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

[2024] SGHC 235

Suit No 194 of 2022

Between

Golden Barley International Pte Ltd

… *Plaintiff*

And

(1) BASP International Pte Ltd
(2) Thompson Global Limited
(3) Fujian Yaoda Fertilizer Technology Co Ltd
(4) Wang Zixi
(5) Ding Ling Fei
(6) Lin Yanyan
(7) Xiao Jiao

… *Defendants*

JUDGMENT

[Restitution — Unjust enrichment]
[Restitution — Mistake — Mistake of fact]
[Restitution — Failure of consideration]
[Restitution — Change of position]

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Golden Barley International Pte Ltd
v
BASP International Pte Ltd and others

[2024] SGHC 235

General Division of the High Court — Suit No 194 of 2022
Kristy Tan JC
2–5, 9–10, 29 July 2024

16 September 2024 Judgment reserved.

Kristy Tan JC:

Introduction

1 In HC/S 194/2022 ("S 194"), the plaintiff brings a claim in unjust enrichment against the third defendant, seeking to recover a sum the plaintiff paid to the third defendant (a) under a contract between the plaintiff and another party and (b) purportedly pursuant to a mistaken belief that the third defendant and that other party were related companies.

Facts

The parties

2 The plaintiff, Golden Barley International Pte Ltd ("GB"), is a company incorporated in Singapore. Its business relates to the trading and manufacturing of fertilisers and/or fertilisation compounds.[1]

3 The third defendant, Fujian Yaoda Fertilizer Technology Co Ltd ("FJYD"), is a company incorporated in the People's Republic of China ("PRC"). Its core business is to produce and sell fertilisers.[2]

Background to the dispute

Prior to February 2021

4 GB began trading with BASP International Pte Ltd ("BASP"), a Singapore-incorporated company in the business of wholesale trade,[3] sometime in or around 2019.[4] Between 2020 to 2021, GB entered into various contracts with BASP to purchase various commodities.[5] On various dates between 2020 and 2021, GB made partial pre-payments to BASP in respect of their contracts.[6]

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1 Affidavit of Evidence-in-Chief of Wu Xiaosheng filed on behalf of the plaintiff on 25 March 2024 ("Wu's AEIC") at para 4.

2 Affidavit of Evidence-in-Chief of Liang Yong filed on behalf of the third defendant on 14 April 2024 ("Liang Yong's AEIC") at paras 1–2.

3 Statement of Claim filed on 11 March 2022 ("SOC") at para 3.

4 Wu's AEIC at para 17.

5 Affidavit of Evidence-in-Chief of Tan Yeu Peng filed on behalf of the plaintiff on 25 March 2024 ("Tan's AEIC") at para 22.

6 Tan's AEIC at para 25.

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5 BASP had been introduced to GB by Mr Wang Zixi ("Wang"),[7] a trader employed by GB from 1 June 2015 until he left GB without notice in or around April 2020.[8]

6 According to GB, Wang had also told GB in or around 2019 that BASP was a company affiliated with FJYD.[9] Mr Wu Xiaosheng ("Wu"), the director and a shareholder of GB,[10] claims that Wang also introduced him to Mr Liang Keng ("Liang Keng") of FJYD and told him that Liang Keng was FJYD's main liaison;[11] this occurred "[p]erhaps [in] 2019".[12] At the material time (and up to 2022), GB did not have any trade or business relationship with FJYD.[13] However, GB knew that FJYD was one of the established fertiliser manufacturers in the Chinese fertiliser industry.[14]

7 It is undisputed in the present proceedings that BASP and FJYD are, in fact, unrelated companies.[15] What is in issue is whether GB knew or ought to have known this at the material time. Neither Wang nor Liang Keng, who could be expected to shed more light on this issue, testified in these proceedings.

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7 Tan's AEIC at para 23; Wu's AEIC at para 17.

8 Tan's AEIC at paras 18–19.

9 Tan's AEIC at paras 32–33; Wu's AEIC at para 17.

10 Wu's AEIC at para 3; Agreed Bundle of Documents filed on 13 June 2024 ("AB") at pp 12–13.

11 Wu's AEIC at para 17.

12 Certified trial transcript ("Transcript") 3 July 2024 at pp 40:28–32 and 41:5–6.

13 Tan's AEIC at paras 34–35 and 46; Wu's AEIC at para 12.

14 Tan's AEIC at para 32.

15 AB at pp 20–22.

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Wang was unresponsive to GB's communications after leaving GB's employ;[16] Liang Keng has been incarcerated by the Chinese authorities since June 2021.[17]

The GB-BASP Contract

8 One of the contracts entered into by GB and BASP was dated 11 January 2021 (Contract No GB013/2021P), under which GB purchased from BASP 30,000MT of ammonium sulphate to be shipped by March 2021 (the "GB-BASP Contract").[18] The payment term under the GB-BASP Contract (cl 11) provided for "[p]ayment against copy of signed B/L within 3 working days".[19] GB purchased the goods for the purpose of resale.[20]

Advance payment of part of the contract price under the GB-BASP Contract

9 On or around 2 February 2021, Ms Lin Yan Yan ("Lin"), a director and shareholder of BASP and "an authorised representative of BASP liaising with [GB]",[21] contacted Wu. Lin told Wu that in order for BASP to proceed with the GB-BASP Contract at the contractually agreed price, GB would have to make a 40% pre-payment, amounting to US$1,398,000.[22] Otherwise, the goods would not be delivered.[23]

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16 Wu's AEIC at para 21.

17 Liang Yong's AEIC at para 6.

18 AB at pp 108–111; Transcript 2 July 2024 at p 24:17–22.

19 AB at p 108.

20 Transcript 2 July 2024 at p 24:23–24.

21 SOC at para 14; AB at pp 21–22.

22 Wu's AEIC at para 32.

23 Transcript 3 July 2024 at p 11:16–18.

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10 Wu avers that he agreed for GB to pay the sum of US$1,398,000 (which GB refers to as the "Deposit" in these proceedings) to FJYD:[24]

> 33. … at that time, [GB] noted that it did not receive several of its goods purchased from BASP under its other contracts with BASP even though [GB] made several pre-payments to BASP. I was concerned that there would be a risk that BASP would not deliver the goods under the [GB-BASP] Contract if [GB] was required to pay the Deposit to BASP.
>
> 34. Since [GB] had already committed itself to delivering the goods to its customers and almost a month had passed since the [GB-BASP] Contract was made, I was concerned that if the Deposit was not paid, shipment of the goods purchased under the [GB-BASP] Contract would be further delayed.
>
> 35. After speaking with Lin, *I agreed for [GB] to pay the Deposit to FJYD* as I understood that this would be payment by [GB] directly to the manufacturer of the fertiliser materials. Further, I was given to understand that BASP was an affiliated company of FJYD. This proposed arrangement gave me some sense of comfort in the circumstances, because [GB] was now paying the Deposit directly to FJYD, which was not only affiliated to BASP but was supplying BASP the goods that were to be shipped to [GB].
>
> 36. I then left it to Lin to liaise with [GB's] Chen Lili… regarding the Deposit…
>
> [emphasis added]

11 Wu stresses that at all times, he did not communicate with FJYD, and only communicated with BASP, regarding the payment of the US$1,398,000.[25]

12 Lin then sent Ms Chen Lili ("Chen"), the Operations, Senior Executive of GB,[26] a Pre-Payment Invoice No BIIN/20210201001 dated 1 February 2021

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24 Wu's AEIC at paras 33–36.

25 Wu's AEIC at para 39.

26 Affidavit of Evidence-in-Chief of Chen Lili filed on behalf of the plaintiff on 25 March 2024 ("Chen's AEIC") at para 3.

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for the sum of US$1,398,000 under the GB-BASP Contract (the "Pre-Payment Invoice").[27] The Pre-Payment Invoice stated that FJYD was the beneficiary of the bank account to which the moneys were to be remitted.[28]

13 On receiving the Pre-Payment Invoice, Chen asked Wu if she could proceed to arrange for payment to be made. Wu answered in the affirmative.[29]

14 On noticing that the beneficiary stated in the Pre-Payment Invoice was FJYD, Chen asked Lin to issue an instruction letter to GB as she (*ie*, Chen) wanted to be sure that it was BASP that had instructed GB to make payment to a third party (*ie*, FJYD).[30] Chen also told Lin to ask FJYD to provide a written confirmation, prior to GB making payment, that FJYD would deliver the goods purchased by GB under the GB-BASP Contract.[31] However, Lin told Chen that Liang Keng apparently did not agree to issue the written confirmation.[32] Chen responded to Lin that it was not a case where GB did not want to pay; rather, GB needed some confirmation from FJYD because there was no contract between GB and FJYD.[33]

15 At around the same time, Chen informed Wu about the written confirmation from FJYD that she had asked Lin to provide. Chen explained that this would protect GB's interests since GB was required to make the payment to FJYD but did not have any contractual relationship with FJYD in respect of

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27 Chen's AEIC at para 17; AB at p 113.

28 AB at p 113.

29 Chen's AEIC at para 18.

30 Chen's AEIC at para 22; AB at p 122.

31 Chen's AEIC at para 24; AB at p 123.

32 Chen's AEIC at para 25; AB at p 124.

33 Chen's AEIC at para 27; AB at p 125.

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the goods purchased by GB under the GB-BASP Contract.[34] However, Lin had also told Wu that FJYD was apparently unwilling to provide the confirmation requested by GB.[35] Wu told Chen to proceed with the payment nevertheless, as the bargaining position of "the factory" (*ie*, FJYD) was "too strong" and the price of the goods if GB had to obtain them from the market instead of under the GB-BASP Contract was "too high now".[36]

16 Shortly thereafter, Lin sent Chen an Instruction Letter issued by BASP to GB for US$1,398,000 to be paid to FJYD's bank account (the "Instruction Letter").[37]

17 On or around 2 February 2021, GB transferred the sum of US$1,398,000 to FJYD "as per BASP's instructions, the Pre-Payment Invoice and the Instruction Letter".[38] FJYD does not dispute receiving the sum of US$1,397,955 from GB on or about 2 February 2021.[39] The difference between the sum of US$1,398,000 remitted by GB and the sum of US$1,397,955 received by FJYD is likely due to the deduction of bank charges for the remittance.[40]

Events after February 2021

18 GB avers that it did not receive the goods purchased under the GB-BASP Contract from BASP or FJYD.[41]

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34 Chen's AEIC at para 28; Wu's AEIC at para 42; AB at p 129.

35 Chen's AEIC at para 29; AB at p 124.

36 Chen's AEIC at para 30; AB at p 130.

37 Chen's AEIC at para 31; AB at p 115.

38 Chen's AEIC at para 32; AB at p 117.

39 Defence (Amendment No 2) filed on 29 May 2023 ("Defence") at para 4.

40 Reply (Amendment No 1) filed on 12 June 2023 ("Reply") at para 4.

41 Chen's AEIC at para 33.

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19 According to Wu, on 14 May 2021, he reached out to Liang Keng through WeChat to chase for the shipment of the goods purchased by GB under the GB-BASP Contract. Liang Keng told Wu to speak to Wang instead.[42] Wu subsequently met Liang Keng. Liang Keng told Wu, "for the first time", that BASP and FJYD were in fact not related companies.[43] Liang Keng also told Wu that BASP owed FJYD US$1,398,000 under a separate contractual arrangement between the companies and that FJYD's receipt of that sum from GB was BASP's payment of the moneys that BASP owed to FJYD.[44] Wu was shocked by what he heard as there was never any agreement between GB and BASP that GB's payment of US$1,398,000 could be used to discharge BASP's debts owed to FJYD.[45]

Procedural history

20 GB commenced S 194 on 11 March 2022 against seven defendants. As against FJYD (the third defendant), GB brought a claim in unjust enrichment. This is the only claim that proceeded to trial and is the subject of this judgment.

21 The first defendant was BASP; the second defendant was another company from which GB purchased commodities ("TGL"); the fourth defendant was Wang; the fifth defendant was the director of TGL ("Ding"); the sixth defendant was Lin; and the seventh defendant was another director and shareholder of BASP ("Xiao").[46] GB claimed that the first, second and fourth to seventh defendants had engaged in an unlawful means conspiracy to jeopardise

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42 Wu's AEIC at para 51; AB at p 133.

43 Wu's AEIC at para 53.

44 Wu's AEIC at para 54.

45 Wu's AEIC at para 55.

46 SOC at paras 3–15.

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GB's business by receiving pre-payments made by GB under various contracts for GB's purchase of goods from BASP and TGL, then failing to deliver or under-delivering the goods purchased. GB claimed for loss in the amount of US$6,647,844.58, being the difference between the pre-payments made to BASP and TGL and the value of the goods received.[47] This loss *includes* the sum of US$1,398,000 paid by GB to FJYD under the GB-BASP Contract.[48]

22 GB also claimed against Wang for breach of his employment contract.[49]

23 GB obtained judgments in default of appearance against BASP, TGL, Wang, Lin and Xiao for the amount of US$6,647,844.58 plus interest and costs.[50] The judgments have not been met. The service of the writ in S 194 on Ding is pending.[51]

The parties' cases

GB's case

24 GB brings a claim in unjust enrichment against FJYD for the sum of US$1,398,000.[52] GB's claim is premised on two unjust factors.

25 The first unjust factor is that GB made payment of the sum of US$1,398,000 to FJYD under a mistake of fact.[53] In this regard, there is an

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47 SOC at paras 33–34.

48 SOC at Annex A, p 15; Transcript 2 July 2024 at p 8:7–16.

49 SOC at para 35.

50 Tan's AEIC at paras 9, 13 and 21; AB at pp 25, 29, 33, 46 and 60.

51 Tan's AEIC at para 14.

52 Plaintiff's Opening Statement dated 24 June 2024 ("POS") at para 24.

53 POS at paras 24 and 33.

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incongruence between (a) the mistake of fact pleaded in GB's Statement of Claim ("SOC") and (b) the mistake of fact advanced by GB in its evidence, case at trial and submissions.

26 In GB's SOC, the alleged mistake of fact is pleaded as being that Wang had informed FJYD that GB was an affiliate of BASP:[54]

> The said sum of USD 1,398,000.00 was paid by [GB] and received by [FJYD] under a mistake of fact. This is because [FJYD] has since informed [GB] that *Wang had informed [FJYD] that [GB] was an affiliate of BASP*, and that [GB] would make payment of the sum of USD 1,398,000.00 due from BASP to [FJYD] pursuant to goods that [FJYD] has previously supplied to BASP in a contract unrelated to [GB]. … [emphasis added]

27 Thereafter, however:

(a) In GB's written opening statement, the mistake of fact alleged is that "*BASP* is a company affiliated with *FJYD*" [emphasis added].[55]

(b) In GB's oral opening statement, GB's counsel stated that GB made payment to FJYD in the mistaken belief that *BASP* was a related company of *FJYD*.[56]

(c) In Wu's evidence, a reason he gave for making payment to FJYD was that "*BASP* was an affiliated company of *FJYD*" [emphasis added].[57]

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54 SOC at para 30.

55 POS at para 41.

56 Transcript 2 July 2024 at pp 7:3–5 and 7:20–23.

57 Wu's AEIC at para 35.

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(d) In GB's closing submissions, the mistake of fact alleged is that "FJYD was a company that was related / affiliated to BASP".[58]

28 The second unjust factor relied on by GB is failure of consideration.[59] This is based on (a) GB's transfer of US$1,398,000 to FJYD being "[GB]'s pre-payment for the [GB-BASP] Contract";[60] and (b) FJYD's failure to deliver any goods to GB.[61]

29 GB submits that "[t]he mere fact that the [GB-BASP] Contract exists and [GB] paid the Deposit for the [GB-BASP] Contract does not *ipso facto* preclude [GB] from making a claim for unjust enrichment against FJYD"[62] as FJYD is the "true immediate enrichee of the Deposit"[63] and this is an "exceptional" case.[64]

30 GB also submits that FJYD has no defence of a change of position. There is no evidence to support FJYD's claim that the moneys it received from GB were used to produce goods for FJYD's contract with another party.[65] Further, any change of position was not *bona fide* as FJYD was wilfully blind to the fact that the moneys were paid by GB with whom FJYD had no business relations at that time.[66]

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58 Plaintiff's Closing Submissions dated 22 July 2024 ("PCS") at para 6.

59 POS at paras 24 and 33.

60 PCS at paras 25–36.

61 SOC at paras 31 and 32.

62 PCS at para 10.

63 PCS at para 13.

64 PCS at para 23. See generally, PCS at paras 10–23.

65 PCS at paras 37–44.

66 PCS at paras 45–52.

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FJYD's case

31 Mr Liang Yong ("Liang Yong"), the Marketing Director of FJYD, was the sole witness who testified on FJYD's behalf. Liang Yong is Liang Keng's elder brother. FJYD is a family business founded by their father, Mr Liang Guosen ("Liang Guosen").[67] While Liang Guosen (who lives in the PRC) had affirmed an Affidavit of Evidence-in-Chief ("AEIC"), he was not well enough to travel to Singapore to give evidence and FJYD elected not to call him as a witness.[68]

32 In any event, neither Liang Yong nor Liang Guosen professed to have personal knowledge of the events of 2021. According to Liang Yong, Liang Keng was the Sales Manager of FJYD.[69] Liang Keng had reported to Liang Guosen that the sum of US$1,397,955 was meant as a deposit or part payment by Best Global International Limited ("Best Global") under a contract between Best Global and FJYD dated 10 February 2021 for FJYD to produce and sell 25,000 tonnes of ammonium sulphate to Best Global (the "Best Global-FJYD Contract").[70] Best Global is the overseas company registered by FJYD in the Marshall Islands, and Liang Keng was a shareholder of Best Global.[71] FJYD performed its obligations to Best Global under the Best Global-FJYD Contract.[72] The sum of US$1,397,955 was used by FJYD to fund the costs of producing the goods supplied under the Best Global-FJYD Contract.[73]

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67 Liang Yong's AEIC at paras 3–4.

68 Transcript 9 July 2024 at p 2:19–25.

69 Liang Yong's AEIC at para 4.

70 Liang Yong's AEIC at paras 21–22; AB at pp 163 and 165–166.

71 Transcript 9 July 2024 at pp 3:27–29 and 4:4–7.

72 Liang Yong's AEIC at paras 24–28.

73 Liang Yong's AEIC at para 34.

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33 At trial, FJYD also produced a copy of a contract between BASP and Best Global dated 29 January 2021, under which BASP had contracted to buy 25,000MT of ammonium sulphate from Best Global (the "BASP-Best Global Contract").[74] Liang Yong had found a copy of the BASP-Best Global Contract in Liang Keng's computer.[75]

34 FJYD argues that:[76]

> … the chain of supply was that (a) [GB] bought the [a]mmonium sulphate … from BASP for sale to [a buyer] in Thailand; (b) BASP contracted to buy the said goods from Best Global which in turn contracted to buy the same from [FJYD] …

35 In response to GB's claim, FJYD submits, first, that allowing GB's claim in unjust enrichment would undermine the contract and the contractual allocation of risk between the plaintiff (*ie*, GB) and a third party (*ie*, BASP), and should thus be disallowed. GB's recourse is against BASP under the GB-BASP Contract.[77]

36 Second, FJYD submits that the mistake of fact which GB had pleaded is "completely different from the evidence that [GB] had adduced at the trial", is evidentially unsupported, and should thus be rejected *in limine*.[78] In any event, even if Wu had mistakenly thought that FJYD was affiliated to BASP, the alleged mistake was not the primary or operative cause of his decision to pay

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74 Exhibit D1.

75 Transcript 9 July 2024 at pp 3:17–32 and 4:1–31.

76 Defendant's Closing Submissions dated 22 July 2024 ("DCS") at para 34.

77 Defendant's Opening Statement dated 24 June 2024 ("DOS") at paras 13–19; DCS at paras 89–105.

78 DCS at paras 4–5.

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the sum of US$1,398,000 to FJYD and cannot be relied on in GB's claim for unjust enrichment.[79]

37 Third, FJYD submits that GB's claim based on failure of consideration proceeds on the false premise that FJYD was contractually obliged to deliver the goods to GB.[80] Further, the basis of GB's payment to FJYD must be determined objectively taking into account the communication between the parties, but there was no communication between GB and FJYD when GB made payment to FJYD.[81] FJYD was not privy to the GB-BASP Contract, BASP's Pre-Payment Invoice or the Instruction Letter.[82] FJYD also submits that the basis for its receipt of the sum of US$1,397,955 was to supply goods to Best Global under the Best Global-FJYD Contract and this basis did not fail.[83]

38 Finally, FJYD relies on the defence of a change in its position given that the US$1,397,955 it received was used to produce the goods supplied under the Best Global-FJYD Contract.[84]

Issues to be determined

39 The four issues for determination are:

(a) whether GB's claim against FJYD in unjust enrichment is precluded by reason of any contractual arrangement between GB and BASP (the "Contract Issue");

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79 DCS at paras 50–53.

80 DCS at paras 54–55.

81 DOS at paras 21–23; DCS at paras 58–67.

82 Defence at para 3.

83 DCS at paras 81–82.

84 Defence at para 12; DOS at para 24; DCS at paras 85–88.

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(b) whether GB has a valid claim in unjust enrichment based on mistake of fact as the unjust factor (the "Mistake Issue");

(c) whether GB has a valid claim in unjust enrichment based on failure of basis (which is synonymous with failure of consideration) as the unjust factor (the "Failure of Basis Issue"); and

(d) whether FJYD may rely on a defence of change in position (the "Change of Position Issue").

Issue 1: Contract Issue

Relevant legal principles

40 The general principle is that where a benefit has been transferred pursuant to a contract which remains open (subsisting), or has been discharged by performance, no claim in unjust enrichment will generally lie because of the fundamental premise that the law should give effect to the parties' own allocations of risk, as expressed in the contract, and should not permit the law of unjust enrichment to be used to overturn those allocations: Charles Mitchell, Paul Mitchell & Stephen Watterson, *Goff & Jones on Unjust Enrichment* (Sweet & Maxwell, 10th Ed, 2022) ("*Goff & Jones on Unjust Enrichment*") at para 3-12. The salient question is what the intended *effect* of that contract was, and whether the intended allocation of contractual risks would be supplanted if restitution were permitted in the case at hand; if so, the principles of unjust enrichment cannot prevail over the intended effect of that contract: *Lim Chee Seng v Phang Yew Kiat* [2024] SGHC 100 at [47].

41 In the specific situation where a claimant and a third party have entered into a valid contract under which the claimant was required to confer a benefit

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directly on the defendant, the law of unjust enrichment should avail the claimant *no* remedy against the defendant, as to do so would undermine the contract and the contractual allocation of risk between the claimant and the third party: *Alwie Handoyo v Tjong Very Sumito and another and another appeal* [2013] 4 SLR 308 ("*Alwie Handoyo*") at [104].

42 In *Alwie Handoyo*, the plaintiffs entered into a sale and purchase agreement with Antig (the "SPA") to sell shares in a company to Antig for US$18m (at [9]). Of the purchase price of US$18m, US$6m was to be paid to the first plaintiff, US$10m in cash and shares to Aventi, and US$2m in cash and shares to OAFL (at [10]). Under the provisions of the SPA, Aventi and OAFL were entitled to receive the payments as beneficiaries nominated by the plaintiffs; Antig's payment to Aventi and OAFL would be deemed to be a payment made to the plaintiffs, and constituted payment towards the full US$18m purchase price (at [71], [75] and [84]). In these circumstances, the Court of Appeal held that the first and second plaintiffs, who had brought a claim in unjust enrichment to recover the cash payment to OAFL, were not entitled to recover that payment, which they had contracted for Antig to pay OAFL; to allow them to recover that payment through an action in unjust enrichment would be to undermine the contractual bargain under the SPA on which the plaintiffs and Antig had agreed (at [104]).

43 The Court of Appeal in *Alwie Handoyo* cited in support of its decision the House of Lords decision of *Pan Ocean Shipping Co Ltd v Creditcorp Ltd* [1994] 1 WLR 161 ("*Pan Ocean*"). The Court of Appeal explained (at [106]) that in *Pan Ocean*:

> There was a valid and subsisting contract between the appellant and Trident, under which Trident had assigned its right to the benefit of payment to the respondent. *By suing the respondent instead of Trident for the advance payment, the*

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> *appellant was effectively seeking to avoid the valid and subsisting contract between itself and Trident, which provided for contractual recourse against Trident in the event of overpaid hire*. Lord Goff was rightly concerned that allowing a plaintiff to claim in such a situation would undermine the contract and the contractual allocation of risk between the relevant parties. *The appellant should have sued Trident on the contract between them, and not the respondent for restitution.* [emphasis added]

Decision

44 In the present case, I find that there was a variation (agreed orally and/or by conduct) of the payment term in the GB-BASP Contract for GB to make an advance payment of US$1,398,000, being 40% of the contract price, to BASP *by way of transferring the moneys to BASP's nominated beneficiary, FJYD*. I reach this finding based on an objective consideration of the following evidence.

45 First, it is undisputed that BASP's Lin made a request to GB on or around 2 February 2021 for GB to make an advance payment of 40% of the contract price under the GB-BASP Contract (see [9] above), which GB agreed to and paid. Parenthetically, while GB has referred to the payment of 40% of the contract price (*ie*, the sum of US$1,398,000) as a "Deposit" in these proceedings, I am of the view that the payment was in the nature of an advance payment given the evidence of the Pre-Payment Invoice stipulating "40% *PRE-PAYMENT*: US$1,398,000.00" [emphasis added].

46 Second, the Pre-Payment Invoice and the Letter of Instruction were issued by BASP to GB. Both documents specified FJYD as the beneficiary in the bank account details provided by BASP for the advance payment.[85] This indicates that the advance payment made pursuant to the Pre-Payment Invoice and the Instruction Letter would be applied towards discharging GB's payment

[85] AB at pp 113 and 115.

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obligation to BASP under the GB-BASP Contract, but FJYD was to be the beneficiary of the advance payment.

47 Third, GB's conduct and evidence reinforce that the advance payment was part of the contractual arrangement between GB and BASP under the GB-BASP Contract, whereby the advance payment would be made to GB's nominated beneficiary, FJYD, and applied towards the discharge of GB's obligation to pay BASP the full contract price, while the obligation to supply the goods remained with BASP:

(a) At trial, Chen characterised the situation as being: "This was our [*ie*, GB's] contract with BASP. However, BASP had instructed us to make payment to a third party, [FJYD]."[86]

(b) Indeed, Chen was contemporaneously cognisant that while GB would be making the advance payment to FJYD as instructed by BASP, FJYD was not contractually obliged to deliver the goods purchased by GB under the GB-BASP Contract. This is why Chen sought (but failed to obtain) a written confirmation from FJYD that FJYD would deliver the goods after receipt of the payment (see [14] above).

(c) Both Chen and Ms Tan Yeu Peng ("Tan"), GB's Operation Manager,[87] also confirmed in cross-examination that FJYD had no contractual obligation to deliver any goods to GB, notwithstanding that the advance payment had been paid to FJYD.[88]

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86 Transcript 2 July 2024 at p 34:16–17.

87 Tan's AEIC at para 1.

88 Transcript 2 July 2024 at pp 30:23–25 and 48:9–11.

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(d) Further, in GB's SOC, GB pleaded that: (i) it had made various pre-payments to BASP, which included the sum of US$1,398,000 remitted to FJYD;[89] (ii) BASP had failed to deliver goods despite the pre-payments;[90] and (iii) GB intended to commence arbitration proceedings against BASP pursuant to its contracts with BASP, which included the GB-BASP Contract,[91] in respect of the loss and damage suffered.[92] This shows that GB recognised that it had a contractual right of recourse against BASP in respect of the advance payment of US$1,398,000 for which GB apparently never received goods from BASP.

48 In my view, the contractual variation was legally valid: the variation had been requested by BASP and agreed to by GB; both parties evidently intended to create legal relations; the varied term was certain; and the variation was supported by consideration in that BASP had conveyed that the goods would not be delivered if the advance payment was not made (see [9] above) such that GB obtained a practical benefit by agreeing to make the advance payment (see *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 at [50]; *Williams v Roffey Bros & Nicholls (Contractors) Ltd* [1991] 1 QB 1 at 15G–16B; *Offshoreworks Global (L) Ltd v POSH Semco Pte Ltd* [2021] 1 SLR 27 at [41]).

49 The legal effect of my finding is that: (a) GB had contracted with BASP under the (varied) GB-BASP Contract to pay the sum of US$1,398,000 to FJYD; (b) FJYD was entitled to receive that sum pursuant to the GB-BASP

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89 SOC at paras 16 and 23 and Annex A p 15.

90 SOC at para 24(a).

91 SOC at para 16 and Annex A p 15.

92 SOC at paras 25–26.

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Contract; (c) the claim in unjust enrichment against FJYD to recover that sum, which GB had contracted with BASP to pay to FJYD, should not be permitted as that would undermine the contractual bargain and allocation of risks struck between GB and BASP; and (d) GB's recourse is against BASP for recovery of that sum. Accordingly, GB's claim in unjust enrichment against FJYD must be dismissed.

50 While this conclusion suffices to dispose of the action, it is also my view that GB has, in any event, failed to establish the alleged unjust factors of mistake of fact and failure of basis, and I will address the remaining issues.

Issue 2: Mistake Issue

Relevant legal principles

51 The principles governing the recovery of mistaken payments in the context of an unjust enrichment claim are set out in *Singapore Swimming Club v Koh Sin Chong Freddie* [2016] 3 SLR 845 ("*Singapore Swimming Club*") (at [94]):

> (a) First, the claimant must prove, as a threshold matter, that he had made a mistake, in that he had believed that it was more likely than not that the true facts (or the true state of law where mistake of law is pleaded) were otherwise than they in fact were.
>
> (b) Second, the claimant's belief must have caused him to confer the benefit on the defendant. In other words, the mistake must be causative.
>
> (c) Third, even if a causative mistake can be shown, the claimant may be denied relief if he had responded unreasonably to his doubts, and thus unreasonably ran the risk of error.

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(d) Fourth, a claimant who had doubts may be denied relief on the distinct grounds that he has compromised or settled with the defendant, or on the basis that he is estopped from pleading the mistake.

52 It is important to appreciate that not every type of mistake in relation to the making of a payment will be capable of grounding a claim in unjust enrichment. A distinction must be drawn between (a) a mistaken payment *simpliciter*, and (b) a mistake in the formation of a contractual obligation which led to payment being made. The law of unjust enrichment is only concerned with the former and not the latter: *Info-communications Development Authority of Singapore v Singapore Telecommunications Ltd* [2002] 2 SLR(R) 136 ("*IDA*") at [84]–[88]. In the latter category of mistake, before unjust enrichment can come into play, and in order to avoid contradicting a valid contractual obligation to render the benefit, the claimant must first succeed in having the contract declared void or rescinded: *IDA* at [88]–[89]; *Goff & Jones on Unjust Enrichment* at para 9-97.

Decision

53 At the outset, I do not accept FJYD's objection based on the incongruence between GB's pleaded case and GB's case at trial on what the alleged mistake of fact relied on by GB is (see [25]–[27] and [36] above). The pleading in GB's SOC that "Wang had informed [FJYD] that [GB] was an affiliate of BASP"[93] is obviously misconceived as what Wang allegedly told *FJYD* would not have anything to do with what *GB* was told and believed. However, from the time GB filed its AEICs, it had asserted its mistaken belief that *BASP and FJYD* were related companies. This was also the case that GB

[93] SOC at para 30.

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ran, and FJYD met, at trial and in the parties' respective closing submissions. Accordingly, I do not think it would be unjust or cause irreparable prejudice to FJYD to permit GB's unpleaded case – that GB paid the advance payment to FJYD under the mistaken belief that BASP and FJYD were related companies – to be raised and determined (see *How Weng Fan and others v Sengkang Town Council and other appeals* [2023] 2 SLR 235 at [20], [28] and [29(b)]).

54 Next, I find that Wang had told GB sometime in 2019 that BASP and FJYD were related companies; in particular, that BASP was a company set up by FJYD in Singapore. This is supported by WeChat messages sent by Wang to Tan on or around 9 January 2019: Wang sent a text message containing BASP's company name and address, accompanied by a voice message conveying that BASP was FJYD's "new company established in Singapore… to make some contracts".[94] I also find, on a balance of probabilities, that GB's personnel accepted what Wang told them and continued to have this mistaken view of the relationship between BASP and FJYD in February 2021. This was the consistent and unshaken evidence of Chen, Tan and Wu.[95]

55 I move then to examine what, on GB's case, this mistaken belief purportedly led to. This will manifest the type of mistake (see the discussion at [52] above) on which GB seeks to rely to ground its unjust enrichment claim.

56 In this connection, three reasons for making the payment of US$1,398,000 to FJYD were canvassed in the evidence led by GB:

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94 Tan's AEIC at para 31; AB at pp 87 and s/n 40; Transcript 2 July 2024 at pp 52:26–55:11; Exhibit P1.

95 Transcript 2 July 2024 at pp 26:26–27:1 and 43:21–32; Transcript 3 July 2024 at pp 9:11–14 and 10:27–28.

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(a) First, GB wanted to secure delivery of the goods at the contract price under the GB-BASP Contract because GB was committed to onward sales of those goods and would have had to pay more to secure replacement goods from the market, given rising market prices at the time, if BASP cancelled the GB-BASP Contract.[96]

(b) Second, GB was prepared to pay FJYD because GB thought that FJYD's factory was producing and supplying to BASP the goods under the GB-BASP Contract.[97] To be clear, GB does not plead or argue that there was any alleged mistake of fact in respect of this second reason.

(c) Third, GB (mistakenly) believed that BASP was an affiliated company of FJYD.[98]

57 To begin with, I find that GB has not proven that its mistaken belief that BASP and FJYD were affiliated had caused it to decide to pay FJYD the advance payment.

(a) Only the first and second reasons (at [56(a)] and [56(b)] above) were alluded to in the contemporaneous communications between Chen and Wu prior to GB deciding to make the advance payment to FJYD. Specifically, the exchange in which Wu instructed Chen to make the payment reads:[99]

[Chen]: Ok, I saw that Lin Yanyan already sent

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96 Wu's AEIC at para 34; Transcript 3 July 2024 at pp 7:22–8:3 and 21:29–22:29; Transcript 2 July 2024 at pp 26:5–8 and 35:2–6.

97 Wu's AEIC at para 35; Transcript 2 July 2024 at p 26:9–12; Transcript 3 July 2024 at p 14:24–32.

98 Wu's AEIC at para 35.

99 AB at p 130.

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> [Wu]: Pay it
>
> [Wu]: *The factory* is in too strong position now
>
> …
>
> [Chen]: The risk is still quite big. From an operational perspective, the factory should at least give a receipt
>
> [Wu]: Let's make arrangements, *the prices are too high now*
>
> [Chen]: Ok
>
> [Wu]: Payment for ammonium sulphate must be made tomorrow
>
> [emphasis added]

(b) Chen also conceded in cross-examination that the perceived affiliation between BASP and GB was not discussed at the time of GB's decision to make the advance payment:[100]

> Q And would I be correct to say there was no discussion about [FJYD] being an affiliated company of BASP, right?
>
> A *It was not discussed at the time the payment was made.*
>
> [emphasis added]

(c) GB also failed to plead (in either its SOC or Reply) that the perceived affiliation between BASP and FJYD was the mistaken belief relied upon by GB in making the advance payment (see [26] above). While I have held (at [53] above) that the absence of such a pleading does not preclude GB from advancing its case on this basis, GB's failure to plead such a case from the outset calls into question whether GB's agreement to make the advance payment was truly due to its mistaken belief that BASP and FJYD were affiliated: if that were the case, surely

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100 Transcript 2 July 2024 at p 26:13–15.

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it would have occurred to GB to say so from the very commencement of this action.

58 More fundamentally, in my judgment, the three reasons given by GB in essence purport only to explain *why GB agreed to vary the GB-BASP Contract to assume an obligation to make an advance payment of US$1,398,000 to FJYD*. In other words, focusing on the third reason, GB's mistaken belief that BASP and FJYD were affiliated purportedly led GB to *agree with BASP* to pay FJYD. However, even if this causal effect is accepted (*cf*, [57] above), there was no mistake in the payment to FJYD *per se*; that payment was made because of and pursuant to GB's varied contractual obligation to do so under the GB-BASP Contract. Applying the legal principles at [52] above, this was a mistake that went towards the formation of the contract (as opposed to a mistaken payment *simpliciter*), for which no claim in unjust enrichment can lie. To avoid doubt, GB did not advance any case that the contract variation should be invalidated. GB's claim in unjust enrichment based on a mistaken belief that BASP and FJYD were affiliated would therefore fail.

Issue 3: Failure of Basis Issue

Relevant legal principles

59 Where a claimant relies on a failure of basis as the unjust factor in his claim in unjust enrichment, he must establish (a) what the basis for the transfer in respect of which restitution is sought was; and (b) that the basis failed: *Benzline Auto Pte Ltd v Supercars Lorinser Pte Ltd and another* [2018] 1 SLR 239 at [46].

60 Critically, the basis of the transfer must be objectively determined based on *what was communicated between the parties*, and must be *jointly understood*

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by the parties as such; the parties' uncommunicated subjective thoughts are irrelevant: *Benzline* at [51]; *Simpson Marine (SEA) Pte Ltd v Jiacipto Jiaravanon* [2019] 1 SLR 696 at [49]. In *Zaiton bte Adom v Nafsiah bte Wagiman and another* [2023] 3 SLR 533, the failure of basis inquiry was held to fail at the first hurdle because there were no communications between the parties at the relevant time out of which any joint understanding could have arisen (at [188]).

Decision

61 I find that there were no communications between GB and FJYD on or around 2 February 2021 regarding the basis on which GB would make the payment of US$1,398,000 to FJYD. Wu "stress[ed] that at all times, [he] did not communicate with FJYD. All communications regarding the payment of the Deposit and the [GB-BASP] Contract were made with BASP".[101] While Wu asserted that "it appeared to [him] that Lin was liaising with FJYD, in particular, Liang Keng regarding the arrangement for the payment of the Deposit",[102] there is no evidence that Lin was indeed, accurately or at all, representing FJYD's position. Given that there was no communication between GB and FJYD, no joint understanding between them (in respect of GB's transfer of the advance payment to FJYD) can be objectively discerned, and GB's claim in unjust enrichment based on failure of basis fails at the first hurdle.

62 I note that FJYD attempted to prove that there was in place a chain of supply contracts under which a certain quantity of ammonium sulphate was to be produced by FJYD and supplied in turn to Best Global, then BASP, then GB, and finally GB's customer in Thailand (see [34] above). FJYD also sought to

101 Wu's AEIC at para 39.

102 Wu's AEIC at para 39.

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prove that the basis for its receipt of the sum of US$1,397,955 was to supply the ammonium sulphate to Best Global under the Best Global-FJYD Contract and this basis did not fail (see [37] above); and that the goods were ultimately delivered to GB's customer in Thailand.[103] I make no findings on these matters as, first, they are legally irrelevant to the failure of basis inquiry which is focused on what (if any) the joint understanding between GB and FJYD was; and, second, given the absence of any evidence from BASP and Best Global in these proceedings, I did not think that conclusions of fact on these matters could be safely drawn.

Issue 4: Change of Position Issue

63 For completeness and were it necessary to decide, I would not accept FJYD's defence of a change of position for the simple reason that, on FJYD's own case, it had used the US$1,397,955 it received to produce goods under the Best Global-FJYD Contract.[104] This was a contract that FJYD was legally obliged to fulfil, and FJYD would have incurred expenditure in producing the goods under this contract regardless of whether FJYD had received the sum of US$1,397,955 from GB. There was no change in FJYD's position. Nevertheless, nothing turns on this, as GB's claim in unjust enrichment is precluded and/or not made out to begin with (see [49]–[50], [58] and [61] above).

Conclusion

64 GB's claim against FJYD in S 194 is dismissed.

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103 DCS at paras 23–37.

104 Defence at para 12; DOS at para 24; DCS at paras 85–88.

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65 Unless the parties agree on costs, they should file their written submissions on costs, limited to three pages (excluding any annexure addressing disbursements), within seven days from the date of this judgment.

Kristy Tan
Judicial Commissioner

Chia Jin Chong Daniel and Tan Ei Leen (Coleman Street Chambers LLC) for the plaintiff;
Yap Neng Boo Jimmy (Jimmy Yap & Co) for the third defendant.

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