IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2020] SGHC 109

Suit No 1173 of 2017

Between

1. iVenture Card Limited
2. iVenture Card International Pty Ltd

… *Plaintiffs*

And

1. Big Bus Singapore City Sightseeing Pte Ltd
2. Singapore Ducktours Pte Ltd
3. Heng See Eng
4. Low Lee Huat

… *Defendants*

A N D

Between

Big Bus Singapore City Sightseeing Pte Ltd

… *Plaintiff in Counterclaim*

And

1. iVenture Card Limited
2. iVenture Card International Pty Ltd
3. iVenture Card Travel Ltd

… *Defendants in Counterclaim*

JUDGMENT

[Contract] — [Discharge] — [Breach]
[Contract] — [Remedies] — [Damages]
[Tort] — [Inducement of breach of contract]
[Tort] — [Conspiracy]
[Confidence] — [Breach of Confidence]

iVenture Card Ltd and another
v
Big Bus Singapore City Sightseeing Pte Ltd and others

[2020] SGHC 109

High Court — Suit No 1173 of 2017
Choo Han Teck J
14–17 and 21 January 2020; 16 March 2020

26 May 2020 Judgment reserved.

Choo Han Teck J:

1 The first plaintiff ("iVenture") is a limited company incorporated in Hong Kong. The second plaintiff ("iVenture International") is a company organised under the laws of Australia, and is wholly owned by iVenture. Both plaintiffs share a common director, Mr Ryan Rieveley. The third defendant in the counterclaim ("iVenture Travel") is a wholly owned subsidiary of iVenture. These three companies (collectively, the "iVenture Group") are part of the iVenture group of companies, which is in the business of developing and marketing tourist packages worldwide.

2 The first and second defendants (respectively, "Big Bus" and "Ducktours") are private limited companies incorporated in Singapore. They are part of the "DUCK & HiPPO Group", which is a group of companies engaged in the tourism business. At the material time, the third and fourth defendants, Mr Heng See Eng ("James") and Mr Low Lee Huat ("Low"), were

the only shareholders and directors of Big Bus and Ducktours. Ducktours has operated a local tourist attractions aggregator pass ("TAAP"), called the "Singapore Pass", since 2006. A TAAP is a product that allows its holder to access various tourist attractions, usually at a discount.

3 Between 2014 and 2015, both groups of companies entered into a collaboration with the broad purpose of re-launching the Singapore Pass (hereinafter referred to as the "Relaunched Pass"). This resulted, *inter alia,* in the following:

(a) An agreement ("Licence Agreement") between iVenture and Big Bus (dated 27 March 2015), under which the former would be paid monthly fees in exchange for selling the Relaunched Pass on its online website, and granting the latter a licence to operate the Relaunched Pass business and use the "iVenture" brand in Singapore.

(b) An agreement ("Service Level Agreement") between iVenture, Smartvisit Pty Ltd ("Smartvisit") (which is a related company of iVenture International), and Big Bus (dated 27 March 2015), under which the former two companies would be paid monthly fees in exchange for providing Big Bus with technical services and access to the "Smartvisit System" in order for it to operate the Relaunched Pass business. The Smartvisit System is a transaction management system which manages the validation, reporting and invoicing of transactions for TAAPs. Its frontend component comprises hardware terminals installed at various attractions, whilst the backend is an online portal known as the "SORSE System".

(c) A reseller arrangement ("Reseller Arrangement") under which both plaintiffs were permitted to resell the Relaunched Pass on behalf of the defendants. It is disputed, however, whether this arrangement constitutes a contractual "agreement", the parties between whom the arrangement was made, and its payment terms.

(collectively, the "Agreements")

4 The iVenture Group has four claims against the defendants — first, iVenture claims that Big Bus repudiated and breached the Licence and Service Level Agreements, and iVenture Travel (or alternatively, iVenture) claims that Big Bus repudiated and breached the Reseller Arrangement; second, iVenture and iVenture Travel claim that Ducktours, James and Low are liable for inducing Big Bus' aforesaid breaches of contract; third, both plaintiffs claim the defendants are liable for breach of confidence; and fourth, both plaintiffs claim that the defendants are liable for an unlawful means conspiracy to injure them. Big Bus first counterclaims against both plaintiffs on the basis that they had first repudiated the Licence and Service Level Agreements. Second, Big Bus also counterclaims against iVenture, or alternatively, iVenture Travel, for the payment of two outstanding invoices for October and November 2017 under the Reseller Arrangement.

5 I start with the iVenture Group's first claim, and Big Bus' first counterclaim. Although the defendants had initially pleaded that both plaintiffs also repudiated a preliminary agreement (dated 17 December 2014), this point was abandoned in their counsel's closing submissions, and hence, it is not necessary for me to deal with it. I will dismiss Big Bus' first counterclaim against iVenture International, given that it is undisputed that the company was not even a party to the Licence and Service Level Agreements.

6 Before dealing with the main issues of repudiation of the Agreements, I must decide three preliminary issues — whether the Reseller Arrangement constitutes an agreement in the first place, the parties to it, as well as its payment terms. I agree with the plaintiffs that Reseller Arrangement constitutes an oral agreement. The defendants had denied this by claiming that the parties merely had a "reseller relationship" that continued "at will" on a "willing buyer, willing seller basis" in accordance with clause 4.3(c) of the Licence Agreement. In my view, this position makes no sense. The defendants' allegation that there was a "willing buyer, willing seller" necessarily means there must be an agreement. In fact, the defendants claim that the plaintiffs are legally bound to accept certain commission rates and to comply with certain payment deadlines under this arrangement. The only apparent basis for these obligations must be contractual, as no other basis (*ie,* in unjust enrichment) was argued. Specifically, I find that the Reseller Arrangement was an oral agreement concluded between the parties separately from the Licence Agreement. Clause 4.3(c) of the Licence Agreement merely states that Big Bus will allow reselling "on execution of a standard sales agency agreement". As Mr Chia himself pointed out, that clause clearly creates no legally binding contract in itself, and implies that a separate agreement would be required.

7 It is not disputed that Big Bus was a party to the Reseller Arrangement. The question is whether its counterparty was iVenture (as the defendants claim), or iVenture Travel (as the plaintiffs claim). In my view, it was iVenture. The parties' correspondence shows that at all material times, Mr Rieveley discussed matters concerning the Reseller Arrangement as an officer of iVenture. While Big Bus' invoices were issued to iVenture Travel, it is clear from the emails between Mr Rieveley, Smartvisit and the defendants (dated 14 July 2015) that this was only because the iVenture Group had set up the SORSE System to

generate the invoices in that manner for billing purposes. In my view, iVenture was the proper contracting party all along, and iVenture Travel had merely accepted invoices under the Reseller Arrangement on its behalf as a matter of administrative convenience. That being the case, I dismiss iVenture Travel's counterclaim against Big Bus for repudiation of the said agreement, and Big Bus' second counterclaim against iVenture Travel for the invoices for October and November 2017 under the same agreement.

8 As for the terms of payment, it is undisputed that after the plaintiffs resold the Relaunched Pass, Big Bus would invoice them on a monthly basis for the sales proceeds (less the plaintiffs' commission). It is also undisputed that around 25 to 29 March 2016, the parties agreed to a "contra arrangement" where Big Bus would deduct the fees it owed to the plaintiffs (under the Licence and Service Level Agreements) from its invoices (under the Reseller Arrangement), and bill them for the net amount. The defendants claim that at all material times, iVenture was required to pay Big Bus' invoices within 30 days of the date of the invoice ("30 Day Credit Term"). The plaintiffs deny this, and say that the parties had only agreed that payment be made on "reasonable credit terms". In my view, the defendants are correct. There were multiple email chasers from Big Bus to the iVenture Group referring to the number of days that an invoice was purportedly overdue, calculated on the basis of the 30 Day Credit Term. There is, however, no record of the iVenture Group ever objecting to these numbers. Further, the parties' emails dated 29 March 2016 specifically indicate that the 30 Day Credit Term would continue to apply even with the "contra arrangement" in place. As a matter of commercial sense, I find it unbelievable that the plaintiffs would claim that any commercial party like Big Bus would agree that payments due to it need only be made within a "reasonable" period,

with no specific timeline at all. I hence find that the Reseller Arrangement was subject to the 30 Day Credit Term.

9 I now address the main issues of whether any of the Agreements were repudiated by the parties. The defendants claim that since 2015, the iVenture Group had been consistently late in its invoice payments under the Reseller Arrangement. According to them, the final straw came on 3 November 2017, when Mr Rieveley outright refused to pay Big Bus' invoice for September 2017 ("Sept 2017 invoice"), and iVenture continued to be in default in respect of the same until 8 November 2017. The defendants' counsel, Mr Chia, submitted that this was in breach of the 30 Day Credit Term, and the Reseller Arrangement allowed Big Bus to terminate the plaintiffs' reseller rights in such an event. Although I agree that iVenture's non-payment amounts to a breach, I do not think it gave iVenture a right of termination. Mr Chia argued that the basis for this right was clause 4.3(c)(iii) of the Licence Agreement. This is obviously wrong because on Mr Chia's own submission, that clause was subject to contract and created no legally binding obligation. Moreover, Mr Chia did not reconcile this submission with his other claim that the Reseller Arrangement was "terminable at will". As he did not submit that Mr Rieveley's refusal or iVenture's default conferred a right of termination or suspension on Big Bus in any other way (*ie,* the 30 Day Credit Term was a condition), I find that neither act was a repudiation of the Reseller Arrangement.

10 The parties' dispute did not end there. Instead, it carried over into a series of suspensions and arguments between 8 and 10 November 2017. On 8 November 2017, sometime in between 7am and 2.30pm (inclusive), Big Bus imposed a suspension in respect of the Relaunched Pass business ("First Suspension"). The exact scope of this suspension is disputed. iVenture retaliated

by imposing its own suspension that same day, sometime between 4.50pm and 5.30pm (inclusive), to cut off Big Bus' access to the SORSE System ("SORSE System Suspension"). Sometime between 6.30pm that same day, and 9am on 9 November 2017, Big Bus followed up with another suspension ("Second Suspension"), whose scope is also disputed.

11 The defendants' case is that iVenture's SORSE System Suspension was a repudiation of the Licence and Service Level Agreements, which Big Bus accepted via its solicitors' letter dated 6 December 2017. The plaintiffs' case is that Big Bus' First and/or Second Suspensions, and/or its allegedly wrongful termination of the Licence and Service Level Agreements on 6 December 2017, amounts to a repudiation of the said agreements and the Reseller Arrangement. According to the plaintiffs, iVenture accepted these repudiations via its solicitors' letter dated 8 December 2017, which letter also served as iVenture Travel's acceptance of Big Bus' repudiation of the Reseller Arrangement.

12 Before discussing the parties' cases, I must first determine the scope of the First and Second Suspensions. For context, the use of the Relaunched Pass involves three steps — first, the pass is sold to a customer; second, the pass is activated by Big Bus; and third, the customer presents the pass to redeem access at the various attractions. The defendants claim that the First Suspension was limited to a suspension of the plaintiffs' reseller rights under the Reseller Arrangement, pending the iVenture Group's payment of the Sept 2017 invoice. Although the emails sent by Ms Zener Teo (the general manager of Big Bus and Ducktours) to Mr Rieveley prior to 8 November 2017 indicate that was indeed the intention, I find that in its implementation, the suspension was not so limited. On 8 November 2017, by 2.27pm at the latest, Big Bus displayed a notice at its pass redemption counters stating that "all sales and activation of the

[Relaunched Pass] will be suspend on Nov 8, 2017 at 0700hrs". As counsel for the iVenture Group, Ms Celeste Ang, pointed out, nothing in this notice limits the suspension to only passes resold by the plaintiffs.

13 Further, contemporaneous records from the SORSE System show that there was no activation of any passes on 8 November 2017, save for a single stray redemption at 5.33pm. There were between 41 and 84 activations per day in the immediately preceding 5-day period. This reinforces my finding that the First Suspension suspended the sales and activation of all Relaunched Passes, regardless of who they were sold by. As to Second Suspension, the parties' correspondence and notices displayed by Big Bus shows that at the latest, by 9 November 2017, 8am, Big Bus had suspended all redemptions of the Relaunched Pass (regardless of when they were sold, or who they were sold by).

14 I accept the plaintiffs' case that Big Bus' First and Second Suspensions amount to a repudiation (by renunciation) of the Licence Agreement and the Reseller Arrangement, but find that they were not a repudiation of the Service Level Agreement. As stated by the Court of Appeal in *San International Pte Ltd (formerly known as San Ho Huat Construction Pte Ltd) v Keppel Engineering Pte Ltd* [1998] 3 SLR(R) 447 (at [20]), the law on repudiatory breach by renunciation is as follows:

> …A renunciation of contract occurs when one party by words or conduct evinces **an intention not to perform** or expressly declares that he is or will be unable to perform **his obligations in some material respect**. Short of an express refusal or declaration *the test is to ascertain whether the action or actions of the party in default are such as to lead a reasonable person to conclude that he no longer intends to be bound by its provisions*. **The party in default** may intend in fact to fulfil the contract but may be determined to do so only in a manner substantially inconsistent with his obligations, or **may refuse to perform the contract unless the other party complies with certain conditions not required by its terms**…

[emphasis in italics original; emphasis in bold added]

15 In my view, Big Bus' First Suspension was a refusal to perform its obligations under the Licence Agreement in a "material respect". Specifically, Big Bus' suspension of all sales and activations of the Relaunched Pass breached its key obligation to "use its best endeavours to develop, promote and sell the [Relaunched Pass]". The importance of this obligation is demonstrated by the fact that all of iVenture's fees under the Licence Agreement are calculated as a percentage of the monthly sales of the Relaunched Pass. The parties' essential bargain under that agreement is hence premised on the continued operation of the Relaunched Pass business, which was wholly disrupted by the First (as well as Second) Suspension. Mr Chia argued that this suspension was not a renunciation, since that would require Big Bus to have refused to perform its obligations at all. Mr Chia said this was not the case here because the suspension was merely temporary pending iVenture's payment of the Sept 2017 invoice. The fatal difficulty with this argument is that the Sept 2017 invoice was only owed by iVenture under the Reseller Arrangement. This means that by the First Suspension, Big Bus was in fact refusing to perform a material aspect of the Licence Agreement unless an extraneous term stipulated under another agreement was complied with. There was obviously no basis for this, and the irresistible inference is that Big Bus effectively refused to be bound by the express terms of the Licence Agreement.

16 I now turn to the Reseller Arrangement. In my view, the evidence shows that the First and Second Suspensions were intended to be temporary when they were first imposed on 8 November 2017, pending iVenture's payment of the Sept 2017 invoice. By 9 November 2017, however, iVenture Travel had paid that invoice, and on the following day, Big Bus still refused to lift its suspensions, unless iVenture further provided an advance remittance of

$150,000 to cover the plaintiffs' resales in October and November 2017, as well as a banker's guarantee. As Ms Ang pointed out, even under the 30 Day Credit Term, the invoices under the Reseller Arrangement for October and November 2017 were not due by that date. Neither did Big Bus have any right to demand a banker's guarantee under any of the agreements. Accordingly, at the very latest, by 10 November 2017, Big Bus' refusal to lift the First and Second Suspensions unless the iVenture Group complied with some terms not required by the Reseller Arrangement was a clear renunciation of the same.

17 Nonetheless, I find that Big Bus' First and Second Suspensions did not amount to a repudiation of the Service Level Agreement, simply because Big Bus is not even obliged to operate the Relaunched Pass business under that agreement. The Licence and Service Level Agreements each contain a clause ("mutual dependency clause") stating that it is a condition of the said agreement that the other agreement continues to be in effect. Contrary to Mr Chia's submission, this does not mean that the mere repudiation of one agreement amounts to a repudiation of the other. It only means that the discharge of one agreement would lead to the discharge of the other. As I find later below, the discharge of either agreement only occurred about a month later.

18 That is not the end of the matter. A contract which has been repudiated by one party is only discharged upon the other party's acceptance of that repudiation. The plaintiffs pleaded that they had only accepted Big Bus' above repudiations on 8 December 2017. I must hence also consider whether prior to that time, as the defendants claim, iVenture had itself repudiated the Licence and Service Level Agreements through its SORSE System Suspension on 8 November 2017, and whether the defendants accepted this alleged repudiation (and terminated the said agreements) through its Second Suspension between

6.30pm that same day and 9am on the following day. Under the said suspension, iVenture had suspended Big Bus' login access to the SORSE System, although the portal itself was still functioning and tracking the relevant information regarding the sales, activations and redemption of passes. iVenture (along with Smartvisit) was obliged to provide Big Bus access to the SORSE System only under the Service Level Agreement. As such, I cannot see how, as Mr Chia submitted, the suspension was a repudiation of iVenture's obligations under the Licence Agreement.

19 Ms Ang argued that the SORSE System Suspension could not be a repudiation of the Licence or Service Level Agreements, because iVenture was merely exercising its contractual right under clause 7.5 of the latter agreement to "restrict or withhold the access of any person…[where iVenture] has reason to suspect that any [such person] has breached…a term of their Licence [to use the Smartvisit System]". I am unable to agree with her, not least because she failed to even identify the "term" in question. It is thus clear that iVenture had no right to impose this suspension and was in breach of the Service Level Agreement. Ms Ang argued that the suspension was nonetheless not a renunciation because it was merely temporary. She referred to Mr Rieveley's email to the defendants on 8 November 2017, at 5.26pm, which stated:

> In accordance with the terms of our agreement I therefore need to advise you that, given the nature of the breach, iVenture Card Ltd will take **immediate action to mitigate the damages** you are causing. Accordingly, **in the event that you don't rectify this situation**, we will be seeking an immediate injunction against you from operating any similar product and to seek damages…I should note that, **as an immediate action, all access to SORSE for your team has been immediately cut**.
>
> [emphasis added]

20 Ms Ang, counsel for the plaintiffs and the third defendant in counterclaim, submitted that Mr Rieveley's email made clear that Big Bus had an opportunity to "rectify [the] situation", indicating that the Licence and Service Level Agreements remained in force. In my view, iVenture made the same mistake as Big Bus above. iVenture had effectively refused to perform its obligations under the Service Level Agreement (*ie*, to give Big Bus access to the SORSE System) unless Big Bus "rectif[ied] [the] situation" (*ie,* performed its obligations under the separate Licence Agreement and Reseller Arrangement). iVenture had no right to impose such extraneous conditions on its performance of the Service Level Agreement, and in doing so, it evinced an intention not to perform its obligations as stated within the four corners of that agreement. There is no doubt that iVenture's provision of access to the SORSE System was absolutely essential to the Service Level Agreement, and I therefore find that iVenture had repudiated the said agreement. I cannot, however, accept Mr Chia's submission that Big Bus' Second Suspension constitutes acceptance of iVenture's repudiation. Mr Chia himself pointed out that in its subsequent emails dated 9, 10 and 13 November 2017, Big Bus continued to state that it was willing to resume the business (albeit subject to certain conditions). All the evidence points only to a "temporary" suspension of pass redemptions, not an unequivocal termination of the Service Level Agreement.

21 That being the case, I find that Big Bus only validly accepted iVenture's repudiation of the Service Level Agreement through its solicitors' letter dated 6 December 2017. By virtue of the mutual dependency clause in the Licence Agreement, Big Bus was then also entitled to terminate the said agreement, which it did in that same letter. To be clear, the fact that Big Bus was itself in continuing breach of the Licence Agreement at the time does not affect its separate, express contractual right to terminate the same. I further note that in

Big Bus' solicitors' letter, it had relied upon iVenture's SORSE System Suspension as a ground to terminate the Licence Agreement, and then cited the mutual dependency clause in the Service Level Agreement in order to also terminate the same. Although Big Bus had gotten it the wrong way around, the Court of Appeal in *Alliance Concrete Singapore Pte Ltd v Comfort Resources Pte Ltd* [2009] 4 SLR(R) 602 (at [63], [65] and [67]) has made clear that an innocent party can generally rely on any ground of termination which existed at the time of election, except that it cannot rely on a ground not raised at the time of termination if the party in breach could have rectified the situation had it been afforded the opportunity to do so. In this case, iVenture had already been notified of Big Bus' factual grounds for terminating both agreements (*ie,* the SORSE System Suspension), and I do not think that Big Bus citing the correct legal mechanism would have made any difference in prompting iVenture to rectify the situation. Hence, contrary to the plaintiffs' pleadings, I find that Big Bus had validly terminated the Licence and Service Level Agreements on 6 December 2017.

22 As for Big Bus' repudiation of the Reseller Arrangement on 10 November 2017, on the assumption that iVenture Travel was a party to that agreement (which I have found to be incorrect), Ms Ang submitted that iVenture Travel should be taken to have accepted the aforesaid repudiation by virtue of iVenture's solicitors' letter dated 8 December 2017. In my view, however, there is a commercially necessary and sensible implied term in the Reseller Arrangement that it would continue to be in effect only insofar as the Licence and Service Level Agreements subsist. This view was in fact taken by Ms Ang herself, albeit on the premise that it was iVenture who would be entitled to terminate the two latter agreements. It is clear that had the parties thought about it, they would not have intended this secondary arrangement to continue if their

main collaboration had come to an end. As such, I find that Big Bus' termination of the Licence and Service Level Agreements also caused the Reseller Arrangement to be automatically and validly discharged on 6 December 2017. I will deal with the parties' claims for damages for the above repudiations later below under the section on remedies.

23 iVenture and iVenture Travel also claim that Ducktours, James and Low, are liable for inducing Big Bus' aforesaid repudiations of the Licence Agreement and Reseller Arrangement. iVenture Travel's claim will be dismissed since I have found that it is not a party to either agreement. iVenture's case is that James and Low (as well as Ms Teo) knew of the existence of the said agreements, induced Big Bus to breach them by imposing the First and Second Suspensions, and intended to interfere with iVenture's rights. The evidence shows that all of these elements are made out. I find, contrary to the defendants' case, that James and Ms Teo either intended to interfere with iVenture's contractual rights as a means to pressure it to pay the Sept 2017 invoice, or were at least recklessly indifferent as to whether a breach had occurred.

24 James and Low, as directors of Big Bus, will not be personally liable in tort for its contractual breaches if they did not breach their own legal duties towards Big Bus and were acting *bona fide* within the scope of their authority. This is the principle enunciated in *Said v Butt* [1920] 2 KB 497, which was approved by the Court of Appeal in *PT Sandipala Arthaputra and others v STMicroelectronics Asia Pacific Pte Ltd and others* [2018] 1 SLR 818 (*"PT Sandipala"*) (at [50], [53], [62] and [65]). Ms Ang argued that this principle does not apply here as Big Bus' suspension of the Relaunched Pass business was not in its best interests, given that it would lose its future profits from the

business and the new HiPPO Singapore Pass business would only benefit Ducktours, a separate legal entity. I cannot accept this. In my view, the evidence shows that James and Low acted *bona fide* in Big Bus' interests to protect it from its mounting "financial exposure" to the iVenture Group, because the iVenture Group was consistently late in its payments under the Reseller Arrangement. I hence dismiss iVenture's claim against James and Low personally for inducing breach of contract.

25 As to Ducktours, Ms Ang submitted that James and Ms Teo's knowledge, actions and intentions in inducing Big Bus' contractual breaches can be attributed to Ducktours (at which they were also officers). I accept this because the evidence (including the parties' correspondence) shows that at all material times, James and Ms Teo were "simultaneously acting on behalf of both Big Bus and Ducktours" when effecting the First and Second Suspensions. The only remaining question is whether iVenture suffered injury as a result of the contractual breaches, which I will examine under the section on remedies.

26 The plaintiffs' third claim is that the defendants had received and misused the plaintiffs' confidential information, relating, *inter alia,* to its product development, pricing, operating processes and marketing ("Alleged Confidential Information"). Ms Ang relied upon the three-limb test for breach of confidence established in the leading English case of *Coco v AN Clark (Engineers) Ltd* [1969] RPC 41, which had been approved in its entirety (until very recently) by the courts in Singapore. She submitted that, first, the Alleged Confidential Information had the necessary quality of confidentiality; second, it was communicated in circumstances importing an obligation of confidence; and third, the defendants misused the information to set up the HiPPO Singapore Pass business. The defendants denied all of these.

27 Even if the first two limbs of the aforesaid test are made out, I do not accept that the defendants had misused the Alleged Confidential Information, or that they had acted unconscionably in any other way. The plaintiffs' main evidence of the defendants' alleged misuse is that the HiPPO Singapore Pass features the same attractions as the Relaunched Pass. This says nearly nothing at all, because all the attractions listed are merely typical tourist attractions in Singapore. Although it is undisputed that the HiPPO Singapore Pass was launched within one to two days of the parties' suspensions on 8 and 9 November 2017, I accept the defendants' explanation that the HiPPO Singapore Pass is part of an integrated IT system which they had been independently developing for at least a year before the parties' present dispute. As I do not find any misuse or that the defendants had acted unconscionably, I dismiss the plaintiffs' claim for breach of confidence.

28 Next, iVenture and iVenture International claim that all the defendants conspired to injure the plaintiffs by unlawful means, and actually did so. As there is no breach of confidence by the defendants, the only unlawful means remaining are Big Bus' repudiations of the Licence Agreement and the Reseller Arrangement. Given that James and Ms Teo were "simultaneously acting on behalf of both Big Bus and Ducktours" when effecting the First and Second Suspensions, I find that Big Bus and Ducktours agreed and intended to commit the acts together, with the intention of injuring iVenture so that it would be pressured into making its payments under the Reseller Arrangement. I will deal with the question of whether iVenture suffered loss as a result later under the section on remedies. I dismiss iVenture's claim against James and Low personally, since the Court of Appeal has held in *PT Sandipala* (at [62]) that the principle in *Said v Butt* [1920] 2 KB 497 also protects directors from personal liability under the tort of unlawful means conspiracy in respect of their

company's contractual breaches. I dismiss iVenture International's claim for unlawful means conspiracy against all the defendants, since it is not even a party to the Licence Agreement and Reseller Arrangement, and it has no real connection with the defendants' actions.

29 Finally, I address the issue of remedies. iVenture claims damages for Big Bus' repudiation of the Licence Agreement and Reseller Arrangement, Ducktours' tortious inducement of the same, as well as Big Bus' and Ducktours' tortious liability for unlawful means conspiracy against it. iVenture is asking for these damages to be assessed collectively. In my view, this is permissible since the torts in question had arisen from a breach of contract, meaning that the position that iVenture would have been in had the contracts been performed, would have been the same as its position had the torts not been committed (see *Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal* [2018] 2 SLR 655 at [387]). As to the Service Level Agreement, having found that iVenture had, by its conduct, repudiated it, I allow Big Bus' first counterclaim for damages to be assessed.

30 I will first deal with iVenture's claim for its loss of profits under the Licence Agreement, and Big Bus' first counterclaim for its loss of profits under the Service Level Agreement. The starting point for the quantification of damages is as follows:

(a) Under the Licence Agreement, iVenture is entitled to recover its expectation losses from the date of Big Bus' repudiation on 8 November 2017 (between 7am to 2.30pm) until 6 December 2017. The latter date is the date on which Big Bus validly terminated the Licence Agreement.

(b) As to the Service Level Agreement, Big Bus is entitled to recover its expectation losses from the date of iVenture's repudiation on 8 November 2017 (between 4.50pm to 5.30pm) until 8 December 2020 only. The basis for the latter date is this - had iVenture not repudiated the Service Level Agreement, iVenture's solicitors' letter on 8 December 2020 would have validly terminated the Licence Agreement, and by extension, the Service Level Agreement (through its mutual dependency clause).

31 The plaintiffs' expert witness, Mr Oliver Watts, and the defendants' expert witness, Mr Wong Joo Wan, each proposed different methodologies for calculating each side's loss of profits. The key point is that both parties were claiming a loss of profits flowing from the non-operation of the Relaunched Pass business, and blaming the other party's suspension as the cause of that non-operation. In my view, however, on 8 November 2017, sometime from 4.50pm to 5.30pm onwards, both sides were to blame for the non-operation of the Relaunched Pass business, and each could not causally attribute their loss of profits flowing from that non-operation to the other's actions.

32 To elaborate, as of 8 November 2017, between 4.50pm to 5.30pm, it cannot be said that but for Big Bus' refusal to perform the Licence Agreement, iVenture would not have suffered its loss of profits flowing from the non-operation of the Relaunched Pass business. The reason is that at that time, iVenture had itself imposed the SORSE System Suspension. Although this was not legally a breach of iVenture's obligations under the Licence Agreement, I agree with Mr Chia that in practice, the suspension effectively "blinded Big Bus' operations vis-à-vis the sale [and activation] and redemption" of the Relaunched Pass, thereby preventing Big Bus from operating the business. In

other words, even if Big Bus had lifted the First (and Second) Suspensions, the Relaunched Pass business could still not be operated owing to iVenture's own SORSE System Suspension. Conversely, it cannot be said that but for iVenture's refusal to perform the Service Level Agreement (*ie,* by imposing the SORSE System Suspension), Big Bus would not have suffered its loss of profits flowing from the non-operation of the Relaunched Pass business. This is because even if iVenture restored Big Bus' access to the SORSE System, Big Bus itself prevented the operation of the Relaunched Pass business by keeping the First (and Second) Suspensions in place. To the extent that either party suggests that it would have lifted its own suspension had the other lifted its suspension first, I find this to be equally speculative coming from both parties.

33 Accordingly, under the Licence Agreement, iVenture may only recover its loss of profits during the small window of time between Big Bus' First Suspension and iVenture's SORSE System Suspension on 8 November 2017. I accept Mr Watts' estimation of iVenture's projected loss of profit of $17,123 for the 22-day period from 9 to 30 November 2017. I find Mr Watts' methodology to be generally more reasonable than Mr Wong's, as it is based on a comparison between iVenture's actual profits and projected profits (had there been no breach), and on more detailed breakdowns of the companies' profits and losses. I will award iVenture damages against Big Bus and Ducktours (jointly and severally) for one day's loss of profits, in the amount of $778.32. On the other hand, under the Service Level Agreement, as I have found that Big Bus cannot recover its loss of profits flowing from the non-operation of the Relaunched Pass business, I will award it only nominal damages against iVenture in the amount of $1,000.

34 As for the Reseller Arrangement, iVenture is theoretically entitled to recover its loss of profits from the date of Big Bus' repudiation on 10 November until 6 December 2017 (which is the date on which the agreement was automatically and validly discharged). Similar to the above, however, my view is that iVenture's SORSE System Suspension had also "blinded" Big Bus by preventing it from keeping track of crucial information relating to the plaintiffs' resales, thereby preventing the Reseller Arrangement from operating in practice. That is, even if Big Bus had not suspended the plaintiffs' reseller rights, iVenture would still have suffered its loss of profits flowing from the non-operation of the Reseller Arrangement owing to its own SORSE System Suspension. As such, I award iVenture only nominal damages in the amount of $1,000 against Big Bus and Ducktours (jointly and severally).

35 Unusually, iVenture also claimed for loss of profits after 27 September 2020, which was the original end-date of the Licence and Service Level Agreements. This was based on the key assumption that after that date, had Big Bus not repudiated the Agreements, Big Bus would have either renewed them, or iVenture would seamlessly transfer their business to another local partner on comparable or better terms, so that iVenture would be operating and earning even higher profits under its renewed or new business. As Mr Chia correctly pointed out, the key assumption is in itself incredibly speculative, especially as to the contractual terms on which iVenture's possible renewed or new business would operate. I find no evidence for this claim. iVenture also sought to recover $45,757.03 in expenditure that it allegedly incurred to respond to affected customers and launch a replacement pass business in order to mitigate the damage from Big Bus' repudiations. Given my view that the non-operation of the Relaunched Pass business was caused by both sides and that all the

Agreements were validly discharged on 6 December 2017, I do not think that iVenture is entitled to recover this expenditure.

36 iVenture also claimed against Big Bus various unpaid fees totalling $27,866.34 under the Licence and Service Level Agreements. As this is supported by the relevant invoices, and Big Bus did not dispute the same, I find in favour of iVenture. In its pleadings, iVenture also claimed the return of a number of terminals purportedly in Big Bus' possession. At trial, however, parties informed the court that the claim was no longer in issue, and I will hence not deal with it.

37 As to Big Bus' second counterclaim against iVenture for unpaid invoices (totalling $145,792.86) for October and November 2017 under the Reseller Arrangement, I find in favour of Big Bus. The two invoices generated from the SORSE System speak for themselves. iVenture had originally pleaded that out of the sales proceeds for these two months, $103,028.77 in sales had to be refunded and/or cancelled. Big Bus explained, however, that the two invoices were only for the sale of passes which customers had actually activated and used. In its pleadings, the plaintiffs also admitted that "none of the cards refunded were in the list of cards that were the subject of the October and November 2017 invoices". There is hence no basis for iVenture to deny liability.

38 In summary, I have decided the following:

(a) For Big Bus' repudiation of the Licence Agreement, Big Bus and Ducktours are jointly and severally liable to iVenture for damages in the sum of $778.32.

(b) For Big Bus' repudiation of the Reseller Arrangement, Big Bus and Ducktours are jointly and severally liable to iVenture for nominal damages in the sum of $1,000.

(c) For iVenture's repudiation of the Service Level Agreement, I will award Big Bus nominal damages in the sum of $1,000.

(d) iVenture's claim against Big Bus for unpaid fees totalling $27,866.34 under the Licence and Service Level Agreements is allowed.

(e) Big Bus' second counterclaim against iVenture under the Reseller Arrangement for unpaid invoices for October and November 2017 (totalling $145,792.86) is allowed.

39 In exercise of the court's inherent jurisdiction to order a set-off by judgment, I will allow iVenture and Big Bus' claims against each other to be set-off. As iVenture's claims against Big Bus total $27,866.34, and Big Bus' claims against iVenture total $146,792.86, I grant judgment for Big Bus against iVenture for the net amount of $118,926.52. I further grant judgment for iVenture against Big Bus and Ducktours (jointly and severally) for the amount of $1,778.32. Under s 12 of the Civil Law Act (Cap 43, 1999 Rev Ed), interest on both judgment sums will run from the date on which the writ was issued to the date of this judgment, at 5.33% per annum.

40 My final remarks concern the procedure of joining a party to an action. The parties informed me that iVenture Travel was only joined as a party to the suit (specifically, as the third defendant to Big Bus' counterclaim) midway through the pre-trial proceedings. This joinder was apparently granted pursuant to the defendants' application under O 15, r 3(1) of the Rules of Court (Cap 322,

R 5, 2014 Rev Ed) ("ROC"), which application the plaintiffs did not dispute. That provision states:

> **Counterclaim against additional parties (O. 15, r. 3)**
>
> 3.—(1) **Where a defendant to an action who makes a counterclaim against the plaintiff alleges** that **any other person (whether or not a party to the action) is liable to him along with the plaintiff** in respect of the subject-matter of the counterclaim, **or claims against such other person** any relief relating to or connected with the original subject matter of the action, **then**, subject to Rule 5(2), **he may join that other person as a party against whom the counterclaim is made**.
>
> [emphasis added]

41 It appears from the wording of the above provision that under certain conditions, a defendant who counterclaims against a plaintiff may join another person who is not yet a party to the proceedings as a "party against whom the counterclaim is made". I must express my disagreement with the terminology used in this provision, as *prima facie,* a defendant cannot "counterclaim" against a person who has not yet made any claim against it.

42 Where a defendant wishes to claim against a person who is not yet a party to the suit, there may be more suitable alternatives than O 15, r 3(1) of the ROC. The defendant may consider, for example, bringing in this other person through the third party procedure, or bringing a separate suit against such a person and consolidating the new suit with the existing one. Importantly, in a suitable case such as the present, parties may even consider whether they can come to an understanding in order to have the other person simply joined as a plaintiff to the suit (*ie,* under O 15, r 4(1) of the ROC). This would apply especially where the existing plaintiffs do not object to the defendant's joinder of the other person, the other person also wishes to claim against the defendant, and the other person's case is essentially aligned with that of the existing

plaintiffs'. As Ms Ang herself acknowledged, all these are true in the present case and for all intents and purposes, iVenture Travel is a plaintiff in this suit. Having instead joined iVenture Travel as the third defendant to Big Bus' counterclaim, parties had to file not only the core set of pleadings (*ie,* the writ, statement of claim, defence and counterclaim, reply and defence to counterclaim), but also another set of pleadings comprising iVenture Travel's individual defence and counterclaim, and Big Bus' reply and defence to iVenture Travel's counterclaim. In my view, this unnecessarily complicated state of affairs could have easily been avoided by taking the more straightforward route of joining iVenture Travel as a plaintiff. As is true of many procedural problems, simplicity is the most efficient solution.

43 I will hear parties on the issue of costs at a later date.

- Sgd -
Choo Han Teck
Judge

Ang Hsueh Ling Celeste, Clarence Ding Si-Liang, Lee Zhe Xu and Tan Yi Wei Nicholas (Wong & Leow LLC) for the first and second plaintiffs, and the third defendant in counterclaim;
Chia Jin Chong Daniel, Ong Xuan Ning Christine and Tan Ei Leen (Coleman Street Chambers LLC) for the first to fourth defendants.