

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 48

Suit No 49 of 2020

Between

Shandong Qixia Shida Fruits
Refrigeration Co., Ltd

... Plaintiff

And

Yong Zeng Yuan Pte Ltd

... Defendant

And Between

Yong Zeng Yuan Pte Ltd

... Plaintiff in counterclaim

And

- (1) Shandong Qixia Shida Fruits
Refrigeration Co., Ltd
- (2) Hou Chao

... Defendants in counterclaim

JUDGMENT

[Companies] — [Directors] — [Duties] — [Breach of fiduciary duties]

[Contract] — [Breach] — [Contracts for sale and supply of goods]
[Tort] — [Conspiracy] — [Unlawful means conspiracy] — [Whether there
was an agreement or combination between parties to harm]

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Shandong Qixia Shida Fruits Refrigeration Co., Ltd

v

Yong Zeng Yuan Pte Ltd

[2022] SGHC 48

General Division of the High Court — Suit No 49 of 2020

Philip Jeyaretnam J

30–31 August, 1–3, 6–10, 14–17 September, 3 December 2021

7 March 2022

Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 An apple supplier did business with a husband-and-wife distributor for many years. When their marriage broke down, the wife says she suspected that the apple supplier was in league with her husband against her. She stopped payment for the apples, and the supplier commenced this action against the pair's company. She joined her husband as defendant to a counterclaim against the supplier. Was she boxing at shadows or was there a conspiracy afoot?

Facts

Background to the dispute

2 The plaintiff in the main action, Shandong Qixia Shida Fruits Refrigeration Co., Ltd (“Shida”), is a company incorporated in the People's

Republic of China (“PRC”). It is in the business of supplying fruits and vegetables which are grown in the PRC.¹

3 The Defendant in the main action, Yong Zeng Yuan Pte Ltd (“YZY”), is a company incorporated in Singapore in 1995.² It is in the business of wholesale trading of fruit.³ Hou Chao (“Mr Hou”), who is the second defendant in the counterclaim filed by YZY, is a director of YZY, and was until 2019 the majority shareholder of YZY.⁴ Gu Xiaolan (“Mdm Gu”), who was married to Mr Hou from 1986 to 2020,⁵ is also a shareholder and director of YZY.⁶ Hou Yini (“Ms Yini”), is the daughter of Mr Hou and Mdm Gu, and has been a director of YZY since 2012,⁷ as well as the majority shareholder of YZY after a series of share transfers made from December 2017 to January 2018.⁸ The validity of these transfers is the subject of separate proceedings in HC/S 1009/2019, where Mr Hou has alleged that his signatures to the transfers were forged. That is a separate dispute and nothing turns on it for these proceedings.

4 Between 1997 and 1999, YZY supplied apples and other fruit to National Trade Union Congress Fairprice supermarkets (“NTUC Fairprice”).⁹

¹ Statement of Claim (“SOC”) at para 1.

² Agreed Bundle of Documents Vol 3 (“3AB”) at p 1468.

³ SOC at para 2.

⁴ AEIC of Hou Chao (dated 2 June 2021) at para 8.

⁵ AEIC of Hou Chao (dated 2 June 2021) at paras 10 to 11.

⁶ AEIC of Gu Xiaolan (dated 2 June 2021) at para 1; AEIC of Hou Chao (dated 2 June 2021) at para 9.

⁷ AEIC of Hou Yini (dated 2 June 2021) at para 7.

⁸ AEIC of Hou Yini (dated 2 June 2021) at para 8.

⁹ AEIC of Hou Chao (dated 2 June 2021) at para 21; AEIC of Gu Xiaolan (dated 2 June 2021) at para 16.

5 In 2002, Yantai Yinyuan Foodstuff Co. Ltd (“YY”) was incorporated in the PRC by Mr Hou on behalf of YZY,¹⁰ and was used in place of YZY to procure and purchase red Fuji apples (the “apples”) to be supplied and delivered to NTUC Fairprice.¹¹ Between 2002 and 2011, NTUC Fairprice would pay YY for the apples supplied to it,¹² however after 2011, NTUC Fairprice would make payment for the apples directly into YZY’s Oversea-Chinese Banking Corporation (“OCBC”) bank account.¹³ It was not disputed that YY was a fully-owned subsidiary of YZY between 2002 and 2012.¹⁴ However while Mr Hou claims that YY was sold in or around October 2012,¹⁵ Mdm Gu states that she was not made aware of this until 2019.¹⁶

6 After the sale of YY, Mr Hou says that he entered into a purchasing arrangement with Shida, on behalf of YZY, whereby Shida would supply the apples to NTUC Fairprice,¹⁷ as well as YZY itself for onward sale to Kian Seng Fresh Produce Pte Ltd (“Kian Seng”).¹⁸ According to Mr Hou, even after sale of YY, the apples supplied by Shida were packaged and delivered using boxes

¹⁰ AEIC of Hou Chao (dated 2 June 2021) at paras 22 to 23.

¹¹ AEIC of Hou Chao (dated 2 June 2021) at para 23; AEIC of Gu Xiaolan (dated 2 June 2021) at para 9.

¹² AEIC of Hou Chao (dated 2 June 2021) at para 26.

¹³ AEIC of Hou Chao (dated 2 June 2021) at para 27; AEIC of Gu Xiaolan (dated 2 June 2021) at para 19.

¹⁴ AEIC of Hou Chao (dated 2 June 2021) at para 16; AEIC of Gu Xiaolan (dated 2 June 2021) at paras 8 to 11.

¹⁵ AEIC of Hou Chao (dated 2 June 2021) at para 30.

¹⁶ AEIC of Gu Xiaolan (dated 2 June 2021) at para 11.

¹⁷ AEIC of Hou Chao (dated 2 June 2021) at para 31.

¹⁸ AEIC of Hou Chao (dated 2 June 2021) at para 33.

labelled with YY's certifications and name.¹⁹ It was not disputed that the invoices for payment of the apples were issued using YY's invoices to NTUC Fairprice,²⁰ but the payments made by NTUC Fairprice for the apples were made to YZY's OCBC bank account in Singapore.

7 After delivery of the apples, Mr Hou would instruct Mdm Gu to pay Shida using YZY's OCBC bank account.²¹ These instructions from Mr Hou would be sent via email to either Mdm Gu or Ms Yini. Attached to these emails would be spreadsheets calculating the amounts to be paid to Shida.²² Sometime in January 2019, YZY stopped making payments to Shida.²³

8 Between 16 October 2018 and 8 May 2019, Shida had supplied apples with a total value of US\$2,077,952.80, which were delivered to the consignee NTUC Fairprice.²⁴ As Shida alleges that the apples were supplied to YZY for onward sale to NTUC Fairprice, it commenced the present proceedings seeking to claim the sum of US\$1,572,142 from YZY—after deducting the sum of US\$400,000 which was already paid by YZY, as well as a discount of US\$64,251.74 and commission of US\$41,559.06 (owed to YZY).²⁵

9 In its defence, YZY argues that Shida had supplied apples to YY, and that YZY had merely provided its OCBC bank account for NTUC Fairprice to

¹⁹ AEIC of Hou Chao (dated 2 June 2021) at paras 34 to 35.

²⁰ AEIC of Hou Chao (dated 2 June 2021) at para 36; AEIC of Gu Xiaolan (dated 2 June 2021) at para 19.

²¹ AEIC of Gu Xiaolan (dated 2 June 2021) at para 20.

²² AEIC of Gu Xiaolan (dated 2 June 2021) at para 21.

²³ AEIC of Gu Xiaolan (dated 2 June 2021) at para 22.

²⁴ SOC at para 5.

²⁵ SOC at paras 5 to 7.

make payment to YY as YY did not have a bank account in Singapore.²⁶ Thus, it was YY and not YZY that was obliged to pay Shida for the apples delivered to NTUC Fairprice, Apart from this arrangement for the use of its bank account, YZY claims that it was not involved in the purchase of apples from Shida or the delivery of apples to NTUC Fairprice.²⁷

10 In its counterclaim, YZY alleges that as YZY had paid Shida US\$8,829,148.20 and only received US\$8,362,153.67 from NTUC Fairprice, it had overpaid US\$466,994.53 to Shida from 2017 to 2018 (the “Excess Payments”), on the instruction of Mr Hou.²⁸ YZY also alleges breach of fiduciary and statutory duties on the part of Mr Hou, as a director of YZY,²⁹ claiming that Mr Hou had benefited from the Excess Payments, by receiving various sums from persons connected to Shida³⁰ and also aided Shida in its business.³¹ Further, YZY also allege that Shida and Mr Hou had conspired to injure YZY by unlawful means, causing YZY to make the Excess Payments, and suffer other losses.³²

²⁶ Defence and Counterclaim (Amendment No. 1) at paras 6(a) to 6(f).

²⁷ Defence and Counterclaim (Amendment No. 1) at para 6(g).

²⁸ Defence and Counterclaim (Amendment No. 1) at para 15.

²⁹ Defence and Counterclaim (Amendment No. 1) at paras 17 to 18.

³⁰ Defence and Counterclaim (Amendment No. 1) at para 16(a).

³¹ Defence and Counterclaim (Amendment No. 1) at para 16A.

³² Defence and Counterclaim (Amendment No. 1) at paras 23 to 28.

The parties' cases

Shida's Case

The main claim

(1) Relationship between Shida and YZY

11 Shida's primary case is that it had contracted with YZY to supply the apples, which were ultimately sold to NTUC Fairprice and Kian Seng.³³ Shida submits that as Mr Hou, a shareholder and director of YZY, was in charge of the logistical and operational aspect of YZY import and export matters,³⁴ he had actual and/or implied authority to enter into the purchasing agreements with Shida on YZY's behalf.³⁵ In any event, whether Mr Hou did in fact have the authority to bind YZY,³⁶ or use YZY's stamp on the purchasing agreements,³⁷ was not a matter that concerned Shida as all of this was simply an internal matter for YZY under the "indoor management rule".³⁸

12 Shida says that all the invoices it has issued to YZY are authentic,³⁹ and were consistent with the spreadsheets compiled by Mr Hou contemporaneously,

³³ Plaintiff's Closing Submissions (dated 15 October 2021) at para 5.

³⁴ Plaintiff's Closing Submissions (dated 15 October 2021) at para 10.

³⁵ Plaintiff's Closing Submissions (dated 15 October 2021) at para 13.

³⁶ Plaintiff's Closing Submissions (dated 15 October 2021) at para 18.

³⁷ Plaintiff's Closing Submissions (dated 15 October 2021) at para 26.

³⁸ Plaintiff's Closing Submissions (dated 15 October 2021) at para 29.

³⁹ Plaintiff's Closing Submissions (dated 15 October 2021) at para 36 to 51.

which were in turn sent to Mdm Gu and Ms Yini,⁴⁰ who did not raise any issues at that time.⁴¹

13 In relation to the concerns raised by YZY about the metadata in respect of the 51 electronic invoices Shida had issued for the 2018/2019 supply cycle, Shida argues that as there was no expert evidence on the significance of this metadata, the allegations are just speculative.⁴²

14 Turning to the different shippers named on the bills of lading, Shida argues that these discrepancies can be explained by the fact that Shida had shipped the apples from a port in the PRC, and that Mr Hou (*vis-à-vis* YZY) had arranged for the shipment of the apples from the PRC to Singapore.⁴³ In any event, Shida argues that YZY does not dispute that the apples were received by NTUC Fairprice, and that NTUC Fairprice had made payment to YZY for the apples.⁴⁴

(2) Relationship between YY and YZY

15 Shida submits that the evidence shows that YZY was not merely a conduit for YY to receive payment from NTUC Fairprice,⁴⁵ and that YZY had treated the profits and monies of YY as its own.⁴⁶

⁴⁰ Plaintiff's Closing Submissions (dated 15 October 2021) at para 53.

⁴¹ Plaintiff's Closing Submissions (dated 15 October 2021) at paras 57 to 60.

⁴² Plaintiff's Closing Submissions (dated 15 October 2021) at paras 63 to 65.

⁴³ Plaintiff's Closing Submissions (dated 15 October 2021) at paras 75 to 78.

⁴⁴ Plaintiff's Closing Submissions (dated 15 October 2021) at para 80.

⁴⁵ Plaintiff's Closing Submissions (dated 15 October 2021) at paras 82 to 83

⁴⁶ Plaintiff's Closing Submissions (dated 15 October 2021) at para 89.

16 Further, Shida argues that although the contract for the supply of the apples to NTUC Fairprice was in YY’s name (and using boxes bearing YY’s name), YZY was the true party to the contract.⁴⁷

(3) Amount Shida is entitled to be paid

17 Shida argues that the price of the apples was not necessarily fixed by the written terms of the purchasing agreements between YZY and Shida, but could fluctuate with the market, subject to agreement between Mr Hou and Shida’s sole director, Liu Jianghua (“Mr Liu”).⁴⁸ As YZY had in fact received payments amounting to US\$2,555,341.66 from NTUC Fairprice for the apples supplied, it would have made a significant profit even after paying US\$1,572,142 to Shida.⁴⁹

The counterclaim

18 Turning to the counterclaim, Shida argues that YZY’s counterclaim was premised on YZY and not YY being the contracting party with Shida.⁵⁰

19 Shida further submits that YZY’s counterclaim wrongly assumes that all the apples supplied by Shida had been delivered to NTUC Fairprice, when in fact some of the apples had been supplied to Kian Seng.⁵¹ After accounting for the apples supplied to Kian Seng, Shida had invoiced YZY a total of US\$9,302,323.20 (including the US\$473,180 paid by Kian Seng to Shida

⁴⁷ Plaintiff’s Closing Submissions (dated 15 October 2021) at para 95.

⁴⁸ Plaintiff’s Closing Submissions (dated 15 October 2021) at paras 101 to 105.

⁴⁹ Plaintiff’s Closing Submissions (dated 15 October 2021) at paras 114 to 115.

⁵⁰ Plaintiff’s Closing Submissions (dated 15 October 2021) at paras 116 to 118.

⁵¹ Plaintiff’s Closing Submissions (dated 15 October 2021) at paras 124 to 125.

purportedly on YZY’s behalf),⁵² while YZY had collected a total of US\$10,706,497 from Kian Seng and NTUC Fairprice,⁵³ making a profit of US\$1,404,163.80 for the 2016/2017 and 2017/2018 supply cycles.⁵⁴

20 As for the transfers made between Mr Hou, Mr Liu Meiliang (Mr Liu’s son), Ms Liu Panhua, and Ms Tan Lin Lin, Shida argues that YZY has not shown how these transactions concerned monies which had belonged to YZY, or how the transactions would have been made at YZY’s expense.⁵⁵ Further, the agreement dated 6 August 2019 was between Mr Hou and Mr Liu Meiliang’s company Zhen Hao Fruit and Vegetable Cold Storage Co Ltd (“Zhen Hao”) (the “Apple Storage Agreement”), which had nothing to do with Shida.⁵⁶

YZY’s Case

The main claim

21 YZY argues that as Shida’s contractual claim against YZY for the apples supplied to NTUC Fairprice arises from the same apple supply contract under which apples were supplied to Kian Seng, the claim for the apples supplied to NTUC Fairprice is intertwined with its supply of apples to Kian Seng.⁵⁷ Accordingly, as YY had issued invoices to YZY for the apples delivered to Kian Seng,⁵⁸ YY had to have been the entity which had purchased the apples from

⁵² Plaintiff’s Closing Submissions (dated 15 October 2021) at para 131.

⁵³ Plaintiff’s Closing Submissions (dated 15 October 2021) at para 130.

⁵⁴ Plaintiff’s Closing Submissions (dated 15 October 2021) at paras 132 and 139.

⁵⁵ Plaintiff’s Closing Submissions (dated 15 October 2021) at para 141.

⁵⁶ Plaintiff’s Closing Submissions (dated 15 October 2021) at para 142.

⁵⁷ Defendant’s Closing Submissions (dated 15 October 2021) at para 47.

⁵⁸ Defendant’s Closing Submissions (dated 15 October 2021) at paras 112 to 120.

Shida for onward sale to NTUC Fairprice.⁵⁹ Further, YZY submits that Shida had belatedly referred to the purchasing agreement between Shida and YZY only in its further and better particulars filed on 22 June 2020, casting doubt on the existence of this purchasing agreement.⁶⁰ In addition, YZY submits that the various sums attributed to “discounts” or “commissions” or “warehouse charges”, were *ex post facto* attempts by Shida to justify the claimed amount, and were not supported by documentary evidence.⁶¹

22 In relation to YY, notwithstanding having averred in its defence that “[YY] was sold in or around 2012”,⁶² YZY submits that there is “a complete lack of any evidence to support the assertions [of Shida] that YY was sold in 2012”.⁶³ Accordingly to YZY, Mr Hou’s continued use of YY’s documents and certifications despite having said that YY was sold in 2012, shows that Mr Hou had concocted evidence to suit his purposes.⁶⁴ YZY further points to the use of YY’s name on the tender submitted to NTUC Fairprice,⁶⁵ YY’s name on the bills of lading,⁶⁶ and the emails between NTUC Fairprice and YY,⁶⁷ as evidence that NTUC Fairprice had contracted with YY rather than YZY for the supply of the apples.

⁵⁹ Defendant’s Closing Submissions (dated 15 October 2021) at para 121.

⁶⁰ Defendant’s Closing Submissions (dated 15 October 2021) at paras 50 to 51.

⁶¹ Defendant’s Closing Submissions (dated 15 October 2021) at paras 53 to 59.

⁶² Defence and Counterclaim (Amendment No. 1) at para 6(h).

⁶³ Defendant’s Closing Submissions (dated 15 October 2021) at para 61.

⁶⁴ Defendant’s Closing Submissions (dated 15 October 2021) at paras 70 to 71.

⁶⁵ Defendant’s Closing Submissions (dated 15 October 2021) at paras 89 to 91.

⁶⁶ Defendant’s Closing Submissions (dated 15 October 2021) at para 96 to 98.

⁶⁷ Defendant’s Closing Submissions (dated 15 October 2021) at paras 99 to 102.

23 YZY also disputes the authenticity of the purchasing agreement between YZY and Shida, the 51 invoices for the apples supplied between October 2018 and May 2019, the bills of lading stating Shida as the shipper, and customs declaration forms.⁶⁸

The counterclaim

(1) Against Shida

24 YZY does not dispute that for its counterclaim for refund of the Excess Payments to succeed against Shida, there would have to be a binding agreement between YZY and Shida for the supply of the apples.⁶⁹ Otherwise, it would be YY that was entitled to refund of any excess payment. This part of the counterclaim is therefore run in the alternative.

25 First, YZY argues, that according to the purchasing agreement between YZY and Shida, the unit price for the apples is US\$24 per carton,⁷⁰ and that while the agreement allowed for a price increase of up to 5%, the amount Shida had invoiced was at the rate of US\$30.50 per carton.⁷¹ As no objective evidence of the market price was provided by Shida, YZY submits that using the “agreed” price, the total amount invoiced should have been US\$1,635,110.40, and that the amount due to Shida would only have been US\$1,129,299.60 after accounting for the various discounts.⁷²

⁶⁸ Defendant’s Closing Submissions (dated 15 October 2021) at para 122 to 123.

⁶⁹ Defendant’s Closing Submissions (dated 15 October 2021) at para 186.

⁷⁰ Defendant’s Closing Submissions (dated 15 October 2021) at para 186.

⁷¹ Defendant’s Closing Submissions (dated 15 October 2021) at para 187.

⁷² Defendant’s Closing Submissions (dated 15 October 2021) at para 187.

26 Second, YZY submits that as Kian Seng had continued to make payments to Shida on behalf of both YY and YZY, a total of US\$1,052,028 (instead of US\$473,180) had been paid by Kian Seng to Shida on behalf of YZY, and that the amount that YZY would owe Shida should be reduced accordingly.⁷³ Adopting the sum of US\$9,302,323.20 provided by Shida,⁷⁴ after accounting for the sum of US\$8,829,143.20 YZY had previously paid Shida and the sum of US\$1,052,028 paid by Kian Seng, YZY submits that there were ultimately Excess Payments of US\$578,848 made to Shida.⁷⁵ At this juncture, I pause to note that in YZY’s pleaded defence, the alleged Excess Payments of US\$466,994.53 was derived *only* from the payments made by NTUC Fairprice, and that the “additional” payments from Kian Seng forming part of the Excess Payments were not part of its pleaded case.⁷⁶

27 Third, YZY argues that part of a sum of US\$1,052,028⁷⁷ that Mr Hou had gotten Kian Seng to pay Shida was an Excess Payment. Of this sum paid by Kian Seng to Shida, it is agreed that US\$473,180 was paid on YZY’s behalf. Shida says that the balance of US\$578,848 was paid pursuant to a direct commercial relationship between Shida and Kian Seng, but YZY disagrees, claiming that it was paid pursuant to a conspiracy between Shida and Mr Hou, and that Shida was unjustly enriched as a result.⁷⁸

⁷³ Defendant’s Closing Submissions (dated 15 October 2021) at paras 190 and 213.

⁷⁴ Defendant’s Closing Submissions (dated 15 October 2021) at para 214.

⁷⁵ Defendant’s Closing Submissions (dated 15 October 2021) at para 214.

⁷⁶ Defence and Counterclaim (Amendment No. 1) at para 15.

⁷⁷ Defendant’s Closing Submissions (dated 15 October 2021) at paras 225 to 226.

⁷⁸ Defendant’s Closing Submissions (dated 15 October 2021) at para 215.

28 YZY points to various transactions as evidence that Shida had conferred a benefit on Mr Hou in return for these Excess Payments,:

(a) A transfer of RMB3,410,000 from Ms Liu Panhua (a shareholder of Shida, and the younger sister of Mr Liu) to Mr Hou;⁷⁹

(b) A transfer of RMB4,000,000 from Ms Liu Panhua to Ms Tan Lin Lin (Mr Hou's alleged mistress) on or around 9 August 2017;⁸⁰

(c) The Apple Storage Agreement which was entered into between Mr Liu Meiliang and Mr Hou.⁸¹

29 Taking these transactions as benefits conferred by Shida on Mr Hou, YZY argues that Shida had combined with Mr Hou to cause YZY to make the Excess Payments to Shida, in breach of Mr Hou's fiduciary duties, and that YZY had suffered a loss as a result.⁸² In the alternative, Shida by receiving the Excess Payments, had been unjustly enriched.⁸³

(2) Against Mr Hou

30 YZY's claim against Mr Hou is that he breached his fiduciary duties owed to YZY as its director,⁸⁴ when he had procured YZY to make Excess Payments to Shida,⁸⁵ and when he had helped Shida procure smaller apples from

⁷⁹ Defendant's Closing Submissions (dated 15 October 2021) at paras 227 to 235.

⁸⁰ Defendant's Closing Submissions (dated 15 October 2021) at paras 236 to 239.

⁸¹ Defendant's Closing Submissions (dated 15 October 2021) at paras 240 to 245.

⁸² Defendant's Closing Submissions (dated 15 October 2021) at para 248.

⁸³ Defendant's Closing Submissions (dated 15 October 2021) at paras 250 to 252.

⁸⁴ Defendant's Closing Submissions (dated 15 October 2021) at para 254.

⁸⁵ Defendant's Closing Submissions (dated 15 October 2021) at paras 256 to 257.

other suppliers instead of from YZY.⁸⁶ YZY also alleges that Mr Hou had procured Shida to commence the present proceedings against YZY, and had worked with Shida to produce false documents.⁸⁷

Mr Hou's Case

The main claim

(1) Relationship between YY and YZY

31 Mr Hou's case is that while YY had been the supplier of apples to NTUC Fairprice after incorporation,⁸⁸ after YY's sale in 2012, YZY had continued supplying apples to NTUC Fairprice using YY's name and certifications in its tenders.⁸⁹ That the contractual relationship was in fact between YZY and NTUC Fairprice was said to be shown by the fact that YZY had received payment from NTUC Fairprice from 2012 to 2019,⁹⁰ that Mdm Gu did not provide any documentary evidence to show that YZY had made any transfers to YY,⁹¹ and that Ms Yini had opposed the attempted change of recipient bank account from YZY to YY by Mr Hou.⁹²

⁸⁶ Defendant's Closing Submissions (dated 15 October 2021) at paras 264 to 265.

⁸⁷ Defendant's Closing Submissions (dated 15 October 2021) at paras 269 to 280.

⁸⁸ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 2.2.4.

⁸⁹ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 2.2.5.

⁹⁰ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 2.2.15.

⁹¹ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 2.2.17 to 2.2.21.

⁹² Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 2.2.25 to 2.2.27.

32 Further, the fact that Mdm Gu had treated YZY's monies as its own, shows that the monies were paid by NTUC Fairprice to YZY and not YY,⁹³ and that YZY was not a mere conduit for payment to YY.⁹⁴

(2) Relationship between Shida and YZY

33 Taking the same line as Shida, Mr Hou submits that he had the authority to enter into binding contracts with fruit suppliers on behalf of YZY, as its managing director and majority shareholder up till December 2017.⁹⁵ It is under this authority that Mr Hou affixed YZY's seal to the purchasing agreements with Shida.⁹⁶

34 Mr Hou also states that the invoices issued by Shida were authentic and that their authenticity is corroborated by the contemporaneous spreadsheets he had sent Mdm Gu or Ms Yini detailing the shipments and amounts.⁹⁷ Similarly, Mr Hou submits that the bills of lading disclosed by Shida were authentic. Any discrepancy as to the named shipper was explained by the fact that Shida had paid for the transportation of the apples within the PRC, while the transportation

⁹³ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 2.2.30.

⁹⁴ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 2.2.33.

⁹⁵ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 3.1.1 to 3.1.4.

⁹⁶ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 3.3.1 to 3.3.5.

⁹⁷ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 3.4.1 to 3.4.7.

documents from the PRC to Singapore would be made under YY's name in order to obtain preferential pricing.⁹⁸

35 Mr Hou concedes that while he had instructed Shida to pack the apples using boxes bearing NTUC Fairprice's logo and YY's name, the boxes had borne Shida's business and packing house registration number, which meant that NTUC Fairprice had been aware that Shida was supplying the apples to it, and that Shida was entitled to the payments made for those apples.⁹⁹

36 In totality, as Shida had in fact supplied and shipped the apples to YZY for sale to NTUC Fairprice, and NTUC Fairprice had made payments to YZY for the apples, Shida is entitled to the payments due on the apples.¹⁰⁰ Mr Hou further argued that neither Ms Yini nor Mdm Gu can deny the existence of a contractual relationship between Shida and YZY, having acknowledged that fact on two occasions:

- (a) When Ms Yini had agreed to pay Shida provided that Mr Hou complied to a list of conditions she had set out;¹⁰¹
- (b) When Mdm Gu had stated in a call on 28 April 2021, that YZY had made payments to Shida whenever they were due.¹⁰²

⁹⁸ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 3.5.1 to 3.5.4.

⁹⁹ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 3.6.1 to 3.1.4.

¹⁰⁰ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 3.8.1.

¹⁰¹ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 3.8.2.

¹⁰² Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 3.8.3.

The counterclaim

37 In relation to YZY's original claim for Excess Payments (*ie*, US\$466,994.53), Mr Hou submits that YZY had omitted to account for the payments made by Kian Seng to YZY,¹⁰³ and that its belated attempt to allege that the payments made by Kian Seng directly to Shida (*ie*, US\$578,848) were Excess Payments were unpleaded and unmeritorious.¹⁰⁴

38 As regards YZY's claim premised on unlawful means conspiracy, Mr Hou argues that as YZY generated a profit from the transactions, there cannot be said to have been any Excess Payments.¹⁰⁵

39 As regards Mr Hou's alleged breach of fiduciary duties for receiving RMB3,410,000 from Ms Liu Panhua, Mr Hou submits that the procurement of smaller apples for Shida was out of his own goodwill, and that ultimately RMB3,200,000 was returned when the transaction was aborted.¹⁰⁶ In any event, Mr Hou argues that Mdm Gu had known about this transaction and that there could not be any breach of fiduciary duties as she acquiesced to it.¹⁰⁷

40 As regards the alleged transfer of RMB4,000,000 from Ms Liu Panhua to Ms Tan Lin Lin, Mr Hou submits that there is no evidence to show that this

¹⁰³ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 3.7.2.

¹⁰⁴ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 3.7.9.

¹⁰⁵ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 5.1.1 to 5.1.11.

¹⁰⁶ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 5.2.1 to 5.2.2.

¹⁰⁷ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 5.2.3 to 5.2.6.

transfer had anything to do with Shida, YZY or Mr Hou.¹⁰⁸ Besides, the sum of RMB4,000,000 is already the subject of legal action taken by Mdm Gu in the PRC, which has been dismissed by the Chinese Courts.¹⁰⁹

41 In relation to the transfer of RMB1,000,000 from Mr Liu Meiliang to Mr Hou, Mr Hou submits that the transfer was a result of bank error, and that Mr Hou had transferred the sum to Mr Liu Meiliang by mistake and was returned the same sum within minutes.¹¹⁰

42 In relation to the Apple Storage Agreement, Mr Hou first states that Shida and Zhen Hao (and Mr Liu Meiliang) are separate legal entities, and that there is no conspiracy between Mr Hou and Shida to injure YZY via any arrangement with Zhen Hao.¹¹¹ Second, the Apple Storage Agreement was entered into in order for YZY to meet its obligations to NTUC Fairprice after Shida had ceased the supply of the apples following YZY's failure to pay Shida. Accordingly, this was done in YZY's best interest rather with the intention to injure it.¹¹²

¹⁰⁸ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 5.3.2.

¹⁰⁹ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 5.3.7.

¹¹⁰ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 5.4.3 to 5.4.4.

¹¹¹ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 5.5.3 to 5.5.4.

¹¹² Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at paras 5.5.5 to 5.5.7.

43 Finally, in relation to YZY's allegation that Mr Hou had procured Shida to commence proceedings against YZY, Mr Hou submits that there is no reason for him to do so, as it compromises his own interest in YZY.¹¹³

Issues to be determined

44 During the hearing, I requested counsel to draw up an agreed list of issues. I now set out that agreed list of issues:

- (a) Agreed list of issues between Shida, YZY and Mr Hou:
 - (i) Whether Shida had contracted with YZY or YY to supply apples that were ultimately delivered to the end-customers, NTUC Fairprice and Kian Seng;
 - (ii) If Shida contracted with YZY, what is the amount Shida is entitled to be paid;
 - (iii) Whether YZY made Excess Payments to Shida in the 2016/2017 and 2017/2018 supply cycles;
 - (iv) If there were Excess Payments made by YZY to Shida in the 2016/2017 and 2017/2018 supply cycles, whether the Excess Payments were made pursuant to a conspiracy between Shida and Mr Hou;
 - (v) What is the purpose of the transfer of RMB3,410,000 on or around 19 June 2017 from Ms Liu Panhua to Mr Hou, whether this transfer was for the benefit of Mr Hou, and whether the

¹¹³ Second Defendant in the counterclaim's Closing Submissions (dated 15 October 2021) at para 5.6.2.

unutilised portion of the said sum had been returned by Mr Hou to Ms Liu Panhua;

(vi) Whether Ms Liu Panhua transferred RMB4,000,000 to Ms Tan Lin Lin on or around 9 August 2017 on behalf of Shida, and if so, whether this was for the benefit of Mr Hou;

(vii) Whether Mr Liu Meiliang transferred RMB1,000,000 to Mr Hou on or around 20 October 2017 on behalf of Shida, and if so, whether this was for the benefit of Mr Hou;

(viii) What is the purpose of the Apple Storage Agreement and whether Shida had any involvement in the Apple Storage Agreement;

(b) Agreed list of issues between YZY and Mr Hou:

(i) Whether Mr Hou had breached his fiduciary and/or statutory duties owed to YZY;

(ii) Whether YZY's failure to pay Shida was the result of matrimonial disputes between Mr Hou and Mdm Gu;

(iii) Whether Mr Hou procured and/or instigated Shida to commence these proceedings against YZY.

45 I will address these issues under four main headings:

(a) Was Shida's contract with YZY or YY?

(b) Were there Excess Payments and if so, how much were they?

(c) Did Mr Hou breach his duties to YZY, and if so, what is his liability to YZY?

(d) Is Shida liable to YZY for any breaches of duty on the part of Mr Hou, whether as a secondary party or as a co-conspirator?

Issue 1: Was Shida’s contract with YZY or YY?

46 YZY did not seriously challenge Mr Hou’s authority, as one of its directors who was actively involved in its business, to contract on its behalf. Indeed, Mdm Gu’s evidence was that she left many matters to Mr Hou to deal with, including interactions with Shida. Rather, YZY’s case is that Mr Hou contracted with Shida on behalf of YY, and then later, together with Mr Liu, made up a false paper trail to pretend that he had done so on YZY’s behalf.

Was YY sold?

47 Material to answering the question whether Shida contracted with YZY or YY is whether YY had already been sold or remained YZY’s subsidiary. Only in the latter case is it practically possible that Mr Hou contracted with Shida on behalf of YY rather than YZY. If YY had already been sold, then Mr Hou’s continued use of its name in dealing with NTUC Fairprice could have been for convenience and continuity. Nonetheless, to continue to use the name of an entity that one has sold is unusual and requires a persuasive explanation.

48 YZY contended that YY was not sold.¹¹⁴ Yet in its pleadings it had taken the position that YY was sold in 2012.¹¹⁵ While ordinarily a party must be held

¹¹⁴ Defendant’s Closing Submissions para 87.

¹¹⁵ Defence and Counterclaim (Amendment No 1) para 6(h).

to its pleading, I accept that in the circumstances of this case YZY could be said to have relied on what Mr Hou told Mdm Gu and Ms Yini. The question of whether YY was sold was contested during trial and Shida did not take the pleading point. Consequently, I will consider the evidence on this point.

49 Mdm Gu did not dispute that the instructions given to NTUC Fairprice for payment changed from YY's bank account in China to YZY's account in Singapore 2011.¹¹⁶ This is consistent with anticipation of YY being sold. However, Mdm Gu offered another reason for the change, namely that it was difficult to remit monies out of China.¹¹⁷

50 Mr Hou conceded under cross examination that it was not a sale of YY but of YY's factory: an asset sale.¹¹⁸ He testified that he told Mdm Gu about it at the time and that he gave her the sale and purchase agreement to retain for YZY.¹¹⁹

51 YZY adduced a document described (in translation) as an "Enterprise Credit Information Publicity Report" for YY dated 12 May 2017,¹²⁰ which showed YZY as the only investor in YY. This would support their case that YY was not sold. However, it is unclear what weight should properly be given to this report, nor has YZY seen fit to adduce any expert evidence on this.

¹¹⁶ Transcript (15 September 2021) p 44, ln 10 to p45 ln 1; 4 AB 1863.

¹¹⁷ Transcript (15 September 2021) p 44, ln 10-22.

¹¹⁸ Transcript (3 September 2021) p 70, ln 1-25.

¹¹⁹ Transcript (3 September 2021) p 71, ln 19-23.

¹²⁰ 4 AB 1829-32.

52 Mr Hou called Mr Quek Chin Hock (“Mr Quek”), a director of Kian Seng to testify on his behalf. Mr Quek claimed to know that YY was sold in 2012 and that Shida supplied apples to YZY for YZY to supply to both NTUC Fairprice and Kian Seng.¹²¹

53 During cross examination, Mr Quek conceded that he was wrong on both these points. First, he conceded that it was YY’s factory that was sold.¹²² Then, he retracted his evidence that Shida supplied apples to YZY for YZY to supply to both NTUC Fairprice and Kian Seng.¹²³ He did so after being shown an invoice issued by YY to NTUC Fairprice.¹²⁴

54 I find on the evidence in these proceedings that YY was not sold by YZY, although there may have been a sale of its assets in 2012. Accordingly, it remains possible that Mr Hou contracted with Shida on YY’s behalf and not YZY. To determine whether this was indeed the case, as YZY alleges, depends on the evidence, in particular whether the purchasing agreements are genuine.

Are the purchasing agreements, invoices, bills of lading and customs declaration forms authentic?

55 The burden is on Shida to prove the authenticity of the documents.

56 I start with the purchasing agreements. Three are relevant in these proceedings:

¹²¹ AEIC of Quek Chin Hock paras 12 and 19.

¹²² Transcript (9 September 2021) p 32, ln 6-24.

¹²³ Transcript (9 September 2021) pp 63-64.

¹²⁴ 3AB 1291.

(a) Purchasing agreement for October 2016 to October 2017 dated 7 October 2016.¹²⁵

(b) Purchasing agreement for October 2017 to October 2018 dated 25 September 2017.¹²⁶

(c) Purchasing agreement for October 2018 to October 2019 dated 4 October 2018.¹²⁷

57 Shida adduced direct evidence from Mr Liu that he signed these purchasing agreements on behalf of Shida.¹²⁸ Mr Hou also provided direct evidence that he signed them on behalf of YZY.¹²⁹

58 Their evidence is that pursuant to these purchasing agreements apples were supplied by Shida to YZY, invoices were issued for that supply, and until this dispute, payments were duly made by YZY.

59 YZY asserts that the purchasing agreements were created after the event for the purpose of making a false claim against YZY in these proceedings. This is what YZY's counsel suggested to Mr Liu.¹³⁰ Much was made of various discrepancies. It was also claimed that the company stamp purportedly of YZY that was used on the purchasing agreements was not made on YZY's behalf but made by Mr Hou at some later point. Consequently, far from signifying

¹²⁵ 1 PB58-61.

¹²⁶ 1 PB 62-65.

¹²⁷ 1 PB 66-69.

¹²⁸ AEIC of Liu Jianghua, paras 28-36.

¹²⁹ AEIC of Hou Chao para 31.

¹³⁰ Transcript (31 August 2021) p 61, ln17-19.

authority to represent YZY, its use betrayed the false backdating of these documents.

60 Thus, the question is not whether Mr Hou and Mr Liu ever signed the documents said to be purchasing agreements, but whether these documents were made and signed at the time of the dates stated on them or instead only brought into existence and signed at some later point in time, and then falsely backdated.

61 In the context of this question, YZY's complaint¹³¹ that the originals of the purchasing agreements were not adduced into evidence is beside the point. Originals were disclosed and inspected, including by YZY's expert who testified about her inspection of them.¹³² That the copies included in Shida's bundle of documents were true copies of the inspected originals was not challenged, and was obviously the case. Thus, the purchasing agreements were proved by secondary evidence, namely the adduction of copies and by the direct evidence of the two signatories.

62 Both the signatories denied that the purchasing agreements were backdated and attested to their being genuine agreements. YZY attacked their truthfulness in three main ways:

- (a) Mr Hou lied when he said that the stamp he used on the purchasing agreements was one of two made by him and Mdm Gu shortly after YZY's incorporation.¹³³

¹³¹ Defendant's closing submissions para 129.

¹³² Report of Yang Chiew Yung dated 25 June 2021, para 10, BAEIC 213; Transcript (10 September 2021) pp 88-97.

¹³³ Defendant's closing submissions paras 170 to 173.

(b) Shida did not mention the 2018 purchasing agreement in its letters of demand and its initial pleadings.¹³⁴

(c) There were inconsistencies between the purchasing agreements and the disclosed invoices, including an increase in price nine days after the alleged signing of the 2018 purchasing agreement.¹³⁵

The company stamps

63 I return to the evidence of YZY’s expert, Mdm Yang Chiew Yung (“Mdm Yang”). Her inspection was focused on whether the stamp impressions were physically stamped and whether those impressions were made by either of the stamps that Mdm Gu had.¹³⁶ YZY’s expert concluded that they were indeed physically stamped but that they were not made by the stamps in Mdm Gu’s possession.¹³⁷

64 I pause to note that there was an initial confusion of terminology. The stamps, which bear YZY’s name in English in the form of a circle with the Chinese character for Yuan in the centre, are just rubber stamps. On application, they leave an ink mark. YZY’s expert was inexact to call those marks impressions as, unlike with a company seal, there is no physical deformation of the paper. The stamps were not company seals. Company seals are used with sealing paper when a company has to execute a deed under seal. In some countries, the company seal continues to be essential for the conduct of

¹³⁴ Defendant’s closing submissions paras 49 to 51.

¹³⁵ Defendant’s closing submissions para 177.

¹³⁶ Report of Yang Chiew Yung dated 25 June 2021, para 7(a) and (b), BAEIC 212.

¹³⁷ Report of Yang Chiew Yung dated 25 June 2021, paras 29 and 20, BAEIC 219.

business. Not so in Singapore. With effect from 31 March 2017, Companies Act 1967 (2020 Rev Ed) (“Companies Act”) s 41B provided that a company may execute a deed without any common seal by signature as stipulated therein.

65 I note further that the stamps did not include YZY’s registration number. In the days before personal computers and laser jet printers, it was usual for rubber stamps to include the company’s registration number as that then provided a convenient means for companies which did not wish to incur the expense of pre-printed invoices or purchase orders to comply with Companies Act s 144(1), when using generic booklets of invoices and other trading documents. Companies Act s 144(1A) requires the registration number of a company to appear in a legible form on all business letters, statements of account, invoices, official notices and publications of or purporting to be issued or signed by or on behalf of a company. The absence of the company’s registration number does not invalidate the document, rather it exposes the company and any of its officers involved in issue of the document to potential penalties.

66 The significance of this digression is that stamping the purchasing agreements was not required for them to be binding. Thus, the only relevance of the stamps is that if it can be shown that the stamp was not in existence at the time when the purchasing agreements were purportedly dated then this would be compelling evidence of backdating.

67 I accept Mdm Yang’s evidence and find that Mr Hou’s initial claim that he had used a stamp that was one of a pair that he had made with Mdm Gu

shortly after incorporation of YZY is not true. He changed his evidence when he testified, suggesting that the stamps were made at different times.¹³⁸

68 However, I do not find that Mr Hou was deliberately lying on this point. That he was mistaken about when or how the stamp was made does not mean that it was made by him after the dispute arose for the purpose of creating false documents.

The belated mention of the 2018 purchasing agreement

69 While I accept that Shida did not mention the 2018 purchasing agreement initially, I do not agree that this shows that there was no such agreement. The debts on which it was suing arose from the invoices that were issued for apples actually supplied, rather than under the umbrella purchasing agreements. It is not unusual or suspicious for letters of demand or a statement of claim to be based on a tabulation of the invoices for goods delivered. The most convenient way for statements of account to be kept between traders is by reference to invoices.

Consistency between purchasing agreements and invoices

70 YZY raised numerous inconsistencies. These included whether the prices on the invoices matched the range of price variations allowed by the purchasing agreements. However, the purchasing agreements did contemplate possible fluctuations in price. I was unable to find that the inconsistencies whether taken singly or together showed that the documents were not genuine.

¹³⁸ Transcript (7 September 2021) pp 41-42.

71 I consider that the contemporaneous internal tables that Mr Hou prepared and sent by email to Mdm Gu and Ms Yini for the purpose of coordinating and arranging payment to Shida, show that the invoices were genuine and the debts real. These internal tables referred to and tabulated the invoices issued by Shida to YZY including details of invoice numbers, dates and amounts. The first was sent on 16 October 2017,¹³⁹ more than two years before these proceedings commenced. Shida matched these internal tables with the information set out in Shida’s invoices with the use of demonstrative exhibits put to YZY’s witnesses at trial.¹⁴⁰ There were some differences but these were convincingly explained by Shida’s counsel.¹⁴¹

72 That these tables were prepared and sent contemporaneously by Mr Hou is highly significant. Even if, as Mdm Gu claimed, the Shida invoices themselves were not sent by Mr Hou to her (and he said they were),¹⁴² the tables establish that Shida had raised the invoices to YZY and YZY acted on them, including to make payments to Shida.

73 Taking a step back and considering the matter as a whole, there are three further points that weigh in favour of Shida’s case. Indeed, these three points taken together raise doubt concerning whether Mdm Gu has defended these proceedings in good faith. The first is that if YY were the true contracting party with Shida then one would expect there to be some positive evidence of this fact within the knowledge and control of YZY. For example, there would be some

¹³⁹ 1 AB 203-227 (Chinese) / 1 AB 228-252 (English translation).

¹⁴⁰ Exhibits “P2”, “P3” and “P4”.

¹⁴¹ Plaintiff’s Closing submissions para 53(a)(iii), 53(b)(iii) and 53(c)(iii).

¹⁴² Transcript (7 September 2021) p 27, ln 5-21.

documents recording the arrangements between YY and YZY, even if only in ledgers and accounts of YZY. No such documents were ever produced by YZY.

74 Secondly, Mdm Gu called Mr Liu Meiliang on 28 April 2021 and in that call spoke of YZY having done business with Shida and not previously owing money to Shida, as well as saying that YZY would pay the money it owed to Shida. The conversation was recorded and transcribed.¹⁴³ The recording was played during the hearing.¹⁴⁴ It appears that in a candid moment Mdm Gu accepted that YZY had a contractual relationship with Shida.

75 Thirdly, assuming that it was indeed YY that contracted with Shida, Mdm Gu accepted that YZY had previously paid Shida on YY's behalf from the monies YZY received from NTUC Fairprice and Kian Seng, again on YY's behalf. Thus, even on her version of the relationships, there was a single pool of money that YZY, and not YY, controlled.¹⁴⁵ Mdm Gu was unable to explain why she did not continue to use those monies generated from supply of apples by Shida to pay Shida.¹⁴⁶ Instead, she paid out large sums of money to purchase a house for her daughter Ms Yini and to the subsidiary of YZY that she had set up in the USA (where she had relocated).¹⁴⁷ This suggests that Mdm Gu has made a pretence of not understanding that YZY owes Shida for the supply of apples in order to divert the money for her own purposes.

¹⁴³ 1AB 143 to 148.

¹⁴⁴ Transcript (14 September 2021) pp 62-75.

¹⁴⁵ Transcript (14 September 2021) p 46, ln 5-14.

¹⁴⁶ Transcript (10 September 2021) p 48, ln 5-21.

¹⁴⁷ Transcript (10 September 2021) p 55, ln 17 to p 56, ln 3.

76 I find that the purchasing agreements, the invoices and the bills of lading were authentic documents, which showed that Shida had entered into binding contracts with YZY for for the 2016/2017 and 2017/2018 supply cycles.

Conclusion on Issue 1

77 I conclude that the contractual relationship was indeed between Shida and YZY.

Issue 2: Were there Excess Payments and if so how much were they?

78 I turn to the Excess Payments. Again, it is striking that YZY did not run a positive case on how much was owed. One would expect a trader to maintain running accounts. Indeed, that is what Mr Hou did in the spreadsheets that he shared with Mdm Gu and Ms Yini. Mdm Gu did not produce or point to any alternative tabulation.

79 YZY has contended that if the agreement is held to be between YZY and Shida, then the unit price of US\$24 per carton stated in the 2018 purchasing agreement should apply, instead of the unit price of US\$30.50 stated in the invoices. I do not agree with this contention. I accept that there may be some fluctuations in price depending on the market and the grade and quality of the apples. Moreover, after apples are harvested in October and November (which is the season in China) they are then stored for periodic supply during the remainder of the annual supply cycle.

80 The one constant is that regardless of the price paid to Shida, YZY was able to charge a higher price to NTUC Fairprice and Kian Seng and earn a reasonable profit margin. YZY increased its own prices to NTUC Fairprice from

US\$35.80 per carton to US\$37.80 per carton within the 2018/2019 supply cycle.¹⁴⁸

81 YZY also claimed that Kian Seng had paid more than the sum of US\$473,180 on behalf of YZY to Shida, namely the larger amount of US\$1,052,028. This assertion of a higher payment amount was not supported by evidence and was denied by Mr Quek of Kian Seng.¹⁴⁹ I reject this claim.

82 I do not accept that there were Excess Payments. Shida is entitled to be paid US\$1,572,142 as the sum outstanding for its supply of apples.

Issue 3: Did Mr Hou breach his duties to YZY, and if so what is his liability to YZY?

83 YZY has alleged that Mr Hou breached his fiduciary duty to YZY by causing YZY to make excess payments to Shida, in return for which he received various benefits, namely RMB3,410,000 from Ms Liu Panhua in June 2017 and RMB4,000,000 (paid to Ms Tan Lin Lin) from Ms Liu Panhua in August 2017. Originally, a third benefit was pleaded, namely the transfer of RMB1,000,000 from Mr Liu Meiliang to him, but this was not pursued in closing.

84 The first difficulty with these allegations is that there were no Excess Payments. At most it can be said that Mr Hou tried to help Shida to obtain what was rightfully due to it from YZY. But that is not a breach of duty to YZY. In fact, it would be a breach of duty to a company for its director to cause it not to pay its debts and instead embroil it in costly litigation. The interests of a company are served by proper management of both payables and receivables.

¹⁴⁸ Transcript (14 September 2021) pp 10-14.

¹⁴⁹ Transcript (8 September 2021) p 73, ln 8-13.

85 The second difficulty is that YZY has not produced evidence indicating that these so-called benefits derived from Mr Hou’s directorship of YZY.

86 In relation to the first payment of RMB3,410,000, I accept Mr Hou’s evidence that he helped Shida procure smaller apples and that after the first delivery Shida was not satisfied with the quality of the apples and the arrangement came to an end. Mr Hou’s account statements show that while he received RMB 3,410,000 on 19 June 2017,¹⁵⁰ he returned RMB3,200,000 on 11 August 2017.¹⁵¹

87 In relation to the second payment of RMB4,000,000 to Ms Tan Lin Lin, there is no evidence connecting it to Mr Hou. Mr Hou denied that it had anything to do with him, YZY or Shida.¹⁵²

88 I turn to YZY’s separate allegation that Mr Hou breached his fiduciary duty to YZY by entering into the storage agreement with Zhen Hao. There is no merit to this allegation. I accept Mr Hou’s evidence that he did so to try to maintain the supply of apples to NTUC Fairprice when Shida stopped supply because of non-payment.¹⁵³ He was acting in the interests of YZY.

89 As for the allegation that Mr Hou instigated Shida to commence this action, it is without merit. Shida was an unpaid supplier and commenced this action for good commercial reasons.

¹⁵⁰ 1AB 169.

¹⁵¹ 1AB 181 – 182.

¹⁵² Transcript (3 September 2021) p 54, ln 17-22; Transcript (7 September 2021) p 71, ln 21 to p 72, ln 13;

¹⁵³ Transcript (3 September 2021) pp 59-60.

Issue 4: Is Shida liable to YZY for any breaches of duty on the part of Mr Hou, whether as a secondary party or as a co-conspirator?

90 As I have found that Mr Hou did not breach his duty to YZY, there was no breach of duty for Shida to abet, nor was there any conspiracy between Shida and Mr Hou.

Conclusion

91 YZY's case has not been supported by any cogent evidence. It is largely the supposition and conjecture of a suspicious mind. Mdm Gu has been boxing at shadows.

92 I give judgment for Shida in the sum of US\$1,572,142. I award interest thereon at the rate of 5.33% per annum from the date of the writ until the date of this judgment. I dismiss YZY's counterclaims. I will hear parties on costs.

Philip Jeyaretnam
Judge of the High Court

Yeo Teng Yung Christopher and Charmaine Elizabeth Ong Wan Qi
(Legal Solutions LLC) for the plaintiff and first defendant in
counterclaim;
Aw Wen Ni and Tan Kia Hua (Chen Jiahua) (WongPartnership LLP)
for the defendant and plaintiff in counterclaim;
Ng Khai Lee and Lee Shu Xian (Infinitus Law Corporation) for the
second defendant in counterclaim.