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

[2024] SGHC 108

Originating Claim No 492 of 2022

Between

Marchmont Pte Ltd

… *Claimant*

And

(1) Campbell Hospitality Pte Ltd
(2) Fu Yao
(3) Wang Cuirong

… *Defendants*

JUDGMENT

[Landlord and Tenant — Termination of leases — Forfeiture — Requirements under section 18(1) of Conveyancing and Law of Property Act]
[Landlord and Tenant — Termination of leases — Forfeiture — Waiver of right to forfeiture]
[Landlord and Tenant — Covenants — Breach of tenant's covenants]
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v
Campbell Hospitality Pte Ltd and others

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2 May 2024 Judgment reserved.

Kwek Mean Luck J:

Introduction

1 The Claimant, Marchmont Pte Ltd ("Marchmont"), is the registered proprietor of a property located at 51 Joo Chiat Road. Marchmont agreed to lease specific parts that constituted most of the area of the property ("Premises") to the 1st Defendant, Campbell Hospitality Pte Ltd ("Campbell").[1] The 2nd Defendant, Ms Fu Yao ("Ms Fu"), and the 3rd Defendant, Mdm Wang Cuirong ("Mdm Wang"), are the directors of Campbell. Mdm Wang is the mother of Ms Fu and the sole shareholder of Campbell.

2 The lease is for a period of three years, commencing from 1 August 2021 to 31 July 2024, for the stated purpose of "[h]otel operation only". The

[1] Statement of Claim (Amendment No. 1) dated 29 May 2023 ("SOC") at para 1.

agreement between the parties is contained in a tenancy agreement dated 22 June 2021 between Marchmont and Campbell ("Tenancy Agreement").[2]

3 In Originating Claim 492 of 2022 ("OC 492"), Marchmont seeks against Campbell, in the main, possession of the Premises, damages for breaches of the Tenancy Agreement, and "double the value" pursuant to s 28(4) of the Civil Law Act 1909 (2020 Rev Ed) ("CLA") for the alleged periods during which Campbell was holding over the Premises.[3]

4 Marchmont also seeks against Ms Fu and Mdm Wang any sums which Campbell is found to be liable to pay in their capacity as guarantors. It is undisputed that they executed a Deed of Guarantee dated 9 December 2021 ("Deed of Guarantee"),[4] under which all sums of money which are owed by Campbell to Marchmont would be paid by them as principal debtors.[5]

5 Campbell counterclaims against Marchmont for declarations which essentially mirror Campbell's defences, such as declarations that Marchmont's notices of breaches are invalid, that Marchmont had waived its right to forfeit the lease, and that Marchmont is refused possession of the Premises.[6]

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2 1st affidavit of evidence-in-chief of Ms Fu Yao dated 25 August 2023 ("Ms Fu 1st AEIC") at pp 98–139.

3 SOC at pp 30–31.

4 Chronology of Undisputed Facts dated 10 January 2024 ("Chronology") at S/N 56.

5 Deed of Guarantee at para 1.

6 Defence and Counterclaim (Amendment No. 2) dated 14 November 2023 ("Defence") at pp 56–57.

Facts

6 The Tenancy Agreement was entered into on 22 June 2021.[7] Possession of the Premises was handed over to Campbell on or around 30 June 2021 and the tenancy commenced on 1 August 2021.[8] For ease of reference, I set out the material clauses of the Tenancy Agreement below:

(a) Clause 4(13)(b) of the Tenancy Agreement provides that:

> The Demised Premises was constructed for use as a hotel and comprises of seventy (70) guest rooms. The Tenant shall not permit or allow at any time during the said Term more than two (2) guests or occupants per room. In the event of any breach of this sub-clause, the Landlord shall be at liberty forthwith to exercise its rights to terminate this Agreement.

(b) Clause 10(1) of the Tenancy Agreement provides that:

> Without prejudice to the Landlord's rights under Clause 9, … if the Tenant neglects or fails to perform or observe any of the provisions of this Agreement or commits any breach of its obligations hereunder, which breach if remediable is not remedied to the satisfaction of the Landlord … in any one of the said cases the rights privileges and interests of the Tenant in respect of the Demised Premises under this Agreement may be terminated by the Landlord. Upon termination of this Agreement, the Landlord at any time thereafter shall have the right to forfeit the Security Deposit and any other monies held by the Landlord for the account of the Tenant and to re-enter the Demised Premises or any part thereof in the name of the whole and to have again, repossess and enjoy the same but without prejudice to the right of action of the Landlord in respect of any antecedent breach of the Tenant's stipulations herein contained.

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7 Chronology at S/N 3 and 6.

8 Chronology at S/N 13 and 21.

7 Around 27 November 2021, Mr Lawrence Leow Chin Hin ("Mr Leow"), a director of Marchmont, was informed of concerns about the cleanliness of the Premises and the presence of foreign workers in the Premises.[9] He visited the Premises on 28 November 2021.[10] Marchmont then hired a private investigation company to investigate whether the Premises were being "used as [a] workers' dormitory instead of hotel service".[11]

8 On 8 December 2021, representatives of Marchmont visited the Premises for an inspection ("8 December Visit").[12] The representatives included Ms Fiona Zhong Yingyan ("Ms Zhong"), the Deputy Vice President (Property Management) of Crescendas Land Corporation.[13] Her company and Marchmont are companies within the Crescendas group. The Marchmont representatives were accompanied by Ms Fu and Mdm Wang during the visit.[14]

9 After the 8 December Visit, Marchmont issued to Campbell the first notice of breach on 14 December 2021 ("NOB 1"). NOB 1 included a "non-exhaustive" list of six alleged breaches of the Tenancy Agreement, such as the permitting of more than two occupants to reside in one room or the failure to keep the Premises in good and tenantable repair. In addition, NOB 1 required Campbell to take immediate steps to rectify the irregularities or breaches, "whether listed or not", by the morning of 17 December 2021. On 20 December

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9 The 1st affidavit of evidence-in-chief of Mr Lawrence Leow Chin Hin dated 25 August 2023 ("Mr Leow 1st AEIC") at para 25.

10 Mr Leow 1st AEIC at para 26.

11 Private Investigation Report at para 1.1; Mr Leow 1st AEIC at p 301.

12 Chronology at S/N 54.

13 The 1st affidavit of evidence-in-chief of Ms Fiona Zhong Yingyan dated 25 August 2023 ("Ms Zhong 1st AEIC) at para 1.

14 Ms Zhong 1st AEIC at para 5.

2021, Marchmont issued to Campbell a notice of termination ("NOT 1"). This stated that Campbell had been and was still in breach of the Tenancy Agreement, which would be terminated with effect from 23 December 2021 pursuant to cl 10(1) and/or cl 4(13) of the Tenancy Agreement.[15]

10 Campbell continued to refuse to hand over the Premises. Marchmont alleges that it then discovered that Campbell had yet to provide the insurance policies Campbell had claimed to have procured in Ms Fu's email to Marchmont dated 3 August 2021.[16] This led to a series of correspondence between the parties' solicitors regarding the obligation to obtain insurance policies that complied with the Tenancy Agreement. This began with a letter from Marchmont's solicitors Tan Kok Quan Partnership ("TKQP") to Campbell's solicitors, Vanilla Law LLC ("VLL"), on 18 February 2022, asking for confirmation that Campbell had complied with cl 4(20) of the Tenancy Agreement and for copies of the relevant insurance policies.[17]

11 Marchmont subsequently instructed TKQP to issue a notice of breach dated 8 March 2022 ("8 March NOB").[18] This informed Campbell that it was in breach of the Tenancy Agreement's insurance requirements under cl 4(20) of the Tenancy Agreement, the obligation not to allow more than two persons to reside in each room, and the requirement to obtain regulatory approval for operating a foreign workers dormitory. Campbell was told to rectify these breaches by 22 March 2022 and provide written confirmation with documentary proof of rectification by then.

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15 Mr Leow 1st AEIC at pp 358–361.

16 Mr Leow 1st AEIC at paras 86–87.

17 Mr Leow 1st AEIC at pp 421–422.

18 Mr Leow 1st AEIC at pp 476–491.

12 VLL responded on behalf of Campbell, by way of a letter dated 22 March 2022.[19] It stated that most of the alleged breaches of the obligation to obtain insurance policies that complied with the Tenancy Agreement were impossible to remedy and no insurance company would be able to fulfil them. It also stated that as of the date of the letter, Campbell actively enforced the limit of two guests in every room.[20] VLL informed that it was taking steps to verify the position of Campbell's insurer and asked that TKPQ hold its hands.

13 This was followed by further correspondence between VLL and TKQP about the requirements to procure compliant insurance policies. However, Campbell realised that the initial insurance policy documents that Campbell had provided to Marchmont on 23 February 2022 contained the incorrect set of policy wordings.[21] Campbell subsequently provided another set of insurance policies to Marchmont[22] on 14 April 2022 ("14 April Policies").[23] Following this, Marchmont instructed TKQP to issue a notice of breach dated 18 April 2022 ("NOB 2"),[24] setting out that the 14 April Policies also failed to meet the requirements under the Tenancy Agreement. However, Campbell continued to remain in possession of the Premises.

14 Pursuant to its powers under cl 4(15)(b) of the Tenancy Agreement, Marchmont further requested from Campbell copies of documents, such as maintenance reports, manpower records, and contracts with third party

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19 Ms Fu 1st AEIC at pp 387–388.

20 Chronology at S/N 86.

21 Ms Fu 1st AEIC at para 70 and p 433.

22 Ms Fu 1st AEIC at pp 452–473.

23 SOC at para 22.

24 Mr Leow 1st AEIC at pp 615–623.

contractors, in letters dated 11 April 2022[25] and 19 May 2022.[26] Campbell responded and furnished various documents in letters dated 14 April 2022[27] and 30 May 2022.[28] In addition, on 8 June 2022, TKQP issued a letter to VLL to request an inspection of the Premises by Marchmont on 10 June 2022. A joint inspection was conducted on 10 June 2022.

15 Marchmont was dissatisfied with the results of the joint inspection on 10 June 2022.[29] It was of the view that the documents provided by Campbell proved that Campbell had failed to fulfil its obligations.[30] Marchmont instructed TKQP to issue another notice of breach dated 23 June 2022 ("NOB 3").[31] NOB 3 alleged that various covenants in the Tenancy Agreement had been breached, including covenants to ensure adequate manpower to operate and maintain the security of the Premises, maintain a high standard of service, and keep the Premises clean and in good and tenantable repair.

16 Marchmont, through TKQP, issued its second notice of termination dated 13 July 2022 ("NOT 2"), stating that as the breaches identified in NOB 2 and NOB 3 had not been remedied, including the lack of compliant insurance policies, the Tenancy would be terminated pursuant to cl 10(1) of the Tenancy Agreement with effect from 21 July 2022.[32]

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25 Mr Leow 1st AEIC at pp 641–642.

26 Mr Leow 1st AEIC at pp 765–768.

27 Mr Leow 1st AEIC at pp 643–764.

28 Mr Leow 1st AEIC at pp 772–824.

29 Mr Leow 1st AEIC at para 135.

30 Mr Leow 1st AEIC at para 140(a).

31 Mr Leow 1st AEIC at para 139 and p 963.

32 Mr Leow 1st AEIC at pp 989–992.

17 Subsequent events and correspondence between the parties followed, while Campbell remained in possession of the Premises. This eventually led to Marchmont filing OC 492 on 28 December 2022. Marchmont has two main claims against Campbell, for: (a) forfeiture and (b) double the value during the period of holding over.

Issues to be determined

18 Two main issues arise for my determination:

(a) Has Marchmont validly exercised its right to forfeit the tenancy and re-enter the Premises?

(b) Is Campbell liable for double the value under s 28(4) of the CLA during the period of holding over after the determination of the tenancy?

Forfeiture

19 After the determination of a tenancy, a landlord may be entitled to claim against a tenant that wrongfully holds over, for double rent or double value for the period of the wrongful holding over under s 28(4) of the CLA. The landlord also has the additional option of exercising his right to forfeiture. Forfeiture has been described as "the most draconian weapon in the armoury of the landlord whose tenant has committed a breach of covenant": Kevin Gray & Susan Francis Gray, *Elements of Land Law* (Oxford University Press, 5th Ed, 2009) at p 470, cited in *Oriental Investments (SH) Pte Ltd v Catalla* [2013] 1 SLR 1182 ("*Oriental Investments*") at [97]. The exercise of the landlord's right of forfeiture is thus heavily qualified. First, a landlord must satisfy the statutory requirements under s 18(1) of the Conveyancing and Law of Property Act 1886 (2020 Rev Ed) ("CLPA") before a right to forfeiture can be enforced. This provision states:

> **18.**—(1) A right of re-entry or forfeiture under any provision or stipulation in a lease, for a breach of any covenant or condition in a lease, shall not be enforceable, by action or otherwise, unless the lessor serves on the lessee *a notice specifying the particular breach complained of* and, *if the breach is capable of remedy, requiring the lessee to remedy the breach*, and, in any case, requiring the lessee to make compensation in money for the breach, and the *lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy*, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.
>
> [emphasis added]

20 Second, if the landlord does any act whereby he recognises the relationship of landlord and tenant as continuing, such an act would be regarded by the law as the landlord waiving their right to forfeiture: *Halsbury's Laws of Singapore* vol 14(2) (LexisNexis, 2014 Reissue) at para 170.1006.

21 Third, the court may exercise its equitable jurisdiction to order relief against forfeiture under ss 18 and 18A of the CLPA.

22 Bearing the above in mind, a prudent landlord would weigh the advantages of exercising the self-help right of forfeiture against its entitlement to double rent for wrongful holdovers: *Oriental Investments* at [102]. With these considerations in mind, I turn to Marchmont's claim for forfeiture of the lease.

The legal issues concerning forfeiture

23 Campbell submits that Marchmont's claim for forfeiture should be denied. The first three of Campbell's five main submissions on forfeiture relate to compliance with s 18(1) of the CLPA. Campbell submits that:

(a) First, the notices of breach NOB 1, NOB 2, and NOB 3 (the "NOBs") are invalid for lack of sufficient particulars;[33]

(b) Second, the time provided for rectification of the alleged breaches did not constitute reasonable time; and

(c) Third, NOB 1 and NOB 3 contained alleged breaches which did not constitute unremedied breaches of the Tenancy Agreement.[34]

24 Campbell further submits that even if s 18(1) of the CLPA has been complied with in respect of any of the NOBs, there should not be forfeiture as:

(a) Fourth, Marchmont had by its conduct waived its right of forfeiture; and

(b) Fifth, even if there is valid forfeiture, there should be relief against forfeiture pursuant to s 18(3) of the CLPA.

NOB 1

Facts pertaining to NOB 1

25 NOB 1, which was dated 14 December 2021, referred to the Tenancy Agreement and the 8 December Visit, and raised the following concerns:[35]

(a) "Renting out rooms to more than two persons per room which is in violation of the Tenancy Agreement";

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33 Defendants' Closing Submissions dated 28 February 2024 ("Defendants' Closing Submissions") at paras 26–30.

34 Defendants' Closing Submissions at paras 50–65.

35 Mr Leow 1st AEIC" at p 335.

(b) "Turning off the airconditioning to common areas leading to poor air circulation, foul smell and mold formation";

(c) "Permitting smoking at places not designated for smoking causing safety issues and health hazards";

(d) "Failure to clean, upkeep and maintain the premises, for example dirty toilets, dusty lift vents, faulty door closer, etc.";

(e) "Permitting motorcycles to park indiscriminately in car parking lots causing issues, including safety issues"; and

(f) "Denying [Marchmont] staff access to inspect suspected seepages in the rooms".

26 The key breach in NOB 1 is the rental of rooms to more than two persons per room. This relates to cl 4(13)(b) of the Tenancy Agreement, which states that Campbell "shall not permit or allow at any time during the said Term more than two (2) guests or occupants per room" ("Occupancy Limit").[36] This sub-clause also provides that in the event that it is breached, "the Landlord shall be at liberty forthwith to exercise its rights to terminate this Agreement". The only other termination clauses in the Tenancy Agreement are cl 10(1), which is set out in more general terms, and cl 4(26), which permits Marchmont to terminate the Tenancy Agreement if any immigration offender or illegal worker is employed. Marchmont submits that this underscores how critical the Occupancy Limit obligation is.[37]

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36 Mr Leow 1st AEIC at p 168.

37 Claimant's Closing Submissions dated 28 February 2024 ("Claimant's Closing Submissions") at para 174(a).

27 Ms Fu responded on behalf of Campbell in an email dated 15 December 2021.[38] She "[a]pologi[s]ed [as] there are indeed various areas [they] have overlooked." She said that Campbell was "taking immediate actions". It is undisputed, and extensively documented in a private investigation report dated 13 December 2021, that Campbell was breaching the Occupancy Limit around December 2021, with groups of up to three or four occupants in rooms.

28 A joint inspection was subsequently conducted on 17 December 2021. Ms Zhong was at the inspection. Ms Fu signed a declaration on an inspection form dated 17 December 2021, stating that four of the alleged breaches had been resolved while two had not.[39] She provided written comments for the latter two:

(a) For the breach of "[r]enting out rooms to more than two persons per room which is in violation of the Tenancy Agreement", Ms Fu wrote "6-7 rooms with 3pax. 69 rooms occupied"; and

(b) For the breach of "[p]ermitting motorcycles to park indiscriminately in car parking lots causing issues, including safety issues", Ms Fu wrote "[m]otorcycles due to longer term guests. Will move towards accommodating short-term guests".

29 Upon receiving NOT 1 on 20 December 2021, Ms Fu responded with two emails to Marchmont on 21 December 2021. In her first email, Ms Fu said that she was "ashamed, very ashamed for covering mistakes", she would assume "full responsibility", and "[they] will be fully rectifying all issues by 3 Jan".[40] She set out a list of 21 rooms for which the Occupancy Limit had been exceeded.

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38 Mr Leow 1st AEIC at p 336.

39 Ms Zhong 1st AEIC at p 42.

40 Mr Leow 1st AEIC at p 387.

In her second email on 21 December 2021, she "well noted" Campbell's potential liability to pay double rent and stated that "[they] are starting to plan reinstatement work" on the Premises.[41]

30 On 23 December 2021, Mr Leow emailed Ms Fu to reiterate that the Tenancy Agreement "will be terminated with effect from 23 December 2021" pursuant to NOT 1.

31 Campbell responded through VLL by way of a letter dated 3 January 2022.[42] The letter stated that save for the alleged breach of the Occupancy Limit in rooms of the Premises, the other allegations have no legal basis. It contended that Marchmont had represented to Campbell that the latter would not have to keep to the Occupancy Limit, and that Marchmont was estopped from relying on cl 4(2)(c) of the Tenancy Agreement to allege breach of the Tenancy Agreement as grounds for termination.

32 Despite VLL's contention on 3 January 2022 that Marchmont was estopped from relying on the Occupancy Limit, Ms Fu sent out an email to Ms Zhong the next day on 4 January 2022 to update that "max 2 pax per room completely fulfilled now".[43] She did not enclose any supporting document. Campbell remained in possession of the Premises after the deadline stated in NOT 1, *ie,* 23 December 2021, passed.

33 I turn now to consider Campbell's submissions on the validity of NOB 1 under s 18(1) of the CLPA.

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41 Mr Leow 1st AEIC at pp 380–381.

42 Ms Fu 1st AEIC at pp 307–310.

43 Ms Fu 1st AEIC at p 312.

Whether there were sufficient particulars

34 I will deal first with whether there were sufficient particulars in NOB 1. In *Fletcher v Nokes* [1897] 1 Ch 271 at 274, North J held that:

> [A notice should] enable the tenant to understand with reasonable certainty what it is which he is required to do. I do not mean that the landlord need go through every room in a house and point out every defect. But the notice ought to be so distinct as to direct the attention of the tenant to the particular things of which the landlord complains, so that the tenant may have an opportunity of remedying them before an action to enforce a forfeiture of the lease is brought against him…

35 This was cited with approval by the High Court in *Lee Tat Realty Pte Ltd v Limco Products Manufacturing Pte Ltd* [1998] 2 SLR(R) 258 ("*Lee Tat Realty*") at [9]–[10] and [13]. I adopt North J's formulation above, that a notice should enable the tenant to understand with *reasonable certainty* what it is which he is required to do, and the notice should be so distinct as to direct the attention of the tenant to the particular things of which the landlord complains.

36 Campbell relies on *Lee Tat Realty* for the proposition that the entire notice would be bad if any alleged breach failed to satisfy the requirement as to particulars.[44] In *Lee Tat Realty* at [13], Chao Hick Tin J (as he then was) found that there was no way the tenant could know from the statement from the landlord, that the tenant "failed to maintain the demised premises in good order and condition", what precisely it was supposed to do to avoid a forfeiture. This alleged breach was held to be bad for lacking sufficient particulars. The court further held that following *Gregory v Serle* [1898] 1 Ch 652 ("*Gregory*"), "if any alleged breach fails to satisfy the requirement as to particulars, the whole notice would be bad".

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[44] Defendants' Closing Submissions at para 25.

37 Marchmont disagrees with this position and submits that it should not matter that there were breaches in a notice that are insufficiently particularised, as long as some are sufficiently particularised. Reliance is placed on the decision of the House of Lords in *Fox v Jolly* [1916] 1 AC 1 ("*Fox*"). At 18 of *Fox*, Lord Atkinson held that each alleged breach warranting forfeiture, and each statement in the notice dealing with each breach, must be taken by itself. If the breach and the statement in the notice dealing with it combined, would have entitled the landlord to enforce the forfeiture if they stood alone, that entitled the landlord to enforce the forfeiture, even though notice of other breaches was defective.

38 In considering this issue, it is useful to examine more closely the rationale behind the holding at *Lee Tat Realty* at [13]. The court noted, in *Lee Tat Realty* at [10], the concern raised by Kekewich J in *Gregory* about the difficulties posed to a tenant by a notice that lacks particulars. Such a tenant faces the risk that the lease may still be forfeited despite the expenditure of moneys and time to make good some breaches, because the tenant has not complied in some unspecified way with another covenant. This reasoning underpinned the holding in *Lee Tat Realty* at [13].

39 The wording of s 18(1) of the CLPA is that "the lessor serves on the lessee a notice specifying the particular breach complained of". The language is wide enough to accommodate both the interpretations in *Lee Tat Realty* and in *Fox*. Having considered this, I agree with the approach taken by Chao J in *Lee Tat Realty* at [13]. Marchmont submits that this approach favours form over substance and would result in landlords articulating singular breaches in a notice of breach. However, as pointed out by Campbell, *Lee Tat Realty* has been good law since 1998 and there is no evidence that the scenario painted by Marchmont has transpired. What is more fundamental, in my view, is the potentially invidious position that tenants are placed into, if there is a list of ambiguous

allegations of breach in the notice. In contrast, there is far less prejudice caused by requiring a landlord to use clear language in a notice to articulate the breaches relied on to forfeit a lease.

40 Such difficulty is put into stark focus by the manner in which NOB 1 is framed. In *Lee Tat Realty*, the court's concern was with the lack of sufficient particulars about alleged breaches that had been identified in the notice. In the case of NOB 1, it does not even set out specifically *all* the alleged breaches that Campbell is required to rectify. Instead, Campbell is required to "take immediate steps to rectify all irregularities/breaches whether or not listed". NOT 1 subsequently included allegations that were not in NOB 1, including fresh allegations that the Premises were being run as a dormitory and that mattresses were being stored along the corridor. While Marchmont cited Ms Fu's response in cross-examination that she thought that she had, as of 16 December 2021, understood "what was wrong [as set out in NOB 1]" and that she did not ask for details of the breaches,[45] this was only in relation to the six alleged breaches that had been set out in "a non-exhaustive list" in NOB 1.[46]

41 Marchmont submits that there is no prejudice to Campbell in this case, and the use of the words "non-exhaustive" to describe the list of breaches is a "red herring", as it is not proceeding for forfeiture on the basis of breaches that are not listed.[47] However, the potential prejudice that was identified in *Gregory* and *Lee Tat Realty* could already have taken place prior to that, when the notice

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45 Claimant's Closing Submissions at para 89, citing Transcript of 24 January 2024 at p 82 lines 12–25, p 83 lines 1–5, with reference to an email in Mr Leow 1st AEIC at p 337.

46 Transcript of 24 January 2024 at p 72 lines 19–21; p 82 line 16 to p 83 line 5.

47 Claimant's Reply Submissions dated 20 March 2024 ("Claimant's Reply Submissions) at paras 5 and 7.

of breach was served on the tenant. There would be layperson tenants who may take "non-exhaustive" at face value. Such tenants would not be aware that a landlord could not rely on breaches that had not been listed to forfeit the lease. Moreover, the sufficiency of particulars required for a notice under s 18(1) of the CLPA is a matter of law and cannot be based on whether there is specific prejudice in a particular case. Consequently, in my view, a notice requiring a tenant to rectify all breaches, whether or not listed, is far too vague and does not meet the statutory requirement of sufficient particulars in s 18(1) of the CLPA. As the intent of s 18(1) of the CLPA is to protect tenants by giving them notice of the alleged breach(es) so that they can have the opportunity to remedy the breach(es) within a reasonable time before facing forfeiture, it would follow that the tenant should know what are the alleged breaches that they are obliged to remedy to prevent forfeiture.

42 The broad framing of NOB 1 also affects other alleged breaches. For example, NOB 1 refers to the "[f]ailure to clean, upkeep and maintain the premises, for example dirty toilets, dusty lift vents, faulty door closer, etc." This is similar to the alleged breach in *Lee Tat Realty* that the tenant "failed to maintain the demised premises in good order and condition", which was found to be bad. In this case, broad reference is made to "dirty toilets, dusty lift vents and faulty door closer", but the alleged breach extends beyond this, as these are stated to be just "examples" "etc", without stating what are the other instances that Campbell is required to remedy to avoid forfeiture. There was an inspection on 8 December 2021, but NOB 1 does not state that the alleged breaches relate only to the items identified during that inspection. In this respect, the facts here are quite distinct from that in *Fox*. There, all of the identified breaches entitling the respondent to forfeiture were found to be sufficiently particularised save for a general clause appended at the end which stated that "the completion of the

items mentioned in this schedule does not excuse the execution of other repairs if found necessary". The court found at 12 that it would not be satisfactory if the efficacy of a sufficiently particularised schedule of breaches, as a whole, is invalidated by the addition of a general phrase at the foot of it. In this case, there are individual breaches which are not adequately particularised, further compounded by Marchmont requiring Campbell to rectify all irregularities or breaches "whether or not listed".

43 A notice should set out specifically the alleged breaches and provide sufficient particulars of the alleged breaches. As set out above, NOB 1 does not do so. I hence find that NOB 1 does not comply with s 18(1) of the CLPA. Marchmont is consequently not entitled to seek forfeiture on the basis of its termination as set out in NOT 1.

44 Marchmont submits that even if the court follows *Lee Tat Realty* at [13], this requirement regarding the sufficiency of particulars should not extend to repudiatory breach as it undercuts the essence of repudiation or to where the terms of the tenancy expressly provide that a particular breach is sufficient to justify termination (referred to as "express termination clauses").[48] As Marchmont only pleaded repudiatory breach in relation to NOB 2, NOB 3, and NOT 2[49] and its evidence is similarly limited to such, I will only address Marchmont's submission on express termination clauses here.

45 In this case, Marchmont stated in NOT 1 that it was terminating the tenancy pursuant to cl 10(1) and/or cl 4(13) of the Tenancy Agreement. The effect of both clauses is that Marchmont is entitled to terminate the Tenancy

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48 Claimant's Closing Submissions at para 26.

49 SOC at para 47.

Agreement, under either cl 4(13), on the basis of a breach of the Occupancy Limit, or under cl 10(1), on the basis of Campbell committing breaches of its obligations under the Tenancy Agreement, which are not remedied to the satisfaction of the Marchmont. It is the later part of cl 10(1) that states that upon termination of the Tenancy Agreement, Marchmont shall have the right to re-enter the Premises and repossess it. The requirement for sufficiency of particulars is a statutory requirement set out in s 18(1) of the CLPA which, on its plain language, extends to where forfeiture is sought "under any provision or stipulation in a lease, for a breach of any covenant or condition in a lease". Thus, even where Marchmont relies on the express termination clause under cl 4(13)(b) to terminate the lease, and forfeiture (as a separate remedy to repossess the Premises) is sought under cl 10(1), it would still be sought under a provision in the lease for a breach of a covenant in the lease. Section 18(1) of the CLPA would hence still apply.

46 Marchmont sought to side-step this by submitting that where it terminates under cl 4(13)(b), it does not rely on cl 10(1) for its right of re-entry and repossession, but on cl 11(1) of the Tenancy Agreement, which does not contain phrases such as the right to re-enter or repossess. Marchmont therefore submits that it is not seeking forfeiture, which has already taken place, but possession instead. Consequently, s 18(1) of the CLPA does not apply.[50] There are three difficulties with this submission.

(a) First, to the extent that Marchmont maintains that it has a right under the Tenancy Agreement to re-enter or repossess the Premises pursuant to cl 11(1), such a right is still derived from the lease, and

[50] 16 April 2024 Notes of Evidence at pp 1–4.

would still fall under s 18(1) of the CLPA as a "provision or stipulation in a lease" on which forfeiture is sought.

(b) Second, while Marchmont then sought to submit that what is sought was the right to repossess, which is distinct from the "right of re-entry or forfeiture" found in s 18(1) of the CLPA, it was not able to explain how the two rights are conceptually distinct nor point to any authority for this conceptual distinction. Neither had this been the position it had advanced over three sets of written submissions, where its primary submissions were that Marchmont satisfied the requirements for forfeiture under s 18(1) of the CLPA, that there was no waiver of the right to forfeiture, and that there should not be relief against forfeiture. On valid termination of the lease, Marchmont is potentially entitled to double value or rent under s 28(4) of the CLA, if Campbell is holding over. However, that is not all that Marchmont seeks. It is also seeking to re-enter and repossess the Premises. This is clearly subject to s 18(1) of the CLPA.

(c) Third, on a plain reading of cl 11(1) of the Tenancy Agreement, what the clause refers to is the state that the Premises must be in when yielded up, that is with the furniture and fixtures in "good and tenantable repair". Clause 11(1) does not go so far as to set out a right to repossession, unlike cl 10(1).

47 For the above reasons, I find that NOB 1 did not sufficiently specify the particular breaches complained of, as required under s 18(1) of the CLPA, for Campbell to understand with reasonable certainty what it was required to do to avoid forfeiture. Accordingly, NOB 1 is not a valid notice for the purposes of

s 18(1) of the CLPA, and therefore the right of re-entry or forfeiture in cl 10(1) is not enforceable pursuant to NOB 1.

NOB 2

Facts pertaining to NOB 2

48 I turn next to NOB 2. NOB 2, which is dated 18 April 2022, reiterated that even on the face of the 14 April Policies, Campbell remained in breach of the obligations under cll 4(20)(a), 4(20)(b), 4(20)(c), and 4(20)(d) of the Tenancy Agreement to procure insurance policies that met certain requirements ("Insurance Requirements"), as set out in the 8 March NOB.[51]

49 The Insurance Requirements were particularised in the 8 March NOB, which stated that Campbell had failed to abide by its covenants to effect and maintain a public liability insurance and an all risk insurance policy for the specified amounts of $5,000,000 and $12,000,000 respectively, to cause Marchmont to be named as a co-assured on all insurance policies required by the Tenancy Agreement, and to refrain from doing acts on the Premises that would render void the insurance policies in respect of the Premises.[52] The public liability insurance and all risk insurance policies were also required to incorporate non-cancellation, cross liability, and waiver of subrogation clauses, as well as other provisions ensuring that the insurer's liability to pay would not be affected by any act, default or negligence of the parties, and preventing the exclusion of liability for property damage, personal injury or loss of life.[53]

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51 SOC at para 23(a).

52 Mr Leow 1st AEIC at pp 476–477. 8 March NOB at paras 2, 3(b), and 3(c).

53 Mr Leow 1st AEIC at pp 476–477. 8 March NOB at para 3(a).

50 To substantiate the 14 April Policies' lack of compliance with the Insurance Requirements, NOB 2 was accompanied by a seven-page schedule which detailed how the 14 April Policies had not fulfilled particular requirements, for example:

(a) Under cl 4(20)(b)(i) of the Tenancy Agreement, Campbell was obliged to procure insurance policies which incorporated non-cancellation, cross liability, and waiver of subrogation provisions. NOB 2 sets out how specific clauses in the 14 April Policies contradicted the Insurance Requirements, referencing the cancellation clauses found under Condition 3 of the 14 April Public Liability Policy and General Condition 4 of the 14 April Industrial All-Risk Policy.[54]

(b) Under cl 4(20)(b)(iii) of the Tenancy Agreement, Campbell had to obtain insurance policies with a provision that the insurer's liability to pay must not be affected by the act, omission, default or negligence of any party to these policies. NOB 2 sets out various clauses in which the insurer's liability was excluded for fraud or wilful acts of the insured.[55]

51 NOB 2 stated that since there had been at least five weeks since the 8 March NOB was issued, Campbell was to rectify and provide written confirmation of rectification of the Insurance Requirement breaches by 21 April 2022. Campbell responded through VLL's letter dated 21 April 2022, enclosing the email correspondence between Campbell and various insurance brokers, such as Marsh LLC.[56]

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54 S/N 2 of Schedule A to NOB 2; Mr Leow 1st AEIC at pp 621–622.

55 S/N 5 of Schedule A to NOB 2; Mr Leow's 1st AEIC at p 622.

56 Ms Fu 1st AEIC at pp 623–640.

Whether there were sufficient particulars

52 NOB 2 informed Campbell of the alleged breaches of the Insurance Requirements as set out under cll 4(20)(a), (b), and (c) of the Tenancy Agreement, with a much higher degree of specificity than that of the alleged breaches in *Lee Tat Realty* at [13].[57]

53 The Defendants submit that NOB 2 was nevertheless inadequately particularised. In particular, the Defendants submit that it was unclear which variant of a "non-cancellation" clause was required under the Tenancy Agreement, given that the insurance brokers that Campbell had consulted each provided differing interpretations of a non-cancellation clause.[58] The Defendants submit that the ambiguity of what exactly a "non-cancellation clause" was amounted to an insufficiency of particulars.[59]

54 I do not find any merit to this submission. NOB 2 was very clear that it required Campbell to fulfill the Insurance Requirements as set out in particular clauses of the Tenancy Agreement. Even if Campbell did not understand which variation of a non-cancellation clause would have met the requirements, it still meant that Campbell understood, with reasonable certainty, that it was required to include a non-cancellation clause in the insurance policy that it was obliged to secure under the Tenancy Agreement. The notice was therefore sufficiently particularised as to direct Campbell's attention to the particular things Marchmont complained of, specifically, the absence of a non-cancellation clause in the insurance policy. Even if there were variations of non-cancellation clauses, it was open to Campbell to raise these variants to Marchmont and seek

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57 Mr Leow 1st AEIC at pp 617–623.

58 Defendants' Closing Submissions at para 28.

59 Defendants' Closing Submissions at para 28(e).

Marchmont's clarification on this specific issue. However, as I elaborate below, Campbell did not take this approach.

55 Indeed, Campbell's submission that there were insufficient particulars in NOB 2, because there were industry variants of a non-cancellation clause, is not supported by any of its evidence. In fact, it is highly inconsistent with multiple aspects of Campbell's evidence.

(a) When VLL responded on behalf of Campbell in its letter of 22 March 2022, VLL did not highlight Campbell's inability to understand the particulars of NOB 2. Instead, the response was that the insurer had articulated that save for adding Marchmont as the co-insured for the All-Risk Policy, "the various alleged breaches are impossible to remedy by virtue of the fact that no insurance company will be able to fulfil said requests of adding or amending the relevant clauses".[60] Campbell must have found NOB 2 to be sufficiently particularised, in order to allege that the breaches of the Insurance Requirements are impossible to fulfil.

(b) In VLL's letter dated 14 April 2022, it again did not highlight the insufficiency of the particulars or the difficulties with different industry variations of a non-cancellation clause. Instead, it stated that Etiqa will not accommodate any request to include a provision for non-cancellation.[61]

(c) In Ms Fu's email to the insurance broker, Marsh LLC on 20 April 2022, Ms Fu was able to explain that "both [public liability] and [a]ll

60 Mr Leow 1st AEIC at p 464.

61 Mr Leow 1st AEIC at p 494.

[r]isk policy should include [n]on-cancellation terms, including a provision that either party (the insurer or the company) do[es] not have the option to terminate the policy".[62]

(d) In VLL's letter dated 21 April 2022, it again did not mention any insufficiency of particulars or the uncertainty over the variations of non-cancellation clause as the reason why Campbell could not comply.[63] Neither did the letter enquire as to which variation of non-cancellation clause was sought by Marchmont.

(e) Moreover, NOB 2 was not the first time Campbell was made aware of Marchmont's concerns in these areas. The Insurance Requirements were the subject of correspondence between the parties' solicitors since 18 February 2022.[64] The 8 March NOB also set out Marchmont's concerns with the alleged breaches of the Insurance Requirements. Campbell did not state in its response to any of such correspondence that it could not understand the Insurance Requirements or that it was unclear as to which variation of non-cancellation clause met the requirements of the Tenancy Agreement. Rather, Campbell's position was that according to the insurers, no insurance company would be able to accommodate the request for a "non-cancellation" clause, and it would be unlawful for an insurer to include such a clause.[65]

(f) Ms Fu did not testify in her AEIC that this was an issue for Campbell or that they had brought it to Marchmont's attention in any of

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62 Ms Fu 1st AEIC at p 571.

63 Mr Leow 1st AEIC at p 624.

64 Mr Leow 1st AEIC at para 89.

65 Ms Fu's 1st AEIC at pp 390–391, S/N 4.

their correspondence. On the contrary, Ms Fu admitted on the stand that NOB 2 was clear enough for her to act on "almost immediately". She also admitted that she thought it was clear enough for her lawyers to just enclose NOB 2 when asking Insur-Asia Pte Ltd, an insurance broker, to act, without any further explanation.[66]

(g) Campbell also confirmed that Ms Fu did not raise this issue in her AEIC, nor did Campbell or VLL raise this to Marchmont or TKQP's attention in their correspondence.[67]

56 Campbell also submits that there were insufficient particulars in NOB 2 because of Marchmont's refusal to engage and clarify the exact remedial works expected by Campbell, despite constant attempts to propose amendments that would *prima facie* meet the issues set forth by Marchmont in NOB 2.[68]

57 This submission is not supported by the evidence. As highlighted above, Campbell's response through VLL's letter dated 22 March 2022, was that the alleged breaches are impossible to remedy by virtue of the fact that no insurance company will be able to fulfil the requests of adding or amending the relevant clauses. This was a position that Campbell maintained right up to the first day of trial before it abandoned its defence of impossibility. In any event, the requirement in s 18(1) of the CLPA for sufficiency of particulars of alleged breaches, is to enable the tenant to understand with reasonable certainty *what* he is required to do to avoid forfeiture. In this case, it is to fulfil the specific Insurance Requirements set out in the Tenancy Agreement. Section 18(1) of the

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66 Transcript of 25 January 2024 at p 125 lines 13–23.

67 16 April 2024 Notes of Evidence at pp 3–4.

68 Defendants' Closing Submissions at para 28(h).

CLPA does not impose a requirement on the landlord to provide sufficiency of particulars as to *how* the tenant is to remedy the alleged breaches.

58 I therefore find no merit whatsoever to Campbell's allegation of NOB 2 suffering from an insufficiency of particulars. NOB 2 provided sufficient particulars of the alleged breaches.

Whether there was reasonable time to remedy the breaches

59 I turn next to whether there was reasonable time for Campbell to remedy the alleged breaches set out in NOB 2. Both parties agreed at the end of trial that the question is whether reasonable time for remedy was provided, in the circumstances of the case, and not just in terms of the time that was specified in the notice of breach.[69] This must be so since on the plain language of s 18(1) of the CLPA, what is required before the right of forfeiture is enforceable, is not that the landlord gives notice of a "reasonable time" to remedy, but that the lessor fails to remedy the breach "within a reasonable time thereafter [*ie,* after the notice]…". The emphasis is on whether the tenant had reasonable time to remedy a breach, after notice had been given, before the landlord enforces the right to forfeiture. The learned author of Mark Pawlowski, *The Forfeiture of Leases* (Sweet & Maxwell, 1993) ("*The Forfeiture of Leases*") at p 114, states that the determination of the court is in relation to "whether or not the landlord has allowed a reasonable time to elapse before commencing his proceedings for forfeiture." *Halsbury's Laws of England* vol 62 (LexisNexis, 5th Ed, 2016) at para 511 states that "a reasonable time must be given to the tenant between the service of the notice and the beginning of proceedings against him". Both parties agreed with the position stated in these authorities, except that Marchmont

69 Transcript of 31 January 2024 at p 4 lines 13–25, p 5 lines 1–12.

submitted that the period should be from the time of notice of the breaches to when there was an act of final determination.[70] I agree with Marchmont that as a matter of principle, the period for assessment should be from the time of notice of the breach till the act of final determination of the lease. As set out below, by established case law, final determination generally takes place when the landlord physically re-enters or commences proceedings for possession.

60 The question that next arises is what constitutes reasonable time. Campbell cited *Horsey Estate Limited v Steiger and The Petrifite Company, Limited* [1898] 2 QB 259, where the court held that what constitutes a reasonable time would depend on the circumstances and is a question of fact. In that case, the landlords served notice on the tenant company alleging that the tenant company had entered into voluntary liquidation and had breached a covenant to repair. The landlords attached a schedule requiring "very extensive repairs" which would require "a considerable time to accomplish". The landlords proceeded to serve the writ in action two days later. The duration of two days was held not to be a reasonable interval. Marchmont cites Tang Hang Wu & Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 4th Ed, 2019) ("*Principles of Singapore Land Law*") at para 17.141 for the same proposition that what is a reasonable time depends on the circumstances of the case.[71] Where the breach to be remedied involves disrepair to the premises, *The Forfeiture of Leases* at p 114 has highlighted that the court will account for all the circumstances, including factors such as the extent and nature of the disrepair and the availability of workers to carry out remedial works, in determining the reasonable amount of time for a tenant to remedy the breach. In *Bhojwani v Kingsley Investment Trust Ltd*

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70 16 April 2024 Notes of Evidence at p 4.

71 Claimant's Closing Submissions at para 30.

[1992] 39 EG 138, the amount of time that elapsed between service of the notice and re-entry was two months. The works to be remedied were set out in a schedule of dilapidations and included extensive underpinning work. The court found two months to be too soon for re-entry and held at 141 that "[g]enerally, a period of three months is thought to be adequate but there are no hard-and-fast rules and all will depend upon what is required to be done." It can be seen from the authorities that the courts have taken into account the extent of repairs needed, in determining what constitutes reasonable time. Thus, while what is reasonable time ultimately depends on the circumstances, the nature and severity of the alleged breaches, and the difficulty or ease of remedying or the breaches, will be taken into consideration as well.

61 In this case, NOB 2 required Campbell to rectify breaches of the Insurance Requirements by 21 April 2022. This is three days from the time that NOB 2 was issued. However, the lease was only terminated on 13 July 2022 via NOT 2. There were thus close to three months between the issuance of NOB 2 on 18 April 2022 and the termination of the lease on 13 July 2022, and over six months till Marchmont commenced these proceedings around 28 December 2022. Taking into account all the circumstances, the period of over six months between the issuance of NOB 2 and the commencement of OC 492 was a reasonable period of time after the notice of the breach, to liaise with insurance brokers to remedy the breach of the Insurance Requirements. In any event, by contending that the Insurance Requirements were impossible to comply with, Campbell was taking the position that reasonableness of time to remedy was not in issue.

62 While Campbell eventually did not submit that the Insurance Requirements were not capable of remedy under s 18(1) of the CLPA,[72] I will briefly deal with this for completeness.

63 Prior to the trial, Campbell submitted that its legal defence to the failure to comply with the Insurance Requirements was that of legal impossibility, *ie,* that it was a legal impossibility to comply with cll 4(20(a) and 4(20)(b) of the Tenancy Agreement.[73] Campbell accepted at the start of the first day of trial that it did not have any legal authority to show that there was such a legal defence of impossibility and withdrew it.[74] It submitted in the alternative, the defence of frustration, arguing that cl 4(20) of the Tenancy Agreement was frustrated by the refusal of third party insurers to provide insurance policies which fulfil the Insurance Requirements, and that cl 4(20) should be severed.[75] When it was pointed out by the Court that the legal effect of frustration is to discharge both parties from their contractual obligations, while Campbell's intention is to continue with the tenancy, Campbell also withdrew its reliance on the legal defence of frustration.[76] Campbell also raised the alternative of severance of the Insurance Requirements but eventually withdrew it.[77] At the end of the trial, Campbell clarified that it was neither contesting the issue of whether the Insurance Requirements were factually impossible to remedy, nor was it

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72 Defendants' Closing Submissions at para 59.

73 Defence at para 1(21).

74 Transcript of 17 January 2024 at p 10 lines 11–19, p 16 at lines 6–8.

75 Defendants' Written Submissions dated 15 January 2024 at paras 6 and 8.

76 Transcript of 17 January 2024 at p 10 line 24 to p 16 line 8.

77 Transcript of 17 January 2024 at p 16 lines 2–5.

submitting that they were incapable of remedy under s 18(1) of the CLPA.[78] Campbell also did not take up this issue in its Closing or Reply Submissions.

Whether there were breaches of the Tenancy Agreement

64 It is clear from the documentary evidence that the breaches of the Insurance Requirements, as identified in NOB 2, were not remedied by the time NOT 2 took effect. Ms Fu admitted that Campbell had not complied with NOB 2.[79]

65 The breaches of the Insurance Requirements have also not been remedied to date. Ms Fu disclosed in her 1st AEIC filed on 25 August 2023 that insurance policies with Tokio Marine ("TM Policies") had been procured on 3 August 2022. She nevertheless confirmed on the stand that it is undisputed that Campbell did not obtain any insurance policies that fully complied with the Tenancy Agreement.[80] On its face, the TM Policies were non-compliant in at least several ways. The policy period for the TM Policies was from 1 August 2022 to 31 July 2023, whereas the requisite period of insurance required under the Insurance Requirements is for the entire duration of the tenancy, that is, from 1 August 2021. Other examples include: (a) the exclusion of liability for injury resulting from a deliberate act or omission of the insured party,[81] contrary to cl 4(20)(b)(ii) of the Tenancy Agreement; (b) the exclusion of liability for loss from dishonesty or fraud,[82] contrary to cl 4(20)(b)(ii) of the Tenancy

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78 VLL's letter dated 31 January 2024: preliminary outline of Campbell's main arguments for the Closing Submissions.

79 Transcript of 26 January 2024 at p 133 lines 3–5.

80 Transcript of 25 January 2024 at p 83 lines 1–6.

81 Ms Fu 1st AEIC at p 718.

82 Ms Fu 1st AEIC at p 649.

Agreement; (c) the all risk insurance policy did not contain a provision that waived the right of subrogation against Marchmont,[83] contrary to cl 4(20(b)(i) of the Tenancy Agreement; and (d) the exclusion of various indemnities such as for loss arising from non-compliance with the covenant not to employ immigration offenders, contrary to cl 4(26) of the Tenancy Agreement.

Conclusion on NOB 2

66 In summary, NOB 2 has satisfied all the conditions to constitute a valid notice of breach under s 18(1) of the CLPA. Marchmont validly exercised the termination clause under cl 10(1) of the Tenancy Agreement to forfeit the lease pursuant to NOT 2 as of 21 July 2022.[84] The issues that next arise are whether Marchmont has waived its forfeiture of the lease and if not, whether there should be relief from forfeiture. I elaborate on these points from [75] onwards below.

NOB 3

67 It is undisputed that while Marchmont relies on three notices of breach in seeking to exercise its right of forfeiture, it only needs to show that one of the notices of breach complies with the requirements of s 18(1) of the CLPA, in order to forfeit the lease. Given that NOB 2 very clearly satisfies the requirements of s 18(1) of the CLPA, it is not necessary to examine in detail whether NOB 3 meets the same requirements of s 18(1) of the CLPA. Both NOB 2 and NOB 3 resulted in the same notice of termination, NOT 2, which takes effect on 22 July 2022. I will thus only make the following brief observations about NOB 3, which I find does not meet the requirements of s 18(1) of the CLPA.

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83 Ms Fu 1st AEIC at p 655.

84 NOT 2 at para 11; Mr Leow 1st AEIC at p 991.

Facts pertaining to NOB 3

68 NOB 3 alleged that Campbell had breached numerous provisions under the Tenancy Agreement, such as cll 4(4)(a), 4(4)(c), 4(6)(e), 4(6)(f), 4(15)(a), 4(15)(b), 4(19)(a), 4(21)(b), 4(23)(a), 4(23)(b), 4(23)(c), 4(24)(a), 4(32)(a), and 4(35).[85] NOB 3 stated that given that the "number of breaches" were "numerous", it would only give "examples to demonstrate the extent [of Campbell's non-compliance]", which included "[a]mong other things", dusty or stained surfaces, chipping paint, cracked walls, a faulty room lock, the inappropriate use of an alleged "prayer room", and the lack of security personnel on site.[86] A schedule to NOB 3 was also annexed, which comprised of an 11-page table setting out the alleged particulars of Campbell's breaches of its obligations to ensure adequate manpower and security, maintain and repair the Premises and its fixtures, maintain a consistently high standard and quality of service, and control and preserve order, *etc*.[87]

General observations

69 I do not find that NOB 3 was insufficiently particularised simply because it utilised the phrase "[a]mong other things". The Defendants submit that because NOB 3's various allegations of breach were preceded by the words "[a]mong other things", this implies that Marchmont regarded the list of breaches in NOB 3 as non-exhaustive, and places Campbell in a position where it could not have known what precisely it must do to avoid forfeiture.[88] However, this phrase was plainly used in NOB 3 to state that because there were

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85 Mr Leow 1st AEIC at paras 140(a) and 140(c), at pp 963–980.

86 NOB 3 at para 6; Mr Leow 1st AEIC at pp 965–967.

87 Mr Leow 1st AEIC at pp 970–980.

88 Defendants' Closing Submissions at para 29(o).

many breaches, Marchmont would only set out certain examples, and that among other things, they included the alleged breaches listed in NOB 3. Marchmont makes clear that what it requires Campbell to rectify are the breaches set out in NOB 3 and not other unlisted breaches, when it concludes by stating that Campbell is given one week "to rectify all the breaches set out in this letter". There is thus no ambiguity as to what Campbell is to do to avoid forfeiture, namely, to rectify the breaches identified in NOB 3. This is distinct from NOB 1, which requires Campbell to rectify all breaches, whether listed or not.

70 However, NOB 3 sets out several alleged breaches which do not enable Campbell to understand what it was required to do with reasonable certainty. First, it is alleged that Campbell breached cl 4(4)(a) of the Tenancy Agreement, which requires Campbell to "ensure that at all times the Tenant shall have adequate employees, servants and/or agents to operate the Demised Premises and in the event of an increase in the volume of business, that the Demised Premises is adequately manned." While para 10 of NOB 3 states that Campbell has failed to comply with cl 4(4)(a) in light of the matters set out in paras 2–9 of NOB 3, nothing in those paragraphs or in NOB 3 sets out what it is specifically about cl 4(4)(a) that has been breached. For example, it is not clear whether Campbell was alleged to have inadequate employees at certain times, whether it had an inadequate number of specific types of employees or whether it is in breach of having adequate manning in the event of an increase in business volume. Marchmont relies on Campbell not fully disclosing its manpower records, despite Marchmont's requests, as showing that Campbell did not have adequate manpower.[89] However, the manpower-related documents and the level

[89] Claimant's Response to List of Questions at p 4.

of disclosure do not shed further light on the particulars of how cl 4(4)(a) had been breached. Campbell would not be able to know from NOB 3 what precisely it was supposed to do, in respect of cl 4(4)(a), in order to avoid forfeiture. Marchmont also submits that Campbell has not tendered evidence that its manpower was adequate.[90] However, under s 18(1) of the CLPA, the onus is on the landlord to provide sufficient particulars of the alleged breach in its notice. In other words, the assessment is on whether the landlord communicated sufficient particulars of the alleged breach. This is distinct from whether there is proof that there was indeed such breaches. Marchmont accepted that on the language of s 18(1) of the CLPA, the focus is on whether sufficient particulars of the breach were communicated and not whether there was proof of such breaches.[91]

71 Second, it is not clear what Marchmont required of Campbell in respect of the alleged breach of cl 4(6)(f), which obliges Campbell to maintain a "consistently high standard and quality in service to guests". Schedule A of NOB 3 sets out that the "bare skeleton crew" responsible for "approximately 70 guest rooms" is insufficient to render such a high standard. However, it was not clear what was regarded as a "consistently high standard and quality in service". For example, if this meant the provision of towels and toiletries, daily cleaning, or something further. Marchmont submitted that Mr Leow had testified that Campbell lacked a receptionist at the front desk, and that there were no amenities such as towels or housekeeping.[92] However, these were only in Mr Leow's AEIC. None of this was set out in NOB 3. Contrary to Marchmont's submission, it was also not clear from the documents that Marchmont sought

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90 Claimant's Response to List of Questions at p 4.

91 16 April 2024 Notes of Evidence at p 5.

92 Claimant's Response to List of Questions at pp 5–6.

from Campbell what it required Campbell to specifically remedy in this instance. Indeed, Marchmont itself states in Schedule A that it can only infer that Campbell has not fulfilled its obligation under cl 4(6)(f).

72 Third, NOB 3 also alleged that Campbell had failed to comply with cl 4(21)(b) of the Tenancy Agreement to "take all necessary steps to control and preserve order with regard to its customers, guests, visitors, employees, independent contractors and invitees" and stated that details were set out in paras 2–9 of NOB 3.[93] However, nothing in paras 2–9 of NOB 3 related to a need to control and preserve order. Schedule A merely stated that the obligation was not fulfilled as Campbell had not provided documents to prove that it has fulfilled this obligation.[94] Again, Marchmont itself states that it can only infer that this obligation was not fulfilled. In the absence of sufficient particulars, I find that Campbell could not have known with reasonable certainty what it was required to do to avoid forfeiture on the basis of a breach of cl 4(21)(b).

73 I would add that the level of ambiguity with these alleged breaches is distinct from that alleged by Campbell in respect of the Insurance Requirements, in particular, that it was not clear which variant of non-cancellation clause was required. Leaving aside that this submission is not supported by the evidence of Campbell, it is clear that Campbell was required to include a non-cancellation clause in the insurance coverage that it was to procure, pursuant to the Tenancy Agreement. This was sufficiently specific as opposed to a requirement that Campbell provide "adequate" insurance coverage or "maintain a consistently high standard" of insurance coverage.

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93 NOB 3 at para 10; Mr Leow 1st AEIC at p 968.

94 S/N 3 of Schedule A to NOB 3; Mr Leow 1st AEIC at p 971.

74 As held above, I agree with the approach in *Lee Tat Realty* at [13] that "if any alleged breach fails to satisfy the requirement as to particulars, the whole notice would be bad". As the three alleged breaches highlighted above do not satisfy the requirement for sufficiency of particulars, NOB 3 as a whole would be bad.

Whether Marchmont has waived its right to forfeiture

75 As set out above, NOB 2 satisfies the requirements of s 18(1) of the CLPA. I thus move to consider Campbell's fourth submission, which is that even if the requirements of s 18(1) of the CLPA are complied with, Marchmont has waived its right to forfeiture. The main test is whether the lessor has done an act unequivocally recognising the subsistence of the lease with the knowledge of the circumstances from which the right of re-entry arises at the time when that act is performed: *Matthews v Smallwood* [1910] 1 Ch 777 ("*Matthews*") at 786; *Principles of Singapore Land Law* at para 17.131.

76 Campbell relies on the decision of the High Court in *Protax Co-operative Society Ltd v Toh Teng Seng* [2001] SGHC 84 ("*Protax*"). There, Chan Seng Onn JC (as he then was) stated at [24]:

> It would appear that waiver is entirely a matter of law and not of the parties intention. The landlord thus could not, with knowledge of the event of forfeiture, avoid a waiver of forfeiture by accepting or demanding rent accruing due after that event by stipulating that the rent was accepted "under protest" or "without prejudice". The fact that the landlord did not intend to waive is irrelevant…

77 Marchmont makes two main submissions in response. First, that it has shown a final determination to take advantage of forfeiture in issuing NOT 1 on 20 December 2021, and no subsequent acts will operate as waiver. Second, in any event, the individual acts relied on by Campbell do not operate as waiver.

Final determination to take advantage of forfeiture

78 Marchmont's first main submission also relies on *Protax*, albeit a different portion of it. There, at [22], the court cited *Halsbury's Laws of England* vol 27(1) (Butterworths Asia, 4th Ed Reissue, 1994) at para 510, which states:

> … [T]he fact that the landlord, by accepting rent, has no actual intention of waiving the breach does not prevent his action amounting in law to a waiver. Nor can the landlord prevent the waiver by demanding or accepting rent without prejudice…*If, however, the landlord has already shown a final determination to take advantage of the forfeiture, for instance by commencing an action to recover possession, no subsequent act, whether receipt of rent, or distress, or otherwise, will operate as a waiver…*
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> [emphasis in original omitted; emphasis added in italics]

79 Marchmont submits that the issuance of NOT 1 is evidence of a "final determination to take advantage of forfeiture". Campbell submits that final determination only refers to physically re-entering the demised premises or service of a writ for possession, citing *Protax* at [36] and [40].

80 I note that *Protax* at [22], which Marchmont relies on, also cites the commencement of an action to recover possession as an example of final determination. In addition, the court in *Fico Sports Inc Pte Ltd v Thong Hup Gardens Pte Ltd* [2011] 1 SLR 40 ("*Fico Sports"*) at [91] held that if a writ contains a demand for possession, service of it operates as a final election to determine the term.

81 The notion of a "final determination" to forfeit the tenancy or take advantage of the forfeiture appears to originate from *Grimwood v Moss* (1872) LR 7 CP 360 ("*Grimwood*") at 364, which held that "the bringing of the action of ejectment is equivalent to the ancient entry. It is an act unequivocal in the sense that it asserts the right of possession upon every ground that may turn

out to be available to the party claiming to re-enter". *Grimwood* was cited in *Halsbury's Laws of England* volume 62 (LexisNexis, 2022) ("*Halsbury's Laws of England 2022*) at para 541 for the proposition that if a landlord has already shown a final determination to take advantage of the forfeiture (for instance, by commencing proceedings to recover possession), no subsequent act will operate as a waiver. An examination of the cases cited for this proposition in *Halsbury's Laws of England 2022*, reveal that the demand or acceptance of rent after the commencement of an action for possession (or, under the old laws, an action for ejectment) was held not to be a waiver of the landlord's right to forfeiture: *Grimwood; Toleman v Portbury* (1872) LR 7 QB 344; *Evans v Enever* [1920] 2 KB 315; *Civil Service Co-operative Society v McGrigor's Trustee* [1923] 2 Ch 347.

82 While *Protax* and *Fico* did not close off other instances of "final determination", the finality that attaches to a notice of termination is far less than that of physical re-entry or service of a notice of action to recover possession. Moreover, Marchmont was not able to point to any authority which suggests that a notice of termination suffices as an act of final determination. *Clarke v Grant and another* [1950] 1 KB 104, which Marchmont cited, stands for a different proposition, namely that after a periodic tenancy had been determined by a notice to quit, the acceptance of rent cannot be used to establish that the landlord was agreeing to a *new tenancy* in the absence of evidence of any intention to create a new tenancy: at 106. Marchmont also cited *Pang Kau Chai @ Pang Hon Wah v Runway 80 Pte Ltd* [2022] SGDC 152 ("*Pang Kau Chai*").[95] This decision is also of limited assistance as the Deputy Registrar there merely declined to make a conclusive finding at the striking out stage, on

[95] Claimant's Closing Submissions at para 40.

affidavit evidence alone, as to whether a notice of termination could constitute final determination: *Pang Kau Chai* at [50].

83 As what was previously known as a writ of summons under the Rules of Court 2014 has been replaced by an originating claim under the Rules of Court 2021 ("ROC 2021") O 6 r 1(2) (see *Singapore Rules of Court – A Practice Guide* (Chua Lee Ming & Paul Quan) (Academy Publishing, 2023) at para 06.003), the references to writ in the authorities above would be replaced by the equivalent terms used under the ROC 2021. Regardless, the consistent principle from these authorities is that final determination to take advantage of forfeiture is effected either by physical re-entry or service of notice on the tenant of the action to recover possession of the demised premises.

84 In this case, Marchmont served OC 492 on Campbell, which contained a demand for possession, on 28 December 2022. This would therefore be the date of "final determination" by Marchmont. Most of the acts relied on by Campbell as constituting waiver, took place prior to this date, except the acceptance of rental payments, which continued. Following from the above, Marchmont's acceptance of rental payments by Campbell after this date of final determination, would not be regarded as waiver of forfeiture.

85 Consequently, if the Insurance Requirements set out in NOB 2 are continuing obligations, rather than single obligations, and they are not remedied, there would be ongoing breaches of these obligations after the date of "final determination", that could entitle Marchmont to exercise its right to forfeiture.

86 In *Protax* at [21], the court cited from *Hill and Redman's Law of Landlord and Tenant* (Barnes *et al*) (LexisNexis Butterworths,17th Ed) at p 451 which stated that "where there is a continuing breach of covenant a waiver does

not extend to breaches continuing beyond the date of the acts which constitutes the waiver". The distinction between the two types of obligations was further examined in *Protax* at [34]. There the court cited *Farimani v Gates* [1984] 2 EGLR 66, where the English Court of Appeal held that if an obligation is to perform an act by a certain time, once that time has elapsed, and the act has not been performed, there is a breach of a single obligation and not of a continuing one. It is established that where a continuing breach gives rise to a right of re-entry, there is a continually recurring cause of forfeiture which entitles a landlord to forfeit a lease: *Penton v Barnett* [1898] 1 QB 276 ("*Penton*") at 280, followed in *Segal Securities Ltd v Thoseby* [1963] 1 QB 887 at 900–901.

87 In this case, the Insurance Requirements require Campbell to maintain the said insurance policies during the term of the tenancy and holding over, but do not provide a timeline for this to be done by. Campbell did not, in its Closing or Reply Submissions submit that these are obligations which must be performed by a certain time. However, when the question of continuing obligations of the Insurance Requirements was raised by the Court to parties, Campbell took the position that these requirements should have been performed by 1 August 2021.[96] Campbell relied on cl 4(20)(a), read with Schedule 1 para 3, of the Tenancy Agreement. This does not assist Campbell, since cl 4(20)(a) merely requires Campbell to maintain the requisite insurance during the tenancy term and holding over period, while Schedule 1, para 3 only specifies that the term of the tenancy is from 1 August 2021 to 31 July 2024. These provisions do not provide a timeline by which the Insurance Requirements must be met by. Campbell also cites *Protax* at [34] for the proposition that the failure to remedy

[96] Defendant's Response to List of Questions at p 6.

a breach within a reasonable time is always a single, once and for all breach.[97] However, the Tenancy Agreement also does not provide that the Insurance Requirements must be performed within a reasonable time. Indeed, by providing the enclosed insurance policies to Marchmont through VLL's letter of 14 April 2022, Campbell took the position that the Insurance Requirements could still be fulfilled after the start of the tenancy term. Marchmont has also taken the position that Campbell was to fill the gap by providing the requisite insurance policies with retrospective effect, covering the term of the tenancy. Indeed, as cl 4(20)(a) requires Campbell to maintain the requisite insurance coverage over the tenancy term and period of holding over, the obligation is to maintain a certain state of affairs over the course of a tenancy, not dissimilar to the nature of obligations in covenants to repair, which had been found to be continuing obligations: *Penton*. In addition, as pointed out by Marchmont, Chan JC in *Protax* at [28] cited *Price v Worwood* (1859) 4 H & N 512, which held that "the non-insurance is a continuing breach", and that a plaintiff was entitled to take advantage of forfeiture if the leased houses were uninsured as of the date of writ.

88 The continuing nature of the obligations under the Insurance Requirements can be further seen by this: Campbell would not be in breach of the Insurance Requirements if, by the start of the tenancy term, it had only provided requisite coverage for part of the term, as long as it ensured subsequently that the requisite coverage extended to cover the entire tenancy term.[98] Hence, contrary to Campbell's submission, it could not be said that the Tenancy Agreement set a timeline of 1 August 2021, for the fulfilment of the Insurance Requirements. The Insurance Requirements or the other parts of the

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97 Defendant's Response to List of Questions at p 7.

98 Claimant's Response to List of Questions at p 6.

Tenancy Agreement clearly do not state that the requirements are to be performed by a certain time. Hence, pursuant to the established authorities, the Insurance Requirements are continuing obligations.

89 As set out above, the breaches of the Insurance Requirements have not been remedied to date, nor were they remedied by the procurement of the TM Policies at the time that Marchmont served the action to recover possession around 28 December 2022.

90 As held in *Protax* at [35], a breach of a continuing obligation gives rise to a continuing right of re-entry and a continually recurring cause of forfeiture should the obligation be breached. Applied to the facts of this case, this means that the breaches of the continuing obligations pertaining to the Insurance Requirements give rise to a continuing right of re-entry. Campbell is obliged to maintain the Insurance Requirements for the duration of the tenancy and during the holding over. It is hence an obligation that accrues daily. Such obligations continue past the time when Marchmont commenced its action on 28 December 2022 to recover possession. Consequently, I find that minimally, Marchmont is not prevented by waiver from enforcing its right of forfeiture, after 28 December 2022. Parties agreed that, on the facts, this would be the position if the Insurance Requirements are continuing obligations.[99]

91 I next turn to Marchmont's second main submission, which is that in any event, the individual acts relied on by Campbell do not constitute waiver of forfeiture. This set of issues is still relevant, as it determines if Marchmont is entitled to forfeiture from a date earlier than the date of final determination (*ie,* 28 December 2022).

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[99] 16 April 2024 Notes of Evidence at p 7.

Non-rental payment acts relied on by Campbell as waiver of forfeiture

92 I begin with the non-rental payment acts relied on by Campbell as constituting waiver. As I have found that only NOB 2 is valid under s 18(1) of the CLPA, and that consequently only NOT 2 entitles Marchmont to proceed with forfeiture, I will not consider alleged acts of waiver that took place before the effective termination date under NOT 2, *ie*, before 21 July 2022.

93 Marchmont cited the proposition from *Expert Clothing Ltd v Hillgate Ho*use *and another* [1986] Ch 340 ("*Expert Clothing*") at 360, which held that in a case which does not involve acceptance of rent, the court is free to look at all the circumstances of the case to consider whether the acts relied on were so unequivocal, that when considered objectively, it could only be regarded as having been done consistently with the continued existence of a tenancy. This was not disputed by Campbell. I agree with and adopt this proposition.

94 With this in mind, I consider the three post-NOT 2 acts which do not involve the purported payment of rent that Campbell relies on as evidence of waiver of forfeiture by Marchmont. First, Campbell submits that there was waiver when Marchmont informed Campbell, on 26 July 2022, that it would be renewing the Electrical Installation Licence ("Licence").[100] Marchmont disagrees and submits that it renewed the Licence as it is at liberty to let the remaining lettable space to other tenants.[101] I do not consider this to be an act which unequivocally affirms the subsistence of the lease. Campbell did not challenge Mr Leow's evidence that Marchmont remained in control of the remaining space at the property at 51 Joo Chiat Road, and that the renewal of

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100 Defendants' Closing Submissions at para 89.

101 Mr Leow 1st AEIC at para 159.

the Licence would facilitate Marchmont's ability, as a landlord, in letting out the remaining space.

95 Second, Campbell relies on Marchmont consenting on 1 August 2022, to Campbell executing a maintenance servicing agreement with Daikin for the air-conditioning at the Premises. Campbell relies on a statement from Marchmont when granting such consent, that states that it "follows that it is for [Campbell] to ensure that the detailed terms of the proposed Maintenance Servicing Agreement fulfils the requirements under the Tenancy Agreement." Campbell submits that this shows that Marchmont unequivocally recognised the subsistence of the lease.

96 Marchmont disagrees and submits that when it consented to this servicing agreement, it stated that this was without prejudice to the Tenancy Agreement being terminated, and that the consent was granted solely in the interest of ensuring that there is at least some maintenance of the air-conditioning and mechanical ventilation system at the Premises, which Campbell continues to use given the holding over. I further note that when granting consent to Campbell, Marchmont had stated that its consent does not absolve Campbell of its obligations or liability in relation to the air-conditioning and mechanical ventilation system and it is for Campbell to determine how to ameliorate its own breach under the Tenancy Agreement.

97 Taking these two statements together, I find that Marchmont's consent to the maintenance servicing agreement is not an act that unequivocally recognises the subsistence of the lease. Marchmont has an interest as a landlord for the air-conditioning to be properly maintained. It is, here, consenting to Campbell taking steps to ameliorate its breach under the Tenancy Agreement.

98 Third, Campbell relies on Marchmont continuing to accept payments from Campbell for utilities charges and other outstanding sums owing and payable in relation to the Tenancy Agreement.[102] Marchmont also continued to issue invoices for utilities to Campbell.[103] Marchmont had stated that such sums are due to it from Campbell during the period of holding over by Campbell.

99 Campbell has not provided any legal authority to show that the payment of utilities is a recognised category constituting a waiver of forfeiture.[104] A landlord is not under an obligation to pay for the utilities incurred by an ex-tenant during the period of holding over. A demand for the repayment of utility bills incurred could also have been made against a tenant at sufferance or a trespasser under, for example, the doctrine of unjust enrichment. Consequently, I find that accepting payment for utilities in such circumstances does not constitute an unequivocal act that could only be regarded as having been done consistently with the continued existence of a tenancy.

Whether acceptance of double rent was act of waiver

100 I turn next to Marchmont's acceptance of rent. Campbell submitted that Marchmont had waived forfeiture by accepting payment of rent due under the Tenancy Agreement since the onset of the dispute to date.[105] Marchmont disagrees that this constitutes waiver, as it had written to Campbell on 7 January 2022, stating that the Tenancy Agreement had been terminated and that any rent received from Campbell will be set off against double rent and utility charges

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102 Defendants' Closing Submissions at para 74; Mr Leow 1st AEIC at pp 407–409.

103 Mr Leow 1st AEIC at para 170, pp 122–123.

104 Defendants' Closing Submissions at para 75.

105 Ms Fu 1st AEIC at para 64 and pp 1045–1060.

and other outstanding sums ("7 January 2022 Letter").[106] In addition, Marchmont also relies on the waiver provision contained in cl 15(a) of the Tenancy Agreement.

101 I will first consider the effect of cl 15(a) of the Tenancy Agreement. This states that "any acceptance of Rent … shall not be deemed to operate as a waiver by the Landlord of any right to proceed against the Tenant of any of its/his obligations hereunder". While *Protax* does not address specifically whether such a contractual clause is inoperable by way of law, it does state at [24] that following its survey of the authorities "it would appear that waiver is entirely a matter of law and not of the parties' intention".

102 Campbell cites *R v Paulson* [1921] 1 AC 271 (P.C.) ("*Paulson*"). The Privy Council, on appeal from the Supreme Court of Canada, held there that the presence of a provision in a lease requiring waiver to be in expressed in writing, such as was the case there at 276, did not render inapplicable the established principle that acceptance of rental shows an election to treat the lease as subsisting and is an irrevocable election to do so: at 282–283. In *Paulson* at 278, the tenant failed to commence active mining operations on the leased land within set time limits, in breach of the lease agreement, but continued to pay the rent in advance as it accrued. Although the Crown, at 276, continued to accept rent, they sought to rely on a clause "that no waiver on behalf of His Majesty … of any breach shall take effect or be binding … unless the same be expressed in writing under the authority of the Minister". The Privy Council held that such a clause "does not enable the landlord to blow hot and cold, to approbate and reprobate the same transaction" by both accepting rent and also treating the tenant as evicted. Campbell also relies on *Hill and Redman's Law of Landlord*

106 Mr Leow 1st AEIC at pp 407–409.

and Tenant (John Furber et al) (Lexis Nexis, 2023 Ed) ("*Hill and Redman*") at para A[4843], which states the view that in a lease of real property, a contractual provision that breaches of covenant cannot be waived by any act of the landlord is ineffective.[107] *Paulson* and *Expert Clothing* are cited in support of this proposition.

103 Marchmont highlights the following. First, the issue of a waiver clause did not arise in *Protax*. Second, *Paulson* did not set out a definitive judicial pronouncement to the effect that waiver clauses are inapplicable. The court held at 286 that it may well be that many cases may occur to which the waiver clause is applicable. Third, *Expert Clothing* does not support the argument that all non-waiver clauses are ineffective. While the court there noted at 346 that the lease contained a "*no waiver*" provision and that it was "common ground that this provision was legally *ineffective*", the wording of the waiver provision was not set out nor did the Court explain why the provision was ineffective. Neither party relied on the provision. Fourth, the High Court of Australia in *Owendale Pty Ltd v Anthony* (1967) 117 CLR 539 ("*Owendale*") observed that *Paulson* appeared to proceed on the basis that the waiver provision there had no application to cases of waiver by receipt of rent and applied only to cases where the waiver relied on was by words alone: at 19. In contrast, cl 15(a) of the Tenancy Agreement evinces an agreement for the payment of rent not to operate as waiver, which is more closely analogous to *Owendale* than *Paulson*.

104 Both parties do not dispute that it is a long-established position in law that the acceptance of rent constitutes a waiver of the landlord's right to forfeiture despite qualifying words from the landlord that such acceptance is without prejudice to the landlord's right to terminate the lease. The rationale for

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[107] Defendants' Bundle of Authorities dated 28 February 2024 at p 243.

this doctrine was set out by Buckley LJ in *Central Estates (Belgravia) Ltd v Woolgar (No 2)* [1972] 1 WLR 1048 ("*Central Estates*") at 1054–1055:

> The landlord's right is a right to elect whether to treat the lease as forfeit or as remaining in force. Any election one way or the other, once made, is irretractable … If the landlord by word or deed manifests to the tenant by an unequivocal act a concluded decision to elect in a particular manner, he will be bound by such an election. If he chooses to do something such as demanding or receiving rent which can only be done consistently with the existence of a certain state of affairs, viz., the continuance of the lease or tenancy in operation, he cannot thereafter be heard to say that that state of affairs did not then exist. If at the time of the act he had a right to elect whether to forfeit the lease or tenancy or to affirm it, his act will unequivocally demonstrate that he has decided to affirm it. He cannot contradict this by saying that his act was without prejudice to his right of election continuing or anything to that effect. In this respect his act speaks louder than his words, because the act is unequivocal: it can only be explained on the basis that he has exercised his right to elect. The motive or intention of the landlord, on the one hand, and the understanding of the tenant, on the other, are equally irrelevant to the quality of the act…

105 It can be seen from the above that the key principles underlying this doctrine are that the act of accepting rent constitutes an exercise of the landlord's right of election to treat the lease as subsisting and that such an act of accepting rent speaks louder than the qualifying words of the landlord. The motive and intention of the landlord, and the understanding of the tenant, are regarded as irrelevant to the quality of the act. As a contractual waiver provision is an expression of the intention of the landlord and the understanding of the tenant, it would also follow that a contractual waiver provision would not affect the quality of the act of accepting rent. While not explicitly stated, such considerations may have underpinned the views of the learned authors of *Hill and Redman* and the dicta of the courts in *Paulson* and *Expert Clothing* on the inapplicability or ineffectiveness of a waiver provision where the acceptance of rent is concerned.

106 I would add that as a lease involves a proprietary element, the usual contractual considerations of parties' intentions, while relevant, would not be determinative, and the established law applying to leases would apply.

107 I also do not place much weight on *Owendale*'s reading of *Paulson*. *Owendale* did not deal with a contractual waiver provision but with the impact of an ordinance that applied to the Commonwealth of Australia. This ordinance provided that the lease would not be determined unless a specific procedure requiring the tenant to comply with directions given pursuant to the ordinance was followed: *Owendale* at 16. The Commonwealth was entitled to treat the lease as subsisting while taking steps to determine if its right to terminate the lease had arisen and the acceptance of rent during this period would not amount to an unequivocal election to waive the breach: *Owendale* at 16 and 19. In contrast, the present case does not involve any statutory requirements in the determination of the lease. While *Owendale* sought to distinguish the waiver clause in *Paulson* as being applicable only to waiver by words, I see no reason why the principle, that waiver is a matter of law and not of intention, should not extend to waivers by the receipt of rent.

108 In view of the above, I do not consider that the presence of a waiver provision, in and of itself, can be said to be determinative of this issue. Furthermore, in this case, cl 15 of the Tenancy Agreement states that Marchmont may unconditionally waive any breach at any time, thereby preserving Marchmont's right to elect to waive a breach. Clause 15(a) also states that this is provided that the acceptance of rent shall not be *deemed* to operate as a waiver by the landlord of any right to proceed against the tenant for any of its obligations. It does not state that the acceptance of rent will *never* operate as a waiver by the landlord. When cl 15(a) is read as a whole, it appears to seek to preserve some room for the landlord to overcome any "deeming" by

nevertheless electing to treat the acceptance of rent as a waiver at any time. That being the case, the question still arises as to whether on the facts, Marchmont did make such an election. Marchmont accepted that the Court is entitled to look into the facts in this case.[108]

109 I therefore turn next to assess whether Marchmont made an election on the facts to treat the lease as subsisting by accepting rent.

110 Campbell relies on *Lim Lay Sooi & anor v Merah Rubber Estates (1931) Ltd* [1951] MLJ 246.[109] There, the Court of Appeal of Federal Malaysia held that receipt of rent constituted waiver despite the landlord writing to qualify that the rent monies were received as damages for use and occupation of the lands. Marchmont relies on the decision of the High Court in *Fico Sports*. There, Judith Prakash J (as she then was) held at [120]–[121] that the question that has to be answered in each case is whether it was rent that was demanded and paid. If it was damages for trespass that was demanded and paid instead, then there would be no waiver. In *Fico Sports*, the landlord had advised the tenant that it was holding over and liable for double rent, and that any rent paid after a certain date was to account for the tenant's liability for double rent. Prakash J held that the landlord made it quite clear that such payments would only be accepted as part of the damages and hence there was no waiver.

111 Having considered both authorities, I agree with the legal approach in *Fico Sports*. The test of waiver as set out in *Matthews* is whether there is an act that unequivocally recognises the subsistence of the lease. Where parties accept rent but qualify it with words to the effect that it is without prejudice to

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108 16 April 2024 Notes of Evidence at p 7.

109 Defendants' Closing Submissions at para 73.

termination of the tenancy, the acceptance of rent constitutes conduct that speaks louder than the qualifying words. This has been the position in established case law: *Central Estates* at 1054–1055; *Leivest International Pte Ltd v Top Ten Entertainment Pte Ltd* [2006] 1 SLR 888 at [39]–[42]. However, the right to double rent only arises in the context of damages, where the lease is no longer in subsistence "after the determination of [the] tenancy": see s 28(4) of the CLA; below at [141]. Hence, it could not be said that the acceptance of double rent as part of damages is an act that unequivocally recognises the subsistence of the lease.

112 The question then is whether, as a matter of fact, the money was only accepted as damages, or whether it was tendered and accepted as rent: *Fico Sports* at [121]; *Leivest* at [42] citing *Windmill Investments (London) Ltd v Milano Restaurant Ltd* [1962] 2 QB 373. I would add, that in looking at the facts, both the conduct and the words used have to be scrutinised. This must be so, bearing in mind that the established case law is that qualifying words alone, such as "without prejudice to the termination of the tenancy", do not suffice to render the acceptance of rental payment an equivocal act. Similarly, the mere use of qualifying words such as "accepted as double rent" or "accepted as damages" would not in themselves, be dispositive.

113 In this case, Marchmont did not solicit rental payments from Campbell after the purported termination pursuant to NOT 1 and submits that the payments were made unilaterally into Marchmont's account.[110] Marchmont also repeatedly set out in correspondence with Campbell that Marchmont would apply any payments made towards the sums due and owed by Campbell in

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110 Claimant's Closing Submissions at para 259(a).

relation to the Tenancy Agreement.[111] Besides the 7 January 2022 Letter, such correspondence includes:

(a) Ms Fu was notified via an email on 21 December 2021 that Campbell was liable to pay double rent, and her response was "[w]ell noted on the double rent portion."[112]

(b) On 7 February 2022, Marchmont wrote to Campbell to state that Campbell was liable under cl 11(3) of the Tenancy Agreement for "among other things, rent calculated at double the last prevailing rent (including rental for furniture)".[113] The letter stated at para 5 that all payments made pursuant to two tax invoices issued on 1 December 2021 and 1 January 2022 would be "set-off at [Marchmont's] discretion against" the double rent and "any other outstanding sums that remain … payable to [Marchmont] under or in relation to the Tenancy Agreement".[114]

(c) Marchmont informed Campbell via TKQP's letter dated 23 February 2022 that "[a]ny payment made" by Campbell "for purported basic rent" "will be set-off" at Marchmont's discretion against double rent or other sums due under the Tenancy Agreement. It is also stated in that letter that it is double rent that is due and not basic rent.[115]

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111 Mr Leow 1st AEIC at para 82; Claimant's Closing Submissions at para 259(c).

112 Mr Leow 1st AEIC at p 380.

113 Mr Leow 1st AEIC at p 407.

114 Mr Leow 1st AEIC at p 408.

115 Mr Leow 1st AEIC at p 411.

Marchmont broadly reiterated these positions in TKQP's letters dated 19 May 2022[116] and 28 September 2022[117].

114 Ms Fu's acknowledgment of "[w]ell noted on the double rent portion" does not, in my view, amount to an acknowledgement that Campbell was liable for double rent. First, the words "[w]ell noted" are not sufficiently unequivocal to amount to an admission of liability. Second, even where a tenant knows that the landlord intends to forfeit, he is entitled to put the landlord to an election. The tender of rent is by implication an invitation to the landlord to elect whether to waive forfeiture: *Central Estates* at 1057. Third, Campbell continued to maintain, as per VLL's letter of 18 February 2022, that it was "mak[ing] payments for rent based on the sums indicated in previous rental invoices and pursuant to the terms of the Tenancy Agreement".[118]

115 A possible reading of the above correspondence from Marchmont, is that Marchmont was accepting rental payments from Campbell, but it would use such rental payments to "set-off" "against the double rent" that was due, or "any amounts due to [Marchmont] whether in relation to the holding over or otherwise". I will however, take Marchmont's case at its highest, that it had stated in its correspondence that the rental payments made by Campbell were accepted by Marchmont as damages towards double rent.

116 Even then, the correspondence between the parties sets out a marked contrast in how they perceived the payments that were made. Just as how a landlord's qualifying words of "without prejudice" or "accepted as damages"

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116 Mr Leow 1st AEIC at p 413.

117 Mr Leow 1st AEIC at p 416.

118 Ms Fu 1st AEIC at p 325.

do not in themselves operate to render an unequivocal act of waiver equivocal, a tenant's representations that sums are intended as rent do not, in themselves, transform a payment of damages into a payment of rent. As Marchmont submits, when disputes arise, a tenant will necessarily assert that the payments are rental payments, and the landlord will likewise maintain that the tenant is holding over.[119] However, this does not lead to Marchmont's conclusion that the payment and acceptance of payment is a neutral factor. Rather, this underscores the fact that the qualifying statements made by either the landlord or tenant are not determinative in and of themselves. The question is whether on a totality of the evidence, the payments were, on an objective evaluation, rent or damages.

117 In this case, I find that on an objective evaluation of the mode, timing, and amounts of the payment, the payments made by Campbell were in fact tendered and accepted as rental payments, for the following reasons:

(a) The amount of money paid by Campbell each month is precisely the sums due as rental payments (subject to prevailing Goods and Services taxes) under the Tenancy Agreement. The bank records of the payments made by Ms Fu to Marchmont's account[120] show that Campbell transferred sums of $56,710 a month from August 2022 to December 2022, and $57,240 a month from January 2023 to August 2023. Under Item 4 of the First Schedule to the Tenancy Agreement,[121] the monthly rent due under the Tenancy Agreement is S$53,000.00 from 1 August 2022 to 31 July 2023 and S$56,000.00 from 1 August 2023 to 31 July 2024, plus prevailing taxes.

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119 Claimant's Reply Submissions at para 46.

120 Ms Fu 1st AEIC at pp 1046–1052.

121 Ms Fu 1st AEIC at p 124.

(b) The timing and method of transfer of the payments adhered to the requirements of the Tenancy Agreement. Clause 2(2) of the Tenancy Agreement required that payments of rent and taxes thereon "shall be made on the first day of each succeeding calendar month either by way of interbank transfer or GIRO".[122] All the payments were made pursuant to the stated mode of interbank transfer[123] or through transfer methods consistent with the mode used from the start of the tenancy, and within the two days of the first of each calendar month.[124]

118 Parties confirmed that the payment amount, timing, and payment mode of Campbell's payments closely mirror what was required under the Tenancy Agreement for rental payments.[125] Taking this into account, I find on the facts, that what Campbell tendered and what Marchmont accepted, were rental payments rather than payment for damages.

119 Consequently, Marchmont's acceptance of the rental payment would constitute a waiver of forfeiture, until the time that Marchmont served on Campbell its action to recover possession, around 28 December 2022, as set out above at [83]–[84].

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122 Mr Leow 1st AEIC at p 163.

123 See the payments for March 2023 and June to August 2023; Ms Fu 1st AEIC at pp 1046 and 1048.

124 Ms Fu 1st AEIC at pp 1046–1052.

125 Claimant's Response to List of Questions at pp 9–10; Defendant's Response to List of Questions at pp 9–10.

Whether there should be relief from forfeiture

120 Campbell's fifth submission is that even if there was valid forfeiture, there should be relief from forfeiture pursuant to s 18(3) of the CLPA, which provides:

> The court may grant or refuse relief as the court, having regard to the proceedings and conduct of the parties under subsections [18](1) and [18](2) [of the CLPA] and to all the other circumstances, thinks fit.

121 In *Lee Tat Realty,* Chao J stated at [49] that in exercising the discretion under s 18(3) of the CLPA, the court must have regard to all the circumstances of the case, including the conduct of the parties, and whether the landlord would be substantially prejudiced or damaged. In addition, wilful breaches should not, or at least should only in exceptional cases, be relieved against: *Shiloh Spinners Ltd v Harding* [1973] AC 691 ("*Shiloh*") at 723–726 (which involved s 146(1) of the Law of Property Act 1925, which is *in pari materia* to s 18(1) of the CLPA). It was also held in *Shiloh* at 722–725 that relief against forfeiture for a breach of covenant may be granted in appropriate and limited cases, and the relevant considerations are the conduct of the applicant for relief, whether the default was deliberate, the gravity of the breaches, and the disparity between the value of the Premises and the damage caused by the breaches. *Shiloh* has been cited with approval in *Lee Chuen Li and another v Singapore Island Country Club* [1992] 2 SLR(R) 266 at [42] and *Pacific Rim Investments Pte Ltd v Lam Seng Tiong and another* [1995] 2 SLR(R) 643 ("*Pacific Rim Investments*") at [40]–[41].

122 Campbell submits that there should be relief. The most crucial reason is that Marchmont had suffered no actual damage or loss, or minimal damage or

loss, as a result of the Campbell's conduct.[126] The only potential loss or damage suffered by Marchmont was the possibility of a fire or the possibility of damage to the walls due to the movement of heavy objects.[127] Campbell also cites other factors, such as the efforts it has made to accommodate the Insurance Requirements, and that Marchmont will be financially enriched if it comes into possession of the Premises, given its current market value and Marchmont's timing of this action. [128]

123 Marchmont submits that there should not be relief as Campbell did not treat key obligations such as the Occupancy Limit and the Insurance Requirements seriously. Campbell wilfully committed the breaches of the Tenancy Agreement and, as stated in *Shiloh*, such tenants should not ordinarily be granted relief.[129]

124 While Campbell emphasises that Marchmont has not sustained damage as a result of the breach that is proportionate to the advantage obtained by Marchmont if relief were not granted, it is clear from s 18(3) of the CLPA, *Lee Tat Realty*, and *Shiloh* that the court, in deciding whether to grant relief, looks at all the circumstances of the case, including other factors such as the conduct of parties and whether the landlord would be substantially prejudiced. Campbell agreed that legally, this was so.[130] In addition, I do not find Campbell's submissions to be well supported by the evidence. I have set out above how Campbell approached the fulfilment of the Insurance Requirements. They do

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126 Defendants' Closing Submissions at para 109.

127 Defendants' Closing Submissions at para 110.

128 Defendants' Closing Submissions at paras 109–112.

129 Claimant's Closing Submissions at paras 270–274.

130 16 April 2024 Notes of Evidence at p 8.

not present a positive factor in favor of relief. As another example, while Campbell claims that Marchmont will be financially enriched because of the current market value of the Premises and Marchmont's "bid[ing] its time to maximise its claim for damages",[131] it has adduced no evidence to support either contention.

125 More fundamentally, I find that unlike the facts in *Lee Tat Realty* at [48]–[50], where the court found that the breaches were at most technical breaches, the breaches here are not purely technical. It is set out in s 18(3) of the CLPA and *Lee Tat Realty*, that in assessing whether there should be relief, the court should consider all the circumstances of the case. This would mean, on the facts of this case, that the assessment is not confined to the parties' conduct only in relation to NOB 2, which was found to be in compliance with s 18(1) of the CLPA. It would include other aspects of the case, including in relation to the breaches identified in NOB 1. As I have dealt with the breaches of NOB 2 above, it would be appropriate to deal now with the allegation of breach of the Occupancy Limit.

126 The unchallenged evidence of Marchmont is that the Occupancy Limit arises from regulations and conditions imposed by regulatory authorities.[132] This was contractually a key obligation, and was given an express termination provision in cl 4(13)(b) of the Tenancy Agreement. Ms Fu admitted that Campbell packed in as many occupants as possible by using bunk beds to maximise revenue.[133]

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131 Defendants' Closing Submissions at para 112(k).

132 Mr Leow 1st AEIC at para 76 and p 396.

133 Transcript of 26 January 2024 at p 129 line 24 to p 130 line 2.

127 While Ms Fu asserted that Campbell was no longer in breach of the Occupancy Limit, Campbell has not provided any supporting documentary evidence beyond Ms Fu's bare assertions. As a hotel, it is not unreasonable to expect Campbell to be able to provide some form of guest records, which it could use to demonstrate compliance with the Occupancy Limit, as requested for by Marchmont in NOB 2, but it did not. Even at the trial, some 22 months after NOB 2 was issued, there was no reliable documentary evidence before the court to show that Campbell is or was in compliance with the Occupancy Limit. It is notable that when Ms Fu was asked if there was any reliable document she could use to prove the number of persons occupying each room in the Premises, she did not assert that there was. She instead replied that Marchmont could come and inspect the Premises.[134] Her reply reinforced the lack of reliable documents from Campbell to verify its compliance with the Occupancy Limit, despite this issue having been raised by Marchmont as early as December 2021.

128 While Campbell refers to photographs[135] of the rooms outfitted with either two single bed or one queen/king sized bed per room in its submissions,[136] these photographs are of limited evidential value. Campbell confirmed that no witness of Campbell testified as to how or when these photographs were taken, and hence they were not cross-examined on this.[137] There are photos suggesting that a room (Room 228) was in breach of the Occupancy Limit around 1 January 2022 and remedied around November 2023,[138] suggesting that the breach was remedied only at the later date. Some images do not depict the entire bed

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134 Transcript of 25 January 2024 at p 60 lines 15–16.

135 Agreed Bundle of Documents ("AB") Vol 10 ("10AB") pp 488–567; 11AB pp 71–74.

136 Defendants' Reply Submissions dated 20 March 2024 at para 32.

137 16 April 2024 Notes of Evidence at p 8.

138 11AB p 74.

configuration of the room (for example, room 411).[139] In addition, the photos only reflect the set up at a certain point in time. They are not robust evidence of compliance with the Occupancy Limit over a period of time.

129 Furthermore, even though Ms Fu testified that it was open for Marchmont to do an inspection, Campbell did not offer Marchmont the opportunity of an inspection to verify in VLL's letter of 22 March 2022. In any event, even if it was offered, Marchmont has justifiable concerns with the reliability of an inspection. Fundamentally, beyond bare assertions, Campbell does not have any reliable documents or material to show that it was or is in compliance with the Occupancy Limit, and confirmed that this was so.[140]

130 Throughout, Campbell maintained that it was not obliged to comply with the Occupancy Limit because Marchmont was estopped by representations made from its representatives. This began with Campbell's assertion of this through VLL's letter of 3 January 2022.[141] At the end of the trial, Campbell confirmed that it was dropping the defence of estoppel against the breach of the Occupancy Limit.[142] Although this defence is not being pursued now by Campbell, it is still useful to examine this in more detail, as it reveals that the estoppel defence was maintained by Campbell until the end of trial, despite it being very clear that there was no evidential foundation for it, even on the face of its own affidavits.

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139 Examples are 10AB p 492, 10AB p 553.

140 16 April 2024 Notes of Evidence at p 8.

141 Mr Leow 1st AEIC at p 391; VLL's letter of 3 January 2022 at para 2(i).

142 Transcript of 30 January 2024 at p 118 lines 13–21 and Transcript of 31 January 2024 at p 5 lines 19–24.

131 Ms Fu testified in her affidavit that Mr Tiong Keh Min ("Mr Tiong"), the Vice-President (Finance) of an affiliated company under the Crescendas group of companies,[143] had represented to her that the hotel would not keep to the occupancy limit of two persons to a room.[144] She relied on messages sent by Mr Tiong that said that "[u]nder normal circumstances hotel occupancy is max at two pax", "but of course for bigger room, more than two guest is allowed". In Ms Fu's affidavit, she also sought to rely on an excel spreadsheet sent to Campbell which stated the capacity of each room in the Premises, including that particular rooms could be occupied by up to four adults and one child.[145]

132 It is clear from Ms Fu's affidavit, that the alleged representations from Marchmont, even if true, only related to bigger rooms, such as a room containing two king-sized beds or a room containing one queen bed and two single beds, and not all rooms. Ms Fu accepted on the stand that it was her own idea that "bigger" meant any room that could fit in bunk beds.[146] It is also clear from Ms Fu's 21 December 2021 Email 1, that the 21 rooms she listed as being in breach of the Occupancy Limit, were not confined to rooms that were bigger in terms of size. There was hence clearly no basis for Campbell's case that Marchmont was estopped from alleging that Campbell had breached the Occupancy Limit, even on the alleged representations that Campbell relied on. Yet, Campbell chose to maintain this defence up to the end of the trial.

133 The unremedied breach of the Occupancy Limit increases Marchmont's regulatory risk exposure, as well as the risk of loss or damage to the Premises

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143 1st affidavit of evidence-in-chief of Mr Tiong Keh Min dated 24 August 2023 at para 1.

144 Ms Fu 1st AEIC at p 1028.

145 Ms Fu 1st AEIC at p 305.

146 Transcript of 23 January 2024 at p 65 lines 7–15; p 68 lines 21–25; p 69 lines 7–13.

and to injury or loss of lives at the Premises.[147] Such risk is accentuated by Campbell's breaches of the Insurance Requirements, which was intended to provide Marchmont with insurance coverage to handle risks. These are not mere technical breaches. Taken together, they could substantially prejudice Marchmont.

134 In relation to the Insurance Requirements, Campbell was, at the very least, negligent in not meeting the Insurance Requirements from the beginning of the lease term despite being contractually obliged to do so. Furthermore, it deliberately maintained since VLL's letter of 22 March 2022 till up to trial, that it was impossible to comply with the Insurance Requirements, despite this not being a known legal defence and not having any legal authority as a basis for this. When queried by the Court on this at a case conference less than a week before the start of the trial, counsel for Campbell confirmed that no authority had been provided in support of this defence and informed that this has not been looked into. After being asked to provide its submissions and supporting authorities, it abandoned such a legal defence at the first day of trial.[148] At the very least, Campbell has deliberately chosen not to remedy the Insurance Requirements, despite it being very clear that it had no legal basis for its defence of impossibility.

135 In its Closing Submissions, Campbell also submits that it is ready, willing, and able to comply with the conditions ordered by the Court if relief is granted.[149] Preliminarily, this may include procuring insurance policies set forth by the court which may be complied with under Singapore law. I have

147 Mr Leow 1st AEIC at para 92.

148 Transcript of 17 January 2024 at p 9 line 23 to p 10 line 19.

149 Defendants' Closing Submissions at para 114.

considered this. However, as highlighted above, Campbell's primary legal defence leading up to the trial was that the Insurance Requirements are impossible to comply with. I hence do not find sufficient evidential basis to have the confidence that such a condition, as now suggested by Campbell, would be workable. It was held in *Pacific Rim Investments* at [41], citing *Shiloh*, that equity may provide relief in "appropriate and limited cases … where the primary object of the bargain is to secure a stated result which can be effectively attained when the matter comes before the court … and the forfeiture provision is added by way of security for the production of that result". Given Campbell's position and conduct with respect to the breaches of the Occupancy Limit and the Insurance Requirements in the lead up to trial, as set out above, I do not find this to be such a case. I am of the view that there should not be relief pursuant to s 18(3) of the CLPA and therefore order that Marchmont be entitled to possession of the Premises.

Repudiation of lease

136 In its Statement of Claim ("SOC") at para 47, Marchmont pleaded that alternatively, by reason of the matters relating to NOB 2, NOB 3, and NOT 2 (set out in paragraphs [16]–[46] of the SOC), Campbell evinced an intention not to comply with its obligations under the Tenancy Agreement and was accordingly in repudiatory breach of the Tenancy Agreement.

137 After the close of trial and the exchange of three sets of written submissions, Marchmont applied for permission under O 9 r 9(11) of the ROC 2021, to amend para 47 of the SOC, to include repudiatory breach pursuant to matters under NOB 1. As held in *Tang Chay Seng v Tung Yang Wee Arthur* [2010] 4 SLR 1020 at [8] and [11], the court will only allow an amendment if it "would enable the real issues between the parties to be tried"

and will be "careful to differentiate between an amendment that merely clarifies an issue in dispute and one that raises a totally different issue at too late a stage", only allowing the latter. I did not grant Marchmont permission for this amendment as it cannot be said that the issue was live during the trial or that Marchmont's evidence was consistent with the amendment that it sought to make. The amendment was also not merely clarificatory in nature. I have set out my reasons for this more fully in the Notes of Evidence,[150] and briefly outline my reasons here:

(a) Amongst other things, Marchmont did not have any substantial evidence in relation to repudiatory breach for NOB 1 matters. The only evidence on repudiatory breach came from Marchmont's main witness, Mr Leow, who only stated in his AEIC at [5(b)(iv)] that Marchmont filed an action against Campbell seeking, as alternative to double rent or double value, damages for repudiatory breach. He did not testify that repudiatory breach arose in relation to NOB 1 or any other incident. The only correspondence from Marchmont or TKQP that refers to repudiatory breach, exhibited by Mr Leow, is in NOB 3 at para 15 (and possibly para 13).[151] These paragraphs state Marchmont's position that Campbell was in repudiatory breach of the Tenancy Agreement, but do not refer to NOB 1. Indeed, there is no correspondence specifically referring to a repudiatory breach in relation to NOB 1.

(b) Furthermore, Marchmont accepted that one of the elements of repudiatory breach is the acceptance of the renunciation and termination

150 16 April 2024 Notes of Evidence at pp 12–16.

151 Mr Leow 1st AEIC at p 969.

of the contract on the basis of such repudiation.[152] *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2nd Ed, 2022) at paras 17.010 and 17.297 set out this proposition. At para 17.297, it states that "an innocent party is only taken to have accepted a breach so as to discharge the contract if its words or actions clearly and unequivocally demonstrate this". However, there is no testimony or documentary evidence that Marchmont accepted that the Tenancy Agreement was terminated due to a repudiatory breach in reliance on matters under NOB 1. NOT 1 proceeds to terminate the tenancy on the basis of cll 10(1) and 4(13) of the Tenancy Agreement. NOT 2 proceeds to terminate the tenancy on the basis of cl 10(1) of the Tenancy Agreement, in relation to matters under NOB 2 and NOB 3. Neither NOT 1 or NOT 2 stated that termination was on the basis of a repudiatory breach.

(c) Hence, even if the amendment to the pleading was allowed, Marchmont would not have been able to establish a key element of its case for repudiatory breach on the basis of NOB 1.

138 I thus proceeded on the basis of Marchmont's pleadings at it stands in the SOC, which limits repudiatory breach to matters under NOB 2 and NOB 3. In view of my findings above, that Marchmont is entitled to forfeit the Tenancy Agreement on the basis of NOB 2 and NOT 2, it is not necessary to examine Marchmont's alternative position that Campbell was in repudiatory breach of the Tenancy Agreement.

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152 16 April 2024 Notes of Evidence at pp 12 and 14.

139 In the course of submissions, the question was raised of whether the requirements under s 18(1) of the CLPA applied to Marchmont's acceptance of Campbell's repudiatory breach,[153] *if* the doctrine of repudiation applies to tenancy agreements. I note that there is academic writing that takes the position that a literal reading of s 18(1) of the CLPA may mean that the protections therein do not apply to repudiation, but that this would be "unattractive": Aedit Abdullah, "Repudiation of Leases – *David Tan Soo Leng v Lim Thian Chai Charles & Anor*" [1998] SJLS 438 at p 447. Vinodh Coomaraswamy J has held that "a lease creates a proprietary interest vested in the tenant. So where it is the *tenant* who is in repudiatory breach of a lease, it seems that the rules of forfeiture, of relief against forfeiture and of re-entry arising under the law of leases continue to apply": *Ritzland Investment Pte Ltd v Grace Management & Consultancy Services Pte Ltd* [2014] 2 SLR 1342 at [99]. Similarly, in *Protax* at [67], Chan JC was of the view that it would be wrong to allow the common law doctrine of repudiation to circumvent the protection or relief otherwise available to tenants against forfeiture of their leases. I see policy merit in the application of the s 18(1) of the CLPA protection to instances of repudiatory breach of a lease.

140 At the same time, I also note that there have been Australian authorities which take the position that Australian provisions, which are *in pari materia* with s 18 of the CLPA, do not extend to repudiatory breach: *Markham Real Estate Partners (KWS) Lty Ltd v Misan* [2022] NSWSC 733 at [110]; *Apriaden Pty Ltd v Seacrest Pty Ltd* [2005] VSCA 139 at [69]. This led to legislative amendments of s 146(1) of the Property Law Act 1958 (Victoria, Australia) to explicitly include breaches amounting to repudiation under its ambit. Similarly,

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153 Claimant's Reply Submissions at para 74.

the Law Commission of the United Kingdom has recognised that if the doctrine of repudiatory breach were to apply to tenancies, the protections in the law of forfeiture would be circumvented, and thus recommended legislative intervention: Law Commission Report No. 142, *Codification of the Law of Landlord and Tenant – Forfeiture of Tenancies* (1985) at para 4.7. While this issue does not arise in the instant case for the reasons I have set out, I flag out the above for the consideration of whether legislative amendments to s 18(1) of the CLPA may be merited, to make clear that it applies to repudiatory breaches of leases as well.

Remedies of double value or double rent

141 Marchmont also claims against Campbell for double the value or double the rent for the period of holding over, pursuant to s 28(4) of the CLA. Section 28(4) of the CLA provides that:

> Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not.

142 I consider two issues in relation to Marchmont's claim for double value or double rent, which are:

(a) Whether holding over requires a tenant to refuse to deliver possession with the knowledge that he has no right to remain in possession?

(b) What is the effect of waiver of forfeiture on the period of holding over?

Intention or knowledge not required for holding over

143 Campbell's main submission here relies on *Lee Wah Bank Ltd v Afro-Asia Shipping Co (Pte) Ltd* [1992] 1 SLR(R) 740 ("*Lee Wah Bank*"). There, the Court of Appeal held at [17], that the expression "holding over" in s 19(4) of the Civil Law Act 1909 (Cap 43, 1988 Rev Ed) "requires an intention on the part of the tenant to refuse to deliver up the premises with knowledge that he has no right to remain in possession".[154] This provision is in *pari materia* with s 28(4) of the CLA. Campbell submits that it did not have the knowledge that it had no right to remain in possession. This because it has, since the onset of this dispute, maintained its legal position that: (a) the notices of breach issued by the Claimant were invalid under s 18(1) of the CLPA; (b) Marchmont had waived its right to forfeiture by way of its post notice conduct; and (c) relief against forfeiture should be ordered.[155]

144 Marchmont also relies on *Lee Wah Bank* for the definition of holding over, at [15], which states that to establish holding over, the landlord "must show that even after the expiration of their tenancy, the [tenants] continued to exercise a degree of possession and control over the demised premises which precluded the [landlord] from excluding them from the demised premises at [the landlord's] will". This definition excludes the requirement that the tenant has an intention to refuse delivery up with the knowledge that there is no right to remain in possession.[156] Campbell does not dispute that the exercise of possession and control is a key element of holding over, nor does it contend that it did not continue to exercise possession and control over the Premises.

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154 Defendants' Closing Submissions at para 15.

155 Defendants' Closing Submissions at paras 16–17.

156 Claimant's Closing Submissions at para 57.

145 I am unable to agree with Campbell's submission that *Lee Wah Bank* at [17] stands for the proposition that a tenant is not holding over, if he remains in possession whilst knowing that he retained a right to possession.

146 First, [15] of *Lee Wah Bank* defines holding over without mention of the elements of intention and knowledge. Second, where the elements of intention and knowledge arise in *Lee Wah Bank* at [17], it arises in the context of the court's finding that the tenant could not be said to have had the intention to refuse to deliver possession (since the tenant had returned the keys). The focus was on whether it could be said that the tenant had the *intention* to refuse to deliver possession. It was not contended that the tenant did not have knowledge that he had no right to remain in possession. In this case, Campbell clearly had the intention to refuse delivery of possession to Marchmont. Third, what Campbell is submitting relates more to the "belief" that it had the right to remain in possession rather than "knowledge". Given that the landlord is asserting its right to possession, it could not be said that the tenant could "know" that they had a right. This is particularly so when the matter was subsequently put before the court for adjudication, by Marchmont filing an action for possession. Fourth, there has not been any cases since *Lee Wah Bank* that interprets "holding over" in the manner that Campbell contends. In *Mount Elizabeth Health Centre Pte Ltd v Mount Elizabeth Hospital Ltd* [1992] 3 SLR(R) 155, the High Court at [59]–[60] cited the *Oxford English Dictionary* Vol 7 (2nd Ed) at p 299, which gave the legal definition of "hold over" as "to remain in occupation beyond the regular term". In *Wingcrown Investment Pte Ltd v Mannepalli Gayatri Ram* [2023] 5 SLR 583, the High Court at [41] referred to the defendant's knowledge that the plaintiff had terminated the agreement and that he could no longer claim any right to remain in possession. In this case, Campbell clearly knows that Marchmont had terminated the agreement.

147 In any event, even if the intention and knowledge referred to in *Lee Wah Bank* relates to whether the tenant knew that he had a right to remain in possession arising from his legal defences, such intention and knowledge must necessarily be construed objectively. The provision states that "[e]very tenant holding over after the determination of his tenancy shall be chargeable…". Holding that the intention and knowledge referred to in *Lee Wah Bank* at [17] is be construed subjectively, would effectively mean that whenever there is a dispute over whether a tenant has a right to remain in possession, the landlord would only be able to charge double the value or rent after the determination of the dispute, regardless of the objective merits of the defences, since a tenant would invariably maintain in such disputes that the landlord had no right to remain in possession. This would go against the expressed intention of s 28(4) of the CLA, which is to allow for the charging of double value or rent after the determination of a tenancy, and not only after the determination of a dispute. Campbell also accepted that such knowledge should be assessed objectively.[157]

148 Adopting this objective lens, it could not be said that Campbell knew that it had a right to remain in possession. For example, Ms Fu admitted that the particulars in NOB 2 were sufficiently clear, and that Campbell has not remedied such breaches. The grant of relief against forfeiture is also a matter of the court's discretion, and could not be said to be within the knowledge of Campbell.

149 I therefore find that Marchmont is entitled to double the value or rent under s 28(4) of the CLA. In view of this, it is not necessary to examine Marchmont's alternative claim for double the rent during the period of holding over, pursuant to cl 11(3) of the Tenancy Agreement.

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157 Defendant's Response to List of Questions at p 13.

Effect of waiver on determination of the Tenancy Agreement

150 Marchmont terminated the Tenancy Agreement by exercising its express power to terminate the agreement, either on 23 December 2021 under cll 10(1) or 4(13) of the Tenancy Agreement, at [45] above, or on 21 July 2022 under cl 10(1) of the Tenancy Agreement: at [66] above. Accordingly, as s 28(4) of the CLA provides that a tenant would be liable for double value *after the determination of the tenancy*, a purely contractual lens would suggest that the tenancy had been determined from as early as 23 December 2021, for the purposes of calculating the period for which Campbell is liable for double the value.

151 However, I have also found above at [117] to [119] that Marchmont had in fact accepted rental payments, which constituted a waiver of the right to forfeit the Premises, until Marchmont made a final determination to take advantage of its right to forfeiture by serving OC 492 on Campbell on 28 December 2022.

152 The legal effect of the acceptance of rent by a landlord with full knowledge of a breach of covenant is that "the landlord, by the receipt of rent under such circumstances, shows a definite intention to treat the lease or contract as subsisting, has made an irrevocable election so to do, and can no longer avoid the lease or contract on account of the breach of which he had knowledge": *Paulson* at 282–283. That forfeiture is waived after a subsisting tenancy is recognised by the landlord was also noted in *Protax* at [22].

153 It therefore appears to me irreconcilable that a landlord can both recognise a tenancy as subsisting by way of waiver of the right to forfeiture, and also claim that the tenancy was determined so as to claim double value under

s 28(4) of the CLA. Marchmont also accepts that as a matter of principle, if the Court finds that there is waiver, there would be no holding over for the period for which there was waiver.[158] Furthermore, it is a general principle of law that a person may not "approbate and reprobate", which was endorsed by the Court of Appeal in *BWG v BWF* [2020] 1 SLR 1296 at [102]:

> **Approbation and reprobation**
>
> 102 The foundation of the doctrine of approbation and reprobation is that the person against whom it is applied has accepted a benefit from the matter he reprobates … The doctrine of approbation and reprobation has also been referred to as a principle of equity that a person "who accepts a benefit under an instrument must adopt it in its entirety giving full effect to its provisions and, if necessary, renouncing any other rights which are inconsistent with it" … We endorse Belinda Ang Saw Ean J's description of the doctrine in *Treasure Valley Group Ltd v Saputra Teddy and another (Ultramarine Holdings Ltd, Intervener)* [2006] 1 SLR(R) 358 ("Treasure Valley") at [31]:
>
> > The doctrine of approbation and reprobation precludes a person who *has exercised a right from exercising another right which is alternative to and inconsistent with the right he has exercised*. It entails, for instance, that a person 'having accepted a benefit given him by a judgment cannot allege the invalidity of the judgment which conferred the benefit' …
>
> [emphasis in original]

154 It is antithetical to the doctrine of approbation and reprobation that Marchmont would be permitted to accept the benefit of rental payments derived from the tenancy, while also maintaining that the tenancy has been determined. I am therefore of the view that, for the purposes of assessing the holding over period, due to Marchmont's affirmation of the lease and waiver of forfeiture by its acceptance of rental payments tendered by Campbell, Marchmont had not

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158 Claimant's Responses to List of Questions at p 14.

determined the tenancy until final determination of the tenancy on 28 December 2022.

Period of holding over

155 The period of holding over therefore begins from the determination of the tenancy as of 29 December 2022, *ie,* one day after service of OC 492, to the period of delivery of possession of the Premises to Marchmont.

Remedies claimed

Ms Fu and Mdm Wang are liable under the Deed of Guarantee

156 Marchmont's claims against Ms Fu and Mdm Wang are made pursuant to the Deed of Guarantee.[159] Ms Fu and Mdm Wang do not contest the formation and understanding of the Deed of Guarantee and their capacity to enter into it. Their Defence has been amended to remove their initial defences to the Deed of Guarantee on these grounds.[160]

157 Under cl 1 of the Deed of Guarantee, Ms Fu and Mdm Wang guaranteed the performance and observance by Campbell of the terms of the Tenancy Agreement, and agreed to pay to Marchmont the rent due from Campbell and all sums of money owing to Marchmont from Campbell as principal debtors.[161] Under cl 9(b), Ms Fu and Mdm Wang undertook to indemnify Marchmont on a full indemnity basis against all loss, damage, liabilities, claims on Marchmont, costs and expenses incurred by Marchmont arising from the Tenancy Agreement, and all legal costs and other costs and disbursements related to

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159 Mr Leow 1st AEIC at pp 217–281.

160 Defence at pp 2–3.

161 Mr Leow 1st AEIC at p 218.

investigation or enforcement proceedings.[162] Each guarantor's liability shall be joint and several under cl 21(c).

158 As Ms Fu and Mdm Wang have not raised any valid defence which is separate from the defences Campbell had pleaded, I find that Ms Fu and Mdm Wang are jointly and severally liable, pursuant to the Deed of Guarantee, for the sums that Marchmont claims against Campbell.

Defendant's counterclaim

159 Following from the above holdings, I accordingly dismiss all the prayers in the Defendant's counterclaim, except in respect of its prayers for declarations that NOB 1 and NOB 3 are invalid for the purposes of s 18(1) of the CLPA.

Claimant's claims for reliefs

160 Marchmont seeks against the Defendants, the following reliefs:[163]

(a) possession of the Premises and damages to be assessed for the Premises to be cleaned and reinstated to the original state and condition (if costs are to be incurred to achieve the same);

(b) "[d]ouble the value" to be assessed pursuant to s 28(4) of the CLA for the period of holding over;

(c) damages to be assessed for the loss of rent, starting from the day after the date of delivery of possession of the Premises to Marchmont to

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162 Mr Leow 1st AEIC at p 222.

163 Claimant's Closing Submissions at para 291.

31 July 2024 (being the last day of the tenancy period provided for under the Tenancy Agreement);

(d) interest at 18% per annum under cl 9 of the Tenancy Agreement; and

(e) costs on an indemnity basis under cl 9(b) of the Deed of Guarantee and cl 17(2) of the Tenancy Agreement.

161 The obligation to reinstate the Premises to the original state and condition is found in cl 11(2) of the Tenancy Agreement. The claim for interest is provided for in cl 9 of the Tenancy Agreement. Indemnity costs are also provided for in cl 17(2) of the Tenancy Agreement and cl 9(b) of the Deed of Guarantee. Campbell informed the Court that it did not contest the reliefs sought for damages for reinstatement costs, interest at 18% per annum, and indemnity costs.[164] The reliefs for possession and damages under [160(b)] and [160(c)] follow from my holdings above. I accordingly order the reliefs set out above at [160], with the period of holding over starting from 29 December 2022.

162 As OC 492 has been bifurcated by consent in HC/ORC 5959/2023 on 13 December 2023, the damages in relation to the costs of reinstatement, double value, and loss of rent are to be assessed by the Registrar, as prayed for by Marchmont.[165]

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164 16 April 2024 Notes of Evidence at p 11.

165 16 April 2024 Notes of Evidence at p 10.

Conclusion

163 In conclusion, I allow Marchmont's claims as set out above. I also find Ms Fu and Mdm Wang liable under the Deed of Guarantee for the sums Campbell is liable to pay to Marchmont under the Tenancy Agreement. Campbell's counterclaim is dismissed, except for its prayers for declarations that NOB 1 and NOB 3 are invalid under s 18(1) of the CLPA.

164 If parties are unable to agree on costs, they are to provide their submissions on costs within 10 days of this Judgment.

Kwek Mean Luck
Judge of the High Court

Marina Chin Li Yuen SC, Darren Ng Zhen Qiang, Gitta Priska Adelya and Nayo Leong (Tan Kok Quan Partnership) for the claimant;
Goh Aik Leng Mark and Ong Boon Chong (VanillaLaw LLC) for the defendants.