

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

[2023] SGHC 239

Suit No 189 of 2022

Between

Zhongshan Shengwang
Electrical Appliance Co Ltd

... Plaintiff

And

Triple D Trading Pte Ltd

... Defendant

JUDGMENT

[Contract — Intention to create legal relations]
[Evidence — Admissibility of evidence]

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Zhongshan Shengwang Electrical Appliance Co Ltd

v

Triple D Trading Pte Ltd

[2023] SGHC 239

General Division of the High Court — Suit No 189 of 2022

Hoo Sheau Peng J

26–28 April, 30 June 2023

30 August 2023

Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 In this action, the plaintiff, Zhongshan Shengwang Electrical Appliance Co Ltd (“Shengwang”), claims for the outstanding purchase price of certain ceiling fans (“the Goods”) ordered by the defendant, Triple D Trading Pte Ltd (“Triple D”), and duly supplied by Shengwang to Triple D. Triple D says, however, that the Goods were bought from, and supplied by a third party, Zhongshan Tanfull Star Trade Co Ltd (“Tanfull”). Shengwang is not party to the contracts for the Goods, and has no standing to bring the claim. Having considered the evidence and the parties’ submissions, I find in favour of Shengwang, and allow its claim for CNY1,885,630. These are my reasons.

Background facts

2 Shengwang is a private company incorporated in the People’s Republic of China. It is in the business of manufacturing and selling, *inter alia*, ceiling fans and lighting fixtures.¹ Triple D is a private company incorporated in Singapore, in the business of the wholesale trade and retail of ceiling fans.²

3 In or around December 2017, the parties began doing business with each other, initially dealing directly with each other on all aspects of their transactions.³ Specifically, Triple D ordered ceiling fans products from Shengwang. Shengwang issued invoices to Triple D and arranged for the delivery of the products from China to Singapore. Triple D made payments for the products to Shengwang.⁴

4 In the course of the business relationship, Mr Yin Jian (“Mr Yin”), the legal representative of Shengwang, and Mr Phua Kian Chey Colin (“Mr Phua”), the sole director and shareholder of Triple D, would communicate with each other on behalf of their respective companies. Mr Zheng Laijun (“Mr Zheng”), whose exact position within Triple D is a matter of contention between the parties (which I deal with from [21] below), was also involved in the transactions.

¹ Statement of Claim (10 Mar 2022) (“Statement of Claim”) at para 2; Hearing Transcript (27 Apr 2023) at p 53 lines 1–4.

² Statement of Claim at para 3; Defence (6 Apr 2022) (“Defence”) at para 4.

³ Plaintiff’s Closing Submissions (16 June 2023) (“PCS”) at para 16; AEIC of Phua Kian Chey Colin (10 Feb 2023) (“AEIC PKC”) at para 12.

⁴ AEIC of Yin Jian (10 Feb 2023) (“AEIC YJ”) at para 12; AEIC PKC at para 11.

5 Sometime during or after July 2020, Tanfull came into the picture. According to Shengwang, Tanfull was brought in as its export agent, and would make all necessary arrangements for the delivery of its products bought by Triple D to Triple D. In support of this position, an Export Agency Agreement dated 28 July 2020 (“the EAA”) was adduced in evidence.⁵

6 Triple D, however, says that at some point in 2020, Shengwang notified Triple D that it would no longer sell products to Triple D. Thereafter, Triple D bought the products from Tanfull, and made payment to Tanfull directly.⁶ Tanfull was therefore “the seller”, and not merely “the freight forwarders”. Triple D was neither privy to the arrangements between Shengwang and Tanfull, nor concerned with the source of Tanfull’s ceiling fans.⁷ That said, it is not seriously disputed by Triple D that Tanfull does *not* manufacture ceiling fans.⁸

7 Turning to the Goods, according to Shengwang, Triple D placed four orders with Shengwang, an order each on 7 January 2021 and 3 March 2021, and two separate orders on 8 March 2021. Shengwang duly supplied the Goods. Triple D disputes this account.⁹ In any event, between 30 March 2021 and 24 May 2021, Triple D received the Goods in four separate shipments.¹⁰ For each

⁵ PCS at para 25–26; Hearing Transcript (27 Apr 2023) at p 35 lines 5–10; AEIC YJ at paras 17 and 18 and Exh YJ-6.

⁶ AEIC PKC at para 14.

⁷ Defence at para 13; Hearing Transcript (27 Apr 2023) at p 53 lines 12–29.

⁸ Hearing Transcript (26 Apr 2023) at p 51 lines 15–17; Hearing Transcript (27 Apr 2023) at p 51 lines 15–24.

⁹ Statement of Claim at para 13; Defence at para 12.

¹⁰ PCS at para 3; Hearing Transcript (26 Apr 2023) at p 18 lines 11–18; Agreed Core Bundle of Documents (19 Apr 2023) (“ACB”) at pp 64, 70, 76, 82.

of the shipments, Tanfull issued an invoice to Triple D.¹¹ These invoices were dated 23 March 2021, 31 March 2021, 29 April 2021 and 23 May 2021 (“the Invoices”).¹² There were accompanying packing lists. For the shipments, the bills of lading listed Tanfull as “Shipper”, and Triple D as “Consignee”.¹³

8 I pause to observe that for each of the Invoices, there was a corresponding invoice issued by Shengwang to Tanfull – on the same dates, for the same products, and at the same prices, with Tanfull listed as “Buyer” (“the P-T Invoices”).¹⁴ There were also corresponding packing lists. Relying heavily on the P-T Invoices, Triple D argues that there were back-to-back contracts, and that Shengwang had sold the Goods to Tanfull, before Tanfull sold them to Triple D.¹⁵

9 As of the date of the hearing, Triple D has only made partial payment of CNY300,000 to Tanfull, with the outstanding amount of CNY1,885,630 remaining unpaid (be it to Tanfull or Shengwang).¹⁶

The parties’ cases

10 Simply put, Shengwang’s case is that Triple D ordered the Goods from Shengwang, and Shengwang duly supplied the Goods. Tanfull then furnished the Invoices. The parties agreed expressly that Triple D would make full payment within 30 days of shipment, or impliedly, that Triple D would do so

¹¹ PCS at para 5.

¹² AEIC PKC at pp 28, 32, 36, 40.

¹³ AEIC PKC at pp 30, 34, 38, 42.

¹⁴ Affidavit of Tan Kin Man (27 June 2022) at pages 44 to 51.

¹⁵ Defendant’s Closing Submissions (16 June 2023) (“DCS”) at para 14.

¹⁶ PCS at para 3; DCS at para 27.

within a reasonable time. The failure to make full payment constitutes a breach of contract.¹⁷ Tanfull's role was simply that of an exporter, shipper, and customs agent. At no time did Tanfull contract in its own name to either buy the Goods from Shengwang, or sell them to Triple D.¹⁸ In this regard, Shengwang's position is that the P-T Invoices and the Invoices are not determinative of the existence of two separate sets of contracts between itself and Tanfull, and between Tanfull and Triple D.¹⁹

11 In response, Triple D says it did not purchase the Goods from Shengwang, but from Tanfull.²⁰ Consequently, Shengwang is not the right party to sue Triple D for breach of contract. Triple D argues that the P-T Invoices and the Invoices, either themselves constitute two separate sets of contracts, or serve as strong evidence that the Goods were sold to Tanfull by Shengwang and then by Tanfull to Triple D in two sets of legally separate transactions.²¹

Issue to be determined

12 By the parties' cases, the main issue which falls to be determined is whether Shengwang is the contracting party which sold and delivered the Goods to Triple D. Subsumed within this is the question of the role of Tanfull in the transactions. There are other arguments raised by the parties concerning the principal-agent relationship between Shengwang and Tanfull, as well as an

¹⁷ Statement of Claim at paras 4-7 and 25.

¹⁸ PCS at para 83.

¹⁹ PCS at para 81.

²⁰ DCS at para 13.

²¹ DCS at paras 13, 17-18.

objection by Shengwang that Triple D has not pleaded various positions it now relies on. I set these aside for the moment, and turn to the main issue.

Whether Shengwang sold and delivered the Goods to Triple D

The applicable legal principles

13 It is trite that the legal burden of proof is on a plaintiff to establish every element of its claim on the balance of probabilities. In a contractual claim, this would include the very basis of the agreement upon which the claim is founded: *ARS v ART and another* [2015] SGHC 78 (“*ARS*”) at [47]. However, the evidential burden, or the tactical onus to contradict, weaken, or explain away evidence that has been led, may shift from one party to another: *Cooperatieve Centrale Raiffeisen-Boerenleenbank BA (trading as Rabobank International), Singapore Branch v Motorola Electronics Pte Ltd* [2011] 2 SLR 63 (“*Rabobank*”) at [30], citing *Britestone Pte Ltd v Smith & Associates Far East, Ltd* [2007] 4 SLR(R) 855 at [58]. Furthermore, unless the defence is a bare denial of the claim, the legal burden of proving a pleaded defence rests on the proponent of that defence: *Rabobank* at [31].

14 Therefore, it is for Shengwang to prove that the Goods were sold by Shengwang to Triple D. Apart from denying this, Triple D also claims that Tanfull was the seller of the Goods. This is a positive claim for Triple D to prove. However, even if Triple D fails to do so, it does not mean that Shengwang succeeds in its claim. A trier of fact is not bound to choose between the assertions of either party. If the state of the evidence is unsatisfactory, the court may simply find that Shengwang has failed to discharge the burden of proof: see *Tan Chin Hock v Teo Cher Koon and another and another appeal*

[2022] 2 SLR 314 at [31]. With these principles in mind, I now turn to consider the evidence.

Mr Yin's evidence

15 Mr Yin was the only witness for Shengwang, and it relies on his testimony, contemporaneous documentary evidence and the surrounding circumstances, to support its claim that it is the contracting party which sold and supplied the Goods to Triple D.

16 According to Mr Yin, in the course of the parties' dealings which began in 2017, Mr Phua or Mr Zheng would place orders for ceiling fan products on behalf of Triple D, by sending emails or WeChat messages to Mr Yin. Mr Zheng, also referred to as "Singapore Ah Jun", is Triple D's warehouse manager. After the orders were placed, Shengwang would check its inventory, and then take the necessary steps to deliver the products to Triple D. Triple D would make payments to Mr Yin's personal bank account, as the representative of Shengwang.

17 At the beginning of their business relationship, Shengwang and Triple D would deal with all aspects of their transactions directly with each other (see also [3] above). This state of affairs persisted until around 2019.²² As its business expanded, Shengwang found it more efficient to engage a specialist export agent and freight forwarder to handle customs permits, payments and shipping.²³ Shengwang thus entered into the EAA with Tanfull, under which Tanfull would, *inter alia*, provide the required documents for customs

²² Hearing Transcript (26 Apr 2023) at p 28 lines 24–31.

²³ AEIC YJ at para 15.

declaration, book and secure space for shipment of the products to Triple D, collect payment for any delivered products from Triple D, and remit the payment collected to Shengwang.²⁴ In return, Tanfull would receive an agency fee, as well as reimbursement for all fees, charges and costs associated with the shipment and delivery of the products.²⁵

18 However, Mr Yin emphasised that even after Shengwang signed the EAA with Tanfull and Tanfull began handling customs, taxes, deliveries and invoicing, Triple D continued to place orders for the ceiling fan products directly with Shengwang.²⁶ By way of an example, he identified two orders for ceiling fan products placed by Triple D on 7 August 2020 and 6 October 2020 (“the 2020 Orders”). Pursuant to these orders, shipment was arranged by Tanfull in accordance with the terms of the EAA.²⁷ Mr Yin also received copies of transfer receipts and remittance advice associated with the 2020 Orders directly from Mr Phua over WeChat (see [58] below). Mr Yin also highlighted that the models of ceiling fans which Triple D received from Tanfull after the signing of the EAA were the exact same models which it had received from Shengwang prior to the signing of the EAA.²⁸

19 In relation to the Goods, Mr Yin testified that it was Mr Zheng who placed the orders for the Goods on behalf of Triple D. Mr Yin listed the models and the quantities ordered on 7 January 2021, 3 March 2021 and 8 March 2021.²⁹

²⁴ Hearing Transcript (26 Apr 2023) at p 64 lines 21–27.

²⁵ AEIC YJ (10 Feb 2023) at paras 20–22.

²⁶ Hearing Transcript (26 Apr 2023) at p 32 lines 29–32.

²⁷ AEIC YJ at para 30.

²⁸ AEIC YJ at para 27.

²⁹ AEIC YJ at para 7.

Mr Yin explained that Mr Zheng sent him a series of WeChat messages, containing photographs of handwritten sheets of paper setting out Triple D’s orders of the Goods by the models and quantities (“the WeChat purchase orders”).³⁰ However, Mr Yin also testified that the contents of a single order were not necessarily packed as a single shipment.³¹ It depended on the availability of space for each shipment, and the availability of the products ordered. However, Shengwang would aim to make use of all available space for shipping.³² This flexibility was possible because of the longstanding cooperative working relationship between Shengwang and Triple D.³³ This was in fact how Shengwang handled the Goods which were the subject of the Invoices.³⁴ In any event, Mr Yin matched the models and quantities of the orders to the four shipments of the Goods.³⁵

20 Having reviewed Mr Yin’s evidence, I find his account of how orders were placed, how deliveries and shipments were typically handled, as well as how the transactions for the Goods came about, to be internally consistent and commercially and logistically sensible. In addition, as I shall discuss below, I find that Mr Yin’s account is in accord with the surrounding circumstances, and supported by the other evidence placed by the parties before me.

³⁰ AEIC YJ at para 34 and Exh YJ-16; Hearing Transcript (26 Apr 2023) at p 80 lines 14–19.

³¹ Hearing Transcript (26 Apr 2023) at p 83 lines 3–5.

³² Hearing Transcript (26 Apr 2023) at p 75 lines 24–31; p 82 lines 12–23; p 83 lines 8–11; p 86 lines 3–5.

³³ Hearing Transcript (26 Apr 2023) at p 86 lines 6–9, p 87 lines 8–13.

³⁴ Hearing Transcript (26 Apr 2023) at p 73 lines 24–28.

³⁵ AEIC YJ at para 8.

Mr Zheng’s authority to place the orders on behalf of Triple D

21 As I stated above, Mr Yin gave clear evidence that Mr Zheng used to place orders with Shengwang, and that Mr Zheng placed the orders for the Goods through the WeChat purchase orders. In terms of documentary evidence, it was also shown that Mr Zheng was the sole signatory for the 2020 Orders.³⁶

22 However, Triple D challenges the authority of Mr Zheng to enter into binding contracts on its behalf.³⁷ Mr Phua claimed that Mr Zheng is merely a storeman, and has no authority to place any orders on Triple D’s behalf.³⁸ Mr Phua attempted to explain that, while Mr Zheng might have signed certain purchase orders, he would do so “in front of ... [Mr Phua’s] view”, and that it would ultimately be Mr Phua who sent the purchase orders.³⁹

23 I do not accept Mr Phua’s account. I find it odd that Mr Zheng would be signing off on purchase orders if he were a mere storeman. In any case, whatever Mr Zheng’s official job title might have been, he clearly had been involved in the placing of prior purchase orders, making it more likely that he had the authority to place the orders for the Goods. As for Mr Phua’s explanation that Mr Zheng signed certain purchase orders in front of him, I fail to understand why Mr Phua would not simply sign them himself instead (if Mr Zheng did not have authority to do so). Further, despite the fact that Mr Zheng continues to be employed by Triple D,⁴⁰ he was not called as a witness to support Mr Phua’s

³⁶ PCS at para 71; AEIC YJ at p 129–130; Hearing Transcript (28 Apr 2023) at p 8 line 26 to p 10 line 26.

³⁷ Defence at para 11.

³⁸ Defence at para 11; Hearing Transcript (27 Apr 2023) at p 78 lines 10–12.

³⁹ Hearing Transcript (28 Apr 2023) at p 10 lines 12–13.

⁴⁰ Hearing Transcript (27 Apr 2023) at p 78 lines 13–14.

case. In any event, it is telling that Triple D appears to have abandoned any challenge premised on Mr Zheng’s lack of authority in its closing submissions and reply submissions.⁴¹ Thus, I find that Mr Zheng had the authority to place orders on behalf of Triple D.

The WeChat purchase orders

24 In support of Mr Yin’s evidence, Shengwang relies on four screenshots, purportedly of the WeChat purchase orders sent by Mr Zheng to Mr Yin.⁴²

25 Triple D disputes the authenticity of these four screenshots, claiming they are forgeries. It filed a Notice of Non-Admission on 6 July 2022.⁴³ Mr Phua claimed at trial that Mr Zheng “checked through his phone” and found that “there was no such screenshots”.⁴⁴ Triple D’s position is that Shengwang should have produced the original messages, which were stored in a computer in China,⁴⁵ or subpoenaed Mr Zheng who was the maker of the messages.⁴⁶ Having failed to do so, it argues that Shengwang ought not to be allowed to rely on the WeChat purchase orders.

26 Shengwang takes the position that the screenshots are admissible and should be considered authentic. It argues that the onus was on Triple D to call

⁴¹ DRS at para 19.

⁴² AEIC YJ at p 150–157.

⁴³ DCS at para 51 and DRS at para 14.

⁴⁴ Hearing Transcript (27 Apr 2023) at p 78 line 18.

⁴⁵ Hearing Transcript (26 Apr 2023) at p 89 line 9 to p 90 line 4.

⁴⁶ DCS at para 52.

Mr Zheng as a witness to address this issue, given the importance of this piece of evidence, and the fact that Mr Zheng continues to be employed by Triple D.⁴⁷

27 I agree with Triple D that Shengwang has not discharged its burden of proving the authenticity of the WeChat purchase orders. As held by the Court of Appeal in *CIMB Bank Bhd v World Fuel Services (Singapore) Pte Ltd and another appeal* [2021] 1 SLR 1217 (“*CIMB Bank*”) at [42]–[43], where a Notice of Non-Admission is issued in respect of a document sought to be adduced at trial and its authenticity is thereby disputed, the party seeking to adduce the document is put to strict proof of its authenticity. In order to do so, it must produce primary or secondary evidence of that document, *ie*, the alleged original or a copy, within the provisions of the Evidence Act 1893 (“2020 Rev Ed”) (“EA”), and thereafter also has to prove that the document is what it purports to be: see *CIMB Bank* at [54].

28 In the present case, the relevant provisions of the EA are ss 65, 66 and 67, which when read together provide that copies of an original document may only be adduced in place of the original where, *inter alia*, that original has been destroyed or lost, is not easily movable, or cannot be produced within a reasonable time for reasons not arising from the default or neglect of the party seeking to produce it. At trial, Mr Yin admitted that the original messages captured in the screenshots were stored in the WeChat app located in a computer in China.⁴⁸ However, Shengwang has not attempted to demonstrate why the original messages in the computer could not be produced so as to bring it within the exceptions in s 67(1)(c) or 67(1)(d) of the EA.

⁴⁷ PCS at para 69.

⁴⁸ Hearing Transcript (26 Apr 2023) at p 89 line 2 to p 90 line 5.

29 Shengwang seeks to rely on *CIMB Bank* at [46],⁴⁹ where the Court of Appeal held that the appellant's failure to adduce the original copy of a document through one of its witnesses was not fatal to its case. However, the reason for this was that in *CIMB Bank*, the original was in fact disclosed, albeit very close to the commencement of trial. The respondent's counsel had the opportunity to inspect the original, and thereafter did not make any objection in respect of the document despite having had several opportunities to do so: *CIMB Bank* at [47]. The situation could not be more different in the present case. To date, the original messages have not been adduced, and Triple D has objected to the authenticity of the WeChat purchase orders.

30 Similarly, Shengwang's reliance on *CIMB Bank*'s observation at [61] that indirect or circumstantial evidence may be relied on to establish authenticity is misplaced.⁵⁰ This comment was made in respect of s 69 of the EA which provides as follows:

Proof of signature and handwriting of person alleged to have signed or written document produced

69.—(1) If a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the handwriting of so much of the document as is alleged to be in that person's handwriting must be proved to be in that person's handwriting.

As observed in *CIMB Bank* at [55]–[61], where the question is whether a signature or handwriting in a document is in fact the handwriting of a particular person, the court may have recourse to circumstantial evidence even if direct evidence would have been available. This is not the situation I have before me.

⁴⁹ PRS at para 47.

⁵⁰ PRS at para 47.

31 Thus, Shengwang is precluded from relying on the screenshots of the WeChat purchase orders, as those are not admissible. That said, while Shengwang has not been able to produce the WeChat purchase orders, in my view, this does little to detract from Mr Yin’s account.

The Export Agency Agreement

32 I now turn to the EAA.⁵¹ Under its terms, Tanfull would be entrusted to act as Shengwang’s “agent for shipping, trailer, customs declaration and export business” with Triple D, which was specifically named in the EAA, while Shengwang would be responsible for “contacting... [Triple D], signing export contracts, and organizing the production and procurement of goods”.⁵² Additionally, while Tanfull would first receive payment for any goods it shipped to Triple D and only later transmit the funds received to Shengwang, Shengwang would be “responsible for urging [Triple D] to pay and remit the payment to the bank account designated by [Tanfull]”.⁵³

33 I note that initially, Triple D indicated that it would be challenging the authenticity of the EAA. At trial, however, Mr Phua said that he had never seen it before, and he could not take any position on whether it was authentic or not. In particular, he did not allege that it was a fraudulent document.⁵⁴ At the end of the day, Triple D appears to have abandoned the challenge. There is no mention of this in its closing submissions and reply submissions. I am satisfied that there is no basis to doubt the authenticity of the document, or the accuracy of the

⁵¹ AEIC YJ at p 95–101.

⁵² AEIC YJ at p 99.

⁵³ AEIC YJ at p 100.

⁵⁴ Hearing Transcript (27 Apr 2023) at p 65 line 14 to p 66 line 8.

certified English translation thereof. More importantly, even if it were true that Triple D was neither privy to nor aware of the EAA,⁵⁵ the question is whether given the terms of the EAA, as a matter of fact, it is more likely that Shengwang or Tanfull contracted with Triple D for the Goods.

34 This being the case, I find that the EAA is admissible, and I also find that it provides strong support for Shengwang’s case. While the existence of the EAA does not definitively prove that Shengwang is the contracting party in relation to the Goods, it strongly suggests that the general nature of the working relationship between Shengwang and Tanfull was that Shengwang would enter into contracts for the sale of ceiling fan products with Triple D, and Tanfull would handle the export, taxes, customs clearance, arrangements for the delivery of the products, and the collection of payments. This in turn makes it more likely that the specific contracts for purchase of the Goods by Triple D were entered into with Shengwang, rather than with Tanfull.

Emails concerning the shipments of the Goods

35 I now turn to the evidence concerning the shipping of the Goods. Between 30 March 2021 and 31 May 2021, Mr Phua and Mr Zheng received a series of emails from one Ms Mini of Zhongshan Jia Cheng Logistics Co Ltd (“ZJCL”),⁵⁶ which were disclosed by Triple D to Shengwang during the discovery process.⁵⁷ I note that by the terms of the EAA, ZJCL is a company related to Tanfull, responsible for handling the transportation arrangements.

⁵⁵ DRS at para 2; Hearing Transcript (26 Apr 2023) at p 42 lines 8–13.

⁵⁶ PCS at para 112; AEIC YJ at pp 159–182.

⁵⁷ Defendant’s List of Documents (21 Jun 2022) at s/ns 5, 10, 15, 20.

Consistent with this, in the bills of lading for the shipments, ZJCL is listed as the agent for the shipper, Tanfull.⁵⁸

36 The first of these emails was sent on 30 March 2021, from Ms Mini to Mr Phua and Mr Zheng. Attached to the email were the invoice and packing list for the first of the four shipments of the Goods which Triple D received from Tanfull, issued by Tanfull to Triple D.⁵⁹ The subject header of this email reads “Shengwang 2021 1st cargo information, please check, thank you!”, and the contents of the email are as follows:⁶⁰

Ah Jun:

Good afternoon. Please check the bill of lading and packing list invoice for Mr. Yin’s first shipment this year in the attachment, thank you!

37 On 8 April 2021, Ms Mini sent another email to Mr Phua and Mr Zheng, which likewise contained the invoice and packing list for the second of the four shipments of the Goods which Triple D had received from Tanfull.⁶¹ The subject header of this email read “Shengwang Mr. Yin 20th shipment information, please check, thank you!”.⁶² Ms Mini sent similar emails on 17 May and 31 May 2021, each of which were accompanied by similar subject headers and contained the invoices and packing lists for the third and fourth shipments of the Goods respectively.⁶³

⁵⁸ AEIC PKC at pp 30, 34, 38, 42.

⁵⁹ AEIC YJ at pp 162–163.

⁶⁰ AEIC YJ at pp 159–160; Hearing Transcript (28 Apr 2023) at p 17 lines 19–25.

⁶¹ AEIC YJ at pp 167–168.

⁶² AEIC YJ at pp 166.

⁶³ AEIC YJ at pp 171–182.

38 I agree with Shengwang that Ms Mini’s characterisation of the shipments as “Shengwang 2021 1st cargo”, “Mr. Yin’s shipment”, and “Shengwang Mr. Yin’s shipment”, provides strong support for Shengwang’s case that the Goods were Shengwang’s. ZJCL treated the Goods as belonging to Shengwang and Mr Yin, rather than to Tanfull (despite the contents of the Invoices and the packing lists referred to in the emails). This is consistent with Shengwang’s case that Tanfull was only an exporter, and that it had never purchased the Goods from Shengwang in any meaningful sense such that it could in turn “re-sell” them to Triple D in separate transactions to which Shengwang was not party.

39 Triple D’s response to this argument is that “Tanfull was referring to the shipment of goods by [Shengwang] to Tanfull, which Tanfull in turn resold to [Triple D]”, and “[i]t is undisputed that the actual documents in the email ... were from Tanfull to [Triple D] and not [Shengwang] to [Triple D]”.⁶⁴ I understand this to mean that the emails were simply identifying the Goods with reference to their source, and that their doing so should not be taken as indicative of who Ms Mini understood as the legal owner of the Goods at the material time. I accept that a genuine reseller *might* possibly choose to identify goods in such a manner. However, given that ZJCL chose to identify each shipment of the Goods specifically with reference to Shengwang, rather than by reference to their contents or to Tanfull, the *more* plausible explanation is that ZJCL was operating on the basis that, for all intents and purposes, the Goods sold to Triple D belonged to Shengwang.

⁶⁴ DRS at para 24.

40 I make one further observation in connection with Ms Mini’s emails. Regardless of what might or might not be inferred about the legal ownership of the Goods at the material time, the contents of the emails make quite clear that the *source* of the Goods was Shengwang. Given that these emails were disclosed to Shengwang *by Triple D*, it cannot seriously be doubted that Triple D was aware of their existence and their contents. This directly contradicts Mr Phua’s claim that he did not know where Tanfull obtained the ceiling fan products which Triple D had begun to receive from it in 2020,⁶⁵ and calls into question Mr Phua’s credibility as a witness (which I shall cover in more detail later).

The P-T Invoices and the Invoices

41 I now turn to the P-T Invoices and the Invoices. These form the main evidentiary plank of Triple D’s case, which is that if Shengwang had truly been the one to contract with Triple D for the sale and purchase of the Goods, then Shengwang would have invoiced Triple D directly.⁶⁶ “Since [Shengwang] chose to structure its arrangement as a sale and delivery from itself to Tanfull, it has to be prepared to face the consequences”, namely that “the [Goods] no longer belonged to [Shengwang] after they had been sold and delivered to Tanfull” and “Tanfull became the legal owner of the [Goods] and [Triple D] purchased the same from Tanfull.⁶⁷ Crucially, the legal premise underpinning this argument is that the Invoices in fact “constitute sales between Tanfull and the Defendant”.⁶⁸ In support of this, Triple D cites an article from Investopedia, which states that

⁶⁵ Hearing Transcript (27 Apr 2023) at p 53 lines 16–29.

⁶⁶ DCS at para 14.

⁶⁷ DCS at para 27.

⁶⁸ DCS at para 14.

“[a]n invoice is a time-stamped commercial document that itemises and records a transaction between a buyer and a seller”.⁶⁹

42 To the extent that Triple D’s argument is that by nature, invoices *are* legally binding or constitute binding contracts, I disagree. As may be drawn from *Nambu PVD Pte Ltd v UBTS Pte Ltd and another appeal* [2022] 1 SLR 391 at [53]–[54], invoices may simply be the requests or demands for payments made pursuant to contracts. In such circumstances, invoices would be non-contractual documents, and they cannot themselves constitute contracts or be dispositive of legal title. I should add that Investopedia is neither binding upon this court nor of persuasive value. The Defendant’s Counsel should have known better than to have cited this as authority.

43 In this light, it is therefore incorrect to say that “even if Tanfull came into the picture as an export agent, [Shengwang] would still have to be the one issuing the commercial invoices to [Triple D] if it were really selling to [Triple D]”.⁷⁰ It does not necessarily follow from the fact that Tanfull issued the invoices that it was “the owner of the goods in the invoices”,⁷¹ and it begs the question to say that “[Shengwang] made the deliberate decision to outrightly sell the [Goods] in the 4 Invoices to Tanfull”,⁷² and that “[t]here is no running from the fact that [Shengwang] had sold and delivered the [Goods] to Tanfull”.⁷³

⁶⁹ DCS at para 15.

⁷⁰ DCS at para 38.

⁷¹ DCS at para 15.

⁷² DCS at para 19.

⁷³ DCS at para 21.

44 Accordingly, to the extent that Triple D’s argument is predicated on the premise that invoices *per se* constitute contracts or form dispositive evidence thereof, it must fail. However, while an invoice which is not itself a contractual document cannot give rise to a contractual relationship, I accept that it would be evidence pointing to one that exists between the party which issued the invoice and the party to whom it was issued. The question then becomes how much weight ought to be attributed to it.

45 Returning to the present facts, I turn to examine how Shengwang reconciles the existence of the two separate series of invoices, with its claim that there had only been one set of underlying contracts directly between itself and Triple D pursuant to which all these invoices were issued.

46 Mr Yin explained that initially, when the volume of Shengwang’s exports was relatively small, payment for exported ceiling fan products could be made directly to Mr Yin’s personal bank account.⁷⁴ However, these products would not go through proper customs export procedures,⁷⁵ which Mr Yin claims was akin to evading national taxes.⁷⁶ As Shengwang’s exports grew in volume, it became necessary to bring Tanfull on board in order to comply with proper tax regulations.⁷⁷ One problem appears to be that Mr Yin could not receive large amounts into his personal account.⁷⁸ As for Shengwang itself, while it could receive large amounts, it did not have the necessary direct export permit.⁷⁹ On

⁷⁴ Hearing Transcript (27 Apr 2023) at p 34 lines 14–20.

⁷⁵ Hearing Transcript (27 Apr 2023) at p 34 lines 29–30.

⁷⁶ Hearing Transcript (27 Apr 2023) at p 36 lines 30–32.

⁷⁷ Hearing Transcript (27 Apr 2023) at p 36 line 32 to p 37 line 2; p 38 lines 6-8.

⁷⁸ Hearing Transcript (27 Apr 2023) at p 43 lines 6–20.

⁷⁹ Hearing Transcript (27 Apr 2023) at p 43 lines 21–29.

the other hand, Tanfull could receive large remittances as it was a foreign trade export agency.⁸⁰

47 Therefore, the arrangement was for Tanfull to issue invoices to cover the export leg of the shipment of the products to Triple D. No mention was made of the fact that Tanfull was acting as Shengwang’s export agent, because these invoices had to be shown to the tax agency, and “two companies cannot appear on the same document”.⁸¹ However, Shengwang had to issue the separate invoices and packing lists for the following reasons:⁸²

We need to give these invoices and packing list to our agent because our agent would need all these documents for Customs clearance purpose. Because our agent will not be able to un--- will not know what is inside the container. So, we have to provide them with all this information, and with this information, they will be able to present it to the Customs for clearance purpose. Because the Customs will require this information from us, and we have to prepare all these documents for each and every container that we ask the agent to deliver for us.

48 Triple D contends that Mr Yin’s explanations are unsatisfactory on a number of grounds. I deal with the main ones. First, Triple D takes issue with the fact that Mr Yin first claimed that Shengwang could not receive large remittances, but then later testified that it “can also collect large amount”.⁸³ In this instance, I agree that on the face of the record, there does appear to be an inconsistency in what Mr Yin has testified. However, when pressed on this point, Mr Yin clarified that the reason why Shengwang did not continue to

⁸⁰ Hearing Transcript (27 Apr 2023) at p 43 lines 17–20.

⁸¹ Hearing Transcript (26 Apr 2023) at p 59 line 25 to p 60 line 6.

⁸² Hearing Transcript (26 Apr 2023) at p 61 lines 4–12.

⁸³ DCS at para 36; Hearing Transcript (27 Apr 2023) p 43 lines 6–23.

receive remittances directly from Triple D was not because it “could not” in the same sense that Mr Yin could not receive large amounts, but because of their lack of an export permit.⁸⁴ While perhaps not quite as clear as it could have been, I am satisfied that this aspect of his testimony is not inherently contradictory.

49 Next, Triple D attempts to cast doubt on Shengwang’s claim that it engaged Tanfull because its prior direct dealing with Triple D was illegal. It argues that if this were true, “the authorities either in China or in Singapore would have intervened a long time ago”.⁸⁵ Conversely, “the fact that the cargo was cleared every time shows that there were no other issues as well”.⁸⁶ I reject this argument. It is plausible that such dealing could have gone undetected because the volume of trade was relatively small, as Shengwang claims, and that it was only when it grew larger, and when the authorities intervened, that it felt a need to regularise its transactions.

50 Then, in response to Mr Yin’s numerous references to the need for tax compliance, Triple D argues that there is no link between engaging a professional export agency and paying tax.⁸⁷ In so far as this is directed towards *export*-related taxes, I disagree. Mr Yin explained that Tanfull would help Shengwang apply for a refund of customs-related taxes as part of the export services it provided.⁸⁸ Additionally, while Triple D asserts that “Tanfull could not have applied for a tax refund on [Shengwang’s] behalf”,⁸⁹ I do not think that

⁸⁴ Hearing Transcript (27 Apr 2023) p 43 lines 26–29.

⁸⁵ DCS at para 39.

⁸⁶ DCS at para 41.

⁸⁷ DCS at para 44.

⁸⁸ Hearing Transcript (27 Apr 2023) at p 35 lines 1–4 .

⁸⁹ DCS at para 45.

Mr Yin, in saying that “Tanfull can help us to apply for tax refund”,⁹⁰ meant this in the strict sense of formally applying for the refund in Shengwang’s name or on its behalf. Rather, what I take him as saying is simply that, in the course of exporting Shengwang’s products, Tanfull would generally be the one assisting with the process of applying for tax refunds. This would be consistent with clause 6.6 of the EAA, which provides that:⁹¹

[The Plaintiff] must issue a valid VAT invoice to [Tanfull] as soon as possible after the goods are exported (or before export). Due to [Shengwang’s] inability to issue the value-added tax invoice to [Tanfull] in a timely manner, [Tanfull] is unable to file a tax refund declaration with the Tax Refund Bureau within the prescribed time limit, and [Shengwang] is ultimately unable to provide [Tanfull] with the value-added tax invoice, resulting in the loss of 17% of the sales tax levied by the Tax Bureau *on [Tanfull], the loss shall be borne by [Shengwang]* [emphasis added].

51 In providing for Shengwang to bear the loss where its failure to supply the VAT invoice required for a refund resulted in sales tax being levied *on Tanfull*, this clause suggests that Tanfull would be the one responsible for applying for the tax refund in its own name first. Otherwise, if Shengwang was the one who would directly receive the refund, then there would be no need to provide for it to bear the loss in a situation where that refund was not obtained and the tax was levied on Tanfull. I therefore do not see anything inherently implausible or contradictory in Mr Yin’s explanation in so far as it concerns export taxes and Tanfull’s role in this. As neither party has provided any evidence on whether such an arrangement is in fact possible or permissible under Chinese law, there is no basis for me to reject it out of hand.

⁹⁰ Hearing Transcript (27 Apr 2023) at p 35 lines 3–4.

⁹¹ AEIC YJ at p 100.

52 I should add that Triple D also levels a similar criticism against Mr Yin’s account of how the arrangement with Tanfull affected Shengwang’s *corporate income* tax obligations. Mr Yin claimed that the National Tax Bureau would deduct taxes from Shengwang’s company account based on the invoices which it had issued.⁹² However, when it was suggested to him that this would lead to any one shipment of Goods being taxed twice, given that both Shengwang and Tanfull would issue invoices in respect of any one shipment, Mr Yin’s response was that Tanfull was simply “doing the export based on our amount”, and that the invoices which were relevant to calculation of corporate income tax were “tax invoices of the standard e-tax invoices by the China Tax Bureau”, rather than those issued by Shengwang to Tanfull or Tanfull to Triple D.⁹³

53 I find this to be the weakest and most confusing part of Mr Yin’s testimony. Mr Yin made no other mention of any parallel sets of invoices, either in his evidence or at trial, nor did the Plaintiff’s Counsel take up this point in further examination. However, neither did the Defendant’s Counsel, despite having had the opportunity to conduct further cross-examination immediately after this point was brought up.⁹⁴ This being the case, and without the benefit of any evidence on the law on Chinese corporate income tax, I can only form a view on whether Mr Yin’s explanation is inherently plausible. While his explanation is again not nearly as clear as would have been desirable, I do not think it inherently implausible that different government agencies may adopt different types of documentation, and that one may have its own system of invoices while another relies on those issued by the exporting party.

⁹² Hearing Transcript (27 Apr 2023) at p 38 lines 10–14.

⁹³ Hearing Transcript (27 Apr 2023) at p 38 line 27 to p 39 line 2.

⁹⁴ Hearing Transcript (27 Apr 2023) at p 40–41.

54 I should add that it is not disputed that the prices of the Goods as listed in the Invoice are the same prices as listed in the P-T Invoices.⁹⁵ According to Shengwang, this strengthens the inference that Tanfull could not have been reselling the Goods in its own right, as it would make no commercial sense for Tanfull to sell the Goods at exactly the same price at which it bought them with no markup whatsoever.⁹⁶ Triple D argues that this fact is simply a business decision that is not relevant in the present case, and that all that matters is that since Tanfull issued the invoices for the Goods to Triple D, this must mean that it owned the Goods and sold them to Triple D.⁹⁷

55 I disagree. All else being equal, the commercial logic of the transaction for all parties, including Tanfull, *is* relevant to the question of whether it was more likely that Tanfull was reselling the Goods and thus contracting directly with Triple D, or whether it was simply exporting the Goods on behalf of Shengwang who had been the one to contract with Triple D. This being the case, I agree with Shengwang that the identical prices listed in both sets of invoices make it more likely that Tanfull was not dealing with Triple D as a reseller of the Goods, but rather as a provider of export and export-related services. It makes no sense for Tanfull to be selling the Goods at the same price at which it bought them if its business was genuinely that of reselling ceiling fan Goods from Shengwang to Triple D. However, it makes perfect sense if their business model was simply to provide export and export-related services, for which they would receive a fee. This is indeed precisely what is provided for in the EAA, which provides that Tanfull would receive an “agency fee” for its services, and

⁹⁵ Hearing Transcript (26 Apr 2023) p 50 lines 1–8; Hearing Transcript (27 Apr 2023) p 81 lines 7–30.

⁹⁶ PCS at para 51.

⁹⁷ DCS at para 24.

also that Tanfull would transfer payments received from Triple D to an account designated by Shengwang within three days of receiving it.⁹⁸

56 As such, I accept that the P-T Invoices and Invoices were simply issued pursuant to, and in accordance with, the EAA. Besides the P-T Invoices (and perhaps the packing lists), for which Shengwang has in my view provided a satisfactory explanation, there is no other evidence suggesting that Tanfull purchased the Goods from Shengwang. Furthermore, as I shall explain later at [72], there is also no credible evidence that Triple D ordered the Goods from Tanfull. Indeed, Triple D's failure to adduce any credible evidence of any underlying contracts with Tanfull corresponding with the Invoices gives rise to serious doubts about its case. Based on these reasons, I am of the view that the Invoices do not form direct contracts between Tanfull and Triple D, and that little if any weight should be accorded to them as evidence of any purported direct contracts between Tanfull and Triple D. I make similar findings in relation to the P-T Invoices. They are not contracts, and they are not sufficient evidence to show that Shengwang had sold the Goods to Tanfull outright. In reaching these findings, I am fortified by my analysis thus far on various aspects of the evidence above, as well as the further discussion below.

Other transactions after the Export Agency Agreement

57 Shengwang also adduced evidence to show that, even after the introduction of Tanfull into the logistical chain in 2020, it would *generally* contract or otherwise deal directly with Triple D. This both corroborates Mr Yin's evidence and increases the likelihood that it was pursuant to such

⁹⁸ AEIC YJ at p 100.

agreements with Shengwang that the Goods were received by Triple D, rather than one between Triple D and Tanfull. I thus turn to consider this evidence.

The 2021 WeChat exchange

58 Between 12 and 18 June 2021, Shengwang and Defendant exchanged a series of WeChat messages (“the 2021 WeChat exchange”), concerning Triple D’s payment for the 2020 Orders.⁹⁹ Triple D does not dispute the authenticity of the 2021 WeChat exchange, and also appears to accept that it was referring to payment for the 2020 Orders.¹⁰⁰

59 The exchange begins with Mr Yin requesting proof that Triple D had made payment for the 2020 Orders, in the form of “remittance advice”. Mr Phua then replies by saying that he has not yet received the remittance advice from the finance house. However, he shortly thereafter sends what appears to be a screenshot of a confirmation of Triple D’s purchase of a sum of Chinese currency, which states that upon clearance of the “SGD funds”, the purchased sum of “CNH 691,260.00” would be transferred to Tanfull.¹⁰¹ In other words, even after Tanfull had begun receiving payment for the ceiling fan products it delivered to Triple D, Shengwang continued to communicate directly with Triple D. Clearly, Shengwang retained an interest in Triple D’s payments to Tanfull, and in turn, this supports its case that it had directly contracted with Triple D, rather than selling its Goods outright to Tanfull to be resold to Triple D in an entirely separate transaction in which it had no interest whatsoever.

⁹⁹ PCS at paras 33(a), 40; AEIC YJ at pp 142–148.

¹⁰⁰ DRS at paras 3, 15.

¹⁰¹ AEIC YJ at p 146.

60 Triple D attempts to reconcile the 2021 WeChat exchange with its claim that it contracted to purchase the Goods with Tanfull and not Shengwang by suggesting that “if Tanfull were reselling [Shengwang’s] goods, it made sense for [Shengwang] to remind [Triple D] to make payment so that Tanfull would in turn pay [Shengwang] for the purchase of the goods”.¹⁰² In short, its argument is that notwithstanding the fact that Shengwang had no *legal* interest in the alleged sale and purchase contract between Tanfull and Triple D, it had a *practical commercial* interest in Triple D making payment to Tanfull, because this was a necessary prerequisite to Shengwang getting paid by Tanfull.

61 However, when cross-examined on the 2021 WeChat exchange, Mr Phua conceded that the reason why Mr Yin wanted to know whether payment had been made to Tanfull was “because the goods were ordered from Shengwang by [Triple D]”.¹⁰³ Thus, on Mr Phua’s own account, there were at least two instances in which Shengwang and Triple D had continued to contract directly with each other for the ceiling fan products even after Tanfull had begun handling deliveries and receiving payment. This seriously undermines Triple D’s weak attempt to reconcile the 2021 WeChat exchange with its claim that Shengwang’s sales of the Goods to Tanfull were entirely distinct transactions from Tanfull’s subsequent sales of the Goods to Triple D. More importantly, it also lends further support to Shengwang’s claim that the Goods were received by Triple D pursuant to similar contracts with Shengwang.

62 I also observe that Mr Phua’s admission that the ceiling fan products involved in the 2021 WeChat exchange were ordered from Shengwang by

¹⁰² DRS at para 15.

¹⁰³ Hearing Transcript (27 Apr 2023) at p 77 lines 13–16.

Triple D, and the contents of the 2021 WeChat exchange itself, clearly demonstrate that he was fully aware that the products Triple D received from Tanfull originated from Shengwang. This is wholly inconsistent with the claim that “[Tanfull] supply the goods to me, but as to where they get the goods from, that one, I wouldn’t know”.¹⁰⁴ In my view, this inconsistency seriously undermines his credibility.

The 19 May Letter and Shengwang-10 Contract

63 Next, Shengwang claims that on 19 May 2021, Mr Yin received a letter from Mr Phua via WeChat (the “19 May Letter”).¹⁰⁵ This letter reads as follows:¹⁰⁶

Director Yin,

Due to a large number of problems with the remote controls of the products, our repair costs have increased. For this matter, Zhongshang Shengwang Electrical Appliance Co., Ltd. will bear part of the costs, with CNY 150000 to be provided to subsidise our company’s repair costs.

Triple D Trading Pte Ltd

Phua Kian Chey Colin (Director)

64 Shengwang claims that shortly thereafter on 8 June 2021,¹⁰⁷ Mr Yin received an unsigned contract titled “Shengwang-10” (the “Shengwang-10 Contract”) from Mr Phua via email.¹⁰⁸ The Shengwang-10 Contract concerns

¹⁰⁴ Hearing Transcript (27 Apr 2023) at p 53 lines 24–25.

¹⁰⁵ PCS at para 99; DRS para 23.

¹⁰⁶ AEIC YJ at p 270.

¹⁰⁷ AEIC YJ at para 78.

¹⁰⁸ PCS at para 99, 103; DRS para 23.

the sale of 500 remote controllers for a total of CNB 30,000, which lists Triple D as seller and Shengwang as buyer.¹⁰⁹ In other words, it appears to be an offer *from* Triple D to sell remote controllers *to* Shengwang. Mr Yin’s evidence is that he understood the Shengwang-10 Contract to be Triple D’s way of seeking compensation for the allegedly faulty remote controllers mentioned in the 19 May Letter.¹¹⁰

65 Indeed, Mr Phua initially accepted that the 19 May Letter and the Shengwang-10 Contract relate to the same subject matter.¹¹¹ During cross-examination, however, Mr Phua’s evidence in respect of the 19 May Letter shifted constantly. First, he refused to accept that it was sent after the first two shipments of the Goods had arrived in Singapore on 5 April 2021 and 13 April 2021,¹¹² but conceded this after being confronted with the dates of the first two shipments.¹¹³ However, he then appeared to take the position that the 19 May Letter could have been referring to remote controls accompanying products which Triple D had received from Shengwang before 2019.¹¹⁴ Finally, he disagreed that he had sent the 19 May Letter to Mr Yin on 19 May 2021,¹¹⁵ even though the screenshot of the WeChat conversation between Mr Yin and Mr Phua shows the timestamp of the message containing the document to be 19 May 2021.¹¹⁶ Needless to say, Mr Phua’s prevarication, and the stark

¹⁰⁹ AEIC YJ at p 273.

¹¹⁰ AEIC YJ at para 78.

¹¹¹ Hearing Transcript (28 Apr 2023) at p 24 lines 19–23.

¹¹² Hearing Transcript (27 Apr 2023) at p 98 lines 15–24; AEIC YJ at paras 63–64.

¹¹³ Hearing Transcript (27 Apr 2023) at p 98 line 25 to p 99 line 9.

¹¹⁴ Hearing Transcript (27 Apr 2023) at p 99 line 21 to p 101 line 1.

¹¹⁵ Hearing Transcript (27 Apr 2023) at p 101 lines 10–11.

¹¹⁶ AEIC YJ at p 267.

inconsistencies between the various aspects of his testimony, do no favours for his credibility as a witness. Triple D does not seriously attempt to reconcile these inconsistencies. In its reply submissions, Triple D simply takes the position that the 19 May Letter and the Shengwang-10 Contract are simply unrelated to the present case.¹¹⁷

66 I am unpersuaded by the various objections and denials Triple D and Mr Phua have proffered in respect of the 19 May Letter. Mr Phua's refusal to admit that the letter was sent after the arrival of the first two shipments of the Goods flies in the face of the evidence and is wholly without merit, as is his belated refusal to accept that the 19 May Letter was in fact sent on 19 May 2021, notwithstanding the timestamp on the WeChat screenshot which clearly shows this to be the case. I also find it very unlikely that Mr Phua would take two full years to follow up on defective orders received directly from Shengwang in 2019. Finally, Mr Phua's acceptance that the 19 May Letter and the Shengwang-10 Contract relate to the same subject matter, and his admission that Triple D does not manufacture anything,¹¹⁸ are both inconsistent with Triple D's suggestion that it was genuinely trying to sell Shengwang remote controllers.

67 That being the case, the 19 May Letter and the Shengwang-10 Contract clearly show that Triple D was dealing with Shengwang as its contractual counterparty, and seeking to hold it responsible for defects in products received from Tanfull. Even if the subject matter of the 19 May Letter did not relate to the Goods themselves, both the 19 May Letter and the Shengwang-10 Contract

¹¹⁷ DRS at para 23.

¹¹⁸ Hearing Transcript (28 Apr 2023) at p 24 lines 5–9.

lend further support to Shengwang’s claim that Shengwang continued to contract directly with Triple D even after Tanfull took over the export of Shengwang’s products. As with the 2021 WeChat exchange, this in turn makes it more likely that the Goods were received pursuant to such contracts made with Shengwang.

Mr Phua’s evidence

Shengwang’s refusal to sell to Triple D

68 I now turn to examine Mr Phua’s evidence more closely. As noted above at [5], it is not disputed that Triple D stopped receiving ceiling fan products directly from Shengwang and started receiving them from Tanfull sometime in or around July 2020. Triple D claims that this switch occurred because Shengwang had decided that it would no longer sell its products to Triple D, and had notified Triple D accordingly. Thereafter, it began buying Goods from Tanfull and making payments to Tanfull directly.¹¹⁹ However, Mr Phua was unable to provide any details as to *how* Shengwang had communicated its decision to stop selling its Goods to Triple D, or as to *why* Shengwang had made such a drastic decision.¹²⁰ In fact, Mr Phua claimed that he *was* able to remember that he did not inquire as to Shengwang’s reasons for its decision.¹²¹

69 I am entirely unpersuaded by Triple D’s argument that “[Shengwang] and [Triple D] were just business partners who had transacted for 3 years”, that “[t]his [was] not a long time nor were they exclusive business partners”, and

¹¹⁹ AEIC PKC at para 14.

¹²⁰ Hearing Transcript (27 Apr 2023) at p 69 line 22 to p 70 line 3.

¹²¹ Hearing Transcript (27 Apr 2023) at p 70 line 12–15.

that it was therefore “not incumbent on [Triple D] to hound [Shengwang] to continue or to ask for reasons”.¹²² Mr Phua admitted that BESTAR was the brand under which Triple D operated, and this was but one series of fans supplied by Shengwang until June 2020.¹²³ This being the case, Shengwang’s alleged cessation of supply of even just this one series of ceiling fan products would surely have been a commercially significant event for Triple D, making it extremely unlikely that Triple D would have reacted in the nonchalant manner which Mr Phua claimed it did, or that Mr Phua would have forgotten almost all of the details of that termination. Absent any claim, let alone evidence, that there was any major disagreement between the parties at the material time, it is also inexplicable to me why, as claimed by Mr Phua, Shengwang would bring the business relationship to a sudden end. Coupled with the other issues with Mr Phua’s credibility, I decline to accord much weight to this aspect of his testimony.

Source of Tanfull’s ceiling fan products

70 Related to the above, Mr Phua made no attempt to explain how Triple D seamlessly secured Tanfull to be its supplier of the very same ceiling fan products that Shengwang used to supply. In this connection, it bears remembering that Tanfull is *not* a manufacturer of ceiling fan products. Indeed, as discussed above at [40] and [62], Mr Phua’s claim that Triple D did not know Tanfull’s source of the ceiling fan products at all is completely discredited by the contemporaneous documentary evidence in the form of Ms Mini’s emails and the 2021 WeChat exchange. Instead, it seems to me that it was Mr Yin’s evidence, that Triple D continued to deal with Shengwang albeit with the

¹²² DRS at para 18.

¹²³ Hearing Transcript (27 Apr 2023) at p 52 lines 25–32.

interposition of Tanfull as the export agent, which carried the greater ring of truth.

Orders for the Goods placed over the phone

71 To buttress its claim that it placed the orders for the Goods directly with Tanfull, Triple D relies on Mr Phua’s oral account of how he placed these orders. He claims that his usual practice when dealing with Tanfull was to “just call this lady ... Chai Yuen from Tanfull”, and “place my order directly with her”.¹²⁴

72 I have little difficulty rejecting this claim. Although this is clearly a key part of Triple D’s positive case, *ie*, that it had placed orders for the Goods directly with Tanfull, no such individual from Tanfull was ever mentioned in the Defence, Mr Phua’s evidence-in-chief or his cross-examination. In fact, it was only on the final day of the trial, during his re-examination, that Mr Phua said that Triple D’s usual practice was to place orders with Tanfull over the phone.¹²⁵ Even then, Mr Phua was unable to provide any evidence of call logs which might have proven that he had in fact spoken to such an individual over the phone at all, which he attempted to explain by saying that he regularly deleted his phone logs.¹²⁶

73 I note that in response to Shengwang’s Notice to Produce Documents Referred to in Pleadings dated 8 April 2022 asking for contracts and orders between Tanfull and Triple D, Triple D replied that there were no such contracts

¹²⁴ Hearing Transcript (28 Apr 2023) at p 34 lines 8–9.

¹²⁵ Hearing Transcript (28 Apr 2023) at p 38 lines 6–21.

¹²⁶ Hearing Transcript (28 Apr 2023) at p 38 lines 15–29.

or orders.¹²⁷ It could not possibly have escaped Triple D's attention that *any* evidence in support of its position that Triple D contracted directly with Tanfull would be critical. Mr Phua's last-ditch attempt to patch this gap in Triple D's case is completely unconvincing. I dismissed this aspect of Mr Phua's testimony as an afterthought.

Conclusion

74 To sum up, having considered the totality of the evidence, I accept Mr Yin's evidence that Mr Zheng placed orders for the Goods with Mr Yin, and that as the contracting party, Shengwang supplied the Goods. In this process, Tanfull dealt with the export arrangements, including issuing invoices to Triple D for payment. Mr Yin's evidence is supported by the EAA which sets out Tanfull's role as an agent for export and export-related services, and the emails from Ms Mini linking the shipments of the Goods to Shengwang (rather than Tanfull). Indeed, it seems to me that the transactions were carried out in accordance with the terms of the EAA. Further, there is also evidence to show that Shengwang had continued to contract directly with Triple D even after Tanfull entered the picture after mid-2020, as would be consistent with Mr Yin's testimony that this was the case in respect of the Goods.

75 In contrast, I do not consider the P-T Invoices or the Invoices to constitute contracts between Shengwang and Tanfull, and Tanfull and Shengwang respectively. These two sets of invoices are also of limited assistance to Triple D in establishing the existence of corresponding contractual relationships, given Shengwang's explanation for why they were issued. What support they do provide for Triple D's case is outweighed by the evidence

¹²⁷ Set Down Bundle at pages 33 and 35.

favouring Shengwang's case. Key aspects of Mr Phua's testimony are unbelievable or inconsistent with the documentary evidence. In particular, I find Mr Phua's belated evidence that he placed the orders with Chai Yuen of Tanfull incredible.

76 Thus, I find that Triple D had directly contracted with Shengwang for Shengwang to sell and supply the Goods. These Goods were delivered to Triple D, and Triple D has failed to make full payment. As Shengwang has succeeded in proving its case, I see no need to deal with any other arguments raised by the parties, as alluded to at [12] above.

77 Accordingly, I grant judgment in the sum of CNY1,885,630.00 to Shengwang. I also allow interest at the rate of 5.33% per annum from the date of writ to date of judgment. Parties are to file costs submissions within two weeks of this judgment.

Hoo Sheau Peng
Judge of the High Court

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