IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2019] SGHC 171

Suit No 981 of 2016

Between

Btech Engineering Pte Ltd

… Plaintiff

And

Novellers Pte Ltd

… Defendant

And

Novellers Pte Ltd

… Plaintiff in Counterclaim

And

Btech Engineering Pte Ltd

… Defendant in Counterclaim

JUDGMENT

[Contract] — [Discharge] — [Breach]
[Tort] — [Conversion]
[Civil Procedure] — [Discovery of documents] — [Striking out]
[Confidence] — [Remedies] — [Delivery up and destruction]

Version No 1: 27 Oct 2020 (22:41 hrs)

TABLE OF CONTENTS

Version No 1: 27 Oct 2020 (22:41 hrs)

Version No 1: 27 Oct 2020 (22:41 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Btech Engineering Pte Ltd
v
Novellers Pte Ltd

[2019] SGHC 171

High Court — Suit No 981 of 2016
Quentin Loh J
9–11 May 2018; 27 June 2018

23 July 2019 Judgment reserved.

Quentin Loh J:

Introduction

1 The plaintiff, Btech Engineering Pte Ltd ("Btech"), claims in these proceedings several sums allegedly owing under an oral agreement between the parties. The defendant, Novellers Pte Ltd ("Novellers"), denies that such a term existed. Novellers also counterclaims for damages and various reliefs in respect of Btech's repudiation of the oral agreement and unlawful detention of Novellers' property.

2 The trial was bifurcated by consent of the parties.[1] This judgment deals with both liability and quantum for Btech's claim but only liability for

[1] Minute Sheet of hearing before AR Una Khng on 27 March 2018.

Novellers' counterclaim. Determination of loss suffered and quantification of damages for the counterclaim were reserved to the next tranche.[2]

The facts

3 Btech is a general wholesale distributor of engineering products. Its director is Mr Ang Tuan Beng ("Mr Ang").[3] Novellers was incorporated on 5 July 2012 and is a manufacturer of engineering products, in particular elastomer seals. Its current director is Dr Ng Soo Yeng ("Dr Huang").[4]

4 Mr Ang and Dr Huang first met sometime in 2003. At the time, Btech was the sole distributor (in Singapore) of elastomer seals manufactured by Precision Polymer Engineering Limited ("PPE"), which was based in the United Kingdom. Dr Huang was PPE's Head of Material Technology and Business Manager for the Asia-Pacific region.[5] As Head of Material Technology, Dr Huang was involved in the development and manufacture of elastomer seals for PPE's clients, and his responsibilities included selection of raw ingredients and determination of the appropriate manufacturing process.[6]

5 From time to time, both men would discuss the possibility of setting up an entity in Singapore to manufacture elastomer seals as an alternative to those supplied by PPE to Btech. Nothing came of the idea when it was first mooted

---

2 Affidavit of Sankar s/o Saminathan dated 21 March 2018 at p 4, para 4.

3 Ang Tuan Beng's 1st AEIC dated 8 January 2018 ("ATB-1") at paras 1, 5.

4 ATB-1 at para 6; Ng Soo Yeng's 1st AEIC dated 24 January 2018 ("NSY-1") at para 1.

5 ATB-1 at paras 10–12; NSY-1 at para 15.

6 NSY-1 at para 8.

Version No 1: 27 Oct 2020 (22:41 hrs)

sometime in 2007,[7] but, by 31 May 2011, detailed discussion on equipment lists and projected timelines had begun in earnest.[8] Sometime in December 2011, Dr Huang resigned from PPE to pursue this new venture.[9]

The Oral Agreement

6 In February 2012,[10] the structure of the proposed venture was finalised and orally agreed between Mr Ang and Dr Huang ("the Oral Agreement"). The arrangement was essentially as follows:

(a) Mr Ang would, through facilities available to Btech, obtain the starting capital and financing for the set-up of a factory for the manufacture of elastomer seals, whereas Dr Huang would be responsible for the technical direction and development of manufacturing operations.

(b) A new entity – Novellers – would be incorporated by Mr Ang and Dr Huang for the purpose of operating the manufacturing facility.

(c) Customers would place orders with Btech, which would cause one of its intermediary companies, Systemaz International Pte Ltd ("Systemaz") or Preseal Engineering Pte Ltd ("Preseal"), both of which were wholly owned by Mr Ang's wife,[11] to place orders with Novellers. Novellers would then manufacture the goods and sell them to Preseal

---

7 NSY-1 at paras 22 and 24.

8 ATB-1 at para 15, pp 52–59; NSY-1 at para 30.

9 NSY-1 at para 34.

10 ATB-1 at paras 21–22; Tr/09.05.18/14/10, 19, 15/7–13, 33/7–15; NSY-1 at paras 32–33.

11 ATB-1 at paras 8–9, p 24.

Version No 1: 27 Oct 2020 (22:41 hrs)

and/or Systemaz at a price which would enable Novellers to turn a profit.[12] Preseal and/or Systemaz would arrange with Btech to send goods to the customer. Btech would then be paid by the customer at a profit margin.[13] I note here that parties disagree over what exactly this margin was, but nothing turns on this.

(d) The long term goal was that Novellers would one day be sufficiently successful and attractive enough to be acquired by an investor so that both Mr Ang and Dr Huang could profit from the sale.[14]

7 The detailed terms of the Oral Agreement are, however, disputed by the parties. The terms, as alleged by Btech, were as follows:

(a) Btech would grant Novellers a contractual licence for use of 128 Tuas South Avenue 2, Singapore 637169 ("the Premises") for the manufacture of elastomer seals ("the contractual licence").[15]

(b) As regards distribution of the goods manufactured by Novellers, Systemaz and Preseal would act as intermediaries between Novellers and the ultimate customers. Customers (including Btech) would place their orders with either Systemaz or Preseal, which would in turn place identical orders for the goods with Novellers. The goods would be sold and delivered to the ultimate customers by Systemaz or Preseal ("the distribution arrangement").[16]

---

12 NSY-1 at para 57.

13 Tr/09.05.18/35–36, 51–54; NSY-1 at paras 32–33, 52.

14 NSY-1 at para 48; Tr/09.05.18/54/26 – 54/8.

15 ATB-1 at paras 20 and 21.

16 ATB-1 at paras 22(a) and 22(c).

Version No 1: 27 Oct 2020 (22:41 hrs)

(c) Novellers would accept and process *all* orders placed by Systemaz and Preseal ("the acceptance obligation").[17]

(d) Novellers would pay or reimburse Btech, *on a monthly basis*, for the following costs and expenses ("the payment obligation"):[18]

(i) monthly mortgage instalments, property tax, maintenance and sinking fund charges, utilities, telephone and broadband bills and any other outgoings and expenses payable in respect of the Premises;

(ii) monthly hire-purchase instalments, repairs, maintenance, insurance and any other outgoings and expenses payable in respect of the manufacturing tools and equipment at the Premises;

(iii) monthly hire-purchase instalments, repairs, maintenance, insurance, road tax and any other outgoings and expenses payable in respect of the vehicle bearing registration number SGV9770C;

(iv) salaries, foreign worker levies, insurance and any other remuneration or expenses incurred by Btech in respect of Btech's employees stationed at the Premises; and

(v) materials purchased by Btech for Novellers' use.

8 The terms enumerated at [7(a)] and [7(b)] (*ie*, the contractual licence and

---

17 ATB-1 at para 22(b).

18 ATB-1 at para 21.

Version No 1: 27 Oct 2020 (22:41 hrs)

the distribution arrangement) are undisputed,[19] but Novellers denies the terms at [7(c)] and [7(d)] (*ie*, the acceptance obligation and the payment obligation). Instead, Novellers' position was that any financial contributions to Btech's running costs would be subsequently agreed on a case-by-case basis.[20]

9 On 5 July 2012, Novellers was incorporated by Dr Huang and Mr Ang, both of whom were directors and 51% and 49% shareholders respectively.[21] Mr Ang voluntarily resigned his directorship on 15 December 2012,[22] and subsequently transferred his shares in Novellers to Dr Huang on 26 May 2015, making Dr Huang the sole shareholder as of that date, though nothing turns on this.[23] Meanwhile, as planned, Novellers began manufacturing elastomer seals, which were then sold to various customers.

The paid invoices

10 On 2 March 2015, Mr Ang emailed Dr Huang and one Lim Meng Heng ("Brian Lim"), Novellers' Finance Manager, who had joined Novellers sometime in September 2014.[24] The text of the email simply read "FYI", and contained as attachments two invoices (Invoice Nos 20150097 and 20150098) issued by Btech to Novellers for "Miscellaneous Expenses", "Property & Equipment Leasing" and "Remuneration Expenses" allegedly incurred between July 2014 to January 2015. The invoices were dated 10 February 2015, and

---

19 Defence and Counterclaim (Amendment No 2) ("D&C") at para 3.

20 D&C at para 3(h).

21 NSY-1 at para 46.

22 ATB-1 at para 17; NSY-1 at para 47.

23 ATB-1 at paras 23–24; Lim Meng Heng's 1st AEIC dated 8 January 2018 ("LMH-1") at paras 12–14; NSY-1 at paras 84–86.

24 Defendant's Core Bundle ("DCB") 83.

Version No 1: 27 Oct 2020 (22:41 hrs)

totalled $200,687.46.[25] Also attached to the email were bank statements showing that Mr Ang had transferred the sums invoiced from Novellers' bank account to Btech.[26]

11 In the same way, invoices dated 16 March 2015, 1 April 2015, 1 May 2015, 1 June 2015 and 1 July 2015 (Invoice Nos 20150168, 20150220, 20150383, 20150384 and 20150454 respectively)[27] were issued by Btech to Novellers in respect of expenses purportedly incurred from February 2015 to June 2015, totalling $116,327.13. Payment was similarly made from Novellers' bank account and effected by Mr Ang.[28] The invoices and the various proofs of payment were attached to cover emails addressed to Brian Lim and copied to Dr Huang.[29] I refer to the invoices dated between 10 February 2015 and 1 July 2015 collectively as the "paid invoices".

12 Meanwhile, beginning in January 2016, Btech's distributorship network in Asia had begun to unravel. First, Btech's affiliate in Taiwan, Btech Taiwan, began to place orders directly with PPE, cutting out Btech.[30] In February 2016, Btech's Malaysian sub-agent, SKN Industrial Supplies Sdn Bhd, realised that the goods it was receiving from Btech had been produced by Novellers, and not PPE, alerting PPE to the fact that Btech had been distributing products manufactured by Novellers, which product PPE claimed comprised materials

---

25 DCB 86–87.

26 DCB 88–89.

27 DCB 91, 96, 104, 106, 116.

28 Tr/09.05.18/65/12–14, 65/20 – 66/8.

29 DCB 90, 95, 100, 110.

30 NSY-1 at paras 94–95.

Version No 1: 27 Oct 2020 (22:41 hrs)

with an almost identical chemical composition to those produced by PPE.[31] PPE subsequently terminated its distributorship arrangement with Btech, and contacted major customers of Btech to inform them of the same. Both Btech and Novellers suffered heavy falls in sales revenue as a result.[32] Amidst these troubles in Btech and Novellers' Asian markets, it was decided that Dr Huang would relocate to the United Kingdom and pursue business opportunities in Europe.[33] In his absence, Dr Huang would continue to retain oversight over the factory operations by way of reports from Novellers' employees as well as closed circuit television footage of the Premises.[34] Dr Huang eventually left for the UK on 28 July 2016.

The China purchase orders

13 On 19 August 2016 at 10.43am, Mr Ang placed two purchase orders for a Chinese customer with Novellers via Preseal ("the China POs").[35] The China POs were sent to Brian Lim and to Sharon Tan, Novellers' product engineer. Sharon Tan was not called as a witness by either party. As the China POs had not been copied to Dr Huang, he first found out that the China POs had been placed when Sharon Tan contacted him to enquire about the acquisition of additional raw material and ingredients due to the size of the order. It was at this point that Dr Huang realised that the proposed price for the China POs was too

---

31 Ang Tuan Beng's 2nd AEIC dated 13 April 2018 ("ATB-2") at pp 146–147.

32 NSY-1 at para 101–102.

33 NSY-1 at para 111; ATB-1 at para 25; Xu Yuqiu's 1st AEIC dated 24 January 2018 at paras 29–32.

34 NSY-1 at para 112.

35 Defendant's Bundle of Documents Vol 5 at 448.

Version No 1: 27 Oct 2020 (22:41 hrs)

low, and would result in Novellers making a loss of about 15%.[36] On the same day, at around 5.48pm, Dr Huang instructed Sharon Tan to stop processing the order. Sharon Tan then relayed the message to Brian Lim by forwarding him a picture of Dr Huang's messages to her with his instructions.

14 According to Mr Ang, he found out that Dr Huang had stopped production of the China POs from Brian Lim. Although Dr Huang subsequently called Mr Ang to discuss the pricing of the China POs, no agreement was reached, and the conversation ended after Mr Ang warned Dr Huang that if he did not process this order, "there will be consequences". Mr Ang admitted that Dr Huang made numerous attempts to contact him thereafter, but said that he did not accept any of Dr Huang's calls because he "was busy".[37]

15 On 25 August 2016, Mr Ang changed the locks to the Premises, and instructed Brian Lim to call Dr Huang to inform him that the factory had been shut down, that the locks had been changed, and that Mr Ang had issued a statutory demand for sums allegedly due under seven invoices, as listed in the table below ("the unpaid invoices"):

Date	Invoice no.	Amount due
1 August 2015	IN20150577	$22,646.55
22 January 2016	IN20160051	$23,145.72
22 January 2016	IN20160052	$23,072.14
22 January 2016	IN20160053	$23,203.77
22 January 2016	IN20160054	$23,072.89

[36] Tr/11.05.18/34/1 – 35/13; NSY-1 at para 119.

[37] Tr/09.05.18/79–84.

Version No 1: 27 Oct 2020 (22:41 hrs)

22 January 2016	IN20160055	$25,857.17
24 August 2016	IN20160418	$140,587.56
	Total:	$281,585.80

16 According to Dr Huang, the unpaid invoices were first brought to his attention on 26 August 2016 when Brian Lim informed him of the statutory demand.[38]

17 On 15 September 2016, Btech commenced the present proceedings.

The parties' cases

Btech's claim

18 Btech's claim is for sums due under the unpaid invoices (listed at [15] above). These invoices were issued in respect of costs and expenses payable by Novellers to Btech pursuant to a term of the Oral Agreement to the effect that Novellers would pay for various expenses incurred by Btech. These expenses included payments in respect of the mortgage over the Premises, the hire-purchase of machinery and a vehicle, manpower costs and levies and the cost of raw materials purchased by Btech for Novellers' use (see [7(d)] above).[39]

19 In its defence, Novellers denies that such a term was agreed. Rather, any contributions to be made to Btech's expenses were to be agreed on a case-by-

---

[38] NSY-1 at para 129.

[39] Statement of Claim (Amendment No 1) ("SOC") at para 5.

Version No 1: 27 Oct 2020 (22:41 hrs)

case basis,[40] and at no time was any such subsequent agreement made.[41]

Novellers' counterclaims

20 Novellers also counterclaims for the following:

(a) loss suffered as a result of Btech's wrongful termination of the Oral Agreement (including the wrongful termination of the contractual licence) when it unilaterally changed the locks to the Premises without notice on 25 August 2016 ("the wrongful termination counterclaim");[42] and

(b) loss suffered as a result of Btech's unlawful detention of three categories of Novellers' property; namely, its documentary records, equipment and tools, and proprietary information, as well as an order for delivery-up of the said property ("the unlawful detention counterclaim").[43]

21 The particulars of the property unlawfully detained are listed at para 11 of the Defence and Counterclaim (Amendment No 2) as follows:

(a) documentary records, being records in physical and electronic form relating to various matters, including human resources, manufacturing history, accounting and finance;[44]

---

40 D&C at paras 3(h), 5.

41 D&C at para 4.

42 D&C at paras 9–10, 12–14.

43 D&C at paras 11–14.

44 D&C at para 11(l).

Version No 1: 27 Oct 2020 (22:41 hrs)

(b) equipment and tools belonging to Novellers, being:

(i) moving die rheometer;

(ii) air compressor;

(iii) deflashing drum;

(iv) clean room compressor;

(v) microscope;

(vi) specimen cutters;

(vii) mechanical tester;

(viii) oven;

(ix) mould sets;

(x) computers, printers and scanners;

(xi) furniture; and

(c) proprietary information, being information stored in physical and electronic form, pertaining to, without limitation, proprietary process protocol and manufacturing technology, mould and product designs, and materials technology.

22 Turning first to the wrongful termination counterclaim, Btech's position is that, in changing the locks to the Premises, it was merely accepting Novellers' own wrongful repudiation of the Oral Agreement when Novellers (i) failed to pay the sums owing pursuant to the payment obligation and (ii) refused to accept

Version No 1: 27 Oct 2020 (22:41 hrs)

the China POs pursuant to the acceptance obligation.[45]

23 In respect of the unlawful detention counterclaim, Btech's case is as follows:

(a) As regards the documentary records, while some documentary records belonging to Novellers are indeed in the Premises, Btech has produced all the relevant documents in its possession, custody and power, and that any other documents were lost due to "the passage of time and circumstances outside [its] control".[46]

(b) As for the equipment and tools listed at [21(b)] above, these items belonged to Btech.[47]

(c) As regards the proprietary information, there was no such information stored within the Premises, and, even if there was, it did not belong solely to Novellers but was in fact jointly owned with Btech, thus entitling Btech to retain possession of it.[48]

Issues to be determined

24 In relation to Btech's claim on the invoices, the main issue for determination is whether it was a term of the Oral Agreement that Novellers would pay Btech the costs and expenses enumerated at [7(d)] above.

---

45 Reply and Defence to Counterclaim (Amendment No 2) ("R&DC") at paras 4–6, 8.

46 R&DC at paras 9, 13; see D&C at para 12A.

47 R&DC at para 9.

48 R&DC at para 10.

Version No 1: 27 Oct 2020 (22:41 hrs)

25 In relation to Novellers' counterclaim for Btech's wrongful repudiation of the Oral Agreement:

(a) As regards the issue of whether Novellers wrongfully repudiated the Oral Agreement by refusing to accept the China POs:

(i) Is it a term of the Oral Agreement that Novellers would accept, without exception, *all* orders placed by Preseal?

(ii) If so, did Novellers refuse to accept the China POs?

(iii) If so, does its refusal to accept the China POs amount to a repudiatory breach of the Oral Agreement?

(b) Whether Novellers wrongfully repudiated the Oral Agreement by intending to change the locks to the Premises.

(c) Whether Btech wrongfully revoked the contractual licence over the Premises by failing to give reasonable notice of revocation.

26 In relation to Novellers' counterclaim for unlawful detention of its property, three classes of property are of concern: (i) documentary records, (ii) manufacturing equipment and tools and (iii) proprietary information. The following sub-issues arise for determination:

(a) Whether Btech's Defence to Counterclaim should be struck out *in toto* under O 24, r 16(1) of the Rules of Court (Cap 322, R5, 2014 Rev Ed) ("ROC").

(b) Whether Btech converted the manufacturing equipment and tools belonging to Novellers.

Version No 1: 27 Oct 2020 (22:41 hrs)

(c) Whether Btech used Novellers' proprietary information without authorisation.

Btech's claim on the invoices

27 I begin with Btech's claim for the sums allegedly due under the unpaid invoices.

Ratification

28 As the Oral Agreement was entered into sometime in February 2012, some five months before Novellers was incorporated on 5 July 2012, there potentially arises the question of whether Novellers was bound by it. However, both parties agree that the Oral Agreement had been validly ratified by Novellers, and was therefore binding.

29 Section 41(1) of the Companies Act (Cap 50, 2006 Rev Ed) ("the Companies Act") provides that a contract purportedly entered into on behalf of a company prior to its formation may nonetheless be ratified by the company after its formation, and that such ratification is effective as if the company had existed at the time of the contract (*Independent State of Papua New Guinea v PNG Sustainable Development* Program [2016] 2 SLR 366 at [87]; see also *Woon's Corporations Law* (LexisNexis, Loose-leaf Ed, 2017) at para C-2954):

> **Ratification by company of contracts made before incorporation**
>
> **41.**—(1) Any contract or other transaction purporting to be entered into by a company prior to its formation or by any person on behalf of a company prior to its formation may be ratified by the company after its formation and thereupon the company shall become bound by and entitled to the benefit thereof as if it had been in existence at the date of the contract or other transaction and had been a party thereto.

Version No 1: 27 Oct 2020 (22:41 hrs)

30 It is undisputed that Dr Huang had entered into the Oral Agreement on behalf of Novellers, and *not* in his personal capacity.[49] As to the question of ratification, again, both parties agree that the Oral Agreement had been impliedly ratified by conduct indicating unequivocally that Novellers considered the contract binding:[50]

(a) Btech granted Novellers a contractual licence to use the Premises, and Novellers did indeed occupy and operate from the Premises for four years after its incorporation until 25 August 2016.

(b) Novellers did indeed receive orders from Preseal and Systemaz, and had commenced production in fulfilment of such orders from September 2012 up till August 2016.

31 I agree with the parties that the Oral Agreement had been impliedly ratified by Novellers, and find that the Oral Agreement was therefore binding on the parties.

Whether the payment obligation was a term of the Oral Agreement

32 The parties joined issue on *what* exactly had been agreed in the Oral Agreement. The ascertainment of the terms of the Agreement was complicated by the fact that there was no written record of the Agreement reached by Mr Ang and Dr Huang, and there were no other witnesses with personal knowledge of the Agreement.[51]

---

49 Tr/09.05.18/6/3–23; Defendant's closing submissions ("DCS") at para 9.

50 Plaintiff's closing submissions ("PCS") at para 12; DCS at paras 13–15.

51 Tr/10.05.18/36/13–27, 38/4–10.

Version No 1: 27 Oct 2020 (22:41 hrs)

33 Btech's position is that it was agreed that Novellers would pay Btech for the various expenses listed at [7(d)] above, which I have referred to above as the "payment obligation". Mr Ang's evidence was that the payment obligation was agreed in the following terms:[52]

> … it was agreed that … the Defendants would bear and pay the Plaintiffs' [*sic*] *on a monthly basis* the following cost [*sic*] and expenses … [emphasis added]

While Mr Ang's affidavit of evidence-in-chief ("AEIC") stated that this term (and indeed the entire Oral Agreement) was agreed in or around the beginning of 2015, Mr Ang subsequently corrected this aspect of his evidence during the trial, clarifying that the Oral Agreement was made sometime in February 2012.[53] The date of the Oral Agreement is not disputed by Novellers.

34 Novellers maintains that no such term was agreed. Where financial contributions were to be made by Novellers to Btech, such payments would have to be subsequently agreed on a case-by-case basis.[54]

The parties' conduct during the duration of the contract

35 Where a contract is made wholly by word of mouth, its contents are a matter of evidence submitted to a judge as the finder of fact. The court's first task is to find as fact exactly what it was the parties said (Michael Furmston, *Cheshire, Fifoot, & Furmston's Law of Contract* (Oxford University Press, 17th Ed, 2017) at p 167). I add that in *ascertaining* the terms of an oral contract, the court is not fettered by the strictures of the parole evidence rule, which apply

---

52 ATB-1 at para 21.

53 Tr/09.05.18/6/3–23, 13/12–29, 14/7–23.

54 D&C at para 4; DCS at para 20.

Version No 1: 27 Oct 2020 (22:41 hrs)

only to the *interpretation* of terms where it is clear that the parties intended that the terms of their agreement shall be exclusively contained in the written document. Where it is undisputed that the contract was never reduced into writing (whether in whole or in part), a court may, and, indeed, should look at evidence of how the parties had actually conducted their affairs under the contract during the contemplated period of its subsistence in ascertaining its terms (see *Chia Kok Kee v HX Investment Pte Ltd (So Lai Har (alias Chia Choon), third party in issue) (Tan Wah, third party in counterclaim)* [2007] SGHC 164 at [53]).

36 In this case, the parties' conduct during the duration of the contract does not support Btech's case that it was a term of the Oral Agreement that Novellers would pay Btech *on a monthly basis* (and not on an *ad hoc* basis as Novellers contends).

37 First, Btech did not issue a single invoice to Novellers until 10 February 2015, when it invoiced Novellers for costs and expenses incurred from July 2014 to January 2015.[55] On Btech's case, one would expect regular invoicing at least from the time Novellers was incorporated in July 2012 but these invoices are conspicuously absent. The same point was put to Mr Ang on the stand, and he agreed:[56]

> Q: So to summarise this, after 2½ years, this is the first time [Btech] issued any invoices to [Novellers], correct?
>
> A: Yes.
>
> …

---

55 DCS at paras 25, 30–31; Tr/09.05.18/33/29 – 34/5; 34/30 – 35/6.

56 Tr/09.05.18/35/4–6, 15–20.

Version No 1: 27 Oct 2020 (22:41 hrs)

> Q: If [Btech] was entitled is—we're talking about do you have a right to invoice these costs?
>
> …
>
> Q: On a monthly basis, which is what you say, [Btech] would have done so long before March 2015. Won't you agree?
>
> A: Yes.

38 I do not accept either of Btech's two (conflicting) explanations for its failure to invoice Novellers from the time Novellers was incorporated. Mr Ang initially deposed that invoices were first issued in March 2015 because that was when Novellers began to "turn a profit", and therefore had to "start carrying some of [its] own weight":[57]

> 18. From the onset [*sic*], the Plaintiffs [*sic*] were funding the Defendants [*sic*] … from the very beginning.
>
> 19. *However, there came a point in time when the Defendants started to turn a profit.* At about the same time, the Plaintiffs were facing some financial difficulties and were financially tight. [Mr Ang] informed [Dr Huang] that the Plaintiffs could not bear the burden of the Defendants' expenses alone any longer and that the Defendants had to start carrying some of their own weight.
>
> [emphasis added]

39 Mr Ang's claim is factually inaccurate because Novellers' financial statements show that it had been making a profit from the year it was incorporated.[58] More fundamentally, the point that invoices were issued only after Novellers was in good financial stead to contribute runs against Btech's own case that Novellers was to contribute to its costs "on a monthly basis", and in fact supports Novellers' case that any contributions were to be subsequently

---

57 ATB-1 at paras 18–19; Tr/09.05.18/57/22–27.

58 DCS at para 51; DCB 69–74; Tr/09.05.18/61/14–31.

Version No 1: 27 Oct 2020 (22:41 hrs)

agreed on a case-by-case basis depending on defendant's financial ability to contribute.

40 Btech's second explanation, put forth after abandoning the first explanation at trial, was that Novellers was obliged to pay – and had in fact been paying for – the said costs and expenses *from the beginning*, albeit on "a contra basis".[59] Btech points to Novellers' annual financial statements, which record that expenses were incurred for "Rental" from the time of Novellers' incorporation, a fact which Dr Huang admitted he was well aware of, being the signatory of those financial statements.[60] Seeing as Novellers only ever operated from the Premises, these "rental" expenses could only have been incurred in respect of the Premises. On this basis, it is argued that the date the invoices were issued ought not to be given much weight; the invoices were issued in 2015 on Brian Lim's initiative shortly after he joined Novellers as Finance Manager sometime in 2014, and were issued as a mere formality to regularise payments which had already been made.[61]

41 But Btech has not shown any link between these alleged rental expenses recorded in Novellers' financial statements and the invoices Novellers was billed for. Mr Ang made no mention of the "rental" expenses allegedly paid by Novellers, whether in his AEIC or on the stand. This is unsurprising, considering that the itemised breakdown of what was billed to Novellers does not even have a rental component. Instead it comprises property and equipment leasing (property mortgage loan, equipment loans, vehicle loans, property tax

---

59 Plaintiff's reply submissions ("PRS") at paras 14–16.

60 Agreed Bundle Vol 8 ("8.AB") 2262, 2282, 2302; Tr/10.05.18/124/27 – 126/4.

61 Tr/09.05.18/35/7–10.

Version No 1: 27 Oct 2020 (22:41 hrs)

and maintenance), miscellaneous expenses (such as water and refuse removal bills, foreign worker levies, phone bills and petrol costs), as well as cash outflows for staff payroll.[62] While Dr Huang was asked about these rental expenses, it was never put to him that the rental expenses recorded in Novellers' financial statements were in fact those same sums owing under the invoices issued by Btech. All that was established was that Dr Huang had signed off on the financial statements, and therefore knew of those expenses.[63]

42 I also find it disingenuous of Btech to suggest that the invoices were issued to regularise payments that Novellers had been making *from its incorporation*, when invoices were only issued in respect of expenses incurred *from July 2014 onwards*. The "rental" expenses were also recorded in the preceding two annual financial statements, and yet no explanation was offered for why invoices were not issued to "regularise" the "rental" expenses incurred before July 2014.

43 Secondly, the lack of regularity with which Novellers was invoiced by Btech when it eventually did so is revealing. As detailed above, Btech issued invoices for July to December 2014 in February 2015, then issued invoices for monthly billings from February 2015 (for the month of January) to August 2015 (for the month of July). Subsequently, *no invoices were issued until 22 January 2016*, when Btech issued a slew of five invoices (for August to December 2015) to Novellers on the same day. Given that there was as yet no dispute between the parties at that point, there would be no reason for Btech to hold back on issuing monthly invoices or for Novellers to refuse to pay the same. Between

---

62 DCB at p 131.

63 Tr/10.05.18/125/25 – 126/4.

Version No 1: 27 Oct 2020 (22:41 hrs)

22 January 2016 and 24 August 2016 there were again no invoices issued, before Btech issued on 24 *August* 2016 one consolidated invoice for January to *September* 2016 – in other words, this invoice purported to bill Novellers for expenses *prospectively* (insofar as it referred to expenses for *September* 2016). All this indicates that was no agreement for monthly payments but only, at best, an *ad hoc* arrangement.

44 Thirdly, Novellers' conduct in allowing the unpaid invoices to go unpaid and Btech's conduct in failing to demand payment or object to the same supports the view that there was no agreement for monthly payment. The first of the unpaid invoices was issued on 1 August 2015 but Btech made no demand for payment until the statutory demand of 26 August 2016. Mr Ang confirmed this on the stand and added that Btech simply continued to invoice Novellers for further amounts, seemingly without heed to the outstanding amounts previously invoiced.[64] I find the parties' conduct in this regard to be more consistent with the view that contributions by Novellers towards Btech's costs and expenses, if any, would be by *subsequent agreement*. In respect of the paid invoices, Mr Ang explained that while he was the one who effected the payments he only did so with Dr Huang's acquiescence, and took care to ensure that Dr Huang was made aware of the invoices and the transfers.[65] At the trial, Mr Ang confirmed that each invoice could only be issued by *subsequent* agreement of the parties:[66]

> Q: … earlier on, you said that before you deduct payment for any invoice, that has to be approved by [Brian Lim] and Dr Huang, correct?
>
> A: Yes.

---

64 DCS at paras 60–61; Tr/09.05.18/93/22 – 94/14.

65 NSY-1 at paras 134–138.

66 Tr/09.05.18/71/29 – 72/10.

Version No 1: 27 Oct 2020 (22:41 hrs)

> Q: But you also said that before the invoice is issued, there is an agreement between Dr Huang, [Brian Lim] and you …
>
> …
>
> Q: … that whatever is going to be billed in that invoice …
>
> …
>
> Q: … it's payable.
>
> A: Yes.
>
> Q: And is it your position that this agreement took place in 2012 or were the agreements that took place in the course of business?
>
> A: In the course of business.

The parties' conduct *vis-à-vis* the unpaid invoices (which are the subject matter of Btech's claim) is in line with an understanding that Novellers was obliged to pay Novellers on an *ad hoc* basis.

45 I therefore find, on balance, that based on the conduct of *both* parties during the period of the Oral Agreement, Btech did not have the right to invoice Novellers for the said costs and expenses as a matter of course as it alleged, but that any sums invoiced had instead to be mutually agreed with Novellers.

46 I observe here that neither party presented an entirely satisfactory or coherent version of events. The affidavit and oral evidence of witnesses for both sides was found wanting, and sometimes raised more questions than answers especially when taken alongside the documentary evidence. To take two examples pertaining to Novellers' case:

(a) Dr Huang offered inconsistent explanations for why he did not object to the payments for the paid invoices. In his affidavit he claimed that he did not scrutinise the invoices and spreadsheets properly because he was copied in the emails on an "FYI" basis, and because he

Version No 1: 27 Oct 2020 (22:41 hrs)

understood Btech's ability to continue running to be important to Novellers and was therefore willing to contribute to some costs incurred by Btech if Novellers could spare the cash.[67] However, on the stand he claimed that he was prepared, if there was excess revenue, to be "compassionate" and support Btech on a "case-to-case basis".[68]

(b) Dr Huang alleged that by late 2013, the amount of outstanding receivables due to Novellers from Preseal had been steadily increasing such that Novellers was profitable on paper but had very little cash.[69] By August 2016, Systemaz owed Novellers about US$400,000 and Preseal owed Novellers about S$1.3m.[70] While Dr Huang explains that he did not claim these sums as "it was unclear if these entities will be good for the money",[71] I view this explanation with some circumspection because these sums are not insubstantial.

47 That said, regardless of any gaps in Novellers' case, the burden is ultimately on Btech to prove its case on a balance of probabilities. In my view it has failed to do so, and because it has not advanced any other case in the alternative its claim must fail.

Consideration and illegality

48 In its written submissions, Btech raised the rather curious point that if the payment obligation were not a term of the Oral Agreement, then Btech, in

---

67 NSY-1 at paras 139–141.

68 Tr/10.05.19/128/3–129/2.

69 NSY-1 at para 79.

70 NSY-1 at para 146.

71 NSY-1 at para 146.

Version No 1: 27 Oct 2020 (22:41 hrs)

contracting to fund the start-up costs of Novellers' factory and to grant it a contractual licence over the Premises for nothing in return, would essentially be making gratuitous payments to Novellers. According to Btech, the Oral Agreement would therefore be void for uncertainty or lack of consideration,[72] or would have been entered into *ultra vires* and therefore void for illegality.[73] It was unclear if Btech was making these points in support of its argument that the Oral Agreement must therefore have contained the payment obligation as alleged by Btech, or if they were made in the alternative (amounting to a submission that the Oral Agreement was indeed void), with the result that Btech's claim – which is based on the Oral Agreement – fails.

49 Whatever the purport of these arguments, I reject them entirely.

50 I turn first to Btech's argument that the Oral Agreement would be void for lack of consideration. According to Btech, if the payment obligation were not a term, then there would be no consideration moving from Novellers under the Oral Agreement. I reject this argument for two reasons. First, as Btech acknowledges,[74] it is not Novellers' case that it would not make any financial contribution to the venture whatsoever, but that it would make contributions by subsequent agreement on a case-by-case basis – which it in fact did when it made payments under the paid invoices.

51 Secondly, it was Mr Ang's own evidence that Btech enjoyed the benefit of distributing elastomer seals manufactured by Novellers with a profit margin

---

72 PCS at paras 30–34.

73 PCS at paras 16–20.

74 PCS at para 32(i).

Version No 1: 27 Oct 2020 (22:41 hrs)

of at least 25%.[75] In fact, based on pricing that Btech had proposed to a client (which was in fact the price the product was actually sold at the previous year), Btech stood to benefit from a 138% profit margin.[76] In response, Btech argues that any benefit it gained in the form of profit margin came not from its Oral Agreement with Novellers, but from the arrangement between Btech and Preseal and/or Systemaz.[77] In my view, this argument ignores the substance of the arrangement, whereby Preseal and/or Systemaz were merely intermediaries; and, in any case, intermediaries wholly owned by Mr Ang's wife. Even if one were to close one's eyes to the obvious connections between Preseal and/or Systemaz and Btech, it is a trite principle of contract law that while consideration must move from the promisee (Novellers), there is no requirement for such consideration to move to the promisor (Btech); consideration may move from the promisee to a third party (Preseal and/or Systemaz) (*The Law of Contract in Singapore* (Andrew Phang Boon Leong gen ed) (Academy Publishing, 2012) at para 04.021).

52 Btech also argues that it would have been a breach of his duties as a director for Mr Ang to have entered into an arrangement whereby Btech essentially makes gratuitous payments to Novellers, and that entry into such an agreement would be an act *ultra vires* of the company and therefore void. For the reasons stated above, I am of the view that Novellers had provided adequate consideration for Btech's promises under the Oral Agreement, and that Btech's promises were not gratuitously made. In any case, even if a director causes the company to enter into a transaction in breach of his duties, that does not mean

---

75 Tr/09.05.18/52/2–10.

76 DCS at paras 70, 326–334; Tr/09.05.18/49–53; DCB 179–185.

77 PRS at para 19.

Version No 1: 27 Oct 2020 (22:41 hrs)

that the said transaction was entered into *ultra vires*. The doctrine of *ultra vires* applies only where a company acts in excess of limitations imposed on it in its constitution, and even so, such an act would be valid vis-à-vis third parties dealing with the company in good faith: see s 25B(1) of the Companies Act.

Conclusion

53 In sum, for the reasons stated above, I reject Btech's contention that Novellers was obliged to reimburse it for the costs and expenses enumerated at [7(d)] above under the Oral Agreement on a monthly basis. That was not a term of the Oral Agreement. Instead, any contributions made by Novellers would be made on an *ad hoc* basis, by subsequent agreement of the parties, and in this regard it cannot seriously be disputed that Novellers never agreed to pay the sums claimed under the unpaid invoices.

54 It follows therefore that Novellers is not liable for the sums claimed under the invoices. Accordingly, I dismiss Btech's claim.

Novellers' counterclaim for wrongful repudiation

55 I turn now to Novellers' counterclaims. I shall begin with the counterclaim in respect of Btech's alleged wrongful repudiation of the Oral Agreement and the contractual licence.

Repudiation of the Oral Agreement

56 Novellers' case is that Btech had wrongfully repudiated the Oral Agreement when it changed the locks to the Premises on 25 August 2016, which repudiation it accepted, with the result that the Oral Agreement was treated as having come to an end on that date.

Version No 1: 27 Oct 2020 (22:41 hrs)

57 Btech's defence is that by changing the locks to the Premises it was merely accepting Novellers' own wrongful repudiation of the Oral Agreement (i) when Novellers refused to accept the China POs in breach of the acceptance obligation (see [7(c)] above),[78] and (ii) because Novellers had itself intended to change the locks on the Premises so as to exclude Btech from the Premises.[79]

58 I note that Btech had also pleaded an additional ground; *viz*, that Novellers was in repudiatory breach by its failure to make payment under the unpaid invoices.[80] I reject this submission for the same reasons given above in relation to Btech's claim.

59 I shall deal with each ground in turn.

Failure to process the China POs

60 According to Btech, Novellers committed a repudiatory breach of the Oral Agreement by failing to accept the China POs placed by Preseal on 19 August 2016 (see [25(a)] above). Novellers denies having repudiated the Oral Agreement and the differences between the parties on this point may be resolved by a consideration of the following three sub-issues:

(a) Was it a term of the Oral Agreement that Novellers would accept, without exception, *all* orders placed by Preseal?

(b) If so, had Novellers refused to accept the China POs?

---

78 PCS at para 40.

79 PCS at para 40; PRS at para 25.

80 R&DC at para 4.

Version No 1: 27 Oct 2020 (22:41 hrs)

(c) If so, did its refusal to accept the China POs amount to a repudiatory breach of the Oral Agreement?

61 First, Novellers denies even having an obligation to accept, without exception, *all* orders placed by Preseal.[81] Having considered the evidence of the parties' conduct in relation to the placing and acceptance of orders (see [35]–[44] above), I agree. Dr Huang's unchallenged evidence was that acceptance of any purchase orders – be they from Preseal or Systemaz – was always subject to Novellers' approval of the price and date of delivery.[82] At the trial, Mr Ang was referred to one such occasion, where Mr Ang had placed an urgent order to be delivered by 15 January 2014 but was told by Mr Anthony Soh, an employee of Novellers, that the order could only be fulfilled two days later on 17 January 2014. Mr Ang agreed that the correspondence showed that the delivery date for each order was subject to Novellers' approval.[83] Upon further questioning, Mr Ang all but conceded that the particulars of each order were negotiable and subject to Novellers' approval:[84]

> Q: If Preseal insists that goods must be delivered by an impossible timeframe … is it [Btech's] case that [Novellers] must accept that order?
>
> A: No.
>
> Q: Right. So I'll move on to my next point. Price is also very important for …
>
> …
>
> Q: … each order, correct? … If Preseal insists that the goods be delivered for free, must [Novellers] accept that order?

---

81 DCS at para 91.

82 DCS at para 92; NSY-1 at paras 53–55.

83 Tr/09.05.18/85/20 – 86/4; DCB 198.

84 Tr/09.05.18/86/5–26.

Version No 1: 27 Oct 2020 (22:41 hrs)

A: No.

…

Q: Yes. So I suggest to you that if price of each order and the date of delivery of each order are negotiable, it cannot be the case that [Novellers] must process all Preseal orders. Do you agree?

A: No.

62 In my view, it is clear from the way the parties actually dealt with each other in relation to the placing and acceptance of orders that Novellers was not under an unqualified obligation to accept *all* orders placed by Preseal. At the very least, important details of the order – such as price and delivery date – were negotiable, and subject to the agreement of both parties.

63 Here, the pricing of the China POs was still being negotiated. There was no indication that Dr Huang's concerns about the price were unfounded, nor did Btech suggest that Dr Huang's objections were in bad faith. In fact, it was Dr Huang who had repeatedly tried to contact Mr Ang to resolve their differences on price, only to be completely stonewalled by the latter, who refused even to take his calls. In my view, since the China POs were still being negotiated, Novellers was not obliged to accept them.

64 However, even if I accept that Novellers was under an obligation to accept *all* orders from Preseal, I do not think Novellers had breached such an obligation in respect of the China POs. Dr Huang had only *temporarily* halted production of the China POs pending resolution of Dr Huang's concerns over the low price offered for the products under the China POs (which Btech did not challenge as being unfounded). That the halt in processing was only

Version No 1: 27 Oct 2020 (22:41 hrs)

temporary is clear both from Dr Huang's instructions to Sharon Tan as well as what the latter understood of those instructions:[85]

> Tan: … From our phone conversation just now, is it confirmed that we stop making any more moulds for [Mr Ang's] order?
>
> Huang: Yes *for now*
>
> …
>
> Tan: Ok. Let me know when you decide to *continue making the moulds* so I can plan.
>
> [emphasis added]

65 While Brian Lim asserted that Sharon Tan had told him that Dr Huang had instructed her to stop the production of all orders from Preseal, he admitted that what he knew of that conversation came second hand from Sharon Tan, and that he had no personal knowledge of what transpired during that conversation.[86] Btech did not call Sharon Tan as a witness.

66 Moreover, Dr Huang had in fact allowed production to continue pending resolution of the pricing in respect of products for which moulds had already been completed, since this would not incur much further cost:[87]

> Tan: Ok, then for the completed mould do we go ahead with production?
>
> Huang: I think you have some milled material left. Use them up if you can.

---

85 2.AB 380.

86 Tr/10.05.18/47/11–15.

87 Tr/11.05.18/28/21 – 29/2; 2.AB 380.

Version No 1: 27 Oct 2020 (22:41 hrs)

This further militates against a conclusion that Dr Huang had decided to reject the order entirely, and in fact indicates that Dr Huang intended and expected that the disagreement over price would be resolved quickly.

67 Besides Mr Ang's vague threat that "there will be consequences" if Novellers did not process the China POs, Btech gave no contemporaneous written notice to Novellers indicating that it considered the halt in production of the China POs to be a breach of the Oral Agreement.[88] In my view, the order to halt production was only temporary, and did not amount to a rejection of the order. In fact, production had begun for *part* of the order. Accordingly, even if Novellers was obliged to accept the China POs, I do not think this obligation was breached when Novellers temporarily halted production of the order pending negotiation of the purchase price.

68 I come to the final contingency in Novellers' response: even if Novellers had been in breach of an obligation to accept all orders placed by Preseal, this did not amount to a *repudiatory* breach of the Oral Agreement.

69 The legal principles concerning when a breach of contract may give rise to a right to terminate are not in dispute. In essence, a repudiatory breach arises in the four situations outlined in *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd and another appeal* [2007] 4 SLR(R) 413 ("*RDC Concrete*") (at [113]). Btech relies only on Situation 3(b) of *RDC Concrete*, and argues that this was a breach so serious as to "deprive the party not in default … of substantially the whole benefit which it was intended that he should obtain from the contract"

---

88 Tr/09.05.18/83/26 – 84/3.

Version No 1: 27 Oct 2020 (22:41 hrs)

[emphasis omitted] (*RDC Concrete* at [99] citing *Hongkong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd* [1962] 2 QB 26 at 70).[89]

70 In my view, a failure to process two orders out of hundreds of other orders placed and processed cannot be said to have deprived Btech of substantially the whole benefit of the contract. There was nothing to suggest that the China POs were particularly large or otherwise significant.[90] While Btech asserted for the first time in its written reply submissions that the China POs refused were "part of a chain of POs" and that Novellers "had knowledge of such disruption should they refuse to process even one China PO",[91] this assertion was unsupported by anything in Btech's AEICs or the transcripts. Furthermore, if indeed the China POs were as critical as Btech makes them out to be, it is puzzling why Mr Ang then chose to completely stonewall negotiations by refusing to pick up Dr Huang's calls instead of attempting to resolve the dispute over price.

71 For the foregoing reasons, I reject Btech's submission that Novellers had committed a repudiatory breach of the Oral Agreement by failing to process the China POs.

Intention to change the locks

72 I turn to the second ground relied on by Btech, *viz*, that it was entitled to terminate the Oral Agreement because Novellers itself had intended to change

89 PRS at para 23.

90 DCS at para 107; NSY-1 at para 57.

91 PRS at para 23.

Version No 1: 27 Oct 2020 (22:41 hrs)

the locks to the Premises and thereby deprive Btech of usage of the same. However, this ground of repudiatory breach was not pleaded by Btech.[92]

73 In any case, this ground does not assist Btech on the merits. It appears that Mr Ang had already intended to terminate the Oral Agreement *before* he was informed by Brian Lim of Dr Huang's alleged intention to change the locks to the Premises. Mr Ang testified that he was already "on the way to the premises with the statutory demand" – a demand for a debt invoiced just the day before, and one he knew Novellers had no means of paying[93] – when he was informed of Dr Huang's intentions:[94]

> Q: And you say that you were on the way to the premises with the statutory demand. And *on your way there*, you were informed that Dr Huang wanted to lock the factory?
>
> A: Yes.
>
> …
>
> Q: … my suggestion to you is that *at the time you issued the statutory demand, it was very clear in your mind that you had no intention of doing business with [Novellers] or Dr Huang any longer*. You can agree or disagree.
>
> A: Yes, I agree. …
>
> [emphasis added]

74 Given that Mr Ang was himself already set on terminating the Oral Agreement before he ever found out about Dr Huang's alleged intention to change the locks, I thought it rather disingenuous for Mr Ang to now assert that

---

92 DCS at para 151; Tr/09.05.18/91/11–13.

93 Tr/09.05.18/95/23 – 96/2.

94 Tr/09.05.18/95/19–22, 96/3–7.

Version No 1: 27 Oct 2020 (22:41 hrs)

his act of changing the locks was an acceptance of Dr Huang's anticipated repudiation of the Oral Agreement.

Conclusion

75 In sum, and for all of the foregoing reasons, I reject Btech's arguments that Novellers was in repudiatory breach of the Oral Agreement, and that in changing the locks to the Premises it was merely purporting to accept Novellers' repudiation. Instead, it was Btech which had wrongfully repudiated the Oral Agreement, which repudiation was accepted by Novellers. Accordingly, the Oral Agreement was terminated as at 25 August 2016. The issue of the loss suffered by Novellers in respect of Btech's wrongful termination of the Oral Agreement is reserved to the next tranche of proceedings, and I therefore make no comment in respect of it.

Revocation of the contractual licence

76 A contractual licence is a creature of the law of contract, and is revocable only in accordance with its terms or where the contractual licensee has repudiated the contract (*Tan Hin Leong v Lee Teck Im* [2000] 1 SLR(R) 891 at [33], [35]):

> 33 The contractual licence is not revocable at will because there is an implied irrevocability at will. The implication arises from the fact that the deed defines the circumstances giving the right to end the right of occupation. …
>
> …
>
> 35 In the result, I would settle this case by applying the doctrine of sanctity of contract. … By that doctrine I hold that the plaintiff cannot revoke the licence he has granted to the defendant save in accordance with the terms of the deed. … This is without prejudice to the rights of the plaintiff to evict her in future if she were in breach of the terms of the deed. …

Version No 1: 27 Oct 2020 (22:41 hrs)

77 Where the terms of the contract are silent as to revocation, the licence may be terminated after reasonable notice has been given (Tan Sook Yee, Tang Hang Wu and Kelvin FK Low, *Tan Sook Yee's Principles of Singapore Land Law* (LexisNexis, 3rd Ed, 2009) at para 19.31). What constitutes a reasonable period of notice is determined by a consideration of all the circumstances of the case, and of these the nature of the licence and the circumstances in which it came to be granted are of first importance (*Parker v Parker* [2003] EWHC 1846 (Ch) at [271], [276], citing *Ministry of Health v Bellotti* [1944] 1 KB 298 at 304).

78 Since Novellers did not commit any repudiatory breach of the Oral Agreement, the contractual licence is revocable only with reasonable notice. In this regard, it is undisputed that by changing the locks to the Premises Btech had revoked the contractual licence, and that it had not given Novellers *any* notice of the revocation, let alone reasonable notice.[95]

79 Btech's argument that no notice was required because the giving of notice would "cause [Btech] to lose possession of the Premises"[96] has no basis in law or on the facts. There is not a shred of evidence that Dr Huang would attempt to deny Btech access to the Premises if Btech had served on Novellers a notice to quit the Premises.

80 Btech's other argument was that Novellers was fixed with constructive notice of Btech's intention to revoke the contractual licence because Dr Huang had been making plans to move Novellers' manufacturing operations to China.[97]

---

95 Tr/09.05.18/110/16–28.

96 PRS at para 26.

97 PRS at para 27.

Version No 1: 27 Oct 2020 (22:41 hrs)

Even if Dr Huang had been making such plans, I do not see how that leads to him being fixed with constructive notice of the revocation.

81 I therefore find that Btech wrongfully revoked the contractual licence when it changed the locks to the Premises on 25 August 2016.

Conclusion

82 In sum, by changing the locks to the Premises, Btech had: (i) wrongfully repudiated the Oral Agreement and (ii) wrongfully revoked the contractual licence, and is liable to Novellers in respect of losses flowing therefrom.

Novellers' counterclaim for unlawful detention

83 The second aspect of Novellers' counterclaim relates to Btech's detention of three categories of property which Novellers says had been left in the Premises when the locks were changed on 25 August 2016. These are the:

(a) documentary records;

(b) equipment and tools; and

(c) proprietary information.

84 I shall deal with each in turn.

Documentary records

85 Novellers seeks an order for delivery up of its documentary records left at the Premises after the locks were changed. To the extent that the said documentary records are no longer in existence, Novellers requests that Btech's Defence to Counterclaim be struck out pursuant to O 24, r 16(1) of the ROC as

Version No 1: 27 Oct 2020 (22:41 hrs)

Btech had suppressed, misappropriated and/or destroyed Novellers' documentary records.[98]

86 At trial, Brian Lim confirmed that the following documentary records were stored on the Premises at the material time:

(a) various hard copy records pertaining to goods supplied to Novellers ("the supplier records"):[99]

(i) purchase requisition forms prepared by Novellers' staff prior to placing orders with suppliers;

(ii) purchase orders generated by Novellers and sent to suppliers;

(iii) delivery orders received by Novellers from suppliers; and

(iv) records of cheque payments made by Novellers to suppliers;

(b) soft copy documents stored on Novellers' computer server, including a "technical" folder, a "supply chain" folder, a "sales" folder and a "finance" folder;[100] and

(c) hard copy administrative documents and files kept in filing cabinets.[101]

---

98 DCS at para 179.

99 DCS at para 161; Tr/10.05.18/53/6 – 54/2.

100 DCS at paras 162, 166; Tr/10.05.18/56/1–29.

101 DCS at para 163; Tr/10.05.18/76/25 – 77/8.

Version No 1: 27 Oct 2020 (22:41 hrs)

87 Evidence was also led from Neo Yew Chin, a former Technical Manager in Novellers' Tooling Department, that job cards (describing the type and breakdown of the work required for each order), soft copy mould design drawings and shrinkage data were kept in the Premises.[102] However, he was not present at the Premises on 25 August 2016 (having left Novellers' employ some six months prior in February 2016),[103] and his evidence must be considered in that light.

88 Brian Lim was however able to confirm that the aforementioned documentary records were kept on Premises, and were therefore in Btech's possession, at least as at 25 August 2016 when the locks were changed:[104]

> Q: So, Mr Lim, based on your answer this morning, it seems clear to me that *there were various records in physical and electronic form at the factory as at August 2016*. Would you agree?
>
> A: *As at … 25th August, yes.*
>
> …
>
> Q: So would it be fair to say that these items are now in [Btech's] possession?
>
> A: I don't know.
>
> Q: But *as at 25th August 2016, you can say that for sure, correct?*
>
> A: *Yes.*
>
> [emphasis added]

89 I therefore relied primarily on Brian Lim's evidence on the types of documentary records which were present at the Premises *at the time the locks*

---

102 Tr/10.05.18/82/1–11, 83/6–10.

103 Tr/10.05.18/82/12–17.

104 Tr/10.05.18/57/24 – 58/10.

Version No 1: 27 Oct 2020 (22:41 hrs)

were changed, and find that the types of documents listed at [86] above were at the Premises at the time the locks were changed on 25 August 2016.

90 On 15 May 2017, Novellers filed a notice to produce, requesting production of the "documentary records, belonging to the Defendants that are still in the Premises" which Btech had referred to at para 9 of its Reply and Defence to Counterclaim (Amendment No 1) filed on 5 January 2017.[105]

91 On 23 June 2017, Btech filed its second supplementary list of documents pursuant to Novellers' notice to produce. This list of documents disclosed only a smattering of bank statements for Novellers' bank accounts and four payment vouchers.[106]

92 Dissatisfied, Novellers requested that Btech state on affidavit that there were no other documents at the Premises. In an affidavit dated 19 July 2017, Mr Ang stated that all of Novellers' remaining documentary records had been produced, and that the other records were no longer in existence due to "the inevitable loss that comes with the passage of time" and "circumstances outside of [his] control":[107]

> 4. I wish to state for the record that I have produced all documents in connection to the above suit. *Any documents that I did not allegedly produce could not be produced as the said documents are no longer in existence due to the effluxion of time.* I have tried my best to preserve all documents under my possession, custody and power to the best of my abilities. All such documents under said preservation have been produced to the Defendant.
>
> …

---

105 DCB 9–10.

106 DCB 14–18.

107 DCB 19–20.

Version No 1: 27 Oct 2020 (22:41 hrs)

> 6. As for documents that are not preserved, are no longer in my possession, custody and power due to the *inevitable loss that comes with the passage of time* and *circumstances outside of my control, such as unsatisfactory document retention when moving of premises* et al.
>
> [emphasis added]

The law

93 Order 24, rule 16(1) of the ROC confers a court with wide powers to make such order as it thinks just in circumstances where a party has failed to comply with the requirements for discovery:

> **Failure to comply with requirement for discovery, etc. (O. 24, r. 16)**
>
> **16.**—(1) If any party who is required by any Rule in this Order, or by any order made thereunder, to make discovery of documents or to produce any document for the purpose of inspection or any other purpose, fails to comply with any provision of the Rules in this Order, or with any order made thereunder, or both, as the case may be, then, without prejudice to Rule 11(1), in the case of a failure to comply with any such provision, the Court may make such order as it thinks just including, in particular, an order that the action be dismissed or, as the case may be, an order that the defence be struck out and judgment be entered accordingly.

94 In determining whether an order under O 24, r 16(1) should be made, the court weighs two countervailing principles. The first is the public interest in the expeditious administration of justice, which pulls in favour of robust enforcement of court orders. The second is the principle that a party should not ordinarily be denied adjudication on his case on its merits because of procedural defaults. This second principle finds expression in the court's general discretion to extend time, though the option of extending time for disclosure obviously falls away in cases where the documents for which discovery is sought have been destroyed or are otherwise no longer in existence (*Singapore Civil Procedure 2019* vol I (Justice Chua Lee Ming editor-in-chief) (Sweet &

Version No 1: 27 Oct 2020 (22:41 hrs)

Maxwell, 2019) at para 24/16/1).

95 Although the general test is whether there is a real or substantial risk that the default will render the fair trial of the action impossible, cases involving contumacious conduct – such as the deliberate destruction or suppression of a document or the persistent disregard of an order of production – may nevertheless warrant an order for striking out even if a fair trial is still possible (*Mitora Pte Ltd v Agritrade International (Pte) Ltd* [2013] 3 SLR 1179 ("*Mitora*") at [48]). Thus, in *Manilal and Sons (Pte) Ltd v Bhupendra K J Shan (trading as JB International)* [1989] 2 SLR(R) 603, the plaintiff's action was struck out for non-compliance with an "unless" order for discovery, the court finding that the non-compliance was either deliberate or arising out of "gross negligence … such as to amount to wilfulness" (at [64]).

96 In this regard, where the application is interlocutory in nature, affidavits of discovery generally are conclusive as to whether or not the discovery obligation had been breached, and striking out would only be appropriate where the breach is admitted or clear on the face of the documents, affidavits or pleadings put forward by the party in default (*Cepheus Shipping Corporation v Guardian Royal Exchange Assurance Plc (The "Capricorn")* [1995] 1 Lloyd's Rep 622 ("*The Capricorn*") at 646. However, an important exception to his rule exists where the existence or suppression of documents is itself an issue for determination at the trial of the action (*The Capricorn* at 646):

> … The present application proceeds on the premise that, at trial, it is open to the defendants, as a matter of probability and on the basis of any useful answers they can extract in cross-examination of any witnesses who happen to be called on issues which do arise for determination, to undermine the affidavits of discovery given by Mr. Faraklas. I have more than a little doubt whether that can be so. *The right view of* Fayed v. Lonrho Ltd. *may be that, unless the existence or suppression of documents is itself an issue for determination at trial of the action,* affidavits

Version No 1: 27 Oct 2020 (22:41 hrs)

> of discovery remain conclusive and are subject to challenge by either party only in the limited circumstances identified in that case. In any other case, an application made under O. 24, r. 16 remains effectively interlocutory whether made before or at trial. … [emphasis added]

Application to the facts

97 That is indeed the case here. The issue of whether Btech had suppressed or destroyed the documentary records was placed squarely before this court; it was raised by Novellers in its pleadings (by amendment to its defence and counterclaim)[108] and appears on the agreed list of issues in both Btech's and defendant's lead counsel's statements.[109] Mr Ang was cross-examined on his affidavit of 19 July 2017, and was afforded every opportunity to satisfy the court of his efforts at preserving the documentary records.

98 Yet, Mr Ang's explanations for the paucity of documents preserved were not only wholly unsatisfactory but, at points, quite troubling. In his affidavit of 19 July 2017, he blamed the "inevitable loss that comes with the passage of time" and "circumstances outside of [his] control" for the loss of documents. As to the first explanation – loss due to the "effluxion of time" – it bears emphasising that barely nine months had elapsed from the time the Premises was shuttered on 25 August 2016 to Novellers' notice to produce (dated 15 May 2017). In fact, I would have expected the materiality of the documentary records to have been apparent to Btech from the time Novellers' defence and counterclaim was first filed on 10 October 2016. Perhaps most pertinently, proceedings were commenced *by Btech* on 15 September 2016 – just a month

---

108 D&C at para 12B.

109 Plaintiff's Lead Counsel's Statement; Defendant's Lead Counsel's Statement, Agreed List of Factual Issues, s/n 5.

Version No 1: 27 Oct 2020 (22:41 hrs)

after the locks were changed. By that time, Btech ought to have been keenly aware of the need to preserve the documentary records left at the Premises on account of the proceedings it itself had commenced.

99 Turning to his second explanation – loss due to circumstances outside of Mr Ang's control – I failed to see how there could have been circumstances outside of his control resulting in the loss of documents.

(a) The documentary records had been left at the Premises when Novellers was essentially evicted on 25 August 2016, and thereafter it was Btech who occupied and operated from the Premises. Perhaps anticipating some difficulty on this score, Mr Ang explained (on affidavit) that the circumstances beyond his control included "unsatisfactory document retention when *moving of premises* et al" [emphasis added] (see [92] above). However, this explanation was completely discredited when he later conceded under cross-examination that Btech had never moved from the Premises.[110]

(b) At the trial, Mr Ang also offered several new explanations for the dearth of documents. When confronted with the incredulity of the explanations in his affidavit, Mr Ang attempted to pin the blame on a cleaning contractor that had been hired "to clean out the whole place".[111] No evidence was adduced as to whether or when the Premises was cleaned out. In any case, I thought this excuse to be particularly disingenuous since one would ordinarily expect the cleaning contractor to have been acting on instructions from Btech.

---

110 Tr/09.05.18/116/1–3.

111 Tr/09.05.18/115/29–30.

Version No 1: 27 Oct 2020 (22:41 hrs)

(c) Mr Ang's bare assertion that Dr Huang eschewed hard copies and preferred to work with soft copy documents[112] is contradicted by Brian Lim's evidence that hard copies of the supplier records certainly existed.

(d) Finally, his assertion that some of the documents which bore PPE's letterhead were returned to PPE[113] is not stated in his affidavit of 19 July 2017, and in any case does not account for the loss of the supplier records, which would have borne Novellers' letterhead.

100 In sum, by Btech's own evidence, documentary records such as Novellers' purchase requisition forms, purchase orders, delivery orders and records of cheque payments were kept at the Premises, and were present at the Premises *at the time the locks were changed*. Yet, the documents disclosed pursuant to a direct request made for the documentary records kept at the Premises were but a fraction of what must have remained on the Premises as at 25 August 2016. Mr Ang could give no coherent reason for the paucity of documents, and in fact contradicted the explanations he had given on affidavit with admissions made during the trial. In the circumstances, I agree with Novellers that the foregoing founds an irresistible inference that Btech had suppressed, misappropriated or destroyed the documentary records, and that this was either deliberate, or borne of gross negligence such as to amount to wilfulness.

101 The suppressed documents would be highly relevant to Novellers' counterclaim for conversion of its equipment and tools, since Btech joins issue

---

112 Tr/09.05.18/116/13–23.

113 Tr/09.05.18/115/13–17.

Version No 1: 27 Oct 2020 (22:41 hrs)

with Novellers on the question of ownership. In the determination of this issue, the purchase requisition forms and purchase orders would indicate whether and which equipment had been ordered by Novellers. The delivery orders would indicate whether the equipment had been delivered *to the Premises*. The cheque records would show whether Novellers had indeed paid for the said equipment. The suppression of these documents would make it extremely difficult, if not impossible, for Novellers to prove its case, especially given that Btech's defence to the claim was that Novellers had not proven that the equipment and tools belonged to it.

102 In my view, given Btech's deliberate suppression of the documentary records, as well as the materiality of those records to Novellers' counterclaim *in respect of the equipment and tools left at the Premises*, this is an appropriate case for the making of an order under O 24, r 16(1) of the ROC. As was mentioned, O 24, r 16(1) confers upon the court wide powers to make such order as would be fair and just in the circumstances. Seeing as the documentary records would be relevant to Novellers' counterclaim for the equipment and tools *specifically*, and not its other counterclaims, I do not think it would be fair to strike out Btech's defence to counterclaim *in toto*. I therefore order that para 9 of Btech's Reply and Defence to Counterclaim (Amendment No 2) be struck out (being the paragraph stating its defence to Novellers' counterclaim for the equipment and tools (see Defence and Counterclaim (Amendment No 2) at para 11)), and I give judgment substantially in favour of Novellers on that claim, subject to the point I discuss at [105] below.

103 As regards Novellers' request for an order for delivery up of the documentary records, such a claim must be brought in an action for detinue, and not conversion. The tort of detinue comprises both the elements of wrongful detention *and* the refusal to redeliver, and as such a demand by the claimant

Version No 1: 27 Oct 2020 (22:41 hrs)

(here, Novellers) for the return of the documentary records is an essential ingredient of the tort (Gary Chan Kok Yew and Lee Pey Woan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) at para 11.067). The Notice to Produce dated 15 May 2017 is not a demand for redelivery, but a notice to produce for the purposes of *inspection*. Novellers did not refer me to any evidence that a demand for redelivery was made in respect of the documentary records, and accordingly, that remedy was not available.

Equipment and tools

104 Novellers counterclaims for the conversion of various items of equipment and tools that were left at the Premises when the locks were changed by Btech. Novellers' counterclaim is in respect of the following:

(a) moving die rheometer;

(b) air compressor;

(c) deflashing drum;

(d) clean room compressors;

(e) microscope;

(f) specimen cutters (cutting tools);

(g) mechanical tester;

(h) oven;

(i) mould sets (mould accessories);

(j) computers, printers and scanners; and

(k) furniture.

Version No 1: 27 Oct 2020 (22:41 hrs)

105 I ordered at [102] above that para 9 of Btech's Reply and Defence to Counterclaim (Amendment No 2) be struck out, and I would therefore give judgment in favour of Novellers' claim for the equipment and tools listed at [104] above, subject to the following caveat: while Novellers claims for a "hardness tester", this item of equipment was not listed in its defence and counterclaim,[114] and accordingly, Novellers is not entitled to relief in respect of that item.

106 I therefore find that Btech is liable to Novellers in damages for conversion of the following equipment and tools belonging to Novellers as described at paras 149–174 of Dr Huang's 1st AEIC dated 24 January 2018 ("Dr Huang's 1st AEIC"):

(a) moving die rheometer;

(b) deflashing drum;

(c) clean room compressor;

(d) microscope;

(e) specimen cutters;

(f) mechanical tester;

(g) oven;

(h) mould sets;

(i) computers, printers and scanners; and

(j) furniture.

---

114 DCS at para 180(b); NSY-1 at para 150.

Version No 1: 27 Oct 2020 (22:41 hrs)

I note that the *quantum* of damages has been reserved for a second tranche of trial. This judgment only deals with liability.

107 For completeness, I should add that I would have arrived at the same conclusion even if Btech's defence in respect of this counterclaim had not been struck out.

108 Novellers counterclaims in tort for conversion. Generally, an act of conversion occurs when there is unauthorised dealing with the claimant's chattel such as to question or deny his title to it (*Tat Seng Machine Movers Pte Ltd v Orix Leasing Singapore Ltd* [2009] 4 SLR(R) 1101 at [45]). Btech's only defence to this counterclaim is that Novellers has not proven its ownership of the various items because it has not produced evidence of payment for those items.[115] Given the nature of Btech's defence, it is beyond dispute that the items were in fact in the Premises and that Btech had treated the items as if they were its property.[116]

109 The burden is on Novellers, as the counterclaimant, to prove its ownership of the property allegedly converted by Btech. In his first AEIC, Dr Huang listed the various items claimed for, stating that each of the items was purchased by and therefore belonged to Novellers. His evidence went unchallenged in respect of three items: the moving die rheometer,[117] microscope[118] and mechanical tester.[119]

---

115 PCS at para 35; Tr/11.05.18/43/12–32, 46/19–32.

116 R&DC at para 9.

117 NSY-1 at para 149, Exhibit 18.

118 NSY-1 at para 155.

119 NSY-1 at para 157.

Version No 1: 27 Oct 2020 (22:41 hrs)

110 In respect of the other items, Btech challenged Dr Huang's evidence on the basis that he was only able to produce purchase orders or invoices, but not proof that *Novellers* had paid for those items:

(a) Deflashing drum: Novellers was only able to produce a quotation from the supplier issued in January 2013, but not proof of payment.[120] Novellers was unable to produce any documents in support as the relevant documents were left in the Premises.[121] The item claimed for was a second deflashing drum, and not the first deflashing drum, which Novellers concedes had been purchased by Btech Taiwan.[122]

(b) Clean room compressor: Dr Huang's evidence was that clean room compressors were purchased sometime in mid-2015. Novellers was unable to produce any documents in support as the relevant documents were left in the Premises.[123] The item claimed for was a new clean room compressor and not the old compressor, which he accepted had not been purchased by Novellers.[124]

(c) Specimen cutters (cutting tools): Novellers was only able to produce purchase orders, but not proof of payment.[125] However, Novellers was able to correlate invoices for six orders of cutting tools purchased for $1,576.11 with transfers reflected in Novellers' bank statements, thereby proving that Novellers had paid for those cutting

120 NSY-1 at para 152, p 549.

121 DCS, Exhibit 1 at para 6.

122 Tr/11.05.18/37/13–20.

123 NSY-1 at para 154.

124 Tr/11.05.18/37/26 – 38/5.

125 NSY-1 at para 156, pp 555–581; Tr/11.05.18/41/6–9.

Version No 1: 27 Oct 2020 (22:41 hrs)

tools.[126] Novellers was unable to correlate the invoices for the rest of the moulds to specific transfers in its bank statements because of the supplier's practice of consolidating several purchase orders (made over a period of time) into a single invoice.[127]

(d) Oven: Novellers was only able to produce a purchase order, but not proof of payment.[128] Novellers was unable to produce any documents in support as the relevant documents were left in the Premises.[129] The item claimed for was a second oven which Novellers had purchased to replace the existing oven (which was purchased by Btech), which was not suitable for the production process.[130]

(e) Mould sets: Dr Huang clarified that Novellers' counterclaim is made in respect of mould *accessories* used in the manufacturing of moulds – specifically, mould plates, pins and brushes – and not the moulds themselves.[131] Novellers was able to correlate invoices for two orders of mould accessories purchased for $687.13 with transfers reflected in Novellers' bank statements, thereby proving that Novellers had paid for those mould accessories.[132] Novellers was unable to correlate the invoice for a previous order to specific transfers in its bank

126 DCS at paras 193–196, Exhibit 1 at para 7, s/n 11–16; 3.AB 804.

127 DCS, Exhibit 1 at para 7, s/n 1–10, 17–27; Tr/11.05.18/66/5–15.

128 NSY-1 at para 153, p 550.

129 DCS, Exhibit 1 at para 6.

130 Tr/11.05.18/40/3–12.

131 NSY-1 at paras 158–159; Tr/11.05.18/42/21 – 43/26.

132 DCS at paras 198–203, Exhibit 1 at para 8, s/n 2–3; 3.AB 784, 822.

Version No 1: 27 Oct 2020 (22:41 hrs)

statements as the delivery orders, invoices and receipts for this order were at the Premises, or, might have been paid for in cash.[133]

(f) Computers, printers and scanners: Dr Huang's evidence was that Novellers had purchased "5 or 6" computers. Novellers was unable to produce the documents relating to these purchases as they were left in the Premises, save for one invoice in respect of a laptop.[134] No evidence was adduced in respect of either printers or scanners purchased by Novellers, and Novellers is not entitled to damages in respect of the same. I further note that Mr Ang claimed these were "mostly bought" by Btech, but had to admit he had not put any invoices or other material evidencing this in his AEIC or disclosed them in discovery.[135]

(g) Furniture: Dr Huang's evidence was that Novellers had spent about $10,000 on furniture and fixtures on or around the time of its incorporation in July 2012. Novellers was unable to produce any documents in support as the Relevant Documents were left in the Premises.[136]

111 In sum, save for the six orders of cutting tools and two orders of mould accessories which Novellers was able to correlate with its bank statements, Novellers was unable to prove payment in respect of the items claimed. Novellers explained that the correlation method (*ie*, correlating invoiced purchases to transfers in its bank statements) could not be applied to every item

---

133 DCS, Exhibit 1 at para 8, s/n 1.

134 NSY-1 at paras 171–172.

135 Tr/10.05/18/28/9–23.

136 NSY-1 at para 174.

Version No 1: 27 Oct 2020 (22:41 hrs)

because multiple purchase orders may have been compiled into a single invoice, and multiple invoices may have been paid using a single cheque or via a single transfer. For this reason, the supplier records (*ie*, purchase requisition forms, purchase orders, delivery orders and records of cheque payments) were absolutely essential. Without these documents, it would not just be difficult but impossible for Novellers to make good its claim to ownership of the various items.

112 I should add that Btech was itself unable to furnish any proof of payment for the disputed items. In my view, it is far too convenient for Btech simply to sit back and deny Novellers' ownership of the items only on the basis of burden of proof, while at the same time suppressing the very documents Novellers would need to discharge that burden. In the circumstances, and for the same reasons discussed at [97]–[102] above, I think this an appropriate case to draw an adverse inference under s 116 of the Evidence Act (Cap 97, 1997 Rev Ed) against Btech by presuming that the documentary records – had they been preserved and disclosed – would have shown that Novellers did indeed purchase the items listed at [110] above (*Mitora* at [45(c)(v)]).

113 For these reasons, even if Btech's defence to counterclaim still stood, I would nonetheless have found that the items listed at [106] above belonged to Novellers, and that by treating those items as its own, Btech had converted the said items and is liable to Novellers in damages.

Proprietary information

114 The third category of Novellers' unlawful detention counterclaim concerns the proprietary information left at the Premises as at 25 August 2016.

Version No 1: 27 Oct 2020 (22:41 hrs)

The proprietary information at issue are as follows:[137]

(a) standard operating procedures ("SOPs") developed by Novellers, covering various aspects of Novellers' business, such as the processing of invoices, use of safety equipment and production processes;[138]

(b) technical drawings for mould designs;[139]

(c) material formulations for elastomer seals;[140] and

(d) data collected by Novellers' staff and predictive graphs to determine the "shrinkage value" of specific materials and moulds.[141]

115 It is beyond dispute that the proprietary information was in fact present at the Premises on 25 August 2016 when the locks were changed. At the trial, both Dr Huang and Neo Yew Chin (who was called by Btech) gave evidence that the technical drawings, material formulations and shrinkage data were stored in a "technical" folder on Novellers' computer folder.[142] As for the SOPs, these were hard copy documents also kept on the Premises.[143] I accept their evidence.

116 In respect of the proprietary information listed at [114], Novellers seeks

---

137 DCS at para 236.

138 NSY-1 at para 76.

139 NSY-1 at para 77.

140 NSY-1 at para 77; Tr/11.05.18/80/19–22.

141 Ng Soo Yeng's 2nd AEIC dated 20 February 2018 ("NSY-2") at para 12.

142 Tr/10.05.18/83/1–10; Tr/11.05.18/80/19–22.

143 Tr/11.05.18/98/9–12, 99/22–29.

Version No 1: 27 Oct 2020 (22:41 hrs)

an order for delivery up of those documents. It also seeks an order that Btech be directed to purge all such proprietary information from its computer servers and electronic storage media.[144] These orders are sought on the basis of both the law of confidentiality[145] and the law of copyright.[146]

117 The elements of an action for breach of confidence are not in dispute. There are three elements, all of which must be established (*Vestwin Trading Pte Ltd and another v Obegi Melissa and others* [2006] 3 SLR(R) 573 at [34]; *Coco v A N Clark (Engineers) Ltd* [1969] RPC 41 at 47):

(a) First, the information must have the necessary quality of confidence about it.

(b) Second, the information must have been imparted in circumstances importing an obligation of confidence.

(c) Third, there must have been an unauthorised use of that information.

118 Btech appears to have abandoned its only pleaded defence to this counterclaim – that Btech could not have unlawfully detained the proprietary information since it was jointly owned by Btech[147] – and instead makes two new arguments:

144 D&C at p 9; DCS at para 273.

145 DCS at paras 261–271.

146 DCS at paras 243–260.

147 R&DC at para 10.

Version No 1: 27 Oct 2020 (22:41 hrs)

(a) It was Dr Huang who is the owner of the proprietary information. Therefore, Dr Huang, and not Novellers, is the proper claimant.[148]

(b) There was no unauthorised use of the proprietary information.

119 I turn to the first point. The question of ownership over the proprietary information was put to Dr Huang, and his answers indicated that although he was the progenitor of the innovations and ideas, the process of developing those ideas into commercially viable processes – which is ultimately the information encapsulated in documents like the SOPs, technical drawings and material formulations – was a joint effort between Dr Huang and Novellers' development team, and therefore belonged to Novellers:[149]

> Court: … So you are saying, Dr Huang, even if the company was already incorporated, and some product or process was developed, the intellectual property in there still belong to you, not the company?
>
> A: … I have a team that would … develop that … intellectual property, the original concept comes from me. But … that concept will need … to be industrialised …
>
> …
>
> Court: … who does that belong to? You or the company?
>
> A: The scientific concept comes from me, so that is mine. But the … innovation, the process of making it industrialised for it to be produced belongs to the company.

120 Btech's second argument was that it had not used the proprietary information. In support of this contention Btech submitted, in its written closing submissions, that "the Plaintiff's scope of business seems to have in fact diverge

---

148 PCS at paras 24–25.

149 Tr/11.05.18/3/27 – 4/4, 5/2–5.

Version No 1: 27 Oct 2020 (22:41 hrs)

[*sic*] from [Novellers'] since the lock-up of the factory",[150] citing several responses given by Mr Ang during cross-examination. However, those responses seem to contradict that very submission, as they suggest that the products which Btech was manufacturing at the Premises after Novellers' eviction were similar to those which had been produced by Novellers.[151]

121 Quite apart from this, the element of unauthorised use is in my view most clearly made out by Btech's admission that Mr Ang had handed over hard copies of Novellers' SOPs to PPE. After the re-examination of Dr Huang, Mr Sankar s/o Saminathan, counsel for Btech, requested leave for further cross-examination of Dr Huang. Mr Sankar informed me that he wished to put a further point (on which he had been instructed) to Dr Huang, the point being that Mr Ang had given Novellers' SOPs to PPE:[152]

> Court: Yes, so what's your question to him?
>
> Sankar: So, Your Honour, I just want to put it across to him that's my instructions.
>
> …
>
> Court: *Your instructions are that your client Mr Ang has taken the SOPs from [Novellers] and handed it over to PPE.*
>
> Sankar: *Yes*, because it's what—this information are similar to what the standard operating procedures PPE has, Your Honour.
>
> …
>
> Court: *So you are saying that your instructions are, those hard copies were handed to PPE, right?*
>
> Sankar: *Yes, yes.*

---

150 PCS at para 27.

151 Tr/10.05.18/6/22 – 7/14, 15/5–12.

152 Tr/11.05.18/104/28–30, 105/8–27.

Version No 1: 27 Oct 2020 (22:41 hrs)

> [emphasis added]

122 Based on the foregoing exchange, it is to my mind clear that unauthorised use is established on the basis of Btech's own admissions. I turn to the remedies sought. Where a party unlawfully obtains or retains confidential information, the court has power to order delivery up or destruction of the confidential material (R G Toulson and C M Phipps, *Confidentiality* (Sweet & Maxwell, 3rd Ed, 2012) at paras 9–013 and 9–016):

> 9–013. The court has power to order delivery up or destruction of material containing confidential information or derived from misuse of confidential information, unless possibly the material has substantial intrinsic value independently of the misuse of confidential information.
>
> …
>
> 9–016. Where the successful plaintiff seeks an order for delivery up of material containing confidential information it will usually be granted, especially if the defendant cannot be relied on to destroy it. …

123 There is nothing to suggest that the proprietary information has any substantial intrinsic value besides that attributable to the confidential information therein. I therefore order that Btech deliver up any proprietary information in the form of hard copy documents left at the Premises or otherwise in its possession. I further order that Btech purge any proprietary information in electronic form remaining in its computer servers, other electronic storage media, or elsewhere on the Premises.

Conclusion

124 In conclusion, I dismiss Btech's claim on the invoices, and find substantially in Novellers' favour in relation to its counterclaims.

125 In relation to the wrongful termination counterclaim, I find that Btech

Version No 1: 27 Oct 2020 (22:41 hrs)

wrongfully repudiated the Oral Agreement and wrongfully revoked the contractual licence, and is therefore liable to Novellers in respect of such losses as may be proven to flow from the wrongful repudiation and wrongful revocation in the subsequent tranche of trial.

126 In relation to the unlawful detention counterclaim, I order that para 9 of Btech's Reply and Defence to Counterclaim (Amendment No 2) be struck out under O 24, r 16(1) of the ROC. Accordingly, I grant judgment in favour of Novellers in respect of its claim in tort for conversion of the items listed at [106] above. In respect of the proprietary information, I order that Btech deliver up or purge the proprietary information in accordance with the directions elaborated upon at [123] above.

127 I will hear the parties on any consequential orders that are or may be required as well as on costs.

Quentin Loh
Judge

Wong Hong Weng Stephen and Sankar s/o Kailasa Thevar Saminathan (Sterling Law Corporation) for the plaintiff;
Sunil Nair and Kevin Koh (Eversheds Harry Elias LLP) for the defendant.

Version No 1: 27 Oct 2020 (22:41 hrs)