

Smile Inc Dental Surgeons Pte Ltd v OP3 International Pte Ltd
[2019] SGHC 265

Case Number : Suit No 498 of 2015
Decision Date : 11 November 2019
Tribunal/Court : High Court
Coram : Chan Seng Onn J
Counsel Name(s) : Ho Chien Mien and Samantha Teong Li Hui (Allen & Gledhill LLP) for the plaintiff;
Vijai Dharamdas Parwani and Nicholas Winarta Chandra (Parwani Law LLC) for the defendant.
Parties : Smile Inc Dental Surgeons Pte Ltd — OP3 International Pte Ltd

Building and Construction Law – Damages – Delay in completion

Building and Construction Law – Damages – Damages for defects

11 November 2019

Judgment reserved.

Chan Seng Onn J:

Introduction

1 Smile Inc Dental Surgeons Pte Ltd (“the plaintiff”) is a company in the business of providing dental services, and it operates several dental clinics in Singapore. OP3 International Pte Ltd (“the defendant”) is a company that provides, *inter alia*, interior design and fitting-out works. [\[note: 1\]](#)

2 The present judgment follows *Smile Inc Dental Surgeons Pte Ltd v OP3 International Pte Ltd* [2017] SGHC 246 (the “Liability Judgment”), where I found that, flowing from various breaches by the defendant, the plaintiff’s clinic located at Suntec City Mall, 3 Temasek Boulevard #02-326/327, Singapore 038983 (“the Suntec Clinic” or “the new Suntec Clinic” (where appropriate)) [\[note: 2\]](#) was subject to three periods of extended closure (collectively, “the Blackout Periods”) (Liability Judgment at [158]):

(a) From 12 September 2013 to 31 October 2013 (*ie* 50 days), the Suntec Clinic was closed as a result of the delayed completion of fitting-out works (“the Works”) by the defendant;

(b) From 17 January 2014 to 8 March 2014 (*ie* 51 days), the Suntec Clinic was closed as a consequence of flooding which had occurred due to the defendant’s failure to ensure that the Works were designed and executed in a manner that was fit for its intended purpose;

(c) From 29 July 2014 to 5 March 2015 (*ie* 220 days), the Suntec Clinic was closed for a third time as a consequence of flooding which had occurred again due to the defendant’s failure to ensure that the Works were designed and executed in a manner that was fit for its intended purpose.

3 Accordingly, the defendant was liable for the losses in relation to the Blackout Periods lasting a total of **321** days. In this judgment, I will assess the extent of damages due from the defendant to

the plaintiff due to its breaches.

Background

4 The facts of the matter were extensively canvassed in the Liability Judgment, and I will therefore only state the key dates relevant for assessing the damages in this judgment:

(a) The plaintiff contracted for the defendant to complete the Works by 12 September 2013, before the grand opening of the refurbished Suntec City Mall; [\[note: 3\]](#)

(b) In breach of the agreement, the defendant only completed the Works on 31 October 2013, and the Suntec Clinic was only opened on 1 November 2013 as a result; [\[note: 4\]](#)

(c) On 9 January 2014, the plaintiff found mould growing on the walls of the filling room in the Suntec Clinic. On 17 January 2014, it was discovered that the mould was the result of a flood that had occurred in the Suntec Clinic ("the first flood"). As a result, the plaintiff closed the clinic on the same day, and handed it over to the defendant for remedial and rectification works. [\[note: 5\]](#)

(d) The defendant returned possession of the Suntec Clinic to the plaintiff on 8 March 2014. [\[note: 6\]](#)

(e) On 21 July 2014, the plaintiff again discovered mould growth on the same walls of the filing room in the Suntec Clinic. It was found that the growth was caused by flooding in the Suntec Clinic ("the second flood"). On 29 July 2014, the plaintiff closed the Suntec Clinic. [\[note: 7\]](#)

(f) Due to the plaintiff's failure to pay outstanding rent and resume business at the Suntec Clinic, the landlord (the "landlord") repossessed the Suntec Clinic on 30 March 2015. [\[note: 8\]](#)

Burden of proof for each head of claim

5 The plaintiff's heads of claim are aplenty, ranging from its expenses flowing from the removal and storage of the equipment and items in the Suntec Clinic, to expenses it had incurred to remedy the impact of the floods. Furthermore, the plaintiff claims for the loss of profit it suffered during the Blackout Periods, as well as wasted expenditure during the same periods. [\[note: 9\]](#) In total, the plaintiff claims in excess of \$1,312,407.87. [\[note: 10\]](#)

6 Before proceeding to consider the validity of each head of claim, principles in relation to the burden of proof are apposite, as they relate to each head of claim that falls for my consideration.

7 It is trite law that the plaintiff bears the burden of proving each head of claim on the balance of probabilities. To meet this standard of proof, the plaintiff cannot merely assert that it has suffered a loss. Instead, each head of claim must necessarily be backed by evidence, whether documentary, oral or otherwise. Without any such evidence, the claim will not be established on the balance of probabilities, and the plaintiff's claim will fail.

8 Where no evidence is furnished by the plaintiff to back its head of claim, there is strictly speaking *no* burden on the defendant to raise any objection. As encapsulated by the Court of Appeal in *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 at [60]:

...at the start of the plaintiff's case, the legal burden of proving the existence of any relevant fact that the plaintiff must prove and the evidential burden of adducing some (not inherently incredible) evidence of the existence of such fact coincide. Upon adduction of that evidence, the evidential burden shifts to the defendant, as the case may be, to adduce some evidence in rebuttal. If no evidence in rebuttal is adduced, the court may conclude from the evidence of the plaintiff that the legal burden is also discharged and making a finding on the fact against the defendant. If, on the other hand, evidence in rebuttal is adduced, the evidential burden shifts back to the plaintiff. If, ultimately, the evidential burden comes to rest on the defendant, the legal burden of proof of that relevant fact would have been discharged by the plaintiff. The legal burden of proof – a permanent and enduring burden – does not shift. A party who has the legal burden of proof on any issue must discharge it throughout. Sometimes, the legal burden is spoken of, inaccurately, as "shifting"; but what is truly meant is that another issue has been engaged, on which the opposite party bears the legal burden of proof.

9 Relatedly, where evidence is furnished by a witness that goes to the very heart of the matter, whether through an affidavit of evidence-in-chief, in court, or otherwise, it will generally be accepted as the truth of the matter unless it is subject to a successful challenge in court. A belated challenge to such evidence in submissions where such a challenge was not put to the witness concerned may be disregarded. As Sundaresh Menon JC (as he then was) observed in *Hong Leong Singapore Finance Ltd v United Overseas Bank Ltd* [2006] SGHC 205 at [42]:

...Browne v Dunn is a case of some vintage and it lays down a rule of fairness. The effect of that rule is that where a submission is going to be made about a witness or the evidence given by the witness which is of such a nature and of such importance that it ought fairly to have been put to the witness to give him the opportunity to meet that submission, to counter it or to explain himself, then if it has not been so put, the party concerned will not be allowed to make that submission. It is not a rigid, technical rule. Nor is it necessarily satisfied by a formulaic recitation of a party's case to a witness, with an invitation merely to agree or disagree. In Chan Emily v Kang Hock Chai Joachim [2005] 2 SLR 236 at [15], Choo Han Teck J noted that the rule which is derived from a case more than a century old must be applied with due regard to the realities of modern litigation and in evaluating any given objection, consideration should be given to the totality of the evidence in the case. I think that is correct. In Lo Sook Ling Adela v Au Mei Yin Christina [2002] 1 SLR 408 the Court of Appeal noted (at [40]) that the rule is not rigid and does not require every point to be put to the witness but this would generally be required where the submission was "at the very heart of the matter"... [emphasis added]

10 With the aforementioned principles in mind, I proceed to consider each head of claim submitted by the plaintiff.

Categories of claim

11 The plaintiff claims for losses for four categories of damages that it allegedly suffered due to the defendant's breaches, namely:

(a) First, the plaintiff claims for sums which it had been awarded in the Liability Judgment ("Category 1"). These sums are not disputed; [\[note: 11\]](#)

(b) Second, the plaintiff claims for losses that it incurred due to the defendant's late completion of fitting-out ("Category 2"); [\[note: 12\]](#)

(c) Third, the plaintiff claims for losses due to the floods ("Category 3"), which are sub-divided as follows:

(i) Category 3a consists of flood investigation and remediation costs in the aftermath of the second flood; and

(ii) Category 3b consists of loss of management time and expense due to both floods. [\[note: 13\]](#)

(d) Fourth, the plaintiff claims for losses arising from the Blackout Periods and the permanent repossession of the Suntec Clinic by the landlord ("Category 4"), which losses are sub-divided as follows:

(i) Category 4a consists of wasted operating costs,

(ii) Category 4b consists of loss of profits,

(iii) Category 4c consists of wasted capital expenses, and

(iv) Category 4d consists of damages in connection with the early termination of the Suntec Clinic lease. [\[note: 14\]](#)

12 As the defendant's submissions respond directly to the categories of damages as presented by the plaintiff, I will consider the plaintiff's heads of claim generally in accordance with the four categories above.

13 However, I have decided to deal with the above Category 4 claims slightly differently by sorting them out into the following Categories to achieve more clarity and to simplify the understanding of the computation of the damages:

(a) Categories 4a and 4b: Loss of revenue minus variable expenses that were saved during the Blackout Periods;

(b) Category 4c: Wasted capital expenses, comprising (i) wasted depreciation expenses from 6 March 2015 to the end date of the lease on 21 September 2016 and (ii) wasted rent in arrears paid to the landlord from 6 March 2015 to 29 March 2015, the day before the landlord's termination of the lease; and

(c) Category 4d: Other damages in connection with the early termination of the lease and the repossession by the landlord on 30 March 2015.

Category 1: Sums awarded in the Liability Judgment

14 As mentioned, the sums in relation to Category 1 are not disputed. However, the plaintiff made some errors in computing sums that were awarded in the Liability Judgment. This needs to be corrected as follows:

S/N	Description of claim	Amount claimed	Explanation/supporting documents	Amount allowed

1	Outstanding work	5,000	This amount of \$5,000 has been taken into account and was deducted and set off against the counterclaim sum due to the defendant (Liability Judgment at [154]), resulting in a final award of \$87,432.50 for the defendant's counterclaim (Liability Judgment at [159]).	0
2	Granite tiles for walkway	1,872.50	This amount of \$1,872.50 has been taken into account and was deducted and set off against the counterclaim sum due to the defendant, resulting in a final award of \$87,432.50 for the defendant's counterclaim (Liability Judgment at [155]).	0
3	Fitting-out deposit	3,000	This amount of \$3,000 has to be taken into account in this assessment of damages as it has <i>not</i> been set off against the counterclaim sum due to the defendant (Liability Judgment at [158(d)]).	3,000
Further sum to be allowed in this Judgment on Damages				\$3,000

Category 2: Losses incurred due to late completion of fitting-out

Lack of evidence to show that delayed completion of fitting-out works was the cause of the plaintiff's loss

15 Turning to Category 2, which relates to losses incurred by the plaintiff due to the delayed completion of fitting-out works by the defendant, the plaintiff claims for \$17,886.60, being the advance payment of one month's rent, service charge and promotion fund (collectively, "rent") which it had paid to its landlord.

16 This one-month advance payment had been paid by the plaintiff to its landlord pursuant to a lease agreement between them ("the Lease"). [\[note: 15\]](#) In the Lease, the landlord also granted a two-month rent-free fitting-out period, provided that the plaintiff does not breach the Lease: [\[note: 16\]](#)

The Landlord agrees to grant to the [plaintiff] a period of two (2) months ... to carry out the Fitting-Out Works. Unless the Tenant is in breach of the Lease, the Tenant shall not be liable for any rent or other payment during the Fitting-Out Period...

This fitting-out period was from 22 July 2013 to 21 September 2013 ("Fitting-Out period"). [\[note: 17\]](#)

17 However, the plaintiff alleges that, due to the delayed completion by the defendant, the plaintiff became in breach of the Lease. [\[note: 18\]](#) As such, the landlord charged the plaintiff for the month of 1 August 2013 to 31 August 2013 by deducting the advance of one month's rent paid by the

plaintiff at the commencement of the Lease, which period would otherwise fall within the rent-free Fitting-Out period. [\[note: 19\]](#)

18 In this regard, Ms Chong Mo-Ai Grace ("Ms Chong"), the managing director of the plaintiff, asserted that the one-month advance on rent had been used to "knock off from the August period when [the defendant] was fitting-out [the] clinic". [\[note: 20\]](#) However, Ms Chong could not provide any proof of correspondence from the landlord that the one-month advance payment had been used to charge the plaintiff for the rent for the month of August 2013 *because* of the defendant's delay in completing the Works. Instead, she admitted that she simply *presumed* that the plaintiff had been charged the rent for the month of August 2013 *because* of the defendant's delay. [\[note: 21\]](#)

Two effective causes of loss: the defendant's breach which caused the second flood and the plaintiff's failure to pay the rent timeously

19 In a Statement of Claim submitted by the landlord against the plaintiff on 18 May 2015, the landlord claimed, among others, for unpaid rent for the months of July and September 2013 (which also fell under the Fitting-Out period). [\[note: 22\]](#) Patently, given that rent was not claimed for August 2013 (which was within the Fitting-Out period), this supports Ms Chong's claim that the one-month advance payment had been used to "knock off" the rent being charged by the landlord for the otherwise rent-free Fitting-Out month of August 2013 (*ie* the first month of the two-month rent-free Fitting-Out period).

20 Nonetheless, the delayed completion was *not* mentioned as a basis for the claim by the landlord against the plaintiff. Rather, the stipulated bases for the landlord's claim was the plaintiff's breach of the Lease by ceasing to operate at the premises from 29 July 2014 (*ie*, after the second flood) and failing to pay the outstanding rents for the premises. [\[note: 23\]](#) This is consistent with the terms of the Lease, which expressly states that "[u]nless the [plaintiff] is in breach of the Lease, the [plaintiff] shall not be liable for any rent ... during the Fitting-Out Period" [emphasis added]. [\[note: 24\]](#) In breach of the Lease, the plaintiff in fact failed to pay rent timeously *and* to keep the Suntec Clinic open during business hours for an extended period after the second flood, [\[note: 25\]](#) thereby justifying the landlord's move to charge the plaintiff rent for the otherwise rent-free Fitting-Out period.

21 The landlord's use of the plaintiff's one-month advance rental payment to cover the rent for the fitting-out month of August 2013 appears therefore to have two causes: first, the plaintiff failed to pay its rent timeously to its landlord; second, the plaintiff ceased to operate the Suntec Clinic following the second flood.

22 Of the two causes, only the second cause involving the plaintiff's failure to operate the Suntec Clinic flowed directly from the defendant's breach of providing defective Works which caused the second flood. The first cause, namely the plaintiff's failure to pay its rent timeously, appears to be caused *solely* by the plaintiff, and is separate and distinct from the defendant's breaches. Although Ms Chong had testified that the plaintiff had insufficient funds to set up and continue operations at the Suntec Clinic after the second flood, [\[note: 26\]](#) I note that the plaintiff did not specifically argue that its inability to pay its rent timeously was in part caused by the closure of the Suntec Clinic, which affected its cash flow from its revenue from patients ("patient revenue") that would otherwise have been earned by having patients attend at its Suntec Clinic.

23 Furthermore, Ms Chong testified that as a company, the plaintiff's position was "positive". [\[note:](#)

[271](#) However, she refused to pay the rental money as she was attempting to renegotiate with the landlord for new premises so that the plaintiff could generate revenue and pay the rent. [\[note: 28\]](#) While awaiting these new premises which were never granted by the landlord, the Suntec Clinic was padlocked, and eventually repossessed. [\[note: 29\]](#)

24 Accordingly, I assume that the plaintiff had the financial capacity and sufficient cash flow at that time from its other clinics (which were generating revenue) or from its other ready sources of funds to help pay the rent timeously for the Suntec Clinic if it so wished. The rent was simply unpaid as the plaintiff was negotiating for alternative premises with its landlord, and did not wish to pay such rent unless and until it was granted such alternative premises. [\[note: 30\]](#) I therefore proceed on the basis that the plaintiff's failure to pay its rent timeously was *solely* caused by the plaintiff.

Principles relating to two causes for a contractual breach

25 When the breach of a contract is one of two causes, "[t]he contract-breaker is liable so long as his breach was 'an' effective cause of [the plaintiff's] loss: the court need not choose which cause was the more effective" (*Chitty on Contracts* vol 1 (H G Beale gen ed) (Sweet & Maxwell, 33rd Ed, 2018) ("*Chitty on Contracts*") at para 26-076). Similarly, in *Heskell v Continental Express Ltd and another* [1950] 1 All ER 1033 ("*Heskell*") at 1048, Devlin J observed that "[i]f a breach of contract is one of two causes, both co-operating and both of equal efficacy, ... it is sufficient to carry judgment for damages."

26 These principles are made clear in the English Court of Appeal's decision in *County Ltd and another v Girozentrale Securities* [1996] 3 All ER 834 ("*County*"). In *County*, the plaintiff bank agreed to underwrite the issuance of 26 million shares in a publicly quoted company, R plc. The defendant stockbrokers were engaged by the plaintiff bank to approach potential investors. The plaintiff bank then informed the defendant broker and R plc that it would only proceed with the issue if institutional investors made commitments to subscribe for all the shares. However, in the letter of engagement to the defendant stockbrokers, the plaintiff bank stated that the brokers were to proceed "on the terms and conditions and strictly on the basis of the information contained in" the issue, and did not include any statement that the bank would only proceed with the issue if all the shares were subscribed. In breach of the letter of engagement, the defendant stockbrokers told institutional investors that the issue would only go ahead if it was fully subscribed. This was done in order to obtain indicative commitments from certain potential investors. The chairman of R plc also gave indicative commitments for six million of the shares on behalf of unnamed principals, with the result that there was an indication of 100% commitment for the placement. However, during the placement, some of R plc's chairman's unnamed principals did not take up the shares, with the result that 4.43 million shares were not taken up. Certain investors who had subscribed on the basis that the company would be fully subscribed therefore withdrew their subscriptions on the back of the defendant stockbrokers' representations. This left the plaintiff bank, as underwriters, with shares on which it made a loss of £6,897,548.

27 The plaintiff bank sued the defendant stockbrokers. At first instance, the judge held that the defendant stockbroker's breach was not the effective cause of the bank's loss, as they were not of equal efficacy with the bank's decision to accept the indicative commitments of R plc's chairman without making proper inquiries. On appeal, the Court of Appeal clarified that the plaintiff bank's conduct did not override the defendant stockbrokers' breach, and the defendant was accordingly liable (*County* at 849):

... [T]he mere fact that the [plaintiff's] failure to take reasonable precautions in its own interest

could be regarded as an effective and concurrent cause ... did not justify the conclusion that [the defendant's] breach of contract was not an effective cause.

For my part *I would not agree that the conduct of [the plaintiff] could be regarded as of greater efficacy but, even if it could, it certainly did not displace the efficacy of [the defendant's] breach.* Accordingly, I would hold that [the defendant] was in breach of the terms of its engagement as brokers and that its breach caused [the plaintiff] the loss claimed. I would accordingly allow the appeal, set aside the judge's order and enter judgment for [the plaintiff] for damages to be assessed.

[emphasis added]

28 Similarly, in *Heskell*, the plaintiff had agreed to sell goods to a Persian buyer by a shipment. On 19 November 1946, the plaintiff instructed the first defendant, which warehoused the goods, to despatch the goods to the dock. By their admitted negligence, the first defendant did not do so, and the goods were accordingly not sent to the dock. Later, on 5 December 1946, a bill of lading in respect of the goods was issued by the second defendant, who had allocated cargo space to the plaintiff for the goods, notwithstanding the fact that the goods were never received at the dock and thus not shipped. The ship that was intended to deliver the plaintiff's goods eventually arrived at the Persian Gulf without the goods. The buyer eventually claimed a substantial sum from the plaintiff, mainly covering the loss of profit which he would have made on a re-sale of the goods. The plaintiff took out a claim against both defendants.

29 A review of the above facts reveals that there were two causes for the plaintiff's loss, namely the first defendant's failure to despatch the goods to the dock and the second defendant's negligence in issuing a bill of lading when the goods had never been received from the first defendant. In holding that the first defendant was liable, Devlin J held that "[t]he issue of the bill of lading could not extinguish the [warehousing company's] breach of duty as a causative event; the breach being continuing is a continuous source of damage. But the two were equally operative causes in that if either had ceased the damage would have ceased" (*Heskell* at 1047). Accordingly, the two causes were "both co-operating and both of equal efficacy", and the first defendant's breach was "sufficient to carry judgment for damages" (*Heskell* at 1048).

The defendant's breach was an effective cause of the plaintiff being charged for the rent-free Fitting-Out period

30 In this case, the landlord applied the one-month advance rental payment paid by the plaintiff to cover the rent for August 2013. The Statement of Claim by the landlord reveals that *both* the plaintiff's failure to pay the rent timeously *and* to resume business at the Suntec Clinic were the operative causes for the plaintiff being charged rent for the month of August 2013, [\[note: 31\]](#) which would otherwise have fallen within the rent-free Fitting-Out period. There is nothing to indicate that one of the two causes was more efficacious than the other. Accordingly, the defendant's breach which caused the second flood and which led to the plaintiff being unable to resume business at the Suntec Clinic was an effective cause of the plaintiff being charged rent of what was otherwise a rent-free Fitting-Out period. This is sufficient on the authorities above to render the defendant liable for the one-month advance payment that was used up in part payment of the two months' rent-free Fitting-Out period.

31 The query then turns to whether circumstances exist which would reduce the amount recoverable by the plaintiff.

No failure to mitigate

32 In this regard, the defendant alleges that the plaintiff ought to have mitigated its losses and paid the rent first. [\[note: 32\]](#) By failing to pay its rent timeously, the landlord charged the plaintiff for the rent-free Fitting-Out period, and it is accordingly "inherently unfair and unreasonable" for the defendant to be liable for the rent-free Fitting-Out period. [\[note: 33\]](#)

33 As explained, both the plaintiff's failure to pay the rent *and* the closure occasioned by the defendant's breach were the effective causes of the plaintiff being charged for the rent-free Fitting-Out period. Hence, even if the plaintiff had continued to pay the rent to its landlord, there is no evidence to show that the landlord would not have repossessed the Suntec Clinic and charged the plaintiff for the rent-free Fitting-Out period. In fact, the plaintiff clearly took mitigatory steps by entering into the settlement agreement with the landlord, whereby it would only pay rent up until 29 March 2015 [\[note: 34\]](#) instead of until 21 September 2016, [\[note: 35\]](#) the latter being the contractually-agreed end date for the Lease.

34 With the early termination of the Lease as part of the settlement agreement, the extent of the defendant's liability in damages to the plaintiff from 30 March 2015 (the date of termination of the Lease) to 21 September 2016 (the contractually-agreed end-date of the Lease) is reduced. This is because the defendant would no longer be liable for the losses in revenue suffered by the plaintiff, as no such revenue could have been generated after the Suntec Clinic had been repossessed following the early termination. Instead, the defendant is only liable to the plaintiff for the proportionate part of capital expenses in setting up the Suntec Clinic that could not be depreciated over the surrendered portion of the Lease and thus was wasted and had to be written off. Had there been no early termination, the plaintiff could claim a loss of **\$830.76 per day** (see [81] below) based on the loss of revenue suffered by the plaintiff on a per-day basis, after deducting variable expenses which were saved. With early termination, the plaintiff's loss is limited to **\$243.25 per day** based on the wasted capital expenses on a per-day basis (see [107] below). The main contribution to the large loss reduction is the savings by the plaintiff in not having to pay anymore rent. It would have made no commercial sense for the plaintiff to continue to pay rent for premises that it could no longer use as a dental clinic. Hence, the premature termination of the Lease constitutes a clear step towards mitigating damages on the plaintiff's part.

35 Hence, I allow the plaintiff's claim of \$17,886.60, being one month's rent paid for August 2013, which rent was payable due to the defendant's breach in providing inadequate Works.

36 I note that the plaintiff also had to pay the rent in arrears for an additional month (being 22 July 2013 to 31 July 2013 and 1 September 2013 to 21 September 2013, a total of 31 days) of the otherwise two months' rent-free Fitting-Out period. [\[note: 36\]](#) This additional month of rent was settled as part of the sum of \$177,570.09 (without GST) paid to the landlord for the early termination of the Lease. For the same reasons, I allow a further sum of \$17,886.60 being another one month's rent as damages which would be conveniently placed under Category 2, to take into account all the rent charged by the landlord for the otherwise two months' rent-free Fitting-Out period.

37 Accordingly, the amount of damages allowed under **Category 2** is **\$35,773.20**.

Category 3: Losses caused by the floods

38 Turning to Category 3, the heads of claim are separated into two sub-categories, which I will

deal with in turn.

Category 3a: Flood investigation and remediation costs

39 Category 3a comprises the plaintiff’s claims for payments which it had allegedly made to vendors for remediating the aftermath of the second flood.

40 Having considered the evidence, my decision with respect to each head of claim under Category 3a is as follows:

S/N	Description of claim	Amount claimed	Explanation/supporting documents	Amount allowed
1	Invoices Nos. 5047 and 5054 issued by Apex Worldwide Movers & Services	1,350 [note: 37]	Not disputed for expediency. [note: 38]	1,350
2	Cost of dismantling and transporting dental equipment by QuantumLeap Healthcare Pte Ltd	3,200 [note: 39]	Not disputed for expediency. [note: 40]	3,200
3	Cost of dismantling and transporting compactus to storage by Goh Kia Liang metal Works Contractor	720 [note: 41]	Not disputed for expediency. [note: 42]	720
4	Cost of handling (unbinding), scanning, transporting documents and destroying empty files in carton boxes by Megastar Scan	8,909.49 [note: 43]	Ms Chong testified that but for the flood, there would have been no need to scan the clinical notes, and the clinical notes for her other clinics had not been scanned yet. [note: 44] However, given that the flood had caused the clinical notes in the Suntec Clinic to become mouldy, she had to scan them to ensure that the clinic would not lose its records. [note: 45] While Ms Chong did not provide any documentary or pictorial evidence to show that the mould had started spreading on the documents following	8,909.49

the flood(s), [\[note: 46\]](#) I accept her evidence that the scanning of the documents was necessary to ensure that the clinical records at the Suntec Clinic would not be destroyed by mould infestation.

This is particularly as the Invoice by Megastar Scan, issued on 2 December 2014, shortly after the second flood, clearly describes the invoice as being issued "[f]or Scanning of Documents located at ... Suntec City Mall...". [\[note: 47\]](#)

The proximity in time of the scanning works by Megastar Scan, coupled with the fact that the scanning was for the Suntec Clinic only, supports Ms Chong's evidence that she did not have to scan the clinical records of her other clinics, [\[note: 48\]](#) thereby furnishing proof that the scanning work at that time was necessitated by the mould infestation occasioned by the floods.

The claim is also not too remote.

The principles in relation to remoteness are espoused in *Hadley and another v Baxendale and others* (1854) 9 Ex 341 ("*Hadley*") at [354]:

Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered as either arising naturally, *ie*, according to the usual course of things, from such breach of contract itself, or such as *may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.* ("the first limb of *Hadley*") [emphasis added]

Given that the plaintiff operated a dental clinic which utilised physical records of clinical notes (which is not at odds with

			<p>modern practice), it is clear that the scanning of such clinical notes to prevent their destruction may be reasonably supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of the contract in failing to design a proper drainage system that was fit for purpose. The claim therefore falls under the first limb of <i>Hadley</i>.</p> <p>Accordingly, I allow this claim.</p>	
5	Cost of dismantling Pax-I and EzSensor by QST Dental Pte Ltd ("QST")	1,325 [note: 49]	<p>[note: 49] As a result of the floods, QST, the plaintiff's X-Ray vendor, dismantled the Pax-I and EzSensor machines in the plaintiff's clinic and stored them in QST's warehouse. [note: 50]</p> <p>While the initial amount quoted by QST was \$2,650 for the dismantling and installation of the machines, and \$200 per month for storage of the machines, [note: 51] the actual amount invoiced was only \$1,325. [note: 52] Furthermore, the invoice was only issued in 2016, some two years after the second flood. This, according to Ms Chong, is due to the goodwill and long-standing relationship between the plaintiff and QST, who "support us and when such calamities fall on us, they are just there to help us." [note: 53]</p> <p>The defendant denies this claim for being too remote. [note: 54]</p> <p>While the invoice was only issued almost two years after the flood, it cannot be that the dismantling of the machines in the premises that was the subject of the flooding, being a natural consequence of the defendant's breaches, was not reasonably foreseeable by the defendant. Hence, notwithstanding the delayed invoice, I allow this claim.</p>	1,325

6	Self-storage licence for use of unit no. 7940 from 7 October 2014 to 6 April 2015 (6 months) at \$331.70 per month	1,990.20 [note: 55]	After the second flood in July 2014, the dental chairs, pipes, furniture and other items in the Suntec Clinic were dismantled and stored elsewhere, [note: 56] causing the plaintiff to incur the following storage costs. The defendant disputes these claims for being too remote, as "it remains to be seen whether the storage was used exclusively for items from [the] Suntec Clinic" [note: 57] and as the defendant ought not to be liable for storage beyond the time of 1.5 to two months after the second flood.	1,990.20
7	Invoice no. 37403M for use of unit no. 7940 from 7 April 2015 to 6 October 2015	1,230 [note: 61]	First, I am satisfied on a balance of probabilities that only items from the Suntec Clinic were stored in unit no. 7940, as no reasonable explanation was provided to support the defendant's speculation that the plaintiff had used the storage facilities to store items from their other clinics. During cross-examination, Ms Chong very reasonably explained that the items which were stored were either equipment or furniture from the Suntec Clinic, or they were stored for evidentiary purposes for the present suit. [note: 58] Her evidence is supported by a report by QuantumLeap Healthcare on 22 August 2014, which stated that the dental equipment in the Suntec Clinic had to be put in storage "to avoid further damage" which had been caused by short circuiting of the dental units and equipment when they came in contact with the water from the flooding. [note: 59]	1,230
8	Invoice No. 030915 for use of unit no. 7940 from 7 October 2015 to 6 April 2016	1,599 [note: 62]	Second, given that the flooding occasioned by the defendant's breach caused the plaintiff to have to find a place to store its equipment and furniture until an appropriate alternative could be found, I find that the period of storage in unit no. 7940 is reasonable. Significantly, there is no legal basis cited by the defendant to back its claim that it ought to be liable for storage for the first 1.5 to two months after the second	1,599
9	Letter from Lock+Store regarding rates for lease renewal for use of unit no. 7224m and 7255m from 22 Feb - 21 Aug 2015 (paid 5 Mar 2015)	1,080 [note: 63]		0
10	Invoice No. 230915 for use of unit no. 7224m and 7255m from 22 August 2015 - 21 February 2016	1,080 [note: 64]		0

			<p>flood only. Given the significant amount of items to be relocated after the second flood, and as most of the items were professional clinical equipment which could not be easily offloaded or disposed of, I find that the storage costs were reasonably incurred.</p> <p>They also clearly fall under the first limb of <i>Hadley</i>, and are accordingly not too remote.</p> <p>I therefore allow the claim for the storage costs only in respect of unit no. 7940.</p> <p>However, I disallow the claim for the storage costs in respect of units no. 7224m/7255m, which leases I note were with effect from 22 February 2015.</p> <p>This is seven months after the discovery of the second flooding on 21 July 2014 that resulted in the closure of the Suntec Clinic on 29 July 2014. I have accepted that the dental chairs, pipes, furniture and other items in the Suntec Clinic (which appears to me to be a fairly comprehensive list of items) had been dismantled and stored in unit no. 7940 soon after the closure of the Suntec Clinic on 29 July 2014. There does not appear to be much else in the Suntec Clinic that had to be dismantled and stored elsewhere some seven months after the second flood, resulting in additional storage space being required (<i>ie</i>, units no. 7224m/7255m). That this was a "lease renewal" [note: 60] suggests that the plaintiff had already been leasing these units for other purposes. I am not satisfied on the evidence presented that these units were specifically rented to store items from the Suntec Clinic.</p>	
11	<p>Cost of inspecting Suntec Clinic by Matcor Technology & Services Pte Ltd</p>	11,300 [note: 65]	<p>After the second flood, the plaintiff appointed Matcor on 5 September 2014 [note: 66] to provide an independent assessment of the cause of the flood and mould growth. [note: 67]</p>	11,300

("Matcor")

The defendant claims that the report was done in contemplation of legal proceedings, and ought therefore to be recorded as an expense subject to taxation. [\[note: 68\]](#) I do not accept the defendant's assertion.

In her affidavit dated 14 November 2016, Ms Chong gave evidence that prior to appointing Matcor in September 2014, she had been chased by the landlord "to clear the waters" from the second flood, and that she had already received a quote by another contractor for \$40,000 to that effect. Accordingly, she asked the defendant to send their method statement by 1 September 2014 if they "preferred that [the defendant] undertake[s] to clear the flood water and mould." [\[note: 69\]](#)

Notwithstanding the urgency of the matter, the defendant merely replied on 11 September 2014, via its solicitors, that it required more time to take instructions as the solicitors had just been instructed on the matter. [\[note: 70\]](#)

Given the above, I accept the plaintiff's evidence that while a letter of demand had been sent to the defendant on 22 August 2014, prior to calling Matcor in to inspect the cause of the flood, the letter had only been sent as a means to spur the defendant into remedying the second flood, rather than with a view to commence legal proceedings. [\[note: 71\]](#)

This is particularly as the plaintiff only commenced legal proceedings on 22 May 2015, [\[note: 72\]](#) long after the Matcor report was furnished on 11 November 2014. [\[note: 73\]](#) Furthermore, aligned with its intention of remedying the situation, on 29 August 2014, the plaintiff had sought a quotation from Disaster Restoration Pte Ltd for "Bio Decontamination, Flood Restoration and Mo[u]ld Remediation Works." [\[note: 74\]](#) True to this intention, the plaintiff subsequently appointed Disaster

Restoration Pte Ltd to extract water from below the floor boards and to deploy and attach six units of blowers to expedite the drying process, [\[note: 75\]](#) showing that they had every intention to remediate the flooding situation at the time when they had procured the Matcor report.

Accordingly, I find that the report was not obtained in contemplation of legal proceedings, but rather with a hope of remediating the flooding situation to allow the plaintiff to recommence business as soon as possible. The cost of the Matcor report was therefore incurred as a result of the defendant's breach in carrying out defective Works,

which breach caused the floods.

12	Cost of inspecting Suntec Clinic by Liew Consultants	5,000 [note: 76]	<p>[note: 77] This cost was similarly incurred by the plaintiff to understand what the cause of the second flood was. This became necessary as the defendant was not forthcoming about the cause of the flood, thereby requiring the plaintiff to undertake alternative measures to find out the cause of the flooding problem in order to be able to remedy the situation.</p> <p>[note: 77]</p> <p>As Liew Consultants was appointed on 25 August 2014 [note: 78] shortly after the second flood, I find, for reasons similar to S/N 11, that they were appointed with a view to remedy the flood rather than in contemplation of legal proceedings. It has not been submitted that it was unreasonable for the plaintiff to have procured two separate reports (one from Matcor, one from Liew Consultants) to determine the root cause of the second flood.</p> <p>Nonetheless, for completeness, I find that procuring two reports is not unreasonable, given that the second flood had occurred shortly after the highly disruptive first flood, and it is therefore reasonable for the plaintiff to obtain both reports to properly determine the cause of the floods so as to prevent any future repeats.</p> <p>I accordingly allow the claim.</p>	5,000
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13	<p>Costs of, amongst other things, providing hoarding and protection around and in the vicinity of Clinic, conducting air sampling tests, dismantling vinyl flooring for the entire unit and other contaminated fixtures and fittings, bio fogging, removal of water beneath floorboards and drying out Clinic, by Disaster Restoration Pte Ltd</p>	<p>39,850 [note: 79]</p>	<p>The sum was incurred due to the plaintiff's appointment of Disaster Restoration Pte Ltd to undertake several steps to remediate the second flood.</p> <p>The defendant disputes this sum as being excessive, and assert that they should only be liable for 50% of the costs "at best". [note: 80]</p> <p>During cross-examination, Ms Chong admitted that "it was an excessive sum" but that she had no choice but to appoint Disaster Restoration Pte Ltd as there was "no one else to do this work. It's such a specialised job that only they can do it." [note: 81]</p> <p>The defendant has not proffered any alternative reports nor evidence to show how the cost was excessive; its claim is a bare assertion. Quite the contrary to its bare assertion, it appears that the plaintiff did not incur the cost unreasonably, but had in fact given the defendant an opportunity to remedy the second flood. Yet, by 27 August 2014, more than one month after the defendant was first notified of the second flood, [note: 82] and after it had repeatedly accessed the Suntec clinic for inspection, the defendant had not offered any concrete proposal as to how it would remedy the second flood. [note: 83] The plaintiff was therefore forced to appoint Disaster Restoration Pte Ltd to remedy the situation, with the hope of resuming business as soon as possible, and to mitigate its losses as the clinic remained closed as a result of the second flood.</p> <p>In this light, since the costs were reasonably incurred as a result of the flooding occasioned by the defendant's breach, the defendant is liable for the full sum.</p>	39,850
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14	Electrical rectification works - Invoice Nos LST/I/021821 and LST/I/021828R1 by LST Electrical Enterprise	3,900 84]	<p>[note: The defendant disputes this claim as the plaintiff has "not proven why there was a need to rectify electrical works at the Suntec Clinic." [note: 85]</p> <p>This submission is misconceived. Key to this dispute is whether the remedial electrical works were necessitated by the defendant's breach in failing to provide a drainage system that was fit for its purpose at the Suntec Clinic. Reviewing the invoices provided by LST Electrical Enterprise, it appears that "labour, tools and material" were supplied to the Suntec Clinic to, <i>inter alia</i>, dismantle the electrical fittings in the clinic as well as to "supply and install new 150A TPN metal isolator Tap-off unit...". The works were paid for on 21 November 2014 and 31 December 2014 respectively, both shortly after the second flood. [note: 86]</p> <p>With cables and electrical connections installed below the floor board in areas which were flooded, I am not surprised that remedial electrical works were needed to prevent electrical tripping and for safety reasons. If not for the flooding incident, I would not have expected such repair works to be needed so soon after the Works had been completed.</p> <p>Without evidence to the contrary provided by the defendant, the electrical rectification works were clearly occasioned by the flood, which flowed from the defendant's breach. The defendant is therefore liable for the costs of the electrical rectification works.</p>	3,900
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15	Cost of disposal of compactus by QuantumLeap	250	The plaintiff only submitted pictures of the compactus, showing that it had become mouldy. [note: 87]	0
16	Cost of disposal of machine / compactus paid to QuantumLeap	3,050 [note: 88]	This is insufficient to show that the cost of disposing the compactus (if any) had been incurred by the plaintiff. In fact, the claim in S/N 15 appears to overlap with S/N 16.	200
			<p>The plaintiff only submitted the first invoice relating to the cost of disposal of the compactus by QuantumLeap of \$200 before the trial.</p> <p>Two other invoices from QuantumLeap relating to \$250 and \$2,600 respectively were only tendered in the plaintiff's reply submissions, giving the defendant no opportunity to challenge the accuracy and authenticity of the invoices. However, they do not appear to relate to any costs for disposal of the compactus.</p> <p>Therefore, only \$200 as shown in the first invoice is allowed. This cost of disposal of the compactus flows directly from the flood, which was occasioned by the defendant's breach, and falls squarely under the first limb of <i>Hadley</i>.</p>	
	TOTAL	\$85,833.69		\$80,573.69

Category 3b: Loss of management time and expense

41 Category 3b relates to the loss of management time and expense that the plaintiff alleges to have suffered due to the first and second floods. In this regard, the plaintiff estimates that it had incurred a loss of \$265,399.38, with the breakdown as follows: [\[note: 89\]](#)

S/N	Description of claim	Amount claimed (S\$)
1	Loss of revenue that could have been earned by Dr Ernest Rex Tan ("Dr Tan") for Smile Inc	260,176.14 [note: 90]
2	Lost income paid to Ms Chong for doing "non-Smile Inc" work	
3	Lost income paid to Irish Leilani Q Salud ("Irish") for doing "non-Smile Inc" work	5,223.24 [note: 91]

4	Lost income paid to Onihana Kathlyn ("Onihana") for doing "non-Smile Inc" work	
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42 According to the plaintiff, the loss flowed from management time and effort which could have been directed to work related to the plaintiff's business, but were instead directed by the aforementioned parties to: [\[note: 92\]](#)

- (a) Manage the delay in completing the Works from 12 September 2013 to 31 October 2013; [\[note: 93\]](#)
- (b) Manage the patients after the discovery of the first and second flood at the Suntec Clinic; and
- (c) Remove equipment, documents and other items from the Suntec Clinic, as well as the storage of these equipment, documents and other items.

43 Preliminarily, it is clear that the claim for the "[l]oss of revenue that could have been earned by Dr Tan", [\[note: 94\]](#) which is calculated based on the revenue he *could have*, but *did not* generate for the Suntec Clinic as a result of the Blackout Periods, [\[note: 95\]](#) is in fact a claim for a loss of revenue, which will be dealt with under Categories 4a and 4b later. To prevent double counting, this head of claim under Category 3b is rejected.

44 In any event, while Dr Tan had previously worked at the Suntec Clinic *before* its relocation ("the old Suntec Clinic") to the new Suntec Clinic, the evidence shows that after the old Suntec Clinic closed on 28 February 2013, he never returned to work as a dentist (and therefore never generated patient revenue) at the new Suntec Clinic after it opened on 1 November 2013. [\[note: 96\]](#) Hence, there is simply no loss of revenue suffered by Dr Tan as a result of the repeated closures of the new Suntec Clinic that was occasioned by the defendant's breach, as Dr Tan was continuing his work as a dentist at the plaintiff's other clinics. Hence, putting the issue of double-counting aside, there is in fact no loss of patient revenue generation by Dr Tan for the plaintiff's business.

45 Furthermore, insofar as the plaintiff is suggesting that Dr Tan had to use up more time *qua* director to supervise the remediation works at the Suntec Clinic, and thus could not generate as much patient revenue for the plaintiff as a dentist, it would be reasonable to expect Dr Tan to find his own spare time beyond that needed to attend to all of his patients in order to manage the plaintiff's business at the new Suntec Clinic *qua* director. By agreeing to be a director of the plaintiff, Dr Tan has, regardless of whether the clinic was fully operational or closed for repairs, accepted that it is a requisite part of his duties as a director of the plaintiff to attend to and resolve business problems as and when they arise for which he would be remunerated by way of director's fees or a salary if he was an executive director. The plaintiff should not be expected to pay Dr Tan more director's fees or additional salary as an executive director merely for attending to some of the plaintiff's problems arising from the remedial or repair works undertaken during the clinic's closure *eg* in advising Ms Chong, if required, on how to manage the flood investigation and remediation. In any event, I find that Ms Chong is very competent and fully capable of and was in fact largely managing these remedial or repair works on her own. She appears to me to be the one entirely in charge of these matters and Dr Tan was adopting a largely hands-off approach. I doubt that much time was spent by Dr Tan as a director in advising Ms Chong on how to handle these matters. Accordingly, no additional damages would be allowed to the plaintiff on account of Dr Tan's very limited time spent in his capacity as a

director in advising Ms Chong, which I believe has no adverse impact on Dr Tan's patient revenue generation capacity for the plaintiff.

46 Turning to claims for fixed salary expenses paid to Ms Chong, Irish and Onihana, it is not disputed that the plaintiff had to continue paying their salaries plus CPF and other foreign worker levies (if any) even when the Suntec Clinic was not operational due to the defendant's breach. As such, I am treating them as permanent salaried staff of the plaintiff. During the Blackout Periods, there would have been a dearth of patient-related work at the Suntec Clinic, such that these permanent salaried staff would have devoted their work hours towards remediating the floods.

47 Hence, unless these permanent salaried staff had to work overtime to remediate the floods, the salaries paid to them during the Blackout Periods will simply be treated as part of the wasted fixed expenses, which is dealt with under Category 4a below. In this regard, I have not seen any evidence in support of any such overtime payments made to Ms Chong, Irish and Onihana during the Blackout Periods.

48 Since the defendant is already liable to compensate the plaintiff for the wasted fixed salary expenses paid to these salaried staff during the Blackout Periods under Category 4a, any diversion of time by the permanent salaried staff to attend to the defendant's breach should not be additionally compensated for by the defendant under Category 3b. Otherwise, the issue of double compensation arises.

49 Accordingly, all salary claims under Category 3b are dismissed. The claim made for the loss of revenue that Dr Tan could have generated as a dentist of the Suntec Clinic is dismissed as the evidence reveals that Dr Tan did not work at the new Suntec Clinic even when it was operational and did not have to spend much time as a director attending to the flooding issues at the Suntec Clinic. The salaries paid to the permanent staff by the plaintiff during the Blackout Periods will be taken into account as wasted fixed expenses under Category 4a, and are dismissed under Category 3b to avoid double counting.

Category 4: Losses arising from closure of Suntec Clinic during the Blackout Periods and early termination of Lease by landlord

50 Turning to Category 4, the plaintiff claims for losses which it incurred during the Blackout Periods. Category 4 is sub-categorised as follows: [\[note: 97\]](#)

- (a) Category 4a: Wasted operating costs;
- (b) Category 4b: Loss of profits;
- (c) Category 4c: Wasted capital expenses; and
- (d) Category 4d: Other damages in connection with the early termination of the Lease.

51 For ease of understanding, I have decided to amalgamate the claims under Categories 4a and 4b when assessing the losses for the Blackout Periods ending on 5 March 2015. Category 4c (which deals with wasted depreciation and rent from 6 March 2015 onwards) and Category 4d (which deals with other losses related to the early termination of the Lease) are then dealt with individually.

Permissible to claim for expectation and reliance loss

52 Preliminarily, under Category 4, the plaintiff claims for wasted operating costs, loss of profit, wasted capital expenses, and other damages in connection with the early termination of the Lease. [\[note: 98\]](#) This appears to offend the general principle that a plaintiff must elect between expectation losses and reliance losses which flow from the defendant's breach(es) (*Alvin Nicholas Nathan v Raffles Assets (Singapore) Pte Ltd* [2016] 2 SLR 1056 ("*Alvin Nicholas*") at [24]–[25]):

24 Following this principle, damages for breach of contract are ordinarily assessed in terms of the claimant's *expectation loss*, which refers to the value of the benefit that the claimant would have obtained but for the breach of contract, or, to put it another way, the gains the claimant expected as a result of the full performance of the contract: Andrew Phang Boon Leong, *The Law of Contract in Singapore* (Academy Publishing, 2012) ("*The Law of Contract*") at para 21.033. On occasion, damages for breach of contract may be quantified in terms of the claimant's *reliance loss* – that is, the costs and expenses the claimant incurred in reliance on the defendant's contracted-for performance, but which were wasted because of the breach of contract: *The Law of Contract* at para 21.034. The basis for awarding reliance loss is the assumption that were the contract performed, the claimant would have at least fully recovered the costs and expenditure incurred: *Van Der Horst Engineering Pte Ltd v Rotol Singapore Ltd* [2006] 2 SLR(R) 586 at [54]–[55]. Indeed, in cases where a claimant enters into a bad bargain and would not have recovered all his costs/expenditure even if the contract had been performed, his losses may not be quantified by reference to his reliance expenditure: *C & P Haulage v Middleton* [1983] 1WLR 1461 at 1468. Thus, the underlying principle, *even in cases where reliance loss is awarded*, is to place the innocent party in the position he would have been in *had the contract been performed*.

25 It should be noted that claims for expectation losses and reliance losses are generally *alternative* claims: *The Law of Contract* at para 21.037. As this court held in *Hong Fok v Bima* at [59]:

[A] plaintiff cannot claim wasted expenditure and loss of profit at the same time. The reason is that a claim for profit is made on the hypothesis that the expenditure had been incurred ...

Indeed, if a court awards a claimant *both* expectation and reliance losses following a breach of contract, the claimant would have been put in an even better position than he would have been in if the contract had been wholly performed. He would effectively have obtained the gains he expected as a result of the full performance of the contract, yet would not have had to incur the necessary costs in securing those gains. The claimant would thus be over-compensated.

[emphasis in original]

53 As seen in the passage in *Alvin Nicholas*, the reason for the general principle of requiring a plaintiff to elect between expectation and reliance losses is to ensure that the plaintiff is not put in a better position than it would have been in if the contract is fully performed but for the defendant's breach. This is to avoid double compensation to the plaintiff. As a result, generally, a claim for both loss of profits and wasted expenditure, as the plaintiff has done in this case, would be impermissible.

54 However, such general principles as espoused in *Alvin Nicholas* are only applicable when the loss of profits are claimed on a *gross* basis, and do not apply in cases where the loss of profits are claimed on a *net* basis. As observed in Andrew Phang Boon Leong, *The Law of Contract in Singapore* (Academy Publishing, 2012) ("*The Law of Contract*") at para 21.038:

These observations [that a plaintiff cannot claim wasted expenditure *and* loss of profits at the same time] are unobjectionable and perfectly in keeping with the desire to avoid double

compensation of the claimant, but only where the "loss of profits" has been ascertained on a *gross* basis, without taking into account the expenditures and costs that would have had to be spent in order to generate those "profits". However, **where the claim as to "loss of profits" has been made on a *net* basis, and a separate claim is then made as to the "reliance losses" in terms of the expenses and costs that had been incurred and which would have had to be incurred to enable the claimant to earn the *net* profits, there would be *no double-counting***. Hence, there is nothing to bar a claim for both "expectation" as well as "reliance" losses. **In such a case, a claim on the reliance basis for wasted expenditure is *complementary and not duplicative***. Thus, there ought to be no issue as to election between a claim on the expectation basis for the loss of **net** profit, and a claim on the reliance basis for wasted expenditure. [emphasis in original in italics, emphasis added in bold]

55 Similarly, the author of *Chitty on Contracts* at para 26-032:

... In principle, the claimant should be entitled to claim damages **both for his wasted expenditure** incurred up to the date of his terminating the contract and **also for the *net* loss of profit** which he would have made but for the breach. There can be no valid objection to this, provided the calculations show that there is no overlapping in the claimant's recovery ... [emphasis added in bold and italics]

56 A hypothetical scenario aptly demonstrates this. In the hypothetical, an entity owns a shop. The cost of the entity's permanent staff and its rental is \$8 per month. For expending the fixed expenses of \$8 a month, the entity makes \$10 per month in total revenue, thereby earning a monthly net profit of \$2. If, due to another entity's breach (eg, defective works), the entity is unable to open its shop for a month, the entity would still have to expend \$8 a month in paying its permanent staff and rental, as such expenses are fixed expenses which do not depend on whether the shop is opened or not. This \$8 would be wasted fixed expenditure, as the entity would not be able to generate any revenue while its shop is closed due to the other entity's defective works. If the entity is only allowed to claim for its loss of net profit in this case, the entity's claim would be \$2, which would not even cover the entity's wasted fixed expenditure of \$8. Hence, to ensure that the entity is put in the same position as it would have been but for the breach, the damages due to the entity ought to be \$10, being the sum of the entity's net profits and wasted fixed expenditure. This \$10 would be used to offset the entity's wasted fixed expenditure of \$8, leaving the entity with the \$2 net profit which it would have earned but for the other entity's breach.

57 Let me extend this same example further. Assume that the cost of the entity's permanent staff and its rental is \$12 per month. However, its total revenue remains the same at \$10 per month. The shop therefore makes a net loss of \$2 per month when it is operational. Does it mean that no damages can be established against a defendant whose defective works caused the shop to be closed for several months simply because it is continuously a loss-making entity? The answer is negative. The defendant has still caused the shop owner to be deprived of his revenue stream of \$10 per month, which he could have used to help to defray his own wasted fixed expenses of \$12 per month. The defendant must still be liable to compensate the shop owner \$10 per month for each month of closure, leaving the shop owner to bear his net loss of \$2 per month. This will be exactly the same as the situation if his shop is open. However, if the erroneous position is adopted that no compensation is due from the defendant simply because it is a loss making entity, then the shop owner's original loss of \$2 per month (with no breach) will have increased to \$12 per month (with breach). It is clear that the contractual measure of damage to put the shop owner in the same position as if the contract is fulfilled will not be met unless compensation of \$10 per month is ordered against the defendant. This shows that it is the revenue stream of the shop owner that has been disrupted or extinguished by the defendant's breach that is of major significance in quantifying the

damage which the defendant will be liable for.

Categories 4a and 4b: Two possible alternative bases of claim for damages - Basis (a) or Basis (b)

58 Having determined that a claim for net profit *and* wasted expenses is not at odds with principle, the plaintiff has two possible *alternative* bases of claim for damages under both Categories 4a and 4b taken as a whole:

(a) **Basis (a):** "Revenue" minus "Variable Expenses":

(i) "Revenue" refers to the dental fees that could have been charged to the patients of the Suntec Clinic, assuming that the clinic was fully operational.

(ii) "Variable Expenses" refers to expenses that would not be incurred if the clinic is not operational but would necessarily be incurred had the clinic been operational in order to earn that "Revenue". Examples of "Variable Expenses" are the cost of consumables like anaesthesia, cotton wool, dental amalgam and X-Ray films used up for the dental treatment of patients, the cost of medication issued to patients and the cost of engaging locum dentists (*ie*, dentists who work on a part-time basis, dentists who are not paid fixed monthly wages but are paid based on the amount of patient revenue generated).

(b) **Basis (b):** "Net Profit" plus "Fixed Expenses":

(i) "Net Profit" refers to the total "Revenue" minus "Total Expenses", which comprises "Fixed Expenses" *and* "Variable Expenses". Its value is hence contingent on the "Revenue", "Fixed Expenses" and "Variable Expenses" of the company.

(ii) "Fixed Expenses" refers to expenses which would necessarily be incurred whether or not the clinic was operation. Examples of "Fixed Expenses" are the rent for the clinic, salaries of permanent staff which are generally fixed in nature and independent of the amount of the patient revenue generated, and depreciation expenses arising from the capital expenditure or setting-up costs which would generally be depreciated over the term of the Lease.

59 The plaintiff cannot claim for both Basis (a) and Basis (b) above as that would amount to a double claim for Categories 4a and 4b combined. The business equations from which I derive Basis (a) and Basis (b) are as follows:

$$\text{Revenue} - \text{Total Expenses} = \text{Net Profit}$$

$$\text{Total Expenses} = \text{Fixed Expenses} + \text{Variable Expenses}$$

$$\text{Revenue} - \text{Fixed Expenses} - \text{Variable Expenses} = \text{Net Profit}$$

$$\text{Revenue} = \text{Net Profit} + \text{Fixed Expenses} + \text{Variable Expenses}$$

$$\text{Revenue} - \text{Variable Expenses} = \text{Net Profit} + \text{Fixed Expenses}$$

$$\text{Basis (a)} = \text{Basis (b)}$$

[In the above equations, the **depreciation** of the "Capital Cost" in setting up the new Suntec Clinic over the duration of the Lease (ie " **Depreciation Expense** ") is to be treated as part of the "Fixed Expenses".]

60 As demonstrated by the equations above, for a fully operational business, the "Revenue" received *minus* the "Variable Expenses" spent in earning the "Revenue" is *exactly equal* to the "Net Profit" earned *plus* the "Fixed Expenses" (inclusive of "Depreciation Expense").

61 For the converse situation when the business is non-operational because of a breach of a contract, the "Revenue" lost *minus* the "Variable Expenses" saved is *exactly equal* to the "Net Profit" lost *plus* the "Fixed Expenses" (inclusive of "Depreciation Expense") wasted. This is also equal to the total losses under Categories 4a and 4b combined.

62 Expressing the plaintiff's claim in such equations, it can be seen that Category 4a, which comprises wasted fixed expenses such as wasted rent and season parking, [\[note: 99\]](#) relates to claims for wasted "Fixed Expenses". Category 4b is then a claim for the loss of "Net Profits". Hence, Category 4a + Category 4b = "Net Profit" + "Fixed Expenses" = Basis (b) = Basis (a).

63 As a matter of principle, the plaintiff is entitled to choose *either* to claim under Basis (b) for *both* the loss of *net* profits and the wasted *fixed* expenses (inclusive of Depreciation Expense) that it had incurred during the Blackout Periods *or* to claim under Basis (a) for the patient revenue it lost during the Blackout Periods less the variable costs that are saved during the closure of the Suntec Clinic. Proceeding under either basis should yield the same answer or result. There will be no double counting so long as aspects of Basis (a) are not claimed under Basis (b) and *vice versa*.

64 In my view, the better basis to adopt in each case is the basis that enables a fairly reliable answer to be more easily arrived at. Sometimes the manner in which the information has been collected by the business entity, or the evidence that happens to be available is such that it allows for an easier computation using Basis (a) rather than Basis (b), or *vice versa*.

65 Given the nature of the evidence adduced before me in this case, I think that proceeding on Basis (a) will be far easier and more likely to give a more reliable estimate for the total losses under both Categories 4a and 4b combined than proceeding on the more complicated Basis (b), which the plaintiff has done.

66 I will now proceed to compute using Basis (a).

Computation using Basis (a) for damages for the Blackout Periods ending on 5 March 2015

67 As mentioned, Basis (a) has two elements:

(a) First, the Revenue lost during the Blackout Periods will have to be established. This is to be computed by determining the estimated potential Revenue that could have been earned from patients of the Suntec Clinic had the clinic been fully operational during the Blackout Periods, which spanned a total of **321** days, as computed at [3] above.

(b) Second, all the Variable Expenses (but *not* the Fixed Expenses) that would have, but

which were not in fact incurred due to the Suntec Clinic's closure during the Blackout Periods (spanning 321 days), will have to be deducted from the lost Revenue. This is because no such Variable Expenses was in fact incurred by the plaintiff during the Blackout Periods. Hence, to reflect the true extent of loss suffered by the plaintiff due to the repeated closures of its Suntec Clinic, the Variable Expenses must be deducted from the Revenue that could have been earned.

(1) Loss of potential revenue

68 To determine the potential Revenue that was lost during the Blackout Periods, the plaintiff provided the following reliable and accurate records of the actual gross revenues (without GST) from patients attending at both the old and the new Suntec Clinics on a month to month basis: [\[note: 100\]](#)

Period	Payments received from patients (without GST)	Events	
Jan-12	238,367.00	Revenue at the defendant's old Suntec Clinic	
Feb-12	179,180.04		
Mar-12	188,987.03		
Apr-12	196,009.04		
May-12	136,108.29		
Jun-12	153,452.93		
Jul-12	109,831.58		
Aug-12	103,941.89		
Sep-12	114,123.05		
Oct-12	136,137.38		
Nov-12	74,664.17		
Dec-12	93,245.69		
Jan-13	190,076.19		Closure of the old Suntec Clinic on 28 Feb 2013. To move to the new Suntec Clinic.
Feb-13	74,042.36		
Mar-13	0	Relocation to the new Suntec Clinic.	
Apr-13	0		
May-13	0		
Jun-13	0	Defendant commenced Works on the new Suntec Clinic. [note: 101]	
Jul-13	0		
Aug-13	0		

Sep-13	0	Completion of Works due on 11 Sep 2013. [note: 102] Delayed completion by the defendant.
Oct-13	0	Defendant completed Works on 31 October 2013. [note: 103]
Nov-13	65,101.31	New Suntec Clinic opened on 1 Nov 2013, after extended closure due to fitting-out works and delayed completion.
Dec-13	88,947.09	
Jan-14	36,120.47	Payments received from 1 Jan 2014 to 17 Jan 2014 only. Closure on 17 Jan 2014 because of first flood. [note: 104]
Feb-14	0	Closure for remediation of the first flood.
Mar-14	44,907.21	Payments received from 10 March 2014 to 31 March 2014 only, after the new Suntec Clinic reopened after remediation of the first flood.
Apr-14	47,737.50	
May-14	59,070.21	
Jun-14	56,585.84	
Jul-14	56,373.81	Payments received from 1 Jul 2014 to 28 Jul 2014 only. Closure because of the second flood. [note: 105]
Aug-14	0.00	

69 In my view, it will be far more reliable to rely on the historical data captured by the plaintiff for its patient revenue for the months that are *more* proximate to the Blackout Periods to determine the potential revenue that Suntec Clinic could have generated had it been fully operational. The patient revenue for those months that are *less* proximate to the Blackout Periods will be less relevant and less reliable, in particular as the Suntec Clinic was shifted to its new location after the closure on 28 February 2013. I accept that many factors influence the patient revenue. In the absence of any other reliable indicators or relevant data and having been given primarily the historical data on patient revenue, I can do no better than to make use of such available data to derive some meaningful average patient revenue figures to serve as an estimation of the patient revenue that was lost during the Blackout Periods.

70 I have decided that the patient revenue figures for the old Suntec Clinic are inappropriate for use as a proxy to estimate the patient revenue for the Blackout Periods for the new Suntec Clinic. This is for several reasons.

71 First, the old Suntec Clinic figures (between January 2012 and February 2013) are rather dated and might not be reflective of the potential patient revenue for the much later Blackout Periods which

occurred predominately in the second half of the year 2014 and in early 2015.

72 More importantly, the old Suntec Clinic had three to four dentists stationed there, with Dr Tan being the permanent anchor dentist bringing in the most patient revenue every month. The other dentists, Dr Nancy Wong, Dr Frank Lee and Dr Alvin Yeo were each bringing in much less patient revenue than Dr Tan. As an example, in March 2012, the old Suntec Clinic's patient revenue was \$188,987.03. Of the total revenue, \$117,095.48 was earned by Dr Tan, while the remainder was earned by Dr Nancy Wong, Dr Frank Lee *and* Dr Alvin Yeo collectively. [\[note: 106\]](#) However, when the new Suntec Clinic opened in November 2013, Dr Tan was no longer stationed at the new Suntec Clinic as he was already transferred to work at the plaintiff's other clinics, leaving only Dr Nancy Wong and Dr Frank Lee to man the Suntec Clinic permanently. Much later, in May 2014, another dentist, Dr Anna Maragopoulou, joined the new Suntec Clinic, but the patient revenue brought in by Dr Anna Maragopoulou was much lower than Dr Nancy Wong and Dr Frank Lee, who themselves earned far less than Dr Tan previously had. [\[note: 107\]](#) The major contributor of patient revenue (*ie*, Dr Tan) was no longer working at the new Suntec Clinic. Accordingly, to derive estimates of the potential patient revenue stream lost for the new Suntec Clinic during the Blackout Periods based on the patient revenue stream of the old Suntec Clinic, when Dr Tan was no longer there, would pull up the revenue figures significantly for the new Suntec Clinic, and would unfairly skew the estimate upwards when it is clear to me that the new Suntec Clinic was in fact structured and manned very differently from the old Suntec Clinic.

73 For the reasons stated, it is in my view wholly inappropriate to use the patient revenue figures of the old Suntec Clinic to estimate the potential patient revenue stream for the Blackout Periods of the new Suntec Clinic.

74 Accordingly, I adopt instead all the patient revenue figures during which the new Suntec Clinic was operational between 12 September 2013 and 5 March 2015 for the purpose of my estimation. The total patient revenue (without GST) generated when the new Suntec Clinic was operational for a total of **219 days** was **\$454,843.44** . [\[note: 108\]](#) Therefore, the estimated average patient revenue (without GST) for the new Suntec Clinic is $\$454,843.44 \div 219 = \mathbf{\$2,076.91 \text{ per operational day}}$.

75 Due to the defendant's breach, the Suntec Clinic was non-operational for a total of **321 days** during the same period between 12 September 2013 and 5 March 2015. The breakdown of the **321 days** of non-operation constituting the Blackout Periods allowed in the Liability Judgment as set out above at [2] consists of:

- (a) the delayed completion of fitting-out of the Suntec Clinic: 12 September 2013 to 31 October 2013 (**50 days**) ;
- (b) the closure from the first flood: 17 January 2014 to 8 March 2014 (**51 days**) ;
- (c) the closure from the second flood: 29 July 2014 to 5 March 2015 (**220 days**) .

76 The element of total patient revenue deemed to be lost for the purpose of computation of damages under Basis (a) is therefore **321 days** × **\$2,076.91 per day** = **\$666,688.33** (the "derived lost patient revenue").

(2) Deemed variable expenses saved during the Blackout Periods

77 What is not known is the total amount of variable expenses to be deducted from this amount if the Suntec Clinic had been fully operational and attending to patients for all these **321 days** . As

explained earlier, variable expenses would include payment for the purchase of consumables used in the course of dental treatment, the cost of medicine dispensed to patients, as well as payments for part-time staff and locum dentists employed (if any). Unlike fixed expenses, these variable expenses are costs that were saved when the Suntec Clinic was non-operational.

78 To estimate the variable expenses for the period of **321 days** had the new Suntec Clinic been operational when in fact it was not, I have to rely on financial data provided by the plaintiff. The court was provided with actual variable expenses incurred by the old Suntec Clinic for the year 2012 and the actual variable expenses incurred by the new Suntec Clinic for the years 2013 and 2014 when it was operational for a total of **219 days**. I have decided to use only the financial data on variable expenses for the new Suntec Clinic when it was operational for the **219 days** to estimate the variable expenses that the new Suntec Clinic would have incurred if it had not been closed for the **321 days**. For the same reasons set out in [69]–[72] above, it is inappropriate to use the figures for the old Suntec Clinic for the year 2012 to estimate the variable expenses for the new Suntec Clinic. Accordingly, the variable expenses for both the years 2013 and 2014 for the new Suntec Clinic will be used for the purpose of my estimation and they represent the best available data for this purpose. This approach is also more consistent as the estimation of the potential patient revenue for the **321 days** were the new Suntec Clinic operational is also based on the patient revenue figures for the new Suntec Clinic for the years 2013 and 2014, and not the patient revenue figures for the old Suntec Clinic for the year 2012.

79 In a letter dated 23 August 2019, the plaintiff furnished a “STATEMENT OF PROFIT OR LOSS AND OTHER COMPREHENSIVE INCOME” for the new Suntec Clinic, which reflected that the actual patient revenues for the years 2013 and 2014 were \$418,632 and \$302,816 respectively. [\[note: 109\]](#) The total patient revenue for these two years is therefore **\$721,448**. The variable expense after pro-rating certain heads of expense which were incurred by the Suntec Clinic for the plaintiff’s other clinics was stated to be \$214,712 and \$212,311 for the years 2013 and 2014 respectively. The total variable expense for these two years is therefore **\$427,023**. [\[note: 110\]](#) The average ratio of variable expense to total revenue is $\$427,023 \div \$721,448 = 59.19\%$ for these two years. Alternatively, if I were to compute the ratio of variable expense to total patient revenue *separately* for each of the years 2013 and 2014, and thereafter derive an average from these two ratios obtained, the average ratio computed in this manner would be **60.70%**. [\[note: 111\]](#) This ratio approach is adopted as it is a reasonable assumption that variable expenses will generally increase when more patients are attended to and more patient revenue is generated, unlike fixed expenses. There is probably a fairly good positive correlation between patient revenue and variable expenses.

80 As a rough approximation, I will therefore use a ratio of **60%** of total variable expense to total patient revenue to estimate the total variable expense that would have been incurred had the clinic been operational for the **321 days** of actual closure of the Suntec Clinic during the Blackout Periods. This works out to be **60%** of **\$666,688.33 = \$400,013**, which is the deemed total variable expense for the **321 days** had the clinic been operational to earn patient revenue.

81 The computation using Basis (a) would be the total deemed “Revenue” minus the total deemed “Variable Expense” = **\$666,688.33 - \$400,013 = \$266,675.33**. This represents the loss of patient revenue to the plaintiff after deducting variable expenses for the **321 days** of the Blackout Periods, and also reflects the sum total of the “loss of net profits” plus “wasted fixed expenses” (inclusive of “wasted depreciation expenses”) for the **321 days** of the Blackout Periods. In other words, this amount of damages of **\$266,675.33** (*ie*, \$830.76 per day) computed under Basis (a) is also equivalent to the damages that would have been computed under Basis (b) (see [59] which explains their equivalence).

Issue: "Diversion effect" against "Disruption effect".

(1) Diversion of the plaintiff's patients from the Suntec Clinic

82 While the *prima facie* damages due to the plaintiff under Categories 4a and 4b is **\$266,675.33**, an issue raised by the defendant is that the plaintiff suffered no loss of patient revenue during the Blackout Periods due to the diversion of patients to the plaintiff's other dental clinics (the "Diversion effect"). [\[note: 112\]](#)

83 The basis to support this Diversion effect appears to be the evidence of Mr Wong King Kheng ("Mr Wong"), who appeared on behalf of the defendant. In his affidavit of evidence-in-chief, Mr Wong opined that the Suntec Clinic's patients could have been, and were indeed, diverted to the plaintiff's new clinic at The Sail, 2 Marina Boulevard, #01-02 when the Suntec Clinic was closed. [\[note: 113\]](#)

84 To refute the allegation of the Diversion effect, Ms Chong explained that when the Suntec Clinic was closed, the patients were not automatically diverted to the plaintiff's other clinics. Instead, the clinic operated on a recall system, whereby patients would be updated via messages that the clinic would be closing down, and that it would get back in touch with their patients when the clinic was re-opened. [\[note: 114\]](#) Patients were not directed to the plaintiff's other clinics unless they asked. [\[note: 115\]](#) As for patients who did not ask to be directed to other clinics, but who were due for an appointment with the Suntec Clinic while it was closed, they were called to schedule an appointment at the Suntec Clinic after it reopened for business. [\[note: 116\]](#)

85 Ms Chong further explained that patients of dental clinics were very location-centric, and they could go to other clinics that did not belong to the plaintiff, and there was thus no formula that could explain whether patients would attend another clinic of the plaintiff's or other clinics during the Blackout Periods. [\[note: 117\]](#) In this regard, there were other dental clinics in the vicinity of the Suntec Clinic. [\[note: 118\]](#)

86 In short, Ms Chong attempted to give the impression that the plaintiff had not *actively* diverted its patients from the Suntec Clinic to its other clinics.

87 However, I find this to be wholly unconvincing, especially as the Blackout Periods stretched across significant periods, and often occurred abruptly (*eg*, the first flood), such that it would only be reasonable to expect the plaintiff to reschedule already scheduled patients (at the new Suntec Clinic) to its other clinics. Furthermore, it accords with common sense that some patients, having been regularly attended to by a particular dentist, would then "follow" that dentist for follow-up treatment, irrespective of whether the dentist continued to operate out of the Suntec Clinic. I am also inclined to believe that any sensible management would have tried to mitigate the consequences of the closure of the Suntec Clinic by actively diverting, where possible, its existing patients to the plaintiff's other clinics to be seen by the same dentists transferred from the Suntec Clinic, whether it was for follow-up treatment or regular check-ups, especially as it was unclear when the Suntec Clinic could be re-opened after the flooding incidents.

88 In fact, Ms Chong stated in her affidavit of evidence-in-chief that the plaintiff had incurred a loss of \$265,399.38 for the loss of management time and effort due to, *inter alia*, "[m]anagement of patients after discovery of the two (2) flooding incidents and *arrangements for these patients to be scheduled for appointments at [the plaintiff's] other clinics*" [emphasis added]. [\[note: 119\]](#) In my view, this confirms that active steps were indeed taken to divert patients to the plaintiff's other dental

clinics when the Suntec Clinic was closed after each of the floods.

89 Thus, I accept that there was at least *some* diversion of the Suntec Clinic's patients to the plaintiff's other clinics.

(2) Disruption from the repeated closures of the Suntec Clinic

90 However, according to the plaintiff, the delayed opening and repeated closures gave the plaintiff inadequate lead time to inform its patients of its reopening date(s), [\[note: 1201\]](#) and rendered the clinic susceptible to the effects of the intermittent cessation of business throughout 2013 and 2014 (the "Disruption effect"). This caused its revenue to fall, as shown by the fall in revenue of the plaintiff's Suntec Clinic from \$1,729,807 in 2012 to \$418,632 and \$302,816 in 2013 and 2014 respectively. [\[note: 1211\]](#)

91 As highlighted above, I note that Dr Tan, who was the dentist bringing in the most patient revenue at the old Suntec Clinic in 2012, was no longer working at the new Suntec Clinic when it opened in November 2013. Moreover, the old Suntec Clinic had three to four dentists working there whereas the new Suntec Clinic had in effect only two dentists; while a third dentist joined the new Suntec Clinic in May 2014, she only brought in about \$3,000 in patient revenue each month, which was far less than the monthly average of about \$30,000 brought in by the other two dentists. [\[note: 1221\]](#) It is thus not surprising that the average *daily* revenue for the old Suntec Clinic far exceeds that of the new Suntec Clinic. Hence, the large difference in the revenue figures between the old and the new Suntec Clinics does not *per se* justify the plaintiff's submission that the multiple closures during the Blackout Periods are mainly responsible for the drop in patient revenue in the new Suntec Clinic.

92 Nonetheless, related to the Diversion effect, while I am inclined to believe that efforts were taken to actively divert patients from the Suntec Clinic to the other clinics during the Blackout Periods, whether the patients who were diverted eventually went to the plaintiff's other clinics for treatment and what proportion of them did so is an entirely different question.

93 While I accept that there was *some* successful diversion of patients that could have mitigated the plaintiff's losses during the Blackout Periods, no evidence is provided to me on how many patients actually went over to the plaintiff's other clinics when their appointments were re-scheduled and how many failed to turn up on the dates of their re-scheduled appointments. Some probably did and some probably did not. For those who did attend at the plaintiff's other clinics, it would not contribute to a loss of patient revenue at the new Suntec Clinic for the plaintiff (when treated as an entity). For those who did not, it would contribute to a loss of patient revenue at the new Suntec Clinic when it was closed due to the defendant's breach. In short, while efforts were put towards diverting patients to the plaintiff's other clinics, this did not necessitate the conclusion that no loss was thereby suffered by the plaintiff due to the repeated closures.

94 Furthermore, the intermittent cessation of the plaintiff's business would have adversely affected its ability to steadily build up an increasing patient revenue stream on a long term basis at the new Suntec Clinic. Thus, I am satisfied that the plaintiff had suffered *some* amount of loss of patient revenue due to the Disruption effect, which must be quantified if that is at all possible.

(3) Balancing the "Disruption effect" against the "Diversion effect"

95 In all, the fact of active diversion of patients from the Suntec Clinic to the patient's other clinics (if successful) would reduce the actual daily lost revenue to the plaintiff during the Blackout

Periods (*ie*, the Diversion effect). Considering the Diversion effect alone, the derived lost patient revenue figure at [76] above unduly *over-estimates* the actual lost revenue for the plaintiff.

96 However, the Diversion effect must be balanced against the Disruption effect. As a result of repeated and intermittent closures suffered by the plaintiff's Suntec Clinic, the plaintiff was unable to reach normal operational conditions even during the months in 2013 and 2014 when it was fully operational. This means that the revenue figures for the operational months of 2013 and 2014, which were utilised to compute the derived lost patient revenue (at [74] above), necessarily *under-estimates* the amount of revenue that the plaintiff *could* have earned at the Suntec Clinic, but for the defendant's breaches causing the intermittent cessation of business.

97 In my view, the abovementioned Diversion effect would be cancelled out by the opposing Disruption effect to some extent. With no data available to enable a quantitative assessment of the magnitude of each of these opposing effects, it is not unreasonable for me to conclude that these opposing effects would cancel each other out to such a degree that it would not be really necessary for me to make any adjustments to the average patient revenue estimated at **\$2,076.91 per day** at [74] and the derived lost patient revenue figure of **\$666,688.33** (referred to at [76] above) for the **321 days** that the new Suntec Clinic was non-operational due to the defendant's breach.

The plaintiff's proposed adjustments to certain items in the management accounts before determining the revenue and the fixed and variable expenses of the new Suntec Clinic

98 Another point should be disposed of. In its Profit and Loss Statement tendered to the court for the purposes of assessing the Suntec Clinic's revenue and expenses (both fixed and variable), the plaintiff proposes adding and/or pro-rating certain revenue and expense items. [\[note: 123\]](#)

99 In relation to the revenue item, the plaintiff proposes to add "Government Grants" which were received by the Suntec Clinic on behalf of the plaintiff's other clinics ("the grants"). [\[note: 124\]](#) This is because the Suntec Clinic was the plaintiff's flagship clinic, and was thus treated as the main branch of the Plaintiff's suite of clinics. [\[note: 125\]](#) As the grants were received on behalf of the plaintiff's other clinics, the plaintiff proposes to pro-rate such grants by the plaintiff's four clinics, such that only a quarter of such the grants are to be added to the plaintiff's revenue for the Suntec Clinic from 2012 to 2014.

100 I do not agree with the plaintiff's proposed treatment of the grants. The grants of \$612 (in 2013) and \$8,040 (in 2014) ought to be removed from the revenue figure as they were in any event received by the plaintiff despite the defendant's breach. The grants are therefore dissimilar from the patient revenue, which would depend on whether the clinic was opened or closed and the extent to which the patients could be successfully diverted to the plaintiff's other clinics during the Blackout Periods. As the plaintiff continues to retain the benefit of the grants, it has therefore not suffered any loss of revenue with respect to these grants notwithstanding the defendant's breaches which caused the repeated closure of the Suntec Clinic. Hence, I have not added the grants in determining the actual revenue earned by the Suntec Clinic in 2013 and 2014, which figures are utilised to estimate the potential revenue deemed to be lost for the Blackout Periods as a result of the defendant's breaches.

101 The plaintiff also proposes that certain fixed expense items had to be divided by three, as they were "paid by the Suntec Clinic on behalf of the Plaintiff's other clinics, namely the Mandarin Gallery and One Raffles Quay Clinics in 2012." [\[note: 126\]](#)

102 As my computation is premised on Basis (a), I need not be concerned with how the fixed expenses (which fall to be determined under Basis (b) only) are to be divided as they do not feature in my computation. In any event, I note from the plaintiff's Profit and Loss Statement that none of the variable expense items needed any adjustment or proration (*ie*, division of a variable expense item by the number of clinics which the plaintiff owned). [\[note: 127\]](#) Hence, I can rely on the accuracy of the variable expense figures set out for the Suntec Clinic for the years 2013 and 2014 for the purpose of arriving at the deemed variable expense that would have been incurred had the new Suntec Clinic been operational for the 321 days of the Blackout Periods. This is precisely what I have done above.

103 There is thus no need for me to make any adjustments to these variable expense figures nor the revenue figures. As such, the amount of damages allowed under Categories 4(a) and 4(b) combined is **\$266,675.33** (see [81] above).

Category 4c: Wasted capital expenses

104 The entire capital expenses in setting up a business is normally depreciated evenly using a straight line method over the duration of the lease of the premises for the business. The capital depreciation whilst the business is operational is normally treated as part of the "Fixed Expenses" incurred for the business. When the business is non-operational for some reason, then these "Fixed Expenses" of capital depreciation will be wasted for that non-operational period.

Wasted depreciation (from 6 March 2015 to the end date of the Lease on 21 September 2016)

105 I begin by first computing the total capital expenditure incurred by the plaintiff when it set up the new Suntec Clinic. The capital expenditure consists of various items of costs incurred by the plaintiff to establish the new Suntec Clinic, such as the costs of moving into the new premises for the clinic, installing fixtures and fittings for the new clinic, and payments made to its contractor for fitting out the new clinic ("capital expenses"). The fruits of such capital expenses were expected to be enjoyed by the plaintiff throughout (a) the **10 days** of the Fitting-Out period from 12 September 2013 to 21 September 2013 when the new Suntec Clinic could be fully operational had the defendant completed its fitting-out contract for the plaintiff without any delay; and (b) the whole duration of the Lease, which was for three years or **1096 days**, commencing on 22 September 2013 and ending on 21 September 2016 [\[note: 128\]](#), both of which would amount to a total of **1,106 days**. All the capital expenses would be assumed to be depreciated evenly over a total of **1,106 days**.

106 Having comprehensively considered the setting up costs for the new Suntec Clinic as well as the equipment that were bought by the plaintiff for the clinic, I have computed the total capital expenses to be **\$269,037.71**, [\[note: 129\]](#) with my reasons as follows:

S/N	Description of capital expense	Amount (S\$)	Explanation	Amount allowed for depreciation computation for Category 4c
1	Cost of moving into the Suntec Clinic	300 [note: 130]	Defendant is agreeable to the items, which are supported by invoices. [note: 131]	300
2	Compactus	9,300 [note: 132]		9,300

3	Camera and CCTV systems	6,650 [note: 133]		6,650
4	Ten televisions ("TVs")	6,497.94 [note: 134]	<p>One TV was confiscated by the landlord when they repossessed the Suntec Clinic on 30 March 2015. [note: 135] As this confiscation is not reasonably within the contemplation of both parties at the time they made the contract as the probable result of the breach of it, I regard this loss as too remote. I disallow the cost of one TV of \$649.79 to be included in the depreciation computation for Category 4c.</p> <p>As for the remaining nine TVs, they were allegedly dismantled by a TV installer, who brought it back to his warehouse, and who reported that the nine TVs were now "gone". [note: 136]</p> <p>I agree with the defendant that the disappearance of nine TVs at the warehouse could not reasonably have been in the contemplation of both parties at the time they made the contract as the probable result of the breach of it. The loss of the nine TVs after the second flood is therefore too remote a loss. I similarly disallow the cost of nine TV sets of \$5,848.15 to be included in the depreciation computation for Category 4c.</p>	Nil

5	Clinic door	8,800 [note: 137]	<p>Defendant is agreeable to the items, which are supported by invoices. [note: 138] Note (for S/N 6): The cost of the granite is included in the entire cost of the fitting-out works of \$168,310 (see S/N 24 below and Liability judgment at [155]), which is included in the depreciation computation. The cost of the granite is therefore not separately allowed to prevent double-counting.</p> <p>Note (for S/N 7): The plaintiff has claimed for \$960 and \$711 for S/N 7 (Sinks), amounting to a total of \$1,671. However, \$711 is the cost of a sink <i>after</i> GST, and hence the figure of \$684.49 (price of sink before GST) is adopted instead for consistency with the other heads of claim (which exclude GST). The total is therefore \$1,644.49 for both sinks before GST.</p>	8,800
6	Granite	1,750 [note: 139]		Nil
7	Sinks	1,671 [note: 140]		1,644.49
8	Cost of setting up telephone system	680 [note: 141]		680
9	Marble for reception counter	6,930 [note: 142]		6,930
10	Motorised glass doors	32,000 [note: 143]		32,000
11	Step lights in corridor	227 [note: 144]		227
12	Installation of TVs	9,180.02 [note: 145]		9,180.02
13	Biometric system	2,125 [note: 146]		2,125
14	Stickers on wall and door	2,260 [note: 147]		2,260

15	Conveyancing fees and stamp fees paid to the landlord	2,929.20 [note: 148]	<p>The defendant disputes these fees as “the Plaintiffs still had the benefit of using the Suntec Clinic and the fees did not arise from the floods” and as such, the fees were “too remote”. [note: 149]</p> <p>First, while the fees did not arise from the flood, such expenses, which were spent to reap the benefits of the Suntec Clinic, were wasted as a result of the defendants’ breach, which was the effective cause of the Blackout Periods and the repossession of the clinic.</p> <p>Secondly, while the plaintiff had the benefit of using the Suntec Clinic, this was only during the short and intermittent periods when the clinic was not hindered by the Blackout Periods. The conveyancing fees were wasted.</p> <p>Finally, the fees are clearly not too remote, and their wastage falls squarely within the first limb of <i>Hadley</i>, given that conveyancing fees are necessarily incurred in most (if not all) conveyancing transactions.</p> <p>Accordingly, the claim for the wasted capital expense is allowed.</p>	2,929.20
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16	Installation of water point, floor trap, and the upgrade of electrical supply	27,102.80 [note: 150]	An amount of \$29,000 with GST (or \$27,102.80 before GST) was incurred and captured in the management accounts as a fitting out item in the year 2012. [note: 151] The old Suntec Clinic was only closed in February 2013, and the Works for the new Suntec Clinic only began thereafter. Hence, this appears to be a claim that is unrelated to the <i>new</i> Suntec Clinic. The item is accordingly disallowed.	Nil
17	Hoarding	872 [note: 152]	Defendant is agreeable to the items, which are supported by invoices. [note: 153]	872
18		850 [note: 154]		850
19	Survey and computation of area of unit, supply of floor plans	350 [note: 155]		350
20	Inspection for building and fire plan, installation of fire extinguisher	1,290 [note: 156]		1,290
21	Sprinkler installation	4,910 [note: 157]		4,910
22	M&E Consultancy Fee Proposal for Tenancy Fit-Out Works	3,850 [note: 158]		3,850
23	Aedas vetting and submission fee	4,325 [note: 159]		4,325

24	Contract between the plaintiff and defendant for the Works	Sum 79,005	<p>The plaintiff only claims \$79,005 under this head, being the 50% downpayment which it had paid the defendant for the Works. [note: 160]</p> <p>However, in the Liability Judgment, I allowed the defendant to the whole contract sum of \$158,010 plus variations of \$15,300 , less \$5,000 for unfinished works = \$168,310 (Liability Judgment at [8], [148] and [156]). Thus, the entire cost of the fitting out works for the new Suntec Clinic was \$168,310, not \$79,005. The whole sum is thus to be depreciated.</p>	168,310
25	Clinic licence	1,100 [note: 161]	Defendant is agreeable to the items, which are supported by invoices. [note: 162]	1,100
26	NEA licence X-ray	155 [note: 163]		155
Total claimed		215,063	Total capital expense allowed for computation of the depreciation.	269,037.71

107 When the total capital expense of **\$269,037.71** is depreciated evenly over a total of **1,106 days** , the average depreciation of the Suntec Clinic works out to be **\$243.25 per day** . [\[note: 164\]](#)

108 The **1,106 days** can be divided into two periods. The first period is from 12 September 2013 to 5 March 2015, or a total of **540 days** . It relates to the period when the new Suntec Clinic was, or ought to have been, operational and earning patient revenue. In other words, there would have been no firm decision made for any permanent closure of the new Suntec Clinic during this period. Hence, assessment of damages is based on the loss of the patient revenue stream for the plaintiff which I have computed using Basis (a). The second period is from 6 March 2015 to the stipulated contractual end date of the Lease of three years on 21 September 2016, or a total of **566 days** . As can be seen, a very substantial part of this second period relates to the period *after* the Suntec Clinic was repossessed by the landlord (*ie*, on 30 March 2015) due the plaintiff's failure to resume business at the clinic and to pay the outstanding rent timeously. [\[note: 165\]](#) Essentially, the Suntec Clinic is to be regarded as having been permanently closed down with effect from 6 March 2015, which was even before the repossession of the premises by the landlord on 30 March 2015. Permanent closure of a newly set up shop is, to state the obvious, a very serious business decision for a business owner. The business owner would naturally have to take time to carefully evaluate his available options before

making the irreversible final decision to do so. Once the decision to permanently close down the clinic is made, the unexpired part of the Lease would have to be dealt with as soon as possible, and the best outcome would be for the landlord to agree to accept the return of the premises and to forgo charging anymore rent for the balance of the unexpired Lease. That appears to me to be the eventual outcome of the settlement with the landlord, as rent was only charged until 29 March 2015 [\[note: 166\]](#) instead of the contractually stipulated end-date of 21 September 2016, [\[note: 167\]](#)

109 For the purposes of calculating the wasted capital expense, I therefore proceed on the basis that the clinic was effectively permanently closed down from 6 March 2015 onwards, even though rent had to be paid until 29 March 2015 as part of the settlement with the landlord. [\[note: 168\]](#)

110 The depreciation amount for the first 540 days (*ie*, the first period) is not needed as the capital expense was not "wasted" during that period, since I am awarding the plaintiff damages for the loss of revenue which it suffered during the delayed opening of the Suntec Clinic and the Blackout Periods that occurred during the first period (under Basis (a) above). The depreciation amount also relates to "fixed expenses", which only fall to be calculated under Basis (b), which I have not adopted.

111 However, the wasted depreciation for the second period of 566 days must be computed as damages to be additionally paid by the defendant under Category 4c (wasted capital expenses). Since the Suntec Clinic is to be regarded as having been permanently closed down from 6 March 2015 onwards, no computation under Basis (a) would be appropriate for this period. No deemed patient revenue lost should be attributed to the defendant because the clinic is to be treated as permanently closed. Instead, mitigatory steps to return the premises and stop the rent from further accruing would be a primary consideration. However, the capital expenses expended for setting up the new Suntec Clinic which are intended for pro-rated depreciation over the second period (*ie* had the clinic been operational) nevertheless continues as wasted capital expenses, for which the defendant remains liable to compensate the plaintiff.

112 Based on the average depreciation expense of **\$243.25 per day** (see [107] above), the wasted depreciation for the whole of the second period of **566 days** from 6 March 2015 to 21 September 2016 amounts to **\$137,681.14** . [\[note: 169\]](#)

Wasted rent (from 6 March 2015 to 29 March 2015 prior to repossession by the landlord

113 Furthermore, as noted at [108], rent was in fact charged by the landlord until 29 March 2015, [\[note: 170\]](#) even though the plaintiff might have regarded the clinic as having been permanently closed down on 6 March 2015. Hence, rent was in fact wasted from 6 March 2015 to 29 March 2015, or for 24 days. This wasted rent forms the second component of Category 4c, and amounts to **\$13,703.04** [\[note: 171\]](#) **for 24 days** after pro-rating based on the average rent of **\$570.96 per day** [\[note: 172\]](#) computed from the settlement sum of **\$177,750.09** (without GST) for the rent in arrears owing to the landlord for a total of **311 days** comprising the following: **9 days** (23 to 31 July 2013); **61 days** (1 September to 31 October 2013); and **241 days** (1 August 2014 to 29 March 2015).

Total amount of wasted capital expenses

114 Adding up these two components, the total sum allowed as damages under Category 4c for wasted capital expenses is **\$151,384.18** . [\[note: 173\]](#)

115 However, the defendant submits that "the Plaintiffs had caused the breach of their own Lease"

and "[t]he Defendants therefore ought not to be liable for the period of closure after September 2014 at worst." [\[note: 174\]](#) In other words, the defendant submits that its liability in relation to the wasted capital expenses ought to be capped to the period ending September 2014.

116 As explained above at [25]–[30], the plaintiff's failure to pay the rent timeously was but one of the two effective causes of the plaintiff's breach of the Lease, with the defendant's breach leading to the closure of the Suntec Clinic after the second flood being the other effective cause. For the defendant to be liable for the plaintiff's loss, it suffices that the defendant's breach was an effective cause of the repossession of the clinic. In this regard, given that the plaintiff could not resume business at the Suntec Clinic due to the defendant's breach which caused the second flood, the defendant's breach was clearly an effective cause of the clinic closures and eventual repossession of the clinic. This repossession caused the capital expenses spent to set up the Suntec Clinic to be wasted. It does not matter that the plaintiff's failure to pay the rent in time also contributed to the clinic's repossession by the landlord, as this factor does not override the consequences of the defendant's breach (see [30] above), nor does it render the defendant's breach an ineffective cause of the breach of the Lease. The defendant's argument in this regard is accordingly rejected.

117 Therefore, the defendant is liable to the plaintiff for a total of **\$151,384.18** under Category 4c for both the wasted depreciation expenses and the wasted rent for the period commencing from 6 March 2015 and ending on 21 September 2016.

Category 4d: Other damages in connection with the early termination of the Lease and repossession by the landlord on 30 March 2015

118 Turning to Category 4d, which relates to other damages incurred by the plaintiff in connection with the early termination of the Lease and repossession of the premises by the landlord on 30 March 2015, the plaintiff claims for (a) the security deposit in the sum of **\$57,237.12** (being three months' rent inclusive of GST) which was forfeited together with the GST as the plaintiff could not complete the Lease period of three years, [\[note: 175\]](#) and (b) legal fees in the sum of **\$26,978.17** which the plaintiff bore in connection with the suit initiated by the landlord. [\[note: 176\]](#)

119 The defendant submits that the legal fees and forfeiture of the security deposit were caused by the plaintiff's own repudiation of the Lease. As canvassed above at [25]–[30], the defendant's breach was also an effective cause of the plaintiff's repudiation. Further, the settlement agreement with the landlord was a necessary mitigatory step that was undertaken by the plaintiff (see [32]–[34] above). Accordingly, I allow the plaintiff's claims under Category 4d for a total amount of **\$84,215.29**.

Defendant's counterclaim

120 Finally, I have decided in the Liability Judgment at [157] that the defendant is entitled to set-off the sum of **\$87,432.50**, being the sum that the plaintiff owes to the defendant for variation works and other works which remains unpaid for.

121 The plaintiff submits that this sum of \$87,432.50 ought to be pro-rated, given that the plaintiff was only able to operate the Suntec Clinic for 209 days out of the 1096 days in the three-year Lease. [\[note: 177\]](#) I do not agree that there should be any pro-rating of this sum because I have to first treat the whole contract as having been fully performed by the defendant, and the plaintiff as having fully paid the defendant for the whole contract price. Thereafter, the *difference* has to be ascertained by comparing the assumed position (when the contract is deemed to have been fully

performed) with the actual position (when the contract has been breached by the defendant). The *difference* will then represent the amount of damages that the defendant would be liable to pay the plaintiff. That is what I have essentially done in the course of this judgment.

Conclusion

122 In conclusion, I allow judgment in the sum of **\$621,621.69** to the plaintiff for the plaintiff's claim. The sum of **\$87,432.50** awarded to the defendant for its counterclaim in the Liability Judgment will be set off against the judgment sum allowed to the plaintiff. The breakdown of the judgment sums is set out in the table below:

Category of damage	Description	Amount awarded (\$)
Category 1	Sums awarded to the plaintiff in the Liability Judgment	3,000
Category 2	Utilisation by the landlord of the advance payment of one month's rent to cover the first month of the rent-free Fitting-Out period, plus the payment of rent in arrears for the second month of the rent-free Fitting-Out period as part of the settlement sum to the landlord.	35,773.20
Category 3: Losses caused by the floods		
Category 3a	Flood investigation and remediation costs	80,573.69
Category 3b	Loss of management time and expense	0
Category 4: Losses arising from closure of the new Suntec Clinic during the Blackout Periods and from 6 March 2015 till the end of the Lease on 21 September 2016		
Category 4a and Category 4b combined computed using Basis (a)	Deemed Patient Revenue (without GST) less deemed Variable Expenses (for the period up till 5 March 2015)	266,675.33
Category 4c	Wasted depreciation expenses (from 6 March 2015 till the end of the Lease on 21 September 2016) and wasted rent in arrears paid to the landlord (from 6 March 2015 till 29 March 2015)	151,384.18
Category 4d	Other damages in connection with the early termination of the Lease	84,215.29
Total judgment sum awarded to plaintiff		<u>621,621.69</u>
Defendant's counterclaim		<u>(87,432.50)</u>

Total amount due to the plaintiff after setting off

534,189.19

123 There shall be interest fixed at 5.33% per annum on the amount due to the plaintiff of \$534,189.19 from the date of the writ until the date of payment. I will hear parties on costs, if not agreed.

124 The detailed calculations are shown in the Excel Sheet "Computation of Revenue and Variable Expenses of new Suntec Clinic" attached to this judgment.

[LawNet Admin Note: The "Computation of Revenue and Variable Expenses of new Suntec Clinic" is viewable only by LawNet subscribers via the PDF in the Case View Tools.]

[\[note: 1\]](#) *Smile Inc Dental Surgeons Pte Ltd v OP3 International Pte Ltd* [2017] SGHC 246 ("Liability Judgment") at [1].

[\[note: 2\]](#) Liability Judgment at [2(a)].

[\[note: 3\]](#) Liability Judgment at [6].

[\[note: 4\]](#) Liability Judgment at [15].

[\[note: 5\]](#) Liability Judgment at [43]

[\[note: 6\]](#) Liability Judgment at [44].

[\[note: 7\]](#) Liability Judgment at [45].

[\[note: 8\]](#) Exhibit D1, p 5, paras 11 – 12.

[\[note: 9\]](#) Statement of Claim (Amendment No 2) para 27.

[\[note: 10\]](#) Statement of Claim (Amendment No 2) para 28(1).

[\[note: 11\]](#) Plaintiff's closing submissions at p 21.

[\[note: 12\]](#) Plaintiff's closing submissions at p 22.

[\[note: 13\]](#) Plaintiff's closing submission at p 24, para 48.

[\[note: 14\]](#) Plaintiff's closing submissions, pp 32 – 33, para 57.

[\[note: 15\]](#) Agreed Bundle of Documents for Quantum Tranche (Vol 2) ("2AB") Tab G59-62, p 12 para 17.2(3).

[\[note: 16\]](#) 2AB Tab G59-62, p 6 para 8.2.1.

[\[note: 17\]](#) Transcripts (31 October 2018) p 161, lines 25- 27.

[\[note: 18\]](#) 2AB Tab G59-62, p 7 para 8.5.

[\[note: 19\]](#) Transcripts (31 October 2018) p 162, lines 13 – 28.

[\[note: 20\]](#) Transcripts (31 October 2018) p 162, line 26.

[\[note: 21\]](#) Transcripts (31 October 2018) p 165 line 4 to p 166 line 10.

[\[note: 22\]](#) 2AB Tab H, pp 5 – 6, paras 13a – 13f.

[\[note: 23\]](#) 2AB Tab H, p 4 para 6 and p 5 para 12.

[\[note: 24\]](#) 2AB Tab G59-62, clause 8.2.1.

[\[note: 25\]](#) 2AB Tab H, p 3 paras c – d.

[\[note: 26\]](#) Transcripts (31 October 2018) p 154 lines 15 – 22.

[\[note: 27\]](#) Transcripts (1 November 2018) p 155 lines 2 – 4, lines 11 – 12 and p 157 lines 23 – 24.

[\[note: 28\]](#) Transcripts (1 November 2018) p 156 lines 30 – 32.

[\[note: 29\]](#) Transcripts (1 November 2018) p 157 lines 3 – 11.

[\[note: 30\]](#) Transcripts (1 November 2018) p 157 lines 27 – 28.

[\[note: 31\]](#) 2AB Tab H, p 5 para 12.

[\[note: 32\]](#) Defendant's Closing Submissions at p 15, para 31.

[\[note: 33\]](#) Defendant's Closing Submissions at p 19, para 35.

[\[note: 34\]](#) 2AB Tab H, p 10.

[\[note: 35\]](#) 2AB Tab H, p 1 at para 3.

[\[note: 36\]](#) 2AB Tab H, p 6 at paras b – f.

[\[note: 37\]](#) Pf 2SLOD Tab E, Tabs 6 and 7.

[\[note: 38\]](#) Defendants' Closing Submissions p 20.

[\[note: 39\]](#) Pf 2SLOD Tab E, Tabs 8 and 9.

[\[note: 40\]](#) Defendants' Closing Submissions p 20.

[\[note: 41\]](#) Pf 2SLOD Tab E, Tab 11.

[\[note: 42\]](#) Defendants' Closing Submissions p 20.

[\[note: 43\]](#) Pf 2SLOD Tab E, Tab 12.

[\[note: 44\]](#) Transcripts (31 October 2018) p 95 lines 1 – 6.

[\[note: 45\]](#) Transcripts (31 October 2018) p 95 lines 10 – 13.

[\[note: 46\]](#) Transcripts (31 October 2018) p 96 lines 6 – 15.

[\[note: 47\]](#) Pf 2SLOD Tab E, Tab 12.

[\[note: 48\]](#) Transcripts (31 October 2018) p 95 lines 1 – 6.

[\[note: 49\]](#) Pf 2SLOD Tab E, Tab 17.

[\[note: 50\]](#) Transcripts (31 October 2018) p 97 lines 8 – 10.

[\[note: 51\]](#) 2AB Tab N, pp 31 – 32.

[\[note: 52\]](#) 2AB Tab N, pp 29 – 30.

[\[note: 53\]](#) Transcripts (31 October 2018) p 97 lines 18 – 19.

[\[note: 54\]](#) Defendants' Closing Submissions p 22.

[\[note: 55\]](#) Pf 2SLOD Tab E, Tab 10.

[\[note: 56\]](#) Transcripts (31 October 2018) p 103 lines 2 – 17.

[\[note: 57\]](#) Defendant's closing submissions at p 25.

[\[note: 58\]](#) Transcripts (31 October 2018) p 103 lines 2 – 17.

[\[note: 59\]](#) Exhibit P4, pp 1 – 2.

[\[note: 60\]](#) See Pf 2SLOD Tab E, Tab 14.

[\[note: 61\]](#) Pf 2SLOD Tab E, Tab 13.

[\[note: 62\]](#) Pf 2SLOD Tab E, Tab 16.

[\[note: 63\]](#) Pf 2SLOD Tab E, Tab 14 (sum being pre-GST amount of \$1,155.60).

[\[note: 64\]](#) Pf 2SLOD Tab E, Tab 15.

[\[note: 65\]](#) Pf 2SLOD Tab G, Tab 39.

[\[note: 66\]](#) Transcripts (31 October 2018) p 145 lines 26 – 29; Grace Chong’s AEIC (14 November 2016) at para 155.

[\[note: 67\]](#) Transcripts (31 October 2018) p 145 lines 31 – 32.

[\[note: 68\]](#) Defendant’s closing submissions at pp 26 – 28.

[\[note: 69\]](#)

[\[note: 70\]](#) Grace Chong’s AEIC (14 November 2016) at paras 152 – 153; See also Transcripts (31 October 2018), p 105 line 25 – p 106 line 8 and p 152 lines 6 – 28.

[\[note: 71\]](#) Transcripts (31 October 2018) p 146 line 5 – 11.

[\[note: 72\]](#) Transcripts (31 October 2018) p 143 line 32.

[\[note: 73\]](#) Grace Chong’s AEIC (14 November 2016) at p 717.

[\[note: 74\]](#) Exhibit P4, p 3.

[\[note: 75\]](#) Pf 2SLOD Tab H, Tab 41, p 1.

[\[note: 76\]](#) Pf 2SLOD, Tab G, Tab 40.

[\[note: 77\]](#) Transcripts (31 October 2018) p 149 line 29 – p 150 line 6.

[\[note: 78\]](#) Transcripts (31 October 2018) p 149 line 24.

[\[note: 79\]](#) Pf 2SLOD, Tab H, Tab 41; Exhibit P4, pp 5 – 7.

[\[note: 80\]](#) Defendant’s closing submissions at p 29.

[\[note: 81\]](#) Transcripts (31 October 2018) p 158 lines 9 – 10.

[\[note: 82\]](#) Grace Chong’s AEIC (14 November 2016) at p 36, para 124.

[\[note: 83\]](#) Grace Chong’s AEIC (14 November 2016) at pp 36 – 44, paras 124 – 154; see also Plaintiff’s closing submissions at pp 72 – 76.

[\[note: 84\]](#) Pf 2SLOD Tab I, Tabs 58 and 59.

[\[note: 85\]](#) Defendant's closing submissions at p 29.

[\[note: 86\]](#) Pf 2SLOD Tab I, Tabs 58 and 59.

[\[note: 87\]](#) 2AB, Tab N pp 34 – 36.

[\[note: 88\]](#) Sum of three invoices: 2AB Tab G-80 (\$200), Plaintiff's reply submissions, Annex A 5th paper from last page of Annex A (\$250, \$2,600).

[\[note: 89\]](#) Plaintiff's closing submissions at p 30, para 52.

[\[note: 90\]](#) Grace Chong's AEIC (14 November 2016) p 974.

[\[note: 91\]](#) Grace Chong's AEIC (14 November 2016) pp 963 and 965.

[\[note: 92\]](#) Grace Chong's AEIC (14 November 2016), p 48, para 169.

[\[note: 93\]](#) Period of delay as per Liability Judgment at [30], [31] and [41].

[\[note: 94\]](#) Plaintiff's closing submissions at p 30.

[\[note: 95\]](#) Grace Chong's AEIC (14 November 2016), p 974.

[\[note: 96\]](#) Suntec Clinic Patient Revenue Breakdown Excel Sheet.

[\[note: 97\]](#) Exhibit D1, p 5, paras 11 – 12.

[\[note: 98\]](#) Plaintiff's closing submissions, p 32 at para 57.

[\[note: 99\]](#) Plaintiff's closing submissions at pp 33 – 34.

[\[note: 100\]](#) Exhibit P2, pp 4 – 26, as tabulated in Suntec Clinic Patient Revenue Breakdown Excel Sheet with some figures amended slightly based on further information provided by the plaintiff after the close of submissions pursuant to the court's further queries.

[\[note: 101\]](#) Liability Judgment at [15].

[\[note: 102\]](#) Liability Judgment at [30].

[\[note: 103\]](#) Liability Judgment at [31].

[\[note: 104\]](#) Liability Judgment at [43].

[\[note: 105\]](#) Liability Judgment at [45].

[\[note: 106\]](#) See Suntec Clinic Patient Revenue Breakdown Excel Sheet at Rows 11 – 14.

[\[note: 107\]](#) See Suntec Clinic Patient Revenue Breakdown Excel Sheet at Rows 30 – 104.

[\[note: 108\]](#) See Computation of Revenue and Variable Expenses of the new Suntec Clinic excel sheet for the detailed computation.

[\[note: 109\]](#) Statement of Profit or Loss (PDF); detailed breakdown in "Suntec PL for HC 22 Aug 2019" Excel Sheet, Tab "Suntec detailed PL".

[\[note: 110\]](#) Statement of Profit or Loss (PDF); detailed breakdown in "Suntec PL for HC 22 Aug 2019" Excel Sheet, Tab "Suntec detailed PL".

[\[note: 111\]](#) See "Computation of Revenue and Variable Expenses of new Suntec Clinic" Excel Sheet at Cells U144 – X148.

[\[note: 112\]](#) Defendant's Closing Submissions p 45, para 60.

[\[note: 113\]](#) Defendant's Bundle of Affidavits of Evidence-in-Chief, Tab A, pp 7 – 8, para 15(b).

[\[note: 114\]](#) Transcripts (1 November 2018) p 110 lines 8 – 22.

[\[note: 115\]](#) Transcripts (1 November 2018) p 110 lines 27 – 32.

[\[note: 116\]](#) Transcripts (1 November 2018) p 110 lines 19 – 22; p 123 lines 8 – 15.

[\[note: 117\]](#) Transcripts (1 November 2018) p 117 lines 10 – 16.

[\[note: 118\]](#) Transcripts (1 November 2018) p 117 line 23 – p 118 line 8.

[\[note: 119\]](#) Grace Chong's AEIC (14 Nov 2016) p 48 at para 169(b).

[\[note: 120\]](#) Grace Chong's AEIC (10 October 2018) p 21, para 62(c).

[\[note: 121\]](#) Grace Chong's AEIC (30 July 2018), Tab GC-105.

[\[note: 122\]](#) Dr Anna Maragopoulou worked for only 3 months in the new Suntec Clinic and contributed to the patient revenue of \$3,659, \$2,124 and \$2,582 for the months of May, June and July 2014 respectively: Suntec Clinic Patient Revenue Breakdown Excel sheet.

[\[note: 123\]](#) See "Suntec PL for HC 22 Aug 2019" Excel Sheet.

[\[note: 124\]](#) See "Suntec PL for HC 22 Aug 2019" Excel Sheet.

[\[note: 125\]](#) Grace Chong's AEIC (30 July 2018) p 9, para 26.

[\[note: 126\]](#) Grace Chong's AEIC (30 July 2018) p 11, para 32.

[\[note: 127\]](#) See "Suntec PL for HC 22 Aug 2019" Excel Sheet.

[\[note: 128\]](#) 2AB Tab H p D-1, para 3.

[\[note: 129\]](#) See "Computation of Revenue and Variable Expenses of new Suntec Clinic" Excel Sheet, at Cells Z99 – AH138.

[\[note: 130\]](#) Grace Chong's AEIC (30 July 2018), Tab GC-120, Tab 1.

[\[note: 131\]](#) Defendant's closing submissions at p 54, S/N 6, 39 and 40, compare with plaintiff's closing submissions at p 63, S/N 6, 39 and 40.

[\[note: 132\]](#) Pf 2SLOD Tabs 18 – 19.

[\[note: 133\]](#) Pf 2SLOD Tabs 20 – 21.

[\[note: 134\]](#) Transcripts (31 October 2018) p 118 line 31 – p 119 line 3; Pf 2SLOD Tab 22 (\$3,457.94), Tab 30 (\$3,040).

[\[note: 135\]](#) Transcripts (31 October 2018) p 118 lines 22 – 26.

[\[note: 136\]](#) Transcripts (31 October 2018) p 120 line 23 – p 121 line 17.

[\[note: 137\]](#) Pf 2SLOD Tab 23.

[\[note: 138\]](#) Defendant's closing submissions at pp 55 – 56, S/N 42 – 53, compare with plaintiff's closing submissions at pp 64 – 66, S/N 42 – 53.

[\[note: 139\]](#) Pf 2SLOD Tab 24.

[\[note: 140\]](#) Pf 2SLOD Tabs 26 (\$960) and 27 (\$684.49).

[\[note: 141\]](#) Pf2 SLOD Tabs 28 – 29.

[\[note: 142\]](#) Pf 2SLOD Tab 31.

[\[note: 143\]](#) Pf 2SLOD Tab 32.

[\[note: 144\]](#) Pf 2SLOD Tab 33.

[\[note: 145\]](#) Pf 2SLOD Tab 34.

[\[note: 146\]](#) Pf 2SLOD Tab 36.

[\[note: 147\]](#) Pf 2SLOD Tab 37 – 38.

[\[note: 148\]](#) Pf 2SLOD Tab 43, p 12, paras 17.2(4) and 17.2(5).

[\[note: 149\]](#) Defendant's closing submissions p 56, S/N 61 and 62.

[\[note: 150\]](#) Pf 2SLOD Tab 51; Transcripts (31 October 2018) p 168 lines 26 – 30.

[\[note: 151\]](#) See "Suntec PL for HC 22 Aug 2019" Tab "Suntec detailed PL" at Cells A35 – D35.

[\[note: 152\]](#) Pf 2SLOD Tab 46.

[\[note: 153\]](#) Defendant's closing submissions at p 57, S/N 67 – 72, compare with plaintiff's closing submissions at p 67, S/N 67 – 72.

[\[note: 154\]](#) Pf 2SLOD Tab 47.

[\[note: 155\]](#) Pf 2SLOD Tab 48.

[\[note: 156\]](#) Pf 2SLOD Tab 54, 55.

[\[note: 157\]](#) Pf 2SLOD Tab 57.

[\[note: 158\]](#) Pf 2SLOD Tab 50 (\$1,295 + \$150), 53 (\$2,405).

[\[note: 159\]](#) Pf 2SLOD Tab 52.

[\[note: 160\]](#) Plaintiff's Closing Submissions at p 68, S/N 75.

[\[note: 161\]](#) Grace Chong's AEIC (30 July 2018), Tab GC-120, Tab 4.

[\[note: 162\]](#) Defendant's closing submissions at pp 57 – 58, S/N 76 – 77, compare with plaintiff's closing submissions at p 67, S/N 76 – 77.

[\[note: 163\]](#) Grace Chong's AEIC (30 July 2018), Tab GC-120, Tab 5.

[\[note: 164\]](#) See calculations in "Computation of Revenue and Variable Expenses of new Suntec Clinic" Excel Sheet at Cells AA139 – AN141.

[\[note: 165\]](#) 2AB Tab H, p 5 at paras 11 – 12.

[\[note: 166\]](#) 2AB Tab H, p 10.

[\[note: 167\]](#) 2AB Tab H, p 1 at para 3.

[\[note: 168\]](#) 2AB Tab H, p 10.

[\[note: 169\]](#) "Computation of Revenue and Variable Expenses of new Suntec Clinic", Excel Sheet at Cell

V134.

[\[note: 170\]](#) 2AB Tab H p 10.

[\[note: 171\]](#) "Computation of Revenue and Variable Expenses of new Suntec Clinic", Excel Sheet at Cell T115.

[\[note: 172\]](#) "Computation of Revenue and Variable Expenses of new Suntec Clinic", Excel Sheet at Cells Z79 – AL83.

[\[note: 173\]](#) "Computation of Revenue and Variable Expenses of new Suntec Clinic", Excel Sheet at Cell P136.

[\[note: 174\]](#) Defendant's closing submissions at p 54, para 92.

[\[note: 175\]](#) Pf 2SLOD Tab 43, p 12, para 17.2(1); Transcripts (31 October 2018) p 160 lines 20 – 24.

[\[note: 176\]](#) Grace Chong's AEIC (30 July 2018), Tab GC-102.

[\[note: 177\]](#) Plaintiff's closing submissions at p 68, para 125. Note: The plaintiff inaccurately writes that there are 1097 days.