Saatchi & Saatchi Pte Ltd and Others v Tan Hun Ling (Clarke Quay Pte Ltd, Third Party) [2005] SGHC 232

Case Number : Suit 2/2004

Decision Date : 15 December 2005

Tribunal/Court : High Court

Coram : Belinda Ang Saw Ean J

Counsel Name(s) : Foo Yuk Lin (Foo Chia Partnership) for the plaintiffs; Subramaniam A Pillai (Acies Law Corporation) for the defendant; P E Ashokan (KhattarWong) for the third party

Parties : Saatchi & Saatchi Pte Ltd; Zenith Media Pte Ltd; KIV — Tan Hun Ling — Clarke Quay Pte Ltd

Tort – Negligence – Breach of duty – Damage caused to plaintiffs' property after fire on defendant's premises spread – Fire allegedly caused by leaving wok of cooking oil to heat on stove unattended – Defendant raising defence of inevitable accident – Whether defendant's negligence causing fire – Whether damage caused by fire foreseeable

Tort – Negligence – Causation – Damage caused to plaintiffs' property after fire on defendant's premises spread – Fire spreading due to build-up of grease in exhaust ducts – Whether defendant liable for damage caused – Whether chain of causation broken by omission of third party to clean exhaust ducts – Whether third party liable for damage caused

Tort – Negligence – Contributory negligence – Damage caused to plaintiffs' property after fire on defendant's premises spread – Fire spreading due to build-up of grease in exhaust ducts – Whether first plaintiff guilty of contributory negligence for locating server room near exhaust duct

15 December 2005

Belinda Ang Saw Ean J:

1 This is an action by the plaintiffs claiming damages against the defendant in negligence for damage caused to the first plaintiff's office premises, furniture, fixtures and fittings as well as equipment belonging to both plaintiffs. The first plaintiff is Saatchi & Saatchi Pte Ltd ("Saatchi") who is the tenant of #03-01, Block 3D, Clarke Quay, and the second plaintiff is Zenith Media Pte Ltd, a subsidiary of the first plaintiff. The defendant is Tan Hun Ling ("Tan"), the sole proprietor of Sin Lok Cuisine. At the material time, Tan was the tenant of #01-03 located in Block 3D from where he operated his seafood restaurant, which was then known as Hong Kong Seafood Place. The defendant has brought in his landlords, Clarke Quay Pte Ltd, as a third party. The trial before me was limited to the liability issue.

2 A fire started in the defendant's kitchen on 13 November 2002. The defendant's kitchen was located on the second floor of Block 3D. Saatchi's office was immediately above the kitchen. The fire started sometime in the morning. The exact time the fire started was imprecise but nothing turned on this. The fire caused some sprinklers in the kitchen to be activated and after 20–30 minutes, the defendant's cook, Lam Chee Keong ("Chee Keong") managed to douse the fire. By the time fire fighters from the Singapore Civil Defence Force ("SCDF") arrived at the scene, the fire appeared to have been completely extinguished. In fact after some checks, SCDF was satisfied that the fire was put out. Fortunately, the fire crew was still on site when someone reported a fire in the building. According to Warrant Officer Azmi Hasan ("Azmi"), he went to the third floor at about 12.00pm. Other witnesses, like Tan, recalled someone coming into his restaurant to report a fire in Saatchi's office at 1.00pm. Mohd Rizal ("Rizal"), the operations executive of the third party, recalled going up to Saatchi's office with the SCDF officers at about 1.00pm or shortly thereafter. Azmi's superior,

Capt Alan Toh ("Toh"), arrived at the scene at 1.15pm.

3 A fire was discovered in the first plaintiff's server room at one corner of the false ceiling. The fire was from the exhaust duct. Access to the rooftop was through the first plaintiff's office on the third storey. Burnt wooden ventilation panels at the chimney area had fallen through the broken skylight. The skylight was broken either by falling debris or roof tiles from the chimney nearby or both. Nobody was certain about this but it was clear that fallen hot debris had burnt through the ceiling board in the server room.

4 The plaintiffs' pleaded case is that a wok with a quantity of cooking oil was left on the stove to heat unattended. There was overheating and fire broke out. At the hearing, Chee Keong confirmed that the same cooking oil that he had used on previous occasions was being recycled for the morning's cooking.

5 The defendant raised the defence of inevitable accident. In other words, the fire was purely accidental. With that, the burden was on the defendant to prove that the fire was accidental in that it was not deliberate or due to negligence. It is the defendant's case that the cooking oil suddenly splattered and caught fire when it came into contact with the gas-lit stove. Through Chee Keong, the defendant asserted that water had dropped into the wok of oil and that caused the oil to splatter. Everything that happened was beyond the control of the defendant's servants or was unavoidable by the exercise of any reasonable care or caution.

6 Mr Subramaniam Pillai for the defendant contends that Azmi's testimony on which the plaintiffs rely is hearsay, as the plaintiffs had not called the kitchen hand, Lam Hai Seng ("Hai Seng") to testify. The SCDF's report dated 15 January 2003 identified Hai Seng as the person who had forgotten about the cooking oil left to heat on the stove. Azmi's testimony in this area is not entirely hearsay. His investigations at the scene of the fire did not throw up inconsistencies to contradict the story gathered at his interview with Hai Seng as to how the fire started. The identity of the person who heated the oil was not so relevant. Putting aside Azmi's testimony, the evidence before me still pointed to a lack of attention given to the cooking oil left to heat on a lit stove to a point that it combusted. The plaintiffs' expert, Low Eng Huat ("Low") explained that in the case of used cooking oil, the self-ignition temperature is lower, which means that combustion takes place much sooner than in the case of virgin oil whose self-ignition temperature is higher.

7 According to Chee Keong, his assistant cook "Henry" lit the stove to heat the cooking oil on his instructions. Henry walked away from the kitchen after turning on the flame and gas supply as Chee Keong had told Henry to go for his lunch. Chee Keong also confirmed that he and Hai Seng were in the kitchen. The rest of the workers were outside having their lunch. Chee Keong had his back to the wok and his attention was directed at sorting out and preparing the fish head for frying. Hai Seng was busy cutting the vegetables. Then a fire broke out causing damage to the immediate surrounding areas of the stove.

8 Although Chee Keong was in the kitchen, he did not see how the fire started. Chee Keong in his written testimony stated that he heard a splatter of oil and as he turned around, the wok and the surrounding areas of the stove were already on fire. In cross-examination, he departed from his written statement. He also vacillated when it came to this incident concerning the alleged splatter of oil which he claimed caused the fire. His testimony was conflicting on two matters[note: 1]: (a) as to whether he actually saw the oil splatter or he simply heard the splatter of oil, and (b) when exactly and why he turned around from his worktable. Mr Pillai downplayed Chee Keong's inconsistent evidence, offering as excuses Chee Keong's limited formal education and the constraints associated with testifying in Mandarin, all of which I do not accept as meriting any serious consideration. With

the different variations in Chee Keong's answers, I find Chee Keong's testimony on the alleged incident involving a splatter of oil to be unreliable.

9 The plaintiff's expert testified that some water could be found in used cooking oil. As used oil heats up, a crackling sound is heard. That was as far as the evidence went. If anything, in all probability, Chee Keong heard this crackling sound which he mistook for a splatter of oil. For completeness, I should mention that the defendant led no evidence to support his theory that the splatter of oil was due to water dropping into the wok from either water condensation at the cooker hood or water from the overhead sprinkler.

10 Mr Pillai argued it was not foreseeable that fire in the kitchen would ignite oil residue within the exhaust ducting and cause such widespread damage from hot debris falling through a broken skylight onto the false ceiling in the server room. It was also not foreseeable that falling hot debris from burnt wooden ventilation panels at the chimney would fall onto the skylight, crack it and enable rain to ingress into the first plaintiff's premises.

11 These contentions do not assist the defendant. The law is clear. The test of liability for damage done by fire is the foreseeability of the injury by fire. If a reasonable man would not have foreseen such injury, the defendant would not be liable in negligence for the damage even though its servant's carelessness was the direct cause of the damage: see *Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd (The Wagon Mound)* [1961] AC 388. Once the type of damage is shown to have been foreseeable, it is no defence to the plaintiff's case to assert that the full extent of the damage could not have been foreseen or the particular method by which the damage was caused could not have been foreseen: see *Hughes v Lord Advocate* [1963] AC 837.

12 It is, or should be, known to a reasonable person that leaving anything on a lit stove unattended poses a risk of fire or smoke damage. A person is negligent if he does not foresee what a reasonable person in his position would have foreseen in similar circumstances. *Sheik Amin bin Salleh v Chop Hup Seng* [1974] 2 MLJ 125 is an illustration of the same duty of care. In that case, the court held that the failure of the defendant to have someone keep watch over the premises until the fire had been put out or extinguished was itself sufficient evidence of negligence. In this case nobody was actually keeping an eye on the oil that was left to heat. A fire broke out causing damage to the immediate surrounding areas of the stove. This was caused by Chee Keong's action in firstly allowing, and then leaving, the wok of oil to heat unattended. As there were no plausible alternative causes of the fire, Low opined that the oil in the wok must have been heated to a temperature where self-ignition or boilover occurred. Once the oil ignited it would have sustained a fire. A kitchen fire is not unexpected and it is therefore necessary for any reasonable person to avoid in any way possible such an occurrence and, secondly, to have in place measures to combat such a fire should it occur.

13 I have no difficulty in finding that the act of leaving the oil to heat unattended amounted to negligence for which the defendant is vicariously liable. It was foreseeable that the wok left to heat unattended could become a fire hazard. A reasonable person in the position of the defendant would have foreseen in similar circumstances that if there was a fire and it was not contained, it could spread to other units in the same building.

14 A question at this trial is whether the spread as opposed to the starting of the fire was caused by any negligence on the part of the defendant. Was the defendant responsible for the spread of the fire as opposed to its starting? The acts of negligence pleaded related to the failure to take any adequate step to prevent the fire from escaping and spreading to the first plaintiff's premises.

15 Even though the flames in the kitchen itself were doused, the fire was not completely extinguished. The defendant, his servants or SCDF who at that time were still on site, did not know of this fact. The whole section of the exhaust duct was concealed – either boxed up by walls or part of it was above false ceilings – so much so that any fire within the duct was unlikely to have been noticed until sometime later when it had spread outside the duct. I do not think this absence of knowledge excuses liability, if any.

16 I pause here to describe the layout of the exhaust ducting system. The vertical section of the exhaust duct ran between two reinforced concrete walls. The gap between the wall and ducting was 0.5m. Rizal confirmed that the ducting could not be dismantled. There was an access point to the exhaust fan on the third floor through a door in the first plaintiff's premises which was concealed by a movable partition. Rizal confirmed that it was not possible to gain access from this door to clean the inside of the exhaust ducting. At no time was the defendant shown the access door to the exhaust fan. Neither was he aware that the exhaust ducting ran through the second and third floors to the exit at the roof. The exhaust duct opening at the roof was enclosed within a chimney with wooden louvres.

17 There is no evidence that the second fire had an independent origin. It is accepted that the exhaust ducting was never maintained or cleaned by anyone during the defendant's tenancy. The premises were previously occupied and operated as a Kentucky Fried Chicken ("KFC") outlet until 1999. It was vacant for about two years before the defendant took over the same unit. The third party's evidence was that the exhaust duct was not maintained by the landlord during the time the premises were occupied by KFC and the defendant. There was no evidence that KFC had in fact maintained or cleaned the exhaust duct.

18 Low confirmed that the fire in the kitchen was a sustained fire. A sustained fire (as opposed to a flash fire which self-extinguishes) would continue to burn either in the form of a flame or a smoulder and could cause ignition of combustible material nearby. Low agreed with Mr Pillai that the fire must have been sustained by oil deposits and residues that would have been in the exhaust duct over the years. He opined that the fire at the ceiling board in the server room was "most certainly" caused by ignition of oil deposits and residues in the exhaust duct that was connected to the cooker hood in the kitchen. He explained that a sustained fire of the nature experienced in this case heated the aluminium filters and exhaust duct that were directly over the cooker hood and caused the oil deposits and residues to ignite. The fire was undisputedly intense. It was not disputed that the edges of the aluminium filters had melted under the cooker hood.

19 On the evidence before me, I had no difficulty accepting that firstly, the fire that started at the stove area was not completely extinguished and secondly, that the later fire was a development of the original fire in the defendant's kitchen. The fire started in the kitchen and it continued to smoulder and develop unseen inside the exhaust duct works, eventually slowly spreading to the chimney at the rooftop.

20 It cannot be denied (and it was not) that deposits of grease and cooking oils occur in the body of the duct works as the vaporised grease and cooking oils condense in the cooler part of the system. Accumulation of grease and cooking oils can develop over time presenting, as Low indicated, a significant fire risk. I generally accept the evidence before me that accumulated grease (and cooking oils) within an exhaust system forms a hidden combustion load. Under certain circumstances, flames or very high temperature within the exhaust duct can ignite the grease causing fire to spread through the exhaust duct. I find that flame and heat within the exhaust duct can and did ignite surrounding materials at various points along the path of the ducting. From the evidence, the exhaust fan was badly damaged. Low testified that the fire must have been sustained at that area to have

melted the aluminium fan blades. Beyond the exhaust fan, the flame or heat within the exhaust duct ignited oil deposits along the path of the duct works upwards to the roof. Toh testified that when he first looked into the space created by the false ceiling board in the server room, he noticed smouldering wooden structures which he later realised were part of the exhaust duct system. Hot debris from the burnt chimney louvres fell through the broken skylight and landed on the ceiling board in the first plaintiff's server room. The third party did not dispute that the hot debris were from the chimney louvres. In my judgment, I find that the fire in the false ceiling was caused by the fire in the kitchen which developed unseen in the exhaust duct in the aforementioned manner.

21 The cleaning cycle in the kitchen was a twice-a-week routine every Monday and Friday. Chee Keong spoke of a twice-a-week cleaning regime of the cooker hood and grease filters with detergent. The filters would be dismantled for washing. Chee Keong would clean just the duct opening as he could reach no further into the exhaust duct works which were narrow and dark. In other words, he did not clean the inaccessible areas. According to the defendant, there was no cleaning of the exhaust duct works by cleaning specialists, as it was not the responsibility of the defendant to see to that. The third party, on the other hand, disclaimed responsibility for cleaning, pointing instead to the defendant since part of the exhaust duct works passed through the void space above the false ceiling of the defendant's unit and thus formed part of the demised premises. The exhaust duct works system as built was not provided with access panels of sufficient number and size to enable unrestricted access for regular cleaning and inspection of the internal surfaces and in-line components. Neither the defendant nor the third party called a specialist cleaner of ventilation systems of this nature to testify on the relevant cleaning regime.

22 Chee Keong, in cleaning as far as he could reach into the exhaust duct while standing on the stove, was no doubt aware that some part of the interior of the duct should be cleaned. He confirmed that he did run his hand over the top of the cooker hood but that he could not get his hand further because of the narrowness of the opening. As far as the evidence went, some cleaning was done. His testimony on limited access was not challenged. Rizal concurred that the defendant's obligation was to clean as far as he could reach and see visible deposits of oil and grease.

23 It is a matter of common sense that cleaning on a regular basis only means that a build-up of any amount of grease within the cooker hood is minimised. As of the day of the fire, the cooker hood and filters, including the exhaust duct opening, were last cleaned on a Monday. By reference to the situation at the time of the fire (the fire happened on a Wednesday after the last clean-up of the cooker hood and filters on Monday), it is not an unreasonable or an implausible deduction that there would have been some grease residue on or under the cooker hood from the previous day's cooking. I find that a key component in the spread of the fire was some element of grease or oil under the hood and the pre-existing grease and oil deposits inside the exhaust duct. In my judgment, the type of damage was foreseeable.

24 Mr Pillai argued that the chain of causation that led to the fire was broken because the accumulation of grease and cooking oils which had developed within the ducting was due to the failure of the third party to maintain and clean it. He submitted that the plaintiff's claim against the defendant should accordingly be dismissed.

25 When considering whether a particular event has operated to break the chain of causation, I refer to Lord Reid's speech in *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004 at 1027–1028:

> And I must consider to what extent the law regards the acts of another person as breaking the chain of causation between the defendant's carelessness and the damage to the plaintiff.

> There is an obvious difference between a case where all the links between the carelessness and the damage are inanimate so that, looking back after the event, it can be seen that the damage was in fact the inevitable result of the careless act or omission and not a case where one of the links is some human action. …
>
> On the other hand, if human action (other than an instinctive reaction) is one of the links in the chain it cannot be said that, looking back, the damage was the inevitable result of the careless conduct. No one in practice accepts the possible philosophical view that everything that happens was predetermined. Yet it has never been the law that the intervention of human action always prevents the ultimate damage from being regarded as having been caused by the original carelessness. The convenient phrase novus actus interveniens denotes those cases where such action is regarded as breaking the chain and preventing the damage from being held to be caused by the careless conduct. But every day there are many cases where, although one of the connecting links is deliberate human action, the law has no difficulty in holding that the defendant's conduct caused the plaintiff loss.

26 Potter J in *Crown River Cruises Ltd v Kimbolton Fireworks Ltd and London Fire & Civil Defence Authority* [1996] 2 Lloyd's Rep 533, in referring to the above speech, accepted and observed that it was more difficult to establish a break in the chain of causation when the event relied on was an inanimate act, or the omission of a third party which formed one of the links between the negligent conduct and the damaged complained of. The present case falls into this situation. It does not matter, as far as the plaintiff is concerned, who has the responsibility to maintain the exhaust duct works. The fact of the matter is that the duct works were not cleaned and maintained and, as I have found, there was an accumulation of grease and oil deposits along the duct works. Even if the cleaning of the duct works was the responsibility of the third party and the third party did not do so, I do not think that that should break the chain of causation. The development of the fire was an inanimate physical process within the duct works unseen by anyone. The duct works had deposits of grease and oil accumulated over the years. The original fire for which the defendant is liable is the causal link to the resultant fire at the first plaintiff's premises.

27 In my judgment, the whole sequence of events as discussed was a natural and probable consequence of the defendant's negligence and a reasonably foreseeable result of it. The defendant is liable in damages to the plaintiffs in respect of damage caused to the premises, furniture, fittings, fixtures and equipment. The skylight was damaged in the fire. I find that the fire in the server room was reported to SCDF at 1.00pm or shortly thereafter. Toh arrived at about 1.15pm. Whether or not Toh was involved in the fire-fighting efforts from the rooftop, the fact of the matter was that as late as 1.15pm, the fire-fighting efforts were still ongoing. That period of time coincides with the evidence from the officer from the meteorological department that the heaviest rainfall that day was between 1.00pm to 2.00pm. Although Azmi directed the computers to be covered, he was in no position to testify that his orders were carried out. He was out of the room and had gone up to the roof. Rizal testified that the computers were covered after the fire was put out. That evidence sounded more plausible (and I accept his testimony) as I cannot imagine that anyone would want to remain in the office with a fire in one of the rooms to save some equipment instead of their own lives. Chong Tat Ming from the plaintiffs said that the staff had vacated the premises. So did Tan and his staff on the floor below. Twenty minutes later, Tan was summoned by SCDF to view the damage in the server room. He was shown the server room where he saw some of the computers in the server room damaged by fire. On the claim for damage to property outside the server room, I agree with Ms Foo's submission that if the roof of a building was damaged by fire and property exposed to rain was damaged by the rain, it could not be argued that such wet damage was not foreseeable as a natural and probable consequence of the fire.

28 There is no merit in the defendant's allegation that the first plaintiff was guilty of contributory negligence in locating the server room near the exhaust duct. As Ms Foo submitted, the first plaintiff occupied the premises first since 1997 whereas the defendant took up the lease which only commenced in August 2001. Dawn Tan of the third party testified that KFC was still occupying the unit below when the first plaintiff moved in. Regardless of who was in occupation first, the fallacy of the argument lies in the failure to recognise the first plaintiff's entitlement to have use and quiet enjoyment of the rented premises. In fire cases grounded on private nuisance, the essence of the tort is the protection of a tenant who has possession of the unit to enjoy his premises undisturbed: see *Epolar System Enterprise Pte Ltd v Lee Hock Chuan* [2003] 2 SLR 198 at [10] approving a passage in *Clerk & Lindsell on Torts* (Sweet & Maxwell, 17th Ed, 1995) at 889 which states that the essence of nuisance is a condition or activity which unduly interferes with the use or enjoyment of land. A parallel reasoning applies where negligence is pleaded.

29 I now turn to the terms of the letter of 30 May 2001 and tenancy agreement dated 30 July 2001. Mr P E Ashokan for the third party has argued that the defendant was contractually obliged to maintain and clean the exhaust duct. He relied on the principal terms and conditions in the letter of offer, in particular para 1(14)(c) read with sub-para (20), which expressly states that the principal terms are part of the lease. Paragraph 1(14)(c) reads:

> You shall be responsible for cleaning and maintaining to a hygienic standard acceptable to the Landlord all air-ducting equipment and pipes, the cookerhoods or any other air-cleaning device in the Demised Premises.

30 Mr Ashokan argued that "air-ducting equipment" and "other air-cleaning device" readily included the exhaust duct. He submitted that in the mind of both parties to the contract "air-cleaning device" must be referable to the exhaust duct since the defendant wanted a ready equipped restaurant and the third party's Emily Fong had told him that the place had the approval of the authorities to operate as a restaurant. He argued that juxtaposed with the word "cookerhoods" are the terms "air-ducting equipment" and "other air-cleaning device" by which the parties intended to refer to the exhaust duct. Mr Pillai contended that "air-ducting equipment" or "air-cleaning device" would refer to exhaust hoods and air conditioning units.

31 The third party has in its letter used a comma after the word "pipes" and "air-ducting equipment and pipes" should be read together. What follows next are "cooker hoods" *or* (not *and*) "any other air-cleaning device". The use of the preposition "or" instead of "and" and "any other air-cleaning device" means other types of "cleaning devices" namely air-cleaners.

32 As a matter of common usage, the term "air-ducting" is usually referable to air-ducting for in-flow of fresh air for an environment where ventilation is inadequate or poor. I note from the mechanical ventilation air-flow schematic diagram for Block 3D[note: 2] that there is a kitchen supply fan (marked "KSF") for the supply of fresh air at the third storey and there is evidence of a fresh air ducting running adjacent to the exhaust ducting located at the third storey next to Saatchi's reception area, which was damaged in the fire and was replaced by Belfor-Relectronic (Singapore) Pte Ltd. The fresh air ducting (6m in length) was next to the exhaust duct within the exhaust riser.

33 In my judgment, the phrase "air-ducting equipment and pipes" refers to the fresh air ducting and fresh air supply fan. At any rate, these are not located within the defendant's premises.

34 On the other hand, air cleaning devices (air filters and air cleaners) are designed to remove or reduce indoor air pollutants. Most air cleaners remove particles such as dust and allergens from the air, a few remove gases (and odours) and some do both. The court can take judicial notice of the

types of air cleaners on the market: mechanical filters, electronic air cleaners and ion generators. I would regard the words "cooker hoods or any other air-cleaning device in the demised premises" in broad terms as referable to air-cleaners. The cooker hoods come with filters to trap the grease from cooking and in this case, the cooker hood in the kitchen has removable filters as Chee Keong had testified. The exhaust duct is designed to extract air and fumes from a confined space, such as the kitchen, to the outside atmosphere. The cooker or exhaust hood caps the exhaust duct to prevent expelled air from returning into the kitchen. Most exhaust systems consist of an exhaust fan, ducting and an exterior hood. In this particular kitchen exhaust system, the fan and fan motor were not in the exhaust hood. The exhaust hood (cooker hood) used an in-line fan, which was in the exhaust duct. The fan and motor were found on the third floor. The word "KEF" stands for kitchen exhaust fan and it is shown on the mechanical ventilation air-flow schematic diagram to be located on the third floor.

35 The only word that is relevant is "cookerhoods" and that is directed at the exterior hood and not the rest of the exhaust system in use, which in this case would be the fan, fan motor and duct works. My conclusion is reinforced by the undisputed testimony of Tan that before he signed the lease, he was not shown the whereabouts of the motor fan and ducts.

36 The words "any other air-cleaning device" refer to any other air cleaners like the ones I have indicated as being available in the market; the exhaust duct in itself is not such a device. I agree with Mr Pillai that the third party could have been specific in its letter of offer by stating like it did in the letter to KFC that the defendant was required to maintain the "exhaust hood, exhaust duct, and motor fan at the demised premises". In other words, the letter ought to have mentioned the exhaust system. I do not accept Mr Ashokan's contention that the third party's letter to KFC dated 21 November 1995 has probative value against the defendant. The differences in drafting showed up when compared with the KFC letter. As for the letter of offer to Tan, I would construe any ambiguity there against the third party on the basis that these were its words. If the third party had wanted the defendant to clean the whole of the exhaust duct it would, as Mr Pillai submitted, have been very easy for the third party to have drafted a condition that said so. If the third party had wanted to, it could have indicated the cleaning obligation at the start of the vertical duct attached to the cooker hood. Since it did neither of these things, then had I any doubt about it, I would construe the provision against the third party.

37 As I have indicated, the terms in the letter are the principal terms and they override the standard and general clauses in the lease. It seems to me that if the special terms do not effectively impose on the defendant the obligation to clean and maintain the exhaust duct, the general terms, in my judgment, would not be capable of achieving a different and more favourable result.

38 On a different note, the general and standard clauses relied upon do not provide the third party with a complete defence to the third party action. Mr Pillai quite rightly cited *Hong Realty (Pte) Ltd v Chua Keng Mong* [1994] 3 SLR 819 for the proposition that exemption clauses must be construed strictly and this means that their application must be restricted to the particular circumstances that the parties had in mind at the time the parties entered into that contract.

39 My reasons as to why the standard clauses in the tenancy agreement relied upon by Mr Ashokan do not assist the third party are as follows:

(a) Clause 2(12) refers to internal fan coil units at the demised premises. That clause does not and cannot be referable to the exhaust motor and fan located outside of the premises.

(b) Clause 2(18) deals with the obligation to maintain in good tenantable repair and decorative order and condition the flooring, interior plaster and other surface materials including

fixtures thereon. That clause also makes reference to "installation and fittings for light and power". The exhaust duct is outside the scope of this clause.

(c) Clause 2(19) is to keep the demised premises in a clean and hygenic condition. The reference to "all pipes, drains, basins, sinks and water closets if any in demised premises" by definition cannot include the exhaust duct which, as I have said, is designed for a different purpose. The reference to "pipes" in cl 2(19) is not to an exhaust duct.

(d) Clause 2(31) is drafted in general terms imposing an obligation to keep the demised premises and all "fixtures, fittings, installation and appliances therein in a safe condition by adopting all necessary measures to prevent any outbreak or occurrence of fire in the demised premises". Mr Ashokan argues that those general words include the "exhaust duct". I cannot see how this interpretation is sustainable in the light of my observations concerning the special clause in [29]–[37] above.

(e) Clause 2(34) is an indemnity clause aimed at claims, actions and demands by parties other than the defendant against the landlord. Here, the plaintiff did not join the third party as a defendant. Moreover, the clause made no reference to negligence or any synonym for it. Even if the clause covered claims by the defendant, the word "indemnity" is of no assistance as I have found that the third party was also guilty of negligence in not maintaining the exhaust duct works. There is a presumption in law that an indemnity would not be readily granted to a party against a loss caused by its own negligence.

(f) The proviso in cl 3(4) does not help the landlord. In this case, no cleaning was ever done by the landlord. This clause excludes liability for the landlord's cleaning contracts, agents and/or licensees.

(g) Clause 4(6) is aimed not at injury and damage or loss to property, goods, chattels belonging to another tenant like the first plaintiff. The language of the clause is directed at the defendant and "licensees" as can be seen from the words "to others who may be permitted to enter or use the Building and/or Clarke Quay".

(h) Clause 4(7)(a) relates to the interruption of services agreed to be provided by the landlord. Clause 4(7)(b) does not apply as there was no cleaning done at all by the landlord as admitted. Clause 4(7)(c) is also inapplicable

40 The defendant took out third party proceedings against his landlord for an indemnity based on negligence. In deciding this issue I am required to have regard to questions both of causation and culpability. Whilst the rules of causation are such that the defendant cannot avoid liability in full to the plaintiffs, what is the culpability as between the defendant and the third party? I have already dealt with the contractual terms and they do not assist the third party. There is contributory negligence on the part of the third party in relation to the spread as opposed to the starting of the fire. Such a spread was the very risk that the third party had a duty to guard against and had the third party not been negligent (on account of the accumulated grease and oil deposited in the exhaust duct) the fire damage would have been minimised and probably confined to the defendant's premises. This view is reinforced by evidence of the sustained fire at the fan motor on the third floor. With respect to the third party proceedings, I find that the third party must take some share of the relative blame. I apportion liability equally between the two of them.

41 Accordingly there will be judgment and costs for the plaintiffs with damages to be assessed by the Registrar. The third party is to indemnify the defendant to the extent of the third party's share

of the damages assessed at 50% and pay the defendant's costs of defending the plaintiff's action and third party proceedings.

[note: 1]Notes of Evidence pages 139, 140, 141, 148, 163, 164

[note: 2]2AB211