IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 119

Suit No 548 of 1995

Between

Essex Monitor Co Ltd

… Plaintiff

And

Ocean Wealth Industry (Pte) Ltd

… Defendant

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

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Essex Monitor Co Ltd v Ocean Wealth Industry (Pte) Ltd

[1998] SGHC 119

Suit No 548 of 1995
Christopher Lau JC
17 April 1998

Judgment:

GROUNDS OF DECISION

1. The plaintiffs' claim was for the sum of US$695,704.00 being the balance of the sum owed for goods sold and delivered to the defendants at their request in 1991 and 1992. The defendants denied liability. Their defence was that of agency. They claimed the goods had been ordered by them as agents for a company known as Jinan Huafu Video Terminal Equipment Co Ltd of the People's Republic of China ("Jinan Huafu") and that it was a term of the sale that payment was due to the plaintiffs only upon the defendants' receipt of payment from Jinan Huafu.

2. After hearing and considering the evidence and the parties' submissions, I was of the view the plaintiffs had, on a balance of probabilities, made out their case, gave judgment on their claim for US$695,704.00, interest and costs. These are my reasons.

Version No 1: 20 Nov 2026 (00:35 hrs)

3. The plaintiffs are manufacturers of computer colour monitors in the Republic of China ("Taiwan"). Their monitors are exported and sold worldwide. The defendants are a trading company in Singapore. Jinan Huafu is a company in China in which the defendants have an interest.

4. There was no dispute that the relevant negotiations and discussions relating to the purchases of the monitors in respect of which the claim was brought were between Yang Long San, the President of the plaintiff company and Alex Shih Tai San, a director and shareholder of the defendant company and the general manager of Jinan Huafu. They were the principal witnesses for the plaintiffs and the defendants respectively.

5. The result of the claim turned principally on who, on a balance of probabilities, was the more credible witness. In my judgment, Yang Long San was. His evidence was substantiated by the documentary evidence and also by the defendant company's auditor. In contrast, Alex Shih did not impress me as a truthful witness. His oral evidence was not only marked by material contradictions but also by an absence of corroborating evidence.

6.1 Firstly, the claim was in respect of nine orders by the defendants in the period 3 December 1991 to 3 June 1992. In each of the documents relating to these sales (PBD8 - 38) the sale was described as a sale to the defendants and at their risk. Not one of these documents referred to these purchases by the defendants as purchases by the defendants as agents either for Jinan Huafu or indeed for any other party.

6.2 Secondly, the defendants' own accounts for the years ending 1992, 1993 and 1994 - which the defendants' directors had signed and accepted as reflecting the true state of the financial affairs of the defendant company - showed clearly

Version No 1: 20 Nov 2026 (00:35 hrs)

that the defendants had bought the monitors as principals and for their own account. That may explain why the defendants had been dilatory in the production of their books of account, only producing these during the trial and after I had ordered production. The dilatoriness was never satisfactorily explained.

6.3 Thirdly, in an agreement entered into on 9 February 1993 (PBD-138) between the plaintiffs and the defendants, the defendants admitted that the sum claimed was payable by them to the plaintiffs. The agreement had been signed by Yang Long San and Alex Shih.

6.4 These were all contemporaneous documents. They showed clearly the true nature of the transaction - the defendants had not contracted as agents but as principals.

7. Alex Shih, in an effort to distance himself from the defendants in order to show that when he placed the orders, he could only have done so in his capacity as the general manager of Jinan Huafu, alleged that he had from as early as 1988, not been active in the defendant company. This was however contradicted again by the defendants' accounts which showed him to have drawn more than nominal directors' fees and by correspondence either he or the defendants' office had sent to the plaintiffs in which he described himself as the defendants' 'marketing director'.

8. Further, the defendants' auditor, Mr Philip Lee Nyen Fatt who impressed me with the directness and frankness of his evidence, confirmed that the defendants' own financial records at all material times showed the defendants had bought the monitors as principals and not as agents. This is what he said (Notes of evidence pages 77 and 78) :

Version No 1: 20 Nov 2026 (00:35 hrs)

> "The defendant company treated the plaintiff company as the sellers and they, the defendant company, as the buyers. From the records of the books of the defendant company, I say this was treated by the defendant company as a sale and purchase transaction because firstly, the client has actually shown the transactions as purchase entries with the corresponding as trade creditors. The trade creditors were shown in the defendant company's books as the plaintiff company. If the defendant company was merely an agent in respect of these transactions, the entries in the books would not be reflected in the manner that I have seen. If the defendant company had been a commission agent, normally the entry would only show the commission income accrued or earned by the company without taking up the obligation to pay for the goods."

9. Even more damaging to the defendants was Philip Lee's evidence that the defendants' financial records further indicated that some of the very same monitors which the defendants had bought from the plaintiffs had been on sold, not to Jinan Huafu - but to another company - Wealth South Trading Pte Ltd (12 February 1998 Notes of Evidence at page 15).

10. Philip Lee was to further contradict Alex Shih on Alex Shih's evidence that the defendant company could not have ordered the monitors for themselves as it was in the business of manufacturing zippers. This allegation was made no doubt to substantiate Alex Shih's allegation that the defendant company could not have bought the monitors for their own account. The allegation was made in paragraph 10 of his affidavit of evidence affirmed on 23 May 1997. As to this, Philip Lee, the auditor, said (22 September 1997 Notes of Evidence at page 80) :

> "The defendant company ceased manufacturing zippers in 1992."

11. The only possible documentary evidence that the defendant company could rely on in support was a fax dated 4 January 1993 (DBD-25) sent by the plaintiffs to Jinan Huafu marked for the attention of Alex Shih in which fax the

Version No 1: 20 Nov 2026 (00:35 hrs)

plaintiffs had said the amount claim was owed by Jinan Huafu to the plaintiffs. Yang Long San's explanation was that the reference to Jinan Huafu as the debtor was an error his office had made; it ought to have stated instead that the debtor was the defendant company. He said the only reason for the fax being sent to Jinan Huafu was that he had been informed Alex Shih was at Jinan Huafu's office at the time. I thought this a perfectly logical explanation particularly as no other documentation referred to the debt being owed by any party other than the defendants. This, in my judgment was confirmed by the agreement dated 9 February 1993 (which was only a month later) to which I earlier referred. Why did Alex Shih then acknowledge in this agreement that the debtors were the defendant company if they were not ? The agreement supported the plaintiffs' case of an error being made in their 4th January 1993 fax.

12. Accordingly I gave judgment to the plaintiffs on their claim.

Dated the 17th day of April 1998.

CHRISTOPHER LAU JC

Christopher Lau JC

Raymond Ng for the plaintiffs
Tan Cheow Hin for the defendants

Version No 1: 20 Nov 2026 (00:35 hrs)