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

[2024] SGHC 81

Suit No 268 of 2021

Between

Jiangsu New Huaming
International Trading Co Ltd

… *Plaintiff*

And

(1) PT Musim Mas
(2) Inter-Continental Oils & Fats
Pte Ltd

… *Defendants*

JUDGMENT

[Contract — Breach — Remedies]
[Contract — Formation — Whether contract existed]
[Agency — Actual authority — Whether employee had implied actual authority]
[Agency — Apparent authority — Whether employee had apparent authority]
[Contract — Discharge — Rescission — Contracts procured by bribery]

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Jiangsu New Huaming International Trading Co Ltd
v
PT Musim Mas and another

[2024] SGHC 81

General Division of the High Court — Suit No 268 of 2021
Hoo Sheau Peng J
23–27 October 2023, 15 January 2024

20 March 2024 Judgment reserved.

Hoo Sheau Peng J:

Introduction

1 This is a claim by the plaintiff, Jiangsu New Huaming International Trading Co Ltd ("JNHM"), against the first and second defendants (collectively the "Defendants") for a total sum of US$2,882,216.68 in respect of the Defendants' repudiatory breach of an alleged exclusive agency agreement entitled the "International Agency Contract" (the "IAC"). In the main, the first defendant, PT Musim Mas ("PTMM"), denies entering into the IAC with JNHM. The second defendant, Inter-Continental Oils & Fats Pte Ltd ("ICOF"), denies JNHM's claim that there was a common understanding between them for the terms of the IAC to apply to their relationship. Having considered the evidence and the parties' submissions, I dismiss the claim. These are my reasons.

Facts

The parties

2 JNHM is an import and export company incorporated in the People's Republic of China ("China").[1] PTMM is a company incorporated in Indonesia and specialises in the production of oleochemical products.[2] ICOF is a company incorporated in Singapore and, amongst other things, sells and markets oleochemical products produced by PTMM.[3] Both PTMM and ICOF are part of the Musim Mas Group.[4]

Background to the dispute

3 Sometime in 2003, PTMM began working with JNHM for the sale of its oleochemical products in China.[5]

4 According to JNHM, it was appointed as PTMM's exclusive commercial agent in 2003. On or around 10 March 2013, this agency arrangement was encapsulated in the IAC.[6] The IAC was negotiated by PTMM through its Chief Executive Officer ("CEO"), Mr Chin Siew Hing ("Mr Chin"), with JNHM's Director, Mr Wang Bin ("Mr Wang"). They were also the representatives who executed the IAC, and this was done in Singapore.[7] In or

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1 Plaintiff's Statement of Claim (Amendment No. 2) ("SOC") at para 1.

2 SOC at para 2; First Defendant's Defence (Amendment No. 1) ("DD1") at para 2.

3 Defendants' Opening Statement ("DOS") at para 6; Second Defendant's Defence (Amendment No. 2) ("DD2") at para 5.

4 DOS at para 6.

5 SOC at para 4; DD1 at para 4.

6 SOC at paras 4–5.

7 SOC at paras 6–7.

around 2007, JNHM also became the exclusive agent for ICOF for the sale of oleochemical products in China, and subsequently, the terms of the IAC came to govern their relationship.[8]

5 In response, the Defendants deny the existence of the IAC. Their position is that, at the material time, Mr Chin was the Head of the Oleochemicals Division of ICOF, and not the CEO or even an employee of PTMM. While he was able to enter into certain standard term contracts on the Defendants' behalf, he ultimately lacked the authority to appoint JNHM as the Defendants' agent.[9] Mr Chin retired on 30 June 2017, and since then, he has been residing in Malaysia. In essence, PTMM claims that it worked with JNHM purely on an *ad hoc* basis for JNHM to broker sales with buyers in China.[10] PTMM denies entering into any formal exclusive written agency agreement with JNHM, claiming instead that it only paid JNHM a commission for each sales contract duly performed with a customer.[11] ICOF takes the same position, and its arrangement with JNHM is similar to that adopted by PTMM. ICOF denies entering into any agreement with JNHM for the latter to be its exclusive agent for any products.[12]

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8 SOC at para 9.

9 Defendants' Reply Submissions at para 35.

10 DD1 at para 4.

11 DD1 at para 4; DOS at para 7.

12 DD2 at para 7.

Prior arbitration proceedings

6 Around early 2018, the Defendants ceased working with JNHM and no longer engaged it for the sale of any of their oleochemical products in China.[13] In early 2019, JNHM commenced arbitration proceedings in the China International Economic and Trade Arbitration Commission against PTMM based on the IAC.[14] On 14 June 2019, PTMM sent an email to Mr Chin, attaching a copy of the IAC (which it had received in the course of the arbitration proceedings) asking whether Mr Chin knew about the IAC, and if he had affixed PTMM's stamp on the IAC. On the same day, Mr Chin replied by email to state that he knew nothing about the IAC and had not stamped PTMM's company stamp on it.[15] A few days after the completion of the evidentiary hearing on 1 July 2019, JNHM withdrew the arbitration proceedings.[16] The reasons for the withdrawal are not entirely clear, but I do not need to deal with the matter.

The present proceedings

7 On 1 April 2021, JNHM commenced the present proceedings. Before I set out the parties' pleadings, I should highlight that in his affidavit of evidence-in-chief dated 16 August 2023, Mr Wang claimed for the *first* time that from 2003 to 2017, he made cash payments to Mr Chin amounting to a third of the commissions which JNHM earned from the sale of PTMM's products in China. In 2013, Mr Wang purportedly used the potential cessation of these payments

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13 SOC at para 11; DD1 at para 10; DOS at para 7.

14 Defendants' Core Bundle ("DCB") at pp 82–89.

15 Agreed Bundle of Documents (Volume 1) ("1AB") at pp 71–79.

16 DCB at pp 147–153.

to persuade Mr Chin to enter into the IAC.[17] These payments amounted to US$771,650.[18]

The parties' cases

8 JNHM's pleaded case is that, by ceasing to work with JNHM in 2018, the Defendants are in repudiatory breach of the IAC entered into with PTMM, as well as the common understanding based on the terms of the IAC with ICOF. JNHM is entitled to claim losses and damages, as well as unpaid commissions from the Defendants, amounting to US$2,882,216.68.[19]

9 The Defendants plead three main defences in response. First, PTMM pleads that it did not sign and execute the IAC, and ICOF avers that there was no common understanding that the IAC would govern its relationship with JNHM.[20] Second, and in the alternative, Mr Chin had not been authorised by PTMM to execute the IAC, or by ICOF to enter into any common understanding for the IAC to govern its relationship with JNHM. Further, the circumstances were such that JNHM knew or ought to have known that Mr Chin was not acting with the authority of PTMM and ICOF.[21] Third, and in the alternative, if the alleged payments out of JNHM's commissions to Mr Chin were made, they were bribes. If the IAC had been procured by bribery, it was a voidable contract which PTMM elected to rescind on 31 August 2023 after the bribes were first

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17 Affidavit of Evidence-in-Chief of Wang Bin ("PA1") at para 31.

18 PA1 at paras 18–21.

19 SOC at paras 12–16 and the prayers.

20 DD1 at paras 5 and 7(a); DD2 at para 8.

21 DD1 at para 7(b); DD2 at para 8B.

mentioned in Mr Wang's affidavit of evidence-in-chief (see [7] above).[22] As for the supposed common understanding between JNHM and ICOF based on the IAC, ICOF avers that such common understanding would also have been voidable for the same reason (*ie*, the payments to Mr Chin), and ICOF similarly elected to rescind any such agreement on 31 August 2023.[23]

10 For clarity, I should explain that the third defence was introduced by way of an amendment to the Defendants' defences, in light of Mr Wang's belated revelation, in his affidavit of evidence-in-chief, of the payments to Mr Chin. In response, JNHM filed a reply, pleading a denial that the IAC was procured by Mr Wang bribing Mr Chin, as it was Mr Chin who had demanded for the payments to be made to him.[24] Further, Mr Chin's acts were attributable to the Defendants because he was the directing mind and will of the Defendants.[25] Therefore, the Defendants were not innocent parties, and the IAC was not voidable at their option.

Issues to be determined

11 Based on the above, three main issues fall for determination:

(a) whether PTMM entered into the IAC with JNHM, and whether there was a common understanding for the IAC to govern ICOF's relationship with JNHM (the "Contract Issue");

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22 DD1 at para 17A.

23 DD2 at para 8A.

24 Plaintiff's Reply at paras 3–4.

25 Plaintiff's Reply at para 4.

(b) whether Mr Chin acted with actual or apparent authority in executing the IAC (the "Authority Issue"); and

(c) whether the IAC was procured by a bribe and thus a voidable contract which PTMM validly rescinded, and whether ICOF validly rescinded any common understanding for the ICA to govern its relationship with JNHM (the "Bribery Issue").

The Contract Issue

12 Turning to the Contract Issue, I set out a few key terms of the IAC that the parties have referred to:[26]

> Art. 8 Exclusivity
>
> 8.1 The Principal shall not, during the life of this Contract, grant any other person or undertaking within the Territory the right to represent or sell the Products.
>
> 8.2 The Principal is however entitled to deal directly without the Agent's intervention (provided he informs the latter) with customers situated in the Territory excluding in the list of Annex II; in respect of any sales arising therefrom, the Agent shall not be entitled to the commission provided for in this Contract.
>
> 8.3 The Principal shall be entitled to deal directly with the special customers listed in Annex II; in respect of the sales to such customers the Agent shall be entitled to the commission provided for in Annex III.
>
> …
>
> Art. 10 Agent's commission
>
> 10.1 The Agent is entitled to the commission provided for in Annex III … on all sales of the Products which are made during the life of this Contract to customers established in the Territory.

[26] DCB at pp 8–15.

> 10.2 If the Agent, when dealing with customers established in the Territory, solicits orders resulting in contracts of sale with customers established outside the Territory, and if the Principal accepts such orders, the Agent shall be entitled to receive commission.
>
> …
>
> Art. 12 Term of the Contract
>
> 12.1 This Contract is concluded and come [*sic*] into force on [Jan.]1, 2013 and shall remain in force until Dec. 30, 2025.
>
> …
>
> Art. 13 Indemnity in case of earlier termination
>
> 13.1 Each party may terminate this Contract with immediate effect, by notice given in writing …
>
> 13.2 The Agent shall be entitled to an indemnity in case of [*sic*] the payment of this indemnity is equitable having regard to all the circumstances and, in particular, the commission lost by the Agent on the business transacted with such customers.
>
> 13.3 The amount of the indemnity equals to: the Agent's average annual remuneration over the preceding five year multiply by the remaining years non-performed under this Contract. Should the remaining years is [*sic*] less than 1 year, it is regarded as 1 year.

13 At the signature block provided for the "[a]gent", JNHM's company stamp is affixed, together with a signature of JNHM's representative, presumably Mr Wang, and the date "2013.3.10". However, at the signature block provided for the "[p]rincipal", there is only a company stamp, purportedly that of PTMM.[27] Despite JNHM's claim that the IAC was executed by Mr Chin, Mr Chin did not sign on behalf of PTMM.

14 Annex II of the IAC contains a list of the names of about 40 of JNHM's customers ("JNHM's Customer List"), while Annex III provides for fixed

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[27] DCB at p 12.

amounts of commissions, expressed in "USDx/mt", for seven different products which the parties dealt with.

15 JNHM's case on the genuineness of the JNHM of the IAC is threefold. First, it relies on the testimony of Mr Wang on the circumstances of the IAC's formation. Second, it points to the fact that PTMM's company stamp is fixed to the IAC.[28] Third, it urges the court to draw an adverse inference against the Defendants based on their failure to produce certain key witnesses, especially Mr Chin, to give evidence on this issue.[29]

16 In response, the Defendants contend that the IAC is not a genuine agreement as between PTMM and JNMH, and the terms of the IAC were not extended to govern ICOF's relationship with JNHM. They highlight the shifting nature of JNHM's position on the circumstances of the IAC's supposed formation and Mr Wang's testimony. Further, the Defendants rely on the following four factors to argue that the irresistible inference to be drawn is that the IAC is a fabricated document:

(a) First, that two entities stated in JNHM's Customer List at Annex II of the IAC, *viz*, "Croda Sipo (Sichuan) Co., Ltd." ("Croda Sipo") and "Nanjing Well Pharmaceutical Co., Ltd." ("Nanjing Well Pharmaceutical"), only became known by these names *after* the purported conclusion of the IAC in March 2013.

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28 Plaintiff's Closing Submissions ("PCS") at para 39.

29 Plaintiff's Opening Statement ("POS") at paras 7–10.

(b) Second, that the parties' conduct after March 2013 was inconsistent with JNHM's allegation that the Defendants had entered into the IAC.

(c) Third, that PTMM's stamp on the IAC does not necessarily prove that it had agreed to the IAC because the stamp could have been forged by one of JNHM's employees.

(d) Fourth, Mr Chin has consistently maintained that he did not enter into the IAC with JNHM.

Mr Wang's evidence

17 I begin by considering Mr Wang's evidence, which JNHM heavily relies on to show that the IAC was entered into by PTMM.

18 Mr Wang's account is that he met Mr ET Lim ("Mr Lim"), the Executive Chairman of the Musim Mas Group, for the first time around June 2003. At this meeting, he impressed Mr Lim because he was able to broker the sale of 3,000 tonnes of stearic acid (which Mr Lim had on hand) to a customer in China on the spot. Overjoyed, Mr Lim instructed Mr Wang to contact Mr Chin to discuss the matter of JNHM being appointed PTMM's agent in China, and also called Mr Chin to inform him to expect a visit from Mr Wang to discuss the same.[30]

19 Subsequently, in September 2003, Mr Wang (acting on JNHM's behalf) entered into an agency agreement with Mr Chin (acting on PTMM's behalf), after agreeing to Mr Chin's requests for a third of JNHM's commissions to be

[30] Affidavit of Evidence-in-Chief of Wang Bin ("PA1") at paras 8–10.

paid to him.[31] However, in 2011, the Defendants began reducing the commissions payable to JNHM. As a result, Mr Wang began pressing Mr Chin for a written agency agreement to secure JNHM's position and protect its interests. To this end, JNHM prepared the IAC which was handed to Mr Chin sometime in January or February 2013. Mr Chin agreed to the IAC without making any amendments, and the IAC was eventually executed on or around 10 March 2013 in Singapore. Specifically, there were two meetings at that time. At the first meeting, Mr Chin handed two original copies of the IAC (duly stamped by PTMM) to Mr Wang. The next day, at the second meeting, Mr Wang handed Mr Chin one original copy of the IAC (duly signed and stamped by JNHM). Subsequently, Mr Chin also agreed to extend this arrangement to ICOF.[32]

20 Having reviewed Mr Wang's testimony, I find that the inconsistencies in his evidence regarding the parties' entry into the IAC undermine the credibility of his account, and in turn, the strength of JNHM's claim that is largely founded on his account.

21 The first inconsistency is Mr Wang's constantly shifting stance regarding the date of the conclusion of the IAC. In his affidavit of evidence-in-chief and in cross-examination, Mr Wang had asserted that the IAC was executed on or around 10 March 2013.[33] Upon being presented with evidence that this could not have been possible as he was in Hong Kong on 10 March 2013, Mr Wang then claimed to have been in Singapore on the morning of 10 March 2013, where he concluded the IAC, and then travelled to Hong Kong and

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31 PA1 at paras 18–20.

32 PA1 at paras 26–38.

33 PA1 at paras 34–37; and Notes of Evidence ("NE") (24 October 2023) at p 18 lines 26–29.

arrived there at night.[34] In re-examination, when confronted with evidence showing that he had left Singapore for Hong Kong on 9 March 2013, and that he then left Hong Kong for China on 10 March 2013, Mr Wang changed his position again. He then claimed that he met with Mr Chin around the "7th, 8th, or 9th [of] March" and he had only dated the IAC on 10 March 2013 as it was his birthday and an "auspicious date".[35]

22 I accept JNHM's argument that it would have been difficult for Mr Wang to recall specific dates given that the events took place more than 10 years ago.[36] Nonetheless, I find the inconsistency between Mr Wang's initial claim (that he had concluded the IAC on the morning of 10 March 2013) and his subsequent assertion (that he had specifically chosen 10 March 2013 as it was an auspicious date to him) to be particularly jarring. If true, the fact that Mr Wang had specifically chosen a date that was personally significant, for the conclusion of the IAC, would not have been a detail that would be easily forgotten, even with the passage of time. I should add that, in providing particulars to the Statement of Claim on when the common understanding in respect of ICOF was entered into, JNHM stated that Mr Wang met Mr Chin in Singapore one "*afternoon*" (not morning) "on or around February/March 2013".[37] These are further discrepancies that rendered Mr Wang's evidence less believable.

23 The second inconsistency is that despite initially claiming, in his

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34 NE (24 October 2023) at p 22 lines 24–29.

35 NE (25 October 2023) at p 16 lines 13–16.

36 Plaintiff's Reply Submissions ("PRS") at paras 31 and 35.

37 Further and Better Particulars of the Statement of Claim (Amendment No. 1) (dated 25 July 2022) at p 2 Particular 1.1.1.

affidavit of evidence-in-chief, that both of his meetings with Mr Chin had occurred at a Japanese restaurant at Park Royal Hotel,[38] Mr Wang subsequently claimed in cross-examination that his first meeting with Mr Chin had taken place in his office at Beach Road, Gateway.[39]

24 Taken together, I find that these two areas of inconsistencies in Mr Wang's testimony, on an event as important as the conclusion of the IAC, are sufficient to undermine his account. In rejecting Mr Wang's evidence on this key aspect of JNHM's claim as being unbelievable, I have also considered two other interrelated aspects of his evidence. These are his claims that Mr Chin had acceded, on PTMM's behalf, to the contract without making *any* changes to the IAC prepared by JNHM, as well as Mr Chin's alleged stipulation that JNHM continued to pay him a third of its commissions as a condition for him concluding any agency agreement with JNHM on the Defendants' behalf.

25 On the first matter, Mr Wang conceded that prior to 10 March 2013, there was "absolutely no email correspondence" concerning drafts or negotiations of the IAC.[40] To explain this, Mr Wang claimed that the IAC was first prepared by JNHM, before it was handed over to Mr Chin who then returned it without any revisions.[41] Subject to the possibility that Mr Chin was induced to do so by the bribes paid to him, I find Mr Wang's explanation to be implausible. The IAC contains highly onerous obligations to be borne by PTMM that are not commercially sensible. I elaborate on some of these unusual

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38 PA1 at paras 34 and 37.

39 NE (24 October 2023) at p 18 lines 15–21.

40 NE (24 October 2023) at p 43 line 29 to p 44 line 9.

41 PRS at para 38.

aspects of the IAC at [30] below. Given this, the lack of evidence of any negotiations with PTMM is surprising.

26 This lack of negotiations is particularly disconcerting in light of the evidence of Mr John Hall ("Mr Hall"). Mr Hall is the current Managing Director of Global Business, Oleochemicals at ICOF, and Mr Chin's successor at ICOF. According to Mr Hall, the Defendants' parent company, Musim Mas Holdings Pte Ltd, has an in-house legal department which serves as the centralised legal department for the entire Musim Mas Group.[42] For a non-standard contract like the IAC, the legal department ought to have been involved in drafting, amending and/or reviewing the same.[43] Although I accept JNHM's contention that Mr Hall could not have known for certain what the Defendants' practice, regarding non-standard term contracts, was at the time of the IAC's purported conclusion, I find the lack of any correspondence with the Defendants' legal department regarding the IAC odd.

27 I observe that the dubious absence of *any* correspondence prior to the conclusion of the IAC could potentially be explained by Mr Wang's evidence that Mr Chin had predicated his assent, to entering into IAC on PTMM's behalf, on him continuing to receive payment of a third of commissions earned by JNHM. The illicit nature of such an arrangement might have been the reason for Mr Chin and Mr Wang to deliberately avoid leaving any paper trail. It might also explain why Mr Chin, having been induced by the payments to him, supposedly executed the IAC without making any amendments to JNHM's draft. However, I reiterate that the existence of these supposed payments was

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42 Affidavit of Evidence-in-Chief of John Hall ("DA2") at para 11.

43 DA2 at para 15.

only raised belatedly by Mr Wang.

28 Leaving aside the belated nature of the allegation of payments to Mr Chin, when these payments were first raised in Mr Wang's affidavit of evidence-in-chief, he clearly meant that Mr Chin had asked for the payments in his *personal capacity* (a point which I will discuss in greater detail at [76] below). However, when JNHM was confronted with the Bribery Issue after the Defendants elected to rescind the IAC, it pleaded in its reply that such acts were attributable to the Defendants as Mr Chin had been their "directing mind and will".[44] In a further twist to this, in Mr Wang's cross-examination, he went even further to add that the payments had been requested *by* Mr Chin *on behalf of* his boss, Mr Lim.[45] It seems clear to me that Mr Wang's evidence has clearly evolved to bolster JNHM's case against the Defendants by first implicating Mr Chin, and then Mr Lim as well. Given this, I find it difficult to believe Mr Wang's unsubstantiated claim in relation to these payments. In any event, if these allegations were true, they contradicted JNHM's position that the IAC was a legitimate deal that governed JNHM's relationship with the Defendants. I discuss this in greater detail below under the Bribery Issue, from [71] onwards.

29 For completeness, I should add that Mr Wang's evidence in relation to errors in the IAC have also caused me to have grave reservations about his credibility. I discuss these aspects at [33]–[41] below.

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44 Plaintiff's Reply at para 5.

45 NE (24 October 2023) at p 26 lines 5–13.

The contents of the IAC

The terms and conditions

30 I turn to consider the contents of the IAC. The Defendants point to several clauses in the IAC which they allege are commercially unfavourable to PTMM. These terms include:[46]

(a) Article 8, which binds PTMM to an exclusive agency contract with JNHM in China for a lengthy period of 13 years.

(b) Article 10, read with Annex III, which provides for fixed commission rates throughout the lengthy period of the IAC for seven products, but does not provide any mechanism to vary the commission rates.[47]

(c) Article 13, which entitles JNHM to terminate the IAC with immediate effect with *no damages* to PTMM. However, in the event of a termination by PTMM, PTMM must *indemnify* JNHM for loss of commission. Such loss is quantified by a generous formulation of the "average annual remuneration over the preceding five year[s]" multiplied by the number of years remaining under the IAC (subject to the minimum period of one year).

31 When these factors were raised to Mr Wang in cross-examination, his response was that the IAC was fair and that it "follow[s] the template provided by the Business Association in China".[48] I do not accept Mr Wang's bare

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46 Defendants' Closing Submissions ("DCS") at pp 45–47.

47 DCB at pp 10 and 14.

48 NE (24 October 2023) at p 70 lines 22–26.

assertion that these were fair terms that were based on a standard template. Indeed, JNHM has provided no evidence of this alleged template's existence. In any event, it is clear on the face of the IAC that it is lopsided, disproportionately favours JNHM and lacks commercial sense from the Defendants' perspective.

32 Admittedly, the mere presence of commercially unfavourable terms is not determinative of the Contract Issue. Indeed, in accordance with the principle of freedom to contract, the court is slow to intervene in a contract between two commercial parties merely because it contains highly unfavourable terms to one party. That said, the fact that at least three of the IAC articles impose obligations on PTMM that are not commercially sensible supports the inference, contrary to JNHM's claim, that the IAC is not a genuine document.

The errors in JNHM's Customer List

33 The Defendants also argue that the IAC could not have been concluded in March 2013, as two of the customers listed in Annex II, *ie,* JNHM's Customer List, were known by different names then. Specifically, up until October 2013, Croda Sipo had been known as "Sichuan Sipo Chemical Co Ltd" ("Sichuan Sipo"), and up until April 2017, Nanjing Well Pharmaceutical had been known as "Nanjing Well Chemical Co Ltd ("Nanjing Well Chemical").[49]

(1) Sichuan Sipo and Croda Sipo

34 JNHM does not dispute the fact that Sichuan Sipo only changed its name to Croda Sipo on 21 October 2013,[50] after the conclusion of the IAC. However,

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49 DOS at para 14.

50 NE (24 October 2023) at p 46 lines 25–27; DCB at p 46.

JNHM claims that Sichuan Sipo was recorded as Croda Sipo in JNHM's Customer List because Sichuan Sipo had informed JNHM of the intended name change *ahead* of the official change of name.[51] Thus, the inclusion of the inaccurate name into the IAC was a mere clerical error.[52]

35 In response, the Defendants point to the inconsistency in Mr Wang's evidence as to how he came to know of the intended name change. Initially, when questioned on this issue, Mr Wang claimed that he was aware of Sichuan Sipo's new name because the "change of name [was] already mentioned" by Sichuan Sipo's boss in a meeting at the Sheraton Hotel in Malaysia in 2011.[53] However, he subsequently claimed that it was because he was informed by the "one in charge [of] Shanghai Croda [that] Croda was going to acquire Sichuan Sipo and [that] this acquisition was going to take place very soon".[54] The Defendants also argue that it is unlikely that Mr Wang would have been made privy to this commercially sensitive information.[55] Further, it does not make sense for JNHM to have used the new name of Sichuan Sipo (*ie,* Croda Sipo), in advance, in reliance of the word of a third party (*ie,* Shanghai Croda) of its intention to acquire Sichuan Sipo. It was entirely possible that this acquisition, and hence the name change, might not come to pass.[56]

36 I agree with the Defendants that Mr Wang's two different explanations of how he came to know of the new name of Sichuan Sipo, in advance of the

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51 PRS at para 9; NE (24 October 2023) at p 47 lines 28–32.

52 PRS at para 8; NE (24 October 2023) at p 48 lines 22–31.

53 NE (24 October 2023) at p 47 lines 30–32.

54 NE (25 October 2023) at p 10 lines 18–24.

55 DCS at para 24.

56 DCS at paras 25–26.

official name change, undermine this aspect of his testimony.[57] His subsequent explanation that the name change had been told to him by a potential purchaser of Sichuan Sipo (*ie*, Shanghai Croda), is at odds with his initial response where he stated that he was made aware by Sichuan Sipo itself of the name change in 2011. Moreover, I find it hard to believe that Shanghai Croda would have informed Mr Wang of its intention to acquire Sichuan Sipo as well as the intended name change. JNHM has offered no rational explanation as to why Shanghai Croda would have disclosed such information to Mr Wang. However, even assuming that information pertaining to Sichuan Sipo's name change and Shanghai Croda's intention to acquire it was disclosed to JNHM, I agree with the Defendants that it simply does not make sense for JNHM to have used the new name in the IAC, months *before* the official acquisition and change of name.

37 Indeed, the Defendants also point out that prior to Sichuan Sipo's official change of name, and after the IAC was allegedly concluded, JNHM had assisted PTMM in procuring two contracts with Sichuan Sipo (in July and September 2013) in which its name was stated as Sichuan Sipo instead of Croda Sipo.[58] It was puzzling why JNHM would have used the prospective name Croda Sipo in March 2013 (the date of the IAC) but still used Sichuan Sipo in July and September 2013. It would have been critical to JNHM to ensure that the correct names of its customers were reflected in a contractual document as important as the IAC. As set out at [12] above, Article 8.3 read with Annex II affect JNHM's entitlement to commissions. To protect its commercial interests, JNHM would have been keen to accurately record the actual names of its

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57 DCS at para 23.

58 Agreed Bundle of Documents (Volume 3) ("3AB") at pp 119 and 147.

customers as of March 2013. Indeed, JNHM would also have been mindful that it was still possible for Shanghai Croda's alleged acquisition plan to fall through before October 2013, or for the proposed name change to Croda Sipo to be derailed.

(2) Nanjing Well Chemical and Nanjing Well Pharmaceutical

38 The same problem presents itself in respect of Nanjing Well Chemical. Indeed, the problem is accentuated because Nanjing Well Chemical only amended its name to Nanjing Well Pharmaceutical on 19 April 2017, close to *four years* after the apparent conclusion of the IAC. In my view, this is evident from the "Enterprise Credit Information Publicity Report", which sets out details on Nanjing Well Pharmaceutical's operations, including the change of name.[59] When questioned on this, Mr Wang did not dispute this name change, but claimed instead that the reason for this change was because Nanjing Well Chemical was merged under Nanjing Well Pharmaceutical in 2017.[60] As such, JNHM's position is that Nanjing Well Chemical and Nanjing Well Pharmaceutical were always separate entities (where the former was the subsidiary of the former) and they were *both* JNHM's customers until the two entities merged in 2017.[61]

39 However, JNHM's explanation – that Nanjing Well Chemical and Nanjing Well Pharmaceutical were two distinct entities and were both customers of JNHM – is improbable in the face of the available objective evidence. While the Defendants were able to point to various contracts brokered

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59 DCB at p 177.

60 NE (25 October 2023) at p 11 at lines 26–29.

61 NE (25 October 2023) at p 11 at lines 3–18.

between JNHM and Nanjing Well Chemical prior to 2017, there was no evidence of any contract made between JNHM and Nanjing Well Pharmaceutical prior to 2017.[62] Further, in an email circulated on 5 June 2014 between the employees of JNHM and ICOF, only Nanjing Well Chemical was named in the customer list and not Nanjing Well Pharmaceutical.[63] These pieces of evidence weaken JNHM's claim that Nanjing Well Pharmaceutical had existed and had always been its customer since 2013.

40 JNHM argues that the Enterprise Credit Information Publicity Report shows that Nanjing Well Pharmaceutical had existed since 18 February 2000.[64] However, I accept the Defendants' explanation that the report likely showed the company's updated name (*ie*, Nanjing Well Pharmaceutical), and not its original name (*ie*, Nanjing Well Chemical), because it was generated in 2019. I am satisfied that, as reflected in the report, the company had carried its original name from 2000 until the name change in 2017.

41 Ultimately, I agree with the Defendants that there is clearly a disturbing incongruity between JNHM's claim that the IAC was signed and concluded in March 2013, and the fact that the JNHM's Customer List includes the names of two companies that only came to be known as such after the IAC's alleged inception. This throws the authenticity of the IAC into further doubt.

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62 DCS at para 27; 3AB at pp 29, 131, 155, 189, 281, 419, 421, 430 and 432.

63 DCB at pp 27–31.

64 DCB at p 175.

The weight to be given to PTMM's company stamp on the IAC

42 I note that the Defendants also allege that there is a possibility that PTMM's stamp on the IAC was a product of forgery by one of JNHM's employees, specifically, one Mr Zhang Fan ("Mr Zhang").[65] In this regard, they rely on a recorded conversation between Mr Zhang and one of the Defendants' employees,[66] which they claim show a previous instance where Mr Zhang had copied and pasted another company's stamp to a sales contract to create the false impression that the other company had signed the sales contract when it had not done so.[67]

43 I am not persuaded that this recorded conversation is sufficient for me to draw the inference that Mr Zhang had fraudulently affixed PTMM's stamp onto the IAC. The events surrounding the initial alleged forgery disclosed in the conversation involve different parties and a contract of a different nature (*ie*, sale of goods as opposed to an exclusive agency agreement).[68] Although the allegations made against Mr Zhang in the recorded conversation are certainly troubling, I am not satisfied that there is sufficient evidence to make a *positive* finding that Mr Zhang and JNHM were engaged in the practice of forging and affixing stamps in various contracts, including the IAC.

44 That said, I reiterate that no signature of any representative of PTMM accompanied the company stamp. Specifically, Mr Chin did not sign the IAC. Mr Hall testified that PTMM's practice was to ensure that each and every sales

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65 DCS at para 74.

66 DCB at pp 76 and 78–79.

67 DCS at para 74.

68 See, *eg*, DCB at p 76.

contract PTMM entered into with JNHM was signed, and that such a practice was premised on the belief that this was required under Indonesian law for the validity of any contract.[69] In contrast, Mr Wang was unable to point to any sales contract left unsigned by PTMM when invited to do so.[70] In the absence of a signature by Mr Chin or any representative of PTMM, I am of the view that little weight could be placed on the company stamp affixed on the IAC to support JNHM's allegation that it was actually entered into by PTMM.

The conduct of the parties after the purported entry into the IAC

45 Having dealt with the contents of the IAC, I turn to the parties' conduct after March 2013. The Defendants argue that JNMH's conduct, post the entry of the IAC, was inconsistent with the existence of the IAC. In this respect they point to two factors. First, that JNHM had asked the Defendants for an agency agreement in 2014 and 2015, which it would not have done if the IAC had already been in place.[71] Second, that JNHM did not make any attempt to enforce its rights under the IAC when certain acts by the Defendants, that would have constituted breaches of the IAC, were brought to JNHM's attention.[72] I deal with each in turn.

46 It is not seriously disputed by the parties that that there was no mention of the IAC or its terms in *any* of their written correspondence after its purported conclusion in March 2013. Indeed, Mr Wang conceded as much during cross-examination when asked to confirm that subsequent to March 2013, there was

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69 DA2 at para 16.

70 DCS at paras 72–73, citing NE (24 October 2023) p 43 lines 25–28.

71 DOS at paras 18–21.

72 DOS at paras 22–26.

no email correspondence referring PTMM to the existence of the IAC, or any of its terms.[73] However, JNHM argues that this was because the IAC had merely encapsulated the understanding of the parties "built up over the years", and by then, the parties had already established a "very smooth working relationship".[74] Presumably, the implication of this was that the parties would thus have had no cause to refer to the IAC specifically.

47 However, I find the lack of *any* reference to the IAC prior to 2018 in the parties' communications particularly perplexing when one considers the events that occurred after the IAC's purported conclusion on 10 March 2013. For one, in 2014 and 2015, JNHM was actively asking the Defendants for an agency agreement. In particular, I turn to events involving Mr Heng Yick Han ("Mr Heng"), who joined ICOF in 2007 and then left in 2021 (with his last held position as General Manager (Oleochemical Sales – Asia)). At the material time, Mr Heng was a subordinate of Mr Chin. On 26 May 2014, Mr Heng sent an email to Mr Zhang (in which Mr Wang was also copied) indicating ICOF's interest in setting up a distributorship and agency agreement and requesting JNHM to fill up a customer list for such an agreement to proceed.[75] Mr Zhang responded to Mr Heng's email (copying Mr Chin and Mr Wang) with the requested information for the proposed customer list. There was no further progress until 28 April and 8 June 2015 when Mr Zhang sent follow up emails asking Mr Chin and Mr Heng respectively, to check if the agency agreement was ready.[76] It is notable that in all of these emails, in which both Mr Chin and

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73 NE (24 October 2023) at p 44 line 21 to p 45 line 15.

74 PRS at para 39.

75 Affidavit of Evidence-in-Chief of Heng Yick Han ("DA1") at paras 16–17.

76 DA1 at paras 18–20 and pp 26–32.

Mr Wang were copied, no mention was made of the IAC. In fact, according to Mr Heng, there was never any written contract appointing JNHM as the agent for the Defendants.[77]

48 JNHM argues that the reason why this additional agency agreement was being negotiated with Mr Heng in 2014 and 2015 was for the purpose of amending the IAC to specifically name ICOF as a contracting party.[78] However, if that had been the reason, it still begs the question why no party made *any* reference to the IAC, given that it was the agreement being amended, and therefore the precise subject of their discussions. Moreover, it is highly unlikely that over the course of the many years until 2018, there was no mention of the IAC by JNHM at all. I find this curious, given that JNHM had purportedly taken the trouble to conclude the IAC, on terms highly favourable to itself, which it surely would have wanted to reap the benefit of.

49 Finally, the Defendants point to the fact that no attempt was made by JNHM to enforce the IAC despite the Defendants having informed JNHM that they had dealt with one of the customers (*ie*, Nanjing Heye Import & Export Trade Co Ltd ("Nanjing Heye")) listed in JNHM's Customer List at Annex II of the IAC without paying JNHM a commission, and that they had another agent in China besides JNHM (*ie*, HBI China).[79] Based on the terms of the IAC, these acts would have respectively amounted to breaches of Article 8.3 and 8.1 of the IAC by the Defendants (see [12] above).

50 Even accepting JNHM's assertion that it had consciously chosen not to

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77 DA1 at para 10.

78 PRS at para 46; NE (24 October 2023) at p 59 lines 14–21.

79 DCS at para 57.

enforce the IAC against the Defendants *vis-à-vis* the Defendants' dealings with Nanjing Heye because JNHM no longer regarded Nanjing Heye as a viable business partner,[80] JNHM failed to offer any satisfactory explanation as to why it did not raise the breach of the exclusivity clause of the IAC to the Defendants. When questioned on this in cross-examination, Mr Wang agreed that the appointment of HBI China was a breach of the IAC and claimed to have informed Mr Chin of this.[81] However, he conceded that there was no written communication to support this supposed notification to Mr Chin.[82] In light of the dearth of evidence supporting JNHM's position, the picture that emerges is one of complete silence by JNHM in the face of a blatant breach of the IAC by the Defendants. It is inexplicable that a commercial entity would act in such a manner, and indeed, there is no cogent explanation or evidence as to why JNHM might have done so. As such, I am led to the inexorable inference that there was, in fact, no breach by the Defendants as the IAC did not exist.

Mr Chin's statutory declaration

51 With this, I turn to the Defendants' contention that Mr Chin had consistently denied acceding to the IAC.[83] Specifically, the Defendants rely on a statutory declaration ("SD") signed by Mr Chin on 8 August 2023 confirming that, prior to PTMM's email to him on 14 June 2019 (see [6] above), he had never seen the IAC and had not affixed PTMM's company stamp on it.[84] In response, JNHM contends that Mr Chin's SD is inadmissible, and that the court

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80 PRS at paras 54–56.

81 NE (24 October 2023) at p 69 lines 12–28.

82 NE (24 October 2023) at p 69 lines 23–25.

83 DOS at paras 27–28.

84 DCB at p 184.

ought to draw an adverse inference from the Defendants' failure to call him as a witness.[85]

52 I will first address the admissibility of Mr Chin's SD. It is indisputable that Mr Chin's SD constitutes hearsay evidence. However, as an exception to the general bar against hearsay evidence, s 32(1)(*j*)(iv) of the Evidence Act 1893 (2020 Rev Ed) ("EA") provides that a statement made by a person who is "competent but not compellable to give evidence" is relevant. A statement of a non-compellable witness who refuses to attend trial is therefore admissible under s 32(1)(*j*)(iv) despite being technically hearsay (see *Gimpex Ltd v Unity Holdings Business Ltd and others and another appeal* [2015] 2 SLR 686 ("*Gimpex*") at [127]).

53 Mr Chin is no longer an employee of the Defendants and, more importantly, is currently resident in Malaysia.[86] He is not compellable to give evidence for the purposes of s 32(1)(*j*)(iv) of the EA (see *Eller, Urs v Cheong Kiat Wah* [2021] SGHC 253 at [49]). I note that the Defendants have made attempts to procure Mr Chin's attendance,[87] albeit to no avail as Mr Chin has expressed his desire to not be a witness to the present suit.[88] Given this, I am satisfied that Mr Chin's SD falls squarely within the exception outlined in s 32(1)(*j*)(iv) of the EA and is hence *prima facie* admissible. The relevant question turns instead to whether the court should, pursuant to s 32(3) of the

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85 PCS at paras 18–21.

86 DCS at para 63; PA1 at para 11.

87 DA2 at pp 871–873.

88 1AB at p 104; DA2 at p 849.

EA, nevertheless regard the SD as irrelevant on the ground that it "would not be in the interests of justice to treat it as relevant".

54 JNHM argues that it would not be in the interests of justice to treat the SD as relevant as it is a self-serving document by Mr Chin with limited probative value. Admitting the SD without cross-examination on an issue as crucial as the entry into the IAC would amount to a fundamental denial of justice, and the SD cannot be used to corroborate the Defendants' case as that would be tantamount to Mr Chin's statement being used to corroborate his own version of events.[89]

55 In *Gimpex* (at [109]), although the Court of Appeal affirmed that the court may exercise its discretion to disregard a piece of hearsay evidence that would have otherwise been admissible under s 32 of the EA, if the document is of limited probative value, it also warned that the court would not "normally exercise its discretion to exclude evidence that is declared to be admissible by the EA". In that case, a report that the defendants sought to rely on was held to be inadmissible under s 32(3) of the EA as the defendants had failed to produce any evidence to suggest that there was a minimal degree of reliability in the report.

56 The present case is distinguishable. Unlike the report in *Gimpex,* an SD is a legal document. Making false declarations in an SD would expose the maker to penalties including imprisonment for up to seven years under s 14 of the Oaths and Declarations Act 2000 (2020 Rev Ed). In light of the potential penalties, the reliability of the SD is certainly greater than that of the report in

[89] PRS at para 76.

Gimpex. Further, While I am aware of the potential prejudice that might be caused given JNHM's inability to test Mr Chin's evidence on cross-examination, this prejudice comes inherent with the admission of any hearsay evidence. Any concerns as to prejudice can be sufficiently accounted for by being careful about the weight to be accorded to Mr Chin's SD pursuant to s 32(5) of the EA. I shall return to this below at [58].

Conclusion

57 Drawing the threads together, I do not find Mr Wang's evidence to be reliable, and there is little objective evidence to support JNHM's claim of the entry into the IAC by PTMM in March 2013. In fact, such a claim is seriously contradicted by the inexplicable errors made by JNHM by referring to two of its customers by names which came about only *after* the purported conclusion of the IAC in March 2013, as well as JNHM's subsequent conduct which completely ignores its rights under the IAC. At the end of the day, it is for JNHM to prove that the IAC is a *genuine* agreement entered into by PTMM, and extended to ICOF by Mr Chin, which binds the Defendants. On an assessment of JNHM's evidence before me, I find that JNHM has simply not met this burden of proof.

58 In this connection, as compared to the unsatisfactory nature of Mr Wang's evidence, Mr Chin's position – that he did not execute the IAC on behalf of PTMM or extend it to ICOF – is more in accord with the surrounding circumstances. In fact, Mr Chin's stance is also partially supported by the accounts of Mr Hall and Mr Heng that as far as they know, no exclusive agency agreement was entered into with JNHM. Such evidence further undermines JNHM's case. I am mindful that Mr Chin did not respond to Mr Wang's belated allegation concerning his receipt of US$771,650. However, as I elaborate below

in discussing the Bribery Issue, I do not think that this allegation – even if assumed to be true – assists JNHM's case. In such circumstances, it can hardly be argued by JNHM that the IAC is a genuine agreement that binds the Defendants. Having said that, even if I were to give no weight at all to Mr Chin's SD, and what has been said by Mr Hall and Mr Heng, I reiterate the point that based on its evidence, JNHM has not made out its case (see [57] above).

59 I also note JNHM has invited the court to draw an adverse inference from the Defendants' failure to call Mr Chin as a witness pursuant to s 116(*g*) of the EA.[90] JNHM relies on *ECICS Ltd v Capstone Construction Pte Ltd and others* [2015] SGHC 214 ("*ECICS*") where the court drew adverse inferences from the defendant's failure to call the expert who had produced the report that she relied upon, as well as a witness to the signing of a disputed letter. Pertinently, the court (at [49]) considered an adverse inference to be appropriate because it was satisfied that these witnesses' absence was attributable to the defendant's conscious decision to not call them. In the present case, I have found that Mr Chin's absence as a witness was not due to a deliberate decision by the Defendants not to call him, but as a result of his own unwillingness to testify and his non-compellability due to him being resident out of jurisdiction (see [53] above). Thus, *ECICS* is distinguishable, and it does not assist JNHM's call for an adverse inference to be drawn in this case.

60 I digress to observe that JNHM has also urged the court to draw an adverse inference from the Defendants' failure to call the top management of the Musim Mas Group, especially Mr Lim, to give evidence on this issue. In this regard, JNHM claims that Mr Lim authorised Mr Chin to enter into the IAC

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90 PCS at para 18.

with Mr Wang.[91] In *Sudha Natrajan v The Bank of East Asia Limited* [2017] 1 SLR 141 ("*Bank of East Asia*") (at [26]), the Court of Appeal held that an adverse inference should not be drawn "except from the non-production of witnesses whose testimony would be superior in respect to the fact to be proved". In my view, there is no indication that Mr Lim's evidence would have been superior to that which is already before the court. Mr Lim's involvement, as alleged by JNHM, was limited to a single meeting approximately ten years before the actual conclusion of the IAC, in which he had directed Mr Wang to liaise with Mr Chin on JNHM potentially becoming the Defendants' agent (see [18] above).[92] In light of Mr Lim's limited role in the conclusion of the IAC itself, I see no reason why Mr Lim would need to be called, and so no adverse inference is warranted.

61 Having found in favour of the Defendants on the Contract Issue, this would be sufficient for me to dismiss JNHM's claim. However, for completeness, I will deal with the Authority and Bribery Issues. For the avoidance of doubt, I deal with them on the basis that Mr Chin executed the IAC on behalf of PTMM, and then agreed to extend its terms to ICOF.

The Authority Issue

62 JNHM claims that Mr Chin had the requisite actual and/or apparent authority to execute the IAC on PTMM's behalf. It relies chiefly on Mr Wang's evidence that Mr Lim had directed him to Mr Chin to discuss the matter of JNHM being appointed the agent of PTMM (see [18] above).[93] Conversely, the

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91 PCS at paras 20–22.

92 PA1 at paras 7–11.

93 PCS at paras 48-49; POS at para 6.

Defendants rely on the testimony of Mr Hall to argue that Mr Chin lacked the actual authority to enter into the IAC for PTMM.[94] They also rely on JNHM's past dealings with the Defendants and the one-sided nature of the IAC to justify why JNHM ought to have known that Mr Chin was acting without the Defendants' authority.[95]

Whether Mr Chin had the actual authority to enter into the IAC

63 Actual authority can be established in one of two forms, namely express actual authority or implied actual authority. In *Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd and another and another suit* [2009] 4 SLR(R) 788 ("*Skandinaviska*") (at [30]), the court held that an agent has express actual authority "where it is given by express words, such as when a board of directors pass a resolution", and implied actual authority when it concerns acts "incidental to the ordinary conduct of such trade or business, or of matters of that nature [and] necessary for the proper and effective performance of [the agent's] duties".

64 In order to establish Mr Chin's actual authority, JNHM relies on Mr Wang's evidence that Mr Lim had informed Mr Wang that Mr Chin was "in charge of global marketing of oleochemicals" for PTMM and that he should be the one to be contacted for JNHM to establish an agency agreement with PTMM.[96] Additionally, Mr Wang referred to the surrounding circumstances, such as Mr Chin "doing things like he was a boss".[97] Thus, JNHM argues, it was

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94 DOS at para 59.

95 DOS at paras 60–63.

96 PA1 at paras 8–18; NE (25 October 2023) at p 7 lines 19–26; PCS at paras 48–49.

97 NE (23 October 2023) at p 23 at lines 20–25.

"natural for [Mr Wang] to believe that [Mr Chin] had authority to execute the IAC".[98]

65 On the other hand, the Defendants rely on Mr Hall's evidence to argue that Mr Chin lacked the actual authority to bind PTMM. As set out above at [5], Mr Chin was not the CEO of PTMM. In fact, PTMM did not have such a position at the time. Mr Chin was not even employed by PTMM, but was instead the Head of the oleochemicals division in ICOF.[99] That said, based on Mr Heng's evidence, while ICOF is the marketing arm of the Musim Mas Group, it is not disputed that, in relation to the Chinese market, PTMM would enter into sales transactions with the end customers.[100] However, Mr Hall also testified that Mr Chin would not have been authorised to sign or execute any non-standard term contracts like the IAC.[101] In this connection, the Defendants further rely on Mr Chin's name card at the time (which Mr Wang said Mr Lim gave to him), which states that Mr Chin was a marketing director of oleochemicals of Musim Mastika (Malaysia) Sdn Bhd ("MM Malaysia").[102]

66 I do not accept JNHM's submission that Mr Chin had actual authority to bind the Defendants to the IAC. Here, the parties' cases ultimately rests upon a set of conflicting testimonies from Mr Wang, Mr Hall and Mr Heng. As I stated above, I do not find Mr Wang's testimony to be particularly convincing. On top of that, the chief piece of objective evidence available was the name card of Mr Chin, which named him as an employee of MM Malaysia and not

98 POS at para 18.

99 DA2 at para 39.

100 DA1 at paras 5 and 7–8.

101 DA2 at paras 11–12.

102 PA1 at p 19.

PTMM's CEO. This contradicts JNHM's assertion that by virtue of his position, Mr Chin had any express or implied actual authority to act on PTMM's behalf and bind it to the IAC, and/or that Mr Wang understood this to be the case. Even if Mr Chin had the authority to enter into sales transactions, this was not sufficient to show that he had the authority to enter into an exclusive agency agreement like the IAC.

Whether Mr Chin had the apparent authority to enter into the IAC

67 In *Skandinaviska* (at [80]), the court affirmed the test for apparent (or ostensible) authority as follows:

> (1) … a representation that the agent has authority to enter on behalf of the company into a contract of the kind sought to be enforced was made to the contractor;
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> (2) … such a representation was made by a person or persons who had "actual" authority to manage the business of the company either generally or in respect of those matters to which the contract relates;
>
> (3) … he (the contractor) was induced by such representation to enter into the contract, that is, that he in fact relied upon it;
>
> …

68 JNHM relies upon the same circumstances and factual matrix as stated at [64] above to argue that Mr Wang relied on the representations of Mr Lim (*ie*, the individual who had actual authority) to believe that Mr Chin had the requisite authority. In response, the Defendants point to the highly lopsided nature of the IAC to argue that Mr Wang, and by extension JNHM, ought to have known that the IAC was clearly contrary to PTMM's interests.[103] In this regard, they rely on the court's finding in *Criterion Properties plc v Stratford*

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103 DOS at paras 62–64.

UK Properties LLC [2004] 1 WLR 1846 ("*Criterion*") that "if a person dealing with an agent knows or has reason to believe that the contract or transaction is contrary to the commercial interests of the agent's principal, it is likely to be very difficult for the person to assert with any credibility that he believed the agent did have actual authority".

69 Since JNHM's argument on apparent authority is similarly premised on Mr Wang's testimony of his conversation with Mr Lim, it runs into the same issue that I have canvassed above due to my view of Mr Wang's evidence. Additionally, even if I were to accept that Mr Lim made the alleged representations, much like in *Criterion*, the IAC is drafted in a highly disadvantageous manner to the Defendants and would have minimally warranted some negotiations between parties. The fact that Mr Chin was apparently willing to sign such a one-sided contract immediately with no amendments, which was also against PTMM's practice for its earlier contracts with JNHM and its customers,[104] should have placed JNHM and Mr Wang on notice that Mr Chin was not truly acting with the Defendants' authority. Put simply, their reliance on his appearance of authority was hardly reasonable. By failing "to make the inquiries that a reasonable person would have made in all in the circumstances" to verify Mr Chin's authority, JNHM could not then rely on any appearance of authority that Mr Chin might have had (see *Philipp v Barclays Bank UK plc* [2023] 3 WLR 284 (at [89]) affirming *East Asia Co Ltd v PT Satria Tirtatama Energindo* [2020] 2 All ER 294 (at [93])). Accordingly, I do not find in favour of JNHM on this issue of apparent authority.

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104 NE (24 October 2023) at p 43 line 29 to p 44 line 9.

Conclusion

70 To add to the analysis above, if Mr Wang's allegation of payments having been made to Mr Chin be true, it appears to me that JNHM's case on authority would be completely untenable. In *Skandinaviska* (at [46]), the court held that dishonesty nullifies the actual authority of the agent as actual authority is "impliedly subject to a condition that it is to be exercised honestly". Hence, the claim that Mr Chin only acceded to the IAC in exchange for a third of JNHM's commissions would obliviate any actual authority of Mr Chin to act on behalf of the Defendants. Such a circumstance would also materially weaken any reliance by JNHM on Mr Chin's apparent authority.

The Bribery Issue

71 Turning to the Bribery Issue, for the avoidance of doubt, I make no finding as to whether JNHM has proved that there were payments made to Mr Chin, or that the promised continuation of those payments incentivised him to execute the IAC on behalf of PTMM as well as agree to extend its terms to ICOF. Instead, I proceed on the assumption that these matters are established. It is on this premise that I deal with the issue of whether the alleged payments made by Mr Wang to Mr Chin could be characterised as bribes, and what effect this would have on the enforceability of the IAC.

72 As set out in *Indian Bank v Green Mint Pte Ltd and others* [2022] 4 SLR 634 (at [17]), as a bribe deprives the principal "of the loyal service of its agent or employee", it entitles the innocent party the "option to avoid the contract procured by a bribe … by rescission from inception of the contract, if counter-restitution is possible".

73 The Defendants argue that they were only first made aware of Mr Wang's payments to Mr Chin on 16 August 2023,[105] via Mr Wang's affidavit of evidence-in-chief, and had promptly exercised their right to rescind the IAC on 31 August 2023 by way of a solicitor's letter.[106] They were entitled to rescind the contract as they submit that JNHM had effectively procured the IAC through bribery via secret payments by Mr Wang to Mr Chin.[107]

74 In reply, JNHM claims that the Defendants are precluded from rescinding the IAC as JNHM had not bribed Mr Chin. Instead, it was Mr Chin *himself* who had demanded for a third of all commissions earned by JNHM to be paid to him.[108] Moreover, the Defendants were not innocent parties and were complicit in the arrangement, and Mr Chin's acceptance of the bribe would have been attributed to the Defendants.[109]

Whether Mr Chin had received payments from Mr Wang in his personal capacity

75 I turn to address JNHM's claim that the IAC was not voidable as it was Mr Chin himself who demanded for a third of commissions to be paid to him. In Mr Wang's evidence, he claims that he felt that he had no choice but to accept Mr Chin's demand for a third of the commissions in order to secure an agency arrangement with the Defendants.[110]

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105 DOS at paras 43–44.

106 DOS at para 52.

107 DOS at paras 46–50.

108 PCS at para 59; POS at para 25.

109 PCS at paras 60–71; POS at para 28.

110 PA1 at paras 18–19; PCS at para 59.

76 However, as the Defendants rightly submit, it is ultimately immaterial as to whether it was Mr Wang or Mr Chin who had initially solicited the payments. In *Ross River Ltd v Cambridge City Football Club Ltd* [2008] 1 All ER 1004 ("*Ross River*") (at [218]), the court affirmed that "it has never been an essential part of the cause of action in bribery to prove that the payer or the agent had a consciously improper motive or intent" as long as the payment "brings about the requisite conflict of interest which is not disclosed to, or consented to by, the principal". This was subsequently affirmed in *Wood v Commercial First Business Ltd and other companies* [2021] 3 WLR 395 (at [43]) where the court held that it "does not inquire into the payer's motives in making the payment" and that an irrebuttable presumption arises "in favour of the principal and against the payer … that the agent was influence by the payment". Hence, even if Mr Chin had been the one to request for the payments, Mr Wang would still be presumed to have known, and in fact likely did know, that these were improper payments which brought about a conflict of interest, thereby rendering the IAC voidable. It is immaterial that Mr Wang felt that he had no choice but to give in to Mr Chin's demands.

77 In cross-examination, Mr Wang raised for the first time that the payments were requested by Mr Chin *on behalf* of Mr Lim, Mr Chin's boss.[111] No such allegation was made in Mr Wang's affidavit of evidence-in-chief or even in JNHM's reply (filed after the Defendants sought to rescind the IAC). Apart from the last-minute nature of such evidence, Mr Wang also seriously contradicted his account in his affidavit of evidence-in-chief where he consistently asserted that the payments were made to Mr Chin in his personal

111 NE (24 October 2023) at p 26 lines 5–9.

capacity. I reproduce the material portions of Mr Wang's affidavit of evidence-in-chief as follows:[112]

> 18. …***He*** wanted 1/3 of all the commissions which the Plaintiff earned from the sale of the 1st Defendant's products in China. I was absolutely shocked when I heard ***Chin's*** demand for 1/3 of the commissions and I thought to myself that ***he*** was being extortionist. I did not agree to ***his*** demand of 1/3 commissions at that meeting. I told ***him*** that ***his*** demand was too high. ***He*** said that if I could not agree to ***his*** demand, then we should leave aside the issue of agency for the time being…
>
> 19. After I went back to China, I reconsidered ***Chin's*** demand. I felt that I had no choice but to give in to ***his*** exorbitant demand…
>
> 20. On or around the end of September 2003, I called ***Chin***. In that telephone conversation, I agreed to let ***him*** have 1/3 of all commissions earned by the Plaintiff. In that conversation I asked ***Chin*** to give me an account for all the commissions ***he*** wanted … ***He*** said ***he*** would not give such an account and that ***he*** wanted me to pass ***him*** cash when we next met. ***He*** refused to have these commissions paid to ***him*** by bank transfer
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> 21. …The purpose of my visit was to pass ***him*** in cash ***his*** 1/3 share of the commissions. My record show that I passed ***him*** about [US$]6,733 in cash on that trip … These trips were for the purpose of bringing customers to meet the 1st and 2nd Defendant[s'] and also for me to pass the cash to ***Chin***.
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> …
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> 31. … I told ***Chin*** that without a written agreement, we could overnight be discarded by the defendants as agents. ***His*** position would also be affected since, we had been giving ***him*** 1/3 of all the commission that we earned.
>
> (Emphasis Added)

78 From the language used in Mr Wang's affidavit of evidence-in-chief, it does not seem to me that he had intended to refer to the Defendants and not Mr Chin himself. I am also unable to agree with JNHM's claim that Mr Wang was simply using the pronouns "he"/"him" because he was operating under the

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112 PA1 at paras 18–21 and 31.

understanding that Mr Chin was representing PTMM. This is particularly so because JNHM concedes that the payments demanded by Mr Chin were "obviously for personal use by him and the other senior management figures".[113] Additionally, the covert manner in which Mr Chin had purportedly requested Mr Wang to "pass him [the payments in] cash" and had "refused to have these [payments] paid to him by bank transfer",[114] weighs heavily against a finding that these payments were authorised, much less ordered, by the Defendants' top management, particularly Mr Lim.

79 In any event, given that bribery is established as long as there is a potential conflict of interest that is not disclosed to the principal (*Ross River* at [218]), even assuming that Mr Chin had the approval of Mr Lim when he sought the bribes from JNHM, their interests as agents were clearly in conflict with that of their principal (*ie*, PTMM and/or ICOF) by receiving and using these payments for their *personal* use. Consequently, I am unable to accept JNHM's claim that the IAC was not voidable as Mr Chin had been the one to solicit the bribe (regardless of whether it was at the behest of the top management of the Defendants *ie,* Mr Lim).

Whether Mr Chin's alleged actions are attributable to the Defendants

80 I now address JNHM's second argument that Mr Chin's actions are attributable to the Defendants.

81 The test for attribution is set out in the case of *Red Star Marine Consultants Pte Ltd v Personal Representatives of Satwant Kaur d/o Sardara*

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113 PRS at para 91.

114 PA1 at para 20.

Singh, deceased and another [2020] 1 SLR 115. The court (at [35]) set out the three distinct rules of attribution:

> (a) First, the primary rules of attribution found in the company's constitution or in general company law, which vest certain powers in bodies such as the board of directors or the shareholders acting as a whole.
>
> (b) Secondly, general rules of attribution comprising the principles of agency which allow for liability in contract for the acts done by other persons within their actual or ostensible scope of authority, and vicarious liability in tort.
>
> (c) Thirdly, special rules of attribution fashioned by the court in situations where a rule of law, either expressly or by implication, excludes the attribution on the basis of the general principles of agency or vicarious liability.

Additionally, the court (at [38]) affirmed that it is important to "consider the context of the case when determining how the rules of attribution should be applied".

82 It is undisputed that the primary rules of attribution are not applicable. There is nothing on the facts which suggests that either PTMM's or ICOF's constitution or laws of incorporation (*ie,* Indonesia and Singapore law) had authorised Mr Chin to receive payments for personal use from Mr Wang in exchange for entering into the IAC. The general rules of attribution are also inapplicable since, as I have determined above, Mr Chin lacked both actual and apparent authority, and hence the principles of agency and vicarious liability are inapplicable.

83 Even if Mr Chin's actions are attributable to the Defendants via the application of agency principles on the basis that, as alleged by JNHM, he is the

"directing mind and will" of the Defendants,[115] JNHM should not be allowed to rely on this defence. In *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] 3 SLR 329 (at [68]–[70]), the court affirmed the principle that an individual's knowledge or state of mind should not be attributed to a company "where the company is *itself* the target of [the] agent's … dishonesty". In that case, the court found that there was no special rule of attribution applicable where the company, against which knowledge of a director is being attributed, is a victim. Here, as I have found above at [79], Mr Chin's alleged acceptance of the bribes from Mr Wang, if at all, was done in conflict with the Defendants' interests.

84 I note that despite Mr Wang making the new allegation against Mr Lim in cross-examination, JNHM does not specifically submit that Mr Lim's knowledge should bind the Defendants. Clearly, this would have fallen outside its pleaded position (as contained in its reply). In any event, I would say that similar reasoning would apply even if Mr Lim had been involved in the receipt of the payments for his personal use, and that any such knowledge should not be attributable to the Defendants.

85 For completeness, I should add that JNHM is quite unlike the innocent third party in most cases where attribution is successfully argued, as it had assented to providing the bribes. In fact, if JNHM's argument were to be accepted, this would mean that a payer who conspires with an agent (who solicits a bribe in exchange for inducing his principal to enter into a contract) would be entitled to ascribe the knowledge of the bribe to the principal so that the contract is no longer voidable. This would be an absurd outcome.

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115 PRS at para 101; POS at paras 27–28.

Whether to draw an adverse inference against the Defendants on the Bribery Issue

86 As a final matter, I turn to address JNHM's invitation for the court to draw some form of adverse inference against the Defendants on the Authority and Bribery Issues, due to the absence of Mr Chin and Mr Lim in the proceedings. As I have already dealt with certain points in relation to the Contract Issue (see above at [59] and [60]), I see no need to elaborate further in respect of the Authority Issue as it involves similar factual disputes.

87 On the Bribery Issue, I acknowledge that Mr Chin's SD does not address this. On 30 August 2023, the Defendants informed Mr Chin of the fresh allegation made by Mr Wang and requested him to testify at the trial. However, Mr Chin maintained that he did not wish to do so.[116] Therefore, the Defendants cannot be faulted for Mr Chin's absence. Moreover, if not for the fact that the allegation was raised belatedly, Mr Chin might have covered this aspect in his SD. As such, I do not see any basis to draw any adverse inference against the Defendants.

88 Turning to Mr Lim, as I set out above at [77], it was only in Mr Wang's cross-examination that he implicated Mr Lim in the matter. Given that Mr Wang sprang this surprise on the Defendants in the middle of the trial, I do not see how the Defendants can be faulted for not calling Mr Lim. In fact, I would say that the Defendants were deprived of a fair opportunity to respond, given that Mr Lim is based in Indonesia. In any event, even if I were to accept that an adverse inference should be drawn against the Defendants, I am unable to draw the specific adverse inference that JNHM alludes to (*ie*, that Mr Lim sanctioned

116 1AB at p 104; DCS at paras 65(d)–65(e).

Mr Chin's receipt of the payments from Mr Wang).[117] In *Bank of East Asia* (at [23]), the court cautioned that s 116(*g*) of the EA "does not afford the court the opportunity to speculate as to what the evidence may be without some basis for the drawing of the inference". Here, Mr Wang's assertion is belated, bare and unsubstantiated. There is absolutely no basis for JNHM to argue that Mr Lim was not called because his evidence would be unfavourable to the Defendants on this aspect, and that an adverse inference should thus be drawn.

Conclusion

89 For the foregoing reasons, I resolve the Contract Issue in favour of the Defendants. JNHM has not proved on the evidence before the court that the IAC existed, and/or that the IAC governed its relationships with the Defendants. The outcome is that the Defendants are not liable to JNHM for any purported repudiatory breach of the IAC. Accordingly, I dismiss JNHM's claim. The parties are to provide costs submissions by way of letter to the court within two weeks of the decision.

Hoo Sheau Peng
Judge of the High Court

117 PCS at paras 21–22.

Lim Tean (Carson Law Chambers) for the plaintiff;
Vergis S Abraham *SC*, Vanathi Eliora Ray and Liu Enning (Providence Law Asia LLC) for the defendants.
