IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2017] SGHC 89

Suit No 887 of 2015

Between

WOLERO PTE LTD

… *Plaintiff*

And

ARVIN SYLVESTER LIM

… *Defendant*

JUDGMENT

[Contract] – [Breach]

[Contract] – [Estoppel by convention]

[Tort] – [Causing loss by unlawful means]

Version No 1: 27 Oct 2020 (22:40 hrs)

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Wolero Pte Ltd
v
Lim Arvin Sylvester

[2017] SGHC 89

High Court — Suit No 887 of 2015
Tan Lee Meng SJ
2 – 4 November 2016; 9 January 2017

24 April 2017 Judgment reserved

Tan Lee Meng SJ:

1 The plaintiff, Wolero Pte Ltd ("Wolero"), which is in the business of providing limousine services to corporate clients and private individuals, rented one of its limousines, an E-200 Mercedes Benz bearing the number SKQ5638H ("the limousine"), to the defendant, Mr Arvin Sylvester Lim ("Arvin") for $3,850 per month and guaranteed him a minimum of 110 job assignments every month to enable him to completely off-set the monthly hire for the limousine. Wolero sued Arvin for liquidated damages amounting to slightly more than $112,000 after terminating its hire arrangements with him on the ground that he failed to pay one month's hire totalling $3,850 on time in July 2015.

2 In addition, Wolero claimed damages from Arvin for inducing four of its other drivers ("the four drivers") to breach their contracts for the hire of its limousines and for causing it loss by unlawful means. The four drivers are Mr

Mohammed Samsuri bin Hussain ("Samsuri"), Mr Ahmad Masran bin Hassan ("Masran"), Mr Hasrin bin Hassan ("Hasrin") and Mr Abdul Hafidz bin Mohd Amir ("Hafidz").

3 Wolero also sought an injunction to restrain Arvin from inducing breaches of contract by its drivers and from unlawfully interfering with its contracts with its drivers.

4 Finally, Wolero claimed damages from Arvin for removing two of its logos from the limousine and for a damaged limousine key.

5 Arvin denied that he breached his contract with Wolero. He also asserted that he did not induce the four drivers to breach their contracts with Wolero and that he did not cause any loss to Wolero by unlawful means. Furthermore, he contended that the claim for liquidated damages pursuant to his agreement to hire the limousine should be dismissed because the amount claimed is a penalty rather than a genuine pre-estimate of Wolero's loss.

6 Arvin counter-claimed against Wolero for the sum of $4,890 as compensation for the latter's failure to provide him with the promised 110 monthly job assignments required to off-set the monthly hire for the limousine from May 2015 onwards and for the deposit that he paid to Wolero for the hire of the limousine.

[A] BACKGROUND

7 Wolero has been in the limousine business since 2009. In 2014, Wolero decided to expand its business. In his affidavit of evidence-in-chief ("AEIC"), its Senior Manager Sales, Marketing & Projects, Mr Ong Siew Tiong alias Iman Abdullah ("Niki Ong"), explained as follows:

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> 12. Being in the industry for several years, I know that most "freelance" limousine drivers fancy driving luxury vehicles but often [do] not have sufficient customers to meet the costs of renting and maintaining such vehicles, let alone purchasing one….
>
> 13. As the Plaintiff's business was fast expanding, it was thought that a person leasing the luxury vehicle may also like to have an option to provide limousine send and fetch services to the Plaintiff's customers.
>
> 14. By the last quarter of 2014, the new business concept was no longer a concept. It was a business model as follows –
>
> > a. New luxury cars would be offered for long term [leases] of 36 months;
> >
> > b. Persons can lease these new luxury cars (vide a Hire Agreement); and
> >
> > c. If such persons are interested, they can enter into an agreement to provide a service to the Plaintiff's customers (vide a Services Agreement)…
>
> 15. The new business model was spread by word of mouth. The Defendant was among one of the first few batch[es] of persons to subscribe to the new business model.

8 Wolero purchased a fleet of Mercedes Benz E-200 limousines to meet the needs of its expanded business. Under its new business model, drivers who hire Wolero's limousines and want to ensure that the monthly hire of $3,850 for the limousines is completely off-set by ferrying a guaranteed minimum of 110 of Wolero's clients, entered into two contracts with Wolero.

9 The first contract is a "Hire Agreement", under which the hirer pays a deposit of $3,000 and agrees to pay $3,850 per month for the hire of a limousine for 36 months. Clause 2.1 of the Hire Agreement requires the monthly hire to be paid on the first day of each month and clause 3.1 provides that a hirer is allowed to terminate the agreement only after 24 months from the commencement of the agreement by serving notice of not less than two months. Under clause 9.1 of the Hire Agreement, Wolero has the right to terminate the hiring arrangements and take possession of the car at any time

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for a number of stated reasons, including the limousine hirer's failure to pay the monthly hire within seven days of it becoming due.

10 The second contract, a "Service Contract", requires Wolero to assign to the limousine hirer at least 110 jobs per month at the rate of $35 per job for trips to Changi Airport and $40 for trips from Changi Airport. It follows that if Wolero fulfils its part of the bargain, a limousine driver would earn enough money to off-set the monthly hire of $3,850 for the limousine.

11 Arvin said that he heard from an acquaintance that Wolero was renting out E-200 Mercedes Benz limousines and that the monthly hire could be set off by completing an agreed number of jobs for Wolero. He telephoned Wolero's main office on 12 December 2014 and spoke to Niki Ong, who asked him to attend an interview in the afternoon. It was not disputed that Niki Ong made a presentation of Wolero's business model to Arvin at this meeting.

12 According to Arvin, Niki Ong explained to him that the proposed business arrangements would be as follows:

(a) Wolero would consider him as a "business partner";

(b) He would be able to hire a brand new E-200 Mercedes Benz under a Hire Agreement for $3,850 per month;

(c) Under a separate Service Agreement, he would be guaranteed a monthly minimum 110 "Send and Fetch" jobs, which involved the chauffeuring of Wolero's clients to and from Changi Airport at the rate of $40 for fetching clients from the airport and $35 for sending them to the airport;

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(d) With 110 jobs per month, he would not have to pay any hire for the limousine and should Wolero fail to assign him the required 110 jobs in any month, he would be compensated for the jobs that were not assigned to him; and

(e) At the end of the month, Wolero would draw up an account of all the jobs completed by him in that month. Wolero would off-set the monthly hire against his earnings under the Service Agreement and if his earnings exceeding $3,850, the amount exceeding the monthly hire would be paid to him.

13 Arvin said that after listening to Niki Ong's presentation, he thought that he had a great opportunity to rent a high-end luxury vehicle and pay for the monthly hire with the money earned from the jobs guaranteed under the Service Agreement. He said that it was on the basis of his discussions with Niki Ong that he signed the Hire Agreement and Service Agreement with Wolero on 12 December 2014. He then collected the key for the limousine and was assigned his first job by Wolero on the very next day.

14 Although clause 2.1 of the Hire Agreement called for payment of the monthly hire on the first day of each month, the practice was for Wolero to determine at the end of each month the number of trips that Arvin made on its behalf and set off the amount earned for these trips against the monthly hire for the limousine. It was common ground that between December 2014 to July 2015, Arvin and Wolero followed this procedure and he did not pay any hire on the first day of each month.

15 Up to April 2015, the amount due to Arvin under the Service Agreement was more than sufficient to pay for the monthly hire for the car.

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However, the position changed in May 2015. From that month until Arvin returned the limousine in August 2015, the amount due to him under the Service Agreement was insufficient to pay for the monthly hire for the limousine. The shortfall in May and June 2015 was $162 and $610 respectively. On 28 July 2015, Arvin paid to Wolero the difference between the monthly hire and the earnings under the Service Agreement in May and June 2015 in cash.

16 Arvin thought that he should be compensated by Wolero for the shortage of job assignments in May, June and July 2015. On 11 August 2015, his then solicitors, M/s David Nayar and Vardan, wrote to Wolero to demand the sum of $1,890 as compensation for having only 97 jobs in May 2015, 86 jobs in June 2015 and 93 jobs in July 2015. The relevant part of this letter is as follows:

> Notwithstanding the difference between the Requisite Number of Send and Fetch Services undertaken to be provided by you under the Hire Agreement (Individual) and the number of services actually provided, we are instructed that in breach of the express term in Clause 2.2 of the Hire Agreement (Individual) you have failed and/or neglected and/or refused to make payment of the various sums as are due to our client in this regard, despite requests, for the months of May and June 2015 and presently have failed to make payment for the sums as are due for July 2015 all of which were due "no later than 7th day of the following month", your actions consistent with a refusal to comply with the Agreements.
>
> In the light of the same, the sums due to our client arising from the difference between the Requisite Number of Send and Fetch Services undertaken to be provided by you under the agreement and the number of services actually provided for the calendar months of May, June and July 2015 is the sum of $1,890.00 …
>
> We are no instructed to and **DO HEREBY DEMAND** from you the total sum of **S$1,890.00**.
>
> [emphasis in original]

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17 Upon receiving Arvin's solicitors' letter, Wolero decided to terminate its Hire Agreement with him and on the same day that Arvin's letter of demand was received, Wolero's solicitors, M/s Salem Ibrahim LLC, informed Arvin's solicitors that Wolero was terminating the Hire Agreement because Arvin did not pay the July 2015 monthly hire on 1 July 2015. Wolero demanded that the limousine be returned by the next day and claimed that it was entitled to liquidated damages from Arvin totalling $113,140.32. Wolero's solicitors' email to Arvin's solicitors was worded as follows:

> Under Clause 2 of the Hire Agreement, your client is required to pay our client the Hire rate of SGD3,850.00 in advance on the 1st day of each month.
>
> Our client instructed that the Hire Rate due on 1 July 2015 remains unpaid to date. As the Hire Rate remains unpaid to date, our client hereby elects to terminate the Hire Agreement forthwith. Kindly have your client deliver Car No. SKQ5638H ("the Car") to our client's possession by 5.00 p.m. on 12 August 2015, failing which our client will take such action as they deem fit and/or necessary and/or as may be advised.
>
> Under Clause 9.2.1 of the Hire Agreement, your client is liable to our client as liquidated damages for the balance of the Hire Rate due under the Hire Agreement as if the Hire Agreement had subsisted and continued for the full Period of Hire. The amount due from your client to our client as liquidated damages is in the sum of SGD113,140.32.
>
> Under Clause 9.2.2 of the Hire Agreement, your client is further liable to indemnify our client for all legal costs and disbursements. The legal costs and disbursements due is in the sum of $300.00.
>
> To avoid our client commencing legal proceedings against your client, please have your client make payment of the sum of SGD113,440.32.

18 Arvin was taken aback by the Wolero's reaction to his demand for the payment of a small sum of money. He returned the limousine to Wolero on 12 August 2015. He said that his emotions were "high" and he posted the following strongly-worded message on a Whatsapp chat for Wolero's drivers:

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> To Wolero Pte Ltd,
>
> I have hereby accepted your termination and had returned the car to Yus as per what your lawyer Salem Ibrahim had demanded to mine. I wish to highlight to you that for the compensation amount of over $113,000.00, you will have to see me in court and also see my middle finger while I speak.
>
> Regards,
>
> Arvin Lim

19 Arvin stated in his AEIC (at para 98) that after returning the limousine to Wolero on 12 August 2015, he remained very disturbed by the whole episode and was worried about what further action Wolero might take against him. He said that he shared his concerns with Azman, who had returned his limousine to Wolero around the end of July 2015. Apparently, Niki Ong had demanded the return of the limousine hired by Azman because outstanding sums allegedly due to Wolero had not been paid. According to Arvin, Azman had some concerns about the insurance cover offered by Wolero for the limousines and that Azman encouraged him to clarify the position with the Land Transport Authority ("LTA").

20 Arvin said that he had came across an article in the *Straits Times* entitled "LTA cracks down on illegal rental car taxis". In the article, a journalist, Mr Christopher Tan, wrote:

> Other than taxis, only company-owned vehicles insured as limousines and driven by its employees are allowed under the law to ferry passengers for a fee.
>
> This rule is to ensure passengers are covered by insurance should something go wrong during the journey.

21 Arvin had in his possession only the cover sheet of the insurance documents in relation to the limousine. The cover sheet stated that insurance was afforded to a person in the Policyholder's employ and is driving on its order or with its permission. He said that he wanted to know whether he had

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acted properly in driving a Wolero limousine when he was not an employee of that company. However, Wolero alleged that Arvin had an ulterior motive to harm it when he looked into this matter and contacted the LTA.

22 On 13 August 2015, Arvin wrote to the LTA as follows:

> I would like to make enquiries about this company called "Wolero Pte Ltd".
>
> I was one of the Hirer for their vehicle no: SKQ5638H. I signed a Hirer agreement with the company and paid a rental of $3850 per month.
>
> However, the insurance coverage is under Z10 instead of R10.
>
> Can you please advise as this company rented their vehicle not only to me but to more than 90 people in Singapore, allowing hirer to provide public transport service which is Limousine fetch and send service, UBER and GRAB CAR.
>
> Shall they do not have proper coverage in insurance for the drivers and passengers, if any accidents were to happen on the road, what is gonna happen to the people.
>
> As I understand that for Z10, I am hiring the vehicle with a Driver to me. But I rented the vehicle without a driver. I am not the company's and I rented and drove that vehicle providing limousines for their company.
>
> I suspected that this is illegal.
>
> Can you please advise?

23 On 14 August 2015, the LTA's Senior Principal Executive Service Officer, Taxi Operations, Mr Henry Chua ("Mr Chua"), replied to Arvin ("the LTA reply") and advised him to stop driving the limousine and return the vehicle. Mr Chua's reply was as follows:

> We wish to clarify that individual parties are not allowed to lease/rent private hire cars from car rental or limousine service companies to convey members of public on hire and reward terms.
>
> *Only individuals who are under the direct employment of car rental/limousine service businesses are allowed to act as drivers to convey customers of these companies.*

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> …
>
> *If you are currently providing limousine services without an employment contract from the company, we would like to advise you to stop your practice and return the vehicle to them.*
>
> We would also like to share that LTA is currently reviewing measures for the private hire/chauffeured transport services sector to better oversee the industry. Details of these measures will be announced when ready.
>
> [emphasis added]

24 Wolero's case is that it had arranged for proper insurance coverage for the drivers who hired its limousines as the relevant policy issued by its insurers, Liberty Insurance Pte Ltd, stated as follows:

> It is hereby noted and agreed that drivers should be as stated below, otherwise no cover:
>
> (1) Full-time employees of Woleo – Full-time employees of Wolero using the vehicles to ferry Wolero's customers or for their own private use.
>
> (2) Free-lance Drivers who have entered into a formal vehicle leasing contract with Wolero – Free-lance drivers using the vehicles to ferry Wolero's customers or for their own private use.
>
> (3) Lease Drivers who have entered into a formal vehicle leasing contract with Wolero – Drivers who lease the car from Wolero on a long term basis and using it to ferry Wolero's customers as well as their own customers or for their own private use.

25 While Wolero may have had adequate insurance cover, the issue before the LTA was no longer confined to insurance cover for persons such as Arvin as Mr Chua referred to the LTA's rule that "only individuals who are under the direct employment of car rental/limousine service businesses are allowed to act as drivers to convey the customers of these companies". That was why he advised Arvin that if he was currently providing limousine services without an employment contract with Wolero, he should stop doing so and return the limousine.

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26 Arvin forwarded the LTA reply almost immediately to Samsuri. He also shared the LTA's advice with Hafidz.

27 On 17 August 2015, Arvin and Hafidz went to the LTA's office to clarify matters with Mr Chua but was unable to meet him. Instead, they spoke to another LTA officer, Ms Shirley Seah ("Ms Seah"). They told her that Mr Chua's email was in general terms and they wanted to know whether or not Wolero was allowed to hire limousines to them when they were not employees of that company. Arvin said that after reviewing the Hiring Agreement and Service Agreement, Ms Seah informed them that they should have a written note from Wolero stating that they are employees of that company and that clause 5.1 of the Service Agreement, which is as follows, was wrong:

> NO AGENCY OR EMPLOYMENT
>
> 5.1 The Parties hereby irrevocably agree that nothing herein shall be construed as there be [*sic*] in existence between the Parties a relationship of Principal/Agent, Employer/Employee or such any relationship where the Company will be liable for the conduct of the Service Provider.

28 After the meeting, Hafidz decided to return the limousine hired by him from Wolero on that very day. Samsuri and Masran also decided to take the same course of action. Arvin agreed to help them draft a letter to Wolero. The letter was as follows:

> RE: RETURN OF VEHICLE NO …
>
> In regards to the above-mentioned, I, ____ of NRIC NO: ____ hereby return the vehicle to you as the vehicle is not properly insured as in according to the Hirer Agreement NO: ____
>
> ….
>
> According to the LTA, the Car which was hired by me was not a car supposed to be driven by me as it is covered under Z10 insurance.
>
> According to Certificate of Insurance from Liberty Insurance Pte Ltd,

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> "Entitled to drive:
>
> Any person provided he is the policyholder's employ and is driving on their order or with their permission"
>
> It has also come to my attention that I am not your employee as stated in your Service Agreement No: ____.
>
> ….
>
> I am now returning the Car to you as all these while, I am not being covered by proper insurance.
>
> I am returning it on my own freewill.
>
> You will also be hearing from my lawyer soon as I will be claiming what I deserved to claim from you.

29 On the following day, Arvin was able to meet Mr Chua, who stood by the contents of the LTA reply. He said that he asked Mr Chua whether he could share the contents of that email with other drivers who had hired Wolero's limousines and was told that as the LTA reply was an official communication, it "can be shared with the public". Arvin then posted the LTA's reply on the Whatsapp chat for Wolero's drivers.

30 Arvin claimed that he was confused as to why Wolero continued to insist that it was "in the right" when the LTA advised that it was not proper for him to have driven Wolero's limousines to ferry that company's clients. He thus decided to write to the LTA's Chief Executive Officer, Mr Chew Men Leong. In his letter and email dated 24 August 2015, he asked why LTA had not taken action against Wolero since its policy is that only persons who are employees of limousine companies are allowed to provide limousine services to the companies' clients.

31 On 3 October 2015, Arvin wrote to the Prime Minister about his concerns in the matter.

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32 On 28 August 2015, Wolero instituted the present legal proceedings against Arvin in the High Court. At the same time, Wolero sued the four drivers in the State Courts for breach of contract by persistently paying the monthly hire for the limousines later than required under the Hire Agreement. Wolero claimed as liquidated damages of more than $110,000 from each of the four drivers.

33 Notably, in the State Court suits against the four drivers, Wolero contended that it terminated the contracts of the said drivers because they were persistently late in paying the monthly hire for the limousines. However, in the present suit against Arvin, Wolero adopted a different position altogether and claimed that it wanted these drivers to continue to hire its limousines and that the said drivers' contracts were terminated because they prematurely returned the limousines that were hired to them.

[B] WITHDRAWAL OF WOLERO'S CLAIM FOR INDUCING BREACH OF CONTRACT

34 During the trial, Wolero decided to withdraw its case against Arvin for inducing the four drivers to breach their contracts.

35 Arvin, who initially wanted the claim against him for inducing breach of contract to be heard and dismissed, finally agreed to consent to Wolero's application to withdraw this claim on the latter's undertaking that no similar claim would be made against him in the future. Leave was then granted to Wolero to withdraw the claim.

36 The parties agreed that the costs payable by Wolero to Arvin for the withdrawal of the said claim would be agreed upon or taxed.

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[C] WHETHER ARVIN BREACHED THE HIRE AGREEMENT BY FAILING TO PAY HIRE ON 1 JULY 2015

37 Wolero claimed that it was entitled to terminate the Hire Agreement on 11 August 2015 because Arvin did not pay the hire fee for July 2015 on 1 July 2015 in accordance with clause 2.1 of the Hire Agreement, which provides as follows:

> The Hire Rate shall be the sum of SGD3,850.00 (inclusive of GST) per month payable in advance on the 1st day of each month or pro-rated on the date of commencement of this Agreement, as the case may be.

38 For this alleged breach of contract by Arvin in failing to pay one month's hire timeously, Wolero claimed from Arvin liquidated damages totalling more than $110,000 in accordance with clause 9.2.1 of the Hire Agreement, which provides as follows:

> The Customer shall be liable to the Owner as liquidated damages, for the balance of the Hire Rate due under this Agreement as if this Agreement had subsisted and continued for the full Period of Hire ….

39 Admittedly, clause 2.1 of the Hire Agreement provides that the monthly hire of $3,850 is payable on the first of every month and clause 9.1 of the same Agreement provides that Wolero may terminate the Hire Agreement if Arvin failed to pay the monthly hire within seven days after it became due. However, Arvin asserted he did not breach the Hire Agreement by failing to pay the hire for July 2015 on 1 July 2015 because that sum was not due on 1 July 2015 for two reasons. First, he said that clause 2.1 of the Hire Agreement was superseded by an oral agreement. Secondly, he asserted that Wolero was not entitled to rely on clause 2.1 because of estoppel by convention.

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The alleged oral agreement

40 When Arvin met Niki Ong before signing the Hire Agreement and Service Agreement, the latter made a presentation to him on Wolero's new business model. It is Arvin's case that what was discussed formed an oral agreement which must be viewed together with the Hire Agreement and the Service Agreement when considering his contractual relationship with Wolero. He added that it was understood and obvious that any inconsistent term of the Hire Agreement, such as payment of hire on the first day of the month, would be varied by the terms of the Oral Agreement. He pleaded in para 6 of his Counterclaim as follows:

> By an oral agreement made on or at the time of the execution of the [Hire Agreement and Service Agreement] (the "Oral Agreement"), the Plaintiff and Defendant agreed that Clause 2 of the [Hire Agreement] would be varied:
>
> (a) The Plaintiff proposed to set off each month's Hire Rate from the sums payable to the Defendant under the [Service Agreement].
>
> (b) Under the arrangement, the Defendant would not be required to pay the Hire Rate on the 1st day of any month. Rather, the Plaintiff would:
>
> i. at the end of each month, consider the aggregate sum payable to the Defendant for all Send and Fetch Services … completed in a month;
>
> ii. set-off the Hire Rate payable that month from this sum; and
>
> iii. pay the Defendant any remaining sum.
>
> ….
>
> 7. It was understood that the [Hire Agreement, Service Agreement] and Oral Agreement together constituted the agreement between parties.

41 Wolero did not accept that there was a separate oral agreement apart from the Hiring Agreement and Service Agreement. However, its main witness, Niki Ong, acknowledged that the presentation that he made to Arvin

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and other drivers before they agreed to sign the Hire Agreement and the Service Agreement was an understanding between Wolero and the drivers on how these two agreements would operate.

42 It is thus necessary to determine what Niki Ong said at his presentation to Arvin. To begin with, he admitted that he informed Arvin that the amount earned under the Service Agreement will be set off against the hire *at the end of the month*. When cross-examined, he testified as follows:[1]

> Q: … *[Y]ou definitely told Arvin that the plaintiff, Wolero, would set off the amount under the service agreement against the hire agreement.* So there is always that calculation. *And you agreed earlier with me that the calculation can only be done at the end of the month.*
>
> A; *That's right, Ma'am.*
>
> [emphasis added]

43 Crucially, Niki Ong testified that what he presented to Arvin about the off-setting of the monthly hire for the limousine at the end of the month was in fact the "*true arrangement*" between Wolero and Arvin. The relevant part of the proceedings is as follows:[2]

> Q: … So, Mr Ong, I also put it to you that what you've described in this presentation … *was really the true arrangement between Wolero and Arvin.* Take your time, Mr Ong ….
>
> A: *Yes.*
>
> ….
>
> Q: I'll take it one step further, Mr Ong, and say that … *what you said in this presentation were the terms of the agreement between Wolero and Arvin.*
>
> A: *It's what states --- in that aspect, yes, yah.*

[1] Transcript, Day 2, 3 November 2016, p 25, lines 14-18.

[2] Transcript, Day 2, 3 November 2016, p 26, lines 8–26.

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…

Q: Sure, I was putting it to you that the terms or rather that what you said ---

A: Yah.

Q --- *in this presentation was in fact the terms of the agreement between Wolero and Arvin.*

A: *That's right.* It's part of [Hire Agreement] and [Service Agreement], yah.

[emphasis added]

44 Niki Ong was fully aware of the fact that Wolero's system of off-setting hire at the end of the month was inconsistent with clause 2.1 of the Hire Agreement. Despite this, he admitted that the "*correct arrangement*" was that hire was off-set only at the end of the month and not that stipulated in clause 2.1 of the Hire Agreement. He testified as follows:[3]

Q: … [T]he logical conclusion of this set-off is that you would have to wait until the end of the month to decide … whether the hire rate has been completely set off, yes?

A: Yes, yes, yes.

Q: And *that is inconsistent with the term in the hire agreement?*

A: *That's right.*

….

Q: But of course, where there is any inconsistency, *it is what you explained to the drivers that really was the correct arrangement?*

A: Yes.

[emphasis added]

---

[3] Transcripts, Day 2, 3 November 2016, p 27, lines 16-27.

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45 In a desperate attempt to shore up his company's case, Niki Ong suggested that the company had a discretion whether or not to insist on a strict performance of clause 2.1 of the Hire Agreement and require Arvin to pay the July 2015 hire on 1 July 2015. However, this suggestion made no sense in the context of his evidence that he had told the limousine drivers, including Arvin, that their earnings under the Service Contract will be set off against the monthly hire at the end of each month, that this was the "true arrangement" and "correct arrangement" and that this arrangement would override any inconsistency in the Hire Agreement. Furthermore, he conceded that the question of a discretion did not arise because the off-setting will "always happen". His testimony which puts paid to his belated argument regarding Wolero's discretion not to enforce clause 2.1 of the Hire Agreement, is as follows:[4]

> Q: [Reads from Niki Ong's AEIC] "It was also made clear that the Plaintiff would set off the amount(s) due to the attendees under the Services Agreement against the monthly lease due under the Hire Agreement."
>
> A: That's right.
>
> Q: Mr Ong, I stress two words there. One is "set-off", yes?
>
> A: Yes.
>
> Q: And the other is "would".
>
> A: Yes.
>
> Q: *That's --- that leaves no discretion, does it, Mr Ong? It means it will always happen.*
>
> A: *Yah.*
>
> [emphasis added]

[4] Transcript, Day 2, 3 November 2016, p 24, lines 30-32, p 25, lines 1-8.

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46 Interestingly, when the Hire Agreement was terminated on 11 August 2015, reference was made in the termination letter only to Arvin's failure to pay the July 2015 monthly hire. By then, the monthly hire for August 2015 was, on Wolero's case, already due on 1 August 2015. Despite this, there was no reference in the termination letter to the monthly hire for August 2015.

47 Niki Ong's reason for not demanding the August 2015 payment at the same time when the July 2015 hire was demanded in the termination letter demolished his company's case that hire was due on the first of every month. He testified as follows:[5]

> Q: ….So definitely by 11th August 2015, the August hire rate was late.
>
> A: Yah.
>
> Q: But your lawyers did not ask or mention it in their letter. You did not instruct or --- no okay, perhaps not you, Mr Ong, but ---
>
> A: Mm,
>
> Q: --- Wolero did not instruct the lawyers to mention August's hire rate in the letter, yes?
>
> A: Yah.
>
> Q: And I put it to you, Mr Ong, that *the reason why there was that omission was because Wolero did not genuinely believe that the hire rate would have been due on the first of the month.*
>
> A: Basically, I think –
>
> Q: Yes or no, Mr Ong?
>
> A: Yes.
>
> [emphasis added]

---

[5] Transcript, Day 2, 3 November 2016, p 36, lines 18-32.

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48 As there was ample evidence that there was a separate agreement on the time of payment of the monthly hire that contradicted and prevailed over clause 2.1 of the Hire Agreement, Arvin was not required to pay hire on the first day of each month. In view of this, I find that he did not breach the Hire Agreement by not paying the hire due for July 2015 on the first day of that month.

Estoppel by convention

49 Arvin had another string in his bow in relation to Wolero's assertion that he breached the Hire Agreement by failing to pay the monthly hire for July 2015 on 1 July 2015. He relied on estoppel by convention and asserted that Wolero is estopped from relying on clause 2.1 of the Hire Agreement.

50 Estoppel by convention concerns an estoppel arising out of a mutually held common belief in a state of affairs. In *Panchaud Freres SA v Etablissements General Grain Company* [1970] 1 Lloyd's Rep 53, Lord Denning MR observed (at p 57) that the basis of estoppel by conduct is that a man "has so conducted himself that it would be unfair or unjust to allow him to depart from a particular state of affairs which another has taken to be settled or correct". In *Singapore Telecommunications Ltd v Starhub Cable Vision Ltd* [2006] 2 SLR(R) 195, the Court of Appeal referred (at [28]) to the minimum requirements for an estoppel by convention as follows:

> The minimum requirements for the doctrine of estoppel by convention to apply are, on the authority of *Republic of India v India Steamship Co Ltd (No 2)* [1998] AC 878 at 913, that:
>
> (a) the parties to a transaction act on an assumed state of facts or law;
>
> (b) the assumption is either one which both parties share or one which is made by one party and acquiesced in by the other; and

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> (c) in the case of a shared assumption, there is either an "agreement or something very close to it" in respect of the assumption.
>
> If these requirements are satisfied, the parties are precluded from denying the truth of that assumption if it would be unjust or unconscionable to allow them (or one of them) to go back on it ….

51 In *Singapore Island Country Club v Hilborne* [1996] 2 SLR(R) 418, the Court of Appeal referred (at [27]) to the criteria for proving an estoppel by convention in the following terms:

> … The criteria for establishing an estoppel by convention are:
>
> (a) that there must be a course of dealing between the two parties in a contractual relationship;
>
> (b) that the course of dealing must be such that both parties must have proceeded on the basis of an agreed interpretation of the contract; and
>
> (c) that it must be unjust to allow one party to go back on the agreed interpretation….

52 I have found that Niki Ong represented to Arvin and to other Wolero drivers that the monthly hire for the limousine will be set-off by earnings for jobs provided by Wolero in accordance with the terms of the Service Agreement ("the representation"). Arvin contended that he was induced by and relied on the representation to sign the Hire Agreement and the Service Agreement.

53 I have also found that although the representation is inconsistent with clause 2.1 of the Hire Agreement, which requires the monthly hire for the limousine to be paid on the first day of each month, the representation, as Niki Ong admitted, reflected the "true arrangement" and the "correct arrangement".

54 There was ample evidence that the parties consistently conducted their affairs on the basis of the representation. Until the Hire Agreement was

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terminated by Wolero on 11 August 2015, Arvin had never paid the monthly hire for the limousine in advance on the first day of each month and Wolero had never complained about this or demanded that he comply with clause 2.1 of the Hire Agreement. Arvin asserted that this course of dealing was so ingrained that it would now be unjust for Wolero to rely on the strict terms of the Hire Agreement in relation to the payment of hire in advance on the first day of July 2015 to terminate the contract in August 2015.

55 Niki Ong conceded time and again that Arvin was not required to pay the monthly rental on the first day of each month. For instance, he testified as follows:[6]

> Q: … [A]rvin *never pays on the 1st of the month*. Right? He doesn't transfer $3,850 to Wolero. Correct?
>
> A: *That's right*, Ma'am.
>
> Q: Okay. And then, at the end of the month, under the service agreement, Wolero would have to pay for the jobs. Correct? So, for example, if we see the jobs done in January, let's use that number. That's $7,774. Do you see that in the last line?
>
> A: Yes, that's right, Ma'am.
>
> Q So, under the service agreement, technically, this amount is payable to Arvin. But … did Wolero pay Arvin $7,774?
>
> A: No, we offset ---
>
> Q: No.
>
> A: --- the rental.
>
> Q: Exactly. *So you had to do the calculation and only one single sum is transferred to Arvin.*
>
> A: *That's right.*
>
> Q: *And that is only possible at the end of the month.*

---

[6] Transcript, Day 2, 3 November 2016, p 10, lines 27-31 and p 11, lines 1-13.

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A: *That's right.*

[emphasis added]

56 Niki Ong admitted that this consistent conduct in off-setting the hire against the earnings under the Service Agreement was because "there was an agreement that it would be netted off at the end of the month"[7] and that as a result of such conduct, Wolero had "no expectation" that the hire for each month would be paid on the first day of each month. The relevant part of the proceedings is as follows:[8]

Q: …. And I put it to you, Mr Ong, that in accordance with this presentation, *Wolero has … consistently netted off the hire rate at the end of the month.*

A: *Yes.*

A: … I put it to you that as [is] evident from *this consistent conduct*, Wolero never expected the hire rate to be paid on the 1st of the month.

A: Er, *yes.*

[emphasis added]

57 In the light of the consistent pattern adopted by both parties in relation to the date for payment of the monthly hire for the limousine, it would be certainly be inequitable for Wolero to change its position without notice and allege that Arvin breached the Hire Agreement by not paying the July 2015 hire on the first day of that month.

Conclusion on whether or not Arvin breached the Hire Agreement

58 As I have found that Arvin did not breach the Hire Agreement in July 2015 and that Wolero was not entitled to terminate the contract on 11 August

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[7] Transcript, Day 2, p 25, lines 28-32.

[8] Transcript, Day 2, 3 November 2016, p 26, lines 27-32, p 27, lines 1-2.

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2015, it follows that Wolero breached its Hire Agreement with Arvin by terminating it on 11 August 2015. In view of this, Wolero's claim for damages for Arvin's alleged breach of the Hire Agreement is dismissed. As Wolero is clearly not entitled to the damages claimed by them for breach of contract, it is unnecessary for me to consider whether or not clause 9 of the Hire Agreement is a penalty clause.

[D] UNLAWFUL INTERFERENCE WITH WOLERO'S CONTRACTS WITH THE FOUR DRIVERS

59 Although Wolero withdrew its claim against Arvin for inducing breach of contract, it maintained its claim against him in relation to the the tort of causing loss by unlawful means. It alleged that Arvin unlawfully interfered with its contracts with the four drivers and caused it loss. Unlike the tort of inducing breach of contract, which concerns accessory liability that is dependent on the primary wrongful act of the contracting party, the tort of causing loss by unlawful means is a tort of primary liability that does not require a wrongful act by anyone else. In *OBG Ltd* v *Allan* [2008] 1 AC 1, Lord Hoffman explained (at [47]) that the "essence of the tort … appears to be (a) a wrongful interference with the actions of a third party in which the claimant has an economic interest and (b) an intention thereby to cause loss to the claimant" while Lord Nicholls stated (at [141]) that the "gist of this tort is intentionally damaging another's business by unlawful means".

60 As for whether or not the tort of causing loss by unlawful means forms part of the law in Singapore, a point raised by Wolero's counsel, there is no reason why the tort of causing loss by unlawful means, which is an integral part of the basket of economic torts and is distinct from the tort of inducing breach of contract, should not be part of the law in Singapore. In *Paragon Shipping Pte Ltd v Freight Connect (S) Pte Ltd* [2014] 4 SLR 574, a claim for

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damages for the tort of causing loss by unlawful means was considered by Judith Prakash J, as she then was. In this case, the defendant, who chartered a vessel from the plaintiff, contended that the latter was liable to it for wrongful interference with its trade. In rejecting the defendant's claim because it was unproven, Judith Prakash J stated (at [83]) as follows:

> To establish a claim of wrongful interference with trade, the claimant must show that (a) the defendant has committed an unlawful act affecting a third party; (b) the defendant acted with an intention to injure the claimant; and (c) the defendant's conduct in fact resulted in damage to the claimant: Gary Chan Kok Yew & Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2011) at para 15.028. The defendant fails on all three counts.

61 It may also be noted that in two decisions which did not concern the tort of causing loss by unlawful means, the Court of Appeal referred to this tort without indicating that it is not part of the legal landscape in Singapore. In *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407, the Court of Appeal pointed out that the plaintiff should have focused on arguments on inducing breach of contract rather than confusing its claim with one for unlawful interference. More recently, in *EFT Holdings Inc v Marinteknik Shipbuilders (S) Pte Ltd* [2014] 1 SLR 860 ("*EFT Holdings*"), the Court of Appeal considered the English position on economic torts and the ramifications of *OBG v Allan* without any suggestion that the tort of causing loss by unlawful means is not part of Singapore law. Sundaresh Menon CJ specifically mentioned this tort when he stated (at [71]) as follows:

> At least a few propositions seem clear. The first is that there appears to be two types of settings in which such torts might arise. The first has been termed the "three-party setting" which envisages the involvement of a third party or intermediary either as the primary wrongdoer (*eg*, the intermediary who actually breaches the contract in the tort of inducement of breach of

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> contract, as was laid down in *Lumley v Gye* [1853] EWHC QB J73) *or as the victim of the wrongful act of the defendant (*eg*, in the tort of unlawful interference with business – also known as the tort of causing loss by unlawful means – such as where a defendant intends to injure the claimant by wrongful interference with a third party's actions) ….*
>
> [emphasis added]

62 The tort of causing loss by unlawful means is still being developed and there are divergent views on the rationale for its existence. However, what is clear is that this tort requires the use of unlawful means and an intention by the defendant to cause loss to the plaintiff. As for what "unlawful means" entails, in *OBG Ltd v Allan*, Lord Hoffman stated (at [49] and [51]) as follows:

> 49 In my opinion, and subject to one qualification, acts against a third party count as unlawful means only if they are actionable by that third party. The qualification is that they will also be unlawful means if the only reason why they are not actionable is because the third party has suffered no loss….
>
> 51 Unlawful means therefore consists of acts intended to cause loss to the claimant by interfering with the freedom of a third party in a way which is unlawful as against that third party and which is intended to cause loss to the claimant. It does not in my opinion include acts which may be unlawful against a third party but which do not affect his freedom to deal with the claimant.

63 The ambit of "unlawful means" has been a troublesome aspect of the tort of causing loss by unlawful means. Lord Hoffman's approach in *OBG Ltd v Allan*, which requires the unlawful act to be actionable by the third party and to affect the freedom of the third party to deal with the plaintiff, was approved by a majority of their Lordships. It is limited in scope as it excludes criminal conduct and statutory offences. In the same case, Lord Nicholls preferred (at [162]) a wider approach and said that what amounts to unlawful means

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"embraces all acts a defendant is not permitted to do, whether by the civil law or the criminal law" while Lord Walker pointed out (at [269]) that the views expressed in this case on the control mechanism needed in order to stop the notion of unlawful means from getting out of hand is unlikely to be the last word on this difficult and important area of the law.

64 It may be noted that in relation to another tort, namely unlawful means conspiracy, in *Revenue and Customs Comissioners v Total Network SL* [2008] 1 AC 1175 ("*Total Network*"), the House of Lords accepted that criminal conduct at common law or by statute can constitute unlawful means. In *Beckkett Pte Ltd v Deutsche Bank AG* [2009] 3 SLR(R) 452, Chan Sek Keong CJ, relying on *Total Network,* opined (at [120]) that "in unlawful means conspiracy, the element of unlawfulness covers both a criminal act or means, as well as an intentional act that is tortious".

65 The controversy regarding the ambit of the term "unlawful means" for the tort of causing loss by unlawful means need not be considered any further in the present case, which involves a "three-party setting", for the simple reason that Wolero did not plead or prove the unlawful means employed by Arvin to cause it loss. This means that it also could not establish that the freedom of the four drivers to conduct their contractual relationship with Wolero was restricted by unlawful means employed by Arvin. In its Statement of Claim, Wolero merely pleaded at paras 14 and 15 as follows:

> 14 The Defendant, knowing, by reason of the Defendant's interaction with [the four drivers], at all material times of the existence of the Contracts, wrongfully and with intent to injure the Plaintiff, procured and induced [the four drivers] to break their respective contracts with the Plaintiff and to refuse to perform or further perform the same.
>
> PARTICULARS

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> Subject to discovery and interrogatories, if any, the following are the best particulars available.
>
> a. The Defendant had written to the Land Transport Authority ("LTA") on or about 13 August 2015 ….
>
> b. The LTA had replied by way of an email dated 14 August 2015 to the Defendant ….
>
> c. Subsequently, the Defendant, through his solicitors informed the Plaintiff, through their solicitors, that the basis for LTA's reply is that the Car was required to be covered under R10 insurance whilst the Plaintiff had covered the Car under Z10 insurance;
>
> d. The Defendants subsequently utilized part of the LTA's Reply, namely, that which read –
>
> "*If you are currently providing limousine services without an employment contract [from] the company, we would like to advise you to stop your practice and return the vehicle to them.*"
>
> And published the same on at least one WhatsApp Group and called upon people in the WhatsApp Group to return their cars to the Plaintiff.
>
> e. As a result of the aforesaid, Samsuri, Masran, Hasrin and Hafidz returned the cars hired under [their Hire Agreements] ….
>
> f. When the cars [hired by the four drivers] were returned by Samsuri, Masran, Hasrin and Hafidz respectively, the Defendant was present.
>
> g. The Defendant, had before the aforesaid, threatened to destroy the Plaintiff's business.
>
> 15 By reason of such procurement and inducement, Samsuri, Masran, Hasrin and Hafidz did break and refuse to perform or further perform the Contracts.

66 All that Wolero alleged in its Statement of Claim was that there is a chain of events that might suggest some impropriety on Arvin's part. The events include Arvin's writing of a letter to the LTA on 13 August 2015, his dissemination of the LTA's reply and his presence at the scene when the four drivers returned their limousines to Wolero. However, Niki Ong readily

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testified that Arvin did nothing wrong in writing to the LTA and disseminating the LTA's reply. With respect to Arvin's communication with the LTA, the relevant part of his testimony is as follows:[9]

> Q: *…So, do you think that Arvin writing to the LTA was wrong?*
>
> A: *No.*
>
> Q: So Arvin could write to the LTA.
>
> A: Anybody can write to the LTA, thank you.
>
> Q. *So … you have no complaint that Arvin wrote to the LTA.*
>
> A: *No.*
>
> [emphasis added]

67 In relation to Arvin's dissemination of the LTA's reply to his fellow drivers, Niki Ong's important concession that there was also nothing wrong with this action is as follows:[10]

> Q: And so, Arvin tells all the drivers in this WhatsApp chat, including the four drivers that Mr Henry Chua had said that he can share the email with them. Now that you have seen that, Mr Ong, was it wrong for Arvin to share the LTA email on the WhatsApp Chat?
>
> A: Your ---
>
> Q: In your opinion, was it wrong for him to share ---
>
> A: Your ---
>
> Q: --- the chat?
>
> A: --- our Honour, this morning [I stated] that *that was not wrong, it can be shared.…*
>
> ….
>
> Q: So, yes, *there was nothing wrong* ---

[9] Transcript, Day 2, 3 November 2016, p 42, lines 18-32.

[10] Transcript, Day 2, 3 November 2016, p 73, lines 12-30.

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> A: Yah.
>
> Q: *--- in Arvin sharing the LTA reply in the WhatsApp chat group ---*
>
> A: *Yah.*
>
> [emphasis added]

68 As for Arvin's presence at the scene when some of the limousines were returned to Wolero by the four drivers and his role in drafting the letters handed over to Wolero by some of the drivers when they returned their limousines, these are not unlawful acts. Samsuri stated in his AEIC that he had asked Arvin to be present when he returned the car as he wanted a ride home after returning the car. He was not cross-examined on this assertion and there is no evidence to contradict his assertion.

69 By failing to show that Arvin used unlawful means to cause it loss, Wolero also failed to prove another requirement for this tort, which is that the freedom of the four drivers to perform their contracts with Wolero was interfered with by unlawful means used by him. In its closing submissions, Wolero stated its position on this matter at paras 63-65 as follows:

> 63 Driving without proper insurance is no doubt a serious offence. DW1, DW2, DW3 and Mr Masran know that they would face serious criminal sanctions.
>
> 64 Furthermore, without proper insurance, DW1, DW2, DW3 and Mr Masran faced the unenviable prospect of having to pay out of pocket for any damages which they may cause while driving the Plaintiff's car under their respective [Hire Agreements].
>
> 65 *Faced with these serious repercussions, [the four drivers'] freedom to contract with the Plaintiff was no doubt affected.*
>
> [emphasis added]

70 Wolero missed the point altogether as the court was left in the dark as to how Arvin had used unlawful means to restrict the freedom of the four

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drivers in their dealings with Wolero. It is rather telling that when three of the four drivers, namely, Hafidz, Samsuri and Hasrin, testified at the trial, they were not cross-examined by Wolero's counsel on whether or not Arvin had acted in an unlawful manner to interfere with their liberty to conduct their contractual relations with Wolero. Significantly, Samsuri stated in his AEIC (at paragraph 108) that he believed that those who chose to return the limousines hired by them to Wolero did so on their own volition. He added that he "certainly did". Samsuri's evidence on this matter was not challenged when he was cross-examined.

71 Wolero's counsel focused his cross-examination of Hafidz, Samsuri and Hasrin on establishing that they had been adequately covered by insurance and that Wolero was not responsible for the shortfall in their earnings under their Service Agreements. These questions may be relevant in Wolero's suits against the four drivers in the State Courts for breach of contract but considering that in this case, Arvin's unlawful interference with the freedom of the four drivers to continue with their contracts with Wolero is an essential ingredient of the tort of causing loss by unlawful means, why no attempt was made to establish during the cross-examination of these witnesses that Arvin had acted unlawfully or that he had restricted their freedom to deal with Wolero cannot be fathomed.

72 It is pertinent to note that in the WhatsApp chat for Wolero's drivers, Arvin did not ask any driver to return the limousines hired from Wolero. In fact, the transcripts of the chats show that Arvin made the following comments:

(i) Anyway bros, I will [share] with you all what I encountered. *But how you all want to think is up to you;*

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> (ii) Bros, anything I said or post here is for your reference only. *How you want to deal with it, it's up to you. OK??*
>
> [emphasis added]

73 Furthermore, on one occasion when the drivers appeared rather agitated while chatting, Arvin specifically stated to them as follows:

> Bros, everyone here is above 21 years of age. *So, they have a mind of their own. Let them [decide] their fate themselves.*
>
> [emphasis added]

74 Finally, Wolero's position in the present proceedings that Arvin is responsible for the breach by the four drivers of their contracts in returning the limousines prematurely to it is totally inconsistent with its position in its suits in the State Courts against the four drivers, which is that it terminated its contracts with them because they were persistently late in paying the monthly hire due for their limousines.

75 When cross-examined, Niki Ong, who initially admitted that his company had taken inconsistent positions in the present proceedings and in the State Courts, could not furnish a reason for the inconsistency. The relevant part of the cross-examination is as follows:[11]

> Q: [Wolero is] suing the drivers … for failing to pay their hire rate. Is that right?
>
> A: Yes, that's right.
>
> Q: And … because they failed to pay their hire rate, Wolero asked them to return their cars. Do you see that?
>
> A: Yes, that's right.
>
> Q: And you agree?
>
> A: Yes.

[11] Transcript, Day 2, 3 November 2016, p 88, lines 1-21.

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> Q: So on one hand … you say that Arvin enticed these drivers to return their cars, which means Wolero did not want them to return their cars. Do you agree? Yes or no, Mr Ong?
>
> A: Yes.
>
> Q: Yes. But in these suits in the State Courts which you are bringing against the same drivers, you say "I wanted you to return the car because you didn't pay your hire rate." Is that right, Mr Ong?
>
> A: Yes, that's right, Your Honour.
>
> Q: And *do you agree that that's inconsistent?*
>
> A: *I can say so.*
>
> Q: You agree that that it's inconsistent. And is there any way that you can explain that, Mr Ong?
>
> A: *I will leave it to my lawyers to explain.*
>
> [emphasis added]

76 When pressed to explain his company's stand on the inconsistency, Niki Ong gave the rather astounding evidence that both inconsistent versions were true.[12] In view of this, he was asked once again to decide on which version of events is true. His testimony was as follows:[13]

> Q: … [I] would put it to Mr Ong that the story in this suit … is not correct.
>
> A: Mm, er --
>
> Q: That this LTA reply issue or that my client had encouraged them or enticed them to return their cars … cannot be true …. Wolero does not genuinely believe that that is what has happened, because at the same time, it is blaming the drivers for returning their cars on a completely different issue … about failing to pay money.
>
> A: Your Honour, … *basically I can't answer this, because* -- [end of answer]

---

[12] Transcript, Day 2, 3 November 2016, p 90, lines 16-30, p 91, lines 3-6.

[13] Transcript, Day 2, 3 November 2016, p 92, lines 15-30, p 91, lines 3-6, p 93, lines 15-24

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[emphasis added]

77 Although Niki Ong said he would leave it to his lawyers to explain the inconsistency in Wolero's claims in these proceedings and in the suits against the four drivers in the State Courts, no convincing explanation for this inconsistence was furnished by his counsel during the trial or in Wolero's closing submissions.

78 To sum up, Wolero failed to plead the alleged unlawful means adopted by Arvin, did not produce proper evidence of any unlawful means adopted by Arvin and did not show how the freedom of the four drivers to deal with Wolero has been interfered with. It follows that its claim against Arvin for causing it loss by unlawful means must be dismissed.

[E] WOLERO'S APPLICATION FOR AN INJUNCTION

79 In its Statement of Claim, Wolero sought the following remedy:

> An injunction to restrain the Defendant from and to prevent the Defendant from committing a repetition thereof, inducing or procuring breaches of unlawfully interfering in contracts between the Plaintiff and such other persons, in so far as such contracts similar to the Contracts.

80 As Wolero withdrew its claim against Arvin for inducing breach of contract and as I have found that its claim in relation to the tort of causing loss by unlawful means has no merit whatsoever, its application for an injunction need not be considered any further.

[F] THE MISSING LOGOS AND MECHANICAL PART OF THE LIMOUSINE KEY

81 Apart from the claims already discussed, Wolero sought compensation from Arvin for two missing logos on the doors of the limousine hired to him

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and for a missing mechanical part of the limousine key. Wolero claimed $500 for the reinstatement of the "W" logo and $200 for the replacement of the mechanical part of the limousine key.

82 Arvin admitted that the "W" logo on the limousine doors was not restored and that the mechanical part of the limousine key was not returned, He said that he had no opportunity to restore the "W" logo or to replace the mechanical part of the key because Wolero demanded that he return the limousine by the very next day. He pointed out that on 19 August 2015, prior to the commencement of these proceedings, he had offered to pay for the replacement of the mechanical part of the key but Wolero did not respond to his offer.

83 During the trial, the parties settled the claim for the cost of reinstating the "W" logo and the mechanical part of the limousine key. Under the settlement, Arvin agreed to pay Wolero $160 for the reinstatement of the "W" logo on the doors and $200 for the missing part of the key. As such, this claim need not be considered any further in this judgment.

[G] ARVIN'S COUNTERCLAIM

84 Arvin's counterclaim for $4,890 relates to money allegedly due to him by Wolero for the latter's failure to assign him at least 110 job assignments per month, and for the deposit that he paid to Wolero when he hired the limousine.

85 Clause 1.3 of the Service Agreement provides that if Wolero failed to provide the requisite 110 job assignments in a month, "the Company shall compensate the Service Provider for the balance of the Send and Fetch Services up to the Requisite Number of Send and Fetch Services". Arvin was short of 13 jobs in May 2015, 24 jobs in June 2015 and 17 jobs in July 2015.

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According to Arvin, the shortage of job assignments resulted from Wolero's expansion of its fleet of limousines in April, with an attendant increase in the number of Hire Agreements and Service Agreements. As such, there were not enough job assignments for the increased pool of drivers.

86 There was contemporaneous evidence that Wolero's Call Centre Manager, Mr Mohd Yusmadi bin Mohd Yussof ("Yusmadi"), admitted that there was a shortage of jobs in a discussion with Arvin on 3 August 2015. The relevant part of the transcript of the discussion is as follows:

> Arvin: Is Wolero facing jobs shortage problem? It wasn't like this last time.
>
> Yusmadi: *I agree that job shortage is there for everyone to see.*
>
> [emphasis added]

87 When cross-examined, Yusmadi admitted that he had told Arvin that the "job shortage is there for everyone to see".[14] Despite this, he toed Wolero's line that there was no shortage of jobs at the material time but he made no attempt to explain why he had admitted to Arvin that there was a job shortage.

88 It is pertinent to note that Arvin was not the only driver complaining about the shortfall of job assignments during the material time. On 24 July 2015, nearly 40 of Wolero's drivers met the management team, including Niki Ong, to air their grievances with the shortfall of jobs and the lack of advance notice for job advancements.

89 Hasrin, one of the four drivers, who entered into a Hire Agreement and Service Agreement with Wolero in late March 2015, also complained of a

[14] Transcript, Day 1, 2 November 2016, p 24, lines 16-17.

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shortage of jobs during the material time. He stated in his AEIC at paras 16-17 and at para 32 as follows:

> 16 However, when I started working for Wolero, I realized that Wolero was not keeping up its end of the agreement.
>
> 17 For all my months of driving for Wolero, I did not get the guaranteed number of "Send and Fetch" jobs. This meant that I was never able to hit the S$3,850 mark that Wolero had promised.
>
> ....
>
> 32 I was not the only one facing problems with Wolero. Many others were also complaining about the insufficient number of "Send and Fetch" jobs given to them, or the poor notice that they were given for the "Send and Fetch" jobs that were allocated to them.

90 Wolero did not dispute that Arvin did not have 110 job assignments in the months in question. However, it alleged that the shortage of assignments was self-induced because Arvin had restricted his driving time to between 12 noon and 8 pm and had turned down many jobs. This allegation was not substantiated.

91 Arvin denied having refused to drive the limousine other than between 12 noon and 8 pm. Wolero's Call Centre Agent, Mr Cruz Tammuel Gaviola ("Cruz"), confirmed that he had merely been asked to "try to accommodate" the timing.[15] Furthermore, there was evidence in Wolero's own documents that Arvin undertook many job assignments before 12 noon and after 8 pm in May and June 2015.

92 As for Wolero's allegation that Arvin rejected job assignments, Arvin said at para 58 of his AEIC:

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[15] Transcript, Day 1, 2 November 2016, p 37, lines 15-17.

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> I remember very few occasions on which I had refused to take on jobs. The only times … were when I had been asked to take up [jobs] with too little advance notice. Put simply, I do not think that these jobs were "rejected" by me – they were simply unfeasible to take up.

93 Under clause 1.2 of the Service Agreement, Wolero was required to give one day's notice to the drivers for a job assignment and Arvin cannot be faulted if he does not accept a job assignment without have been given the requisite notice. To support its assertion that Arvin turned down jobs, Wolero adduced four transcripts of conversations recorded by its call centre ("call transcripts") regarding job assignments that allegedly showed that Arvin rejected four assignments allocated to him.

94 The call transcripts did not take Wolero's case very far. For a start, none of the call transcripts indicated the date and time of the calls referred to therein and a question arises as to whether the calls were made within or outside the relevant time frame of May to June 2015. Furthermore, one of Wolero's witnesses who testified on the transcripts, Cruz, was not involved in any of the calls that had been transcribed while its other witness, Yusmadi, who was not involved in the first, second and third recorded calls to Arvin, was initially not even sure whether he was the person who was on duty during the fourth call. In any case, even if the call transcripts showed that Arvin turned down four job assignments, he complained about a shortage of 54 job assignments during the relevant period and it does not follow if he declined four job assignments, he rejected another 50 job assignments.

95 Apart from the problems with the call transcripts already mentioned, the first call transcript revealed that Arvin mentioned several times that he had received the job assignment "just now", This indicates that he had not been given the required notice of one day for this job as was required under the

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Service Agreement. As such, he was entitled to reject this assignment. Arvin's evidence was not effectively contradicted.

96 As for the second and third call transcripts, they also concerned job assignments given to Arvin without the requisite notice of one day. As such, Arvin was also entitled to reject these assignments under the terms of the Service Agreement.

97 With respect to the fourth call transcript, while Cruz thought that this involved an assignment in respect of which the requisite one day's notice was given, he based his belief on the fact that one of his colleagues mentioned that he needed to call "Niki" about this. How this proved that Arvin rejected the assignment without justification was not explained.

98 I now turn to Wolero's contention that Arvin is precluded from complaining about a shortfall of job assignments because he made a payment in cash on 28 July 2015 for the shortfall in the hire for May 2015 and June 2015. Arvin said that he paid these amounts in order "to avoid any trouble". His counsel pointed out that less than two weeks after making these payments, his then solicitors wrote to demand that he be paid compensation on the ground that Wolero had failed to provide him with the requisite number of job assignments required by the Service Agreement. I accept that the fact that Arvin had paid the said amounts on 28 July 2015 does not bar him from asserting his rights under the Service Agreement.

99 I find that the shortage of 54 job assignments given to Arvin in May, June and July 2015 was not due to the latter's fault. As such, Arvin is entitled to be compensated for the shortage of jobs during the stated period.

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[H] COSTS

100 Arvin is entitled to costs.

Tan Lee Meng
Senior Judge

Ismail bin Atan (Salem Ibrahim LLC) for the plaintiff;
Reshma Nair and Chew Wai Yin, Michelle (TSMP Law Corporation)
for the defendant.

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