

18. INSURANCE LAW

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18.1 In 2017, the Law Reform Subcommittee (Insurance) (on which this reviewer sits) was formed by the Singapore Academy of Law to examine and evaluate the changes introduced by the UK Insurance Act 2015.¹ The subcommittee was tasked to make recommendations regarding possible insurance law reforms in Singapore. In 2019, a preliminary consultation paper was circulated to the industry and various stakeholders for their feedback. The subcommittee's final report is to be issued in 2020.

18.2 2019 was not an especially fecund year for the development of insurance law (in terms of case law jurisprudence). Nonetheless, there was an interesting contract law case which threw up noteworthy issues germane to the insurance context.

I. Mistake in insurance law

18.3 *Wong Chong Hui v Lim Siong Hoe Lawrence*² involved an appeal against the decision of the Magistrates' Court allowing a discharge voucher ("DV") issued by NTUC Income Insurance Co-Operative Limited ("NTUC Income") to be voided on the basis that the injured third-party motorist ("Lim") had signed it under a unilateral mistake.

18.4 In 2011, the plaintiff Lim was involved in a motor accident with the insured appellant, Wong. The former repaired his vehicle at a workshop ("the Workshop"), and authorised the Workshop to "do the needful"³ to claim for property damage from NTUC Income directly. In February 2012, the Workshop lodged a claim with NTUC Income for the sum of \$9,052.20 including repair costs and loss of use. The Workshop negotiated a settlement with NTUC Income and, on 1 March 2012, procured Lim's signature on a DV issued by the Insurer. The Workshop received the settlement sum of \$9,052.20 paid directly by NTUC Income. After having simply told the plaintiff that it had settled its claim with NTUC Income, the Workshop asked the plaintiff to sign the DV without

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2 [2019] 4 SLR 989.

3 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [2].

explaining its terms or further details. The plaintiff signed the DV, which essentially provided that:⁴

[The plaintiff] ... hereby acknowledge[s] and agree[s] that payment by [NTUC Income] of the sum of S\$9,052.20 to [the Workshop] shall be full satisfaction[,] liquidation and discharge of all claims whatsoever competent upon [the defendants] in respect of all loss[,] injury or damage[,] whether now or hereafter to become manifest[,] arising directly or indirectly from the [accident] ...

18.5 However, in October 2014, Lim commenced a suit claiming damages for his personal injuries arising from the accident. NTUC Income, on behalf of the defendants, rejected Lim's claim on the basis that the DV fully discharged all claims that Lim had against the defendants in relation to the accident. Thereafter, Lim sued the defendants in the Magistrates' Court.

18.6 In the Magistrates' Court, the District Judge allowed the claim and held that, notwithstanding the "clear and unambiguous terms" of the DV, Lim operated under a unilateral mistake that the DV settled only his property damage claim and not his personal injury claim. Hence, the DV was void.⁵ The defendants appealed.

A. *Holding*

18.7 The issue on appeal before the High Court was whether the settlement agreement in the DV between Lim and NTUC Income precluded Lim's claim for damages for personal injury. Answering this in the affirmative,⁶ Choo Han Teck J allowed the appeal.

18.8 The plaintiff's claim failed, for three reasons.

18.9 First, Lim had not acted under a unilateral mistake in common law as he was taken to have understood that the settlement agreement, as evidenced by the DV, discharged the defendants' – and thus NTUC Income's – liability.⁷ It was "clear and unequivocal and left no room for a subsequent and separate claim for personal injury arising from the Accident". It was also clear enough for a literate man to read for himself. The court rejected the argument that the DV was "merely a receipt

4 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [3].

5 *Lim Siong Hoe Lawrence v Wong Chong Hui* [2018] SGMC 78.

6 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [7].

7 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [6].

simpliciter”⁸; an argument also rejected in the earlier *Ter Yin Wei v Lim Leet Fang*⁹ (“*Ter*”) case.

18.10 Second, even if Lim had been under a mistaken impression, the DV was not void for unilateral mistake at common law.¹⁰ The judge reiterated the elements of a unilateral mistake at common law:¹¹

- (a) The mistaken party must have made a mistake.
- (b) The mistake must be a sufficiently important or fundamental mistake as to a term.
- (c) The non-mistaken party must have actual knowledge of the mistake.

18.11 The first and second elements were not made out. The plaintiff did not make a mistake as to the terms as he was “a literate man [who] ought to be able to understand the clear and unambiguous language of the [DV]”. It was immaterial that he was not privy to the negotiations between the Workshop and NTUC Income. It was also significant that he did not seek legal advice before signing the DV (indeed, he did so only almost three years later,¹² towards the end of the limitation period for personal injuries).¹³ As the Court of Appeal stated in *Broadley Construction Pte Ltd v Alacran Design Pte Ltd*,¹⁴ if the plaintiff chose to sign a contract without seeking any clarification (such as legal advice), it would be completely pursuant to his own assumptions about the contract’s terms.¹⁵

18.12 The third element of actual knowledge was also not made out for three reasons:

- (a) First, NTUC Income had no actual knowledge of the respondent’s (putative) mistake. The court stressed that the DV had “the clear and unequivocal effect ... in discharging all claims that the [plaintiff] had or may have against NTUC Income [or the defendants] in relation to the Accident”.¹⁶ It was insufficient that NTUC Income dealt only with the Workshop (and not the

8 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [7].

9 [2012] 3 SLR 172 at [16], cited in *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [7].

10 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [6].

11 Recently re-stated by the Court of Appeal in *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110, cited in *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [8].

12 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [8].

13 See s 24A of the Limitation Act (Cap 163, 1996 Rev Ed).

14 [2018] 2 SLR 110.

15 *Broadley Construction Pte Ltd v Alacran Design Pte Ltd* [2018] 2 SLR 110 at [38].

16 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [1].

plaintiff), that the claim received by NTUC Income was only for property damage (and not also for personal injury), or that NTUC Income paid the Workshop directly (and not the plaintiff).¹⁷ The court also noted that NTUC Income did not know of any claim for personal injury before issuing the DV.¹⁸ The court apparently also rejected the reasoning below that, because the Workshop did not have the legal authority to claim for personal injuries, it was reasonable for NTUC Income to expect that the DV pertained only to the claim for property damage.¹⁹

(b) Second, NTUC Income had no blind-eye knowledge amounting to actual knowledge of the plaintiff's (putative) mistake. The court held that it was insufficient that the claim received by NTUC Income was only for property damage (and not also for personal injury);²⁰ or that NTUC Income (presumably) had access to an accident report which "vaguely stated" certain facts relating to the plaintiff's personal injury (he felt numbness in his arm, saw a doctor and was given medical leave),²¹ as "the mere indication of an injury in the [plaintiff's] accident report did not necessarily mean that he would be making a personal injury claim". The court also observed that it was insufficient even if the accident report clearly referred to a claim for personal injury.²²

(c) Third, NTUC Income's lack of actual knowledge of the plaintiff's (putative) mistake was unaffected by the fact that the plaintiff was legally unrepresented when signing the DV. Neither NTUC Income nor the Workshop owed a duty to explain the DV to the plaintiff; the plaintiff should have sought legal advice.²³

18.13 The DV was also not void for unilateral mistake in equity. This would have called for some form of constructive knowledge on the part of NTUC Income of the mistake Lim was labouring under, such that the court could in the exercise of its equitable jurisdiction consider it unconscionable for NTUC Income to insist on adherence to the clear terms of the DV.²⁴ In the instant case, the court rejected the plaintiff's

17 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [10].

18 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [12].

19 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [5(b)].

20 Presumably, this was what the court meant by "[t]he correspondence between NTUC Income and the Workshop": *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [11].

21 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [11].

22 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [9].

23 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [12].

24 *Law Practice Series: The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Singapore Academy of Law, 2012) at pp 611-613.

suggestion of unconscionability on NTUC Income's part merely because NTUC Income failed to inform the plaintiff of his right to legal advice. The fact that NTUC Income did not provide for the possibility of deletion or amendments of the DV's terms also did not prove unconscionability, and the court noted that the DV was not "an unusual one".²⁵ Again, the plaintiff should have sought his own legal advice²⁶ regarding possible amendments to the DV.

B. Concluding remarks

18.14 *Wong Chong Hui v Lim Siong Hoe Lawrence*²⁷ is instructive in underlining the import of the DV in the motor insurance context. It is the first local case in which the vitiation of a discharge voucher (for any vitiating factor), or the vitiation of an insurance document for mistake, has been considered.²⁸ It should come as a relief to insurers that discharge vouchers, if expressed in clear and unequivocal terms, will be effective in discharging liability, even if the counterparty made a putative mistake as to its terms. In holding Lim to the terms of the DV, the court's approach is consistent with that in *Ter*,²⁹ and reflects the principle that the meaning of contractual terms should be given their "plain, ordinary meaning in the context of the policy ... as a whole".³⁰ This places the onus on the injured third party to scrutinise the terms of the settlement agreement before concluding it, *even if* it authorises an agent to negotiate the settlement on its behalf. Whether the Workshop, as Lim's agent in negotiation, breached its duty of care in contract or tort is a separate issue.

18.15 The case also iterates the binding nature of the DV where the DV is tantamount to a compromise agreement. The public policy interest in encouraging and honouring compromises is manifestly evident. Indeed, issuing discharge vouchers when negotiated motor insurance payouts are made is a much-vaunted motor industry practice spanning more than half a century.³¹ The standard language of discharge vouchers (along the lines of "with the payment, it was a full and final settlement of, and full discharge from *all* claims arising from the incident that the recipient *had* or *may have had* against the insurer and the insured driver" [emphasis in original]) has received a hallowed meaning of a

25 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [13].

26 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [13].

27 See para 18.3 above.

28 The rectification of an insurance policy for mistake was considered in *Pender Development Pte Ltd v Chesney Real Estate Group LLP* [2009] 3 SLR(R) 1063 and *Hub Warrior Sdn Bhd v QBE Insurance (Malaysia) Bhd* [2004] SGHC 279.

29 *Ter Yin Wei v Lim Leet Fang* [2012] 3 SLR 172 at [16].

30 *Jason v British Traders' Insurance Co Ltd* [1969] 1 Lloyd's Rep 281 at 290, *per Fisher J*.

31 *Ter Yin Wei v Lim Leet Fang* [2012] 3 SLR 172 at [17].

final and good compromise. This is almost tantamount to it having acquired a technical legal meaning.³² The language used in *Wong Chong Hui v Lim Siong Hoe Lawrence* was on even stronger footing than the usual standard language (encountered in the earlier case of *Ter*) with its clear reference to “all loss injury or damage whether now or hereafter to become manifest, arising directly or indirectly from the [accident]”. More generally, the decision reinforces the sanctity of a compromise contract. It also emphasises the importance of certainty and predictability in the commercial context (including the insurance context),³³ particularly in light of the policy concern of injured parties “reviv[ing] or add[ing] to their original claims”.³⁴

18.16 Such a compromise amounts to a new contractual agreement which can only be reopened or vitiated subject to the usual vitiating defences like misrepresentation and undue influence of mistake.³⁵ Unilateral mistake, particularly in common law, is difficult to prove against an insurer. An attempt to open it up was advanced in this case on the ground of unilateral mistake which failed for the reasons above.³⁶ Any allegation of wilful blindness on the part of NTUC Income was not to be lightly invoked, and foisting a burden on the part of NTUC Income to inquire whether the respondent intended to make a personal injury claim would have been an overreach.

18.17 The resort to unilateral mistake in equity also failed for the reasons above. NTUC Income was under no obligation to flag to the injured third party that he ought to seek legal counsel before concluding the DV. This would have amounted to handholding which would not be expected of parties on opposing sides in an adversarial system. Such infractions, if any, were not an impropriety falling within the ambit of the Court of Appeal’s pronouncement in *Chwee Kin Keong v Digilandmall.com Pte Ltd*³⁷ (“*Digilandmall*”), viz, “the conduct of deliberately not bringing the suspicion of a possible mistake to the attention of the mistaken party could constitute such impropriety”.³⁸ However, one could query whether the situation might have been different if the accident victim was in fact an insured rather than a third-party outsider. Would the *uberrima fides* obligation of good faith have impelled that the insurer warn the insured to seek his own legal counsel?

32 John Birds, *Birds’ Modern Insurance Law* (Sweet & Maxwell, 11th Ed) at p 245.

33 See, in a different context, *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd* [2007] 4 SLR(R) 413 at [109].

34 *Wong Chong Hui v Lim Siong Hoe Lawrence* [2019] 4 SLR 989 at [13].

35 John Birds, *Birds’ Modern Insurance Law* (Sweet & Maxwell, 11th Ed) at p 304.

36 See paras 18.8–18.12 above.

37 [2005] 1 SLR(R) 502.

38 *Chwee Kin Keong v Digilandmall.com Pte Ltd* [2005] 1 SLR(R) 502 at [80].

18.18 It is interesting to note that the court's consideration of a unilateral mistake in equity further distances Singapore from the UK's rejection of common mistakes in equity in *Great Peace Shipping Ltd v Tsavliris Salvage (International) Ltd*,³⁹ and follows the Court of Appeal's recognition of equitable unilateral mistakes in *Digilandmall*.⁴⁰ This underlines the local judiciary's robust independent trajectory following Singapore's own socio-political and business context.

18.19 In this case, the Workshop might have been arguably remiss and negligent in not fully protecting or advising Lim regarding the implications of the DV, or at least warning him of the need to seek own legal counsel. However, this is a separate matter and a separate cause of action that Lim is not deprived of.

18.20 Additionally, there might have been a missed opportunity in this case for not considering the issue of possible constructive knowledge on the part of NTUC Income. Lim mistook the DV as precluding only property injury claims. This leaves the threshold for proving constructive knowledge unclear, especially in light of the thin line between actual and constructive knowledge. There is some force behind the District Judge's reasoning in the lower court that since the workshop only had authority to submit claims for property injuries, they did not have the authority to conclude a settlement precluding Lim's personal injury claims.⁴¹ This, considered alongside Lim's disclosure of his injuries in his accident report (which NTUC Income had knowledge of), may have been sufficient to prove constructive knowledge of the alleged mistake. In any event, however, constructive knowledge *per se* would not have constituted a valid defence in mistake in equity without there being some sharp practice on the part of NTUC Income⁴² (which the court had already found absent as discussed above).⁴³

18.21 Finally, the settlement agreement in this case was between an injured third party and the insurer. The actions of both possible property and personal injury were merged in the DV. In respect of Lim's personal injury, he also had a direct right of action against NTUC Income under ss 9(1) and 9(2) of the Motor Vehicles (Third-Party Risks and Compensation) Act⁴⁴ – a compulsory motor insurance scheme meant

39 [2003] QB 679.

40 *Chwee Kin Keong v Digilandmall.com Pte Ltd* [2005] 1 SLR(R) 502 at [74].

41 *Lim Siong Hoe Lawrence v Wong Chong Hui and Heng Hong Development Pte Ltd* [2018] SGM 78 at [34].

42 *Law Practice Series: The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Singapore Academy of Law, 2012) at p 625.

43 See para 18.12 above.

44 Cap 189, 2000 Rev Ed.

to protect third-party victims suffering personal injury. This decision suggests that an insurer may preclude both claims under the policy and the third party's statutory right of action against the insurer using broad language such as in the DV. This raises the thorny question of whether such contractual latitude should be frowned upon, given that the enactment of this compulsory motor insurance scheme had a social policy genesis of protecting the personal injury of the road accident victim:⁴⁵

[T]he whole purpose and rationale for such a scheme, [was that] where there was no effective insurance cover, the victim [would be] assured of compensation and that was dealt with by the Insurer who issued the motor policy.

45 *Pacific & Orient Insurance Co Bhd v Motor Insurers' Bureau of Singapore* [2013] 1 SLR 341 at [34], *per* Quentin Loh J.