the parties' true intentions.[226] I find the submission on this point to be a non-starter. Throughout the cross-examination, Mr Lau has displayed a clear awareness and understanding of the nature of the Service Agreement as evident from his answers to the numerous questions put by the plaintiff's counsel.

165 I also find that Mr Lau has a stubborn streak, which explains the defendant's uncompromising and high-handed conduct. For example, Mr Lau was asked about the 1st LOD dated 6 February 2020 which demanded payment of the January and February 2020 fees amounting to $22,256. Since this letter was issued after the parties mutually agreed to reduce the monthly fee to $9,000 from $10,400, the sum of $22,256 for January and February 2020 is incorrect. That the 1st LOD listed an incorrect sum of arrears is also undisputed by both parties as the defendant later issued the Credit Notes on 1 June 2020 to refund the overpaid amount to the plaintiff. However, Mr Lau adamantly denied that

226 DRS at paras 7–11.

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the sum of $22,256 stated in the 1st LOD was incorrect and vehemently defended the accuracy of the figure.[227] It was only after the Court mentioned the Credit Notes did Mr Lau reluctantly admit, albeit implicitly, that the sum of $22,256 was incorrect and that was why he "added a [credit note]".[228]

The declaration to nullify the sale of the Assets to Yew Huat

166 The plaintiff asked for, *inter alia*, a declaration that the sale of the Assets to Yew Huat is null and void.[229] However, this Court is unable to grant this remedy as (a) Yew Huat is not a party to these proceedings; and (b) Yew Huat appears to be a *bona fide* third party purchaser for value without notice of the plaintiff's interest as claimed in these proceedings. The declaration will affect the right of Yew Huat to the Assets for which it had paid $40,000 to the defendant. The plaintiff should have included Yew Huat as a party to these proceedings so that Yew Huat was given an opportunity to defend itself.

167 To successfully establish that Yew Huat is a *bona fide* third party purchaser for value without notice ("the purchaser"), the following elements must be present: (a) the purchaser acted in good faith; (b) the purchaser had paid valuable consideration; (c) the purchaser obtained the legal interest in the property; and (d) the purchaser had no notice of the plaintiff's equitable interest in the property: *Snell's Equity* (John McGhee, Steven Elliott, ed) (Sweet & Maxwell, 34th Ed, 2020) at paras 4-017–4-027.

168 Mr Lau testified that he told Yew Huat the plaintiff was in arrears and showed Yew Huat the letters of demand sent from the defendant's solicitors to

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227 Transcript (26 May 2022) at p 33 line 15 to p 34 line 1.

228 Transcript (26 May 2022) at p 36 line 2 to p 37 line 23.

229 POS at para 50; SOC at para 93(c).

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the plaintiff.[230] This gave Yew Huat the impression that the defendant had the legal right to seize and sell the Assets as the plaintiff was in arrears. Accordingly, Yew Huat had no notice of the plaintiff's interest in the Assets. Thus, it appears that Yew Huat might have acted in good faith when it purchased the Assets and furnished consideration of $40,000 to obtain the Assets. The Court's hands are, therefore, tied and it cannot make a declaration that the sale of the Assets to Yew Huat is null and void.

Conclusion

169 For the above reasons, I allow the plaintiff's claim against the defendant for its intentional disposal of the Assets. I grant all of the plaintiff's prayers as pleaded in the SOC,[231] save for: (a) a declaration that the sale of the Assets to Yew Huat is null and void; and (b) an order for the plaintiff and the defendant to recover the Assets from Yew Huat.

170 I also dismiss the defendant's counterclaim for the balance outstanding arrears. However, I make the following findings:

> (a) There was a tenancy agreement between the plaintiff and the defendant. The language of the LOI plainly shows that the parties intended to create a landlord-tenant relationship. The Service Agreement was, in substance, a tenancy agreement. IRAS also considered the Service Agreement to be a tenancy agreement. Further, the plaintiff had exclusive possession of the Service Area. The name "Service Agreement" was an attempt by the defendant to circumvent JTC's prohibition against subletting the Premises. In fact, JTC, through

[230] Transcript (25 May 2022) at p 97 line 16 to p 98 line 4.

[231] SOC at para 93.

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the CHBC letter, concluded that the plaintiff was the defendant's subtenant and the defendant did not dispute JTC's finding. Finally, the assignment of the leasehold to the defendant was valid.

(b) The defendant had no contractual entitlement to dispose of the Assets. The plaintiff made attempts to make payment of the arrears in September 2020 but the defendant unreasonably refused to accept the plaintiff's payment. The defendant's intentional, unreasonable and high-handed disposal of the Assets was in breach of the COVID-19 Act and the Distress Act.

(c) The defendant's counterclaim fails as the defendant did not mitigate its losses. The defendant did not make attempts to ascertain the fair market value of the Assets. Its sole concern was to sell the Assets as quickly as possible in order to evict the plaintiff as its tenant so as to avert punitive actions from JTC.

171 The defendant should have lived up to its responsibilities as landlord of the plaintiff and engaged in discussions with the plaintiff who acted at all times as an amiable and willing tenant. Disappointingly, the defendant refused to engage the plaintiff in September 2020 and was instead determined to evict the plaintiff from the Premises so that JTC would not take action against the defendant for unapproved subletting.

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172 The defendant is to pay costs to the plaintiff for the main suit and the defendant's counterclaim, to be agreed or taxed.

Tan Siong Thye
Judge of the High Court

Loh Yik Ming Michael (Clifford Law LLP) for the plaintiff;
Lim Bee Li and Wong Zhen Yang (Chevalier Law LLC) for the defendant.

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