IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2021] SGHC 35

Suit No 1174 of 2016

Between

(1) O'Laughlin Industries Company Limited
(2) O'Laughlin Corporation Limited

… *Plaintiffs*

And

(1) Tan Thiam Hock
(2) Tan Poh Suan Jacqueline
(3) Desiree Ann Derek David
(4) Pegasus Chemical Pte Ltd
(5) Koh Chiao-Jian Felicia
(6) Tan Huat Chye
(7) Tan Thiam Teng

… *Defendants*

GROUNDS OF DECISION

[Tort] — [Conspiracy]

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O'Laughlin Industries Co Ltd and another
v
Tan Thiam Hock and others

[2021] SGHC 35

General Division of the High Court — Suit No 1174 of 2016
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27 July–30 July, 3 August, 26 October 2020; 27 January 2021

10 February 2021

Lee Seiu Kin J:

Introduction

1 The present suit arises from the abuse of trust that the plaintiffs had reposed in their employee, Tan Thiam Hock (the "First Defendant"). Using his position and influence, the First Defendant concocted a web of lies and deceit, misusing goods and products belonging to the plaintiffs. When this was discovered, the plaintiffs commenced the present suit against the First Defendant, his family members and a company.

Background facts

The parties

2 O'Laughlin Industries Company Limited (the "First Plaintiff") is a company incorporated in Hong Kong and is in the business of chemicals and

ingredients used in flavours, fragrances, food, beverages and cosmetics. O'Laughlin Corporation Limited (the "Second Plaintiff") is also a Hong Kong-incorporated company that was set up in 2014 to handle several businesses and operations in place of the First Plaintiff. Mr Michael Frederick O'Laughlin ("MFO") is the chief executive officer of both companies.

3 The First Defendant was employed as the export sale executive of the First Plaintiff, pursuant to an agreement dated 20 June 2010.[1] The other defendants are related to the First Defendant in the following manner:

(a) The second defendant, Tan Poh Suan Jacqueline ("Jacqueline") is the sister of the First Defendant.

(b) The third defendant, Desiree Ann Derek David ("Desiree") is the daughter of Jacqueline and the niece of the First Defendant.

(c) The fourth defendant, Pegasus Chemical Pte Ltd ("Pegasus") was a company incorporated in Singapore on 3 July 2015. Jacqueline was the sole signatory of Pegasus' bank accounts at the material time.

(d) The fifth defendant, Koh Chiao-Jian Felicia ("Felicia") is the former wife of the First Defendant.

(e) The sixth defendant, Tan Huat Chye ("Huat Chye") is the father of the First Defendant.

(f) The seventh defendant, Tan Thiam Teng ("Thiam Teng") is the brother of the First Defendant.

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1 1AB Vol 1 p 129.

4 The factual background to this suit involves a number of other companies, as follows:

(a) Globchem Logistics Private Limited ("Globchem") was a company incorporated in Singapore on 7 March 2013 and struck off from the register of companies on 17 March 2016. Jacqueline was the sole director and shareholder of Globchem at all material times.

(b) Luxepack International Pte Limited ("Luxepack") was a company incorporated in Singapore on 8 March 2007 and struck off from the register of companies on 19 February 2016. Luxepack was operated by the First Defendant and Jacqueline, who were also the signatories of Luxepack's Standard Chartered Bank account (the "Luxepack SCB Account"). Moreover, the First Defendant and Thiam Teng were the directors and shareholders (of $1 each) of Luxepack.

The Globchem shipments

5 In early 2013, the First Plaintiff sought to store certain goods in Singapore that were intended for onwards shipment to its customers. The First Defendant recommended appointing Globchem as the logistics and warehousing agent in Singapore. The first shipment to Globchem was completed on 31 March 2013. Upon receipt of such goods belonging to the First Plaintiff, Globchem duly delivered the goods to the First Plaintiff's various customers. In turn, Globchem invoiced the First Plaintiff for its services and was paid accordingly.[2]

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[2] AEIC of Michael Frederick O'Laughlin ("MFO") Exhibit MFO-65, pp 64–110.

6 This relationship continued up until the middle of 2014, when the First Plaintiff no longer required Globchem's services. Globchem was thus requested to return the goods that it held to the First Plaintiff's factory or to ship it to the First Plaintiff's warehouse in Rotterdam. To that end, the First Defendant was tasked to send an email to Globchem on 21 July 2014, giving advance notice of the shipment of all goods from Singapore to Rotterdam.[3] Globchem, however, failed to comply with these instructions and appeared to have almost completely ceased communications with the First Plaintiff thereafter.

7 The only relevant communications produced by the parties were a series of emails dated 29 to 30 December 2014, between Jacqueline and a Mr Jackson Chan ("Mr Chan"), who worked for the First Plaintiff.[4] In this correspondence, Jacqueline had attached the stock report for November 2014 and December 2014. This appears to have detailed the inventory that was held by Globchem for the First Plaintiff, as Mr Chan had pointed out errors in the inventory report, requesting modifications by Jacqueline. Thereafter, Jacqueline had replied with the attachment titled "INVENTORY LIST (O'LAUGHLIN -Globchem Pte Ltd)- Dec 2014". The plaintiffs' evidence was that the estimated value of these goods was approximately US$623,781.21.

8 Following the failure to ship the goods to Rotterdam, the First Defendant (who was then based in Shanghai) was tasked to travel to Singapore to enquire about Globchem's whereabouts. The First Defendant then reported that Globchem had moved out of the registered office that it previously occupied. In September 2016, the plaintiffs then appointed Singapore solicitors to commence

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3 1AB 357.

4 MFO, Exhibit MFO-67 pp 130–132.

investigations into the defendants. It was discovered that on 12 November 2015, Globchem's registered address had been changed to Jacqueline's residential address.[5] Additionally, Globchem had filed an application for it to be struck off the register of companies on the very same day. It should also be noted that in the application, it had been stated that Globchem had not commenced business operations since the date of incorporation, and that it had no contingent assets and liabilities.[6] Jacqueline had also signed a resolution representing that Globchem had "been dormant and there are no assets and liabilities since 7th March, 2013, the date of incorporation".[7]

9 The First Plaintiff submitted that it had relied on the First Defendant's recommendations as the latter was the "most senior executive office for sales export".[8] Unbeknownst to the plaintiffs, Globchem appears to have been specifically incorporated on 7 March 2013 to handle the First Plaintiff's business. The First Defendant had also failed to reveal his relationship with Jacqueline, and by extension, that he indirectly controlled Globchem's operations.

The Pegasus shipments

10 On 12 May 2015, MFO received an email from one Jonathan Foo, purportedly sent on behalf of Pegasus, as follows:[9]

> Dear Sir,

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5 MFO, Exhibit MFO-69 pp 136–137.

6 MFO, Exhibit MFO-69 pp 138–140.

7 MFO, Exhibit MFO-69 pp 141.

8 PWS para 17.

9 1AB p 366.

> We are from Pegasus Chemical Pte Ltd. We have been in business for many years trading in Chemicals for Fragrance and Flavors Industry.
>
> Our main suppliers currently are from Privi (India) and Future Trading/HangZhou Crescent (China). We would like to increase the number of our suppliers and would appreciate if you could send me your product list.
>
> If you do have further queries, please feel free to email me.
>
> …
>
> Best Regards
>
> Pegasus Chemical Pte Ltd
>
> Jonathan Foo

11 When MFO failed to reply, Jonathan Foo then again followed up with an email on 18 May 2015, repeating the request. MFO responded on the same day, referring Jonathan Foo to the First Defendant and his export team to follow up on the request. Following a series of correspondence, Mr Chan then arranged on 19 May 2015 to have certain samples shipped to an address given by Jonathan Foo, at 192 Pandan Loop #06-28 Pantech Business Hub, Singapore 128381. In reply, Jonathan Foo confirmed himself as the contact person and provided his contact number.

12 This kicked off the relationship between Pegasus and the plaintiffs, following which the Second Plaintiff agreed to sell certain quantities of Kovyral, Ivernia, Ethylene Brassylte, Trigustral and Heliolal (collectively, the "Pegasus goods") to Pegasus. The plaintiff's submission is that the total value of the Pegasus goods was US$983,040, out of which only US$279,000 was ever paid. This left an outstanding amount of US$704,040.

13 On 13 January 2016, the First Defendant wrote to Pegasus, requesting payments of US$408,400 on the basis of three invoices. In his email, the First

Defendant had indicated that his "accounts dept[artment] informed" him that the invoices were "due for immediate payment".[10] On 15 January 2016, the Second Plaintiff's accountant, Ms Emily Mo ("Ms Mo") followed up with a request for payment, to which Jonathan Foo replied that his boss was away on a business trip and he could only report back at the end of the week.[11] On 18 January 2016, Ms Mo again requested for immediate payment, copying the First Defendant, only to receive a reply on 19 January 2016 that the supposed chairman of Pegasus had not approved the payment and to wait until the end of that week again. It bears mentioning that the First Defendant had replied to the 19 January 2016 email on the same day stating "[n]o problem. Just feedback to us as soon as possible".[12]

14 On 1 April 2016, the First Defendant wrote to Jonathan Foo stating that "[w]e have been chasing you for payment but have not heard back anything. As such, we have to withhold any new shipments of goods that you might require till the overdue payment are paid up to date."[13] In reply, Pegasus noted that there were issues with the quality of the Pegasus goods that had "finally been resolved" by the production team and that payment would be made by May 2016.[14] Despite this, no payment was made. The Second Plaintiff served a letter of demand on Pegasus on 18 July 2016, through an email sent by the First Defendant.

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10 1AB pp 383–384.

11 1AB pp 381–383.

12 1AB p 380.

13 1AB p 379.

14 1AB p 379.

15 In response, Desiree replied to the First Defendant on 22 August 2016 as the "owner and director of Pegasus Chemical". In her email, she alleged that the Pegasus goods were "inferior and expired" and that Pegasus would be counterclaiming for the return of its deposit and for damages. MFO personally responded proposing a meeting to negotiate a resolution despite doubting the validity of the quality issues. Desiree, however, avoided all attempts to meet up in person. Pegasus subsequently paid US$50,000 on 5 October 2016 and US$21,000 on 18 October 2016.

16 Following the plaintiffs' solicitors' investigations into the defendants, it was discovered that Pegasus was only incorporated in 3 July 2015. This was *after* Jonathan Foo's email that was sent on 12 May 2015, as above at [10]. It was also discovered that Jonathan Foo was not a real person. It was instead a pseudonym that the First Defendant utilised to communicate with MFO and the Second Plaintiff. In essence, the First Defendant was, at all times, communicating with himself, on behalf of the Second Plaintiff on the one hand and Pegasus on the other.[15]

17 Further, the plaintiffs observed that in the course of these proceedings, it was discovered that Pegasus had in fact sold the Pegasus goods to companies belonging to one Mr Mehul Sheth ("Mr Sheth"), for a total sum of US$657,150.[16]

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15 PWS para 198.

16 PWS para 37.

The confessions and commencement of proceedings

18 Having investigated the defendants, as noted above at [8] and [16], MFO confronted the First Defendant in late 2016. On 12 October 2016, the First Defendant verbally confessed to MFO that he had masterminded the incorporations of Globchem and Pegasus to receive goods from the plaintiffs for further sale to other third parties. He also admitted that the plaintiffs' goods were sold to Mr Sheth, and that Jacqueline was his sister and Desiree was his niece.

19 On 14 October 2016, the First Defendant sent the following email to MFO:[17]

> Michael,
>
> Sorry this mail went to my spam and I saw it this morning. I did not manage to convey my full thoughts and message as it was getting very late that night. If you do not mind, I would like to talk in person with you next week when you are back in Shanghai? Words cannot express my regret and broken the trust that you had in me.. I have brought this upon myself and have to face up to the consequences . It has been a living hell these past month. Saying sorry does not do justice . Hoped [*sic*] that you will allow me the opportunity to talk to you next week.
> …

20 This was followed by similar emails on 17 October 2016, twice on 18 October 2016 and on 20 October 2016.[18] In each of these emails, the First Defendant expressed his remorse, assured MFO that he was willing to take responsibility and "face up to the consequences". MFO responded on

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17 2AB pp 235–236.

18 2AB pp 232–234.

21 October 2016 requesting for details of the fraud and repayment of the monies misappropriated.[19]

21 The First Defendant voluntarily met the plaintiffs' lawyer, Mr Nicholas Narayanan ("Mr Narayanan"), on 2 November 2016.[20] At that meeting, Mr Narayanan revealed that the legal papers had already been prepared but had not been filed as MFO had a "soft spot" for the First Defendant. The First Defendant had also indicated his intention to make restitution.

22 Notwithstanding this, the plaintiffs commenced the present action on 3 November 2016 and terminated the First Defendant's employment on 8 November 2016.[21]

The Tonalid and Kovyral shipments

23 Following the commencement of the suit, the plaintiffs discovered more irregularities that the First Defendant had committed prior to his termination. Broadly, these related to two shipments: (a) from Globchem's warehouse to Karl Rapp Rotterdam B.V ("Karl Rapp") (the "Globchem-Karl Rapp shipments"); and (b) from AGX Logistics (S) Pte Ltd ("AGX Logistics") to Karp Rapp (the "AGX Logistics-Karl Rapp shipments").

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19 2AB pp 232.

20 2AB pp 240–246.

21 2AB p 247.

The Globchem-Karl Rapp shipments

24 In 2014, the First Defendant directed four batches of products termed "Kovyral" be shipped to Globchem's warehouse. The batches distributed were as follows:

(a) 75 drums of Kovyral on 26 January 2014;

(b) 80 drums of Kovryal on 27 April 2014;

(c) 80 drums of Kovryal on 27 December 2014; and

(d) 60 drums of Kovryal on 7 January 2015.

25 The First Defendant then directed Globchem to ship the first two batches, together with an additional five drums that Globchem had, to Karl Rapp on 21 July 2014. The third and fourth batches, together with an additional 20 drums that Globchem had, were also shipped to Karl Rapp on 6 February 2015 on the First Defendant's instructions. In total, 240 drums were directed for shipment to Karl Rapp, with each drum weighing 16 tons.

26 Following the First Defendant's termination, the plaintiffs ordered a test on these relevant drums (collectively, the "Globchem-Karl Rapp shipments"). It was then discovered that eight of the nine samples contained water instead of Kovryal and the remaining appeared to be heavily contaminated.[22]

27 The plaintiffs claimed that amongst the drums of genuine Kovryal held by Globchem, the First Defendant had caused 30 tons to be sold to Mr Sheth,

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22 1AB 158

through Luxepack. These sales occurred in two tranches, amounting to US$170,800 and US$195,200. Concurrently, the First Defendant had supposedly arranged for the 240 drums of genuine Kovyral to be switched to water in order to "deceive Karl Rapp".[23]

The AGX Logistics-Karl Rapp shipments

28 On 20 March 2016, the First Defendant had instructed the plaintiff's associate company, O'Laughlin Industries Inc to ship certain products for sale to Singapore customers. To this end, the First Defendant also suggested the use of local freight forwarder, AGX Logistics, which had a new warehouse and had purportedly offered to store the goods for free in return for future business.

29 On 16 May 2016, 228 drums of products termed "Tonalid", which were worth US$102,600, were therefore delivered to the warehouse of AGX Logistics. The products were further transferred as consignment goods to Karl Rapp on 11 September 2016. On 6 October 2016, however, the plaintiffs received an email from a representative of Karl Rapp, Ms Marja Versteeg ("Ms Versteeg"). In that email, Ms Versteeg claimed that the drums that were supposed to have contained the Tonalid had been repacked with sea salt instead.

30 The plaintiffs also claimed that the 228 drums of genuine Tonalid had been sold to Mr Sheth's company on 20 June 2016, through Pegasus. The purchase price of US$71,250 was subsequently remitted to Pegasus' UOB bank account on 26 September 2016.[24]

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23 PWS para 62.

24 MFO pp 287–289.

31 On board the shipment to Karl Rapp was also seven drums of Kovyral, which were worth US$13,300. Upon arrival, however, it was discovered that the drums were damaged and rusty. The plaintiff's solicitors subsequently discovered from AGX Logistics that the latter had been instructed to pick up the seven drums from Nardev Chemie Pte Ltd ("Nardev Chemie") and to deliver them to Lam Seng Hang Co Pte Ltd, together with one empty container.[25] Nardev Chemie was a customer of the plaintiffs and appeared to have rejected the seven drums earlier.[26]

32 The plaintiffs' evidence was that both the Globchem-Karl Rapp shipments and the AGX Logistics–Karl Rapp shipments were no longer fit for purpose. The products hence had to be disposed of in order to mitigate losses.

The quantum of losses and the interim judgment

33 The extent of losses suffered in relation to both shipments were listed by MFO in his AEIC as such:[27]

Losses suffered as a result of the Globchem shipments	US$623,781.21
Losses suffered as a result of the Pegasus Shipments	US$704,040

25 PWS para 50.

26 PWS para 48.

27 PWS para 109; MFO p 41 para 117.

Losses suffered as a result of the Globchem-Karl Rapp shipments	US$870,400
Losses suffered as a result of the AGX Logistics-Karl Rapp shipments	US$115,900
Freight, clearance, storage and demurrage costs	US$19,314.08 EUR17,446.95 RMB236,877.96
Import, storage and disposal costs of sea salt	EUR2,077.42
Import, storage and disposal costs of water and contaminated product	EUR48,985.70

34 It bears noting also that on 27 February 2019, upon an application by the plaintiffs before me, an interim judgment was entered into as against the First Defendant and Pegasus (see also *O'Laughlin Industries Co Ltd and another v Tan Thiam hock and others* [2020] SGHCR 6 at [7]). The First Defendant and Pegasus were ordered to pay the plaintiffs the sum of US$1,677,040, which can be further broken down as follows:[28]

[28] PWS paras 14–15.

(a) Losses suffered as a result of the sale to Pegasus, amounting to US$704,040.

(b) Losses suffered as a result of the First Defendant's deception in relation to Tonalid, amounting to US$102,600.

(c) Losses suffered as a result of the First Defendant's deception in relation to Kovyral, amounting to US$870,400.

My decision

The action in relation to Felicia

35 It has been consistent throughout this dispute that the plaintiffs do not allege any wrongdoing on Felicia's part. She was involved in this suit solely because she held assets belonging to the First Defendant and was named as a co-defendant such that appropriate reliefs could be brought against her: *O'Laughlin Industries Co Ltd and another v Tan Thiam hock and others* [2020] SGHCR 6 at [6].

36 In the course of the trial, the plaintiffs decided to discontinue their claim against Felicia, which she agreed to. On 28 July 2020, I ordered the notice of discontinuance to be filed, subject to an injunction against Felicia from making payments in respect of a property that she co-owned with the First Defendant.

Liability of the First Defendant

37 The plaintiffs' claim against the First Defendant proceeds on two grounds. First, that the First Defendant had breached his contractual, fiduciary and/or implied duties to the plaintiffs. Secondly, and in the alternative, that the

defendant was a constructive trustee of the plaintiffs and held all secret profits and benefits on trust.

The Globchem shipments and the Pegasus shipments

38 In these proceedings, however, the First Defendant does not dispute that he had perpetrated the acts of wrongdoings alleged by the plaintiffs in relation to the Globchem shipments and Pegasus shipments. In fact, he admitted to these in his written submission, the relevant portions which bear reproducing in full:[29]

> 10. The [First Defendant] had admitted his wrongdoings to the Plaintiff's [MFO] on several occasions, including:
>
> (a) Verbal Confession to [MFO] in Shanghai on 12 October 2016;
>
> (b) Various Written E-mails from 14 October 2016 through to 20 October 2016;
>
> (c) Voluntary meeting with Plaintiffs' solicitors (Nicholas & Tan Partnership) ("NTP") on the 2 November 2016;
>
> (d) The [First Defendant's] solicitors' (Tan Rajah & Cheah) ("TRC") letter of 25 Nov 2016.
>
> 11. Further, even after the service of this Writ of Summons and Statement of Claim was served on the 1st to 5th defendants, the [First Defendant] through TRC's letter of 25 November 2015 had unconditionally admitted sole responsibility for the plaintiffs' losses and did reiterate that the other defendants were not involved and were not liable to the Plaintiffs.
>
> 12. In fact the [First Defendant's] position was that he would never have entered his Defence to the Plaintiffs' Statement of Claim if the Writ was served on him alone. …
>
> 13. In fact the [First Defendant] has been candid in disclosing his statements from Kim Eng Maybank showing securities transactions evidencing that most of these monies

[29] PWS paras 10–13.

> were lost in his wrong habits and debts engaging in stocks and shares on the Singapore Stock Market.

39 The position in relation to the First Defendant is therefore clear with regard to the Globchem shipments and Pegasus shipments. He is liable for the full extent of damages caused to the plaintiffs in those aspects.

40 I pause to note that the First Defendant had been evasive and inconsistent in his evidence, and unapologetically so. He also sought to drip-feed the disclosure of documents, requiring an extensive number of applications to be taken out for discovery. This conduct was perhaps reflective of the manner in which he played fast and loose with the truth in his dealings with the plaintiffs and their customers, as detailed above at [5]–[17] and [23]–[32]. Similarly, during cross-examination, he admitted to forging various signatures, including that of Thiam Teng's on Luxepack's mandate to Standard Chartered Bank.[30] When further questioned on the reason why he had done so, his cavalier response was as follows:[31]

> I would say it's for convenience purposes, I was at the bank – I can't remember when I signed this mandate, so I just signed it on his behalf – on his so-called name.

41 The sheer extent of lies and deceit that the First Defendant appears to have perpetrated, as well as his related conduct, speaks volumes about the credibility of both him and his evidence.

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30 1AB 520.

31 Transcript dated 28 July 2020 93:12–14.

The Globchem-Karl Rapp shipments and the AGX Logistics-Karl Rapp shipments

42 I turn now to the liability for the Globchem-Karl Rapp shipments and the AGX Logistics-Karl Rapp shipments. The First Defendant alleged that MFO had in fact authorised him to sell the genuine Kovryal and Tonalid to customers at a discount and to hold the proceeds in his personal bank account pending instructions. He further claimed that MFO "was the one who came up with the idea" and had instructed him to switch the genuine products with water or salt. He was then to write off the full value of the goods after it was shipped to Rotterdam.[32] The First Defendant claimed that the discussion between himself and MFO took place in the Shanghai office.[33]

43 It is the First Defendant's case that the scheme was hatched due to the poor financial condition of the plaintiffs.[34] In particular, he based this claim on an email dated 22 December 2015 from Ms Mo where she wrote "cash is extremely important for the O'Laughlin group. All the problems with O'Laughlin now need cash".[35] This explanation, however, is simply unbelievable. The directions pertaining to the Globchem-Karl Rapp shipments had already begun in early 2014, as noted above at [24]–[25]. This was at least a year before the email from Ms Mo. Further, as MFO testified in court, the profits for 2013 were substantial, amounting to over US$2m in profit.[36] This was a point that he was not challenged on. Additionally, on the plain wording

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32 DWS paras 94–95.

33 Transcript dated 29 July 2020 59:11–13.

34 DWS para 96.

35 2AB p 194.

36 Transcript dated 28 July 43:25–44:7.

of the Ms Mo's email, it appeared that she was simply encouraging the First Defendant to follow up on outstanding invoices to ensure cash flow within the company.

44 The First Defendant further alleged that MFO would have been aware of these activities because the latter "micromanaged" the plaintiffs, exercising "strict control over small matters". This allegation again does not support the First Defendants' case. Even if MFO was closely involved in the operations of the plaintiffs', any switching of the products would have occurred *outside* the purview of the plaintiffs' and been carried out by Globchem. While the First Defendant alleged that the quantities of Kovyral were reflected in weekly inventory reports circulated to MFO, he has failed to adduce in evidence any such reports, much less to show that the reports reflected quantities of *switched* Kovyral.

45 In my view, the Globchem-Karl Rapp shipments and the AGX Logistics-Karl Rapp shipments were schemes carried out by the First Defendant on his own. He must therefore be liable for the sums due as a result of these schemes.

The liability of the other defendants

46 The plaintiffs' claim against the other defendants primarily proceeds on three grounds, as follows:

(a) That the corporate veils of Pegasus, Globchem and Luxepack should be lifted.

(b) That Jacqueline, Desiree, Pegasus, Huat Chye and Thiam Teng be liable for dishonest assistance, or as constructive trustees of any profits or benefits received.

(c) That Jacqueline, Desiree, Pegasus, Huat Chye and Thiam Teng had engaged in a conspiracy together with the First Defendant.

47 Given the way the plaintiffs have argued the case and the extensive overlap of evidence between the issues, it is conceptually easier to proceed first with the *factual* analysis of the other defendants' liability in turn.

Jacqueline

48 I find that, on a balance of probabilities, Jacqueline was not involved in the schemes of the First Defendant. The First Defendant's evidence was that he had approached Jacqueline to use her name to incorporate Globchem, appointing her as a nominee director of the company.[37] Jacqueline was also the authorised signatory of Globchem. However, the operation of the email, movements of goods, and various correspondences, however, were left solely to the First Defendant. Both the First Defendant and Jacqueline testified that the latter merely signed blank cheques with no details being filled in.[38] Once she signed those cheques, she handed them over to Huat Chye for safekeeping.[39] At no point in time was she made aware of the actual transactions, or the movements of cash that were carried out on the basis of these signed cheques.

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37 First and Fourth Defendants' AEIC dated 10 June 2020, para 10.

38 Transcript dated 28 July 2020 104:25–29.

39 Transcript dated 28 July 2020 105:1–8.

49 Two further points bear noting. First, while Jacqueline's signature was appended to the resolution striking off Globchem, the First Defendant testified that he had forged her signature.[40] Secondly, while there were substantial communications between the plaintiffs and a "Jacqueline Tan" on behalf of Globchem, MFO accepted that there was no way in which he could verify that Jacqueline was, in actuality, communicating with him.[41] While MFO was certainly entitled in his communications to assume so, the First Defendant testified that he again was masquerading as Jacqueline in these communications.[42]

50 I am unable to accept the plaintiffs' argument that Jacqueline should be liable as there is no documentary evidence that the proceeds from Globchem's bank accounts did go to Jacqueline; and that there is no documentary evidence that the First Defendant had handled Globchem's business on his own, especially given that he was in Shanghai at the time. Given that the plaintiffs are alleging that Jacqueline had somehow assisted the First Defendant in his plans, the burden is on them to show that that is the case and to adduce the necessary documents.

51 It is acknowledged that the First Defendant might be said to be motivated to lie in his evidence in order to shield Jacqueline from liability. I find that unlikely to be the case here. The forging of signatures and masquerading as others behind email communications was an act entirely consistent with what the First Defendant did in relation to the Pegasus shipments

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40 Transcript dated 29 July 2020 90:23–26.

41 Transcript dated 28 July 2020 8:1–31.

42 Transcript dated 28 July 2020 114:3–7.

(as above at [16]). In the circumstances, it is more likely that Jacqueline has become implicated as she had trusted the First Defendant, allowing him to incorporate Globchem in her name and signing the cheques for his use. That, however, is insufficient to show any wrongdoings on her part. I accept that it is very difficult for the plaintiffs in such a situation to adduce evidence to prove their case against Jacqueline. However, that is the burden that they have to bear, and I do not find, on the evidence before me, that they have discharged that burden. Accordingly, I find that Jacqueline is not liable in these proceedings.

Desiree

52 There is no evidence that Desiree was involved in the schemes of the First Defendant. In this regard, I accept the First Defendant's explanation that the initial plan was to have Jacqueline incorporate Pegasus to assist the First Defendant in the chemical trade. However, as Jacqueline was, at the time, holding a position under a separate company, she was not agreeable to this proposition. Desiree was thus brought in as a nominee director, with Jacqueline as the authorised signatory.

53 Beyond this, however, Desiree was not involved in any other way. The plaintiffs again pointed to the emails that were purportedly sent by Desiree, as above at [15]. As with the emails sent by "Jonathan Foo" (as above at [16]), and in relation to "Jacqueline Tan" (as above at [51]), these were in fact drafted and sent out by the First Defendant.

54 It bears mentioning that at the relevant times, Desiree was still a full-time student and had no knowledge of the company operations. This much was evident on cross-examination and counsel for the plaintiffs, in my view, made

no headway in proving otherwise. Accordingly, Desiree is not liable in these proceedings.

Pegasus

55 The First Defendant utilised Pegasus for his schemes under the pseudonym of Jonathan Foo. This induced the plaintiffs to transport the goods in the Pegasus shipment, which Pegasus then sold on for a total sum of US$657,150, as above at [17]. With the First Defendant having admitted liability in relation to the Pegasus shipments, it is indisputable that Pegasus should be jointly liable for the losses there.

56 I note that Pegasus has also received US$71,250 from the sale of the 228 drums of genuine Tonalid on 26 September 2016, as above at [30]. Given my findings in relation to the Globchem-Karl Rapp shipments and the AGX Logistics-Karl Rapp shipments, as above at [42]–[45], Pegasus is jointly liable for the sum of US$71,250 that it had received.

Huat Chye

57 I find that on a balance of probabilities, Huat Chye was also not involved in the schemes of the defendant. On occasion, the First Defendant had engaged Huat Chye to handle certain accounting matters for the First Defendant's companies, namely Globchem, Luxepack and Pegasus.

58 The plaintiffs' case, however, was that he was handling the accounts of these companies. As an experienced businessman personally handling the accounts, he would have been aware of the suspicious transactions that were taking place.

59 In my view, the plaintiffs' allegations are speculative at best. There simply is no evidence to support the plaintiffs' claim that Huat Chye, as the First Defendant's "trusted lieutenant" was "deliberately feigning ignorance" or "downplaying his involvement".[43] Indeed, they have not been able to point to any evidence to support the allegation that Huat Chye had assisted in the re-packing of the products to deceive the plaintiffs. I accept that Huat Chye was engaged on an *ad-hoc* basis, when the First Defendant needed errands to be run. In return, he was paid for these services as a form of "pocket money", on most occasions with a sum of $500, and on two occasions, $1,000.[44]

60 This, however, in no way translates to any assistance or knowledge in relation to the wrongdoings carried out by the First Defendant. Accordingly, I find that Huat Chye is not liable in these proceedings.

Thiam Teng

61 The plaintiffs allege that Luxepack was used as a conduit to wrongly deal with the goods held by Globchem on behalf of the plaintiffs. Following a third-party disclosure application against Standard Chartered Bank, the plaintiffs obtained disclosure of documents pertaining to the Luxepack SCB Account. These documents revealed the following:

(a) The First Defendant and Thiam Teng had signed a board resolution opening the Luxepack SCB Account in November 2012, with the First Defendant and Jacqueline as the approved bank signatories.

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43 PWS paras 213–214.

44 PWS para 106.

(b) Between January 2014 and February 2015, substantial sums were remitted to Luxepack from the plaintiffs' customers, including:

(i) S$657,785.03 from a company called Fragrance World;

(ii) S$62,453.45from Nardev Chemie; and

(iii) S$89,180.48 from a company called Bio Young Aromas.

62 On that basis, the plaintiffs claim that Thiam Teng was involved in the wrongdoings perpetrated by the First Defendant.

63 In my view, the claims against Thiam Teng are again speculative at best. It is evident from his testimony in court that Thiam Teng simply had no knowledge in relation to any of Luxepack's activities. The First Defendant and Jacqueline had both testified at multiple points that Thiam Teng was unaware of Luxepack's activities or that the Luxepack SCB account even existed.[45] In fact, the First Defendant testified that he had forged Thiam Teng's signature on multiple occasions.

64 That Thiam Teng was not involved in any way is most apparent from the fact that after his lawyers showed him documents relating to the striking off of Luxepack, he filed a police report alleging forgery. The plaintiffs have not adduced sufficient evidence to demonstrate that Thiam Teng was implicated, and accordingly he is not liable.

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[45] Transcript of 28 July 2020 59:1–21, 60:21–616; Transcript of 30 July 2020 4:5–10, 6:1–17.

65 At this juncture, however, I pause to point out Thiam Teng's non-cooperation in these proceedings. In Registrar's Appeal No 132 of 2019, I ordered that Thiam Teng was to provide discovery of all documents in his possession, custody or power relating to Luxepack. Following this, Thiam Teng disclosed four letters that were exchanged between his lawyers and Standard Chartered Bank. The last of these letters was dated 16 August 2019. Subsequently, Thiam Teng represented in various affidavits that these four letters were all that existed, for instance:

> (a) In his reply affidavit in summons no 5014 of 2019 (SUM 5014/2019), filed on 22 October 2019, Thiam Teng stated that he had "made every effort at procuring documents" relating to the Luxepack SCB Account. He then went on to specifically refer only to the four letters.
>
> (b) In his supplementary affidavit in SUM 5014/2019, filed on 19 December 2019, Thiam Teng stated that "to comply with [Assistant Registrar] Wong's directions, I put it on record that I have not received any correspondence from [Standard Chartered Bank] after 16 August 2019".

66 This could not be further from the truth. In fact, there existed a letter dated 19 August 2019, sent from Standard Chartered Bank to Thiam Teng's lawyers.[46] In this letter, Standard Chartered Bank stated as follows:

> Since you are not able to get a board resolution from Luxepack, please let us have the other Luxepack's director's signed consent specifically authorising the Bank to release the

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46 MFO p 605.

> requested information / documents to your client, such signature to be witnessed by you.
>
> In the alternative, as previously stated in our letter of 15 August 2019, **please let us have an order from the Singapore court specifically ordering the Bank to disclose to your client the information / documents sought in your said letter**
>
> [emphasis added]

67 This letter would have been critical in proving the existence of the Luxepack SCB Account and allowing the plaintiffs to obtain the necessary documents. On cross-examination, Thiam Teng conceded that he had *lied* in this regard,[47] and when further pressed answered as follows:[48]

> Q: But you deliberately suppress the 19th August correspondence.
>
> A: I did not deliberately suppress it because I find that – it doesn't contribute much to the case. But in terms of your questioning, if you want me to reply "Yes", okay, yes, I suppress the documents.

68 Actions like these cannot be condoned for they impede the course of proceedings and subvert the justice carried out by the courts. As a result, while the plaintiffs have not successfully made out a case against Thiam Teng, this matter will be relevant on the question of costs.

Implications in relation to the other defendants

69 To reiterate, save for Pegasus, I find that none of the other defendants (Jacqueline, Desiree, Huat Chye and Thiam Teng) was implicated or involved in the First Defendant's wrongdoings. As a result, there is logically no need for

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47 Transcript dated 3 August 2020 16:29–30

48 Transcript dated 3 August 2020 21:16–19.

a declaration that the corporate veils of Pegasus, Globchem and Luxepack should be lifted. In that vein, any claims for dishonest assistance or conspiracy as against Jacqueline, Desiree, Huat Chye and Thiam Teng must fail.

Conclusion

70 For the reasons given, I find that the First Defendant is liable in relation to the plaintiffs' claim as against him. I also find that Pegasus is liable to the extent of the Pegasus shipment and the US$71,250 that it had received.

71 On the other hand, I reject the plaintiffs' claims against Jacqueline, Desiree, Huat Chye and Thiam Teng.

72 I will hear counsel on the issue of costs.

Lee Seiu Kin
Judge of the High Court

Nicholas Narayanan (Nicholas & Tan Partnership LLP) for the plaintiffs;
K Nair Chandra Mohan (Tan Rajah & Cheah LLP) for the first to sixth defendants;
Oliver Quek and Tan Si Rui (Oliver Quek & Associates) for the seventh defendant.
