IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2018] SGHC 73

Suit No 44 of 2016

Between

MATTHEWSDANIEL INTERNATIONAL PTE LTD

… *Plaintiff*

And

KITH MARINE & ENGINEERING SDN BHD

… *Defendant*

JUDGMENT

[Agency] — [evidence of agency]
[Contract] — [contractual terms] — [admissibility of evidence]
[Contract] — [contractual terms] — [parol evidence rule]

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v
Kith Marine & Engineering Sdn Bhd

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9, 10 January 2018

28 March 2018 Judgment reserved.

Andrew Ang SJ:

Introduction

1 This is a claim brought by the plaintiff, MatthewsDaniel International Pte Ltd against the defendant, Kith Marine & Engineering Sdn Bhd, for three unpaid invoices amounting to a total of USD 130,642.33. The plaintiff is also claiming interest on the unpaid sums amounting to a total of USD 52,051.02, calculated based on a formula found in the plaintiff's standard terms and conditions of service ("plaintiff's Standard Terms").

2 The invoices were issued by the plaintiff for marine warranty survey services that it had provided in relation to the transportation of two oil rigs. The sole matter in dispute is who the parties to the contract for the provision of those services were. The plaintiff's case is that the contract was made between itself and the defendant in its personal capacity. The defendant's case, on the other

hand, is that it was merely contracting with the plaintiff as *agent* for the representatives of the owners of the oil rigs, namely, Dragon Offshore Industries LLC ("Dragon"). Therefore, the defendant claims that it is not personally liable to pay the plaintiff under the contract.

Facts

The parties

3 The plaintiff is a Singapore incorporated company in the business of, *inter alia*, providing marine warranty survey services for the transportation of oil rigs. The defendant is a Malaysia incorporated company in the business of providing ship related services, such as ship repair and conversion, and tank cleaning and coating.

Background to the dispute

The genesis

4 On 29 August 2013, the defendant's General Manager, Mohamed Taib Bin Abdullah ("Taib"), received an email from Amir Ghaffari ("Ghaffari"), a Project Manager from Dragon.[1] Dragon was acting as the agent for Amar Offshore S.A. ("Amar"), the owner of an oil rig named Trident VI. Trident VI was later renamed "United 1". For the avoidance of confusion, I shall refer to this oil rig as the First Rig.

5 This email contained a request by Dragon for the defendant to provide towing services for the First Rig. It was further specified in the email that as part of the provision of the towing services, the defendant would have to procure

[1] Affidavit of Mohamed Taib Bin Abdullah dated 24 November 2017 ("Taib's Affidavit"), MT-1, p 42.

the requisite marine warranty surveyor's clearance.

6 On 6 September 2013, the defendant received a further request for towing services to be provided, in relation to a second oil rig known as "GSF 134" ("the Second Rig"). Dragon was also acting as agent for the owner of the Second Rig, namely, Teras Harta Maritime Ltd ("Teras"). The scope of the towing services to be carried out in relation to the Second Rig also included obtaining the requisite marine warranty surveyor's clearance. The First and Second Rig shall hereinafter be collectively referred to as "the Rigs".

7 Concurrently, Miller Insurance LLP ("Miller Insurance") had been engaged to insure the transportation of the Rigs. As part of the terms of the insurance coverage, there was a condition for a marine warranty survey to be conducted on the Rigs to determine their fitness for transportation. The plaintiff was one of the companies on the approved panel of warranty surveyors for Miller Insurance. In an email dated 10 September 2013, Miller Insurance contacted the plaintiff, informing them of the potential assignment of conducting the marine warranty survey for the Rigs.[2] The plaintiff's director, Shaik Esmail Sahib Bin Abdul Rahiman ("Shaik") replied the same day, stating that the plaintiff would be able to take on the assignment.[3] Miller Insurance thereafter provided the plaintiff with the contact details of the defendant, who it said was the representative of the owners of the Rigs.[4] Meanwhile, Dragon informed the defendant that the plaintiff would be the ones carrying out the marine warranty survey for the Rigs.[5]

2 Affidavit of Shaik Esmail Sahib Bin Adbul Rahiman dated 24 November 2017 ("Shaik's Affidavit"), SESBAR-3, p 36.

3 Shaik's Affidavit, SESBAR-4, p 39.

4 Shaik's Affidavit, SESBAR-4, p 39.

5 Taib's Affidavit, MT-1, p 51.

The formation of the contract

8 Subsequently, on 11 September 2013, Shaik and Taib spoke over the phone regarding the marine warranty survey that was to be carried out by the plaintiff on the Rigs. This discussion was followed by an email dated 11 September 2013 ("the 11 September Email"), from Shaik to Taib, copying three representatives of Miller Insurance and two other employees of the plaintiff.[6] Notably, Dragon was not copied in this email. The email contained the plaintiff's Standard Terms as well as its schedule of rates. It was undisputed that the plaintiff's Standard Terms formed part of the contract for the marine warranty survey services rendered.[7]

9 On 13 September 2013, Shaik and Taib met to further discuss the marine warranty surveys to be conducted. Also in attendance were some representatives from the Marine Department of the Johor Port. Notably, no representative of Dragon was present at this meeting. The minutes of the meeting, which were prepared by Taib and approved by Shaik, show that Shaik had informed Taib that it was the defendant who had engaged the plaintiff, and that Miller Insurance's role was merely to give the plaintiff the defendant's contact details.[8] Nothing was mentioned about the defendant acting as agent for Dragon.

10 On 17 September 2013, Taib sent an email to Shaik, copying Ghaffari from Dragon ("the 17 September Email"). The email stated as follows:

> Shaik,

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6 Shaik's Affidavit, SESBAR-5, p 114.

7 Taibs' Affidavit, para 48.

8 Shaik's Affidavit, SESBAR-7, p 122.

> Please refer email below which is self-explanatory.
>
> We will furnish the Appointment Letter/PO tomorrow.
>
> Trust the above in order and do not hesitate to call me.
>
> Regards,
>
> MTA
>
> …
>
> "QUOTE"
>
> Dear Mohamed,
>
> Please arrange a MWS with Mattews [*sic*] Daniel and get required approvals for the operation.
>
> Please keep us in the loop.
>
> "UNQUOTE"

The quoted portion at the bottom of the email was reproduced from a prior email that was sent from Ghafarri to Taib. Apart from this, nothing more specific was mentioned about the defendant being the agent for Dragon in relation to procuring the marine warranty survey services from the plaintiff.

11 On 19 September 2013, Taib, on behalf of the defendant, sent the plaintiff a purchase order for marine warranty surveys to be carried out on the Rigs ("the Purchase Order").[9] The letterhead at the top left corner of the Purchase Order displayed the defendant's company name and contact details. The box located at the bottom of the Purchase Order, above the line for "Authorised Signature", contained the company stamp of the defendant, with a corresponding signature next to it. This Purchase Order was acknowledged and duly signed by Shaik on behalf of the plaintiff. It was accepted by Taib during

[9] Shaik's Affidavit, SESBAR-8, p 129.

cross examination that there was nothing on the face of the Purchase Order that indicated that the defendant was contracting with the plaintiff on behalf of Dragon.[10]

12 Both parties did not dispute that the 11 September Email (which included the plaintiff's Standard Terms) and the Purchase Order together formed the written agreement for the provision of the marine warranty survey services in relation to the Rigs ("the Contract").

13 Upon the plaintiff's acceptance of the Purchase Order, Taib wrote to Ghaffari from Dragon on 22 September 2013 informing him of the same.[11] Ghaffari replied the same day, stating in his email:

> …[O]nce the job [is] done and you [the defendant] have received their [the plaintiff's] final invoice for two (2) rigs Lump Sum, you [the defendant] shall forward [the] same to us at cost plus 10% and then payment will be executed within 3 working days.

The services were duly rendered by the plaintiff

14 It was undisputed that in compliance with the Contract, the plaintiff rendered services to the defendant, including conducting engineering reviews of the Rigs, conducting surveys on the Rigs and reporting the same. No objections or complaints were raised by the defendant and the assignment went smoothly.

15 Subsequently, the plaintiff issued four invoices to the defendant for the services rendered under the Purchase Order (collectively, "the Invoices"):[12]

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10 NE 10 January 2018, 13:6–13:15.

11 Taib's Affidavit, MT-1, p 77.

12 Shaik's Affidavit, SESBAR-11, pp 343–358.

(a) Invoice No 14178 dated 21 October 2013 for the sum of USD 16,818.15 ("the First Invoice");

(b) Invoice No 14233 dated 27 November 2013 for the sum of USD 30,000.00 ("the Second Invoice");

(c) Invoice No 14326 dated 17 January 2014 for the sum of USD 43,641.67 ("the Third Invoice"); and

(d) Invoice No 14426 dated 25 March 2014 for the sum of USD 57,000.66 ("the Fourth Invoice").

It is undisputed that apart from the First Invoice, the other Invoices have remained unpaid to date.

16 On 24 October 2013, the defendant invoiced the owner of the Second Rig, Strategic Excellence Ltd (formerly known as Teras). This invoice was for the plaintiff's fees as stated in the First Invoice, plus an additional 10% being the defendant's "Service Charge". This amounted to a total of USD 18,499.96.[13] Pursuant to this invoice from the defendant, Strategic Excellence Ltd made full payment by way of a cheque dated 30 October 2013.

17 The defendant thereafter made full payment of the First Invoice to the plaintiff, by way of a cheque dated 13 November 2013 drawn on Standard Chartered Bank Singapore.[14]

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13 Taib's Affidavit, MT-1, p 109.

14 Shaik's Affidavit, SESBAR-13, p 369.

The defendant's difficulties in obtaining payment from Dragon

18 Beginning from as early as December 2013, the defendant sought to obtain payment from Dragon in relation to the marine warranty survey services that had been provided by the plaintiff. As was done with the First Invoice, the defendant billed Dragon based on the plaintiff's fees, plus an additional 10% for the defendant's service charge.

19 However, despite repeated attempts on the part of the defendant to obtain payment, Dragon failed to comply. When payment was still not made by the end of March 2014, Taib personally went to Dubai to meet with Ghaffari to demand payment.

20 Negotiations between the defendant and Dragon resulted in a settlement agreement dated 14 April 2014.[15] Clause 6 of the settlement agreement states that the debt that the defendant was claiming included "amounts for agency fees and other disbursements relating to the pilotage, tug services security fees, a marine warranty survey and surcharges". It should be noted that in a Statement of Accounts that was subsequently issued by Dragon to the defendant, there were two amounts, in items number 33 and 56, which corresponded to the sums under the Second and Third Invoices.[16] To my mind, it is evident that part of the debt that the defendant was claiming from Dragon was reimbursement for the plaintiff's fees in providing the marine warranty survey services.

21 Pursuant to the terms of this settlement agreement, Dragon agreed to pay the defendant USD 150,000 in full and final settlement of their claims against each other. This sum was duly paid to the defendant on 4 May 2014.

15 Taib's Affidavit, MT-1, p 142–144.

16 Taib's Affidavit, MT-1, p 146–147.

The defendant's request for the plaintiff to invoice Dragon directly

22 Curiously, despite the settlement, on 20 April 2014, the defendant received an email from a representative of Dragon, instructing the defendant to request the plaintiff to invoice Dragon directly for the marine warranty surveys that were conducted.[17] Taib replied saying that he would inform the plaintiff of these instructions.

23 This prompted a telephone conversation between Taib and Shaik on 21 April 2014, pertaining to the issue of addressing the invoices for the services rendered by the plaintiff directly to Dragon. The conversation was followed by an email from Shaik to the defendant, copying Dragon. The email stated:[18]

> Please note that our initially [*sic*] agreement was with KITH Marine with address in Singapore and *your* [the defendant's] *PO was subsequently issued*. These are the reason we agreed to undertake the job, so if there is no payment from you, we could pursue your company locally. *We have no written agreement* [with] *Dragon Offshore Industries and we do not know them*, as such we will not submit any invoice directly to them.
>
> Please note that we still hold KITH Marine responsible for all payment of our fee for the service that we have rendered on good fate [*sic*].
>
> The only way that we may consider to invoice Dragon Offshore directly, [is] if they would pay our fee in advance as per attached. Once payment of US$57,000.66 is received, then we will issue new invoice and address the same to Dragon Offshore, and issue credit note to KITH Marine. In the meantime, we still hold KITH Marine for all payment of our fee.
>
> [emphasis added]

24 The defendant did not raise any objection in response to this email from the plaintiff. Instead, on 5 June 2014, Taib sent another email to Dragon,

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17 Taib's Affidavit, MT-1, p 148.

18 Shaik's Affidavit, SESBAR-14, p 371.

copying the plaintiff, demanding payment for their invoices issued in relation to the plaintiff's fees.[19] In response, Dragon brought up the settlement agreement and reiterated that there were no commercial payments outstanding between them.[20]

The defendant's continued failure to repay

25 During the period from June 2014 to January 2015, the plaintiff sent various emails to the defendant demanding payment of the Second, Third and Fourth Invoices. In spite of this, the defendant refused to make payment. On 9 December 2015, the plaintiff's solicitors, M/s Straits Law Practice, sent a letter of demand to the defendant demanding payment of the outstanding sum under the Second, Third and Fourth Invoices.[21] The defendant's Malaysian solicitors, M/s Raman Velu & Co replied stating that their client would not be complying with the letter of demand.

26 The plaintiff therefore commenced this suit against the defendant on 18 January 2016, to claim for the unpaid sums under the Second, Third and Fourth Invoices.

The parties' cases

27 The plaintiff's case is that it had contracted with the defendant for the marine warranty survey services that it had rendered in relation to the Rigs. This is evident from the written documents that form the Contract, namely the 11 September 2013 Email and the Purchase Order. Therefore, the defendant is

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19 Shaik's Affidavit, SESBAR-15, p 374.

20 Shaik's Affidavit, SESBAR-15, p 373.

21 Shaik's Affidavit, SESBAR-18, p 416.

liable for the unpaid sums under the Second, Third and Fourth Invoices.

28 The defendant's case, on the other hand, is that they had issued the Purchase Order to the plaintiff for and on behalf of Dragon, as Dragon's agent. They rely on the 17 September Email, to assert that the plaintiff must have been aware that the Contract was always understood to be between the plaintiff and Dragon, and that the defendant was merely acting as an agent. Accordingly, the defendant is not liable to make payment of the Second, Third and Fourth Invoices.

29 Additionally, the defendant asserts that Dragon had ratified the Contract, thereby allowing Dragon (the purported principal) to adopt the defendant's (the purported agent) past acts. Therefore, the defendant argues that it is Dragon which should be liable for the unpaid sums, and not the defendant.

Issues to be determined

30 In order to ascertain if it is the defendant or Dragon that should rightfully be liable under the Contract, these are the issues that have to be determined:

(a) whether, as a matter of law, the defendant is personally liable under the contract, given that there was no qualification that it was acting as agent when it affixed its signature and company stamp on the Purchase Order;

(b) whether extrinsic evidence can be adduced to contradict what is stated in the Contract; and

(c) whether Dragon's subsequent ratification of the Contract absolves the defendant of liability.

Issue 1: whether the defendant should, as a matter of law, be personally liable under the Contract given that its signature was unqualified

31 It is clear on the face of the Purchase Order that the defendant's signature under the company stamp was unqualified. As stated above, Taib himself accepted during cross-examination that there was nothing on the face of the Purchase Order to indicate that the defendant was contracting on behalf of Dragon and not in its personal capacity. Therefore, the issue to be determined is whether, as a matter of law, the defendant is necessarily liable under the Contract given that it contains the defendant's unqualified signature.

32 The law of agency places very specific emphasis on the manner in which a purported agent affixes his or her signature to a contract. In particular, where a written contract, objectively construed, does not indicate in clear terms that the signatory is contracting on behalf of someone else, the signatory will be taken to be personally liable under the contract.

33 This general principle is clearly set out in Prof Tan Cheng Han, *The Law of Agency* (Academy Publishing, 2010) ("*The Law of Agency*") at para 09.004:

> It may also be the case that an agent, *despite intending to act as agent only, enters into a contract in such a manner as to be personally liable under it to the exclusion of the principal.* This may arise because ***the agent has not contracted in a manner that makes it clear that he is only acting on behalf of another person with no personal liability whatsoever***. **Thus, *under an objective interpretation of the contract, he, and only he, is regarded as a party to it.*** *It does not matter that he intended something else as the law deems that he intends the consequences of what he has entered into, objectively construed.* [emphasis added in italics and bold italics]

34 In support of this proposition, Prof Tan cites *Teheran-Europe Co Ltd v S T Belton (Tractors) Ltd* [1968] 2 QB 53 (QBD) at 59–60 and *Gadd v Houghton*

(1876) 1 Ex D 357 at 360. Both these cases show that in determining the proper parties to a contract, the names of the signatories to the written contract are a very strong *prima facie* indication as to who the contracting parties are. The cases further emphasise that where the agent did not intend for personal liability to attach to him, there must be a very clear indication of such an intention. For example, the signature must be claused "as agents only" or something to similar effect.

35 In the more recent English Court of Appeal decision of *Internaut Shipping GmbH and Sphinx Navigation Limited of Liberia v Fercometal Sarl (The Elikon)* [2003] 2 Lloyd's Rep 403 ("*The Elikon*"), the Court reiterated this principle, in coming to a decision on who the proper parties to a charterparty were. Internaut Shipping GmbH ("Internaut"), a small broking firm, had signed a charterparty for the vessel The Elikon under the heading "Owners", without any qualification. In actual fact, it was Sphinx Navigation Limited of Liberia which was the registered owner of The Elikon.

36 Nevertheless, the Court held that Internaut was personally liable under the charterparty. Rix LJ, in delivering the leading judgment of the Court, considered three English precedents and concluded at [46]:

> What remains, however, is that in all three cases *a party who was expressly said in the body of the contract to be an "agent" or to be acting on behalf of a principal was nevertheless adjudged to have personal liability* in circumstances where, again in all three cases, *the agent signed without qualification*. This permits the extraction of a principle, which in my view can be found stated as at least part of the reasoning in those cases that ***the way in which a party named in a contract signs that contract may be of particular strength in the overall question of whether he is a party to that contract with personal liability under it***. [emphasis added in italics and bold italics]

Therefore, it was held at [51] that because Internaut had signed the charterparty without any qualification, its liability was firmly established.

37 Rix LJ went on to elucidate at [53] the rationale for paying particular attention to *the form of the signature*:

> [I]t reflects the commercial facts of life, the promptings of *commercial common sense*. The signature is, as it were, the party's seal upon the contract; and that remains the case even where, as here, the contract has already been made… Prima facie *a person does not sign a document without intending to be bound under it, or, to put that thought in the objective rather than subjective form, without properly being regarded as intending to be bound under it*. [emphasis added]

Indeed, in the realm of contract where intention is paramount, an unqualified signature affixed to a contract should be taken as an objective indication of the signatory's intention to be bound. To hold otherwise would be to derogate from contractual certainty, which would in turn affect commercial certainty. To my mind, this rationale holds with equal force in the present case, and I see no reason not to accept this principle as good law.

38 A similar matter was previously considered by the Singapore High Court. In *Todd Trading Pte Ltd v Aglow Far East Trading Pte Ltd* [1997] 1 SLR(R) 494 ("*Todd Trading*"), the plaintiff claimed damages from the defendant for breach of contract. The defendant's main defence was that it was acting as an agent for a *disclosed* principal buyer, and thus it should not be held liable as buyer under the contract.

39 Kan Ting Chiu J held at [37] that the disclosure of a principal does not *ipso facto* release the agent from liability. The disclosure alone is not, without more, evidence of the party's intention to be absolved of personal liability under

the contract. Given that there was nothing in the agreement, nor in the conduct of the parties, that suggested that the defendant did not intend to contract personally, the defendant was accordingly held to be personally liable to the plaintiff.

40 The defendant in the present case has sought to argue that in the course of its dealings with the plaintiff, it had always made known that it was acting as agent for Dragon. At this point, I note that the plaintiff, in its closing submissions, has argued that at the point of contracting, the defendant had never informed them of the existence of Dragon.[22] Therefore, at best, Dragon was an *undisclosed principal*. In this regard, I would disagree with the plaintiff. To my mind, the 17 September Email was sufficient to give notice to the plaintiff that the defendant and Dragon had an agency relationship. Therefore, at the point of the conclusion of the contract on 19 September 2013, when the plaintiff acknowledged the Purchase Order, Dragon was in fact a *disclosed principal*.

41 Be that as it may, I agree with Kan J's holding in *Todd Trading*, that the defendant's disclosure of Dragon as its principal does not *ipso facto* release it from liability. On the face of the Contract, there is nothing to suggest that the defendant did not intend to contract personally, given that the signature under the company stamp was unqualified. Therefore, the defendant should be personally liable under the Contract, notwithstanding that it had disclosed its principal.

42 I would answer Issue 1 in the affirmative.

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22 Plaintiff's Closing Submissions, para 4(c).

Issue 2: whether extrinsic evidence can be adduced to contradict what is stated in the Contract as to who the parties are

43 The defendant relies on the 17 September Email (see [10] above) to assert that the plaintiff must have known that the Contract was to be between the plaintiff and Dragon, and that the defendant was therefore not personally liable. However, this contradicts what is expressly stated in the Purchase Order. Accordingly, the next issue that I have to consider is whether extrinsic evidence, in the form of the 17 September Email, can be adduced to contradict the express terms of the Contract.

44 In general, the courts do not allow extrinsic evidence to be adduced to contradict or reinterpret the express terms of a contract where these terms are clear and unambiguous. The Court of Appeal in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 stated at [116] that where the "contractual language … was plain and unambiguous in reference to the existing facts", extrinsic evidence should not be adduced to contradict the clear terms.

45 More specifically, in the context of agency, Article 100(1) of *Bowstead & Reynolds* (Peter G. Watts gen ed) (Sweet & Maxwell, 20th Ed, 2006) ("Bowstead") at para 9–039 states:

> Where it is *clear from the terms of a written contract* made by an agent *that he contracted personally*, *extrinsic evidence is not admissible to show that*, notwithstanding the terms of the contract, *it was the intention of the parties that he should not be personally liable on it*, because such evidence would be contradictory to the written contract. [emphasis added]

46 Similarly, it is stated in Sir Kim Lewison, *The Interpretation of Contracts* (Sweet & Maxwell, 6th Ed, 2015) ("Lewison") at para 10.07 that:

> Extrinsic evidence is admissible to identify the parties to a contract, by way of exception to the parol evidence rule. However, although evidence is admissible to identify parties to a contract, *where the parties are specifically named in a written contract, evidence is not admissible for the purpose of showing that others (who were not named) were also parties to the contract*. [emphasis added]

47 I would note parenthetically that the commentary to Art 100(1) of Bowstead (at para 9–040) states that although extrinsic evidence may not be adduced to *delete* an apparent contracting party, it may be adduced to *add* a party. This "addition" might occur in situations where, for example, the liability of the principal has to be established in addition to that of the agent. A more stringent view is taken in Lewison at para 10.07, which states that where the contracting parties have been specifically named in the contract, evidence is *not admissible* to show that others (who were not named) were also parties to the contract. Therefore, on this approach, it appears that extrinsic evidence cannot even be adduced to "add" a party to the contract. However, the defendant in the present case is seeking to adduce extrinsic evidence to absolve itself of liability under the Contract or, in other words, delete itself as a party to the Contract. Therefore, there is no need for me to comment on whether I prefer the approach taken by Bowstead or Lewison, given that both textbooks are in agreement that extrinsic evidence cannot be used to delete an apparent contracting party.

48 This position is also reinforced by the House of Lords decision of *Shogun Finance Ltd v Hudson* [2004] 1 AC 919 ("*Shogun Finance*"). In that case, a car dealer agreed to sell a car on hire-purchase to a fraudster who falsely claimed to be the person named in the driving license which he produced. The claimant hire-purchase company approved of the sale upon completing satisfactory credit checks on the person named on the driving license. The hire-purchase agreement was subsequently concluded, with the "hirer" on the

agreement identified as the person named on the driving license. The fraudster took possession of the car, and subsequently sold it to the defendant, who purchased it in good faith. The claimant thereafter brought the suit to claim the return of the car from the defendant.

49 A majority of the House of Lords found in favour of the claimant, on the basis that the fraudster never had good title to the car, and hence could not have passed good title to the defendant. In reaching that conclusion, the majority held that the agreement should be construed based on what was *expressly stated in the hire-purchase agreement*. The purported contract between the fraudster and the claimant was constituted by the hire-purchase agreement, under which the hirer was stated to be the person named on the driving license, and not the fraudster. Extrinsic evidence could not be adduced to contradict the terms of the written agreement so as to find that the fraudster had been the true hirer, instead of the person named on the driving license. Accordingly, title to the car was never transferred to the fraudster.

50 There is no ambiguity in the Contract in the present case. The defendant was signatory to the Purchase Order without qualification or equivocation. Accordingly, no extrinsic evidence is admissible to relieve it of liability under the Contract. I therefore answer the second issue in the negative.

The equivocality of the 17 September Email

51 I would add that even if I had found that extrinsic evidence was admissible, I do not think that the 17 September Email is sufficient to prove that the plaintiff had absolved itself of liability under the Contract. It is true that the defendant had copied Dragon in the 17 September Email. The Email also quoted Dragon's earlier email to the defendant, where Dragon had instructed the

defendant to procure marine warranty surveys for the Rigs, and to keep them "in the loop". All that this demonstrates, is that the plaintiff should have known of Dragon's existence, and that they were the ones instructing the defendant to procure services from the plaintiff. It does not, however, go as far as to demonstrate that the plaintiff must have known that they were contracting with Dragon as opposed to the defendant.

52 The more reasonable interpretation that the plaintiff would have taken was that the defendant would personally procure the marine warranty survey services from the plaintiff, and subsequently seek a reimbursement of the cost from Dragon. This arrangement was in fact borne out on the evidence, as seen from how the defendant invoiced Dragon for the fees charged by the plaintiff plus an additional 10% service charge (see [18] above). Furthermore, payment for the First Invoice was made by the defendant directly from their own bank account (see [17] above). Therefore, even if I had allowed extrinsic evidence to be adduced, the 17 September Email is equivocal at best, and it does not bring the defendant's case very far.

Issue 3: whether Dragon's subsequent ratification of the Contract absolves the defendant of liability

53 In its closing submissions, the defendant relies on the email dated 20 April 2014 (see [22] above), in which they were instructed by Dragon to request the plaintiff to forward the invoices for the services rendered directly to Dragon, to demonstrate that Dragon had ratified the Contract.[23] Hence, the argues that Dragon should held liable under the Contract. In my view, this is a misapplication of the doctrine of ratification.

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[23] Defendant's Closing Submissions, pp 28–29.

54 It is trite law that ratification is used when a principal wishes to take the benefit of an unauthorised act done by his or her agent. Ratification allows the principal to retrospectively clothe the agent with authority, such that the agent is taken to have been authorised from the outset (see *The Law of Agency* at para 06.004).

55 The defendant's case has never been that it *lacked authority* to enter the Contract on behalf of Dragon. Neither has the plaintiff sought to argue that the defendant lacked authority to contract on behalf of Dragon. On the contrary, the defendant's entire defence is predicated on the assertion that they have always had *actual authority* to contract with the plaintiff on behalf of Dragon. Therefore, even if I accept that Dragon had validly ratified the Contract, thereby clothing the defendant with actual authority to act on its behalf, the question would still remain whether the defendant had made it sufficiently clear in the written documents that it did not intend to be personally liable under the Contract. For the reasons already stated above, I find that the written documents constituting the Contract unequivocally demonstrate that the defendant had entered into the agreement with the plaintiff in its own personal capacity. Accordingly, my decision remains unchanged.

Interest payable by the defendant

56 There is one final issue that I have to address, that being the interest payable by the defendant on the unpaid invoices. The parties do not dispute that the plaintiff's Standard Terms form part of the Contract. Therefore, clause 5.2 of the plaintiff's Standard Terms is relevant. It states:

> 5.2 Payment of fees are due within 30 (thirty) days of the invoice date. Company reserves the right to charge interest at a rate of 1% per month on invoices remaining unpaid after 30 (thirty) days.

57 However, the Purchase Order, which was sent subsequent to the plaintiff's Standard Terms and duly acknowledged by the plaintiff, provides for payment terms of 90 days instead. In my view, this represented a valid counteroffer from the defendant and it was accepted by the plaintiff. However, given that no counteroffer was made with regard to the interest that would be charged after the expiry of the payment period, the interest rate as provided for in clause 5.2 should still stand. Accordingly, interest on the unpaid invoices should be calculated at 1% of the invoiced sum per month that the invoice remains unpaid, with time to start running 90 days after the issuance of the relevant invoice. Indeed, the plaintiff had used these figures in the calculation of the interest payable. I would therefore allow the plaintiff's claim for interest in full, in the amount of USD 52,051.02.

Conclusion

58 In conclusion, I find the defendant liable under the Contract. I therefore allow the plaintiff's claim for USD 130,642.33, that being the total sum due under the Second, Third and Fourth Invoices together with interest amounting to USD 52,051.02. I will hear parties on costs.

Andrew Ang
Judge

Liow Wang Wu Joseph and Jerrie Tan Qiu Lin (Straits Law Practice LLC) for the plaintiff;
Anand S/O Thiagarajan (M P Kanisan & Partners) for the defendant.