IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2016] SGHC 139

Suit No 441 of 2013

Between

Shenzhen Kenouxin Electronic Co Ltd

… *Plaintiff*

And

(1) Heliyanto
(2) Express Logic Pte. Ltd.
(3) PT Mega Mandiri Batam

… *Defendants*

JUDGMENT

[Agency] — [Agent's liabilities]
[Agency] — [Third party and principal's relations] — [Contractual relations]
[Contract] — [Breach]

Shenzhen Kenouxin Electronic Co Ltd
v
Heliyanto and others

[2016] SGHC 139

High Court — Suit No 441 of 2013
Lai Siu Chiu SJ
12 – 13 April 2016

21 July 2016 Judgment reserved

Lai Siu Chiu SJ:

Introduction

1 This was a case involving the purchase of goods by Shenzhen Kenouxin Electronic Co Ltd ("the plaintiff") through an individual Heliyanto ("the first defendant") from a Singapore company called Express Logic Pte Ltd ("the second defendant") and an Indonesian company called PT Mega Mandiri Batam ("the third defendant").

2 The plaintiff is a company situated in Shenzhen, China, and is in the business of dealing in electronic parts and components, including integrated circuit chips ("chips"). Its purchasing director is one Huang Haiyan ("Huang"), otherwise known as Annie Huang. The first defendant is an Indonesian national, but is also a permanent resident of and resides in Singapore. He is a director and shareholder of a Singapore company called

KLS International Pte Ltd, a company which he set up on 2 November 2010. It is now known as Kho Industries Pte Ltd ("Kho"). Kho is involved in various trading activities, including dealing in chips. Prior to setting up Kho, the first defendant worked as a purchaser for a company called Trio-Tech International Pte Ltd ("Trio-Tech"), which also dealt in chips.

3 The second defendant was incorporated on 2 August 2011 by one Fu Qiming ("Fu"). It is also in the business of trading in electronic components, including chips. The first defendant left Trio-Tech in early 2010 after Fu approached him with an offer to work for the second defendant. The first defendant joined the second defendant in or about October 2011 and left the second defendant's services in May 2013. In the course of his dealings in the electronics industry, the first defendant became acquainted with one Leau Swee Yong ("Leau") in or around late 2010.

4 The third defendant is based in Batam Island and its business includes the supply of chips. The company's managing director is one Suprianos.

5 According to Huang, she was approached by Leau in or about 25 August 2011. Leau offered to provide the plaintiff with chips. However, because Leau travelled very often, he requested Huang to contact his partner, who was the first defendant.

6 Huang contacted the first defendant and on 17 November 2011, the plaintiff signed its first contract for US$14,208 ("the first contract") with the second defendant to purchase chips. Huang claimed she was told by the first defendant that he was the sole owner of the second defendant. The first contract was fulfilled without problems.

7 On 7 February 2012, the plaintiff signed a second contract with the second defendant to buy chips. This second contract was for US$33,000 and US$10,070 ("the second contract") and was made after the first defendant had allegedly represented to Huang that the goods were new, there was a warranty period of one year on the goods, and the chips could be returned if they had a quality problem. Huang alleged that the plaintiff received goods only for the order for US$10,070 but not that for US$33,000.

8 Huang claimed that the first defendant then agreed to refund the plaintiff its payment of US$33,000. However no refund was made. Instead, Huang alleged that the first defendant agreed to deduct the sum of US$33,000 from the next batch of chips ordered by the plaintiff.

9 When the plaintiff received the chips under the second contract for US$10,070, Huang discovered they were imitations. She claimed that this was confirmed by tests carried out for the plaintiff by China Electronic Component Center Laboratory ("China Lab") in Shenzhen in January 2013. The plaintiff then discovered that the first defendant did not own the second defendant but was only its employee.

10 Notwithstanding Huang's discovery, on 11 July 2012, the plaintiff entered into a contract with the third defendant to purchase chips in the sum of US$2,240,000.00 (the "11 July contract"). In Huang's affidavit of evidence-in-chief ("AEIC") she deposed that the contract sum was US$3,344,400.00 of which the plaintiff paid US$2,500,206.00. Neither figure is reflected in any particular contract. Huang alleged that the first defendant had guaranteed that the plaintiff would receive the goods contracted from the third defendant and had reassured her that the sum of US$33,000 paid under the second contract would be set off against the purchase price under the 11 July contract. She

alleged that the first defendant had informed her that he owned the third defendant. As in the case of the first defendant's ownership of the second defendant, she said this information turned out to be false.

11 I should point out that it was only in the course of her cross-examination did Huang explain that the plaintiff's claim was for all the payments it had made to the defendants, not only under the 11 July contract but under various other contracts as well.

12 The goods under the 11 July contract, as well as four other contracts, which were not made with the third defendant but with another Indonesian company called PT Mega Aero Engineering ("Mega Aero"), were delivered to the plaintiff on 2 November 2012. According to Huang, the goods were all fake. The plaintiff contacted the first defendant and he said he would find out from his Indonesian counterparts what happened.

13 By this time, Huang decided she would pay a visit to the first defendant. Huang arrived in Singapore on 7 November 2012. She met the first defendant who came to pick her up at the airport. The first defendant helped her to check into a hotel. On the morning of 8 November 2012, Huang met the first defendant at his office (the "8 November meeting"). She alleged that the first defendant (who denied it) agreed to refund all the plaintiff's payments and on the day itself, he agreed to pay US$374,000.00. The first defendant further promised to return US$2,159,206.00 to the plaintiff the following day.

14 As proof of her allegation, Huang exhibited in her AEIC (at HHY-1) a note handwritten by the first defendant. The note states:-

> We will transfer a total of $2159206 USD to Saoig International Limited (Ms Annie Huang) on Friday sent over T/T receipt. Will T/T $374,000 USD today.

MEGA MANDIRI BATAM

Heliyanto (signed).

The court will henceforth refer to the handwritten note as "the settlement agreement". In cross-examination, Huang explained that for the purpose of US dollar remittances, the Hong Kong company called Saoig International Limited was used by the plaintiff as it has a US$ account.

15 On the afternoon of 8 November 2012, Huang received from the first defendant a copy of his remittance request to CIMB Bank ("the remittance request") for the sum of US$374,000.00. However she subsequently discovered that the remittance request was never processed.

16 Unbeknownst to the first defendant, Huang had recorded what transpired at the 8 November meeting. She produced the transcript at the trial (as part of her exhibit HHY-1). Huang deposed that the audio-recording confirmed that the first defendant did not deny what he had done and that he had agreed to return the plaintiff's monies.

17 She added that the first defendant had made a telephone call to someone in the midst of their conversation to impress upon her that he was indeed making arrangement to return the plaintiff's monies.

The pleadings

18 The plaintiff commenced this suit in April 2013. Its statement of claim pleaded (at paragraph 4) that the first defendant agreed to supply the plaintiff chips at the price of US$2,533,206.00 and the first defendant had requested that US$33,000.00 therefrom be paid to the second defendant with the balance (US$2,500,206.00) paid to the third defendant. In paragraph 6 of the statement

of claim, the plaintiff gave a breakdown of its claim for US$2,533,206.00. The claim related to nine contracts, beginning with the first contract for US$33,000.00, which was made with the second defendant. The remaining eight contracts, with the last contract being an order for US$50,000.00 on 31 September 2012, were all placed with the third defendant.

19 In addition to the allegation that the goods supplied by the defendants were fake, the plaintiff also alleged that the goods were not brand new and were not in original packaging. The plaintiff asserted that the first defendant had made fraudulent misrepresentations which entitled the plaintiff to repudiate the contracts under s 2 of the Misrepresentation Act (Cap 390, 1994 Rev Ed). The plaintiff asserted that it rescinded the contract in or about October 2012 and had demanded return of the sums paid of US$2,533,206.

20 At this juncture, I should point out that the plaintiff's claim in misrepresentation is now academic as, it had stated in its opening statement (at paragraph 4) that it was not pursuing that head of claim and was relying solely on the settlement agreement.

21 The plaintiff alleged that on 11 November 2012, the first defendant had agreed to refund the total sum of US$2,533,206 to the plaintiff. The plaintiff relied on the settlement agreement as evidence of the first defendant's promise to return US$374,000 that day and the balance of US$2,159,206 subsequently. Despite the first defendant's promise, the plaintiff did not receive either sum subsequently or at all.

22 The plaintiff claimed the sum of US$2,533,206.00 from the first defendant and in the alternative, the sums of US$33,000 and US$2,500,206.00 from the second and third defendants respectively. The plaintiff obtained

judgment in default of appearance against the second defendant for US$33,000 with interest and costs by an order of court dated 3 October 2013. However, it has not to-date served the writ of summons and statement of claim on the third defendant.

23 In his defence, the first defendant asserted that he did not contract with the plaintiff in his personal capacity. As for the second contract's order for US$33,000, he acted as representative and/or agent of the second defendant of which he was an employee at all material times. Furthermore, the chips supplied under this order were meant for testing and were tested to ascertain their suitability for the plaintiff' requirements, for which the chips failed.

24 As for the contracts made with the third defendant, the first defendant stated that he was not involved in any negotiations with the plaintiff leading to the conclusion of those contracts, whether in his personal capacity or on behalf of the third defendant.

25 The first defendant denied making misrepresentations to the plaintiff as alleged.

26 As for the settlement agreement, the first defendant asserted that he was representing the third defendant in the negotiations to resolve the dispute with the plaintiff. In return for the third defendant's payments of US$374,000 and US$2,500,206.00, the plaintiff had agreed to return the goods that had been delivered but failed to do so.

27 In its reply to the first defendant's defence, the plaintiff asserted that Fu knew nothing of or approved the first contract. In relation to the second and subsequent contracts, the plaintiff maintained that the first defendant was its

sole point of contact and he was the legal principal of the third defendant. The plaintiff contended that it only wanted to deal with a Singapore-based company and alleged it was only on the first defendant's assurances that he owned the third defendant that the plaintiff entered into contracts with the third defendant.

28 The plaintiff denied that the goods supplied under the second contract were meant for testing. It pleaded that as the chips were not genuine, there could not have been any proper and valid test results. The results would be irrelevant in any case.

29 The plaintiff asserted it was ready, willing, and able to return the goods delivered by the third defendant to the first defendant or to any other party that he nominated to receive them.

The issue

30 The only issue for this court's determination is whether the first defendant signed the settlement agreement personally (as the plaintiff contended) or if he did so as a representative of the third defendant, as was his pleaded case.

The evidence

31 At the outset, I should point out that the plaintiff accepted the accuracy of and relied on the notes of evidence of the trial that had been prepared by the first defendant's counsel. However, the first defendant disputed the transcripts prepared by the plaintiff of the audio-recording of the 8 November meeting.

(i) The plaintiff's case

32 Huang was the only witness for the plaintiff. In complete disregard of paragraph 4 of the plaintiff's opening statement which stated that it would not be pursuing its claim based on misrepresentation, Huang repeatedly maintained throughout her testimony that the plaintiff only entered into the contracts with the second or third defendants at the first defendant's request because the plaintiff believed his representation that he owned the two companies.

33 Huang also seemed unclear of the plaintiff's claim and it was only during cross-examination that she agreed that there was no issue with the chips delivered to the plaintiff under the first contract and for the US$10,070 order under the second contract. She disagreed that the order for US$33,000 was for chips meant for testing, insisting that the first defendant had agreed to refund the sum to the plaintiff by deducting the amount from subsequent orders placed by the plaintiff.

34 Huang was shown the second defendant's invoice dated 7 February 2012 (at AB2) which clearly stated "3 pcs of components for testing purposes" at the unit price of $11,000 per piece. She was also referred to emails sent to her by the first defendant on 4 and 7 February 2012 which specifically stated that the three chips were meant for testing purposes. Huang could only say that the testing was a matter between the first defendant and his supplier and had nothing to do with the plaintiff.

35 The plaintiff's case changed in the course of Huang's testimony. In its pleadings, it alleged that it had been supplied fake goods under the order for $33,000. In court, however, Huang claimed that the plaintiff never received the goods at all.

36 While she agreed that the plaintiff had contracted with the second and third defendants and even Mega Aero (a company that is also based in Batam), Huang maintained that it was done at the first defendant's behest. As far as the plaintiff was concerned, it only dealt with the first defendant. She claimed that the first defendant had told her over the telephone that he would be responsible for all the contracts. I would also point out that the third defendant's address given in paragraph 10 of Huang's AEIC differed from that which was stated in the plaintiff's contracts with the company. No reason was furnished by Huang for the difference.

37 Counsel for the defendants drew Huang's attention to another inconsistency. In paragraph 5 of the plaintiff' statement of claim, it was alleged that the first defendant had in a telephone conversation on or about 6 February 2012 represented to Huang that he had started the third defendant with no other shareholders. In court, however, she claimed that she only became aware of the third defendant on or about 25 May 2012 in a discussion she had with the first defendant.

38 It was noted from the documents before the court that there was a dearth of emails between Huang and the first defendant after May 2012. In cross-examination, Huang claimed it was due to the fact that they "mainly conversed over the phone".

39 Although the five contracts signed with Mega Aero in July-August 2012 bore different dates and were scheduled for delivery 10 to 12 weeks after payment of the deposit, Huang claimed all the goods were received by the plaintiff on 2 November 2012. Purely on a visual inspection, Huang said she could conclude that the goods were all fake because the chips "looked different in their sizes". Huang's allegation was not pleaded. In paragraph 7

of the plaintiff's statement of claim, the complaint was that the goods received were not brand new and did not have original packaging.

40 As for the settlement agreement (at [14]), Huang disagreed that the words "MEGA MANDIRI BATAM' above the first defendant's signature meant he was signing on behalf of the third defendant.

41 It is noteworthy that the various test reports of China Lab to support the plaintiff's allegation that the goods were fake showed that China Lab received test samples from the plaintiff on 15 and 26 January 2013 and they were tested on 16 and 28 January 2013 respectively. The tests were conducted well after the plaintiff received the allegedly fake chips under the order for US$10,070 in or about February 2012. Further, the test results did not state that the size of the samples were deficient as Huang complained (see above at [39]).

42 During cross-examination, Huang said that in addition to the size, the pins of the goods received by the plaintiff were also different and fewer in number than what was specified in the plaintiff's contracts. Although she claimed to have taken photographs of the fake goods with her handphone camera, Huang inexplicably did not send them to the first defendant even though she claimed to have telephoned him upon discovery of the fake goods. Her excuse for her omission was that she was then in China while he was in Singapore, they had arranged to meet in Singapore on 7 November 2012, and he had admitted the goods were fake during their telephone conversation. Her oral testimony to this effect was missing from her AEIC.

43 Despite the fact that the plaintiff relied wholly on the settlement agreement for its claim, Huang's AEIC made no mention whatsoever of her

follow-up with the first defendant after the 8 November meeting when the promised payment of US$374,000 did not materialise. In court, however, she claimed that she stayed on in Singapore for another night after 8 November 2012 (according to her hotel bill) to try to recover the plaintiff's money from the first defendant. but failed to do so.

(ii) the first defendant's case

44 The first defendant was the only witness for his case. He testified that the order for US$33,000 was to enable the plaintiff to ascertain the suitability for the plaintiff's purpose of the three chips to be tested. The plaintiff had initially wanted to place an order for US$1m worth of that particular chip. The first defendant was apprehensive and advised the plaintiff not do so without first testing the integrity of the chips, as the second defendant could not furnish a guarantee that the chips would suit the plaintiff's purpose. The tests proved the chips were unsuitable. Hence, the plaintiff did not subsequently place orders for that particular chip.

45 After the conclusion of the second contract between the plaintiff with the second defendant, the first defendant said he continued sourcing for chips for the plaintiff. Unfortunately, the chips he sourced for Huang between March and May 2012 did not meet the plaintiff's expectations as they were either too expensive or too old. Consequently, he introduced Huang to the third defendant's managing director, Suprianos (whom Huang denied meeting or knowing), after which he played no part in their negotiations.

46 The first defendant pointed out that in relation to the third defendant's contracts amounting to US$2,500,206, he was not even involved as a representative for the third defendant because the parties dealt with each other

directly. That was why after May 2012, there was no email communication between Huang and the first defendant.

47 The first defendant went further in his AEIC to produce a table (in exhibit H-9) showing the emails he exchanged with Huang on the types and models of chips that resulted in: (i) contracts between the plaintiff and the third defendant; (ii) no contracts between them and (iii) eight contracts dated 8 and 16 August 2012 between the plaintiff and the third defendant for models of chips on which he had not discussed with Huang.

48 The first defendant deposed that in October 2012, he was contacted by Suprianos (who was in Jakarta) who informed him that a dispute had arisen between the third defendant and the plaintiff. Suprianos requested for his help to negotiate an amicable settlement between the parties. As the first defendant speaks Mandarin and had previous dealings with Huang, he agreed to help the third defendant. Suprianos told him Huang was coming to Singapore and instructed him to meet up with her. This resulted in the 8 November meeting. He had paid for Huang's hotel accommodation for which he claimed reimbursement but he could not recall if he was reimbursed by the third defendant.

49 The first defendant identified the following contracts as the ones in dispute:

	Date	**Contract No.**	**Amount (US$)**
1	11/7/2012	KNX12071101	2,240,000.00
2	01/8/2012	KNX12080101	540,000.00
3	03/8/2012	KNX12080301	300,000.00
4	08/8/2012	KNX12080801	106,300.00
5	16/8/2012	KNX12081601	158,100.00
			3,344,400.00

50 Until he was contacted by Suprianos, the first defendant's evidence was that he was not aware of the dispute between the plaintiff and the third defendant.

51 It was the first defendant's evidence that he was on the telephone talking to Suprianos at the 8 November meeting, as it was on the latter's instructions that he met Huang. While Huang's AEIC ended with the 8 November meeting, the first defendant's AEIC went on to depose that the third defendant did not proceed with the settlement agreement subsequently because Suprianos suspected that the genuine chips supplied by the third defendant had been replaced with fake ones by the plaintiff who then sent the fake chips for testing by China Lab.

52 At the 8 November meeting, the first defendant recalled calling Suprianos twice to obtain his instructions and perhaps calling Suprianos' secretary once. However, he was unable to substantiate his evidence in this regard as he claimed to have sold off the Blackberry device that he had then used for his telephone calls and emails. He had conveyed to Suprianos the plaintiff's complaint that the goods supplied by the third defendant were not genuine. He had also conveyed Suprianos' request to Huang that the plaintiff should return the third defendant's goods and the latter would refund the plaintiff's payment.

53 The first defendant testified that Huang had pressurised him at the 8 November meeting and she refused to end the meeting unless she received some form of settlement. After consulting Suprianos, the first defendant was instructed to write and sign the settlement agreement. The wording was sent to his Blackberry by Suprianos. He had then prepared the remittance request and sent it to Suprianos.

54 However, on the following day, Suprianos informed the first defendant that he had changed his mind and would not be making payment to the plaintiff in accordance with the settlement agreement.

55 Although the first defendant was aware by 9 November 2012 that the third defendant did not intend to abide by the terms of the settlement agreement, the first defendant's surprising response to Huang's repeated reminders sent to him in November 2012 on the non-payment of the first instalment of US$374,000 was (on 27 November 2012) "Sorry. The bank account do not have sufficient balance, hence the fund did not go through". When cross-examined, the first defendant could not recall sending the message after first attempting to deny he was the sender. The court was perplexed as to why he carried out the charade.

56 The first defendant disclosed that his relationship with Suprianos had soured after he requested that the latter pay his legal fees in these proceedings and provide him with documents (which included notes he had taken at the 8 November meeting). As a result, the first defendant was unable to substantiate his claim that he holds 1% share in the third defendant and is a director of the company.

The findings

57 There were many inconsistencies in the plaintiff's case that raised grave doubts as to the veracity of its claim. As pointed out earlier, Huang was also not a credible witness. Her oral evidence departed from her AEIC on more than one occasion (see above at [35]) and was often inconsistent with the documents before the court. Although she claimed only to understand simple English, it was Huang's own evidence during re-examination that whenever she received emails in English from the first defendant, she would use

translation tools readily available on websites to translate the messages into Mandarin. That meant that Huang fully understood what the first defendant told her. That further meant she was aware that the plaintiff entered into contracts not with the first defendant but with the second and third defendants as well as with Mega Aero.

58 At one stage, the court was prompted to point out to Huang the inconsistency in her testimony. This related to the contract with Mega Aero dated 19 July 2012 for US$150,000. By then the issue of the fake goods (according to the plaintiff) under the second contract (US$33,000) was already known. Indeed, Huang had already requested a refund of the sum. Yet, the plaintiff was willing to contract with Mega Aero. In response, Huang claimed the plaintiff had not then tested the chips under model no. 432i (for the contract for US$10,070) and added that the first defendant had told her the sum of US$33,000 would be repaid.

59 Huang's repeated excuse when confronted with contracts that the plaintiff had entered into with the third defendant was that the plaintiff did so at the first defendant's behest – Huang testified she understood the company (like the second defendant) belonged to the first defendant and that he remained liable under the contracts. That excuse is hardly credible for someone who has acted as purchasing director for some seven to eight years (according to Huang's own testimony) on behalf for the plaintiff and entered into many contracts with its suppliers. Even if Huang was correct in saying that the first defendant wanted the plaintiff to sign contracts with third parties rather than himself, the plaintiff could have refused. There was nothing to stop the plaintiff from choosing not to enter into contracts with the second and third defendants. After all, as the buyer, the plaintiff was in a position to dictate its terms to its sellers.

60 As for Mega Aero, there was no explanation at all from Huang as to why the plaintiff contracted with this company. After all, this was not an instance where she could use the excuse that the first defendant told her he owned the company. Equally unconvincing was Huang's testimony that she had telephone conversations instead of emails after May 2012 (as was their previous means of communication) pertaining to the five contracts listed in [49]. That explanation is untenable given the technical specifications of the chips ordered by the plaintiff and the financial risks for both sides if the wrong chips were supplied by mere oral orders placed over the telephone. The omission of emails must be due to the fact that the plaintiff dealt directly with the third defendant and that the first defendant was not involved.

61 As such, the court rejects the plaintiff's closing submission that the first defendant was at all times the contracting party despite the fact that the contracts were made in the names of the second and third defendants. In this regard, the following passage from Peter Watts & F M B Reynolds, *Bowstead and Reynolds on Agency* (Sweet & Maxwell, 20th Edition, 2014) ("*Bowstead and Reynolds on Agency*") at para 9-036 cited by the first defendant is apposite:

> The question whether the agent is to be deemed to have contracted personally, in the case of a contract in writing other than a deed, bill of exchange, promissory note or cheque, *depends upon the intention of the parties, as appearing from the terms of the written agreement as a whole, the construction of which is a matter of law* (emphasis added).

I would add that the plaintiff's statement of claim did not plead that the corporate veil of the second and third defendants should be lifted so as to make the first defendant personally liable for the plaintiff's claims against the two companies.

62 Consequently, the cases cited by the plaintiff on the interpretation of contracts namely, *Bakery Mart Pte Ltd (in receivership) v Sincere Watch Ltd* [2003] 3 SLR(R) 462, *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 and *Tribune Investment Trust Inc v Soosan Trading Co Ltd* [2000] 2 SLR(R) 407, have no relevance. In this regard, I accept the first defendant's submission that the parol evidence rule encapsulated in ss 93 and 94 of the Evidence Act (Cap 97, 1997 Rev Ed) precludes the admission of any oral evidence that would contradict the terms of the written contracts. The two sections state:

> 93 When the terms of a contract or of a grant or of any other disposition of property have been reduced by or by consent of the parties to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property or of such matter except the document itself, or secondary evidence of its contents in cases in which secondary evidence is admissible under the provisions of this Act.
>
> 94 When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 93, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms subject to the following provisions: …

63 What the court also found amazing was Huang's unyielding attitude even when the evidence presented contradicted her/the plaintiff's position. An example would be the plaintiff's claim against the second defendant for failing to deliver chips worth US$33,000 under the second contract. The second defendant's tax invoice to the plaintiff dated 7 February 2012 clearly stated 3 pcs of components for testing purposes. Those chips were indeed tested thereby damaging them beyond repair/use. Huang's attempt to distance the

plaintiff from the tests on the basis that it was a matter between the first defendant and his supplier was unmeritorious.

64 With regard to the tests conducted by China Lab, those tests were carried out because (according to Huang) the plaintiff's lawyers had advised that proof was required to support its allegation that the chips delivered by the third defendant were fake. Yet no representative from China Lab was called to testify on the test results. Consequently, the tests results had no probative value whatsoever and the plaintiff's allegation that the chips were fake remained an unsubstantiated allegation. The court is not prepared to accept Huang's testimony that she could tell from a visual inspection that the chips were fake. She had also changed her testimony with respect to whether she had or had not forwarded the photographs she had taken of the fake chips to the first defendant. The numerous inconsistencies in her testimony warranted the court's finding that Huang was an unreliable witness.

65 The plaintiff had received the chips it purchased albeit fake (according to its case). The law pertaining to sale of goods provides that the buyer's remedy in such instances is to claim damages for breach of contract. Here, the plaintiff is claiming the return of all monies that it had paid to the second and third defendant for selling allegedly fake chips. Yet, the plaintiff retains the chips and until the matter was raised by the third defendant, gave no indication that it was willing to return them to whoever the first defendant nominated.

66 This was a case where if the court rejected the evidence of one side, the other side's version of events ought to have prevailed. Here, the court had some reservations on the first defendant's version of events as highlighted in one instance at [55].

67 However, since the plaintiff is relying solely on the settlement agreement for its claim, whatever doubts the court may entertain on some aspects of the first defendant's case are irrelevant as the focus is on the document itself.

68 As stated earlier at [30], the only issue is whether the first defendant signed the settlement agreement personally or on behalf of the third defendant.

69 The court is mindful that the first defendant was unable to produce evidence to support his position that he had consulted Suprianos during the meeting with Huang on 8 November 2012. Neither could he substantiate his claim that he was a 1% shareholder of the third defendant. Even so, Huang's AEIC confirmed that the first defendant did telephone someone in the course of his negotiations with her.

70 Huang's version of what was said in the first defendant's telephone call was set out earlier at [17]. This court is of the view that her version is unlikely to be true. It is common ground that the first defendant only spoke to Huang in Mandarin whereas the first defendant's conversation with Suprianos would have been in the Indonesian language, which Huang could not have understood. Even if it was in English (which is unlikely), Huang by her own evidence would not have fully understood the conversation. Although he did not inform Huang that he was calling Suprianos, it is more likely than not that the first defendant spoke to the latter. It bears remembering that Suprianos used the first defendant as an intermediary to negotiate with the plaintiff/Huang because the latter could speak Mandarin.

71 I arrive at the above conclusion because there was no reason for the first defendant to have met Huang otherwise. His unwavering evidence was

that he never contracted with the plaintiff personally. The court had found at [61] that the plaintiff contracted with either the second or third defendants. Why then would the first defendant want to meet Huang on his own accord? It would most likely have been because Suprianos requested him to do so. If he was representing the third defendant, the first defendant would need to inform Suprianos of the proposals put forward by Huang and obtain the latter's response thereto. Hence the telephone calls to Suprianos and Suprianos' secretary.

72 It follows that if the first defendant did not enter into any of the contracts personally, there was no reason for him to make himself personally liable under the settlement agreement. That was the reason why he wrote the third defendant's name on the document before he appended his signature beneath (see above at [14]).

73 At law, an agent is not personally liable on contracts made by its disclosed principle. In this regard, the defendant cited the following passage from *Bowstead and Reynolds on Agency* at para 9-001:

> In the absence of other indications, when an agent makes a contract, purporting to act solely on behalf of a disclosed principal, whether identified or unidentified he is not liable to the third party on it. Nor can he sue the third party on it.

74 Finally, the fact that Huang secretly recorded proceedings at the 8 November meeting meant that the court must be circumspect in accepting the accuracy of the transcript prepared by the plaintiff. Simply put, Huang was in a position to steer the conversation in the direction she wanted.

Conclusion

75 There was no legal basis for the plaintiff to make a personal claim against the first defendant on contracts it had entered into with the third defendant. Consequently, the plaintiff's claim against the first defendant is dismissed with costs to be taxed in a standard basis unless otherwise agreed.

Lai Siu Chiu
Senior Judge

Roy Yeo and Sankar Saminathan (Sterling Law Corporation) for the plaintiff;
Moiz Sithawalla, Teng Po Yew, and Zara Chan (Tan Rajah & Cheah) for the 1st defendant.