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Case Note

DAMAGES FOR TORTIOUS INJURIES TO COMPANION ANIMALS

Walker Helen Debra v Soh Poh Geok [2021] SGMC 79

The Magistrate's Court's decision in *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 is the first published decision in Singapore that directly considers the principles applicable to an award of damages for tortious injury to a companion animal. Even though its precedential value is limited, the decision raises interesting issues of general application in relation to tortious remedies for damage and destruction of unique chattels. This note tests the limits of the framework governing tortious remedies for damaged and destroyed chattels and argues for a shift away from the conventional "market value" analysis and the "total constructive loss" rule in favour of a holistic test of reasonableness in determining the recoverability of damages.

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I. Introduction

1 How should a court make awards for injuries or death intentionally or negligently caused to a companion animal? Surprisingly, until the 2021 decision in *Walker Helen Debra v Soh Poh Geok*[2] ("*Walker*"), there were no reported decisions in Singapore directly addressing this point. This is not for a lack of incidents. Pet ownership is on the rise, veterinary costs are increasing, and in the last few years there has been no shortage of pet abuse or neglect cases.[3] Yet, the civil dimension of these cases has

1 This article is written in the author's personal capacity. The opinions expressed in the article are entirely the author's own views and do not reflect the views or positions of the entity she belongs to and/or represents.

2 See *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79, observing at [27] that the issue was a "novel one".

3 Shynn Ong, "79% jump in reported cases of animal cruelty and welfare issues in 2023, highest in 11 years: SPCA" *Today* (31 January 2024) <https://www.todayonline.

(cont'd on the next page)

been neglected. Indeed, local scholarship on animal law has focused on the criminal and regulatory angle,[4] and recent reported decisions almost exclusively concern prosecutions.[5] What could account for this phenomenon? One possibility is that pet owners have no appetite to sue, or are unsure what legal recourse is available. It may also be perceived that such cases are simply not worthwhile to pursue in view of the low quantum of damages recoverable. This may push pet owners to settle out of court, contributing to the lack of reported judgments.

2 This lack of emphasis is unfortunate. First, as this note will show, the perception that there is no recourse or that the amount of damages recoverable is inadequate may not always hold true. There are situations where substantial damages ought to be recoverable. Second, because companion animals are the quintessential example of a unique and irreplaceable chattel, they raise many interesting issues of principle in relation to tortious remedies for damage and destruction of chattels. It is therefore doubly unfortunate that even though the plaintiff owner in *Walker* appealed to the General Division of the High Court ("General Division"), and her appeal was allowed in part, there is no reported judgment or published account of that decision. This area of law deserves a second look. This note therefore examines the authority that is available – the published Magistrate's Court judgment in *Walker* – and explores what it tells us about the civil remedies available for pet owners in Singapore.

II. The decision

3 The litigation in *Walker* arose from a tragic accident. The defendant, who was driving her motor car, collided into two domestic helpers who were walking two dogs, Max (a four-year-old Tibetan Mastiff) and Ruby (a ten-year-old Labrador Retriever). The dogs belonged respectively to the plaintiffs, Mdm Walker and Mr Rogers. The domestic helpers suffered personal injuries, but their claims were settled out of court. The litigation therefore pertained to the two dogs. Max died on the spot as a result of the accident, while Ruby suffered a severely fractured hip that required surgical intervention, and suffered a significant long-term loss of mobility. The defendant agreed to bear 90%

com/singapore/79-jump-reported-cases-animal-cruelty-and-welfare-issues-2023-highest-11-years-spca-2353106> (accessed 25 November 2024).

4 See Alvin W-L See, "Animal Protection Laws of Singapore and Malaysia" [2013] Sing JLS 125 and Alvin W-L See, "Milestones for Animal Welfare: *Public Prosecutor v Ling Chung Yee Roy* [2013] SGDC 252" [2014] Sing JLS 238.

5 *Eg*, *Sabrina Sim Xin Huey v Public Prosecutor* [2023] 3 SLR 1551 and *Public Prosecutor v Gobysuwaran Paraman Sivan* [2023] SGMC 23.

liability for the incident, and accordingly the focus of the trial was on the assessment of damages.

4 Mdm Walker claimed that Max should be valued at $10,000, which sum was pegged to the value of a Tibetan Mastiff puppy[6] and a further $600 for cremation or burial costs. The defendant contended that: (a) Max's replacement value should not be awarded as Mdm Walker did not intend to replace Max; moreover, this would result in Mdm Walker's betterment; (b) Max should instead be valued using a depreciation analysis, which gave the rounded sum of $2,700; and (c) the claim for the cost of Max's cremation should be rejected on the basis that those sums would be incurred by Mdm Walker eventually in any event.[7]

5 In relation to Ruby, Mr Rogers claimed the sums of $11,219.23 for veterinary expenses prior to trial ("VE") and $47,964.64 for future veterinary and rehabilitation services ("FVE").[8] The defendant argued that the concept of "constructive total loss" should apply since the sums claimed for veterinary expenses far exceeded Ruby's cost of replacement. Accordingly, damages in respect of Ruby should be capped at her market value, which the defendant assessed at $3,700 or $4,000 depending on the methodology adopted.[9]

6 The court took as its starting point that a pet dog is a chattel, and that therefore the basis of assessment would be the market value of the animal.[10] As to Max, the court applied a depreciation analysis which resulted in $2,700, the same figure that the defendant proposed. The court rejected the claim for cremation fees. As to Ruby, the court allowed Mr Rogers' claim for veterinary expenses already incurred, but declined to make an award for future veterinary expenses.[11] To this, the court added Ruby's value, which it assessed at $2,700.

7 Mdm Walker sought to appeal the judgment, in the course of which it became necessary to file an application for extension of time, which due to an error by the State Courts Registry was eventually heard by the General Division.[12] Choo Han Teck J, after noting the facts and the outcome below, transferred the extension application back to the Magistrate's Court without expressing any views on the merits of the case. While there is no public record of what subsequently transpired,

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6 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [8].
7 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [14]–[18].
8 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [9]–[13].
9 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [19]–[23].
10 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [24].
11 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [49].
12 *Walker Helen Debra v Soh Poh Geok* [2021] SGHC 113.

the published version of the Magistrate's Court judgment records that the appeal was allowed in part by the General Division on 31 March 2022.[13]

III. Animals as chattels

8 The decision in *Walker* provides confirmation of the view that, for the purposes of the law of torts, companion animals are to be treated as chattels. This seems to have been assumed by the parties.[14] Although the court regarded itself "bound by the High Court authority of *Wang Sam Lin*[15]" [reference added], it is not clear whether that is so. *Wang Sam Lin* involved, amongst others, a claim that the defendant had committed trespass to a racehorse, and damages were claimed in respect of the loss of a chance to win prize money from racing the horse. The court analysed the trespass claim on the basis of trespass to goods and treated the horse as a chattel.[16] Since *Wang Sam Lin* did not concern a companion animal, there is not, strictly speaking, any Singapore authority which affirmatively establishes that companion animals are to be treated like chattels.

9 That said, this represents the established view in various jurisdictions including Australia,[17] England[18] and Canada.[19] For example, in *Britt v Parcell*,[20] the New South Wales District Court reviewed both the academic literature and prior Australian authority and held that "[a]ny animal is a chattel", for the purpose of ordering the return of a dog tortiously detained. The same view was applied in the older English case of *Hymas v Ogden*,[21] where the defendant was held in contempt for disobeying an order to return a dog. Likewise, in *Dorka v Kumar*,[22] in a matrimonial dispute over property, it was "common ground between the parties that in law the dog [wa]s to be treated as a chattel".

10 Accordingly, there is little or no room for an argument that a companion animal ought to be treated like a human being, and the court in *Walker* was correct in applying the rules for assessing damages in cases where chattels are damaged or destroyed by the wrongful act of the

13 See Editorial Note in *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79.
14 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [24].
15 *Wang Sam Lin v Burridge Steven Harold* [2009] SGHC 252.
16 *Wang Sam Lin v Burridge Steven Harold* [2009] SGHC 252 at [20]–[24].
17 *Eg*, *Britt v Parcell* [2021] NSWDC 464 at [12] and *Edwards v Nine Network Australia Pty Ltd (No 5)* [2024] FCA 22 at [288].
18 *Eg*, *Hymas v Ogden* [1905] 1 KB 246.
19 *Eg*, *Dorka v Kumar* 2016 ONSC 8226.
20 [2021] NSWDC 464 at [12] and [25]–[26].
21 [1905] 1 KB 246.
22 2016 ONSC 8226 at [1].

defendant. But, as discussed below, these rules are not as straightforward as they seem when applied to companion animals.

IV. Tortious death

11 The general rule is that, where a chattel is destroyed as a result of the defendant's tort, damages are awarded based on the value of the chattel at the time and place of destruction, often said to be the "market value" of the chattel.[23] But where the goods in question are not easily bought or sold in a market, complications arise. In this case, the court acknowledged that there was "no meaningful market" for either an adult Tibetan Mastiff or an 11-year-old Labrador Retriever.[24] Nonetheless, the court applied a depreciation analysis of its own design, on which a companion animal, with at least half of its life span remaining at the time of the accident is subject to a flat two-thirds depreciation discount up to half of its lifespan, and an equal straight-line yearly depreciation discount thereafter.[25] In contrast, for dogs with less than half their lifespan remaining at the time of the accident, an equal yearly depreciation discount was applied to the remaining one-third value of the puppy for that breed of dog.[26] The court found it appropriate to factor in "higher depreciation in the initial years as mature dogs are less desirable and the likelihood of illnesses or injuries becomes higher in the later years".[27] Applying the court's depreciation analysis, Max's value (as a four-year-old Tibetan Mastiff with a 12-year lifespan) was assessed at $8,000 – (2/3 x $8,000) = $2,700 (rounded up),[28] and Ruby's value (as a ten-year-old Labrador Retriever with three years of her lifespan left) was assessed at $12,000 – (2/3 x $12,000) = $4,000, followed by the application of a straight-line depreciation discount of $533 per year,[29] which resulted in a value of $2,700 (rounded up).[30]

12 With respect, this analysis is unsatisfactory. The court did not provide any specific authority in support of its bespoke depreciation analysis, save to note that the defendant had relied on the case of *Voaden v*

23 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [30]; see, *eg*, *McGregor on Damages* (James Edelman ed) (Sweet & Maxwell, 22nd Ed, 2024) at para 38-065.
24 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [8] and [21].
25 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [32] and [34].
26 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [34].
27 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [37].
28 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [37].
29 Being $4,000 divided by 7.5 years (which is the midpoint of Ruby's estimated 13-year life span).
30 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [42].

Champion[31] (a case involving a sunken pontoon) for the proposition that damages would be calculated by "taking the likely lifespan of the replacement chattel and then award[ing] the proportion of its cost represented by the would-be useful life of the item replaced".[32] On this basis, the defendant proposed a linear depreciation calculation. However, the court declined to adopt that analysis and preferred a different method which ascribed higher depreciation to the earlier years.

13 It is submitted that the approach adopted in *Voaden v Champion* is not appropriate here. That approach might be appropriate where there *is* a market, but it is difficult, or perhaps impossible, to determine a *market value*. In *Voaden v Champion*, there *was* a market for used boats: the difficulty was that the pontoon in question was a "very special boat" and therefore hard to value.[33] But such an approach is not appropriate where there is *no market* at all. The difference was illustrated in the case of *Aerospace Publishing Ltd v Thames Water Utilities*[34] ("*Aerospace*"), where a burst water pipe for which Thames Water was strictly liable caused significant damage to a unique private archive containing a "comprehensive and historical collection" of documents relating to aviation and military history. The court observed:[35]

> In the case of a unique chattel it may be reasonable to reinstate but it will not be too difficult, by reference to past auction prices, to assess realistically a market value even though the chattel is itself unique. It will then be easy to compare figures for reinstatement and market value. …
>
> Here, by contrast, while cost of reinstatement is calculable (and is in the event largely agreed), market value is problematic to assess. … the archive in the present case represents the companies' memory and, as such, is an asset whose value could in conventional parlance be described as 'priceless' and whose actual value can only be calculated with considerable difficulty.

14 This passage demonstrates the difference between difficulty in assessing market value where there *is* a market (including a market at auction) and where there is *no market whatsoever* (as with the "priceless" records in *Aerospace* itself). Where there is a market, the value of the destroyed goods can be assessed on the basis of the available evidence. This may entail reference to a depreciation formula, as used in *Voaden v Champion*, or past auction prices, as suggested in *Aerospace*. Alternatively,

31 [2002] 1 Lloyd's Rep 623. Note, however, that in *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 (at [18]), *Voaden v Champion* was cited as *The Baltic Surveyor*, with the same case citation.

32 *Voaden v Champion* [2002] 1 Lloyd's Rep 623 at [18].

33 See *Voaden v Champion*, 2000 WL 33148689 (2000) at 12.

34 [2007] Bus LR 726.

35 *Aerospace Publishing Ltd v Thames Water Utilities* [2007] Bus LR 726 at [1]–[5].

it might require a more "rough and ready method" that considers various factors, such as the original cost plus the cost of improvements, and the profit-making ability of the chattel.[36] In contrast, where there is no market whatsoever, the valuation analysis becomes untethered from any evidential basis. Why, in the first place, should a depreciation analysis be adopted, rather than an alternative measure that takes into account the original cost plus the cost of improvements (such as vaccinations and training in the case of companion animals)? Such a measure has in fact been preferred in some US cases concerning tortious injuries to companion animals.[37] Moreover, how is the correct depreciation formula to be arrived at? In *Lombank Ltd v Excell*,[38] Upjohn LJ said:

> If the depreciation figures are correct for a juke box can they really be correct for, say, a suite of bedroom or drawingroom furniture (so frequently purchased on hire-purchase) intended to be used and to last for many years but which, on the formula, would lose 75 per cent. of its value in five months?
>
> Then as to motor vehicles themselves: whether or not an initial depreciation of 45 per cent. for a new car is reasonable we know not, but if it is, surely it can hardly be reasonable for second-hand vehicles?

15 Whilst said in the context of determining whether an agreed depreciation clause was a penalty clause, the point stands that even when chattels depreciate, they do so differently. With respect, it is not enough to say that mature dogs are "less desirable" and are more prone to illness.[39] The inverse correlation of desirability with age makes sense in determining the depreciation of used cars, because there is market evidence of such a correlation. However, where there is no market, relying on such a correlation seems fictitious. In fact, people desire all sorts of things, including things that are unique and priceless. That people desire certain things (or not) does not mean that there is a market in them, nor does it provide a sound basis for developing a depreciation formula.

16 It is submitted that a viable alternative is to assess damages on the basis of replacement costs, rather than strictly cleaving to market value. This is a well-known method of assessing damages. In *Walker* itself, the court regarded those replacement costs as encompassing the "cost of purchasing a replacement dog plus other related costs such as cost of immunization, cost of neutering the dog and cost of dog training".[40] However, the court declined to award the replacement measure, saying

36 *The Harmonides* [1903] P 1 at 5.
37 *Eg*, *McDougall v Lamm* 38 A 3d 312 (NJ, 2012) and *Heiligmann v Rose* 16 SW 931 (Texas, 1891).
38 [1963] 3 WLR 700 at 708.
39 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [37].
40 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [30].

it was "not available as of right" and would only be available where the claimant "genuinely intended to renew/replace the chattel".[41]

17 With respect, the requirement of intention is less categorical than the court believed. The authority usually cited for the proposition that replacement costs are only available where the claimant genuinely intends to replace is *Southampton Container Terminals Ltd v Schiffarhrisgesellsch "Hansa Australia" MGH & Co (The MV Maersk Colombo)*[42] ("*The Maersk Colombo*"). But in fact, as the court in *Aerospace* observed, *The Maersk Colombo* is equivocal.[43] While some passages have been read to lay down a strict rule, the England and Wales Court of Appeal ("English Court of Appeal") also accepted the following propositions set out by counsel:[44]

> …
>
> (3) Damages are only recoverable if reasonable …
>
> (4) In particular, where replacement costs exceed market value, they will only be recoverable if shown to be reasonable.
>
> (5) Whether or not a claimant has an intention to replace the item is relevant to the question of reasonableness.
>
> …

18 On this formulation, the overarching principle is whether it is reasonable to claim replacement costs, even if strictly speaking they exceed "market value", and the claimant's intention to replace goes towards that question of reasonableness. This position is consistent with *obiter dicta* in the recent case of *JSD Corp Pte Ltd v Tri-Line Express Pte Ltd*[45] ("*JSD Corp*"). There, Goh Yihan JC approved a passage from an academic text,[46] which stated that the "intention test *forms part of the general reasonableness test* which determines whether a market replacement is to be applied, especially where the market resale price (ie the value of the goods) plus consequential losses are lower than the replacement cost"[47] [emphasis added].

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41 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [30].

42 [2001] EWCA Civ 717. See, *eg*, *Clerk and Lindsell on Torts* (Andrew Tettenborn gen ed) (Sweet & Maxwell, 24th Ed, 2023) at para 28-117.

43 *Aerospace Publishing Ltd v Thames Water Utilities* [2007] Bus LR 726 at [49].

44 *Southampton Container Terminals Ltd v Schiffarhrisgesellsch "Hansa Australia" MGH & Co (The MV Maersk Colombo)* [2001] EWCA Civ 717 at [25]. See, *eg*, *Clerk and Lindsell on Torts* (Andrew Tettenborn gen ed) (Sweet & Maxwell, 24th Ed, 2023) at para 28-117.

45 [2023] 3 SLR 1445.

46 Adam Kramer QC, *The Law of Contract Damages* (Hart Publishing, 3rd Ed, 2022).

47 *JSD Corp Pte Ltd v Tri-Line Express Pte Ltd* [2023] 3 SLR 1445 at [67].

19 With that said, Goh JC held in *JSD Corp* that an intention to replace is a "weighty factor" in the overall assessment of reasonableness, and that indeed a "failure to prove an intention to cure would, absent very special countervailing factors, result in a plaintiff's claim for cost of cure damages to be dismissed".[48] This is consistent with the court's observation in *Aerospace* that it "must be very rare when the cost of reinstatement will be awarded to someone who does not intend to reinstate in fact".[49] But rare as such a case may be, it is suggested that the case involving the tortious killing of a companion animal is appropriate for such an exception. This is for three reasons. First, the grief that accompanies the loss of a companion animal is real and documented,[50] and in the immediate aftermath of her loss, it should come as no surprise that Mdm Walker indicated that she did not intend to replace Max. Second, such a case is not one where replacement costs clearly exceed some objectively-defined "market value". Given the artificiality of the "market value" analysis as illustrated above, it is hard to say what "market value" is at all. Third, in *JSD Corp*, Goh JC noted the importance of the "consumer surplus", or the "excess utility or *subjective value* obtained from a good over and above the utility associated with its market price"[51] [emphasis in original], although he said this point should not be overstated.[52] The replacement value comes closer than a depreciated "market value" analysis to representing the subjective utility of a companion animal to its owner, since *ex hypothesi* the owner would have shelled out corresponding amounts on vaccinations, neutering and training for the deceased animal (in order to claim such sums for a "replacement"). In analogous fashion to a wasted expenditure claim in contract law, it is suggested that the extent of the owner's expenditure is presumptive evidence of the value of the animal to the owner. This is not to say that wasted expenditure ought to be recognised as a head of damage in tort. Rather, the replacement measure provides the best available estimate of the true quantifiable value of a companion animal to its owner. And that points in favour of the replacement measure meeting the threshold of reasonableness.

20 One concern with such an approach is the perceived overcompensation, or "betterment", of the plaintiff. This point was taken by the defendant, although the court did not consider the argument since the court did not award replacement costs.[53] The idea, as the

48 *JSD Corp Pte Ltd v Tri-Line Express Pte Ltd* [2023] 3 SLR 1445 at [82].
49 *Aerospace Publishing Ltd v Thames Water Utilities* [2007] Bus LR 726 at [49].
50 *Eg*, *Ferguson v Birchmount Boarding Kennels Ltd* [2006] 79 OR (3d) 681 at [23], detailing the "emotionally distraught and hysterical state" of the plaintiff after the defendant kennel lost her dog.
51 *JSD Corp Pte Ltd v Tri-Line Express Pte Ltd* [2023] 3 SLR 1445 at [81].
52 *JSD Corp Pte Ltd v Tri-Line Express Pte Ltd* [2023] 3 SLR 1445 at [81].
53 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [39].

defendant put it, is that the "desirability of a mature dog is lower than that of a puppy's desirability" and, therefore, awarding the claimant replacement costs in full would leave the claimant better off than before the accident.[54] This concern is perhaps overstated. The doctrine applies only where the defendant can show that the claimant will obtain a "real pecuniary advantage" from the replaced item.[55] In *Voaden v Champion*, the English Court of Appeal observed that in many cases, the purported "betterment" will have conferred "no corresponding advantage on the claimant".[56] In particular, in assessing whether the claimant is better off, the court will have regard to any "additional burdens" brought about by the replacement. Thus, in *Dominion Mosaics v Trafalgar Trucking Co*,[57] where the plaintiffs' building had burned down in a fire for which the defendants were liable, they were able to recover the cost of acquiring a replacement building even though it was some 5,000 sq ft larger than the original building: the "betterment" doctrine did not apply because that advantage was "balanced" by burdens such as increased ground rents. Now consider pet ownership. The defendant in *Walker* compared the market value of a puppy with the claimed "market value" of an adult dog (which, it is submitted, is an artificial measure). Even on the basis of that comparison, one must appreciate that owning a companion animal is an ongoing liability involving necessary incidents such as food, shelter and routine veterinary care. The unwanted replacement of a well-integrated mature dog with a several-month-old puppy not only causes the claimant to lose a companion animal with which she has already formed a close bond, but will force the claimant to incur additional years of caretaking expenses. On balance, the better view is that such a claimant should not be held to have obtained a "real pecuniary advantage",[58] and accordingly, the "betterment" doctrine should not apply here.

V. Tortious injury

21 Rather than raising questions about the valuation of a companion animal, Ruby's case raises different questions: should veterinary expenses be recoverable in tort, if so to what extent, and what head of loss should such expenses be classified as? This is an important question because such expenses can be significant. In *Walker*, in respect of Ruby's injuries, the court awarded damages comprising both Ruby's "market value" ($2,700), calculated using the same method used for Max, and VE

54 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [17].
55 *Voaden v Champion* [2002] 1 Lloyd's Rep 623 at [85].
56 *Voaden v Champion* [2002] 1 Lloyd's Rep 623 at [85].
57 See *Dominion Mosaics v Trafalgar Trucking Company Limited* [1989] 22 EG 101.
58 *Voaden v Champion* [2002] 1 Lloyd's Rep 623 at [85].

($8,499.23).[59] The court, however, declined to make an award in respect of FVE ($47,964.64).

22 It appears that the court's award was premised on acceptance of the defendant's submission that Ruby was a "total constructive loss". Generally speaking, the measure of loss for a damaged chattel is the diminution in value of the chattel plus any consequential loss.[60] Diminution in value is typically assessed by reference to the cost to repair the chattel to its pre-damaged state.[61] However, where the cost of repair exceeds the market value of the chattel, making repairs uneconomical, the damaged chattel is in "total constructive loss". The measure of damages would then be the value of the chattel at the time and place of damage, plus any other consequential losses.[62] In this case, the court awarded damages representing both Ruby's market value and VE (characterised as "foreseeable consequential damages arising from the injury").[63] Thus, it seems that the court treated Ruby as a "total constructive loss" and allowed the VE claim as consequential damages.

23 At first glance, the outcome seems defensible. Indeed, as the court observed,[64] courts in other jurisdictions have awarded veterinary expenses as damages in cases involving tortious injuries to animals.[65] Yet, the precise basis for awarding such damages has not been examined, in Singapore or elsewhere. In particular, *Walker* seems to regard veterinary expenses both as "repair" costs (for the purposes of the "total constructive loss" rule) *and* as consequential losses (and hence subject to a foreseeability requirement). But the cost of repair and consequential losses are generally regarded as distinct since the cost of repair represents the claimant's immediate loss and is therefore a direct, rather than consequential, loss.[66] The question, then, is whether veterinary expenses are to be characterised as repair costs or consequential losses, or whether they partake of both heads of loss, as the court in *Walker* seemed to assume.

24 It is submitted that veterinary expenses (both pre-trial and future) are better characterised as repair costs rather than consequential

59 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [48]–[50].
60 *Yip Holdings Pte Ltd v Asia Link Marine Industries Pte Ltd* [2012] 1 SLR 131 at [13].
61 *Coles v Hetherton* [2015] 1 WLR 160 at [27].
62 *Yip Holdings Pte Ltd v Asia Link Marine Industries Pte Ltd* [2012] 1 SLR 131 at [13].
63 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [47].
64 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [46].
65 *Eg*, *Denhaan v Coghlin* 1988 CarswellOnt 2791; *MacNeil v Black Rock Stables* 2021 CarswellNS 734; *Pipicella v Stagg* 32 SASR 464; and *Howard v Lapwood* [2018] ACAT 123.
66 *McGregor on Damages* (James Edelman ed) (Sweet & Maxwell, 22nd Ed, 2024) at para 38-008.

loss. The logic to this is apparent. Where a companion animal is injured by the defendant's tort, placing the owner in a position as though the tort did not happen entails the animal recovering from its injury and being nursed back to health (as far as possible). Where this entails seeking professional care, veterinary expenses incurred should properly be regarded as the direct loss suffered and the cost of repair. Losses suffered by the owner that are consequent on the animal's injury would include, *eg*, transportation costs which the owner had to incur in bringing the companion animal to seek treatment.[67]

25 This raises a further question. What is the scope of veterinary expenses properly recoverable as the "cost of repair"? With respect, it is submitted that there is no principled reason to bar the recovery of *future* medical expenses, and that expenses incurred pre-trial and expenses expected to be incurred in the future should likewise be recoverable. The courts are no stranger to awarding repair costs that have yet to be executed. In *The Kingsway*,[68] the owners of a damaged vessel recovered successfully for both the cost of temporary repairs already executed prior to the trial, and the cost of permanent repairs, which had yet to be executed. The court said the question for the trial judge is: "Looking into the future, what is the proper compensation for these repairs and this detention which, in his opinion, would have to be done and would take place?"[69] Further, drawing an analogy to prospective damages arising from personal injuries, the court in *The Kingsway* said this would be a question of assessing the "reasonable probabilities".[70] It is trite that in personal injury cases, future medical expenses that are reasonably incurred are recoverable.[71] This shows that the courts are attuned to the reality that injuries may require medical treatment stretching beyond the date of the trial.

26 The court in *Walker* dismissed the FVE claim with a single line: "In view of the advanced age of Ruby, it did not make economic sense for Ruby to obtain future medical care that far exceeded her value."[72] But it is unclear how "economic sense" is relevant to the damages inquiry. The only question ought to be what repairs (or treatment) "would have to be

67 The court in *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 (at [47]) properly regarded transportation costs as recoverable consequential losses.

68 [1918] P 344. See *McGregor on Damages* (James Edelman ed) (Sweet & Maxwell, 22nd Ed, 2024) at para 38-007: "Since damages may on general principles be given for prospective loss, it is immaterial that the repairs are not yet executed."

69 *The Kingsway* [1918] P 344 at 359.

70 *The Kingsway* [1918] P 344 at 359 and 362.

71 Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at para 2.065.

72 *Walker Helen Debra v Soh Poh Geok* [2021] SGMC 79 at [49].

done and would take place".[73] As the court itself highlighted in relation to VE (rather than FVE), s 41C(1)(*d*) of the Animals and Birds Act[74] imposes a statutory duty on the owner of an animal to take "reasonable steps to ensure that the animal is cared for in accordance with the codes of animal welfare applicable to the animal". Since the court allowed Mr Rogers' VE claim, the provision of necessary veterinary treatment must be regarded as one such reasonable step. This is consistent with the Code of Animal Welfare published by the Animal & Veterinary Service for pet owners, which requires owners to "seek veterinary attention promptly if [they] notice any signs of injury, illness or disease".[75] The same logic that makes VE recoverable dictates that reasonable long-term veterinary care should be recoverable. This is consistent with the idea that the touchstone of recoverability is reasonableness.[76] If it is accepted that veterinary expenses should be seen as the costs of repair, all veterinary expenses reasonably incurred or reasonably necessary ought to be recoverable. This suggests that the court also seems to have erred in awarding damages for *both* Ruby's market value and VE. Market value and cost of repair are two alternative ways of assessing the same loss, *ie*, the diminution in value of the damaged chattel, and should not both be awarded.

27 If it is correct that veterinary expenses (present and future) are repair costs, and if the court was correct that the "total constructive loss" rule applied, it follows that only the market value of Ruby and consequential losses (such as transportation costs) ought to have been awarded. However, this approach would give rise to the same difficulties in assessing market value discussed in the previous section. It would also potentially leave owners out of pocket by a significant amount, notwithstanding that they are under a statutory duty to take reasonable care of their animals.

28 It is suggested that there is an alternative approach. The court appears to have overlooked the possibility of disapplying the "total constructive loss" rule altogether. *Darbishire v Warran*[77] ("*Darbishire*") is often cited as authority for that rule, where Harman LJ denied recovery of the cost of repairs beyond the value of a car, saying:[78]

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73 *The Kingsway* [1918] P 344 at 359.

74 Cap 7, 2002 Rev Ed. This provision is retained in the Animals and Birds Act 1965 (2020 Rev Ed).

75 Animal & Veterinary Service, "Code of Animal Welfare (for pet owners)" at para 3.2 <https://www.nparks.gov.sg/avs/animals/animal-welfare/animal-and-pets-welfare/code-of-animal-welfare-(for-pet-owners)> (accessed 25 November 2024).

76 *JSD Corp Pte Ltd v Tri-Line Express Pte Ltd* [2023] 3 SLR 1445 at [67].

77 [1963] 1 WLR 1067.

78 *Darbishire v Warran* [1963] 1 WLR 1067 at 1073.

> This was not an irreplaceable article and therefore as the cost of repairs greatly exceeded the value, the car should be treated as a constructive total loss and the measure of damage is its value.

29 However, the caveat regarding "irreplaceable articles" is important. In *Darbishire*, the English Court of Appeal distinguished the decision of *O'Grady v Westminster Scaffolding Ltd*[79] ("*O'Grady*") handed down just a year earlier, where the court had allowed a claim for repairs in the sum of £253 for a vehicle said to have a pre-accident market value of only about £180.[80] This was because that expenditure, according to Edmund-Davies J, was reasonable in the circumstances, having regard to the special improvements and excellent condition of the car.

30 Further support may be found in *Aerospace*, discussed above in relation to Max. There, the repair measure of some £2.69m was awarded to reinstate unique archives utilised in a business that had been damaged by flooding, even though the diminution in value (such as could be calculated) was no higher than £1.06m.[81] The court said that it was "difficult to regard what may be called the strictly economic value of the archive (what the authorities call the resale value) as being the sole value of the archive", as it was a "labour both of love and dedication to build up and then catalogue the archive in the first place", and its "value to the owner may be (and, in this case, is) greater than such sum as can be obtained by selling it at spaced-out auctions".[82]

31 It is submitted that the decisions in *Aerospace* and *O'Grady* are consistent with Goh JC's holding in *JSD Corp* that the touchstone is whether it is "reasonable for [the plaintiff] to choose the cost of cure (*ie*, to repair) rather than seek a replacement or the difference in value".[83]

32 The upshot is that the "total constructive loss" rule admits of an exception where it is reasonable to repair, rather than replace, the damaged chattel, despite the higher cost of repair. Relevant factors in the assessment of reasonableness are the extent to which the chattel is unique, and the value to the owner of those unique characteristics. It is submitted, therefore, that the cost of repair measure should be generally applicable in cases where the damaged chattel is a companion animal, given that such chattels are as unique as they come. Courts have, on

79 [1962] 2 Lloyd's Rep 238.
80 *O'Grady v Westminster Scaffolding Ltd* [1962] 2 Lloyd's Rep 238 at 240.
81 *Aerospace Publishing Ltd v Thames Water Utilities* [2007] Bus LR 726 at [44]–[46].
82 *Aerospace Publishing Ltd v Thames Water Utilities* [2007] Bus LR 726 at [52].
83 *JSD Corp Pte Ltd v Tri-Line Express Pte Ltd* [2023] 3 SLR 1445 at [67]–[69] and [88].

occasion, acknowledged this sentiment. For example, in *Downey v Beale*,[84] the Federal Circuit Court of Australia said:[85]

> I am conscious of that, opined by Roger Caras, '*dogs are not our whole life, but they make our lives whole*'. I am completely empathetic with the importance this issue holds for the parties and conscious that the parties and each of them may consider this sentient creature, this living being, as fundamentally important to them. [emphasis in original]

VI. Conclusion

33 The discussion above demonstrates the numerous difficulties with the application of conventional principles to cases involving companion animals. If the analysis above is correct, there may be grounds to seek substantial recovery for companion animals killed or injured through tortious acts,[86] and the perception that recovery is extremely limited is untrue. Moreover, by taking companion animals as an analytical example, it is possible to test the limits of the framework governing tortious remedies for damaged and destroyed chattels. As set out above, both the "market value" analysis and the "total constructive loss" rule ought not to be treated as sacred cows. Where unique chattels such as companion animals are concerned, recovery should be governed by the ultimate question of what the court assesses as reasonable in the circumstances. The implication of *Walker*'s "market value" approach is that it is reasonable for owners to value their companion animals at their depreciated value, and no more. This approach ignores both the costs that owners have already incurred in pet ownership (such as veterinary and training expenses) and the costs that owners are willing (and obliged under the Animals and Birds Act) to incur for the future care of their animals. On the approach suggested here, both types of costs would be recognised: the former by awarding the "replacement" measure instead of "market value" in cases of tortious death, and the latter by awarding veterinary costs arising out of tortious injury, both accrued and future. Ultimately, whether a future court agrees with the proposed approach is a question that involves consideration of social norms and attitudes towards pet ownership.

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84 [2017] FCCA 316.

85 *Downey v Beale* [2017] FCCA 316 at [13].

86 This is, of course, in addition to recovery on more exceptional bases, such as for psychiatric harm and punitive damages.