1. This judgment DOES NOT need redaction.
2. Redaction HAS NOT been done.

District Judge Chiah Kok Khun
29 April 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 150

District Court Suit No 1819 of 2024
Registrar's Appeal No 3 of 2026
District Court Summons No 270 of 2026

Between

Hong Seh Motors Pte Ltd

… *Claimant*

And

(1) Rynenation Pte Ltd
(2) Peter Chan Chuin Howe
(3) Kang Huey Min, Geraldine

… *Defendants*

JUDGMENT

[Contract — Contractual terms — Rules of construction — Interpretation of contracts — Leasing of Tesla car — Lessee breaching lease agreement — Lessor terminating lease agreement — Whether liquidated damages payable by lessee — Whether contractual clause plain and unambiguous — Whether reference to extrinsic evidence permissible]

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[Civil Procedure — Pleadings — Lessee seeking to argue contract infringed rule against penalties — Whether rule against penalties must be pleaded — Whether rule against penalties can be relied on at appeal]
[Civil Procedure — Appeals — Adducing fresh evidence on appeal — Lessee seeking to adduce fresh evidence on appeal to contend rule against penalties infringed — Whether requirement of relevance under *Ladd v Marshall* principles satisfied]

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Hong Seh Motors Pte Ltd
v
Rynenation Pte Ltd & 2 Ors

[2026] SGDC 150

District Court Originating Claim No 1819 of 2024 (Registrar's Appeal No 3 of 2026; District Court Summons No 270 of 2026)
District Judge Chiah Kok Khun
26 February, 7 April 2026

29 April 2026 Judgment reserved.

District Judge Chiah Kok Khun:

Introduction

1 This appeal ("RA") from the decision of the learned deputy registrar ("DR") is related to an assessment of damages ("AD"). The underlying dispute concerns the lease of a Tesla car ("the Vehicle"). The 1st defendant had entered into two rental agreements dated 7 December 2021 to rent the Vehicle from the claimant (Rental Agreements). The 2nd defendant was named as the authorised driver under the rental agreements. The 2nd and 3rd defendants also each entered into a letter of guarantee dated 7 December 2021 whereby they guaranteed payment to the claimant of all sums due under the Rental Agreements.

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2 The Vehicle was seized by the Traffic Police for offences under the Road Traffic Act 1961 on 18 February 2022 when the 2nd defendant was involved in a hit-and-run road traffic accident. The 2nd defendant was charged in court for a number of offences. At the time of the hearing of the RA, the criminal proceedings against him were ongoing.

3 The claimant subsequently terminated the lease and made claims under the Rental Agreements. Summary judgment was entered on 11 April 2025, in the form of interlocutory judgment against the 1st, 2nd and 3rd defendants with damages to be assessed.

4 At the end of the AD, the following sums were assessed and ordered by the DR:

(a) The defendants are jointly and severally liable to pay the claimant damages assessed in the sum of $147,870.93 in relation to the claimant's claims for the remaining contract value, late payment interest and administration fees.

(b) The defendants shall pay the claimant contractual interest on the damages awarded at the rate of 5% per month from 8 October 2024 to the date of payment.

(c) The defendants shall pay the claimant costs on an indemnity basis fixed at $16,625.00 plus disbursements fixed at $1,445.90.

5 The RA is the defendants' appeal against the whole of the decision of the DR. The defendants also apply to adduce further evidence for purposes of the RA. The application is the subject matter of District Court Summons No 270 of 2026 ("SUM 270").

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6 For the reasons below, I am dismissing both the RA and SUM 270.

Analysis and findings

7 At the outset, I am mindful that an appeal from a deputy registrar to a district judge is a rehearing of the application which led to the order under appeal. It has been held that a district judge hearing a matter first heard by the registrar is not exercising appellate jurisdiction, but rehearing the matter and exercising a form of confirmatory jurisdiction.[1] The appeal is to be decided as though the matter came before him for the first time: see *Tan Boon Heng v Lau Pang Cheng David* [2013] 4 SLR 718, ("*Tan Boon Heng")* at [22]. Arguments which were not raised before may properly be considered by the judge in chambers on appeal.[2] Where the registrar's findings of fact are based solely on affidavit or documentary evidence, a judge in chambers will have little difficulty in deciding the matter afresh as he will have all the necessary evidence, materials and information before him, and the judge is in as good a position as the deputy registrar to exercise the discretion afforded to him: *Tan Boon Heng* at [44].[3]

Liquidated damages are payable by the defendants under clause 18.1.2.3

8 I begin the analysis of this case with the undisputed facts. It is not disputed that the claimant, at the request of the 1st defendant, purchased the Vehicle, a brand new Tesla Model 3 Performance bearing vehicle number SJG906G from Tesla Singapore Pte Ltd and in turn leased it to the 1st defendant pursuant to two vehicle rental agreements both dated 7 December 2021 and

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1 *Augustine Zacharia Norman and another v Goh Siam Yong* [1992] 1 SLR(R) 746 at [11].

2 *Tan Boon Heng* at [22].

3 *Tan Boon Heng* at [44].

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containing identical terms.[4] For purposes of financing the claimant's purchase of the Vehicle, the claimant entered into a facility agreement with DBS Bank Ltd.[5] The total rental period was for 84 months, from 7 December 2021 to 6 December 2028. The monthly rental rate was $2,759.00 per month plus Goods and Services Tax ("GST"). The 2nd defendant was the person authorised to drive the Vehicle. As alluded to above, the 2nd and 3rd defendants also executed two separate, but identical personal guarantees dated 7 December 2021 in favour of the claimant ("Guarantees").

9 It is not disputed that not long after the leasing the Vehicle, the 2nd defendant was involved in an alleged hit-and-run road traffic accident whilst driving the Vehicle. Five criminal charges were brought against the 2nd defendant. The vehicle was seized by the Traffic Police for offences under the Road Traffic Act. The claimant's request to the Traffic Police for the release of the Vehicle to them was to no avail.[6] Further, despite the claimant's appeals, the vehicle was deregistered by the Land Transport Authority on 18 February 2022.[7]

10 The claimant thus terminated the Rental Agreements pursuant to the terms therein. The claimant then commenced the underlying action to this RA against the defendants, claiming, amongst others, the sum of $147,870.93 in relation to the remaining contract value, late payment interest and administration fees. The clauses of the Rental Agreements that the claimant relied on in its action are pleaded by the claimant in the statement of claim. I set

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[4] Bundle of Documents dated 29 October 2025 ("BOD"), pp 26 to 49.

[5] BOD pp55-79.

[6] Paras 12(g) of the statement of claim.

[7] Paras 12(c)-(f) of the statement of claim.

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out below some of the key clauses as pleaded in para 10 of the statement of claim:

> 10 Pursuant to the express terms of the Rental Agreements, the 1st defendant agreed inter alia as follows:
>
> > …
> >
> > 5.1 The Vehicle is the property of the Owner and the Hirer shall have no rights to the Vehicle other than as a bailee and shall not do or permit or cause to be done anything whereby the rights of the Owner are or may be prejudiced or affected.
> >
> > 5.2 If the Owner's rights or title in the Vehicle are infringed, jeopardised or prejudiced as a consequence of any act or omission of the Hirer or the Authorised Driver or the Additional Driver approved by the Owner, then without prejudice to the generality of Clause 20, the Hirer shall indemnify the Owner against all costs, damages, expenses or loss resulting from or in connection with such act or omission before as well as after judgment, until full payment of the same.
> >
> > …
> >
> > 17.2 Without prejudice to Clause 16.1, the Owner may immediately terminate the Agreement without notice and take repossession of the Vehicle upon any of the following events:
> >
> > …
> >
> > 17.2.15 the Hirer shall be in breach of any term or condition of this Agreement; …
> >
> > …
> >
> > 18.1 Upon the early termination of the hiring as provided in Clause 17 above or by the Hirer for any reason whatsoever, the Hirer shall:
> >
> > 18.1.1 immediately return the Vehicle to the Owner in accordance with Clause 19; and 18.1.2 immediately pay the Owner:
> >
> > …
> >
> > 18.1.2.3 Premature Termination Damages comprising the liquidated damages being the sum equivalent to the rental payable for the unexpired duration of the Rental

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> Period and Disposition Fees without any rebates whatsoever.
>
> …

11 It is seen that under the terms of the Rental Agreements as pleaded by the claimant, the defendants were not to cause the rights of the claimant to the Vehicle to be prejudiced or affected in any way (clause 5.1). And if the defendants were in breach of any terms of the Rental Agreements, the claimant may terminate the Rental Agreements immediately (clause 17.2). Further, upon such termination, the defendants would be liable for premature termination damages comprising the liquidated damages being the sum equivalent to the rental payable for the unexpired duration of the rental period (clause 12.1.2.3). It is on this basis that the claimant claimed in the underlying action against the defendants for the remaining contract value of the Rental Agreements of 49 months rental from 7 November 2024 to 6 December 2028 amounting to $147,358.19.[8]

12 The claimant applied for summary judgment on 13 December 2024 and was granted interlocutory judgment (on liability) against the defendants on 11 April 2025. In other words, we are past the question of liability under the Rental Agreement. The question of liability has been adjudicated fully at the summary judgment stage and the liability of the defendants under Rental Agreement is subsumed in the interlocutory judgment entered against them.

13 At the centre of the dispute between the parties at the AD is clause 18.1.2.3 of the Rental Agreements.[9] As alluded to above, the clause provides that upon early termination of the Rental Agreements the defendants are to

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8 Para 13(e) of the statement of claim.

9 BOD pp34-36.

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immediately pay the claimant liquidated damages equivalent to the rental payable for the unexpired duration of the rental period.

14 At the outset, it is noted that clause 18.1.2.3 is clear and unambiguous. It states plainly that upon early termination of the Rental Agreements the defendants are to immediately pay the claimant liquidated damages equivalent to the rental payable for the unexpired duration of the rental period. There is no room for any alternative interpretation of the clause, and the defendants do not dispute the plain meaning of the clause.

15 The defendant's contention at the RA instead is that clause 18.1.2.3 infringes the rule against penalties. The defendants devoted the bulk of their written submissions filed for the RA exclusively on their argument that clause 18.1.2.3 is an unenforceable penalty.[10] In those submissions, the defendants set out at length the penalty doctrine first laid down in *Dunlop Pneumatic Tyre Company, Ltd v New Garage and Motor Company, Limited* [1915] AC 79, and their contention as to why clause 18.1.2.3 infringes the rule against penalties. The defendants argue that as the claimant relies on clause 18.1.2.3 as the sole basis for its claim, the claim must therefore fail.

The defendants did not plead the penalty rule

16 The defendants however face an insurmountable huddle in their contention. They have not pleaded in their defence that clause 18.1.2.3 offends the rule against penalties. There was in fact no reference at all to the rule against penalties in the defence. As the defendants has placed great store by the penalty doctrine in arguing their RA, I set out below the entire defence in the manner it was filed by the defendants:

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[10] Pp 13-32 of the defendant's written submissions dated 5 February 2026.

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Defence:

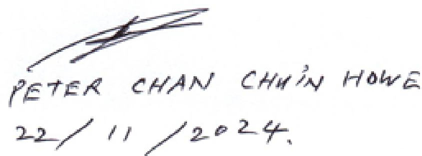
1. Defendant, PETER CHAN CHUIN HOWE (also director of RYNENATION PTE LTD) and KANG HUEY MIN, GERALDINE have been paying the monthly rental fees of $2759.00 + GST from **Dec 2021 to Oct 2024 without missing a single instalment.**

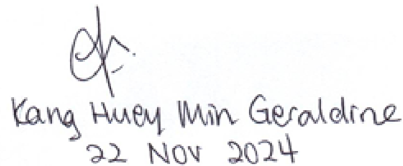
2. Have checked and confirmed with the Traffic Police on 12th Nov 2024 that the vehicle, SJG906G still in Traffic Police pound from **18th Feb 2022** till date due to an ongoing accident case.

3. Have checked and confirmed with LTA on 20th Nov 2024 that the vehicle, SJG906G is deregistered as the road-tax has not been paid for more than 12 months. According to LTA, road tax cannot be paid due to the **'Laid Out' status of the vehicle (in pound)** and that the vehicle can be re-registered upon conclusion of the case.

4. Claimant has made a ludicrous claim for **6 years of vehicle insurance** of $30,371.76 for the period of **7th Dec 2022 till 6th Dec 2028** despite having **ZERO cost** incurred by claimant during this period.

5. Claimant sent the last email on 10th Oct 2024 for Rental Invoice and there was **NO attempt from Claimant** to contact Defendant for any resolution prior to filing the claim. This has resulted in **Severe Undue financial hardship** due to **Cancellation of Banking facilities** and **Adverse Financial Credit Record** despite **having no outstanding owed** to Claimant till Oct 2024.





17 It is seen that no mention is made of the penalty rule. The defendants however contended vigorously in their written submissions that they have pleaded the rule against penalties in the above defence. It is plain however that by no stretch of any imagination can it be said the rule against penalties is pleaded in the defence, and I do not see how it can be argued otherwise.

18 For the sake of completeness, I turn now to the legal principles on pleadings. In this regard, I have in mind two Court of Appeal decisions in considering whether the defendants should be allowed to depart from their pleaded case.

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19 The first case is the Court of Appeal decision of *BOM v BOK and another appeal* [2019] 1 SLR 349 ("*BOM*"). In *BOM*, the Court of Appeal reiterated that the role of pleadings is to define the scope of dispute and thus to inform parties of issues in contention. However, evidence given at trial can where appropriate, overcome defects in the pleadings provided that the other party is not taken by surprise or irreparably prejudiced (at [40]). The strict approach to pleadings is rejected by the Court of Appeal. The test of adequacy of pleadings that can be distilled from the case is thus whether the other party is prejudiced by being taken by surprise.

20 In the second case, *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 at [18]-[20], the Court of Appeal sets out two important qualifications to the general rule that the court is precluded from deciding matters that have not been put into issue by the parties. First, where material facts supporting each element of a legal claim is pleaded, the particular legal result flowing from the material facts that the claimant wishes to pursue need not always be pleaded. Second, the court may allow an unpleaded point to be raised and determined where there is no irreparable prejudice caused to the other party in the trial that cannot be compensated by costs or where it would be clearly unjust for the court not to do so. The Court of Appeal also held at [29b] that where the material facts of each element of the legal claim had not been pleaded, the court would only allow the legal claim if the court was satisfied that there would be no prejudice occasioned as a result because both sides engaged with the issue at trial.

21 It is seen that evidence given at trial can where appropriate, overcome defects in the pleadings provided that the other party is not taken by surprise or irreparably prejudiced. In this case however, no evidence relating to the contention that clause 18.1.2.3 is an unenforceable penalty was given at the AD

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before the DR. The parties therefore did not engage in considering any such evidence before the DR. The claimant was not given the opportunity to test and challenge any such evidence at the AD whether in cross-examination or otherwise. It thus cannot be said that both sides engaged with the issue at the AD and it is undisputable that the rule against penalties was not argued before the DR. The defendants therefore cannot now contend that the claimant is not taken by surprise or irreparably prejudiced by the defendants' sudden decision to argue the penalty doctrine at the RA before me. As seen in the authorities, the court may allow an unpleaded point to be raised and determined only where there is no irreparable prejudice caused to the other party that cannot be compensated by costs or where it would be clearly unjust for the court not to do so. This is not the case in the present instance.

Clause 18.1.2.3 is plain and unambiguous

22 With the rule against penalties out of the way, I return to the effect of clause 18.1.2.3. As seen above, clause 18.1.2.3 states plainly that upon early termination of the Rental Agreements the defendants are to immediately pay the claimant liquidated damages equivalent to the rental payable for the unexpired duration of the rental period. The underlying thrust of the defendants' case at the RA is essentially that the clause is too harsh. However, as noted by the DR, the Rental Agreements reflect the contractual bargain that the defendants had agreed to in signing the Rental Agreements and the Guarantees.[11] In my view, parties are free to contract and the corollary of freedom to contract is the sanctity of contract. In the High Court decision of *Forefront Medical Technology* (*Pte) Ltd v* Modern-Pak *Pte Ltd* [2006] 1 SLR(R) 927, at [24] and [26] the

[11] Para 13(a) of NE dated 8 January 2026.

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Honourable Justice Andrew Phang (as he then was) emphasised that sanctity of contract is vital to certainty and predictability in commercial transactions:

> 24 It also bears emphasising that, in the absence of any relevant vitiating factors, it is incumbent that parties observe, scrupulously, the precise terms of the contract. … Sanctity of contract is vital to certainty and predictability in commercial transactions. If a party (here, the plaintiff) were allowed to unravel the contract by ignoring a term it had entered into voluntarily, this would undermine the very concept of a contract itself. Parties entering into contracts necessarily take business risks. Business losses are not unexpected. All these are hard facts of commercial life. The law does not exist to shield contracting parties from miscalculations or even commercial folly. That is why vitiating factors in contract law are applied strictly as the law attempts to balance the need for commercial certainty on the one hand and fairness to individual parties in egregious situations on the other.
>
> …
>
> 26 Finally, it is important to stress that notwithstanding many academic critiques to the effect that commercial certainty and predictability are chimerical, it cannot be gainsaid that the *perception* of their importance is deeply entrenched within the commercial legal landscape in general and in the individual psyches of commercial parties (and even non-commercial parties, for that matter) in particular. …
>
> [emphasis in original]

23 As observed by the High Court, the perception of the importance of commercial certainty and predictability is deeply entrenched within the commercial legal landscape in general and in the individual psyches of not only commercial parties, but also non-commercial parties. Once a contract is entered into, parties are expected to abide by the terms as agreed. Having entered into the Rental Agreements, the defendants cannot be heard now to contend that the terms are too harsh for their liking.

24 I would add for completeness that there is no room for extrinsic evidence to alter the clear meaning of clause 18.1.2.3 that was intended by the parties. The approach to the admissibility of extrinsic evidence to affect written

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contracts has been set out in the Court of Appeal decision of *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029. The Court of Appeal held at [132] as follows:

> 132 To summarise, the approach adopted in Singapore to the admissibility of extrinsic evidence to affect written contracts is a pragmatic and principled one. The main features of this approach are as follows:
>
> (a) A court should take into account the essence and attributes of the document being examined. The court's treatment of extrinsic evidence at various stages of the analytical process may differ depending on the nature of the document. In general, the court ought to be more reluctant to allow extrinsic evidence to affect standard form contracts and commercial documents (see [110] above).
>
> (b) If the court is satisfied that the parties intended to embody their entire agreement in a written contract, no extrinsic evidence is admissible to contradict, vary, add to, or subtract from its terms (see ss 93–94 of the Evidence Act). In determining whether the parties so intended, our courts may look at extrinsic evidence and apply the normal objective test, subject to a rebuttable presumption that a contract which is complete on its face was intended to contain all the terms of the parties' agreement (see [40] above). In other words, where a contract is complete on its face, the language of the contract constitutes *prima facie* proof of the parties' intentions.
>
> (c) Extrinsic evidence is admissible under proviso (f) to s 94 to aid in the interpretation of the written words. Our courts now adopt, via this proviso, the modern contextual approach to interpretation, in line with the developments in England in this area of the law to date. Crucially, ambiguity is not a prerequisite for the admissibility of extrinsic evidence under proviso (f) to s 94 (see [114]–[120] above).
>
> (d) The extrinsic evidence in question is admissible so long as it is relevant, reasonably available to all the contracting parties and relates to a clear or obvious context (see [125] and [128]–[129] above). However, the principle of objectively ascertaining contractual intention(s) remains paramount. Thus, the extrinsic evidence must always go towards proof of what the parties, from an objective viewpoint, ultimately agreed upon. Further, where extrinsic evidence in the form of prior negotiations and subsequent conduct is concerned, we find the views expressed in McMeel's article ([62] supra) and Nicholls' article ([62] supra) persuasive. For this reason, there should be no absolute or rigid prohibition against evidence of previous

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> negotiations or subsequent conduct, although, in the normal case, such evidence is likely to be inadmissible for non-compliance with the requirements set out at [125] and [128]–[129] above. (We should add that the relevance of subsequent conduct remains a controversial and evolving topic that will require more extensive scrutiny by this court at a more appropriate juncture.) Declarations of subjective intent remain inadmissible except for the purpose of giving meaning to terms which have been determined to be latently ambiguous (see [50] above; see also sub-para (e) below).
>
> (e) In some cases, the extrinsic evidence in question leads to possible alternative interpretations of the written words (*ie*, the court determines that latent ambiguity exists). A court may give effect to these alternative interpretations, always bearing in mind s 94 of the Evidence Act. In arriving at the ultimate interpretation of the words to be construed, the court may take into account subjective declarations of intent (see [50] above). Furthermore, the normal canons of interpretation apply in conjunction with the relevant provisions of the Evidence Act, ie, ss 95–100 (see [75]–[80] and [131] above).
>
> (f) A court should always be careful to ensure that extrinsic evidence is used to explain and illuminate the written words, and not to contradict or vary them. Where the court concludes that the parties have used the wrong words, rectification may be a more appropriate remedy (see [123] above).

25 It is seen therefore that a court should always be careful to ensure that even if extrinsic evidence is admitted, it is to be used to explain and illuminate the written words, and not to contradict or vary them. Further, the court ought to be more reluctant to allow extrinsic evidence to affect standard form contracts and commercial documents. Where a contract is complete on its face, the language of the contract constitutes *prima facie* proof of the parties' intentions. The principle of objectively ascertaining contractual intention is paramount. Any extrinsic evidence must always go towards proof of what the parties, from an objective viewpoint, ultimately agreed upon. In the present case, there is plainly no room to alter the clear meaning of clause 18.1.2.3 that was intended by the parties. The Rental Agreements were terminated by the claimant pursuant to clause 17 following the defendant's breach and the claimant is contractually

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entitled under clause 18.1.2.3 to the sum of $147,358.19, being the sum equivalent to the rental payable for the unexpired duration of the rental period.

26 The defendants also raised the contention that the claimant has failed to prove its damages. In this regard, the defendants appear to be saying that the claimant must prove that it suffered the actual loss of the sum of $147,358.19 as claimed. This contention is wholly misguided. The sum of $147,358.19 is claimed by the claimant as liquidated damages under clause 18.1.2.3. The reason for liquidated damages to be provided for under any contract is so that damages need not be proved by the innocent party in the event of a breach. It is precisely why parties contract for liquidated damages clauses in their agreements. Clause 18.1.2.3 resides in the Rental Agreements so that the claimant could claim for liquidated damages without having to prove actual loss. There is no merit in the defendant's contention.

27 The other belated contention of the defendants concerns the duty of the claimant to mitigate damages. This can be dealt with briefly in view of my discussion on the question of pleadings. As noted by the DR, it is uncontroverted that the defendants must plead and prove that the claimant has failed to fulfil its duty to mitigate its loss. As seen in the defence set out above, there is no allusion to the claimant's duty to mitigate in the defence. There is also no evidence regarding the claimant's failure to mitigate. This is conceded as much by the defendants' counsel in arguments before me. There is plainly no merit in this contention.

28 Finally, as regards the claim for late payment interest and administration fees, I only need to note that they are provided for under the Rental Agreements. It is unclear to me what is the defendants' objections to this claim. I would refer

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to my discussion above regarding the contractual bargain that the defendants had agreed to in signing the Rental Agreements and the Guarantees.

The further evidence is not relevant to the RA

29 For completeness, I will now deal with the application by the defendants under SUM 270 to admit further evidence for purposes of the RA. The defendants applied for leave under SUM 2070 to adduce further evidence at the RA of the following three categories of documents:

(a) Category 1: documents pertaining to the release of the Vehicle (which is the subject of the Rental Agreements) from the impound as of 5 February 2026;

(b) Category 2: documents pertaining to the current market rates for rental and pre-owned sale prices of vehicles similar to the Vehicle; and

(c) Category 3: documents pertaining to the "lease to own" arrangement between the 1st defendant and the claimant in relation to the Vehicle.

30 The defendants seek admission of the three categories of documents for purposes of supporting their contention that clause 18.1.2.3 infringes the rule against penalties. The claimant objects to the adduction of the documents for the reason that the documents do not meet the requirement of relevance.

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31 I turn first to the law. The legal principles in respect of an application to adduce further evidence in an appeal are well settled. The applicable test is laid down in *Ladd v Marshall* [1954] 1 WLR 1489 (the "*Ladd v Marshall* test").[12]

32 Under the *Ladd v Marshall* test, if the further evidence does not relate to matters occurring after the date of the decision appealed against, the applicant must show special grounds warranting the admission of further evidence. The Court of Appeal of Singapore in *COD v COE* [2023] SGCA 29 elaborated on the approach to the admission of further evidence that was already available before the hearing at the lower court. The Court of Appeal stated as follows at [37]:

> 37 As provided for in s 59(4) of the SCJA 1969 read with O 19 r 7(7) of the ROC 2021, should the Further Evidence not relate to matters occurring after the date of the decision appealed against, then an applicant must show *special grounds* warranting the admission of further evidence in an appeal by satisfying the three cumulative conditions in the *Ladd v Marshall* test (see *BNX v BOE* at [74]; *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 at [21]), *ie*, that:
>
> > (a) the evidence could not have been obtained with reasonable diligence for use in the lower court;
> >
> > (b) the evidence would probably have an important influence on the result of the case, although it need not be decisive; and
> >
> > (c) the evidence must be apparently credible, although it need not be incontrovertible.
>
> [emphasis in original]

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12 I have the occasion to discuss the law relating to the adduction of further evidence in an appeal in a recent judgment: see *Chen Rongying v Paige Lee Wen Xuan* [2026] SGDC

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33 Hence, the Court of Appeal was of the view that if the further evidence did not become available only after the date of the decision appealed against, the following conditions are to be satisfied:

(a) the evidence could not have been obtained with reasonable diligence;

(b) the evidence would probably have an important influence on the result of the case, although it need not be decisive; and

(c) the evidence must be apparently credible, although it need not be incontrovertible.

34 If, however, the further evidence became available only after the date of the decision appealed against, then the court should instead apply a modified version of the *Ladd v Marshall* test ("the *Ladd v Marshall* Modified Test"). The was also elaborated on in *COD v COE* [2023] SGCA 29, at [38] as follows:

> However, if the Further Evidence relates to matters occurring after the date of the decision appealed against, s 59(5) of the SCJA 1969 provides that the evidence "may be given to the Court of Appeal without permission" and O 19 r 7 of the ROC 2021 provides that it is exempt from the requirement that further evidence may not be given except on special grounds. The court should hence apply the *Ladd v Marshall* Modified Test (see *BNX v BOE* at [97] to [99]) which entails the following:
>
> > (a) to ascertain what the relevant matters are, of which evidence is sought to be given, and ensure that these are matters that occurred after the trial or hearing below;
> >
> > (b) to satisfy itself that the evidence of these matters is at least potentially material to the issues in the appeal; and
> >
> > (c) to satisfy itself that the material at least appears to be credible.
>
> …

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35 As seen, the court in this scenario is to take the following steps under the *Ladd v Marshall* Modified Test:

(a) ascertain what the relevant matters are, of which evidence is sought to be given, and ensure that these are matters that occurred after the trial or hearing below;

(b) satisfy itself that the evidence of these matters is at least potentially material to the issues in the appeal; and

(c) satisfy itself that the material at least appears to be credible.

36 The *Ladd v Marshall* tests discussed above can be broadly characterised as encompassing the three requirements of non-availability, relevance and credibility.

37 It is of pertinence to note however that in *Anan Group (Singapore) Pte Ltd v VTB Bank (Public Joint Stock Co)* [2019] 2 SLR 341 ("*Anan Group*"), the Court of Appeal held that the court is not obliged to strictly apply *Ladd v Marshall* in the context of an interlocutory appeal. The Court of Appeal stated as follows at [35]:

> 35 It is apparent from the foregoing that whether or not an appeal is against a "judgment after a trial or hearing of any cause or matter upon the merits" does not necessarily determine the applicability or otherwise of *Ladd v Marshall.* Rather, consistent with the summary in *Park Regis* which this court endorsed in *ARW* ([21] *supra*) at [100], the cases should be analysed as lying on a spectrum. On one end of the spectrum, where it is clear that the appeal is against a judgment after a trial or a hearing having the full characteristics of a trial (ie, which involves extensive taking of evidence and particularly oral evidence), then it is clear that *Ladd v Marshall* should be generally applied in its full rigour. On the other end of the spectrum, where the hearing was not upon the merits at all, such as in the case of interlocutory appeals, then *Ladd v Marshall* serves as a guideline which the court is entitled but

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> not obliged to refer to in the exercise of its unfettered discretion. For all other cases falling in the middle of the spectrum, which would include appeals against a judgment after a hearing of the merits but which did not bear the characteristics of a trial, then it is for the court to determine the extent to which the first condition of *Ladd v Marshall ie*, criterion of non-availability should be applied strictly, having regard to the nature of the proceedings below. In this regard, relevant (non-exhaustive) factors would include: (a) the extent to which evidence, both documentary and oral, was adduced for the purposes of the hearing; (b) the extent to which parties had the opportunities to revisit and refine their cases before the hearing; and (c) the finality of the proceedings in disposing of the dispute between the parties.

38 In other words, it is for the court to determine the extent to which the first step of the *Ladd v Marshall* test of non-availability should be applied strictly, depending on the nature of the proceedings below. The Court of Appeal made it clear that where the hearing was not upon the merits at all, such as in the case of interlocutory appeals, then *Ladd v Marshall* serves as a guideline which the court is entitled but not obliged to refer to in the exercise of its unfettered discretion.

39 Finally, the Court of Appeal has held that the judge hearing a registrar's appeal exercises confirmatory, rather than appellate, jurisdiction and rehears the case afresh. The judge is entitled to exercise an unfettered discretion, including on the admissibility of fresh evidence. The Court of Appeal stated as follows in *Lassiter Ann Masters v To Keng Lam (alias Toh Jeanette)* ("*Lassiter*") [2004] 2 SLR(R) 392 at [10]:

> 10 It would be expedient if we first deal with the question of whether *Ladd v Marshall* applies to an appeal from the Registrar's decision. It is settled law that when a judge in chambers hears an appeal from a decision of the Registrar, the judge is not exercising an appellate jurisdiction but a confirmatory jurisdiction. In such an appeal, there is a rehearing before the judge and he is entitled to exercise an unfettered discretion of his own. In *Herbs and Spices Trading*

> *Post Pte Ltd v Deo Silver (Pte) Ltd* [1990] 2 SLR(R) 685 ("*Herbs and Spices*"), Chan Sek Keong J (as he then was) said at [12]:
>
> > … In such appeals, the judge-in-chambers is not exercising 'appellate' jurisdiction in the same sense when [he] hears appeals from the District Court. This view is consistent with the rule that an appeal from the Registrar of the High Court to the judge-in-chambers is by way of an actual rehearing of the application and the judge treats the matter afresh as though it came before him the first time, and the practice of allowing fresh affidavit evidence in such appeals.

40 It is seen that in a registrar's appeal, the judge treats the matter afresh as though it came before him the first time, with the practice of allowing fresh affidavit evidence in such appeals. However, in the context of an appeal from the assessment of damages by the registrar, the Court of Appeal cautioned that it is not suggesting that a party should be free to bring in fresh evidence as he pleases. The Court of Appeal stated as follows at [24]-[26]:

> 24 Having said that, and for the reasons set out in [20], we are far from suggesting that a party should be free to bring in fresh evidence as he pleases. The discretion rests with the judge. Reasonable conditions must be set. The first condition under *Ladd v Marshall* is a very stringent one – it must be shown that the new evidence could not have been obtained with reasonable diligence at the trial. Any sort of judgmental error would not be sufficient to meet this condition. However, for the reasons given in the previous paragraph, the imposition of the same stringent requirement on an appeal from an assessment by the Registrar to the judge would not be appropriate. The judge should be given a wider discretion in the matter. But this is not to say that the discretion ought to be exercised liberally. Sufficiently strong reasons must be shown why the new evidence was not adduced at the assessment before the Registrar.
>
> 25 The next question to ask is whether the second and third conditions in *Ladd v Marshall*, namely, that the evidence must be such that, if given, it would probably have an important influence on the result of the case and that it must be apparently credible though it need not be incontrovertible, are in any way relevant. To our mind, these two conditions are eminently reasonable ones. If the new evidence sought to be admitted cannot satisfy the two conditions, what would be the

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> point of admitting the evidence? It would be meaningless to do so.
>
> 2 Accordingly, to the extent that the judge below held that all the conditions in *Ladd v Marshall* applied to the present case, we would, with the utmost respect, differ from that view. On the other hand, we would reiterate that it is also wrong to think that a party appealing against a Registrar's award following an assessment is freely entitled to introduce fresh evidence before the judge. The discretion to admit such evidence is with the judge who should exercise it subject to the conditions we mentioned above. In passing, we would add that we do not see any reason why these conditions should not also apply to other similar proceedings conducted by the Registrar, such as the taking of accounts or the making of inquiries.

41 It is seen that the Court of Appeal mandated a balanced approach. Whilst the imposition of the same stringent requirement of the *Ladd v Marshall* test on an appeal from an assessment by the registrar to the judge would not be appropriate and the judge should be given a wider discretion; it does not mean that the discretion ought to be exercised liberally. There must still be sufficiently strong reasons why the new evidence was not adduced at the assessment before the registrar. In other words, whilst the second and third requirement, that of relevance and credibility respectively remain applicable, wider discretion is given to the court as regards the first requirement of non-availability.

42 Applying the foregoing to the present case, whilst I have a wider discretion as regards the first requirement under the *Ladd v Marshall* test of non-availability in an RA arising from an AD, the defendants face an insurmountable hurdle at the second requirement. This is the requirement of relevance. The defendants are not able to show that the evidence of these categories of documents is potentially material to the issues in the RA simply because as discussed above, the issue of the penalty rule cannot be argued before me. It has not been pleaded and the issue of whether the claimant has infringed the rule against penalties cannot be considered in the RA. Any evidence relating

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to the question of the penalty rule would not be relevant to the RA. The three categories of documents therefore do not pass muster under the requirement of relevance. I therefore dismiss the application under SUM 270.

Conclusion

43 Clause 18.1.2.3 of the Rental Agreements is plain and unambiguous and liquidated damages are payable by the defendants under the clause. The defendants did not plead the penalty rule nor tender any evidence at the AD regarding how clause 18.1.2.3 infringes the penalty rule. The defendants cannot now argue that clause 18.1.2.3 infringes the rule against penalties. The further evidence sought to be admitted concerns the defendants' contentions in regard to the penalty rule and is thus not relevant to the RA for the same reasons.

44 RA and SUM 270 are therefore dismissed. Parties are to file written submissions on the question of costs, to be limited to three pages, within 14 days hereof.

Chiah Kok Khun
District Judge

Tay Wei Loong Julian and Wong Liang Yeong Samuel (Lee & Lee LLP) for the claimant;
Noel Chua Yi How (Characterist LLC) for the defendants.

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