

**KUALA LUMPUR HIGH COURT
[CIVIL SUIT NO: WA-22IP-58-09/2023]**

BETWEEN

BENTLEY SYSTEMS, INCORPORATED

... PLAINTIFF

AND

PUSB ENGINEERING SDN BHD

... DEFENDANT

**JUDGMENT
[After full trial]**

Introduction

[1] In a nutshell, this action by the Plaintiff (“Bentley”) against the Defendant (“PUSBE”) is for copyright infringement. PUSBE’s counterclaim against Bentley as pleaded at first glance is, however, not one that can easily be fitted into a nutshell of the usual categories of causes of action. Push come to shove to put a name on it, I would say it is for damages against Bentley for the very bringing of this copyright infringement action against it. In simple terms, PUSBE says that Bentley’s action against it is an abuse of process.

Copyright infringement

[2] In a second nutshell, a successful action for copyright infringement consists of two essential elements, namely establishing the copyright and then establishing the infringement of it.

[3] The first element is not really in dispute here. Bentley, a US-based software development company, develops, manufactures and distribute

computer software for numerous industries worldwide, including the design, construction, and infrastructure industries.

- [4] The software in issue here is an offshore structural analysis software that it calls as SACS Connect Edition (“SACS Computer Programs”) (note the American spelling). SACS Computer Programs come in various versions (the latest being Version 16) and contain the Bentley’s copyrighted language, codes or notations (“Works”). It is used and utilised by offshore engineers and structural engineers to design, analyse, and simulate the response of, *inter alia*, offshore platforms. The SACS Computer Programs come with various integrated modules that were developed and designed to carry out different functionalities, and include SACS Offshore Structure, SACS Pile Structure Design and SACS Fatigue.
- [5] PUSBE does not really dispute Bentley’s copyright in the SACS Computer Programs. It pleaded in paragraphs 14.1, 14.2 and 14.3 of its Amended Defence and Counterclaim:

“Petrokon Utama Sendirian Berhad (Petrokon) is a multi-discipline engineering consultancy established in Brunei Darussalam since January 1984. Petrokon provides design engineering and project management services to the oil and gas, petrochemical and construction industries.

Petrokon owns a 30% stake in the Defendant's issued share capital, thereby establishing its affiliation within Petrokon's consortium of corporate entities (“the Consortium”). As a member of the Consortium, the Defendant and Petrokon co-work on projects awarded to Petrokon and vice versa.

Petrokon has subscribed for the ensuing software applications from the Plaintiff:

(a) SACS Offshore Structure Ult. SELECT Sub

(b) *SACS Pile Structure Design SELECT Sub*

(c) *Bentley AutoPIPE Advanced SELECT Subs* (d) *Structural WorkSuite SELECT Subscription*

(hereinafter collectively referred to as “the Software”).”

The part that Petrokon fits into the narrative of PUSBE’s defence and counterclaim will be looked at in due course.

[6] That concession by PUSBE is probably due to pragmatism, all the more because of the Statutory Declaration that Bentley adduced under **section 42(1) of the Copyright Act, 1987** (“Act”), which provides:

‘42. Affidavit admissible in evidence

(1) An affidavit or statutory declaration made before any person having authority to administer oath by or on behalf of any person claiming to be:

(a) The owner of the copyright in any works eligible for copyright under this Act stating that:

(i) at the time specified therein copyright subsisted in such work;

(ii) he or the person named therein is the owner of the copyright; and

(iii) a copy of the work annexed thereto is the true copy thereof;

...

shall be admissible in evidence in any proceedings under this Act and shall be prima facie evidence of the facts contained therein. ”

Whether PUSBE has infringed Bentley's copyright

[7] Section 36(1) of the Act provides:

“Copyright is infringed by any person who does or causes any other person to do, without the license of the owner of the copyright, an act the doing of which is controlled by copyright under this Act.”

[8] Under **sections 13(1)(a) and (aa) of the Act**, as owner of the copyright in the SACS Computer Programs Photos, Bentley has the exclusive right to control in Malaysia the reproduction in any material form and the communication to the public of the SACS Computer Programs and the Works.

[9] To protect its copyright in the SACS Computer Programs and the Works and to detect any unlawful or unlicensed use, Bentley caused to be embedded into the SACS Computer Programs certain security mechanisms in the form of piracy detection and reporting technology that would detect, identify and report any unlicensed/infringing usage of the SACS Computer Programs (“Security Mechanism”).

[10] At the trial, Mr. Lu Han-Chiang, Bentley's Copyright Compliance Director for Asia Pacific (“PW2”) testified that the Security Mechanism had been developed by a company known as *Reverera*, and was commonly used by renowned software publishers and vendors such as PTC Inc., Siemens Industry Software Inc., Dassault Systèmes and CNC Software, LLC. I found PW2 to be a truthful witness, and that his evidence that SACS Computer Programs were embedded with the Security Mechanism to have been unchallenged and uncontroverted by PUSBE.

[11] PW2 and Mr. Sebastian Liew Zhen Lead, Bentley's Senior License Compliance Specialist (“PW1”), whom I also found to be a truthful witness, testified that, sometime in 2022, the Security Mechanism had generated an Infringement Report (which Bentley also adduced and was unchallenged) which had detected unlicensed use of one of the

SACS Computer Programs named SACS Connect Edition. The Wi-Fi network that was connected by the computing devices showed that PUSBE’s Wi-Fi networks contained infringing copies of it, and that the Wi-Fi location, i.e. the coordinates of the Wi-Fi domains of the computing devices containing the infringing copies, were detected to be at PUSBE’s premises. These Wi-Fi domains were:

- (i) PUBSGuest;
- (ii) PUBSStaff;
- (iii) PUBBHOD_5.0@unifi;
- (iv) PUBLEVEL11;
- (v) PUB_MAXIS_GUEST;
- (vi) PESBMIRI; and
- (vii) PUB_MAXIS.

[12] Further, the company domain and the domain list of the computing devices that were detected of containing the infringing copies of the SACS Computer Programs was pusbengineering.com.my. obviously PUSBE’s domain. PUSBE did not dispute this.

[13] To compound matters, PW1 further testified that ten devices at PUSBE’s premises contain the infringing copies of the Works (collectively, “Infringing Devices”). They are listed in Table A below.

Table A

No .	Hostname (Machine Name)	Windows Username User details
1.	LAPTOP-003DT800	ab610

2.	Dell	User
3.	kflee-jason	Jason Lee Kee Foo
4.	Laptop-7H9NHGGC	Jason Lee Kee Foo
5.	Noewu	Noel Reginald
6.	PESB-H49915C	Dennis
7.	DESKTOP- SV5M36F	acer
8.	KFLEE-JASON	Jason Lee Kee Foo
9.	DESKTOP-BIKMQU6	User
10.	ANY	Jason Lee Kee Foo

[14] Thus, the Security Mechanism had not only detected the Infringing Devices but also the names of the following users of those Infringing Devices (collectively, “Infringing Device Users”):

- (i) Noel Reginald;
- (ii) Jason Lee Kee Foo;
- (iii) Abdullah Daud;
- (iv) Dennis Enyang; and
- (v) Shawry Anding.

[15] There was no rebutting evidence from PUSBE that those Infringing Devices were not used at its business premises, or that the Infringing Device Users were not its employees at the material time.

[16] In my view, all of this uncontroverted evidence raised a *prima facie* case of copyright infringement, which made it then incumbent upon PUSBE to raise a plausible defence to it.

[17] PUSBE's defence to copyright infringement was essentially three-fold, hence Petrokon's role in its narrative:

- (i) There was no copyright infringement because PUSBE had used the license for the use of SACS Computer Programs that Bentley had given to Petrokon, with Petrokon's consent, through the use of one of Petrokon's devices on which SACS Computer Programs had been installed;
- (ii) The license to use the SACS Computer Programs via PUSBE's subsequent online purchase of SACS Offshore Structure Virtuosity legitimized PUSBE's usage of SACS Computer Programs; and
- (iii) Any infringing copies of the SACS Computer Programs detected by the said Security Mechanism on were possibly used/installed by the Device Users in their personal devices, which would have been out of PUSBE's control.

[18] For the first, PUSBE alleges that, because Petrokon is a 30% shareholder in PUSBE and that as they are both part of a consortium, they work on projects together. As and when the need arises in respect of their joint-projects, Petrokon would lead to PUSBE the use of the electronic device on which the licensed SACS Computer Programs is installed, which device would then be returned to Petrokon after use.

[19] I wholly reject this excuse. Firstly, Petrokon and PUSBE are wholly different, independent and separate legal entities, and I find it incredulous that Petrokon would even think of departing with one of its computer devices (which would obviously contain in its database much, much more of its private and confidential information over and above that SACS Computer Program) to allow anyone to have exclusive and unlimited access to use that device.

[20] Secondly, even if that were true, DW1 said that PUSBE knew that Petrokon were using the SACS Computer Programs under license from

Bentley. That means that PUSBE paid scant regard to any enquiry as to whether that license to Petrokon extended to allowing PUSBE to use it for whatever reason. As it is, there was no evidence whatsoever that Bentley's license to Petrokon allowed Petrokon to further license and allow a third party to also use it.

- [21] Thirdly, that excuse does not at all explain how the SACS Computer Programs came to be detected as being in the Infringing Devices.
- [22] Fourthly, a report on Petrokon's usage of the SACS Computer Programs did not reflect any usage of Petrokon's license by the PUSBE.
- [23] Lastly, the evidence from Haji Jamain bin Haji Mohammad Lot, Petrokon's General Manager (Corporate), confirming that Petrokon and PUSBE are both part of a consortium, that they work on projects together, that Petrokon would let PUSBE use the device on which the licensed SACS Computer Programs is installed as and when the need arises in respect of their joint-projects, which device would then be returned to Petrokon after use, does not at all legitimize PUSBE's use of the SACS Computer Programs.
- [24] I also reject PUSBE's second contention that the license to use SACS Computer Programs which PUSBE subsequently procured from Bentley's online site legitimized PUSBE's usage of SACS Computer Programs.
- [25] Firstly, the operative word is "subsequent", and that purchase was after the copyright infringement acts that Bentley complains of. While that subsequent purchase gives license to PUSBE to use the SACS Offshore Structure Virtuosity component of the SACS Computer Programs from the time of its purchase, that would neither extend nor excuse PUSBE's historical acts of infringement.
- [26] Secondly, both PW1 and PW2 testified that the SACS Offshore Structure Virtuosity License is merely a single user license that grants

access to a single user to one (1) module of the Works, namely the SACS Offshore Structure Ultimate, and by subscribing to one (1) copy of the Virtuosity License, only one (1) user of PUSBE is allowed to install and use to only one (1) SACS Offshore Structure Ultimate software. Further, that SACS Offshore Structure Ultimate Software is only the base license, and does not cover all modules in the Works such as SACS Fatigue Ultimate and SACS Pile Structure Design.

[27] PUSBE's third and final allegation that any infringing copies of the SACS Computer Programs detected by the said Security Mechanism on were possibly used/installed by the Device Users in their personal devices, which would have been out of PUSBE's control, is also rejected. As I had said earlier, PUSBE did not dispute that the Infringing Devices were at its premises or that the Device Users were its employees. Even if it is true that these Devices Users had been downloaded the SACS Computer Programs onto the Infringing Devices without PUSBE's knowledge or consent, it must take responsibility for those actions.

[28] In this regard, Bentley had aptly relied in the Singapore High Court case of *Siemens Industry Software Inc. (formerly known as Siemens Product Lifecycle Management Software Inc) v. Inzign Pte Ltd* [2023] SGHC 50 that held that an employer was vicariously liable for copyright infringement committed by its employee, even though the employer was not aware of the acts complained of and had not authorised the commission of those acts by the employee.

[29] Based on the foregoing, I find that Bentley has succeeded on its claim for copyright infringement against PUSBE.

PUSBE's counterclaim

[30] As I said at the outset, I find PUSBE's counterclaim against Bentley to be a rather odd and curious one, that it be best if I set out what PUSBE had pleaded of it.

[31] In paragraphs 24 to 30 of its Counterclaim, PUSBE had pleaded:

- “24. *The Defendant avers that the Plaintiff commenced this present suit without reasonable and proper cause and/or in bad faith and/or with the ulterior motive of harming the reputation of the Defendant.*
25. *The Defendant has engaged in contractual agreements with reputable enterprises operating in the oil, gas, petrochemical, and construction sectors, including but not limited to entities such as Petronas, Sarawak Shell Berhad, Sabah Shell Petroleum Company Ltd, and similar corporations, for the provision of its services to the aforementioned corporate entities herein referred to as "said Companies."*
26. *The Defendant has made commitments to the aforementioned corporate entities that there are no ongoing legal actions or claims against the Defendant that could in any manner impede the Defendant's entitlement to enter into the aforementioned contract(s).*
27. *In the context of the ongoing litigation, a substantial concern exists regarding the potential termination of the current Contract(s) and Purchase Order(s) by the said Companies. In the event of such termination, the Defendant may incur liability for any resultant loss or damage suffered by the said Companies due to the termination of the existing contract(s) with the Defendant. The Defendant has 11 ongoing contracts with unbilled works of approximately RM2,731,790.77 and a contract recently secured valued at RM6.307 million. The contract recently awarded does not utilize the Plaintiff's software but stand to be impacted by the ongoing litigation.*
28. *Additionally, there is a substantial potential for the Defendant to assume liability for claims arising from the termination of the*

Contract(s) and Purchase Order(s) awarded to the Defendant, which will encompass costs and damages suffered by Consultants, professionals, and/or advisers. These shall be regarded as components of the costs and damages recoverable by the said Companies from the Defendant.

29. *The ongoing litigation has inflicted substantial distress and embarrassment upon the Defendant. The Defendant has endured and is likely to continue to experience irreparable losses and damages to its commercial operations, reputation, standing, goodwill, and economic interests.*
30. *By reason of the matters aforementioned, the Defendant seeks the following reliefs from this Honorable Court:-*
- a) *The Plaintiff to pay damages to the Defendant the amount of which is to be assessed,*
 - b) *A declaration that the Defendant has not infringed the copyright of the Plaintiff's Works in Malaysia;*
 - c) *Costs; and d) Any other relief as this Honorable Court deems fit and just in the circumstances. ”*

[32] I can only gather that what PUSBE is really saying is that this Bentley's action for copyright infringement is an abuse of the process of the Court.

[33] In *Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin bin Ungku Mohamed* [1998] 2 MLJ 425, Gopal Sri Ram JCA (as he then was) said:

“In my judgment, the essential elements of the tort of abuse of process are these:

- (1) *The process complained of must have been initiated,*

- (2) *The purpose for initiating that process must be some purpose other than to obtain genuine redress which the process offers. In other words, the dominant purpose for which the process was invoked must be collateral, that is to say, aimed at producing a result not intended by the invocation of the process; and*
- (3) *The plaintiff must have suffered some damage or injury in consequence.”*

[34] In *Gasing Heights Sdn Bhd v. Aloyah Bte Abd Rahman & Ors* [1996] 3 MLJ 259, Mahadev Shankar J (as he then was) said:

“It seems to me that some of the passages quoted from the text books requires qualification. I therefore propose to analyse the cases cited.

But before I do that I want to say in the most emphatic terms that, if a litigant brings an action to protect his rights (as the defendants did in filing the motion), the use of all remedies afforded to them by the law cannot be an abuse of the court's process. ”

*“As to what constitutes an abuse of process, it would salutary to remind ourselves that in *Grainger v. Hill* [1838] 4 Bing NC 212, it was obvious that the plaintiff knew he never had a cause of action in the first place. Secondly, he proceeded with his action in order to extort a relief he was never entitled to in law.*

[35] As I had found that Bentley had successfully proved its case for copyright infringement against PUSBE, then for a surety this action is not an abuse of process.

[36] I should also clarify that, even if I had found that Bentley had failed to establish its case for copyright infringement against PUSBE, that in itself does not mean that this action would be an abuse of process. Without more, that would only be a finding of no liability in an action for genuine redress. Even if this action was dismissed. As long as an action is brought for genuine redress, its dismissal will not mean that it

is an abuse of process.

- [37] Furthermore, the relief for an action that is an abuse of process is damages. However, the relief for the dismissal of an action is merely costs.
- [38] Further, the relief sought by Bentley sought (which I will come to shortly), namely declaratory relief, injunctive relief, assessment of damages, etc., are also usual and common relief sought to protect intellectual property and other rights. There was therefore no abuse in Bentley seeking those reliefs.
- [39] I also find that PUSBE did not adduce any evidence whatsoever to substantiate its counterclaim that this action was an abuse of process and was anything other than a genuine action for a genuine grievance.
- [40] I further find that PUSBE seeking that declaration that it has not infringed the copyright of the Bentley's Works in Malaysia is also entirely unnecessary and superfluous, as in its defence it had already sought the dismissal of Bentley's claim for copyright infringement. If granted, that alone would have meant that it would not be infringing the copyright of the Bentley's Works no declaration would have been necessary.
- [41] Lastly, I make short shrift of PUSBE's contention in its Written Submissions to the effect that its counterclaim should be allowed because Bentley's interlocutory application to summarily strike it out was dismissed. Just because a claim or counterclaim was not summarily struck out does not automatically translate to mean that it should be allowed without being proved.
- [42] Based on the above, I would also go as far as saying that I find that it was really unnecessary for PUSBE to have filed a counterclaim at all, and doing so required Bentley to defend it, with precious Court time being unnecessarily allocated and spent to hear it out. Parties need to understand that they should not file a counterclaim in a kind of

retaliatory gesture to a claim filed against them for the sake of it. Just like a claim, a counterclaim - which reverses the parties' roles and puts the counterclaimant in the position of plaintiff - should only be filed for a genuine redress of a genuine grievance.

Conclusion

[43] Based on the above, I would accordingly dismiss the 1st Defendant's counterclaim with costs. For that indiscretion of unnecessarily filing a baseless counterclaim, an appropriate order for costs should be made against PUSBE for its dismissal of its unnecessary and baseless counterclaim.

The relief to be ordered

[44] Section 37(1) of the Act provides.

“(1) Infringements of copyrights and the prohibited acts under sections 36A and 36B shall be actionable at the suit of the owner of the copyright and, in any action for such an infringement or prohibited act, the court may grant the following types of relief:

- (a) an order for an injunction'*
- (b) damages;*
- (c) an account of profits;*
- (d) statutory damages of not more than twenty five thousand ringgit for each work, but not more than five hundred thousand ringgit in the aggregate; or*
- (e) any other order as the court deems fit. ”*

[45] Section 37(7) of the Act **provides:**

“Where in an action under this section an infringement of copyright or the commission of a prohibited act under sections 36A and 36B is

established, the court may, in assessing damages for the infringement or commission of the prohibited act, award such additional damages as it may consider appropriate in the circumstances if it is satisfied that it is proper to do so having regard to:

- (a) the flagrancy of the infringement or prohibited act;*
- (b) any benefit shown to have accrued to the defendant by reason of the infringement or prohibited act; and*
- (c) all other relevant matters.”*

[46] In its Statement of Claim, the Plaintiff sought the following relief:

- “1. A declaration that the Plaintiff’s copyright subsists in the SACS computer program and their various versions which contain the Plaintiff’s copyrighted language, codes or notations (“the Works”);*
- 2. A declaration that the Plaintiff is the owner of the copyright in the Works in Malaysia;*
- 3. A permanent injunction to restrain the Defendant, whether acting by itself, its servants or agents or otherwise, howsoever from doing or enabling others to do the following acts or any of them:*
 - a. Infringing the Plaintiff’s copyright in the Works; b. Infringing the Plaintiff’s copyright in the Works by doing or c*
 - b. Infringing the Plaintiff’s copyright in the Works by doing or causing others to do the following acts or any of them, that is to say:*
 - i. in any way making and/or reproducing and/or substantially reproducing in any material form the*

Works the copyright of which subsists and is vested in the Plaintiff; and/or

- ii. possessing any works being or containing an unauthorised/unlicensed reproduction and/or substantial reproduction of the Works (“the Infringing Copies”) the copyright of which subsists and is vested in the Plaintiff; and/or*
 - iii. disposing/destroying, hiding or parting with power, possession, custody or control to anyone other than to the Plaintiff’s solicitors, their servants or agents, any works being or containing an unauthorised / unlicensed reproduction of the Works the copyright of which subsists and is vested in the Plaintiff.*
- 4. That the Defendant whether acting by themselves, their directors, officers or agents or any of them or otherwise howsoever do, within 7 days from the date of service of this Judgment, deliver up and surrender to the Plaintiff’s solicitors, Messrs Josephine, L K Chow & Co, their servants or agents all Infringing Copies in the possession, custody or control of the Defendant, its officers or agents or any of them;*
- 5. An order for the Defendant to file an Affidavit to affirm that the Defendant, its officers or agents or any of them no longer have within their possession, custody or control the Infringing Copies within 7 days from the date of deliver up and surrender of all Infringing Copies to the Plaintiff’s solicitors, Messrs Josephine, L K Chow & Co;*
- 6. An order to compel the Defendant to file an Affidavit that discloses all relevant documents, particularly invoices, statement of accounts, profit margins, customer records, sales records, and other documents related to the Defendant's use of*

- the Infringing Copies within 30 days from the date of service of this Judgment;*
7. *An inquiry as to damages for infringement of copyright and also an account of profit for infringement of copyright and payment of such damages assessed from the Defendant to the Plaintiff in accordance to Section 37(1)(b) and (c) of the Copyright Act 1987;*
 8. *Statutory damages under Section 37(1)(d) of the Copyright Act 1987;*
 9. *Additional damages under Section 37(7) of the Copyright Act 1987;*
 10. *An order that the Defendant be directed to pay the costs and expenses for the publication of an advertisement to be prepared by the Plaintiff in 3 different newspapers of the Plaintiff's choice; such advertisement bearing the particulars of this action, the Defendant's business name and the Defendant's business address and containing an apology from the Defendant for its acts of copyright infringement;*
 11. *Judgment interest to be calculated at the rate of 5% per annum on judgment sums from the date of the judgment till the date of the full settlement;*
 12. *Costs for the assessment of damages proceedings;*
 13. *Costs for this action;*
 14. *Interest on costs in accordance with Order 59 Rule 24, Rules of Court Interest on costs in accordance with Order 59 Rule 24, Rules of Court 2012 at to be calculated at the rate of 5% per annum from the date of the costs ordered till the date of the full settlement; and*

15. *Such further or other relief or direction as this Court may deem fit."*

- [47] Save for relief number 10, I find that all of the others are permissible and aligned with the relief set out in section 37 of the Act and I so order them, with the additional order that the damages sought in reliefs numbered 7, 8 and 9 are to follow from the assessment of damages under Order 37 of the Rules of Court, 2012.
- [48] Apart from the fact that relief number 10 is not provided for under section 37 of the Act, I have further refused it as it is too vague and would essentially put Bentley in the lofty position of unilaterally deciding what kind of apology PUSBE is to make, without any overriding Court supervision. I cannot allow that.
- [49] Apart from allowing relief number 12, i.e. costs for the assessment of damages proceedings, I will not fix a quantum for those costs as at yet because that will be dependent on the assessment of damages proceedings under Order 37 of the Rules of Court, 2012. I should also stress that that order does not prohibit or rule the making of a contrary order of costs for the assessment of damages proceedings in PUSBE's favour should Bentley fail at that assessment proceedings to prove its various claims for damages.
- [50] As for costs of this action, both parties had similarly sought costs of RM200,000.00 against the other if successful. I see no reason to depart from that amount and thereby further make an order for PUSBE to pay to Bentley the sum of RM200,000.00 collectively as costs for Bentley's action for copyright infringement and the dismissal of its counterclaim, subject to an allocator.
- [51] When delivering this decision, Counsel for Bentley had aptly reminded me of the Order I had made on 24.4.2024 for Bentley to deposit with PUSBE the sum of RM100,000.00 on or before 15.5.2024 as security, that was to be placed with PUSBE's Solicitors as stakeholder. Counsel

for Bentley informed me that Bentley had complied, and that sum of RM100,000.00 had then been placed by PUSBE's solicitors in an interest-bearing account with Malayan Banking Berhad. Naturally, Bentley's success in this action necessitates that deposited sum with interest being refunded to it. I therefore made a further order for PUSBE to refund to Bentley that sum of RM100,000.00 with interest accumulated on it on or before 30.6.2025.

Dated: 29 MAY 2025

(AZLAN SULAIMAN)

Judge

Kuala Lumpur High Court

Counsel:

For the plaintiff - Cyndi Chow Li Kian, Chan Wei Yang, Peh Khaik Kew & Chin Hau Zhe; M/s Josephine, L K Chow & Co

For the defendant - Subramaniyan, Melisa Ooi & Lily Ho; M/s L Ho & Associates