**IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT**
**OF THE REPUBLIC OF SINGAPORE**

**[2023] SGHC(I) 5**

Suit No 9 of 2021

Between

Roll SG Pte Ltd

… *Plaintiff*

And

Cong Ty Co Phan Van Tai
Lien Hiep Huy Hoang

… *Defendant*

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# JUDGMENT

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[Contract — Breach — Rental agreement]
[Contract — Remedies — Damages]

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# Roll SG Pte Ltd
# v
# Cong Ty Co Phan Van Tai Lien Hiep Huy Hoang

**[2023] SGHC(I) 5**

Singapore International Commercial Court — Suit No 9 of 2021
Anselmo Reyes IJ
12 January, 24 February 2023

25 April 2023 Judgment reserved.

## Introduction

1 The dispute arises out of several crane rental agreements (collectively, the "Contract") between the plaintiff, Roll SG Pte. Ltd. ("Roll"), and the defendant, Cong Ty Co Phan Van Tai Lien Hiep Huy Hoang ("HTL"). Under the Contract, Roll agreed to lease to HTL a CC6800 crawler crane (the "Crane"). The Crane was to be used for HTL's construction and installation works at the Tra Vinh Wind Farm Offshore Project (the "Project") in the Mekong Delta of Vietnam. On 2 November 2020, the Crane was severely damaged while being transported by HTL.

2 Roll seeks damages against HTL for breach of the Contract. More specifically, Roll claims the cost of repairing the Crane, unpaid invoices for the rental and demobilisation of the Crane, and late payment interest. Roll contends that it is entitled to damages of €5,108,764.93, US$1,215,844.13 and S$96,641.60 in respect of the repair and return of the crane, plus outstanding

sums relating to the rental of the crane and late payment interest amounting to at least US$3,982,351.60. In correspondence, HTL denied the Singapore International Commercial Court's ("SICC") jurisdiction to hear this case and has not appeared to defend the action. HTL has not stated why it contends that the SICC lacks jurisdiction to hear this case.

3 The main issues that I have to determine in this dispute are:

(a) Does the SICC has jurisdiction over the parties' dispute?

(b) Did HTL breach the Contract by failing to repair the Crane and return it in good condition to Roll?

(c) Did HTL breach the Contract by failing to pay outstanding invoices for the rental and demobilisation of the Crane?

(d) Is Roll entitled to late payment interest for sums outstanding on Roll's unpaid invoices?

(e) If Roll is entitled to damages, what is the quantum of the same?

(f) How should the costs of this action be dealt with?

## Background

### *The parties*

4 Roll is a Singapore company and a subsidiary of the Roll Group. The Roll Group rents out heavy lifting equipment, particularly for construction and installation applications in the energy industry, among other business.



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5 HTL is a Vietnamese company. It provides logistics, transportation, equipment installation, and construction services in Vietnam, especially for offshore wind turbine projects off the Vietnamese coast.

***The Contract and its performance***

6 On 30 March 2020, Ms Bach Mai Huynh ("Ms Mai") of HTL wrote to Mr Tan See Ann Gilbert ("Mr Tan") of Roll, enquiring about the possibility of renting a CC6800 crawler crane for HTL's use on the Project. Roll had leased the Crane from P. van Adrighem B.V ("PVA"), a Dutch company.

7 Following months of negotiation, Roll and HTL entered into a rental agreement on 12 May 2020 (the "1st Rental Agreement"). Under the 1st Rental Agreement, Roll would lease the Crane to HTL for a minimum period of nine months from 15 August 2020 to 15 May 2021.

8 Sometime in June 2020, to assist HTL's bank financing application, the parties agreed to split the nine months rental period into two separate periods: first, a four-month rental agreement from 15 August to 14 December 2020 (the "2nd Rental Agreement") and second, a five-month rental agreement from 15 December 2020 to 14 May 2021 (the "3rd Rental Agreement"). The 1st, 2nd and 3rd Rental Agreements expressly incorporated the Roll Group's Standard Terms and Conditions (the "Standard T&Cs") and Special Terms and Conditions (the "Special T&Cs"). Apart from the rental periods, the material terms of the three agreements are identical. The Rental Agreements collectively comprise the Contract.

9 The material terms of the Contract were as follows:



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(a) Roll would lease the Crane to HTL from 15 August 2020 to 15 May 2021. In return, HTL would pay Roll a monthly rental of US$175,000 for the Crane, together with a one-off payment of US$75,000 for the demobilisation of the Crane (collectively, the "Payment Obligation Clauses").

(b) HTL was responsible for returning the Crane to Roll undamaged. If the Crane was damaged during the rental period, HTL would rectify the damage and be responsible for all costs associated with the repair of the Crane and its return to Roll (collectively, the "Damage Rectification Clauses").

(c) HTL would pay Roll default interest, in the event of delay in paying Roll's invoices, at a rate of 1.5% per month, accruing from the due date of each invoice.

(d) Disputes under the Contract were to be referred exclusively to the Singapore Court.

10 On or around 22 to 23 August 2020, Roll delivered the Crane to HTL at Cai Mep Port in Vietnam. The document certifying the handover of the Crane by Roll to HTL (the "Handover Document") stated that "no physical damages were detected, and all the crane parts are received in good condition".

11 On 28 September 2020, PVI Insurance Corporation ("PVI Insurance") issued a Domestic Transport Insurance (Certificate No. 20/25/01/VCND/P00154) for the Crane. The PVI Insurance policy required HTL to properly sea-fasten the Crane and procure a Certificate of Approval from a Marine Warranty Surveyor prior to the Crane being towed to the Tra



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Vinh Wind Farm. A breach of this condition would lead to the PVI Insurance policy being invalidated.

12 In October 2020, HTL transported the Crane from Cai Mep Port to Long Anh International Port ("Long Anh Port"). The Crane was assembled by HTL at Long Anh Port before being towed by sea to the Tra Vinh Wind Farm on 2 November 2020.

13 On 2 November 2020, the Crane was severely damaged while being towed to the Tra Vinh Wind Farm.

14 On 4 November 2020, Crawford & Company (Nederland) B.V. ("Crawford") was engaged to investigate the incident and prepare a report on the cause, nature, and extent of the damage to the Crane as well as the cost of recovering and repairing the Crane. Reports were prepared based on inspections of the Crane from 4 November 2020 to 29 June 2021.

15 On 25 November 2020, PVI Insurance rejected HTL's claim for insurance on the ground that "the sea fastening of Dolly was not completed prior to the intended towage of the barge" and "there was no Marine Warranty Surveyor (MWS)'s Certificate of Approval for the towage from Long An International Port to Tra Vinh Windfarm project site ... [This] is a non-compliance to the Warranted Conditions of the Policy, or in other words 'Breach of Warranty'". On or about 26 November 2020, through emails passing between Mr Tan and Ms Mai, Roll learned that PVI Insurance had rejected HTL's claim.

16 From November 2020 to March 2021, Roll repeatedly requested that HTL repair and return the Crane in compliance with its obligations under the Contract. HTL did not do so, apparently because it was in a disagreement with



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its main contractor, Vestas Wind Technology (Vietnam) LLC ("Vestas"), over the damage to the Crane. Vestas was a wind turbine construction and installation company which had subcontracted part of the construction work on the Tra Vinh Wind Farm to HTL.

17 Eventually, on 6 to 7 February 2021, HTL brought the Crane down from the inverted V-position which it had been in since 2 November 2020. However, HTL refused to remove the Crane from Vestas' barge. In late March 2021, Vestas arranged for the Crane to be dismantled and removed from its barge and transported to PV Shipyard in Vietnam.

18 On 29 March 2021, HTL sent a letter to Roll ("HTL's 29 March 2021 Letter"), which stated:

> As you are aware, we have not had use of the crane for the purpose we hired the said crane, as a result of extensive damage that was caused to the crane during transit from Long An International Port to Tra Vinh Windfarm Project Work Site, S.R. Vietnam. The said damage was caused by the acts, neglect and omissions on the part of a third party, that is, Vestas Wind Technology (Vietnam) LLC, who were in control of and managed the transfer of the crane to the work site.
>
> As a result of the said damage, we have been deprived of the use of the crane, and as far as we are concerned, the agreement for the use of the crane came to an end on 2 November 2020.
>
> As you are aware, Vestas have now unilaterally moved the crane from site to the PV shipyard in Vung Tau, for purposes only known to them. We do not have knowledge of how the move was undertaken, what the actual condition of the crane was prior to and after the move, and whether the crane has been further damaged during the move. If your good company is minded to retrieve the crane, we would ask that your good company liaise directly with Vestas, who are well aware that you are the owner of the crane.
>
> In the meantime, we reserve all our rights in this matter and place you on notice that we will be seeking to recover the sums



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> paid by way of rental from 2 November 2020, as we did not have the use of the crane from this date.

19 On 6 April 2021, Roll's Vietnam and Singapore solicitors sent a letter in response to HTL's 29 March 2021 Letter ("Roll's 6 April 2021 Letter"). The letter asserted that HTL had breached the Contract by failing to return the Crane to Roll undamaged and by failing to rectify the damage to the Crane. It also rejected HTL's position in HTL's 29 March 2021 Letter.

20 Following Roll's 6 April 2021 Letter, HTL and Roll continued to exchange email correspondence. On 18 May 2021, Ms Mai emailed Mr Tan stating:

> We acknowledge our obligation of redelivery this crane [*sic*] to Roll as stipulated in the Rental Agreement. Though, we're still trying to survive through this crisis with Vestas while putting our last coins into the early stages of delivering our new projects which we expect to harvest at the end of this year. Thus, we're seeking for Roll's support to pay upfront the load-out cost at PV Shipyard as a part of your kind action to mitigate loss that you've been doing ever since the incident happened. This cost, together with the overdue payments, shall be paid to Roll when HTL collects revenue from its on-going projects.

21 On 29 June 2021, following an inspection of the Crane by a Vietnamese surveyor (Vietnam International Adjuster) in the presence of HTL and Roll, the Crane was loaded onto a barge and shipped out of Vietnam.

22 On about 25 September 2021, the Crane arrived at PVA's premises in Vlaardingen, The Netherlands. It underwent inspection, testing and repairs. The Crane was fully repaired and returned to PVA in good condition on 31 August 2022.



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23 During the period from February 2021 until August 2022, invoices were issued by Roll to HTL for the rental of the Crane at US$175,000 per month. Invoice No. 20210035 was also issued by Roll on 14 July 2021 for the demobilisation of the Crane, in the sum of US$75,000. HTL has not paid these invoices.

***Background to HTL's jurisdictional challenge***

24 On 8 September 2021, Roll filed its Writ of Summons and Statement of Claim, thereby commencing these proceedings ("SIC 9") in the SICC against HTL.

25 On 9 February 2022, following several attempts at service on HTL in Vietnam and an application by Roll for substituted service, Roll effected substituted service of the SIC 9 cause papers on HTL.

26 On 18 February 2022, HTL's Vietnam lawyers (Global Vietnam Lawyers ("GVL")) sent a letter to Roll ("18 February 2022 Letter") in which GVL confirmed receipt of the SIC 9 cause papers but rejected the SICC's jurisdiction over the matter as follows:

> We, Global Vietnam Lawyers Law Co., Ltd … act for Cong Ty Co Phan Van Tai Lien Hiep Huy Hoang.
>
> We write with reference to the Singapore International Commercial Court ("SICC") action, SIC/S 9/2021 which your clients, Roll SG Pte Ltd, have commenced against our clients. Our clients reject the jurisdiction of the SICC to adjudicate this matter. Consequently, service of the writ on our clients is rejected and all our clients' rights are expressly reserved.
>
> If your clients proceed with the SICC action, this notice to you will be drawn to the attention of the appropriate court in Vietnam, and we will at such time demand that all costs associated therewith be paid by your clients.



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27 On 15 April 2022, Drew & Napier LLC ("DN") (Roll's Singapore lawyers) informed the court that Roll would be filing an application requesting for all matters relating to its claim in SIC 9 to be dealt with on the merits. The grounds for this application were that obtaining a default or interlocutory judgment as a result of HTL's failure to enter an appearance in SIC 9 ran the risk of being unenforceable against HTL in Vietnam. On 25 April 2022, DN sent HTL a copy of its letter to court of 15 April 2022.

28 On 11 May 2022, HTL, through its Vietnam lawyers (GVL) sent a further letter to Roll in which it reiterated its rejection of the SICC's jurisdiction:

> We, Global Vietnam Lawyers Law Co., Ltd, are acting for our client, Cong Ty Co Phan Van Tai Lien Hiep Huy Hoang.
>
> On 18 February 2022, we sent a letter to you to inform the clear rejection of our client to the jurisdiction of the Singapore International Commercial Court ("SICC") to adjudicate the action, SIC/S 9/2021 which your clients, Roll SG Pte Ltd, have commenced against our client ("Matter").
>
> For avoidance of any doubt, by this letter, we once again confirm that our client continues to reject the judisdiction [*sic*] of SICC to adjudicate the Matter and the validity of the correspondence being sent by Drew & Napier LLC on behalf of Roll SG Pte Ltd.
>
> If your client insists on proceeding with the Action, this letter will be drawn to the attention of the appropriate court in Vietnam, and we will at such time demand that all costs associated therewith be paid by your clients. …

29 On 13 May 2022, Roll filed its application in SIC/SUM 23/2022 ("SUM 23"), for an order that SIC 9 proceed to trial for the purposes of obtaining a judgment on the merits of the action disposing of all the issues in the case, including an assessment of damages (if any).

30 On 23 May 2022, DN sent a copy of SUM 23 to HTL. DN also wrote to GVL, explaining Roll's basis for asserting that the SICC has jurisdiction over



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SIC 9 ("DN's 23 May 2022 Letter"). In its Letter, DN stated that "should [HTL] continue to take the position that the SICC does not have jurisdiction to adjudicate SIC 9, we invite [HTL] to explain the basis of its position, and to directly submit its objection to the SICC". No response was received from HTL or GVL to DN's 23 May 2022 Letter.

31 On 23 June 2022, this court heard SUM 23 and directed that SIC 9 proceed to trial.

32 By letter dated 5 July 2022 ("DN's 5 July Letter"), DN duly wrote to HTL regarding the outcome of SUM 23 as follows:

> [W]e refer to ... the letters exchanged between us and your Vietnamese solicitors, pertaining to the matter of the SICC's jurisdiction. During the Hearing, Justice Reyes took note of your objection to the jurisdiction of the SICC but stated that the Court was unclear as to the basis of your objections. Accordingly, we have been directed by Justice Reyes to request that you provide the Court with the grounds of your objection to the jurisdiction of the SICC. To that end, we invite you to communicate the grounds of your jurisdictional objections either to us or to the SICC directly, as soon as possible.

33 HTL did not respond to DN's 5 July 2022 Letter. In particular, HTL did not clarify the bases of its jurisdictional objection.

34 On 20 July 2022, following a Case Management Conference, this court rendered SIC/ORC 51/2022 ("ORC 51") in which the timelines for the trial of SIC 9 were fixed. In ORC 51, this court ordered that:

> (a) Roll was to write again to HTL by 25 July 2022 to request that HTL provide the court with the grounds of its objections to the jurisdiction of the SICC; and



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(b) HTL was to *"*provide the Court with the grounds of its objections to the jurisdiction of the SICC (if any) by 30 August 2022*"*.

35 By letter and email dated 25 July 2022, DN sent a copy of ORC 51 to HTL. Neither HTL nor GVL responded to DN's 25 July 2022 letter and email. HTL consequently failed to provide details of its jurisdictional objection by the deadline of 30 August 2022 or any time thereafter.

36 On 24 November 2022, this court extended the deadline for filing and exchange of affidavits of evidence-in-chief to 2 December 2022.

37 On 8 December 2022, this court granted leave for Mr Michael Alexander Schaap (a Director of Roll) ("Mr Schaap") and Mr Alfred Kommers (Executive General Adjuster with Crawford) ("Mr Kommers") to give evidence by video link from The Netherlands at the trial of SIC 9.

38 On 12 January 2023, the hearing for the Suit took place. Mr Tan (Roll's Business Development Director), Mr Schaap, and Mr Kommers gave evidence on Roll's behalf. HTL neither appeared in court nor filed any application under O 12 r 7(1) of the Rules of Court (2014 Rev Ed) ("ROC 2014") (which govern these proceedings) challenging the SICC's jurisdiction. It should be noted that, in the event, Mr Schaap gave evidence in person and only Mr Kommers gave evidence by video link.



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**Discussion**

***Issue 1: Whether the SICC has jurisdiction over the dispute***

39 The Contract expressly incorporates the Standard T&Cs. Clause 17.2 of the Standard T&Cs is an exclusive jurisdiction agreement in favour of the Singapore Courts (the "Singapore Jurisdiction Clause") in the following terms:

> All disputes arising in connection with the Contract or subsequent contracts resulting therefrom, including disputes relating to the existence, validity and/or termination thereof, will be referred exclusively to the Court of Singapore.

40 It might be suggested by HTL that the Singapore Jurisdiction Clause only confers jurisdiction on a "Court of Singapore" and does not go so far as to confer jurisdiction on the SICC.

41 However, the court would disagree with such contention.

42 First, Section 18A of the Supreme Court of Judicature Act 1969 (Cap 322) (the "SCJA") expressly states that the SICC is a division of the General Division of the Singapore High Court. O 110 r 1(2)(*ca*) of the ROC 2014 further provides that: "where an agreement to submit to the jurisdiction of the High Court is concluded on or after 1 October 2016, the agreement is to be construed as including an agreement to submit to the jurisdiction of the Court (*ie*, the SICC), unless a contrary intention appears in the agreement." Here, the 1st Rental Agreement was signed in May 2020 and the 2nd and 3rd Rental Agreements were signed in July 2020. The Singapore Jurisdiction Clause does not contain any words indicating a contrary intention. Accordingly, the SICC has jurisdiction pursuant to Section 18A of the SCJA.



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43 Second, pursuant to Section 18D of the SCJA read with O 110 r 7(1) of the ROC 2014, the SICC has jurisdiction to hear and try any action which satisfies the following conditions:

(a) the action is international and commercial in nature;

(b) the action is one that the General Division of the Singapore High Court may hear and try in its original civil jurisdiction; and

(c) the parties to the action do not seek any relief relating to a prerogative order (including a mandatory order, a prohibiting order, a quashing order or an order for review of detention).

44 On the first limb, Roll's action is "*international*" in nature under O 110 r 1(2)(*a*)(i) of the ROC 2014. This is because Roll's place of business is Singapore and HTL's place of business is Vietnam so that "*the parties to the claim have their places of business in different States*".

45 Roll's action is "*commercial*" in nature under O 110 r 1(2)(*b*)(i) of the ROC 2014, as: "the subject matter of the claim arises from a relationship of a commercial nature, whether contractual or not, including (but not limited to) ... (A) any trade transaction for the supply ... of goods or services ... [and] (E) construction works". The Contract is a commercial contract for the supply of a Crane on a rental basis for HTL's use in its construction and installation works on the Project.

46 On the second limb, under s 16(1)(*a*)(ii) of the SCJA, the General Division of the High Court of Singapore has civil jurisdiction to hear and try any action *in personam* where the defendant is served with a writ of summons



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"outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court". Roll duly served the SIC 9 cause papers on HTL by substituted service on 9 February 2022. As such, this requirement is also satisfied.

47 On the third limb, Roll is not seeking any relief relating to a prerogative order. Instead, Roll merely seeks for an award of damages arising out of HTL's breach of the Contract.

48 Therefore, the SICC also has jurisdiction pursuant to section 18D of the SCJA read with O 110 r 7(1) of the ROC 2014.

49 On this issue, the court determines that the SICC has jurisdiction pursuant to s 18A of the SCJA, as well as pursuant to s 18D of the SCJA read with O 110 r 7(1) of the ROC 2014.

### *Issue 2: Whether HTL breached the terms of the Contract by failing to repair the Crane and return it in good condition to Roll*

*Background*

50 Clause 1.4 of the Special T&Cs provides:

> When it is delivered, the [Crane] will function properly, be well maintained, in good working order and free from defects.

51 Clause 1.5 of the Special T&Cs provides:

> [HTL] is obliged to inspect the state and condition of the [Crane] upon delivery. If the [Crane] does not meet the requirements set out in paragraph 1.4, [HTL] must inform [Roll] accordingly in writing immediately upon receipt of the [Crane], failing which [HTL] will be deemed to have received the [Crane] in the state and condition described in paragraph 1.4.



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52 Clause 1.7 of the Special T&Cs states:

> [HTL] must take good care of the [Crane] and use the [Crane] with due care. [HTL] is responsible and liable to [Roll] for all defects and/or damage caused to the [Crane] during the Hire and Project Period.

53 HTL's liability in the event of damage to the Crane is further clarified by cl 1.9 of the Special T&Cs:

> If repairs ... are necessitated by acts, omissions or improper use by or on behalf of [HTL], the costs associated with such repairs ... including (without limitation) the costs of labour, materials, transport and travelling expenses, will be payable by the [HTL].

54 The Contract also specifies that it is HTL's responsibility to ensure that the Crane is repaired and in a good condition prior to its return to Roll. Clause 1.10 of the Special T&Cs states:

> The [Crane] must be returned clean, undamaged and in the same state and condition as it was when received.

55 Similarly, page 3 of the Rental Agreements stipulates: "On return [of the Crane] the surveyor will be engage[d] again to ascertain the crane condition, [and] any damages or defaults arising from [the] rental period will have to be rectified by [HTL] prior to handover."

56 Further, cll 2.2 to 2.4 of the Special T&Cs provides for the liability when HTL's personnel operate the Crane. Clause 2.2 states:

> If [HTL] provides personnel to operate the [Crane], [HTL] must ensure that the personnel it assigns and/or hires to operate the [Crane] has all the expertise, qualifications and skills required to perform the work with the [Crane]. [HTL] is fully responsible for the Personnel it assigns to operate the [Crane].

57 Clause 2.3 of the Special T&Cs states:



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> [HTL] will be fully responsible and liable for and fully indemnifies … [Roll] against any consequences, loss, costs and damage … arising from any act or omission on the part of the Personnel …

58 Clause 2.4 of the Special T&Cs states:

> The Personnel are deemed to be 'borrowed servants'. The Personnel must perform the work under the supervision, on the instructions and under the control of [HTL] and in [HTL's] name.

59 It should likewise be noted that page 4 of the Rental Agreements stipulate that the hirer is responsible for the sea-fastening of the Crane on a barge.

*Analysis*

60 HTL might suggest that it did not breach the terms of the Contract by failing to repair the damage to the Crane and return it in good condition to Roll.

61 HTL might contend that Vestas should be liable for any damage to the Crane. Vestas was responsible for the transfer of the Crane at all the material times, including on 2 November 2020, under the agreement between HTL and Vestas. In this connection, it may be argued that Roll was made aware or ought to have been aware during the Contract negotiations that the work on the Tra Vinh Wind Farm had been subcontracted to HTL by Vestas as part of Vestas' construction work on the Tra Vinh Wind Farm. For example, in HTL's 29 March 2021 Letter, HTL stated that:

> … The said damage was caused by the acts, neglect and omissions on the part of a third party, that is, Vestas Wind



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> Technology (Vietnam) LLC, who were in control of and managed the transfer of the crane to the work site.

62 HTL might additionally argue that the Contract had been terminated because HTL had been deprived of the use of the Crane. Addendum A of the Rental Agreements, for example, provides for the termination of the Contract in the event of impossibility of use of the Crane. Clause 14 of the Standard T&Cs also sets out grounds whereby HTL may be entitled to cancel or terminate the Contract. For example, cl 14.2 allows HTL to terminate the Contract in the event of *force majeure*. To this end, HTL's 29 March 2021 Letter purports to terminate the Contract on the basis that HTL had been "deprived of the use of the crane" due to the "extensive damage ... to the crane".

63 The court is unable to accept the foregoing arguments.

64 Reading cll 1.4, 1.5, 1.7, 1.9 and 1.10 of the Special T&Cs, along with page 3 of the Rental Agreements, HTL is required to return the Crane to Roll in the same state and condition as it was when received, rectify any damage to the Crane, and bear the cost of repairing the Crane and all other related costs. The terms of the Contract expressly state that it is HTL who bears the liability to Roll for the damage of the Crane.

65 The Crane was damaged on 2 November 2020 due to a failure to sea-fasten the Crane securely prior to its towage to the Tra Vinh Wind Farm. The damage occurred after the Crane had been delivered by Roll to HTL in good condition. The unrectified damage was a breach by HTL of the terms of the Contract. HTL's failure to repair and return the Crane in the same state and condition as it received the same or to bear the cost of repairing the Crane, constituted a clear breach of the Contract.



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66 Roll is not privy to the contract between HTL and Vestas. Nor is Vestas a party to the Contract. Even if HTL has a claim against Vestas in respect of the damage to the Crane, that is for HTL to pursue against Vestas separately under its contract with Vestas or otherwise. The possibility of a claim by HTL against Vestas is no defence in the present Suit under the Contract.

67 Even if it is assumed that Roll was aware that the Crane would be handled by a third party to the Contract, this does not detract from the clear terms of the Contract which imposes liability on HTL. Clause 1.9 of the Special T&Cs provides that in the event of damage "by or on behalf of the Customer (*ie*, HTL)", such costs "will be payable by the Customer". Clauses 2.2 to 2.4 of the Special T&Cs also expressly establish that it is HTL who bears the liability for the damage to the Crane while in its possession, even if the damage is caused by a third party.

68 HTL would not have been entitled to terminate the hire of the Crane pursuant to Addendum A. Addendum A of the Contract provides:

> Agreed amendment to special condition clause 4.2
>
> 4.2 If the Equipment cannot be used for a period that is expected to last at least 15 (fifteen) days and if the impossibility to use the Equipment is not due to the use, abuse or improper use of the Equipment by, under the supervision of or on behalf of the Customer and if the Equipment cannot be replaced within a reasonable time, the Customer will be entitled … to terminate the Hire of the Equipment in question after the Contractor has been given notice to remedy the default and 20 (twenty) working days have passed without the default having been remedied. The Customer will not be required to pay any rental charges for the Equipment during any period in which the Equipment cannot be used under the circumstances described in this paragraph 4.2.



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69 The damage to the Crane occurred due to the "use, abuse or improper use" of the Crane by HTL or those acting under its supervision or on its behalf. Furthermore, no notice was given by HTL to Roll to remedy the alleged default.

70 Since the damage to the Crane was caused by HTL or by those acting on its behalf, HTL would not be entitled to terminate the Contract pursuant to cl 14 of the Standard T&Cs.

71 Consequently, on this issue, the court finds that HTL breached the terms of the Contract by failing to repair the damage to the Crane and return the same in good condition to Roll.

***Issue 3: Whether HTL breached the terms of the Contract by failing to pay for outstanding invoices for the rental and demobilisation of the Crane***

*Background*

72 Page 1 of the Rental Agreements stipulates that "[HTL] shall pay [Roll] for the [Crane] ... to be rented". Page 5 of the Rental Agreements provides that the rental sum for the Crane is US$175,000 per month. As to the duration of rent, page 3 of the Rental Agreements states that the "anticipated period of rental" and/or the "minimum rental period" is from 15 August 2020 to 15 May 2021. Moreover, the "actual end date of the Rental Period will be [the] date of return of the Equipment to [Roll] upon offloading of the equipment from barge to owner trailers".

73 On demobilisation, cl 1.3 of the Special T&Cs states that "the Equipment will be ... demobilised by [Roll] at [HTL's] expense". Page 5 of the Rental Agreements then states that the demobilisation cost due from HTL under the Contract is US$75,000.



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74 During the period from February 2021 to August 2022, invoices were issued by Roll to HTL for the rental of the Crane at US$175,000 per month. Invoice No. 20210035 was issued by Roll on 14 July 2021 for the demobilisation of the Crane, in the sum of US$75,000. HTL has not paid any of the invoices.

*Analysis*

75 HTL has suggested in a letter dated 8 March 2021 and email dated 18 May 2021, that it would only be in a position to make payment to Roll of its "overdue payments ... when HTL collects revenue from its on-going projects".

76 However, in the court's view, payment of the rental sum and other obligations to Roll cannot be conditional on the collection of revenue from HTL's ongoing projects.

77 HTL cannot delay payment or seek to make payment dependent on its revenue from other projects because cl 6.3 of the Standard T&Cs states that "[p]ayments by the Customer to the Contractor may never be dependent upon receipt by Customer of payments from third parties, including the Customer's own customer". As such, HTL has no basis for withholding payment in this manner.

78 Page 3 of the Rental Agreements should also be interpreted in light of cl 1.10 of the Special T&Cs, which requires that the Crane "must be returned clean, undamaged and in the same state and condition as it was when received". Any damage to the Crane that occurred prior to its return to Roll therefore has to be rectified. If the Crane is damaged (as it was) while in HTL's care and custody, the reference in page 3 of the Rental Agreements to the "actual end



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date of the Rental Period" as the "date of return of the Equipment to [Roll]" should be construed as meaning the "date of return of the Equipment to [Roll]" in a condition which is "clean, undamaged and in the same state and condition as it was when received".

79 Thus, HTL is liable to pay for the monthly rental of the Crane up until the date when reasonable repairs to the Crane were completed.

80 On demobilisation, HTL was obliged to pay for the demobilisation costs under cl 1.3 of the Special T&Cs. By failing to pay Invoice No. 20210035 issued by Roll on 14 July 2021 in the sum of US$75,000 for demobilisation, HTL breached the terms of cl 1.3 of the Special T&Cs.

81 Consequently, on this issue, the court finds that HTL breached the terms of the Contract by failing to pay for the outstanding invoices for the rental and demobilisation of the Crane.

### *Issue 4: Whether HTL breached the terms of the Contract by failing to pay late payment interest for sums outstanding under the unpaid invoices*

82 Clause 6.4 of the Standard T&Cs provide that:

> If [HTL] has not made payment by the due date at the latest, [HTL] will be in default without any notice of default being required, and will owe [Roll] default interest equal to 1.5% (one and a half per cent) per month on the overdue amounts. Such default interest will accrue from the relevant due date.

83 HTL may argue that the late payment interest is at an exorbitant rate such that the court should strike it down or hold that it is unenforceable. HTL may also contend that as Roll only started demanding that HTL pay late payment interest on 16 February 2022 (the "Demand Date"), Roll should be



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taken to have waived any right to late payment interest prior to the Demand Date.

84 The court disagrees with the foregoing contentions.

85 A clause imposing late payment interest will not be deemed unenforceable or a penalty if it is a genuine pre-estimate of the likely loss to be incurred as the result of a breach: *Dunlop Pneumatic Tyre Co, Ltd v New Garage and Motor Co, Ltd* [1915] AC 79. The following factors need to be considered:

(a) Whether the parties intended for the clause to be a genuine pre-estimate of the likely loss that could conceivably be proved to have followed from the breach, as opposed to the imposition of a penalty.

(b) Whether the late payment interest of 1.5% per month is unconscionable, extravagant or out of proportion to the losses sustained by Roll.

(c) Whether there was evidence of any imbalance in bargaining power between the parties.

86 On the first factor, the commercial context behind the late payment interest clause establishes that the parties intended the clause to be a genuine pre-estimate of loss. As Mr Schaap testified, the interest rate of 1.5% was intended to mitigate the higher risk of delay in payment or non-payment. This was because HTL was a new customer without a proven track record of timely payment and HTL had not provided any collateral to Roll for taking possession of an expensive Crane. Thus, the objective was to reflect the potentially severe risk and losses that would result in the event of HTL's non-payment.



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87 On the second factor, the 1.5% per month was neither unconscionable, extravagant nor out of proportion in comparison with the potential losses to be sustained by Roll. The agreed replacement value of the Crane in the Contract was US$7,650,000. In the event that HTL did not make payment of rental and simultaneously refused to return the Crane, Roll would be at a risk of liability to PVA, from whom Roll had hired the Crane. In particular, Roll would have to continue paying €60,000 of monthly rental to PVA as owner of the Crane until such date as the Crane was returned in good order to PVA. Further, as Roll submits, the late payment interest is calculated as simple interest. There is no compounding effect to make the clause punitive in nature, as opposed to serving a compensatory function.

88 On the third factor, there is no evidence suggesting an imbalance in bargaining power between the parties. HTL vetted the Contract over the course of three months. During the negotiation of the Contract, on 23 April 2020, Ms Mai expressly stated that "I've studied the contract's body. Most terms and conditions are perfectly fair."

89 Therefore, the late payment interest clause is a genuine pre-estimate of the likely loss to be incurred by the breach. It should not be struck down as a penalty or treated as unenforceable.

90 As for waiver, the late payment interest clause stipulates that "default interest will accrue from the relevant due date" of the invoice "without any notice of default being required". Roll is not contractually obliged to make a formal demand for payment of interest.



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91 Although HTL did not demand late payment interest prior to the Demand Date, this is insufficient to constitute a waiver. For there to be waiver, the innocent party must have unequivocally communicated to the other party by words or conduct that it would not be insisting on its strict rights. The mere omission to seek late payment interest before the Demand Date could not constitute such unequivocal communication.

92 Instead, there were communications between the parties that late payment interest was due and owing. Moreover, HTL periodically and expressly acknowledged its liability for the late payment interest through letters and emails sent to Roll on 8 March 2021, 10 June 2021, and 16 June 2021:

(a) In HTL's letter to Roll dated 8 March 2021, HTL acknowledged its obligation to pay for the monthly rental of the Crane until the same was repaired and returned to Roll, "plus our interest on deferred payment under our contract".

(b) In an email to Roll dated 10 June 2021, HTL stated that it "would [be] grateful if Roll would consider [allowing] 'pending and imposing interest' on our payment for these overdue invoices ... We're aware that this is too much to ask but we really hope for your kind understanding".

(c) In an email to Roll dated 16 June 2021, HTL stated that it was "deeply sorry for being stagnant regarding payments which are overdue", and that it "wish[es] for Roll's sympathy to allow us to pend [*sic*] the payments while imposing interest".

These emails suggests that a waiver was not present in either of the parties' minds.



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93 Accordingly, on this issue, HTL breached the Contract by failing to pay late payment interest for the sums outstanding under the unpaid invoices.

***Issue 5: Damages and quantum***

*Background*

94 On 4 November 2020, Crawford was engaged to investigate the incident and prepare a report on the cause, nature and extent of the damage to the Crane, as well as the cost which would be incurred by Roll to recover and repair the Crane. Contemporaneous reports were prepared based on inspections of the Crane from 4 November 2020 to 29 June 2021 (the "Damage Reports").

95 Over the course of five months from 29 September 2021 to 9 February 2022, Mr Kommers of Crawford inspected the Crane and dismantled parts in The Netherlands. Each part of the Crane was inspected visually, by means of a 3D laser scan by a 3D survey specialist, or by non-destructive test and crane repair specialists. Each of the Crane's boom parts were sent for non-destructive testing and further evaluation by specialist sub-contractors.

96 According to Mr Kommers' survey report dated 25 July 2022, the damage to the Crane was brought about by repeated oscillating swinging of the boom and jib. This resulted in fatigue cracking. Fatigue cracking appeared in the form of fine cracks inside the steel material and could be detected by ultra-sonic or x-ray testing. The survey report further dealt with two sets of costs incurred by Roll: the cost of recovery and the cost of repair. The former entailed the cost of arranging for the recovery and transport of the Crane from Vietnam to The Netherlands. The latter entailed the cost of repairing the Crane, including



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inspections by specialist contractors, transporting crane parts, rental of space for the storage of crane parts, and purchase of replacement parts.

97 The survey report concluded that the items claimed by Roll were reasonably incurred to recover or to repair the Crane. They were typical items in cases involving crane damage and generally accepted by insurers on recommendation by loss adjusters. The total cost of repair was assessed at €5,108,764.92 (approximately US$5,377,000).

98 In Mr Kommers' affidavit of evidence-in-chief, he expressed the view that the damage sustained by the Crane arose from the incident of 2 November 2020. Therefore, the cost of repair was fully attributable to the incident of 2 November 2020.

*1. Whether the damage to the Crane was attributable to HTL*

99 The Crane was built in 2012 with a service life of at least 15 years. At the time of the accident, eight years had passed. In Mr Kommers' affidavit of evidence-in-chief, he states that "a visual inspection is insufficient to determine the extent of damage to the Crane, because it would be impossible to examine micro-fractures, internal cracks and other similar damage that cannot be seen by the naked eye". It may be contended that such damage to the Crane should not be attributed to HTL. The micro-fractures, internal cracks, and other similar damage (it may be argued) could simply be attributable to normal wear and tear of the Crane's operation.

100 The court would not agree with such contention.



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101 The evidence is that the normal operations of the Crane could not have led to the micro-fractures and internal cracks observed. Rather, the latter would have resulted from the extraordinary torsion that the Crane experienced as a result of the November 2020 incident. Mr Kommers testified as follows:

> In this particular case, the crane was installed on a barge and towed out to sea. We know from video footage that the jib, that is the second boom on top of the main boom, broke its lashings and started to swing. [Such] oscillating swings meaning putting a torsional load on the main boom. Now the main boom is designed to withstand bending and compression loads, but torsional loads are not part of the equation ... [and are] outside the design scope of the crane.

102 As Mr Kommers further commented, the excessive stress that caused the Crane's lacings to fracture would also have been exerted on the Crane's connector lugs and would have been responsible for the cracking. Mr Kommers noted at the trial that normal crane operations and wear and tear do not produce fractures situated at the connector lugs. This is because a crane's boom is always under compression. The load that is suspended from the crane's boom head will exercise a downward force on the boom head. This is countered by the action of the pendant wire. Because of the hinge point at the bottom, the boom cannot absorb bending or oscillating moments. Therefore, in a normal operating crane, the load and the pendant forces are at equilibrium, resulting in a compression force on the boom. In such a situation, the crane's steel will not crack because the steel will be under compression. Cracking will only occur when steel is in tension and this tension was caused by the torsional loading of the main boom due to the oscillating swings arising from the 2 November 2020 incident.

103 In any event, HTL assumed the risk of micro-fractures, internal cracks, and other similar damage. Clause 1.5 of the Special T&Cs provides that HTL must inform Roll in writing immediately upon receipt of the Crane if the Crane



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was not in good working order or free from defects. HTL is deemed to have received the Crane in good working order and free from defects if it fails to inform Roll accordingly. HTL did not notify Roll of any defects. This is particularly significant, as before the Crane was handed over to HTL on around 22 to 23 August 2020, HTL itself had signed and confirmed in the Handover Document that the Crane had been delivered to HTL defect-free and in good condition. Moreover, the Crane had undergone routine maintenance and annual inspections showing that as of 31 October 2019, it was certified in good working order without the need for any restrictions or further testing. As Mr Kommers testified, in such annual maintenance inspections, the Crane would have been certifiably in a good working condition because the inspections would cover the wires of the Crane, its running machinery, engines, hydraulic pumps, electric motors, safety systems such as load sensors and computer control systems.

104 Accordingly, on the evidence, the damage to the Crane is attributable to the 2 November 2020 incident when the Crane was under HTL's responsibility pursuant to the Contract.

*2. Whether Roll acted reasonably to mitigate the damages*

105 HTL may suggest that Roll failed to mitigate its damages. For instance, it might be contended that it would have been cheaper for Roll to purchase a second-hand CC6800 crane instead of repairing the damaged Crane. This is because, according to the Contract, the replacement value of a crane of similar age and use to the damaged one was approximately US$7,650,000. Consequently, it might be contended that Roll's claim for the repair and return of the Crane should be limited to US$7,650,000.

106 The court would disagree with that contention.



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107 An injured party has the duty to act reasonably to mitigate its damages. The evidence is that finding a replacement Crane would have been immensely difficult. As Mr Tan stated at trial, as far as the market for new CC6800 cranes was concerned at the time, "because of the Ukraine war, the manufacturer don't [*sic*] even put a price to the crane, there is no delivery date ... It is quite ridiculous ... they don't have the material and they don't have the manpower." In the circumstances of a tight market, it was unlikely that Roll could have found a replacement second-hand crane within any reasonable period of time. That would especially have been the case where Roll was contractually bound to return a sound Crane to PVA and, until then, Roll would be obliged to pay monthly rental to PVA.

108 Further, a substantial amount of the costs associated with the rental, transport and investigation of the damage to the Crane may nonetheless have been incurred even if Roll ultimately decided to buy a replacement crane. It would have been reasonable first to assess the extent of damage to the Crane to determine whether repairing or replacing the Crane would be more economical. This means that the damaged Crane would nonetheless have had to be transported to the Netherlands for inspection. Similar costs would still be incurred for the return and transport of the Crane.

109 Considering the above, it would not have been practicable for Roll to replace the damaged Crane with another used CC6800 crane instead of repairing it. Roll acted reasonably in its duty to mitigate its damages.

*3. The total quantum of damages for the repair costs of the Crane*

110 Mr Kommers evaluated Roll's damage in respect of the repair costs of the Crane. A breakdown of the repair costs has been provided. Roll contends



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that, based on Mr Kommers' assessment, the total quantum of damages for the repair costs of the Crane, after deducting the salvage value credited to HTL, amounts to €5,064,365.93. A number of items in the breakdowns of the repair costs assessed by Mr Kommers warrant examination.

111 First, Item 43 of Annex B concerning mark-ups charged by PVA stated a "Mark-up of 10% for handling of invoices" and "Mark-up of 2% for outstanding purchases". These amount to €89,959.37. The "10% for handling over invoices" was charged over invoiced amounts.

112 The amount of €89,959.37 is accepted as reasonable. As Mr Kommers testified, this mark-up was a "standard practice ... worldwide" which the main repair contractor imposes when handling and managing the repair of a crane. The total amount was in fact "bargained down by the Roll Group". For example, the mark-up was intended to cover the purchase of crane components from Tadano Demag, the crane manufacturer. A mark-up of 10 per cent was initially proposed, but Roll argued that 10 per cent over large items was "a lot more than required to cover the purchase of one item". PVA later "agreed that 2 per cent on the large purchased items would be sufficient to cover their efforts", while 10 per cent would be charged for other items.

113 Second, Item 44 of Annex B concerning "Tail Items" stated a "mark up of 5% for unforeseen costs and other items not otherwise detailed such as replacement of the reels and cables of load monitoring and sensing systems." This amounts to €85,000.00.

114 The amount of €85,000.00 is accepted as reasonable. As Mr Kommers testified at trial:



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> [W]hen [Roll] settled the invoice for the cost of repairs with [PVA], the repairs of the crane had not been completed yet. The drives of the winches were outstanding, the electronic control system was outstanding, and I know that we have lost some sensors on the crane ... that still had to be replaced.
>
> Roll, at one hand, was still facing monthly hire for the crane. And they needed an urgent settlement of the crane in order to stop the hire contract. [PVA] argued that there were still items that had not been inspected.
>
> And, at the end of the day, we agreed for a remuneration of 85,000 to cover for the what [*sic*] I said earlier, the sensors, the winches that had not been completed as of yet, as I say under the heading "unforeseen".

115 Hence, these "Tail Items" constitute the "agreed figure for things that remain to be done and have not yet been fully calculated". In particular, the figure was negotiated by Roll to terminate its rental agreement with PVA. This was so that Roll would not have to continue paying rental to PVA under its rental agreement with PVA. Part of Mr Kommers' role was to bargain this amount down to the best price for Roll as possible. The court is consequently persuaded that this figure is reasonable.

116 HTL may argue that, as the Crane was taken out of commission while under repair, it would be double recovery for Roll to claim the cost of repair as well as the rental that accrued while the Crane was being repaired.

117 The court disagrees with this argument.

118 The purposes of the Damage Rectification Clauses and the Payment Obligation Clauses in the Contract are different and distinct. The Damage Rectification Clauses were intended to ensure that Roll would not be responsible for the costs associated with the repair and return of the Crane to Roll. The claim here is for the expenses incurred by Roll arising out of HTL's breach of the



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Contract in failing to repair and return the Crane. In contrast, the Payment Obligation Clauses are to ensure that there will be no loss of income to Roll in the event that the Crane had not been properly returned by HTL. It is a claim for expectation loss under the Contract. As the principle against double recovery only operates to prevent an innocent party from recovering duplicative damages for what is effectively the same loss, the principle would not operate here where the two clauses concern different losses.

119 Consequently, the total quantum for the repair costs of the Crane (after deducting the salvage value credited to HTL) amounts to €5,064,365.93.

*4. The total quantum for the return costs of the Crane*

120 Roll submits that the costs associated with the return of the Crane are respectively €44,399, US$1,215,844.13, and S$96,641.60. This amount includes the costs associated with the return of the Crane from Vietnam to Singapore as follows:

(a) dismantling and loading the Crane from PV Shipyard in Vietnam onto a barge for shipment to Singapore ("Dismantling Cost"), in the sum of US$180,794.90;

(b) transport of the Crane from Vietnam to Singapore by sea including the sea lift by barge, agency charges in Vietnam, storage at the shipping company's shipyard in Singapore, wrapping of Crane parts, and loading of Crane parts on trailers for transport to port ("Transport Cost"), in the sum of US$194,964.00; and

(c) demobilisation of the Crane from the shipping company's shipyard in Singapore to Roll's storage area in Singapore



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("Demobilisation Cost") (Invoice No. 20210035 for US$75,000). The amount also includes the subsequent transport of the Crane from Singapore to The Netherlands.

121 HTL may argue that there is double recovery of the return costs regarding the transport leg of the Crane from Singapore to The Netherlands. Had the Contract been fully performed, it may be suggested that the Crane would have been delivered to Roll in Singapore and the cost of transportation to The Netherlands would have been for Roll's account.

122 However, the court is unable to accept such an argument.

123 There is no evidence indicating that Roll would have returned the Crane to The Netherlands. The court accepts Roll's submissions that the transport leg of the Crane from Singapore to The Netherlands was only necessitated at the time because of the damage to the Crane. Specialist repairs could only be effected in The Netherlands. Had HTL fully performed the Contract and the Crane been returned to Roll in sound condition after nine months, the likelihood is that Roll would have continued renting out the Crane to other clients in Asia without the need to return the Crane to The Netherlands. Consequently, the transport of the Crane from Singapore to The Netherlands should be recoverable as damages.

124 HTL may further contend that there is an overlap between the Transport Cost and Roll's claim against HTL for the unpaid invoice in respect of Demobilisation Cost.

125 The court would reject such contention.



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126 The Contract is clear that the Transport and Demobilisation Costs claimed by Roll are distinct. Page 3 of the Rental Agreements states, as regards the return of the Crane from HTL to Roll, that the "hirer (*ie*, HTL) shall demobilise on DAT terms back to owner free on trailers (Singapore/South East Asia). Hirer (*ie*, HTL) to unload and load from/to owners trailers". Further, Clause 1.3 of the Special T&Cs provides that:

> Except as provided otherwise in the Contract, the Equipment will be mobilised and demobilised by the Contract at the Customer's expense.

127 It is accepted that the industry meaning of "DAT terms" or "Delivery at Terminal" means that HTL "bears all risks involved in bringing the goods to and unloading them at the terminal at the named port or place of destination" and "must pay ... all costs relating to the goods until they have been delivered". This is confirmed by the International Chamber of Commerce's Incoterms 2010. This means that the Dismantling and Transport Costs of the Crane were to be arranged and borne by HTL. These costs were separate from the Demobilisation Cost of US$75,000.

128 This understanding is supported by Mr Tan's evidence at trial as to how "demobilisation" had been understood by the parties:

> COURT: Thank you. And when you use the term "transport" in the sense of the demobilisation, do you mean transport from Vietnam back to Singapore?
>
> MR. TAN: No.
>
> COURT: What do you mean, then?
>
> MR. TAN: The HTL barge was supposed to deliver the crane back to the Singapore port. And from the port to the yard, that is the cost of 75,000 with the police escort and everything. Because this crane is very



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| | |
|---|---|
| | big, it's 3,000 freight tonne, so that is the cost of bringing from the port to our yard. |
| COURT: | Let's just make clear we understand, when you say port, which port? |
| MR. TAN: | Singapore port. |
| COURT: | Singapore port. To the yard where. |
| MR. TAN: | In Singapore, or wherever we decide we want to keep our crane. |
| COURT: | Right. But it's envisaged somewhere in Singapore? |
| MR. TAN: | Yes. |
| COURT: | A yard somewhere in Singapore. |
| MR. TAN: | Yes, correct. |

It follows that the Demobilisation Cost of US$75,000 was not meant to cover the Dismantling and Transport Costs of the Crane.

129 Accordingly, the court accepts the total quantum for the return costs of the Crane are €44,399, US$1,215,844.13, and S$96,641.60.

*5. The total quantum due on unpaid invoices*

130 Invoices were issued in respect of the rental of the Crane from 15 February 2021 to 31 August 2022, when the Crane was returned to PVA. The monthly rental from 15 February 2021 to 14 August 2022 was US$175,000. For the invoice from 15 August 2022 to 14 September 2022, as the Crane was returned to PVA on 31 August 2022, Roll only claims US$95,967.74 as the pro-rated rental from 15 to 31 August 2022. The invoices remain unpaid.

131 The court accepts that unpaid invoices in the total amount of US$3,245,967.74 are due and owing to Roll.



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*6. The total quantum for late payment interest*

132 Clause 6.1 of the Standard T&Cs provide:

> Payment must be made by the Customer within the payment period specified in the Contract or, if no payment period is specified in the Contract, within 30 (thirty) days of the date of the invoice.

133 Read with cl 6.4 of the Standard T&Cs and page 5 of the Rental Agreements, it is clear that late payment interest accrues if payment of an invoice is not received by Roll within 15 days of the transmission of the invoice to HTL. Consequently, Roll is entitled to late payment interest accruing from the relevant due date for each unpaid invoice until the date of payment.

134 For completeness and reference only, Roll's calculation underlying the tabulation of the outstanding late payment interest accrued up to the date of filing of its closing written submissions (*ie*, 24 February 2023) is set out below:

| Invoice No. | Invoice Date | Rental Period Covered | Date on which Invoice was sent to HTL | Outstanding Amount under Invoice | Due Date of Invoice | Bundle References | Amount of Late Payment Interest accrued as of 24 February 2023 |
|---|---|---|---|---|---|---|---|
| 20210005 | 2 Feb 21 | 15 Feb 21 to 14 Mar 21 | 4 Feb 21 | US$ 175,000.00 | 19 Feb 21 | 2PB 91 - 92 | US$ 63,468.75 |
| 20210010 | 5 Mar 21 | 15 Mar 21 to 14 Apr 21 | 26 Mar 21 | US$ 175,000.00 | 10 Apr 21 | 2PB 93 - 94 | US$ 59,125.00 |
| 20210020 | 5 Apr 21 | 15 Apr 21 to 14 May 21 | 23 Apr 21 | US$ 175,000.00 | 08 May 21 | 2PB 95 - 96 | US$ 56,697.58 |
| 20210025 | 5 May 21 | 15 May 21 to 14 Jun 21 | 8 Jun 21 | US$ 175,000.00 | 23 Jun 21 | 2PB 97 - 98 | US$ 52,737.50 |
| 20210028 | 7 Jun 21 | 15 Jun 21 to 14 Jul 21 | 8 Jun 21 | US$ 175,000.00 | 23 Jun 21 | 2PB 99 - 100 | US$ 52,737.50 |
| 20210033 | 7 Jul 21 | 15 Jul 21 to 14 Aug 21 | 13 Jul 21 | US$ 175,000.00 | 28 Jul 21 | 2PB 101 - 103 | US$ 49,754.03 |
| 20210039 | 3 Aug 21 | 15 Aug 21 to 14 Sep 21 | 6 Aug 21 | US$ 175,000.00 | 21 Aug 21 | 2PB 110 - 111 | US$ 47,721.77 |
| 20210043 | 6 Sep 21 | 15 Sep 21 to 14 Oct 21 | 9 Sep 21 | US$ 175,000.00 | 24 Sep 21 | 2PB 114 - 115 | US$ 44,775.00 |
| 20210047 | 6 Oct 21 | 15 Oct 21 to 14 Nov 21 | 8 Oct 21 | US$ 175,000.00 | 23 Oct 21 | 2PB 116 - 117 | US$ 42,302.42 |
| 20210051 | 6 Nov 21 | 15 Nov 21 to 14 Dec 21 | 8 Nov 21 | US$ 175,000.00 | 23 Nov 21 | 2PB 118 - 119 | US$ 39,612.50 |
| 20210059 | 6 Dec 21 | 15 Dec 21 to 14 Jan 21 | 15 Dec 21 | US$ 175,000.00 | 30 Dec 21 | 2PB 120 - 121 | US$ 36,459.68 |
| 20220003 | 6 Jan 22 | 15 Jan 22 to 14 Feb 22 | 12 Jan 22 | US$ 175,000.00 | 27 Jan 22 | 2PB 122 - 123 | US$ 34,088.71 |
| 20220008 | 6 Feb 22 | 15 Feb 22 to 14 Mar 22 | 10 Feb 22 | US$ 175,000.00 | 25 Feb 22 | 2PB 124 - 125 | US$ 31,406.25 |
| 20220016 | 6 Mar 22 | 15 Mar 22 to 14 Apr 22 | 10 Mar 22 | US$ 175,000.00 | 25 Mar 22 | 2PB 126 - 127 | US$ 29,008.06 |
| 20220023 | 6 Apr 22 | 15 Apr 22 to 14 May 22 | 5 Apr 22 | US$ 175,000.00 | 20 Apr 22 | 2PB 128 - 129 | US$ 26,750.00 |
| 20220028 | 6 May 22 | 15 May 22 to 14 Jun 22 | 12 May 22 | US$ 175,000.00 | 27 May 22 | 2PB 130 - 131 | US$ 23,588.71 |
| 20220045 | 6 Jun 22 | 15 Jun 22 to 14 Jul 22 | 5 Jul 22 | US$ 175,000.00 | 20 Jul 22 | 2PB 132 - 133 | US$ 18,931.45 |
| 20220046 | 6 Jul 22 | 15 Jul 22 to 14 Aug 22 | 5 Jul 22 | US$ 175,000.00 | 20 Jul 22 | 2PB 134 - 135 | US$ 18,931.45 |
| 20220058 | 6 Aug 22 | 15 Aug 22 to 14 Sep 22: However, as the Crane was repaired on 31 August 2022 and returned to PVA on that date, Roll will only be claiming for the pro-rated rental from 15-31 August 2022 under this invoice. The amount claimed for this period has therefore been adjusted accordingly. | 19 Aug 22 | US$ 95,967.74 | 03 Sep 22 | 2PB 136 - 137 | US$ 8,287.50 |
| | | | | | | **TOTAL** | **US$ 736,383.86** |



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135 Extrapolating to the date of this Judgment (*ie*, 25 April 2023) gives further late payment interest of US$96,219.76, making a total of US$832,603.62 as at the date of this Judgment.

| **Invoice No.** | **Outstanding Amount under Invoice** | **Due Date of Invoice** | **Amount of Late Payment Interest accrued as of 25 April 2023** |
|---|---|---|---|
| 20210005 | US$175,000.00 | 19 Feb 21 | US$68,656.25 |
| 20210010 | US$175,000.00 | 10 Apr 21 | US$64,312.50 |
| 20210020 | US$175,000.00 | 08 May 21 | US$61,885.08 |
| 20210025 | US$175,000.00 | 23 Jun 21 | US$57,925.00 |
| 20210028 | US$175,000.00 | 23 Jun 21 | US$57,925.00 |
| 20210033 | US$175,000.00 | 28 Jul 21 | US$54,941.53 |
| 20210039 | US$175,000.00 | 21 Aug 21 | US$52,909.27 |
| 20210043 | US$175,000.00 | 24 Sep 21 | US$49,962.50 |
| 20210047 | US$175,000.00 | 23 Oct 21 | US$47,489.92 |
| 20210051 | US$175,000.00 | 23 Nov 21 | US$44,800.00 |
| 20210059 | US$175,000.00 | 30 Dec 21 | US$41,647.18 |
| 20220003 | US$175,000.00 | 27 Jan 22 | US$39,276.21 |
| 20220008 | US$175,000.00 | 25 Feb 22 | US$36,593.75 |
| 20220016 | US$175,000.00 | 25 Mar 22 | US$34,195.56 |
| 20220023 | US$175,000.00 | 20 Apr 22 | US$31,937.50 |
| 20220028 | US$175,000.00 | 27 May 22 | US$28,776.21 |
| 20220045 | US$175,000.00 | 20 Jul 22 | US$24,118.95 |
| 20220046 | US$175,000.00 | 20 Jul 22 | US$24,118.95 |
| 20220058 | US$95,967.74 | 03 Sep 22 | US$11,132.26 |
| | | **Total** | US$832,603.62 |

136 Roll is entitled to late payment interest in the amount of US$832,603.62.



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*7. Incidence of cost*

137 In these proceedings, Roll has largely succeeded against HTL. Consequently, as costs should normally follow the event, Roll should be entitled to its reasonable costs of these proceedings as against HTL.

138 By way of costs, Roll claims the amounts to S$725,715.21 (that is, counsel's fees of S$690,831.68 and disbursements of S$34,883.53) and US$34,140.02 (that is, legal fees for Vietnamese counsel). Roll submits that the court should award its full litigation costs and expenses. This is because, pursuant to cl 6.5 of the Standard T&Cs:

> In the event of payment default by the Customer, all costs and expenditure (including all costs of legal assistance, both in and out of court) incurred by the Contractor in collecting the amount due will be payable by the Customer …

139 The costs associated with the interlocutory applications in SIC 9 were ordered to be in the cause. Roll claims S$122,553.33. In the court's view, S$122,553.33 is a reasonable sum in light of the need to ensure that all applications were properly served on HTL in Vietnam.

140 For the rest of Roll's costs (including disbursements), the bulk were incurred in connection with: (1) pleadings and particulars, (2) service of documents in Vietnam; (3) case management conferences; (4) discovery; (5) affidavits of evidence-in-chief; (6) work done after filing of the latter affidavits up to trial; and (7) work done during and after trial (including closing submissions). Given the nature of the proceedings (especially the need to comply with Vietnamese requirements for the recognition and enforcement of judgments) and bearing in mind cl 6.5 of the Standard T&Cs, the court finds the amounts claimed by Roll to be reasonable.



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141 In those premises, Roll should have its costs of S$725,715.21 and US$34,140.02.

**Conclusion**

142 By reason of the foregoing, the court orders and directs as follows:

(a) There will be a Declaration that the SICC has jurisdiction to adjudicate the claims in SIC 9.

(b) There will be Orders that:

(i) HTL pay damages to Roll for the repair of the Crane in the sum of €5,064,365.93.

(ii) HTL pay damages to Roll in respect of the return of the Crane in the amounts of €44,399.00, US$1,215,844.13, and S$96,641.60.

(iii) HTL pay damages to Roll for the unpaid rental of the Crane in the amount of US$3,245,967.74.

(iv) HTL to pay late payment interest in the amount of US$832,603.62.

(v) HTL pay Roll's costs of SIC 9, in the amounts of S$725,715.21 and US$34,140.02.



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(vi) Simple interest is to accrue on the amounts set out in sub-paragraphs (i) to (v) above at 5.33% per annum from the date of this Judgment until payment.

Anselmo Reyes
International Judge

Lee Soong Yan, Kevin (sole proprietor) (instructed), Eunice Lau Guan Ting and Samuel Wittberger (Drew & Napier LLC) for the plaintiff;
the defendant absent and unrepresented.

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