IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC(I) 8

Suit No 1 of 2022

Between

Renault SAS

… *Plaintiff*

And

Liberty Engineering Group Pte Ltd

… *Defendant*

JUDGMENT

[Contract — Contractual terms — Rules of construction]
[Credit and Security — Guarantees and indemnities]

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v
Liberty Engineering Group Pte Ltd

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Singapore International Commercial Court — Suit No 1 of 2022
Roger Giles IJ
25 April 2023

19 May 2023 Judgment reserved.

Roger Giles IJ:

Introduction

1 The plaintiff claims €7m and statutory interest from the defendant under a Deed of Guarantee dated 5 July 2018 ("the Guarantee"). The proceedings have come down to a question of construction of the Guarantee, understood together with a Financial Services Agreement dated 28 May 2018 ("the FSA") pursuant to which it was given.

2 For the reasons which follow, the claim should not succeed and the proceedings should be dismissed.

The FSA

3 The plaintiff, Renault SAS ("Renault"), a French incorporated company, is the well-known automobile manufacturer. On or about 16 January 2018

another French company, AR Industries, which had been a manufacturer of wheels for the automobile industry with Renault as its main client, was placed under *redressement judiciaire*, a form of receivership or judicial restructuring, by the Commercial Court of Orleans. The defendant, Liberty Engineering Group Pte Ltd ("LEG"), a Singapore incorporated company within the Liberty Group, was willing to acquire the operations and assets of AR Industries, but with financial support from Renault. To this end, the FSA was entered into between Renault, LEG, and Liberty House Group Pte Ltd ("LHG"), the last-mentioned being said to be "the mother company" of LEG.

4 The FSA said in its opening that it "acts the terms and conditions agreed between Liberty Group and Renault within the frame of the sale of the activity and assets (the 'Sale Plan') of AR Industries … to Liberty Engineering [*ie*, LEG] or to any entity of Liberty Engineering's Group … which might be substituted to Liberty Engineering in the benefit of the Sale Plan (the 'Purchaser')". In Article 3 it described its purpose as being to specify "the respective and reciprocal commitments of the Parties within the frame of the acquisition, by the Purchaser, of the operations and assets of AR Industries". In Article 4 it was provided that:

> The terms and conditions of the Agreement have been agreed in consideration of an acquisition of the operations and assets by the Purchaser, which will carry out the activity within its Group.
>
> The Purchaser shall be Liberty Engineering or any entity of Liberty Engineering's Group controlled by Liberty Engineering.

5 Article 5 dealt with the provision of funds by Renault and the repayment of the funds. In summary as to the provision of funds, Renault agreed to provide financial support totalling €7m to the Purchaser by payments of €1.5m on 1 July and 30 October 2018, €2.5m on 1 July 2019 and €1.5m on 1 July 2020. All payments were subject to the Purchaser complying with its commitments under

the FSA, and the 2019 and 2020 payments were subject to provision of a guarantee by Aluminium Dunkerque, a company which the Liberty Group was in the process of acquiring, or agreement on an "alternative first demand guarantee of equivalent efficiency". As to repayment of the funds, the article provided:

> The Financial Support offered by Renault will be totally reimbursed by the Purchaser to Renault over 4 years, as of 2022 (year 1) to 2025 (year 4), through a cash payment of 1,750,000 € per year made by the Purchaser to Renault on June 1st of each year (i.e. for the first time on June 1st, 2022), except if the Purchaser fails to comply with any of the repayment terms, in which case the amount of the Financial Support already paid will become immediately refundable by the Purchaser and the Guarantors 1, 2 and 3.

6 In the FSA, LHG was entitled Guarantor 1 and LEG was entitled Guarantor 2. From Article 10 next referred to dealing with the provision of guarantees, Aluminium Dunkerque was Guarantor 3.

7 Article 10 of the FSA was lengthy. It began:

> In case of the opening of bankruptcy proceedings towards the Purchaser (*sauvegarde, redressement judiciaire* or *liquidation judiciaire*) and/or if the Purchaser fails to reimburse the Financial Support in due time (as referred to in Article 5) for any reason whatsoever, Liberty House Group, as Guarantor 1, commits to reimburse to Renault the Financial Support paid to the Purchaser, on first demand, in place of the Purchaser, within the same schedule. For the sake of clarity, it is specified that in case the amount of the Financial Support already paid becomes immediately refundable by the Purchaser, it will also become immediately refundable by the Guarantor 1.
>
> Moreover, in case i) the Purchaser is an entity of Liberty Engineering's Group substituted to Liberty Engineering in the benefit of the Sale Plan and ii) a bankruptcy proceedings is opened towards the Purchaser (*sauvegarde, redressement judiciaire* or *liquidation judiciaire*) and/or iii) the Purchaser fails to reimburse the Financial Support in due time (as referred to in Article 5) for any reason whatsoever, Liberty Engineering, as Guarantor 2, commits to reimburse to Renault the Financial Support paid to the Purchaser, on first demand, in place of the

> Purchaser, within the same schedule. For the sake of clarity, it is specified that in case the amount of the Financial Support already paid becomes immediately refundable by the Purchaser, it will also become immediately refundable by the Guarantor 2.
>
> To this end, Liberty House Group and Liberty Engineering, each as far as it is concerned, commit to provide Renault, within 10 business days, following the signing of the Agreement, with (i) a first demand guarantee duly approved by their competent corporate bodies and (ii) a legal opinion from a Singapore leading law firm, attesting that these two guarantees were regularly issued in particular as regards their corporate interest and that they will be efficiently enforceable (together, the "***First Demand Guarantees 1 and 2***").
>
> [bold and italics in original]

8 The article went on to deal with the provision by Aluminium Dunkerque, as Guarantor 3, of a First Demand Guarantee 3 in like terms to the First Demand Guarantees 1 and 2, following its acquisition by LHG. It included a guarantee by LEG and LHG that Aluminium Dunkerque would give the guarantee.

9 The article concluded:

> Renault will be allowed to call the First Demand Guarantees 1 and 2 simultaneously or one after the other, in any order, at Renault's option, until full repayment of the Financial Support paid to the Purchaser. The First Demand Guarantee 3 will be enforceable by Renault if the Purchaser and/or the Guarantors 1 and 2 failed to perform their obligations within 10 business days after Renault's demand.
>
> As an exception to the above, the First Demand Guarantees 1, 2 and 3 will be enforceable simultaneously, in any order, at Renault's option, until full repayment of the Financial Support paid to the Purchaser, in case the amount of the Financial Support already paid becomes immediately refundable by the Purchaser and the Guarantors.

10 Other articles, the detail of which does not matter, included forecasts for volumes of wheels ordered by Renault from AR Industries over 2019, 2020 and 2021, and prices for the wheels, with many qualifications as to both, including that the volume forecasts "do not entail any firm commitment from Renault in

terms of effective volumes to be ordered to the Purchaser nor in terms of effective turnover to be achieved with the Purchaser" (in Article 6) and that without prejudice to the commitment to discuss in good faith neither the Purchaser nor any entity of its Group, or their managers and/or shareholders, would have any "recourse/claim of any kind against Renault … as regards (i) the level of volumes ordered by Renault from 2018 onwards …" (in Article 14). Article 6 included, however, a commitment by the Parties (as to Parties see [12] below) to negotiate in good faith towards compensation if the level of the volume forecasts was not achieved.

11 Article 13 stated a number of commitments of the Purchaser "[a]s a counterpart of Renault's commitments". Some were administrative (for example, to provide annual accounts) or aspirational (for example, to make best efforts to become fully competitive within three years, and to develop a relationship of trust with Renault). Others had potential significance, such as to maintain a level of performance in terms *inter alia* of quality, logistics, process, costs, engineering and lead times in order to meet Renault's purchasing terms and conditions, and "[t]o ensure deliveries to [Renault] in accordance with the volumes ordered, and delivery lead times".

12 In Article 1 the parties to the FSA were stated as Renault, LEG and LHG, and they were the only signatories to the FSA. Article 1 included at its end, however, "The Car Manufacturer [*ie*, Renault], the Purchaser and the Guarantors 1 and 2 being hereafter referred to, collectively, as 'the Parties' and individually as 'a Party'", and the FSA included many commitments (the term generally used) of the Purchaser (Article 5 as to repayment and Article 13 being some, but there were more) and commitments of the Parties. As next described, in the event the Purchaser was not LEG but an entity controlled by LEG, the Purchaser would therefore not be a signatory to the FSA. The FSA was

expressed to be governed by French law. Whether by French law such a Purchaser would be bound under the FSA to make the Article 5 repayments was raised in the course of the hearing (see [51] below).

The Guarantee

13 It was common ground that the Guarantee was given by LEG as First Demand Guarantee 2 pursuant to the agreement to do so in Article 10 of the FSA. What happened about the giving of First Demand Guarantees 1 and 3 was not explained. It was also common ground (and was evident in the Guarantee) that by the time the Guarantee was given the operations and assets of AR Industries had been purchased by Liberty Wheels France, a French company in the Liberty Group (and I take it one controlled by LEG), and that it became the Purchaser as referred to in the FSA.

14 The parties to the Guarantee were LEG, entitled and defined as Guarantor, and Renault, entitled and defined as Financial Support Provider. The definitions included that Purchaser meant Liberty Wheels France. Other definitions were:

> …
>
> **Bankruptcy Event** means the taking of any corporate action, legal proceedings or other procedure or step in relation to the opening of any bankruptcy proceedings (*sauvegarde, sauvegarde financière accélérée, sauvegarde accélérée, redressement judiciaire* or *liquidation judiciaire*) towards the Purchaser.
>
> **Financial Support Document** means the agreement signed by Renault SAS, Liberty Engineering Group Pte. Ltd. as Guarantor 2 and Liberty House Group Pte. Ltd. as Guarantor 1 on 28 May 2018 within the scope of the sale of the activity and assets of AR Industries (under "*redressement judiciaire*") to Liberty Engineering or to any entity of Liberty Engineering's Group which might be substituted to Liberty Engineering in the benefit of the Sale Plan (as defined in the Financial Support Document)

> …
>
> **Obligations** means all money and liabilities (including debts) owing or incurred to the Financial Support Provider by the Purchaser under or in relation with [*sic*] the provisions of the Financial Support Document relating to the Financial Support (as such term is defined in the Financial Support Document), and in any capacity irrespective of whether such moneys or liabilities: (i) are present or future, (ii) are actual, contingent or otherwise, (iii) are at any time ascertained or unascertained, (iv) are owed, incurred by or on account of the Purchaser alone, or severally or jointly with any other person, (v) are owed or incurred as principal, interests, fees, charges, taxes, duties or other imposts, damages (whether for breach of contract or tort or incurred on any other ground), losses, costs or expenses, or on any other account, or (vi) comprise any combination of the above
>
> …

15 The Guarantee provided in cll 2.1 and 2.2, under the heading "Guarantee and Indemnity", in the terms:

> 2.1 Subject to clause 2.2, the Guarantor irrevocably and unconditionally:
>
> > (a) guarantees to the Financial Support Provider the due and punctual performance, observance and discharge by the Purchaser of any and all the Obligations;
> >
> > (b) undertakes that (i) whenever the Purchaser does not pay any amount when due under or in connection with the Financial Support Document or (ii) upon the occurrence of a Bankruptcy Event, the Guarantor shall immediately on demand by the Financial Support Provider pay that amount to the Financial Support Provider as if it was the Purchaser; and
> >
> > (c) agrees that the Guarantor shall, as principal obligor and as a separate, primary and independent obligation, indemnify and keep indemnified the Financial Support Provider in full and immediately on demand against any cost, loss, liability, damages, claims, demands and expenses suffered or incurred by the Financial Support Provider as a result of any of the Obligations being or becoming void, voidable, unenforceable, invalid, illegal or ineffective against the Financial Support Provider for any reason whatsoever, whether or not known by the Financial Support Provider. The amount payable by the Guarantor under this indemnity will not exceed the

> amount it would have had to pay under this clause 2 if the amount claimed had been recoverable on the basis of a guarantee.
>
> 2.2 Although this guarantee shall be construed and take effect as a guarantee of the whole and every part of the Obligations, the total amount recoverable under this guarantee shall be limited to €7,000,000.

16 It continued for a number of pages with many more clauses, most of the kind commonly found in such a document essentially protective of the beneficiary of a guarantee such as the waiver of defences and not proving in competition with the beneficiary. Renault's submissions took up some of these, and I will refer to them as appropriate in these reasons. The collection of clauses was generous, and included (cl 7.1):

> The Rights created by this Deed are in addition to any other Rights of the Financial Support Provider against the Guarantor under any other documentation, the general law or otherwise. They will not merge with or limit those other Rights, and are not limited by them.

17 The Guarantee was expressed to be governed by and construed in accordance with Singapore law.

Demand under the Guarantee

18 The first repayment of €1.75m was due on 1 June 2022. Well before that date, on 23 April 2021 the Paris court opened *redressement judiciaire* proceedings for the benefit of Liberty Wheels France, by then known as Alvance Aluminium Wheels ("Alvance"). On 20 May 2021, Renault issued a letter of demand for payment by LEG of the sum of €7m on the basis that a Bankruptcy Event had occurred and the full sum was payable to it pursuant to cl 2.1 of the Guarantee.

These proceedings

19 Renault commenced these proceedings in the High Court on 31 May 2021, still well before the first repayment was due, and filed an Amended Statement of Claim on 1 June 2021. It claimed the €7m in reliance on cl 2.1(b) of the Guarantee on the basis of a Bankruptcy Event. A Defence was filed, and then by consent an Amended Defence was filed on 22 October 2021. An Amended Reply was filed on 5 November 2021. The parties made and responded to requests for further and better particulars, and filed lists of documents. The proceedings were transferred to the Singapore International Commercial Court on 15 March 2022.

20 LEG's defence had two limbs. One was that as at 31 May 2021 nothing was payable by it as guarantor because nothing was then payable by the Purchaser, Alvance. It said that the Bankruptcy Event (which was admitted) did not accelerate repayment by the Purchaser, and that as a matter of construction of the Guarantee it (LEG) was only obliged to pay if the Purchaser failed to adhere to the payment terms in Article 5 of the FSA. The other was that as a matter of French law Renault was not entitled to demand payment under the Guarantee on the basis of the occurrence of the Bankruptcy Event, because the Bankruptcy Event was a result of or materially caused by a failure by Renault to perform its contractual obligations in good faith concerning purchasing forecast volumes of wheels or negotiating compensation in lieu as required under the FSA.

21 At the first Case Management Conference in the Singapore International Commercial Court, held on 28 April 2022, it was agreed that there should be a brief hiatus in case failure in the repayment due on 1 June 2022 gave Renault a new basis for its claim. That did not occur: the first repayment was made by a

related company of LEG. The parties could not agree on proposals involving discontinuance or extended adjournment pending the further repayments, and directions were given towards a hearing.

22 On 30 September 2022 LEG filed an application for decision of the first limb of its defence as a preliminary issue, which Renault opposed. At the hearing of the application on 27 October 2022, it was dismissed in an *ex tempore* judgment. Revised directions towards a hearing were given. LEG then abandoned the second limb of its defence (meaning that the application had been pointless, other than perhaps as a tactic), and the hearing became, as earlier noted, a question of construction of the Guarantee.

23 With further revised directions, the hearing was ultimately conducted on an agreed statement of facts and an agreed bundle of documents, going little beyond the facts of entry into the FSA and the giving of the Guarantee and the documents themselves; the Bankruptcy Event; and the demand under the Guarantee. At the hearing, Mr Lionel Leo appeared as lead counsel for Renault, and Mr Chew Kei-Jin appeared as lead counsel for LEG.

Further proceedings

24 These proceedings may not be the end of the story. On 30 March 2023, a few weeks before the hearing date of the proceedings, Renault commenced further proceedings against LEG in the Singapore International Commercial Court, SIC/OA 3/2023. It claimed the balance of the €7m pursuant to cl 2.1 of the Guarantee on the basis that in February 2022 the *redressement judiciaire* proceedings had been converted into *liquidation judiciaire*, and under the French Commercial Code the sum had thereby been rendered immediately due and payable by the Purchaser under the FSA. As the necessity for and course of the further proceedings could be affected by the result in these proceedings, at

the hearing it was agreed that the timelines for the further proceedings should be suspended until further order, and that there should be a Case Management Conference in SIC/OA 3/2023 following judgment in these proceedings to deal with their future.

The parties' positions

25 LEG's position has been indicated above. It characterised Renault's case as a case that the Bankruptcy Event accelerated its (LEG's) liability under the Guarantee; but, it said, LEG's liability was a secondary liability solely as guarantor, it was coextensive with the liability of the Purchaser, and the Purchaser's liability to make the repayments on 1 June of 2022, 2023, 2024 and 2025 was not accelerated by the Bankruptcy Event. As at 31 May 2021, nothing was payable by Alvance to Renault, so nothing was payable by LEG to Renault.

26 Renault did not say that the Bankruptcy Event made the full amount of the Financial Support immediately repayable by the Purchaser; it was common ground that under Article 5 of the FSA that was the result only of failure by the Purchaser to comply with the repayment terms, that is, to make one of the 1 June payments. It said that under cl 2.1(b) of the Guarantee, upon the Bankruptcy Event LEG had a primary liability, independent of any liability of the Purchaser, to pay the amount of the Financial Support (which at times it did describe as acceleration of LEG's liability).

27 The contest, in the respective submissions, was cast in terms of primary or secondary liability: whether upon the Bankruptcy Event LEG came under a primary liability to pay to Renault the amount of the Financial Support (being €7m), or a secondary liability to pay to Renault any amount when payable by the Purchaser (as at 31 May 2021, and still, being nothing).

Primary and secondary liability

28 The descriptors of primary and secondary liability are commonly encountered, in this context in connection with differences between a guarantee and an indemnity: see the extended discussion in *Vossloh Aktiengesellschaft v Alpha Trains (UK) Ltd* [2011] 2 All ER (Comm) 307 ("*Vossloh*") at [22]–[26], summed up with reference to that case in *TA Private Capital Security Agent Ltd v UD Trading Group Holding Pte Ltd* [2023] SGHCR 1 at [54]:

> First, a guarantor's obligation under a guarantee is a *secondary* one, in the sense that it is contingent upon the principal debtor's continuing liability and ultimately the principal debtor's default. The guarantor is not liable unless and until the principal debtor has failed to perform his obligation … On the other hand, under a contract of indemnity, the liability of the giver of the indemnity is a *primary* one, and is not dependent upon the principal debtor's default.
>
> [emphasis in original; citation omitted]

29 However, the description of a liability as primary or secondary is conclusory, and whether a document records a guarantee or an indemnity, or imposes a primary liability or a secondary liability, depends upon the obligations undertaken in the document by the putative guarantor/indemnifier. So it was said by Lord Diplock in *Moschi v Lep Air Services Ltd* [1973] AC 331 at 349:

> Whether any particular contractual promise is to be classified as a guarantee so as to attract all or any of the legal consequences to which I have referred depends upon the words in which the parties have expressed the promise. Even the use of the word "guarantee" is not in itself conclusive. It is often used loosely in commercial dealings to mean an ordinary warranty. It is sometimes used to mis-describe what is in law a contract of indemnity and not of guarantee. Where the contractual promise can be correctly classified as a guarantee it is open to the parties expressly to exclude or vary any of their mutual rights or obligations which would otherwise result from its being classifiable as a guarantee. Every case must depend upon the true construction of the actual words in which the promise is expressed.

30 It is preferable in this case to avoid seeing the contest through the lens of primary or secondary liability, or of acceleration of a liability. The task is one of construction of the Guarantee, with the central enquiry: what did LEG promise to do?

Construction of the Guarantee

The approach to construction

31 The approach to construction of a contract was summarised in the Court of Appeal in *CIFG Special Assets Capital I Ltd (formerly known as Diamond Kendall Ltd) v Ong Puay Koon and others and another appeal* [2018] 1 SLR 170 ("*CIFG*") at [19] (affirmed in *PT Bayan Resources TBK and another v BCBC Singapore Pte Ltd and another* [2019] 1 SLR 30 ("*PT Bayan*") at [120]):

> (a) The starting point is that one looks to the text that the parties have used (see *Lucky Realty Co Pte Ltd v HSBC Trustee (Singapore) Ltd* [2016] 1 SLR 1069 at [2]).
>
> (b) At the same time, it is permissible to have regard to the relevant context as long as the relevant contextual points are clear, obvious and known to both parties (see *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [125], [128] and [129]).
>
> (c) The reason the court has regard to the relevant context is that it places the court in "the best possible position to ascertain the parties' objective intentions by interpreting the expressions used by [them] in their proper context" (see *Sembcorp Marine Ltd v PPL Holdings Pte Ltd* [2013] 4 SLR 193 at [72]).
>
> (d) In general, the meaning ascribed to the terms of the contract must be one which the expressions used by the parties can reasonably bear (see, *eg*, *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [31]).

32 As explained in *Y.E.S. F&B Group Singapore Pte Ltd v Soup Restaurant Singapore Pte Ltd (formerly known as Soup Restaurant (Causeway Point) Pte Ltd)* [2015] 5 SLR 1187 at [30]–[35], in the process of interpretation text and

context interact, but the text is "the first port of call" (at [32]) and context cannot be used by the court to rewrite the terms of the contract to what the court considers a fairer or more commercially sensible result.

33 The court will also have regard to the established canons of construction, on the basis that and so far as they are a guide to the parties' objective intention: *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [131].

The text of cl 2.1(b)

34 Renault relied only on cl 2.1(b) of the Guarantee. I go first to its text; for convenience, I repeat it:

> Subject to clause 2.2, the Guarantor irrevocably and unconditionally:
>
> […]
>
> (b) undertakes that (i) whenever the Purchaser does not pay any amount when due under or in connection with the Financial Support Document or (ii) upon the occurrence of a Bankruptcy Event, the Guarantor shall immediately on demand by the Financial Support Provider pay that amount to the Financial Support Provider as if it was the Purchaser …

35 I will call (i) and (ii) "happenings", leaving "event" for the Bankruptcy Event. Upon either of happening (i) or happening (ii), Renault can demand that LEG pay "that amount" to it, and LEG has immediately to pay "that amount" to it. What is "that amount"?

36 "[T]hat" is the identifier, and on a natural reading of the clause it refers back to the amount in the description of happening (i), the amount due under or in connection with the FSA which the Purchaser has not paid. Consistently with this, LEG is to pay Renault "as if it was the Purchaser", that is, to pay the amount

the Purchaser should have paid. That the amount has become due, meaning payable by the Purchaser, is part of the identification of "that amount" which LEG has promised to pay.

37 If LEG's promise is understood in this way, even though there had been a Bankruptcy Event there was no amount payable by the Purchaser as at 31 May 2021, and so no amount payable by LEG.

Context and canons of construction

38 This meaning of "that amount" is unexceptional in the working out of happening (i) in which the amount is described. Renault can demand, and LEG must immediately pay, a known amount then due: the substance is a guarantee of payment given by LEG. In the working out of happening (ii), however, a Bankruptcy Event may occur before the time for a 1 June payment or in the interval between 1 June payments, when no repayment is due, or at a time before some other amount has become due, under, or in connection with the FSA. The ability to demand payment of "that amount" then triggered which LEG had immediately to pay would have to await an amount becoming due. That is not necessarily anomalous, and leaves a workable operation of LEG's promise; the Bankruptcy Event has meant that LEG immediately becomes, or can be made, a co-obligor with the Purchaser for when an amount becomes due. But in the actual recovery of money, happening (ii) adds nothing to happening (i). If the Purchaser pays, demand on LEG does not matter; but if the Purchaser does not pay, the trigger of a Bankruptcy Event leads only to LEG having to pay an amount which it would in any event have to pay by reason of happening (i) because it had not been paid by the Purchaser when due.

39 This was at the heart of Mr Leo's submissions against the textual meaning of "that amount" in LEG's promise. From the FSA, he submitted that

the Guarantee was part of the provision of financial support in aid of the supply of wheels to Renault; if wheels were no longer being supplied because the Purchaser had suffered a Bankruptcy Event, it was not commercially sensible (he also said absurd) that the Purchaser should still have the money provided it made the instalment payments. The purpose was that the money could immediately be demanded by Renault from the guarantor and had to be repaid by it when, by reason of the Bankruptcy Event, the Purchaser could not repay it, and the construction should promote that purpose seen from the FSA and avoid the uncommercial result. He referred to a number of clauses in the Guarantee (cll 3.1, 3.4(d), (g) and (h), and 7.1) which he submitted supported that LEG's liability was not coextensive with that of the Purchaser. But he placed great weight on the fact that happening (ii) would, as he put it, be otiose, and submitted (with reference to *Vossloh* at [20]) that the court must endeavour to avoid a construction which renders a clause otiose. In his submission, the parties to the Guarantee should be taken to have understood that upon happening (i) the full amount of the financial support then outstanding would become repayable, as provided in Article 5 of the FSA; the amount in happening (i), and so "that amount", was intended to refer to the full amount that would thereby be payable; and the text should be given that meaning.

40 In his submissions, Mr Chew took a different context from the FSA. He pointed to LEG's commitment in Article 10 of the FSA, to be formalised in a guarantee, for its reference to reimbursement "in place of the Purchaser, within the same schedule". He said, in substance, that this was reflected in "as if it was the Purchaser" in cl 2.1(b) of the Guarantee and that the cl 2.1(b) undertaking, like the Article 10 commitment, was confined to payment according to the timetable in Article 5 of the FSA; so happening (ii) correctly led only to payment of amounts payable by the Purchaser. He said also that Article 10 showed that Renault was content with reimbursement by LEG according to that timetable,

in the case of the opening of bankruptcy proceedings (in essence the Bankruptcy Event in the Guarantee) just as much as in the case of default in payment by the Purchaser. He did not accept that happening (ii) was otiose, submitting that for happening (i) "that amount" would be everything that had been paid, which default would make repayable, but happening (ii) meant that LEG kept on paying Renault in the way the Purchaser would have paid, so that "that amount" would be the instalments that would be due. And he said that if the parties had meant that a Bankruptcy Event would bring liability to pay the full amount of the financial support then outstanding, they could easily have said so, but did not.

Discussion

41 Although provided pursuant to the FSA, the Guarantee is a quite different animal from the First Demand Guarantee 2 outlined in Article 10. The commitment there outlined is confined to reimbursement of the financial support. The Guarantee goes further. It contains the very wide definition of Obligations and the guarantee of the Obligations in cl 2.1(a), apt also to catch any liability of the Purchaser for breach of the FSA; some breaches would be unlikely to sound in damages, but some would, of which failing to ensure deliveries of wheels in the volumes and with the lead times ordered is a stark example. A similar form of words to the words catching such a liability in the definition of Obligations, referring to money and liabilities owing or incurred "under or in relation with the provisions of the Financial Support Document" is found in the description of the amount in cl 2.1(b) as an amount due "under or in connection with the Financial Support Document", a matter to which I will return. The events constituting a Bankruptcy Event appear to be more extensive than those constituting the opening of bankruptcy proceedings in the FSA, although that is not entirely clear in the absence of evidence or explanation of

French process. As well as the much wider reach of what is guaranteed, there is the indemnity in cl 2.1(c). There are the numerous clauses earlier mentioned, some imposing additional obligations on LEG including matters such as warranties by it and an obligation to provide its audited financial statements and "relevant information on the level of its stocks and assets". In cl 7.1 earlier mentioned the rights created by the Guarantee are additional to any other rights of Renault against LEG "under any other documentation, the general law or otherwise".

42 It would therefore not be safe to undertake the construction of the Guarantee on the basis that it was intended to replicate the commitment in the FSA. The Guarantee must be construed on its own terms. In particular, I do not think that "within the same schedule" in the FSA can be seen as transposed to "as if it was the Purchaser" in the Guarantee, and do not accept Mr Chew's reliance on that phrase in the FSA, although "as if it was the Purchaser" provides some support to his case.

43 However, the FSA does bear upon Mr Leo's submission concerning commercial sense or absurdity. I do not think he contested that, according to the commitment in the FSA, in the event of the opening of bankruptcy proceedings the reimbursement to Renault was to be according to the timetable in Article 5, subject of course to acceleration of payment if one of the instalments was not paid, and in any event in my view that is the correct reading of the commitment. That is not inherently uncommercial, let alone absurd, and more to the point that it was not uncommercial in the eyes of Renault and LEG is evidenced by the fact that it was agreed by them in the FSA. It appears to have been an informed choice. The opening of bankruptcy proceedings would not necessarily mean that the Purchaser could not repay the financial support, although let it be assumed that it would be likely; nonetheless in the FSA the opening of bankruptcy

proceedings did not make the whole of the financial support (or such part as had not been repaid) immediately repayable by the Purchaser, so it was equally not immediately repayable by LEG as guarantor but the guarantor became liable to repay in the same manner as the Purchaser.

44 More to the point is Mr Leo's submission that, on the textual understanding of "that amount" in LEG's promise, happening (ii) would be otiose. I do not accept that it would be without any operation: it marks a happening other than the Purchaser's default, probably earlier, when LEG becomes or can be made a co-obligor with the Purchaser. But it does not add to the actual recovery of money, and I am unable to accept Mr Chew's explanation for its separate operation. The two happenings bring the same result, payment of "that amount", and why "that amount" had a different meaning in the case of happening (ii) from that in the case of happening (i) was not explained and is not evident. The submission ignores the vital word "that", and there is only one amount (whatever it may be) identified in cl 2.1(b). If my understanding is correct that Mr Chew submitted that on happening (i) the full amount would become payable, the submission would seem to play into the hands of Renault, although it remains that the amount found in that happening is the amount which the Purchaser does not pay when due and I do not understand him to have conceded that for both happenings "that amount" was the amount which would be repayable.

45 The force of Renault's case is in happening (ii) producing no actual recovery of money which would not also be produced by happening (i). Mr Leo's submission citing *Vossloh* rests on a well-established canon of construction: it is sufficient to refer also to *Travista Development Pte Ltd v Tan Kim Swee Augustine and others* [2008] 2 SLR(R) 474 at [20]:

> The law on documentary construction is clear. It is an established principle of documentary interpretation that a clause must not be considered in isolation, but must instead be considered in the context of the whole document (see Kim Lewison, *The Interpretation of Contracts* (Sweet & Maxwell, 3rd Ed, 2004) ("*Lewison*") at para 7.02, p 193). In addition, in construing a contract, all parts of it must be given effect where possible, and no part of it should be treated as inoperative or surplus. This means, as explained in *Lewison* at para 7.03, p 198, that, in general, 'each part of the document is taken to have been deliberately inserted, having regard to all the other parts of the document, with the result that there is a presumption against redundant words'. The courts should not adopt an interpretation of a contract which would render the language of a particular clause redundant.

46 The strength of what is also called the presumption against surplusage can vary according to the circumstances. In *PT Bayan* it was said (at [131]) that the presumption is weak "in the context of standard form contracts, which typically have redundancy drafted into them". In England, its value in the interpretation of commercial contracts has been doubted, at least where the contracts had some complexity, see for example *Total Transport Corporation v Arcadia Petroleum Ltd* [1998] CLC 90 at 97, *Swallowfalls Ltd v Monaco Yachting & Technologies SAM and another* [2014] EWCA Civ 186 at [27]–[28], and it has even been said in the advice of the Privy Council in *Antigua Power Co Ltd v A-G of Antigua and Barbuda* [2013] UKPC 23 at [38], that "on issues of interpretation, arguments based on surplusage are rarely of much force". These matters and their place in Singapore law were not the subject of submissions, and I do not go into them: I accept that in the present case the presumption is a material consideration in the interpretation of the relatively uncomplicated, professionally prepared, Guarantee. But underlying the variable weight to be given to the presumption is that it is but an aid to construction, and cannot justify giving words a meaning they will not bear.

47 In endeavouring to give separate operation to happening (ii), the purpose of enabling immediate recovery of the financial support from LEG upon a Bankruptcy Event, as submitted by Mr Leo, comes back into consideration. But even if it be put aside that, from the FSA, Renault and LEG did not have that purpose, a way of giving that effect to the words of cl 2.1(b) must be found. The canon of construction is constrained by what is possible consistently with the text and context: from *Yap Son On v Ding Pei Zhen* [2017] 1 SLR 219 at [31] (cited in *CIFG*, see at [31] above) as to context but equally applicable:

> In our judgment, the Judge's interpretation must be rejected for the simple reason that the meaning ascribed to the term by the Judge is not one which the expressions used by the parties can reasonably bear. In *Zurich Insurance* at [122], we stressed … that even under a contextual approach, the 'meaning imputed by the court [must] be one which "the words are reasonably adequate to convey"'. While the court is entitled to depart from the plain and ordinary meaning of the expression used, there is a limit to what the court can legitimately do in the name of interpretation.

48 Mr Leo's submissions did not provide a way. The submission that the parties should be taken to have understood that upon happening (i) the full amount of the financial support outstanding would become repayable, and that "that amount" was intended to refer to the amount that would thereby become repayable, does not fit with the trigger of failure to pay "any" amount. The full amount outstanding is not "any" amount becoming due; if Mr Leo's submission were correct it would simply be "the" amount becoming due, and as Mr Chew submitted it would have been easy for the parties to have said so if that was what they had intended. Importantly and more widely, the happening is not confined to failure to pay a 1 June instalment, or the full amount of the financial support. Demand for and liability to pay "that amount" is triggered by failure to pay "any amount when due under or in connection with" the FSA, as noted earlier extending to an amount such as damages for breach of the FSA in relation to

wheel deliveries, and happening (i) looks to amounts other than the amount of the financial support, hence the "any". That is, the amount in happening (i) is not a conceptual amount that would become payable in the event of failure to pay a 1 June instalment, but is a real amount which has become payable by the Purchaser for any of a number of reasons.

49 The overlap in the operation of the two happenings in cl 2.1(b) must be accepted: the dictate of "that amount" and the identification of the amount do not permit the construction urged by Mr Leo. The overlap is not alone in the Guarantee – see the overlap between cl 2.1(a) and happening (i) in cl 2.1(b). It may be observed that if I am too cautious in declining, at [42] above, to see the clause as intended to replicate the commitment in the FSA, and can make that direct connection, it supports that in relation to the financial support a Bankruptcy Event was intended to bring payment by LEG according to the same timetable as the Purchaser.

50 It is unnecessary to label any liability LEG may have or incur as a primary or a secondary liability, and Renault does not gain any assistance from the other clauses of the Guarantee to which Mr Leo referred in that connection. Looking at what LEG promised to do, it promised to pay amounts payable by the Purchaser; as at 31 May 2021 the amount of the financial support was not payable by the Purchaser, so it is not payable by LEG.

A further matter

51 The Purchaser in this case was not LEG but Alvance, an entity controlled by LEG and not a signatory to the FSA. As mentioned above (at [12]), whether by French law Alvance would be bound under the FSA to make repayment according to its terms was raised in the course of the hearing. Mr Leo was inclined to submit that it was not, in aid of LEG's liability being a primary

liability because there was no liability of Alvance to which it could be secondary. Mr Chew submitted that it was, referring to the Purchaser's description and treatment as a Party in the FSA.

52 It was evident that the question came to counsel unanticipated, neither spoke with the benefit of French law, and the question did not receive real consideration. It could arise in SIC/OA 3/2023, and unless it is necessary to answer it, it should be left unanswered in these proceedings. The Guarantee certainly is drawn as if Alvance is liable under the FSA, as to payment and as to obligations more widely. I do not think it matters, in the present task of construction, whether in cl 2.1(b) the Purchaser's failure to pay any amount when due is failure in an obligation to pay or simply failure in the fact of timely payment, or more generally whether there can ever be an amount payable by it as the Purchaser. Even assuming in Renault's favour that Alvance was not bound under the FSA to make repayment according to its terms, labelling LEG's liability as a primary liability for that reason does not advance Renault's position.

Conclusion

53 The Bankruptcy Event did not enliven a liability in LEG to pay the €7m to Renault. The proceedings are dismissed. Renault is to pay LEG's costs of the proceedings; I invite the parties to agree on the amount of costs, but if they are unable to agree written submissions are to be filed by LEG within 21 days and by Renault within seven days thereafter, and costs will be determined on the written submissions. A Case Management Conference should be fixed in SIC/OA 3/2023 on a date approximately two weeks after the date of this

judgment. It will not be necessary to file a Case Management Bundle for that date.

Roger Giles
International Judge

Leo Zhen Wei Lionel, Liu Zhao Xiang, Chia Shi Mei and T Abirami (WongPartnership LLP) for the plaintiff;
Chew Kei-Jin, Lee Chia Ming and Hannah Alysha Binte Mohamed Ashiq (Ascendant Legal LLC) for the defendant.