Negligence

An Autochthonous Approach to the Law of Negligence in Singapore; Auditor Liability for Trading Losses

In a landmark judgment, a five-member *coram* of the Singapore Court of Appeal (**CA**) struck out a US$2.6 billion claim for trading losses brought by the liquidators of Hin Leong Trading (Pte) Ltd against its former auditor. The CA revisited the foundational principles of negligence, departed from aspects of overseas authority and set out a distinctly Singaporean framework for analysing negligence claims: *Deloitte & Touche LLP v Hin Leong Trading (Pte) Ltd (in compulsory liquidation)* [2026] SGCA 33.

In summary, the CA:

- **Articulated a six-part framework for negligence claims** comprising (a) actionable damage; (b) a duty of care; (c) breach of duty; (d) factual causation; (e) legal responsibility; and (f) the absence of any defence. The CA cautioned against unnecessary proliferation of further doctrines, holding that outcomes should be rationalised in terms of existing established doctrines.
- **Reconceptualised the *SAAMCo* scope of duty principle as an application of contractual remoteness principles**. The CA declined to follow the English approach of treating the principle as a distinct element in negligence.
- **Emphasised the distinction between duty and breach**: A duty of care is a general duty to exercise reasonable skill and care whereas any alleged failure to take a specific step is a question of breach.
- **Delineated the limits of a statutory auditor's liability** by holding that a statutory auditor is not liable for losses incurred from its client company's continued trades, as such losses are too remote.

Our Senior Consultant Tan Cheng Han SC, Deputy Head of Commercial & Corporate Disputes Wendy Lin, Partner Monica Chong Wan Yee, and Associates Brandon Wong and Matthew Tan Ju Wei successfully represented the auditor before the CA.

Decision

Deloitte & Touche LLP (**Deloitte**) was the statutory auditor of Hin Leong Trading (Pte) Ltd (**HLT**), formerly one of Asia's largest oil traders and controlled by Mr Lim Oon Kuin and his family (**Lim Family**).

Deloitte issued unqualified audit opinions for the financial years ended 31 October 2014 to 31 October 2019. In April 2020, extensive fraud within HLT came to light, revealing that the Lim Family had materially misstated HLT's financial statements – including by recording fictitious profits and overstating accounts receivable and inventory – to conceal the staggering losses the company had accumulated over the years. HLT was estimated to be insolvent from as early as 2012.

The liquidators of HLT brought claims against Deloitte for negligence (**Negligence Claim**) and for a breach of duty to report fraud or irregularities likely to cause material loss to HLT to government authorities and/or third parties (**Reporting Duty Claim**).

The liquidators claimed, among other losses, US$2.6 billion in losses incurred from HLT continuing to trade between November 2015 and mid-April 2020, which it alleged would have been avoided had Deloitte discharged its duties and HLT entered liquidation earlier (**Trading Losses**).

The CA proceedings arose from Deloitte's application to strike out HLT's claims, which had been dismissed by both an Assistant Registrar and a Judge in the General Division of the High Court. The CA proceeded on the basis that the appeal involved the summary determination of two questions of law: (a) whether Deloitte's duty of care included a duty to have regard to the interests of HLT's creditors assuming HLT was insolvent at the time of the audits (**Creditor Duty Question**); and (b) whether the Trading Losses were recoverable in law from Deloitte (**Trading Losses Question**).

The CA allowed the appeal in part and struck out HLT's claim for Trading Losses. However, it declined to answer the Creditor Duty Question, finding it "*academic*" and, in any event, not appropriate for summary determination.

Framework for Negligence Claims

The CA identified six broad requirements for liability in negligence:

(a) the subject matter of the complaint must be of a type actionable in negligence;

(b) the defendant must have owed the claimant a duty of care;

(c) the defendant's conduct constituted a breach of that duty;

(d) the breach was a factual cause of the injury;

(e) the loss must fall within the scope of the defendant's legal responsibility; and

(f) the absence of any operative defences, such as illegality or contributory negligence.

The CA cautioned against unnecessary proliferation of further doctrines, which would generate uncertainty and undermine consistency in reasoning and outcomes. Instead, legal outcomes should be rationalised by reference to existing established doctrine.

Distinguishing factual causation from legal responsibility

The CA observed that the fourth and fifth elements (factual causation and legal responsibility) have not always been clearly defined or distinguished in the authorities. It therefore endeavoured to "*disentangle*" the two inquiries as follows:

(a) Factual causation is a question of historical fact: whether the claimant's loss would not have occurred *but for* the defendant's wrongful conduct; and

(b) Legal responsibility, by contrast, is a normative question as to whether the defendant should be responsible for the loss.

The element of legal responsibility encompasses two broad categories. The first concerns the attribution of responsibility where the claimant's damage has multiple causes, engaging principles such as *novus actus interveniens* and mitigation. The second concerns whether the type of damage suffered was sufficiently foreseeable under the doctrine of remoteness. These doctrines governing legal responsibility operate as control mechanisms that limit the consequences for which a defendant may be held liable.

Distinguishing duty from breach

The CA cautioned against conflating the existence of a duty of care with the question of breach. A duty of care is a general duty to take such care as is reasonable in the circumstances as opposed to a specific obligation to do or not do any specific acts.

The distinction matters for two reasons. First, whether a duty of care exists is a question of law, whereas breach is a fact-sensitive inquiry generally unsuitable for summary determination and one on which an appellate court will be slow to disturb the trial judge's findings. Second, framing a duty by reference to specific acts makes an *a priori* assumption that a failure to do that thing is invariably a failure to act with reasonable care, creating the misleading impression that liability is strict rather than tested on a standard of reasonableness.

Distinguishing duty from remoteness

The CA also cautioned against conflating duty of care with remoteness by defining the duty by reference to particular forms or risks of damage. Whether a defendant should be liable for a specific type of loss is properly addressed under remoteness, whereas the duty of care is a broader obligation to take reasonable care to avoid harm generally. The two inquiries address different forms of indeterminacy: duty limits the class of persons to whom liability may be owed, while remoteness limits the extent of recoverable loss suffered by that class.

SAAMCo principle is an application of contractual remoteness

The *SAAMCo* principle, derived from the House of Lords decision in *South Australia Asset Management Corporation v York Montague Ltd* [1997] AC 191, has commonly been understood as excluding losses falling outside the scope of the defendant's duty of care.

The CA held that the *SAAMCo* principle is better rationalised as an application of orthodox contractual remoteness principles, under which a defendant is liable only for damage for which it may be taken to have assumed responsibility because it was within the parties' contemplation at the time of contracting (per *Hadley v Baxendale* (1854) 9 Exch 341). The CA declined to adopt the English courts' treatment of *SAAMCo* as a distinct doctrine confined principally to professional negligence cases, observing that such a limitation appeared "*rather arbitrary*".

The Creditor Duty Question

An academic question

The CA declined to answer the Creditor Duty Question, taking the view that: (a) that question was an argument as to the breach of Deloitte's duty of care (since it boiled down to Deloitte having acted or failed to act in a particular way) and therefore was a factual issue that was not appropriate for summary determination; and (b) resolving that question would not result in any part of HLT's pleadings being struck out.

The CA's comments on HLT's arguments on the Creditor Duty Question

The CA nevertheless went on to opine on the conceptual difficulties underlying the Creditor Duty argument. It firmly rejected HLT's analogy with directors' duties to creditors, emphasising that auditors perform a fundamentally different role and are uninvolved in a company's decision-making. The CA also rejected HLT's reliance on *Stone & Rolls Ltd v Moore Stephens* [2009] 1 AC 1391, finding that its discussion of auditors' duties had been taken out of context. *Stone & Rolls* concerned the illegality defence, an issue in which the purpose of an auditor's duty may be relevant to whether attributing fraud to the company would defeat that duty. Contrary to HLT's contention, the case did not suggest that auditors are subject to any specific obligation to act, or to give subjective consideration to creditors' interests.

The Trading Losses Question

The Trading Losses are too remote

The CA characterised the Trading Losses Question as one of remoteness governed by the rule in *Hadley v Baxendale*. In doing so, it departed from authorities in Australia and the United Kingdom that had analysed similar claims through the concepts of causation or scope of duty.

The CA found Trading Losses too remote for the following main reasons:

(a) First, Deloitte had no involvement in or control over HLT's trading activities, which depended on market movements and management decisions.

(b) Second, the statutory context for liability for insolvent trading formed part of the background against which the parties contracted. Under sections 339(3) and 340 of the Companies Act (Cap 50, 2006 Rev Ed) (as then in force), liability for wrongful or fraudulent trading requires actual knowledge, and it is unlikely that Deloitte would have assumed responsibility for HLT's losses based on a lower degree of knowledge than that which was fixed by statute.

(c) Third, even if Deloitte's negligence had enabled HLT to continue trading by obtaining financing using its misstated financial statements, the obtaining of financing did not itself cause HLT any loss, as the increase in HLT's liabilities was matched by a corresponding increase in its assets. The Trading Losses arose from how HLT put the financing to use in trading by management, which was outside Deloitte's knowledge.

Illegality Defence Left Open

The CA also observed that the Lim Family's fraud raised the possibility that HLT's claim might be barred by illegality. Although the CA observed that the present case was "*on all fours*" with *Stone & Rolls*, in which an auditor was permitted to rely on the controller's fraud against the company as a complete defence, the CA noted that the decision remained controversial, and the precise basis of the majority's decision itself has proven elusive. However, as the issue of the illegality defence was not before the CA, it left this difficult issue open for future determination.

Key Takeaways

The judgment provides important guidance on the proper analysis of negligence claims in Singapore.

First, the CA's six-part framework promotes analytical discipline by requiring parties and courts to identify precisely which element of negligence is engaged, while cautioning against the conflation of conceptually distinct inquiries such as duty, breach and remoteness.

Second, the judgment locates doctrines of remoteness, mitigation and *novus actus interveniens* within the broader inquiry into the extent of a defendant's legal responsibility.

Third, the CA departed from overseas authorities that treat the *SAAMCo* principle as an independent 'scope of duty' doctrine. It instead rationalised the principle as an application of orthodox contractual remoteness.

Finally, the decision marks an important limit on auditor liability. A company cannot look to its auditor for compensation for losses incurred through continued trading while insolvent, in circumstances where the auditor neither participated in the company's trading decisions nor assumed responsibility for the risks arising from those activities.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally work with or any of the following:

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