Mycitydeal Ltd (trading as Groupon UK) and others *v* Villas International Property Pte Ltd and others
[2014] SGHC 196

Case Number : Suit No 281 of 2012

Decision Date : 09 October 2014

Tribunal/Court : High Court

Coram : Steven Chong J

Counsel Name(s) : Navinder Singh and Amirul Hairi (Navin & Co LLP) for the plaintiffs; Rasanathan s/o Sothynathan and Nazirah K Din (Colin Ng & Partners LLP) for the defendants.

Parties : Mycitydeal Ltd (trading as Groupon UK) and others — Villas International Property Pte Ltd and others

Civil Procedure – Pleadings

Civil Procedure – Judgments and orders – Admissions of fact – Order 27 r 3

Contract – Breach

Evidence – Documentary evidence – Proof of contents

9 October 2014 Judgment reserved.

Steven Chong J:

Introduction

1 Prior to the trial of an action, it is quite usual for parties to engage in different forms of interlocutory applications of varying complexities. They are often either a source of distraction or useful ammunition for trial preparation. However when the dust is settled after the resolution of the interlocutories, it is essential for the claimant not to lose sight of or ignore the primary requirement to prove its claim. This is especially so if the claim is for a liquidated sum based on an allegedly unpaid contractual debt. This was, unfortunately for the claimant, precisely what happened in this case.

2 The trial of the action only concerned the defendants' counterclaims against 13 Groupon entities from 13 different countries for numerous unpaid vouchers that had allegedly been redeemed, the plaintiffs' claims having been dismissed for failure to comply with an "unless order". Separate and distinct claim amounts were pleaded against each of the 13 Groupon entities. However, only bare particulars were provided in respect of each counterclaim. Not unexpectedly, this prompted the plaintiffs to apply for further and better particulars of the respective claim amounts. The application was successfully resisted by the defendants. They were able to convince the Assistant Registrar that the particulars sought relate to matters of evidence and hence need not be pleaded.

3 Having taken the position that the breakdown of each of the claim amounts relates to evidence, the defendants would be expected to provide the evidence at the trial to prove the respective claim amounts against each of the plaintiffs. Inexplicably, this was not done. In their Opening Statement, the defendants sought to advance their claim on an aggregate basis, *ie*, by purporting to add up all the redeemed vouchers less the total amounts paid by the plaintiffs to prove

the balance amount outstanding from all 13 plaintiffs collectively. In response to my observation at the start of the trial on the lack of evidential basis to support the total number of redeemed vouchers and that the claim amounts need to be proved against each of the 13 plaintiffs separately and not on an aggregate basis, two exhibits, D1 and D2 were belatedly tendered by the defendants. They comprised spreadsheets, the origins of which were not satisfactorily explained. More will be said of the exhibits below. For now, it suffices to say that it is not clear how the spreadsheets were prepared. Further, tabulating the figures in a spreadsheet does not dispense with the basic requirement to prove the claim amounts. The defendants claim that they were not able to provide all the supporting documents because the documents had earlier been seized by the Commercial Affairs Department ("CAD") in connection with the plaintiffs' complaint. However no evidence was led to show that they took any steps to secure the release of the documents from the CAD to fulfil their discovery obligations. Nonetheless they were still able to produce a "*sampling*" of the primary documents but this was of little comfort to the defendants because, based on those documents, the sums simply did not add up to support the pleaded claim amounts. No explanation was offered as to why the defendants were able to provide a sampling of the primary documents when all had allegedly been seized by the CAD.

4 Recognising that there are severe gaps in exhibits D1 and D2, the defendants sought to address the flaws of their case in seeking to rely on alleged "admissions" by the plaintiffs' representative in an earlier affidavit filed in connection with the defendants' application to discharge a Mareva Injunction then in force against them. These "admissions" are not the usual admissions which a party relies on to obtain judgment under O 27 r 3 of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court"). None of them admits to the claim amounts. Instead they are statements in an affidavit (extracted from a different context) which the defendants seek to rely on to prove *one* component of the claim amounts against the plaintiffs. There are many difficulties with such an approach, the most serious of which is the conspicuous fact that reliance on the alleged "admissions" would result in claim amounts quite different, some higher and some lower, from the pleaded claim amounts. No explanation was forthcoming from the defendants to reconcile the conflicting amounts. In fact, they readily concede that they simply cannot be reconciled. To date, no application has been made to amend the pleaded claim amounts to those arrived at on the basis of this new "admissions" case theory. Naturally this approach took the plaintiffs by surprise since the case which they were asked to meet at the closing submissions was quite different from the case as pleaded. Is such an approach permissible to prove the claim amounts? Clearly not. As such, the various attempts by the defendants to plug the evidential gaps of their claims not only failed to address them, they in fact highlighted the gaps and hence compounded the defendants' shortcomings as regards proof or the lack thereof of their claims.

5 As it turned out, this was not the only problem that the defendants faced in their quest to prove their claims. The contractual arrangement between the parties required the defendants to submit evidence of valid redemption of the vouchers to the plaintiffs within 28 days of the vouchers having been validly redeemed by the end-consumer failing which the defendants "shall lose its right to receive" payment. Both parties relied on the same clause for different purposes and each adopted diametrically opposing views on the question of the burden of proof. Was it for the defendants to prove that the evidence of valid redemption was submitted within 28 days or for the plaintiffs to establish that such evidence was submitted outside the 28-day window? The defendants claimed that this requirement was never previously insisted upon and was only pleaded by the plaintiffs at a late stage of the proceedings. Yet, no waiver or estoppel was pleaded by the defendants in response.

6 Having broadly set out my general observations on the relevant issues, I turn now to provide the background to the present dispute.

The facts

The parties

7 The 13 plaintiffs are related entities worldwide which are each partly owned by Groupon Inc, a company incorporated in the United States of America. [note: 1] Where relevant, each of these Groupon entities will be individually referred to with a suffix indicating its geographical location. Therefore the first plaintiff will be referred to as "Groupon UK", the second plaintiff as "Groupon France" and so on.

8 The plaintiffs' primary business is in the running of "deal-of-the-day" [note: 2] websites where discount vouchers for a range of advertised goods and services may be purchased by internet users. To be clear, the actual provision of such goods and services to the end-consumer is not by the plaintiffs themselves; instead, this is typically undertaken by various merchants who have contracted with the plaintiffs to have their goods and services promoted at a discounted rate on the plaintiffs' online platform. [note: 3] However there may also be instances where the contracting merchant is not the actual goods/service provider (as in the present case). [note: 4] To illustrate, this may occur where a merchant which contracts to advertise hotel stay packages on the plaintiffs' websites is not actually the hotel itself but, for example, a travel agency. In all instances, however, the process which the end-consumer has to go through is the same: first, he purchases a voucher directly from the plaintiffs online; then, he looks to the contracting merchant to redeem the voucher and obtain the purchased good or service as the case may be, and this usually involves him having to present a computer print-out of the voucher to the merchant. [note: 5]

9 Subsequently, the merchant would seek to obtain payment from the plaintiffs in respect of the redeemed vouchers according to the mechanism provided under the contract with the plaintiffs. [note: 6] The sum payable to the merchant is usually stipulated as the price of the voucher less an agreed success fee to which the plaintiffs are entitled and any tax which is payable. [note: 7]

10 The first defendant was incorporated on 9 March 2011 as a private limited company of which the third and fourth defendants are listed as directors and equal shareholders. Its business is concerned with hotel management, consultancy services, luxury property management and booking services. [note: 8] The second defendant is a sole proprietorship registered on 24 August 2010 with the fourth defendant as its sole proprietor and it provides a similar but more limited range of services than the first defendant. [note: 9] However, according to its corporate profile maintained with the Accounting and Corporate Regulatory Authority, the second defendant had ceased carrying on business prior to the commencement of the trial. [note: 10] Both the first and second defendants are relatively young set-ups and they share the same registered address in Textile Centre along Jalan Sultan. [note: 11]

The dispute

11 The first and second defendants contracted as merchants with the plaintiffs under agreements which shall hereinafter be referred to collectively as "the Co-operation Agreements". [note: 12] It was agreed that the first and second defendants would provide packaged holiday villa stays at promotional rates in Bali, Indonesia [note: 13] and that the plaintiffs would advertise and sell vouchers for the enjoyment of these discounted services on their websites.

12 The present dispute arose from the plaintiffs' alleged failure to make payment on numerous vouchers which were allegedly redeemed by end-consumers with the first and second defendants. The plaintiffs' response, however, was that the first and second defendants have failed to prove their claims and in any event were not entitled to payment on these vouchers based on the terms of the Co-operation Agreements.

The procedural history

13 The plaintiffs commenced this suit on 5 April 2012 as a result of the first and second defendants' failure to provide end-consumers with the hospitality services they had contracted to provide under the Co-operation Agreements. [note: 14] Various causes of action were formulated by the plaintiffs [note: 15] but I shall not elaborate upon them here because, as will be explained shortly, the plaintiffs' claim was ultimately not proceeded with.

14 The plaintiffs also concurrently filed an *ex parte* application for a Mareva Injunction against the defendants on the same day. [note: 16] This application was heard by Lai Siu Chiu J on 10 April 2012 and the injunction was granted. [note: 17] However more than a year later, on 20 May 2013, Lai J made an order to discharge the injunction on the defendants' application. [note: 18] It is expedient to flag out here that, in the present proceedings, the defendants have sought to rely on alleged "admissions" made by Ms Adeline Seah ("Ms Seah") in an affidavit filed for the purposes of resisting the discharge of the Mareva Injunction. I shall elaborate upon these "admissions" in due course.

15 On 24 October 2012, the defendants amended their defence to include the present counterclaim for a contractual debt of $290,552.86. [note: 19] The defendants alleged that this debt arose as a result of numerous validly redeemed vouchers remaining unpaid by the plaintiffs in breach of the Co-operation Agreements. [note: 20] To explain how the debt of $290,552.86 had been arrived at, the defendants produced a basic summary table in their pleadings which contained a breakdown of figures in respect of each of the 13 plaintiffs ("the Pleadings Table"), although I should qualify this statement with the observation that the claims against Groupon Australia and Groupon New Zealand were grouped together on an aggregate basis without any explanation. [note: 21] Essentially, the Pleadings Table displayed how each claim amount was arrived at by juxtaposing the sums purportedly due on redeemed vouchers from each plaintiff against the sums purportedly paid by them; the difference was then totalled up to arrive at the aggregate claim of $290,552.86.

16 The defendants' pleaded case did not provide particulars of either the *number* or *identity* of redeemed vouchers which they claimed remained unpaid by each plaintiff. This prompted an application for further and better particulars by the plaintiffs on 14 February 2013. [note: 22] This application, however, was successfully resisted by the defendants before Assistant Registrar Teo Guan Kee ("AR Teo") on 11 March 2013. [note: 23] Importantly, the defendants' basis for objecting to the application was that the Pleadings Table provided the plaintiffs with sufficient notice of the case which they had to meet and that particulars of the unpaid vouchers constituted evidence which did not have to be pleaded. [note: 24]

17 At about the same time as the plaintiffs' application for further and better particulars, the defendants also filed an application for security for costs on 18 February 2013. [note: 25] AR Teo heard this application on 14 March 2013 and ordered the plaintiffs to furnish security in the sum of $50,000 within 14 days of the order. [note: 26] The deadline lapsed, however, without the plaintiffs

complying. [note: 27]

18 Consequently, at a subsequent pre-trial conference on 22 May 2013, Assistant Registrar Cornie Ng ("AR Ng") ordered that unless security was provided by 5 June 2013, (a) the plaintiffs' claim would be dismissed with costs and (b) judgment would be entered for the defendants on the counterclaim. [note: 28] Once again, the plaintiffs failed to comply.

19 Subsequently, the plaintiffs took steps to appeal against that part of AR Ng's decision which concerned the entering of judgment on the counterclaim and eventually succeeded in setting it aside before Woo Bih Li J on 23 August 2013. [note: 29] However, as the plaintiffs did not appeal against the dismissal of their original claim, [note: 30] it stands dismissed and is not before this court. Accordingly, only the counterclaim remains to be considered.

The defendants' evolving claims

The task of proving the counterclaim

20 I begin by noting that in every claim for a liquidated sum arising from an allegedly unpaid contractual debt, it is crucial for the claimant to satisfactorily prove how the claim amount is arrived at. In some instances, this will be a straightforward task. Take for example a creditor seeking to recover a lump sum extended as a simple loan to the debtor. Such a creditor should not encounter any difficulty in proving the amount which he alleges is owed to him upon maturity of the loan period; he needs only to produce the loan agreement stating the amount to be repaid to him. In other instances, however, the task of proving the claim amount may involve more complex considerations. The present case is perhaps one such example. Having said that, however simple or complex the case may be, once the claimant decides to bring the claim, he bears the burden to prove his case. No "discount" on the burden of proof is to be extended on account of the complexity of the case.

21 For starters, the defendants' counterclaim does not involve the recovery of a single lump sum. It might appear to be that way if one looks only at the total counterclaim amount of $290,552.86 but that is apt to mislead. It must be appreciated that this total figure is in actual fact a function of 13 different claims against 13 different plaintiffs, with each claim no doubt having to be proved separately. The present case also differs from my previous illustration in a further respect, which is that each claim amount here arises from a series of transactions (instead of a single one) because each claim is essentially founded on the collective value of numerous distinct vouchers which were allegedly redeemed by end-consumers with the first and second defendants at different times. Evidence of these redeemed vouchers is therefore crucial. However, that is not the end of the matter because it is not the defendants' case that *all* the redeemed vouchers remain unpaid. The defendants say that the plaintiffs did make payments but that these payments were short of the amounts due and owing on the validly redeemed vouchers. Accordingly, evidence of how much each plaintiff did pay will also have to be furnished by the defendants as a further facet of their claims in order to arrive at the balance outstanding amount owing by each of the 13 plaintiffs.

22 The foregoing observations show that effort must be properly undertaken by the defendants to prove their claims. However, this is not by any stretch a task which is plagued by insoluble problems of proof. It is plainly capable of proof provided it is approached with due diligence. In this regard, it is perhaps useful to underscore the fact that the defendants' claim against each plaintiff in essence involves no more than the simple arithmetic combination of two components presented in the formula below:

Claim amount = Total value of validly redeemed vouchers ("Component A") – Total amount paid by the plaintiff ("Component B")

23 As I have stated, however, the defendants had overlooked the basic necessity of proving each of their claims. They found proof of Component A, in particular, to be seriously problematic. The result of this failing was that the claim amounts were constantly in flux during the course of the trial and even beyond that as the defendants sought desperately to address the evidential gaps in their case.

Charting the evolution of the defendants' claims

24 The defendants' counterclaim as viewed from the plaintiffs' perspective no doubt resembled a "moving target" as it evolved according to the varying and troublingly irreconcilable evidential sources that the defendants sought to rely on. It is by all accounts unsatisfactory that a claim for liquidated damages should take on such a fluid character but even more so where, as was the case here, the defendants appeared to hold out at the interlocutory stage that their claims were grounded in evidence that would be adduced at the trial. The plaintiffs were no doubt caught by surprise when this did not materialise and, indeed, much court time was unproductively spent on trying to understand the defendants' ultimately ephemeral claims.

25 The paragraphs which follow thus provide a sketch of how the defendants' claims meandered through the course of the proceedings. This account is further complemented by a series of tables annexed to this judgment ("the Annexed Tables") which will be referred to at the appropriate junctures. The Annexed Tables would show at a glance how the claims against each of the 13 plaintiffs had evolved from the pleadings to the oral closing submissions.

The defendants' pleaded position

26 As mentioned earlier at [15], the defendants' pleaded position was reflected in the Pleadings Table which showed how the total counterclaim amount of $290,552.86 was arrived at by totting up the individual claim amounts (except for Groupon Australia and Groupon New Zealand) which were in turn obtained after netting off the figures displayed for Component B against those for Component A in respect of each claim. [note: 31] No further particulars were provided but, if anything, the breakdown of information in the Pleadings Table at least gave the impression that the defendants were cognisant of the need to prove each individual claim as pleaded and of how this task was to be approached. That, however, turned out to be an illusory indication.

The defendants' position at trial

27 At the commencement of the trial, the defendants inexplicably set out in their Opening Statement that they would be proving their claims on an aggregate basis. [note: 32] In other words, they were beginning from the premise that it was permissible to effectively lump up their 13 claims into one indiscrete claim for $290,552.86. They then intended to go about proving this global sum by simply subtracting the total amount paid from the total value of redeemed vouchers for all the 13 plaintiffs collectively without any conceivable attempt to relate which of these payments or redeemed vouchers were connected to which particular claim. As I stressed earlier, however, the counterclaim here is made up of 13 claims, each one distinct from the rest; hence the defendants' proposed approach which blurred the lines between claims was wholly inappropriate.

28 Further, on the face of the counterclaims, there are two counterclaimants – the first and second defendants. The pleadings did not identify the amounts which were due and owing from which of the plaintiffs to the first and/or second defendants. I then sought clarification from the defendants'

counsel, Mr Rasanathan, who upon taking instructions confirmed that all the counterclaims were being pursued entirely by the first defendant. Mr Rasanathan at the same time informed the court that the total claim amount would be reduced from the pleaded amount of $290,552.86 to $289,118.43 to take into account a payment of $1,434.43 received from Groupon Sweden after the commencement of the proceedings. I indicated to Mr Rasanathan that if this was the extent of the amendment, he could apply to amend the counterclaim at the appropriate time. There was certainly no suggestion from Mr Rasanathan that, arising from his confirmation, all vouchers redeemed and payments received by the second defendant would have to be deleted from the claim amounts. The significance of this point will be elaborated below when I consider the first defendant's revised claims which, *inter alia*, seek to delete all vouchers redeemed and payments received by the second defendant. It is not clear why this was done by the defendants. For now, suffice it to say that when the fourth defendant was cross-examined, she was referred to various Co-operation Agreements such as those concerning Groupon UK and Groupon Australia which were, on their face, entered into only with the second defendant. This raised the question whether the first defendant was the proper counterclaimant in respect of those Co-operation Agreements entered into with the second defendant. As this point was not specifically pleaded by the plaintiffs, I enquired from counsel for the plaintiffs, Mr Navinder Singh, whether the plaintiffs were planning to take this point. Mr Singh subsequently confirmed that the plaintiffs accept that the first defendant was indeed the proper contracting party for all the Co-operation Agreements with all the 13 plaintiffs. With this confirmation from both parties, I will henceforth consider all the claims in the name of the first defendant.

29 I indicated to the first defendant that they still had to prove their 13 pleaded claims on an individualised basis. However the manner in which they sought to do so was most perplexing. This was because they relied for this purpose chiefly on another summary table exhibited in the fourth defendant's affidavit of evidence-in-chief ("the AEIC Table") which contained *virtually the same* set of data as that in the Pleadings Table. [note: 33] I failed to see how this new table, which essentially mirrored the first, did anything to advance the first defendant's case evidentially in the absence of the relevant underlying primary documents. I shall return to elaborate on this shortcoming of the AEIC Table in greater detail below.

30 I should mention here, however, that the first defendant did point me to a "sampling" of redeemed vouchers which purportedly supported the figures for Component A in the AEIC Table. [note: 34] However, given the simplicity of the AEIC Table, it was bereft of any explanation as to how the figures contained therein were correlated to the limited sampling of vouchers which were adduced. Indeed, the fact that these vouchers represented mere *samples* in support of the first defendant's claims was a clear concession that they did not possess the entire body of evidence required to prove their claims as pleaded. The first defendant explained that they were handicapped in this regard as their documents had been seized by the CAD as part of an investigation into the defendants' business activities pursuant to a complaint lodged by Groupon Singapore. [note: 35] However, as I noted earlier, no evidence was led as to whether the defendants had taken any steps to procure the release of such documents to fulfil their discovery obligations. The court is certainly not in the habit of taking it upon itself to fill the evidential gaps in a party's case.

31 Recognising the deficiencies in the AEIC Table, the defendants then sought to supplement it by tendering two exhibits on the second day of the trial: D1 and D2. These exhibits were in the nature of spreadsheets and they compiled information regarding Component A and Component B respectively. To elaborate, D1 purportedly tabulated each voucher which the defendants claimed was validly redeemed, serialised according to the individual voucher codes and accompanied by figures showing the total amounts due in respect of these vouchers to the first and second defendants. As for D2, this spreadsheet displayed the payments received by the first and second defendants from each of

the plaintiffs according to bank statements which were adduced.

32 In my view, however, the production of these two exhibits also did not assist the first defendant. First, the origins of D1 and D2 were never satisfactorily explained to me. At the time of their production during the trial, I inquired with Mr Rasanathan as to how and when these spreadsheets were prepared. He replied that he would need to check with his clients. In any event, these are matters for the fourth defendant to explain since D1 and D2 were introduced while she was still on the stand. Other than claiming that the exhibits were prepared "some time ago" and not overnight, the fourth defendant was not able to explain how they were prepared and the sources of information used in their preparation. I specifically asked her to check when the spreadsheets were actually *created*. She said that she would access her computer to obtain the information but she failed to respond with the information even after a reminder from me. Eventually Mr Rasanathan informed the court that D1 and D2 were prepared some time between August and October 2012. Quite apart from the fact that this was for the fourth defendant to explain, Mr Rasanathan was not able to offer how they were in fact prepared. This lack of a proper explanation was especially problematic in so far as D1 was concerned because D1 was set out much in the same way as the two summary tables before it (*ie*, the Pleadings Table and the AEIC Table): it did not contain cross-references to any of the primary documents from which its figures were purportedly derived. Therefore, if D1 had been prepared with the benefit of the primary documents, *ie*, the validly redeemed vouchers (which must be so if it was to have any probative value), then it begs the question why the first defendant was no longer able to provide them to support their claims. The total amount owing from the validly redeemed vouchers would to some extent depend on the total number of redeemed vouchers. In this connection, it bears mention that while the counterclaim did not plead the total number of redeemed vouchers, that figure was however provided in D1 with no explanation as to the source of that information. To compound the problem even more, with the exception of Groupon Australia, Groupon New Zealand and Groupon Mexico (in respect of whom the claim amounts are either insignificant or not seriously pursued) none of the total number of redeemed vouchers in D1 tallied with that in Annex B (see [35] and [47] below) which the first defendant relied on to support their primary case. This appears clearly from the Annexed Tables which accompany this judgment. As for D2, it fared better since the documentary origin of the figures contained therein, *viz*, the bank statements, were cross-referenced. However, it must be emphasised that the information in D2 was meaningless on its own as it had to be read alongside D1 to arrive at the balance outstanding amounts claimed to be owing from each of the 13 plaintiffs.

33 Second, even if one took pains to match the voucher codes in D1 to those vouchers within what was provided in the "sample" pool, it was not clear how the figures in D1 stating what was payable in respect of each voucher had been derived from the individual voucher prices. This was because, in many instances, the difference between the two figures was so stark that I doubted it could be attributable to mere deductions of the plaintiffs' success fee and any taxes paid from the displayed voucher price. For example, for the Groupon voucher with voucher code 5/7461, the value of this voucher which is contained in the Agreed Bundle is stated to be £1,100 [note: 36] whereas the amount stated to be payable to the first defendant for this same voucher is stated in D1 as £259.35. [note: 37] D1 provides no explanation for this discrepancy. Even if the difference was indeed due to the deduction of the success fee and tax paid, D1 did not make that clear and, in any event, Mr Rasanathan also could not give a satisfactory explanation for these recurring discrepancies when I raised the matter with him. It was for the first defendant to explain but none was forthcoming. Simply put, then, D1 was of no evidential value on its own and coupling it with whatever underlying primary evidence led only to more questions than answers.

34 Third, I observe that even if the aforementioned defects in D1 were ignored and its figures

accepted as accurately proven, a combined reading of D1 and D2 still did not produce claim amounts that equalled the pleaded claims in the AEIC Table when, logically, this should have been the case. In this regard, another glance at the Annexed Tables will quickly reveal that the claim amounts arrived at by subtracting the figures in D2 from that in D1 had morphed from the pleaded claims for a significant portion of the Groupon entities (namely, those in Switzerland, Austria, Italy, Belgium, Australia, and New Zealand). In fact, the Annexed Table specific to Groupon New Zealand further illustrates what may perhaps even be an internal incongruency between D1 and D2 since, if the figures therein are correct, it would appear that Groupon New Zealand had actually made payments *in excess* of what it owed to the first defendant.

The first defendant's position in written closing submissions

35 D1 and D2 were thus riddled with irremediable inconsistencies and, realising this, the first defendant embarked on a novel route to prove their claims in their written closing submissions which annexed three further tables: Annex A, Annex B, and Annex C. [note: 38] I focus for the moment on Annex A.

36 Annex A largely comprised figures which the first defendant said were derived from "admissions" made by Ms Seah in her affidavit dated 13 March 2013 ("13 March affidavit") which was filed to resist the discharge of the Mareva Injunction (see [14] above). It is important to point out that the statements made by Ms Seah in this affidavit covered, *inter alia*, the following ground: (a) the number of validly redeemed vouchers in respect of each plaintiff, (b) the amounts due to the first and second defendants based on those vouchers, (c) the amounts paid by the respective plaintiffs, and (d) the amounts which the plaintiffs had to refund to end-consumers for the first and second defendants' failure to provide the hotel accommodation in spite of the booking confirmation. [note: 39] Annex A included only the first three categories of information which the first defendant attributed to Ms Seah. However, when I perused Ms Seah's 13 March affidavit on my own, I was surprised to find that the figures which she had provided therein differed frequently enough from what was tabulated in Annex A such that these incongruities could not be excused on the basis of being mere technical errors in compilation. For example, while Ms Seah's 13 March affidavit states that Groupon UK had remitted €74,679.09 to the defendants, [note: 40] Annex A records her as stating that this sum was in fact €101,987.20. To provide another example, Ms Seah's 13 March affidavit states that Groupon France remitted €27,974 to the defendants [note: 41] but Annex A records her as stating that this sum was €58,410 instead. Annex A provides no explanation for these discrepancies. It therefore appeared that much of the information reproduced in Annex A was basically masquerading as Ms Seah's affidavit evidence when, in fact, the two did not tally. For that reason, I was inclined to treat Annex A with necessary caution.

37 However, leaving aside for the moment that there were serious questions over the integrity of the Annex A figures, I further noted that the first defendant was particularly selective in how they sought to use Ms Seah's statements to prove their claims. The reason for this was ostensibly because, if Ms Seah's affidavit evidence (as produced in Annex A) was adopted in its entirety, it would result in the first defendant's claims against a majority of the plaintiffs being wholly extinguished. This may clearly be gathered from the Annexed Tables which show that, based on Ms Seah's evidence as tabulated in Annex A, many of the Groupon entities (namely, those in the UK, France, Germany, Poland, Sweden, Belgium, Mexico, and UAE) had *fully* paid up on the amounts which were owing to the defendants in respect of the redeemed vouchers. In light of this, the first defendant urged me to ignore that particular part of Ms Seah's "admissions" in the 13 March affidavit which related to the amounts paid by each plaintiff and to prefer, instead, the figures contained in their unchallenged exhibit D2. According to the first defendant, I could properly subtract the figures in

D2 (representing Component B) from the amounts owing based on Ms Seah's 13 March affidavit (representing Component A) to derive the amounts claimed in Annex A. This approach was highly doubtful. I shall discuss its merits in greater detail below but it suffices to observe for now that the mishmash of evidence cobbled together by the first defendant ultimately produced claim amounts which departed erratically from what was pleaded. Some of these new claims were higher and yet others lower than the pleaded claims. *None* of the 13 claim amounts remained the same. Once again, this is borne out by the Annexed Tables.

38 As mentioned earlier, the first defendant also relied on two other tables in their written closing submissions: Annex B and Annex C. These were unrelated to the novel "admissions" case theory as described above. They were provided, instead, to plug the evidential gap which D1 was earlier intended to address, *viz*, the lack of proof regarding the validly redeemed vouchers in respect of each plaintiff (*ie*, Component A). However, both tables fell far short of their intended aim.

39 It was not at all clear how Annex C was intended to assist the first defendant. Annex C merely tabulated *some* of the redeemed vouchers from within the "sample" pool according to their voucher codes. It also displayed the voucher price payable for each of these tabulated vouchers. To begin with, it has already been observed at [30] and [32] above that the total value of the sampling of vouchers produced simply did not add up to support the pleaded claims and, moreover, if one sought to match the voucher codes in Annex C with the primary documents, one would find that the voucher price which was reflected on the face of the voucher itself did not correspond with that recorded in Annex C. For example, the first voucher serialised in Annex C (with voucher code 4/0995) is stated to have the voucher price of £499. However, when the same voucher is located in the Agreed Bundle, it appears on the face of that voucher that the voucher price is in fact £1,835. [note: 42] The exact same discrepancy may again be observed when one moves down to the second voucher serialised in Annex C (with voucher code 135/1162) and compares its stated voucher price with that reflected on the actual voucher itself in the Agreed Bundle. [note: 43] Annex C provides no explanation for these discrepancies.

40 As for Annex B, it was simply a reincarnation of the AEIC Table as it contained the same columns of information for Component A and Component B broken down according to the individual plaintiffs. Naturally, it was afflicted with the same problem of being unsupported by the primary evidence to prove the stated number of vouchers which were purportedly redeemed.

41 There was, however, a noticeable difference in that some of the claim amounts in Annex B were different from that which had been put forward at trial according to the AEIC Table. Mr Rasanathan explained that these claim amounts had been deliberately modified so as to reflect an alleged confirmation at trial that the second defendant was abandoning its claims. The new figures in Annex B were thus explicable on the basis that they no longer took into account the sums allegedly owing on redeemed vouchers or paid by the plaintiffs in so far as the second defendant was concerned. The result of this was that the claim amounts in Annex B remained the same as what was pleaded only against certain plaintiffs (namely, Groupon UK, Poland, Mexico, and UAE) while it was revised to reflect the changed circumstances for the remaining plaintiffs. This may again be gathered from the Annexed Tables.

42 However I found Mr Rasanathan's explanation for the revision to be without foundation and that his confusion most likely stemmed from his failure to follow the trial. As observed earlier in [28] above, I had sought clarification from Mr Rasanathan on the second day of the trial about the amounts owing to the first and second defendants respectively and, in reply, he merely confirmed that all the defendants' claims were being pursued entirely by the first defendant and that the total counterclaim amount was to be reduced to account for a small payment which had since been made by Groupon

Sweden. There was certainly no statement that, as a consequence of his confirmation, all the vouchers redeemed with the second defendant and alleged to be outstanding would have to be withdrawn or abandoned. Therefore I did not understand how it became necessary for the defendants to remove from their claims against the 13 plaintiffs those vouchers which they alleged were redeemed with the second defendant. It was clear to me that Mr Singh had effectively accepted that whoever might have submitted the vouchers for payment, it was done on behalf of the first defendant. This was after all in line with Mr Singh's confirmation that, notwithstanding the fact that some of the Co-operation Agreements might have been entered into with the second defendant, he accepted that the first defendant was in fact the proper contracting party. It did not make any sense for the defendants to delete all the vouchers redeemed with the second defendant. It also cannot be reconciled with Mr Rasanathan's clarification that, arising from his confirmation that all the counterclaims are being pursued in the name of the first defendant, the total claim would be reduced only to reflect the small payment of $1,434,43 received from Groupon Sweden. If his understanding had been that the total claim amount was to be reduced to account for a deletion of the vouchers redeemed by the second defendant, the reduction would have been significantly more. Finally there was no logic to delete the claims purportedly made by the second defendant. Clearly these claims could be identified (despite the fourth defendant testifying to the contrary) since they were, after all, the subject matter of the revision. Further, the second defendant is already an existing party to the counterclaim and could rightly pursue the claim if indeed it was the proper party to do so. Accordingly, the new claims in Annex B were the result of a completely unwarranted revision. Nevertheless, I should add that I did not regard this to be in any way fatal to the first defendant's claims. I raised this just to illustrate the appalling manner in which the counterclaims were pursued.

The first defendant's position during oral closing submissions

43 There was yet a further evolution of the first defendant's claims during oral closing submissions. Mr Rasanathan was hard-pressed to explain in a rational and coherent manner how each of the claims against the 13 plaintiffs were sought to be proven and, in his rather vain attempt at doing so, the waters were unfortunately muddied even further. For instance, the first defendant's claim against Groupon New Zealand was withdrawn completely while no definitive stand was taken in respect of Groupon Australia. This was not altogether surprising given that the first defendant's claims against both these plaintiffs had always been advanced on an aggregate basis (see [15] above). Therefore, when urged to indicate what evidence he was relying on for each distinct claim, Mr Rasanathan ultimately conceded that he could not do so. Further, the first defendant also chose to abandon their "admissions" case theory as an alternative basis of proof for some claims (namely, against Groupon Switzerland, Poland, Sweden, Belgium and Mexico) while they had no choice but to hastily qualify other claim amounts in Annex B when it was pointed out that the value of these claims somehow outstripped the pleaded amounts (see, for example, the claim against Groupon Switzerland). These developments are noted down in the Annexed Tables and, ultimately, they illustrated an alarming lack of consistency in how the first defendant sought to prove their individual claims.

The first defendant's application to amend the counterclaim

44 At the close of oral submissions, I directed the parties to address me on several issues of law with further written submissions. Mr Rasanathan, however, appeared to take this opportunity to launch a last-ditch attempt at proving how the first defendant's 13 claims were arrived at. His further submissions [note: 44] therefore included an Amended Annex B which, as its name suggests, is modelled entirely after Annex B in terms of its presentation. The differences were that Amended Annex B had again changed the claim amounts for a majority of the 13 plaintiffs and that it was accompanied by certain explanatory notes which attempted to rationalise how these changes addressed earlier discrepancies. Mr Rasanathan also concurrently filed a fresh application on 3

September 2014 to amend his counterclaim so as to reflect the new claim amounts in Amended Annex B. [note: 45] For completeness, it should be mentioned that the application to amend did not also seek to include the alternative claim amounts advanced under the "admissions" case theory in Annex A.

45 I heard the first defendant's application on 17 September 2014 and dismissed it. It is clear that the application to amend was made very late in the day – after oral closing submissions. The only explanation provided by the first defendant for the late application was that their business came to a halt as a result of the Mareva Injunction. They were therefore unable to afford the services of an accountant to assist them in the proper calculation of the claim amounts. The first defendant claimed that they realised the errors and mistakes over the course of the trial. I do not accept the explanation. The proper calculation of the claim amounts is a basic task to be undertaken prior to the filing of the counterclaim. It was not such a complex exercise which necessarily required the services of an accountant. More fundamentally, the application sought to amend the balance outstanding amounts due and owing from the second, third, fourth, fifth, sixth, ninth, and tenth plaintiffs. The amendments were ostensibly to delete the claims in respect of vouchers redeemed by the second defendant and to correct calculation errors. However, Mr Rasanathan readily conceded during the hearing before me that the first defendant does not have the complete set of primary documents to support the revised total amount owing on the redeemed vouchers. The first defendant reiterated that they seek to rely on D1 to prove their claims. As I will explain at [55]–[59] below, without the primary documents, the claims cannot be proved with reference to D1. Accordingly, I saw no purpose in allowing such an amendment which is a non-starter and in this regard, I can do no better than to cite the decision of Judith Prakash JC (as she then was) in *Hong Leong Finance Ltd v Famco (S) Pte Ltd and others* [1992] 2 SLR(R) 224 at [13]–[15]:

> I … considered the substance of the proposed amendment itself carefully. In my view, even if the amendment were allowed, it would not, on the basis of the evidence placed before the court to date, afford SPP a real and viable defence.
>
> At the close of the plaintiffs' case there was **no evidence** that they had actual knowledge of any breach of fiduciary duty on the part of M/s Chew and Cheng. Accordingly, SPP would have to rely on the proposition that in all the circumstances of the case, the plaintiffs "ought to have known" that Mr Chew and Mr Cheng were acting in breach of duty in procuring the issue of the corporate guarantee. Again, **the evidence does not substantiate** any such constructive knowledge. What the plaintiffs knew as shown by the testimony of James Sim, their senior manager, was that sometime in August 1984, Famco had become a subsidiary of SPP and SPP was accordingly prepared to replace the pledge of shares given by FYH for its subsidiary's obligations by its own corporate guarantee. It was perfectly reasonable for the plaintiffs to accept this at face value. In business transactions, it is common place for a holding company to guarantee the obligations of its subsidiaries either from the outset or from such time as the holding company acquires the subsidiary. There were thus, in this case, no suspicious circumstances that should have put the plaintiffs on guard or alerted the plaintiffs to the fact that something not quite proper might be going on. The plaintiffs' acceptance of the corporate guarantee without further investigation cannot therefore be impugned.
>
> I therefore regarded the proposed amended defence vis-à-vis the plaintiffs as **a non-starter**.
>
> [emphasis added in bold]

46 For completeness, I should say that if there was in fact evidence before me to support the revised claims, I would have awarded the reduced amounts even without the necessity of an amendment since the revision was merely to delete the vouchers redeemed by the second defendant

and to correct calculation errors.

Summarising the first defendant's claims and the evidence relied on

47 Despite the highly unsatisfactory way in which the first defendant's claims shifted throughout the proceedings, I note that they did finally come to rest on Annex A and/or Annex B of the first defendant's written closing submissions, with both yielding different amounts. As between the two, Annex B was relied on as the first defendant's main plank. The figures contained therein were intended to prove the first defendant's original pleaded claim amounts in respect of some plaintiffs and its revised claim amounts in respect of others. Annex A was the first defendant's alternative plank. It was intended to prove entirely new claim amounts against all the plaintiffs based on the "admissions" case theory.

48 To determine whether the first defendant had proved the claim amounts in either Annex A or Annex B, the evidentiary basis on which each of these documents were in turn founded had to be closely scrutinised. In this regard, I intend to examine the two following pieces of evidence proffered by the first defendant:

(a) the AEIC Table as proof of the claim amounts in Annex B; and

(b) the alleged "admissions" by Ms Seah as proof of the claim amounts in Annex A.

49 Before embarking on such an inquiry, however, I should first consider a *threshold* objection made by Mr Singh in response to the evolving nature of the first defendant's claims. I have described Mr Singh's objection in this manner because he argued that the mere fact that the claim amounts in Annex A and Annex B were different from those contained in the pleadings meant that the counterclaim must fail *in limine*. In other words, according to Mr Singh, there was strictly no need to determine whether the claim amounts in Annex A and Annex B had been proven since their very departure from the pleadings was self-defeating in nature.

The plaintiffs' threshold objection

50 Mr Singh's threshold objection can be stated as follows. [note: 46] First, he labelled the first defendant's pleaded claim for the specific liquidated sum of $290,552.86 as an action for damages, in particular special damages. Next, he said it was crucial to notice that this was the only relief sought by the first defendant in their pleadings on the basis of allegedly unpaid vouchers. Importantly, there was no explicit prayer for general damages to be assessed. [note: 47] In these circumstances, Mr Singh submitted that the court had no power to award a sum lower than that which was specifically pleaded under the guise of general damages. That was so even if the loss of such a lesser amount was in fact supported by the evidence.

51 I do not agree with Mr Singh's submissions. In my judgment, his starting premise was mistaken as it involved a mischaracterisation of the precise nature of the counterclaim. The first defendant's counterclaim here is *not* an action for damages, it is an action for a contractual debt (or an action for a fixed sum as it is sometimes referred to). That the two kinds of actions generally arise in very different circumstances and generate very different considerations is made clear by the learned authors of *The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) ("*The Law of Contract in Singapore*") at para 23.042:

> Where an action for a fixed sum is brought, there is no need to consider concepts such as remoteness and/or mitigation of damages. Nor, in most cases, is there a need for quantification or

assessment. Those concepts are irrelevant. Remoteness and mitigation issues are only relevant in claims for unliquidated damages for breach of a contractual term. This should be obvious once we appreciate that **the action for a fixed sum or debt has nothing to do with *compensation* . Such a claim simply allows the innocent party to recover what was promised to him, and is not a "money-substitute" for it.** To use Lord Diplock's language of primary and secondary obligations [in *Photo Production Ltd v Securicor Transport Ltd* [1980] AC 827], **the action for a fixed sum enforces performance of the primary obligation of payment, as specified by the contracting parties in their contract; whereas an action for damages enforces performance of the *secondary* obligation to pay damages which is imposed *by law* when a contractual promise is breached by one of the contracting parties**. [original emphasis in italics; emphasis added in bold]

52 In the present case, the first defendant's counterclaim for $290,552.86 represents the total value of validly redeemed vouchers which they allege remain unpaid by the plaintiffs. This sum, to borrow from the language used in the passage above, "has nothing to do with *compensation*". It is certainly not a sum which the first defendant has formulated as a "money-substitute" for their total losses flowing consequentially upon the plaintiffs' alleged breach. Instead, it is a sum which the first defendant claims has accrued to them directly under the contract as a result of the plaintiffs' failure to perform their primary contractual obligation to make payments on validly redeemed vouchers. The amounts to be paid in respect of each voucher is, it should be added, also readily quantifiable because, according to the terms of the Co-operation Agreements, this is fixed by reference to the price of each voucher less the agreed success fee and any tax payable. Viewed in this way, then, it becomes clear that the counterclaim here is not in the nature of an action for damages, whether general or special. It is simply an action to recover a fixed debt which, if successful, produces the result that "the defendant is bound to do exactly what the contract required" (see Neil Andrews *et al*, *Contractual Duties: Performance, Breach, Termination and Remedies* (Sweet & Maxwell, 2011) at para 19-003).

53 Given that Mr Singh's submissions proceeded from an entirely erroneous footing, the rest of it necessarily falls away. Consequently, I find that the case which he cited in support of his arguments – *The "Shravan"* [1999] 2 SLR(R) 713 – had no application here. Mr Singh had relied, in particular, on a paragraph of that judgment (at [77]) where Chao Hick Tin J (as he then was) made plain the distinction between general and special damages and observed that special damages had always to be explicitly claimed on the pleading. [note: 48] However the present action is not one for damages but for a debt; and this is not a difference without a distinction because, as I have stated, the applicable principles differ depending on the particular form of the action. *The "Shravan"* was simply not concerned with an action for a debt, thus the observations made there are of no assistance here.

54 In my view, I have no doubt that it is open to me to award to the first defendant an amount lower than what was pleaded in respect of each claim *if* that lower claim amount is supported by the evidence. The first defendant's pleaded claim amounts, after all, are simply based on the difference between Component A and Component B. Component A, in turn, is derived from totalling up the number of vouchers which the first defendant says were validly redeemed in respect of each plaintiff. If, however, the first defendant is unable to make good at the trial what they have pleaded in that they manage only to prove that a smaller number of vouchers were validly redeemed, I do not see why this precludes them from being awarded a sum which is correspondingly reduced from the pleaded claim as I had earlier alluded to at [46] above. Accordingly, the mere fact that the claim amounts now advanced by the first defendant in Annex A and Annex B have evolved from what was pleaded is not in itself fatal to the counterclaim. I thus go on to determine whether these new claims had been properly proved. It certainly invites closer scrutiny to understand how and why the claims have evolved.

The first defendant's reliance on the AEIC Table to prove the Annex B claims

55 The main objection to the first defendant's reliance on the AEIC Table to prove their claims in Annex B should be obvious by now: the entries therein regarding the total amounts owing in respect of redeemed vouchers is not supported by the relevant primary evidence, *viz*, the allegedly redeemed vouchers themselves (see [30] above). Section 66 of the Evidence Act (Cap 97, 1997 Rev Ed) is material in this regard. Its mandatory language clearly prescribes that documents *must* be proved by primary evidence except where the circumstances in s 67, which permit proof by way of secondary evidence, are applicable.

56 That the evidential rule in s 66 of the Evidence Act is of great practical importance in the proper conduct of disputes is not in doubt. As the Court of Appeal noted in *Jet Holding Ltd and others v Cooper Cameron (Singapore) Pte Ltd and another and other appeals* [2006] 3 SLR(R) 769 ("*Jet Holding*") at [36], this rule is "*intended to ensure that only the best evidence is admitted into evidence*" [original emphasis]. While the Court of Appeal in *Jet Holding* did also go on to observe that an "overly punctilious insistence" on compliance with provisions in the Evidence Act for its own sake was "undesirable" (see [50]) and that the "modern approach" in other jurisdictions was generally to admit all evidence and focus on issues of weight instead (see [57]–[62]), it must be stressed that these remarks were being proffered by way of "preliminary observations" only (see [47]). Certainly they were not intended to diminish the evidential rule in s 66. Indeed, the following passage from *Jet Holding* at [48] dispels such notions entirely and bears mention in the present case:

> Firstly, we must begin with the general principle that the party who wishes to introduce the documents concerned into evidence must comply with the salient provisions of the Evidence Act … To begin with, any other premise would ignore the clear provisions of the Act. Worse still, it would be a signal to parties to be indisciplined in so far as the introduction of documents is concerned. It would then be the thin end of the procedural wedge and might even lead to the fraudulent introduction of documents. The fact that there is another legal barrier in the form of testing the truth of the contents of documents is no excuse for lowering the barrier in relation to the authenticity of documents under the salient provisions of the Evidence Act, and which would itself constitute an important threshold safeguard.

57 The general stance towards s 66 of the Evidence Act is therefore clear. However it is also useful for present purposes to provide a more specific illustration of how this evidential rule operates against parties seeking to prove the contents of documents which are purportedly collated from other sources. In this regard, I find instructive the Indian case of *State of Meghalaya and others v Joinmanick Nosmel Giri* (1995) 2 GLR 174 ("*Joinmanick*"). I pause to add parenthetically that as our Evidence Act originated from the Indian equivalent, authorities from this jurisdiction are certainly not short of persuasive value here (see also *Jet Holding* at [52]).

58 In *Joinmanick*, the claimant contractor sought to recover a shortfall in payment by the defendants for work done in connection with an irrigation project. To prove an aspect of its claim, the claimant produced among various other exhibits one which took the form of an exercise book. This exercise book was prepared by the claimant and contained several entries regarding work which it had purportedly done over a certain period. However the court refused to admit it into evidence as the entries therein had not been proven by primary or secondary evidence (at [20]):

> … [Exhibit] 15(1) is a exercise book containing some entries. Also it contain some slips of papers. … *It is not understood as to why this book was admitted in the evidence without proving entries made therein*. … No doubt, this book was exhibited without objection from the defendant. But

> that did not take away the right of the court to question and/or secrutinize [*sic*] the evidentiary value of the same, Section 61 of the Evidence Act [equivalent to s 63 of our Evidence Act] provided that contents of documents may be proved either by primary or by secondary evidence. *Here the contents of the exhibits were not proved either by primary or by secondary evidence. So these exhibits must be brushed aside. … The way these exhibits are sought to be utilised to thrust the liability on the defendant, may give rise [to] dangerous precedent in the field of civil litigation.* [emphasis added in italics]

59 In the present case, the total sums payable in respect of redeemed vouchers as recorded in the AEIC Table were also not proven by production of the underlying primary evidence. Although *some* primary evidence was adduced in the form of "sample" redeemed vouchers, it is clear that these vouchers simply do not add up to the sums tabulated in the AEIC Table. Compiling the claim figures in a spreadsheet, D1, without adequately explaining the source of the underlying information, does not improve the first defendant's position.

60 The first defendant could also well have attempted to prove their claims through secondary evidence such as reminders sent to the plaintiffs for payment of the unpaid "validly redeemed" vouchers. In this regard, I find it curious that apart from the first defendant's abject failure to identify and/or produce the primary evidence, *ie*, the unpaid "validly redeemed" vouchers, they have also failed to produce any correspondence demanding payment from the plaintiffs in respect of the unpaid "validly redeemed" vouchers. I say that this is surprising because the first defendant – and, for that matter, the second defendant as well – certainly cannot be described as large or established corporate outfits having the financial wherewithal to tolerate a sustained period of late payments by the plaintiffs. Indeed, this becomes even more apparent when one takes into account the business model which the first and second defendants operated. In this regard, the fourth defendant explained in her affidavit that the first and second defendants abided by a marketing principle known as the "Principle of Loss Leader" which involved them selling the vacation packages to end-consumers at prices lower than what they were themselves paying to the actual service providers, *ie*, the Bali villa owners. [note: 49] The objective was to grow the first and second defendants' businesses and, once they had established a name for themselves, it was envisaged that the prices of the holiday packages sold to the end-consumers would be increased to return a profit. From this description of the first and second defendants' business strategy, it is clear that they effectively incurred a loss each time a transaction was made. Timely payment from the plaintiffs on validly redeemed vouchers was therefore paramount for the survival, much less success, of the first and second defendants' businesses since this would provide them with the necessary cash flow for making up the shortfall owing to the Bali villa owners on each transaction. One would therefore expect the defendants to have monitored payments by the plaintiffs closely and, in respect of the particular unpaid vouchers comprising the present claims, to have promptly sent reminders seeking payment of these vouchers. However, there is a conspicuous absence of any evidence of this sort. While I noted that the first defendant did disclose certain emails showing that they had issued reminders for payment, these emails were of little assistance to the first defendant because there is nothing to indicate that the reminders therein were specifically in respect of those "validly redeemed" vouchers which they alleged *remained unpaid*. For example, in an email dated 22 February 2012, [note: 50] a staff member of the first and second defendants issued a reminder to Groupon France to make payment on vouchers which had been redeemed earlier on 28 January and 18 February. However, there is nothing to suggest that these redeemed vouchers remained unpaid. Groupon France may well have paid up on these vouchers pursuant to the reminder, and it is for the first defendant to prove that they did not. In another email thread which the first defendant sought to rely on, it is shown that reminders for payment were sent to Groupon Hong Kong on 21 September 2011 and 19 October 2011 in respect of redeemed vouchers listed out in an earlier email dated 6 September 2011. [note: 51] However Groupon Hong Kong is not a

party to this action. The first defendant has not made any claim against Groupon Hong Kong for unpaid vouchers and, indeed, it was clarified during the trial that there were no outstanding payments due from Groupon Hong Kong. This is another illustration of how the email reminders which the first defendant sought to rely on simply did not advance their claims which, it must be stressed, are made in respect of a definite number of identifiable validly redeemed vouchers which remained unpaid. What was the reason for the first defendant's remarkable failure to produce any reminder of whatsoever nature sent from the defendants to the plaintiffs demanding for payment in respect of the *unpaid* "validly redeemed" vouchers? None other than a general averment that their documents had been seized by the CAD. It is possible that no such reminders were in fact ever sent.

61 The result, then, is that the AEIC Table had not been properly admitted into evidence in accordance with the statutorily prescribed modes of proof. The claim amounts in Annex B were thus without any evidential basis.

The first defendant's reliance on Ms Seah's alleged "admissions" to prove the Annex A claims

62 The next issue relates to whether the first defendant could prove their claim amounts in Annex A based on Ms Seah's alleged "admissions" in her 13 March affidavit. To be more specific, the question here is whether the first defendant could rely specifically on that *part* of Ms Seah's alleged "admissions" which pertained to the sums owing on validly redeemed vouchers (*ie*, Component A) while at the same time choosing to disregard her evidence on the amounts paid by each plaintiff (*ie*, Component B).

The first defendant's invocation of Order 27 rule 3

63 Mr Rasanathan asserted during oral closing submissions that this was a permissible approach but, when probed on the legal basis for him saying so, he was unable to provide a ready answer. It was only later in the first defendant's further written submissions that his legal argument on this issue became somewhat clearer. First, Mr Rasanathan submitted that admissions are oral or documentary statements which suggest an inference as to the facts in issue. He explained that the sums owing on validly redeemed voucher is one of the facts in issue in this case. Second, he appeared to invoke O 27 r 3 of the Rules of Court which ordinarily allows a party to rely on admissions of fact by the opposing party to obtain judgment. [note: 52] However, in my view, the first defendant could not avail themselves of this rule.

64 Order 27 r 3 of the Rules of Court provides as follows:

> **Judgment on admission of facts (O. 27, r. 3)**
>
> **3.** Where admissions of fact are made by a party to a cause or matter either by his pleadings or otherwise, any other party to the cause or matter may apply to the Court for such judgment or order as upon those admissions he may be entitled to, without waiting for the determination of any other question between the parties, and the Court may give such judgment, or make such order, on the application as it thinks just.

65 First, it bears emphasis that admissions of fact under O 27 r 3 must be *clear* (see *Singapore Civil Procedure 2013* vol 1 (GP Selvam gen ed) (Sweet & Maxwell Asia, 2013) ("*Singapore Civil Procedure 2013*") at para 27/3/2). This requirement was noted early on by Sargant J in *Ellis v Allen* [1914] 1 Ch D 904 who stated (at 909) that the then English equivalent of O 27 r 3 applies only where there is a "clear admission of facts in the face of which it is impossible for the party making it to succeed". The position in Singapore is no less strict as Sargant J's statement has been cited with

approval by Lee Seiu Kin JC (as he then was) in *Ow Chor Seng v Coutts Bank (Schweiz) AG* [2002] 1 SLR(R) 380 at [16]. Second, it must also be stressed that the mere fact that a statement can constitute an admission for the purposes of s 17 of the Evidence Act does not *per se* entitle the party to obtain judgment under O 27 r 3. The admission must not only be clear but it must in itself admit to the claim in order for judgment to be entered "*without waiting for the determination of any other question*".

66 In the present case, it is alleged that Ms Seah's 13 March affidavit contained "admissions". I note that the 13 March affidavit was filed in connection with an interlocutory application in relation to an injunction and such interlocutory affidavits, by their nature, typically refer to matters outside the personal knowledge of the deponent. It is relevant to point out that Ms Seah filed four affidavits. Each of them contained a suitable qualification as to the source of the information – they are matters either within her personal knowledge and/or obtained from documents in her possession and are true to the best of her information, knowledge and belief. However under s 18(1) of the Evidence Act, statements made by an agent to any party to the proceedings under the circumstances of the case as expressly or impliedly authorised by him to make them are nonetheless admissions. Although such "admissions" *if clear* are admissible in evidence, the probative weight of the evidence would still need to be considered by reference to the circumstances in which they were made and may well depend on the source of the deponent's knowledge. Here, the 13 March affidavit which the first defendant sought to rely on was the last in the series of four affidavits. In my view, the four affidavits must be construed together instead of the 13 March affidavit in isolation. Consistent with the interlocutory nature of the four affidavits, Ms Seah qualified in her 13 March affidavit that the figures which she provided therein (relating to the total number and value of vouchers validly redeemed and the total amounts paid by each plaintiff) had been gathered from each of the plaintiffs and that "coordinating efforts across 13 entities worldwide with differing invoice and payment systems is not an easy task". [note: 53] Her figures were thus stated to have been "collated and prepared to the best of [her] ability" [note: 54] and, further, that they were based only on "the most updated figures [the plaintiffs] were able to provide". [note: 55] In these circumstances, it can hardly be said that Ms Seah had made clear and unequivocal *admissions* of fact. Indeed, I am further fortified in my view by the fact that, in an earlier affidavit dated 5 April 2012 which Ms Seah filed in support of the Mareva Injunction application, she had also given evidence regarding the same matters but her figures on that occasion differed for several of the claims. [note: 56] This serves to amplify Ms Seah's reservation in the 13 March affidavit that she was only doing the best she could based on the information provided to her which was subject to possible change.

67 Further, although the 13 March affidavit referred to the total number of vouchers sold by each of the Groupon entities and the number of "validly redeemed" vouchers by the end-consumers, Ms Seah also asserted that many of the "validly redeemed" vouchers had to be *refunded* by the plaintiffs to the end-consumers because of the first defendant's failure to provide the hotel accommodation in spite of their booking confirmation. Ms Seah stated clearly in her 13 March affidavit that the end-consumers have been refunded after having "validly redeemed" the vouchers but before payment was claimed by the defendants. [note: 57] It is questionable whether the first defendant was entitled to be paid for these "validly redeemed" vouchers that had to be refunded to the end-consumers as a result of the first defendant's failure to provide the hotel accommodation. I should be clear that I am not making any finding that this was in fact the case as asserted by Ms Seah. All I am saying is that once the 13 March affidavit is read in its entirety, it becomes far from clear or unequivocal that the 13 March affidavit or any of Ms Seah's other affidavits contained admissions of the total amount *owing* to the first defendant in respect of the "validly redeemed" vouchers.

68 In fact, the first defendant highlighted in their closing written submissions that Ms Seah had

filed conflicting affidavits containing "numerous inconsistencies" which showed that the plaintiffs "were not sure of the number of Vouchers sold, redeemed, refunded nor what they paid the 1st/2nd Defendants in total". [note: 58] This point was actually highlighted by the first defendant's counsel to discharge the injunction. That being the case, it simply does not lie in the mouth of the first defendant to cherry-pick one aspect of one of the four affidavits filed by Ms Seah and assert that it contained *clear and unequivocal* admissions.

69 It is also important to note that, for the purposes of invoking O 27 r 3, the admission sought to be relied on must be a clear admission of *all* the facts necessary to establish the cause of action and not merely evidence of some of the facts (see *Singapore Civil Procedure 2013* at para 27/3/2, citing the Malaysian case of *Hasrat Usaha Sdn Bhd v Pati Sdn Bhd* [2011] 3 MLJ 343 at [37]). In other words, the effect of the admissions must be, as succinctly stated by GP Selvam J in *Shunmugam Jayakumar and others v Jeyaretnam Joshua Benjamin and others* [1996] 2 SLR(R) 658 at [35], that "it is unnecessary for the Court to make findings of fact – it having been admitted by the defendant that they are no longer in issue".

70 In my view, I consider that even on the assumption that Ms Seah's 13 March affidavit contains clear admissions of facts in issue, those admissions alone are not sufficient to resolve the counterclaim in the first defendant's favour. This is because there still remains the *further* question of whether the first defendant had complied with the contractual arrangement under the Co-operation Agreements which requires them to submit evidence of valid redemption of the vouchers which they say were unpaid within the 28-day window (see [5] above). This contractual arrangement will be analysed in greater detail below but what is relevant to note here is that Ms Seah's 13 March affidavit gives absolutely no indication of whether the first defendant had satisfied the requirement stipulated by this clause in respect of any vouchers. This is therefore a further question of fact which remains to be determined by the court and, accordingly, the admissions standing alone, even assuming that they are clear admissions, do not entitle the first defendant to judgment "*without waiting for the determination of any other question between the parties*" as is required by the clear terms of O 27 r 3.

71 Finally, but no less significantly, I find that the first defendant's invocation of O 27 r 3 was entirely misplaced because of the manner in which they sought to rely on the "admissions". It is highly doubtful that a party seeking judgment on the basis of O 27 r 3 can isolate only a part of the admissions made by the opposing party for the purposes of proving a particular aspect of his case while at the same time ignoring another part of those admissions which relate to the same subject matter. That, however, was precisely what the first defendant intended to do here. As mentioned earlier (at [37]), the first defendant was relying only on that part of Ms Seah's 13 March affidavit which pertained to the total value of validly redeemed vouchers (*ie*, Component A). This was ostensibly to make up for their inability to actually prove this aspect of their claims by adducing the relevant primary evidence. On the other hand, when it came to Ms Seah's alleged "admissions" regarding the amounts which the plaintiffs had paid (*ie*, Component B), the first defendant said that her figures in this respect were unreliable because they did not correspond with the first defendant's own tabulated figures in D2 which were supported by their bank statements. It is difficult to escape the impression, however, that the true reason why the first defendant sought to substitute Ms Seah's figures here was because, if her evidence as recorded down in Annex A was accepted, many of the first defendant's claims would be reduced to naught (see [37] above). That was certainly an unattractive proposition for the first defendant.

72 It appeared to me, therefore, that the first defendant was no more than cherry-picking from Ms Seah's 13 March affidavit to prove their claims. When her "admissions" suited them, they seized upon it. Yet when her "admissions" appeared detrimental, they found a way to disregard it. I do not think

that this is the proper way for obtaining judgment under O 27 r 3. In my view, Ms Seah's 13 March affidavit must be looked at in its *totality* as a matter of fairness to her and, by extension, the plaintiffs. If she has made a statement which qualifies or perhaps even contradicts what appears to be an admission of fact supporting the first defendant's claims, that statement cannot be conveniently brushed aside. Adopting that approach, then, I find that when Ms Seah's alleged "admissions" are viewed as a whole, they simply do not admit to the claim amounts put forward by the first defendant in Annex A.

The overriding importance of Order 18 rule 8

73 In light of the above, it is clear that the first defendant's invocation of O 27 r 3 to prove their Annex A claims was completely misguided. Instead, I find that there is another procedural rule which has overriding importance here and whose effect is to *impede* the first defendant's reliance on the alleged "admissions". I am referring in this regard to O 18 r 8 which prescribes those matters which must be *specifically* pleaded. In particular, O 18 r 8(1)(*b*) provides as follows:

> **Matters which must be specifically pleaded (O. 18, r. 8)**
>
> **8.—(1)** A party *must* in any pleading subsequent to a statement of claim plead *specifically* any matter, for example, performance, release, any relevant statute of limitation, fraud or any fact showing illegality —
>
> …
>
> (b) which, if not specifically pleaded, might *take the opposite party by surprise* …
>
> [emphasis added in italics]

74 Let me be clear. As explained in [66]–[68] above, the statements which the first defendant are seeking to rely on are not admissions within the meaning of O 27 r 3. If they were, then strictly speaking, I agree that there is no necessity to plead them. Here, the alleged "admissions" by Ms Seah merely pertained to one aspect of the first defendant's claims (*ie*, Component A). As reliance on the alleged "admissions" was never a part of the first defendant's pleaded case (especially since it contradicts their pleaded case), I have no doubt that such a development did take the plaintiffs by surprise at trial.

75 The first defendant's pleaded case certainly gave the impression that they would be proving their claims based on evidence of the allegedly redeemed but unpaid vouchers. Indeed, this manifested itself in the plaintiffs' request for further and better particulars in respect of those vouchers. The first defendant also never gave notice of their intention to rely on the "admissions" case theory which they advanced here: at no time did they apply to amend their pleadings to include this alternative basis of proof which, significantly, gave rise to claim amounts different from those already pleaded. In these circumstances, I have little difficulty in finding that the plaintiffs would be prejudiced if the first defendant was allowed to rely on the "admissions". This was an entirely different route by which they sought to prove the total value of redeemed vouchers and, accordingly, one which the plaintiffs would not have come to trial expecting to meet. If they had been pleaded, the plaintiffs submit that they would have adduced evidence at the trial to explain the proper context of the alleged "admissions" made in Ms Seah's 13 March affidavit.

76 In fact, I go on further to note that the first defendant's "admissions" case theory was not only surprising as a *new method* of proving their claims, but that it was also surprising as a method

yielding completely *new claim amounts* in respect of all 13 plaintiffs (see [37] above). In other words, the Annex A claims which were partly derived from the "admissions" actually *contradicted* the first defendant's pleaded claims. This certainly adds to the already strong perception that the plaintiffs would be prejudiced if the first defendant could rely on Ms Seah's 13 March affidavit in the guise of "admissions".

77 In light of the above, I hold that it is impermissible for the first defendant to rely on Ms Seah's alleged "admissions" to prove their Annex A claims.

Clause 4.2 of the Co-operation Agreements

78 So far I have addressed only the question of whether the first defendant's claims (in Annex A and Annex B) were proven as a matter of evidence. I find that they were not and this is sufficient to dispose of the counterclaim. However, even if I am mistaken, I note that the first defendant was not automatically entitled to recover the contractual debt claimed. There was still a further obstacle in cl 4.2 of the Co-operation Agreements.

79 Clause 4.2 is set out here in full:

> For any Voucher that is Validly Redeemed by a Purchaser with Partner, Groupon shall pay to Partner the Groupon Voucher Price less the Success Fee and also less any amount in respect of Value Added Tax ("VAT") chargeable by Groupon in respect of the Success Fee ("Groupon's VAT"). For the avoidance of doubt, Groupon shall retain the Success Fee plus Groupon's VAT. That payment shall be made within 7 of Groupon's working days of Groupon receiving from Partner suitable and valid evidence (the nature of which may be stipulated by Groupon from time to time) evidencing that the Voucher has been Validly Redeemed - which evidence Partner must: (i) provide to Groupon using Groupon's online partner redemption portal; or (ii) be sent to Groupon by post, fax or email; and for which, in both preceding cases, such evidence must be received by Groupon within 28 days of the Voucher having been Validly Redeemed by the Purchaser of that Voucher, with the Partner. If that evidence is not received by Groupon within that time, then Partner shall lose its right to receive any monies from Groupon in respect of that Voucher (and Groupon may retain any monies that would have been so payable).

A preliminary observation on the uniformity of cl 4.2

80 I pause to make an important observation which is that counsel for both parties had proceeded on the basis that cl 4.2 operates across all 13 of the Co-operation Agreements. However, upon my own inspection of the various Co-operation Agreements, I found that this was a wholly inaccurate representation of the facts. Not all of the 13 Co-operation Agreements were before me but, from those that were, I was able to discern the following.

81 First, cl 4.2 as it has been reproduced at [79] above only appears word for word in *one* of the Co-operation Agreements, namely that entered into with Groupon UK. [note: 59] Further, of the remaining Co-operation Agreements, only one other has a clause which comes close to duplicating cl 4.2 of the UK Co-operation Agreement. That is the UAE Co-operation Agreement. [note: 60] This agreement also contains a cl 4.2 which for the most part replicates that in the UK Co-operation Agreement, except that Groupon UAE is required to make payment within three working days after receiving evidence of valid redemption instead of seven days as is the case for Groupon UK. As for the other Co-operation Agreements, there were more observable differences which I shall proceed to broadly describe.

82 For example, looking at the Co-operation Agreements with Groupon France [note: 61] and Groupon Poland, [note: 62] it is clear that cl 4.2 as numbered in these agreements have nothing to do with the respective Groupon entity's payment obligation or with the time required for submission of evidence of validly redeemed vouchers to trigger that obligation. In these two agreements, cl 4.2 relates to a completely different matter: it provides for the parties' mutual rights to exclusivity. The search for a clause equivalent to that in the UK Co-operation Agreement instead takes one to cl 2 but, even then, cl 2 is not formulated in the exact same way. In the France Co-operation Agreement, for instance, cl 2 has broken down the material parts of cl 4.2 in the UK Co-operation Agreement into distinct sub-clauses. Further, the time frames for Groupon France to make payment and for the contracting merchant to submit evidence of valid redemption are both differently stipulated as three and 30 working days respectively. The same kind of departures from cl 4.2 of the UK Co-operation Agreement may also be seen in cl 2 of the Poland Co-operation Agreement. In fact, a further observable difference in this latter agreement is that it does not speak of the "valid redemption" of vouchers but uses the entirely different terminology of the "perfection" of vouchers instead. Groupon Poland's payment obligation is thus stated to arise only after a "perfected voucher" has been delivered to them and the "perfection" of a voucher is in turn defined as the performance of the voucher service by the contracting merchant.

83 The Co-operation Agreements entered into with Groupon Australia [note: 63] and Groupon New Zealand [note: 64] are somewhat similar in so far as the clauses which cover the same subject matter as cl 4.2 of the UK Co-operation Agreement are concerned. These two agreements contain several of the differences which have been noted above in respect of the other Co-operation Agreements, *eg*, a difference in the timeframe for Groupon Australia and Groupon New Zealand to fulfil their payment obligations and a difference in how the clauses which are materially related to cl 4.2 of the UK Co-operation Agreement are structured and numbered. However there is one further difference in these two agreements which do not appear elsewhere. In this regard, it appears that the mere submission of evidence of valid redemption within 28 days will not always entitle the contracting merchant to receive payment from Groupon Australia and Groupon New Zealand. This is because in certain stipulated circumstances, the contracting merchant must submit *additional* evidence in the form of a tax invoice before it can receive payment. Such a requirement is no doubt absent in cl 4.2 of the UK Co-operation Agreement.

84 Finally, I note that the Co-operation Agreement entered into with Groupon Germany is in the German language. [note: 65] It has not been translated into the English language, thus its terms cannot be discerned. As for the Co-operation Agreement adduced in respect of Groupon Mexico, it appears to be incomplete as it does not contain the relevant general terms and conditions. [note: 66] Therefore its terms likewise cannot be ascertained.

85 The foregoing clearly illustrates that there were multiple layers of differences between the Co-operation Agreements and, ultimately, only one contained cl 4.2 in the form which was argued before me. I would have expected counsel to bring at least the fact that there were dissimilarities to my attention but both failed to do so. Instead, they presented the facts in a way which suggested that cl 4.2 was a standard term appearing consistently in all the Co-operation Agreements and engaged each other on that basis. What this state of affairs suggested to me was that neither counsel had actually taken the trouble to look at each of the Co-operation Agreements individually. Indeed, as I have pointed out, some agreements were not even adduced and there was at least one which was not translated into the English language. Counsels' preference, instead, was simply to adopt the shortcut of *assuming* the uniformity of the agreements. This is disappointing. Indeed, this is especially so when it is considered that each of the first defendant's 13 claims arises from alleged breaches of

contract. In these circumstances, the very least to be expected of counsel was for them to examine the very terms of the contract they were both seeking to rely on to prove their claim or defence. It is baffling to find, however, that even such a basic exercise had not been undertaken.

86 Be that as it may, I note that both parties proceeded on the basis that cl 4.2 of the UK Co-operation Agreement was the only clause for me to consider in determining whether the defendants were entitled to receive payment on the validly redeemed vouchers. Their oral and written submissions were focused entirely on this one clause. Accordingly, the references to "cl 4.2" in the remainder of this judgment will be to that which has been reproduced at [79] above.

The burden of proof under cl 4.2: a matter of construction

87 I turn now to address the crucial question regarding who, as between the plaintiffs and the first defendant, had the burden of proving that evidence of valid redemption was or was not submitted within the 28-day window. Unsurprisingly, the parties took different views on this matter which produced contrasting results.

88 The plaintiffs submitted that cl 4.2 was in the nature of a *condition precedent* since it provided that the first defendant must submit evidence of valid redemption within 28 days before triggering the plaintiffs' liability to pay. [note: 67] Accordingly, it was argued that the burden of proof was on the first defendant to prove their timely submission of evidence. [note: 68] On the other hand, the first defendant submitted that cl 4.2 was in the nature of an *exclusion clause* since its last sentence completely discharged the plaintiffs' liability to pay in the event of late or non-submission of evidence. [note: 69] It was thus argued that the plaintiffs, as the parties seeking to rely on the exemption clause, had the onus of proving that evidence of valid redemption was submitted late or not at all. [note: 70]

89 In either interpretation, a preliminary question arises in respect of cl 4.2: *when* exactly does "valid redemption" take place? This determines the precise point at which the first defendant's time for submitting the evidence of valid redemption begins to run. There was conflicting evidence on this issue. One interpretation was that valid redemption occurs at the point when the end-consumer checks into the hotel to which his purchased voucher relates. This view was put forward by the plaintiffs' witness, Mr Adrien Jean Bernard Jorge ("Mr Jorge"), who gave evidence on Groupon's business mechanism. A second interpretation was that valid redemption takes place at an earlier point when the end-consumer receives a confirmation of his hotel booking from the merchant, *ie*, the first defendant in this case. This view was explained by Ms Seah who was not called as a witness but did describe Groupon's voucher redemption process in her earlier interlocutory affidavits. [note: 71] Ms Seah's view was brought to Mr Jorge's attention during cross-examination and although he maintained his understanding of when "valid redemption" occurred, he agreed that Ms Seah's account was correct in *most* cases. In my view, Ms Seah's explanation makes more sense because the end-consumer's actual checking into the hotel can take place months after the booking confirmation is provided by the merchant. It does not make commercial sense that the merchant can only seek payment from Groupon after the end-consumer had checked into the hotel. Therefore I find that "valid redemption" occurs on receipt of the booking confirmation by the end-consumer. The first defendant, accordingly, has 28 days from this point to submit evidence of valid redemption.

90 I consider that there is some merit in each of the parties' submissions but, ultimately, neither was completely accurate in their characterisation of cl 4.2. In my view, both parties fell short because it was simply not possible to attribute one single juridical description to this verbose contractual term. Once the clause is broken down into its constituent limbs, of which I can discern

three, it becomes clear that each of them in fact serves a different purpose although they collectively relate to the same broad subject matter of payment on validly redeemed vouchers by the plaintiffs. I therefore consider it beneficial to reproduce cl 4.2 again but, on this occasion, I have divided it into three limbs, replaced immaterial portions with an ellipsis, and emphasised material portions in italics:

> For any Voucher that is Validly Redeemed by a Purchaser with Partner, *Groupon shall pay* to Partner the Groupon Voucher Price less the Success Fee and also less any amount in respect of Value Added Tax ("VAT") chargeable by Groupon in respect of the Success Fee ("Groupon's VAT"). …
>
> *That payment shall be made within 7 of Groupon's working days of Groupon receiving from Partner suitable and valid evidence … evidencing that the Voucher has been Validly Redeemed* – which evidence Partner must: (i) provide to Groupon using Groupon's online partner redemption portal; or (ii) be sent to Groupon by post, fax or email; and for which, in both preceding cases, such evidence must be received by Groupon within 28 days of the Voucher having been Validly Redeemed by the Purchaser of that Voucher, with the Partner.
>
> If that evidence is not received by Groupon within that time, then Partner *shall lose its right to receive any monies* from Groupon in respect of that Voucher (and Groupon may retain any monies that would have been so payable).
>
> [emphasis added in italics]

91 There is little difficulty in construing the first limb of cl 4.2 as set out above. It simply creates an obligation on the plaintiffs to pay to the contracting merchant the price of a validly redeemed voucher (less the success fee and any tax payable). However this payment obligation is not an absolute one as the second limb of cl 4.2 goes on to provide that the plaintiffs' payment obligation is contingent upon the merchant having provided evidence of valid redemption within 28 days of the said redemption. It is only when the merchant has complied with this that the plaintiffs' payment obligation, which must be discharged within seven working days, becomes live. The second limb of cl 4.2 thus simply stipulates the *order of performance* of the contracting parties' interdependent and mutual obligations and, seen in this way, the fulfilment of the merchant's obligations may properly be described as a "condition precedent" to the plaintiffs' performance of theirs (see *The Law of Contract in Singapore* at paras 16.018 and 16.019). Although cl 4.2 in the form as argued by the parties does not appear verbatim in all 13 Co-operation Agreements, I have noted that in so far as the Co-operation Agreements which have been disclosed are concerned, they at least contained an equivalent condition precedent similar to the second limb of cl 4.2. Finally, the third limb of cl 4.2 provides that if the plaintiffs do not receive evidence of valid redemption within the 28-day window, the merchant "shall lose its right to receive any monies" from the plaintiffs. This limb, to my mind, has the effect of an exclusion clause as it exempts the plaintiffs from any liability to pay the merchant if, for one reason or another, the relevant evidence of valid redemption is not furnished within the 28-day window.

92 Once cl 4.2 is dissected in the manner above, it becomes clear that the first defendant cannot lay emphasis only on its third limb to brand the entire clause an exclusion clause and thereby shift the burden of proof to the plaintiffs. Such an approach conveniently glosses over the remaining limbs in cl 4.2 and that is lamentable because, in my view, it is the second limb in particular which the first defendant had to address in the present dispute. As already described, this limb provides that the plaintiffs' obligation to make payment is *contingent* upon the first defendant first having submitted evidence of valid redemption within 28 days of the said redemption. Logically, therefore, it must be

the first defendant who bears the burden of proving that they had fulfilled the condition precedent if they intend to assert that the plaintiffs' payment obligation had subsequently arisen but yet remained undischarged. Surely it is not for the *plaintiffs* to prove the facts necessary for making out the *first defendant's* claim.

The first defendant's alternative arguments to avoid the operation of cl 4.2

93 It is thus for the first defendant to prove that they had submitted evidence of valid redemption within the 28-day window in respect of those vouchers which they claimed remained unpaid. Before determining whether they had discharged that burden, however, I note that the first defendant had two further strings to their bow to avoid the operation of cl 4.2.

94 First, the first defendant argued in oral closing submissions that even if cl 4.2 was read as imposing a condition precedent, this had to be specifically pleaded by the plaintiffs if reliance was sought to be placed on it. In support of this argument, the first defendant cited the case of *Amixco Asia (Pte) Ltd v Bank Bumiputra Malaysia Bhd* [1992] 2 SLR(R) 65 ("*Amixco*") and highlighted, in particular, [36] of the judgment where the High Court stated as follows:

> By O 18 r 7(4) of the Rules of the Supreme Court 1970 [now the Rules of Court 2014 Rev Ed], a condition precedent necessary for the case of a plaintiff is to be implied in his pleading. *The defendant must therefore raise in his defence the point of non-compliance with a condition precedent*: O 18 r 8(1). … [emphasis added in italics]

95 The plaintiffs do not dispute the correctness of this proposition in *Amixco*. [note: 72] They accept that they must specifically plead non-compliance with a condition precedent to raise it at trial. Their argument, however, is that this is precisely what they did. [note: 73] I agree with them. There is no doubt that the first defendant's non-compliance with the 28-day window for submission of evidence of valid redemption was sufficiently pleaded. This appears clearly from the following paragraphs of the plaintiffs' defence to the counterclaim: [note: 74]

> The Defendants have failed to identify, plead or prove when each voucher was bought or submitted for redemption. In any event, *the 28-day period has lapsed* and as per the contractual terms, *the Defendants have lost their right to any monies allegedly due under the Co-operation Agreements*.
>
> *It is the Plaintiffs' pleaded Defence that the Defendants have failed to comply with clause 4.2 in that the 28-day period was not complied with.*
>
> [emphasis added in italics]

96 Second, the first defendant also attempted to argue that, even if the plaintiffs had sufficiently pleaded the condition precedent, this requirement was, in reality, not strictly insisted upon during the course of the parties' dealings. It was therefore submitted that it would be "wholly inequitable" for the plaintiffs to now raise non-compliance with this requirement as a bar to the counterclaim. [note: 75]

97 In my judgment, it is not open to the first defendant to pursue this line of argument because, on this particular occasion, it is *their own* pleadings which have been found wanting. The first defendant has simply not pleaded any material facts to support an argument either on the basis that the condition precedent had been waived by the plaintiffs or that the plaintiffs were now estopped

from insisting upon it. These are certainly facts which would render the plaintiffs' defence to the counterclaim "not maintainable" and, accordingly, must be specifically pleaded as provided in O 18 r 1(*a*) of the Rules of Court.

98 The first defendant's various arguments therefore do not relieve them from the burden imposed by cl 4.2. This thus leaves me to consider whether they did in fact manage to discharge it.

Whether the first defendant had discharged the burden of proof under cl 4.2

99 In this regard, I note that the fourth defendant clearly conceded on the stand that she was unable to prove that evidence of valid redemption was submitted within 28 days of the valid redemption for each of the allegedly unpaid vouchers. She added, however, that it was in the first defendant's interests to do so immediately in order to claim payment from the plaintiffs. However, even accepting the fourth defendant's evidence that claims for payment would typically have been made timeously, I am of the view that this is not sufficient for the purposes of shifting the burden onto the plaintiffs under cl 4.2. This is because what is required of the first defendant under this clause is proof that they did submit evidence of valid redemption within 28 days in respect of those *exact* vouchers which they claimed remained unpaid. The fourth defendant's general statement clearly lacks the degree of specificity which is required for this purpose. The documentary evidence which shows that the first defendant might have made a timely claim for payment on some occasions (see the examples of email reminders at [60] above) logically also cannot form the basis for a broad-ranging assumption that *this* was done *all* the time. In addition, there is no explanation why the first defendant is unable to produce any evidence of valid redemption in respect of the allegedly unpaid "validly redeemed" vouchers, whether within or without the 28 days.

100 In fact, I make the further observation that, despite the fourth defendant's concession on the stand, it actually appears to have been well within the first defendant's ability to prove whether or not they had submitted evidence of valid redemption for the vouchers which their claims were based on. The fourth defendant was taken to several documents during her cross-examination which bears out this observation. These documents were in the form of email correspondences between representatives of the first and/or second defendants and representatives of the respective Groupon entities regarding payment on vouchers which had been validly redeemed. [note: 76] In these emails, it is telling that the defendants were able to identify the specific vouchers which were due for payment and also to identify the date of redemption for those vouchers. This therefore shows that the first defendant should be able to determine whether evidence of valid redemption had been submitted within 28 days of valid redemption by the end-consumers. While it might have been a laborious and time-consuming exercise for them to actually compile this information in respect of the many vouchers which they claimed remained outstanding, that is the extent to which they must be committed to go if they wish to succeed on their claims.

Conclusion

101 In the premises, I find that the first defendant failed on all their counterclaims.

102 There are two sets of costs which I have to provide for. First, the plaintiffs' claims have been dismissed with costs for failure to comply with the "unless order". It was dismissed pursuant to an order of court dated 22 May 2013 when the proceedings were at the discovery stage. The plaintiffs submitted that costs should be fixed at $4,000 while the first defendant submitted costs fixed at $22,000. Second, as regards the counterclaim, the first defendant submitted that costs should be $70,000 excluding disbursements while the plaintiffs submitted a sum of $120,000 excluding disbursements.

103 The trial was heard over two and a half days. Oral submissions were heard over a full day following the exchange of written submissions. A further set of written submissions were filed to address specific issues which I had directed the parties to submit on. Both sets of submissions were not substantial. The issues related largely to burden of proof and the construction of a particular contractual clause. The trial was however unnecessarily complicated by the first defendant in constantly changing both the quantum and basis of their counterclaim without due regard to their pleaded case.

104 There were altogether four witnesses, two from each side. Although the total number of discovered documents was in excess of 1,000 pages, they were mostly vouchers and other formal documents. In all, I award a net sum of $50,000 excluding disbursements as costs to the plaintiffs to be paid forthwith by the first defendant.

ANNEX

(1) Groupon UK

	Defence and Counterclaim	4th D's AEIC at p 204	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	227	NA	180	202	132	Relying on Annex B to prove a claim of $34,071.81. Alternatively, also relying on the admission case theory based on Adeline Seah's affidavit to support a claim of $35,712.40.
Total amount due in respect of redeemed vouchers	$162,854.82	$162,854.82	$162,854.82	NA	$164,495.48	$162,854.82	NA	
Total amount paid	$128,783.01	$128,783.01	NA	$128,783.01	(D) $128,783.01 (A) $164,495.48	$128,783.01	NA	
Claim amount	$34,071.81	$34,071.81	$34,071.81		(D) $35,712.40 (A) $0.00	$34,071.81	NA	

NOTE: The references to "(D)" and "(A)" under the column for Annex A also appear in the tables for the other Groupon entities. These references stand for the following:

"**(D)**" refers to the sum which the *defendants* say was paid by the relevant Groupon entity and the sum thus owing.

"**(A)**" refers to the sum which *Adeline Seah* is alleged to have stated was paid by the relevant Groupon entity and the sum thus owing.

(2) Groupon France

	Defence and Counterclaim	4th D's AEIC at p 204	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	136	NA	63	117	26	Relying on Annex B to prove a revised claim of $43,431.05. This revised claim is purportedly derived from deducting the claims submitted by the 2nd Df. Alternatively, also relying on the admission case theory to support a claim of $47,392.50.
Total amount due in respect of redeemed vouchers	$96,808.73	$96,808.73	$96,808.73	NA	$94,209.68	$90,248.18	NA	
Total amount paid	$46,817.13	$46,817.13	NA	$46,817.13	(D) $46,817.13 (A) $94,209.68	$46,817.13	NA	
Claim amount	$49,991.60	$49,991.60	$49,991.60		(D) $47,392.50 (A) $0.00	$43,431.05	NA	

(3) Groupon Switzerland

	Defence and Counterclaim	4th D's AEIC at p 204	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	96	NA	89	65	10	Relying on Annex B, although it is conceded that the claim amount under Annex B is higher than the pleaded amount. Seeks to cap the claim based on the pleaded amount. Not relying on the admission case theory.
Total amount due in respect of redeemed vouchers	$69,655.03	$69,655.03	$68,220.59	NA	$62,967.79	$61,460.75	NA	
Total amount paid	$62,206.90	$62,206.90	NA	$56,403.81 (*)	(D) $49,060.91 (**) (A) $59,084.97	$49,060.01	NA	
Claim amount	$7,448.13	$7,448.13	$11,816.78		(D) $13,907.70 (A) $3,882.82	$12,400.74	NA	

(*): This figure of $56,403.81 is the total of the sums paid to the 1st Df ($49,060.91) and the 2nd Df ($7,342.90) which are contained in different tables within D2.

(**): This figure of $49,060.91 is reflected in Annex A. It excludes the sums paid to the 2nd Df.

(4) Groupon Austria

	Defence and Counterclaim	4th D's AEIC at p 204	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	104	NA	23	84	0	Relying on Annex B to prove the claim of $45,624.33. Alternatively, also relying on the admission case theory to support a claim of $8,024.30.
Total amount due in respect of redeemed vouchers	$71,754.27	$71,754.27	$71,754.27	NA	$22,220.97	$59,820.92	NA	
Total amount paid	$9,927.41	$9,927.41	NA	$15,730.50 (*)	(D) $14,196.59 (**) (A) $15,498.31	$14,196.59	NA	
Claim amount	$61,826.86	$61,826.86	$56,023.77		(D) $8,024.30 (A) $6,722.66	$45,624.33	NA	

(*): This figure of $15,730.50 is the total of the sums paid to the 1st Df ($14,196.59) and the 2nd Df ($1,533.91) which are contained in different tables within D2.

(**): This figure of $14,196.59 is reflected in Annex A. It excludes the sums paid to the 2nd Df.

(5) Groupon Germany

	Defence and Counterclaim	4th D's AEIC at p 204	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	229	NA	168	137	0	Relying on Annex B to prove a revised claim of $30,140.70. This is less than the pleaded claim. The reduction is due to the removal of claims purportedly submitted by the 2nd Df. Alternatively, also relying on the admission case theory to support a claim of $40,949.50.
Total amount due in respect of redeemed vouchers	$159,444.99	$159,444.99	$159,444.99	NA	$109,079.89	$98,271.03	NA	
Total amount paid	$115,399.62	$115,399.62	NA	$115,399.62 (*)	(D) $68,130.03 (**) (A) $109,079.89	$68,130.33	NA	
Claim amount	$44,045.37	$44,045.37	$44,045.37		(D) $40,949.50 (A) $0.00	$30,140.70	NA	

(*): This figure of $115,399.62 is the total of the sums paid to the 1st Df ($68,130.03) and the 2nd Df ($47,269.59) which are contained in different tables within D2.

(**): This figure of $68,130.03 is reflected in Annex A. It excludes the sums paid to the 2nd Df.

(6) Groupon Italy

	Defence and Counterclaim	4th D's AEIC at p 204	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	53	NA	41	24	0	Relying on Annex B to prove the reduced sum of $5,112.77. The reduction is due to the removal of claims purportedly submitted by the 2nd Df. Alternatively, also relying on the admissions case theory to support a claim of $14,285.20.
Total amount due in respect of redeemed vouchers	$32,702.98	$32,702.98	$32,702.98	NA	$24,626.61	$15,454.17	NA	
Total amount paid	$27,258.56	$27,258.56	NA	$25,801.72 (*)	(D) $10,341.10 (**) (A) $24,625.81	$10,341.40	NA	
Claim amount	$5,444.42	$5,444.42	$6,901.26		(D) $14,285.20 (A) $0.80	$5,112.77	NA	

(*): This figure of $25,801.72 is the total of the sums paid to the 1st Df ($10,341.40) and the 2nd Df ($15,460.32) which are contained in different tables within D2.

(**): This figure of $10,341.10 (which should probably be $10,341.40) is reflected in Annex A. It excludes the sums paid to the 2nd Df.

(7) Groupon Poland

	Defence and Counterclaim	4th D's AEIC at p 204	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	35	NA	9	34	34	Relying on Annex B to prove a claim of $16,113.71. Not relying on the admissions case theory.
Total amount due in respect of redeemed vouchers	$21,477.18	$21,477.18	$21,477.18	NA	$8,695.16	$21,477.18	NA	
Total amount paid	$5,363.47	$5,363.47	NA	$5,363.47	(D) $5,363.47 (A) $8,695.16	$5,363.47	NA	
Claim amount	$16,113.71	$16,113.71	$16,113.71		(D) $3,331.60 (A) $0.00	$16,113.71	NA	

(8) Groupon Sweden

	Defence and Counterclaim	4th D's AEIC at p 204	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	38	NA	16	37	0	Relying on Annex B to prove the claim of $21,033.68. This is slightly lower than the pleaded amount because credit is given for the payment made by Groupon Sweden in the sum of $638.29 in August 2012. Not relying on the admissions case theory.
Total amount due in respect of redeemed vouchers	$25,046.34	$25,046.34	$25,046.34	NA	$11,070.97	$25,046.34	NA	
Total amount paid	$3,374.37	$3,374.37	NA	$3,374.37	(D) $3,374.37 (A) 11,070.97	$4,012.66 (*)	NA	
Claim amount	$21,671.97	$21,671.97	$21,671.97		(D) $7,696.60 (A) $0.00	$21,033.68	NA	

(*): This sum is higher than that in D2 and Annex A (of $3,374.37). Dfs' counsel explains that this is because Annex B accounts for a further sum of $638.29 which was paid on 3 August 2012. This is reflected in Annex B.

(9) Groupon Belgium

	Defence and Counterclaim	4th D's AEIC at p 204	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	15	NA	11	8	0	Relying on Annex B to prove the claim of $5,820.04 which is lower than the pleaded claim amount. The reduction is due to the removal of claims purportedly submitted by the 2nd Df. Not relying on the admissions case theory.
Total amount due in respect of redeemed vouchers	$10,288.15	$10,288.15	$10,288.15	NA	$7,673.95	$5,820.04	NA	
Total amount paid	$0.00	$0.00	NA	$1,456.84 (*)	(D) $0.00 (**) (A) $7,673.95	$0.00	NA	
Claim amount	$10,288.15	$10,288.15	$8,831.31		(D) $7,673.95 (A) $0.00	$5,820.04	NA	

(*): This figure of $1,456.84 is the total of the sums paid to the 1st Df ($0.00) and the 2nd Df ($1,456.84) which are contained in different tables within D2.

(**): This figure of $0.00 is reflected in Annex A. It excludes the sums paid to the 2nd Df.

(10) Groupon Australia

	Defence and Counterclaim (*)	4th D's AEIC at p 204 (**)	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	152	NA	123	152	16	Not relying on Annex B because the claim amount in Annex B of $48,359.20 is significantly higher than the consolidated pleaded claim against Groupon Australia and Groupon NZ in the sum of $10,062.35. Relying on the admissions case theory though it is conceded that the amount stated to be due in Adeline Seah's affidavit of £74,241.18 does not tally with the Defendants' pleaded amount of $98,986.48. Defendants did not take a definitive stand on the final claim against Groupon Australia.
Total amount due in respect of redeemed vouchers	$98,986.48	$98,986.48	$98,254.00	NA	$119,743.84	$98,254.00	NA	
Total amount paid	$88,924.13	$88,924.13	NA	$87,771.82 (***)	(D) $49,884.95 (****) (A) $84,523.44	$49,894.80	NA	
Claim amount	$10,062.35	$10,062.35	$10,482.18		(D) $69,848.80 (A) $35,220.40	$48,359.20	NA	

(*) **and** (**): The Defence and Counterclaim and the table at p 204 of the 4th D's affidavit do not distinguish between Groupon Australia and Groupon NZ. Therefore, although this table is for Groupon *Australia*, the figures reflected in the two columns here are inclusive of the amounts due from, paid by and claimed against Groupon NZ as well.

(***): This figure of $87,771.82 is the total of the sums paid to the 1st Df ($49,884.95) and the 2nd Df ($37,886.87) which are contained in different tables within D2.

(****): This figure of $49,884.95 is reflected in Annex A. It excludes the sums paid to the 2nd Df.

(11) Groupon New Zealand

	Defence and Counterclaim (*)	4th D's AEIC at p 204 (**)	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	2	NA	5	2	2	Withdrawing the claim against Groupon NZ because based on Annex B, Groupon NZ has paid the sum of $1,152.31 which is more than the amount stated to be due at $919.80.
Total amount due in respect of redeemed vouchers	$98,986.48	$98,986.48	$732.47	NA	$4,084.43	$919.80	NA	
Total amount paid	$88,924.13	$88,924.13	NA	$1,152.31	(D) $1,152.31 (A) $1,495.34	$1,152.31	NA	
Claim amount	$10,062.35	$10,062.35	(-) $419.84		(D) $2,932.10 (A) $2,589.09	$0.00	NA	

(*) **and** (**): The Defence and Counterclaim and the table at p 204 of the 4th D's affidavit do not distinguish between Groupon Australia and Groupon New Zealand. Therefore, although this table is for Groupon *New Zealand*, the figures reflected in the two columns here are inclusive of the amounts due from, paid by and claimed against Groupon *Australia* as well.

(12) Groupon Mexico

	Defence and Counterclaim	4th D's AEIC at p 204	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	5	NA	2	5	5	Relying on Annex B to prove a claim of $3,519.14,. Not relying on the admissions case theory.
Total amount due in respect of redeemed vouchers	$3,519.14	$3,519.14	$3,519.14	NA	$2,106.45	$3,519.14	NA	
Total amount paid	$0.00	$0.00	NA	$0.00	(D) $0.00 (A) $2,106.45	$0.00	NA	
Claim amount	$3,519.14	$3,519.14	$3,519.14		(D) $2,106.45 (A) $0.00	$3,519.14	NA	

(13) Groupon UAE

	Defence and Counterclaim	4th D's AEIC at p 204	Exhibit D1	Exhibit D2	Annex A of D's closing subs (based on Adeline Seah's alleged admissions)	Annex B of D's closing subs	Annex C of D's closing subs	D's final position during oral closing subs
Total number of redeemed vouchers	NA	NA	199	NA	189	197	177	Relying on Annex B to prove a claim of $26,069.35. Alternatively, also relying on the admissions case theory to support a claim of $16,635.20.
Total amount due in respect of redeemed vouchers	$143,747.26	$143,747.26	$143,747.26	NA	$134,313.15	$143,747.26	NA	
Total amount paid	$117,677.91	$117,677.91	NA	$117,677.91	(D) $117,677.91 (A) $134,313.15	$117,677.91	NA	
Claim amount	$26,069.35	$26,069.35	$26,069.35		(D) $16,635.20 (A) $0.00	$26,069.35	NA	

[note: 1] Affidavit of Evidence-in-Chief of Mr Adrien Jean Bernard Jorge dated 31 March 2014 ("Mr Jorge's AEIC) at para 10.1

[note: 2] Mr Jorge's AEIC at para 11

[note: 3] Mr Jorge's AEIC at paras 12–13

[note: 4] Mr Jorge's AEIC at para 13

[note: 5] Mr Jorge's AEIC at para 15; Statement of Claim dated 4 June 2012 ("SOC") at para 17

[note: 6] Mr Jorge's AEIC at para 14

[note: 7] SOC at para 19

[note: 8] Mr Jorge's AEIC at para 10.5

[note: 9] Mr Jorge's AEIC at para 10.6

[note: 10] Mr Jorge's AEIC at para 10.6

[note: 11] Mr Jorge's AEIC at para 10.5

[note: 12] Affidavit of Evidence-in-Chief of Ms Samirah Bte Hamza dated 28 March 2014 ("Ms Hamza's AEIC") at para 8

[note: 13] SOC at para 26

[note: 14] Affidavit of Evidence-in-Chief of Mr Tan Boon Cher Adrian dated 31 March 2014 ("Mr Tan's AEIC") at para 4.

[note: 15] Mr Tan's AEIC at para 5

[note: 16] Mr Tan's AEIC at para 4

[note: 17] Mr Tan's AEIC at para 6

[note: 18] Mr Tan's AEIC at para 6

[note: 19] Defence and Counterclaim (Amendment No 1) dated 24 October 2012 ("Defence and Counterclaim") at paras 1, 14A and 42

[note: 20] Defence and Counterclaim at para 14

[note: 21] Defence and Counterclaim at para 14A

[note: 22] Summons 804 of 2013 filed on 14 February 2013 ("SUM 804/2013")

[note: 23] Certified Transcript for SUM 804/2013 dated 11 March 2013 ("Certified Transcript")

[note: 24] Certified Transcript at p 4 line 30 to p 5 line 11

[note: 25] Summons 858 of 2013 filed on 18 February 2013

[note: 26] Mr Tan's AEIC at para 7

[note: 27] Defendants' Opening Statement at para 12

[note: 28] Mr Tan's AEIC at para 8

[note: 29] Minute Sheet of Justice Woo Bih Li in Registrar's Appeal 233 of 2013 dated 23 August 2013

[note: 30] Mr Tan's AEIC at para 9

[note: 31] Defence and Counterclaim at para 14A

[note: 32] Defendants' Opening Statement at paras 18–20

[note: 33] Ms Hamza's AEIC at p 204

[note: 34] Agreed Bundle vol 2 ("2AB") and Agreed Bundle vol 3 ("3AB") both dated 1 August 2014

[note: 35] Mr Tan's AEIC at para 34

[note: 36] 2AB at p 448

[note: 37] D1, at p 1, serial no 3

[note: 38] Defendants' Closing Submissions dated 19 August 2014 (Defendants' Closing Submissions")

[note: 39] Affidavit of Ms Seah Wei Ting Adeline dated 13 March 2013 ("Ms Seah's 13 March Affidavit") at paras 9–32

[note: 40] Ms Seah's 13 March Affidavit at para 9

[note: 41] Ms Seah's 13 March Affidavit at para 10

[note: 42] 2AB at p 482

[note: 43] 2 AB at p 500

[note: 44] Defendants' Further Submissions dated 3 September 2014 ("Defendants' Further

Submissions")

[note: 45] Summons 4373 of 2014 filed on 3 September 2014

[note: 46] Plaintiffs' Further Submissions dated 3 September 2014 ("Plaintiffs' Further Submissions") at para 4

[note: 47] Defence and Counterclaim at para 42

[note: 48] Plaintiffs' Further Submissions at para 2

[note: 49] Ms Hamza's Affidavit at paras 13–15

[note: 50] Agreed Bundle vol 1 dated 1 August 2014 ("1AB") at p 52

[note: 51] 1AB at pp 15–17

[note: 52] Defendants' Further Submissions at paras 8–11

[note: 53] Ms Seah's 13 March Affidavit at para 33

[note: 54] Ms Seah's 13 March Affidavit at para 33

[note: 55] Ms Seah's 13 March Affidavit at para 6

[note: 56] Affidavit of Ms Seah Wei Ting Adeline dated 5 April 2012

[note: 57] Ms Seah's 13 March Affidavit at para 38.2

[note: 58] Defendants' Closing Submissions at para 12

[note: 59] 1AB at p 110

[note: 60] Plaintiffs' Bundle of Documents dated 4 August 2014 ("PBOD") at pp 15–16

[note: 61] PBOD at pp 56–57

[note: 62] PBOD at pp 21–22

[note: 63] 1AB at pp 125–126

[note: 64] PBOD at pp 37–40

[note: 65] 1AB at pp 129–130

[note: 66] PBOD at p 1

[note: 67] Plaintiffs' Closing Submissions dated 15 August 2014 ("Plaintiffs' Closing Submissions") at para 44

[note: 68] Plaintiffs' Closing Submissions at para 47

[note: 69] Defendants' Closing Submissions at para 36 and 45

[note: 70] Defendants' Closing Submissions at para 48

[note: 71] See, for example, Ms Seah's 13 March Affidavit at para 4.2

[note: 72] Plaintiffs' Further Submissions at para 12

[note: 73] Plaintiffs' Further Submissions at paras 14–15

[note: 74] Reply (Amendment No 1) and Defence to Counterclaim (Amendment No 2) dated 25 October 2013 at paras 31–32

[note: 75] Defendants' Closing Submissions at para 57

[note: 76] 1AB at pp 2, 17, 27, 36, 44, 51 and 52