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

[2021] SGHC 118

Suit No 530 of 2018

Between

AIX Engineering &
Construction Pte Ltd

… *Plaintiff*

And

(1) Yeong Wai Teck
(2) Aegis Building & Engineering
Pte Ltd
(3) Ong Beng Yong

… *Defendants*

Counterclaim of 2nd defendant

And Between

Aegis Building & Engineering
Pte Ltd

… *Plaintiff in counterclaim*

And

AIX Engineering &
Construction Pte Ltd

… *Defendant in counterclaim*

JUDGMENT

[Companies] — [Directors] — [De facto]
[Agency] — [Apparent authority]
[Tort] — [Conspiracy] — [Unlawful means conspiracy]

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AIX Engineering & Construction Pte Ltd
v
Yeong Wai Teck and others

[2021] SGHC 118

General Division of the High Court — Suit No 530 of 2018
Lai Siu Chiu SJ
23–27 November 2020, 4 February 2021

18 May 2021 Judgment reserved.

Lai Siu Chiu SJ:

Introduction

1 AIX Engineering & Construction Pte Ltd ("the plaintiff") is a Singapore-incorporated company in the business of building and construction.

2 The second defendant Aegis Building & Engineering Pte Ltd ("the Second defendant" or "Aegis") is a company incorporated in Singapore and its principal activities are said to be in structural repairs, process and industrial plant engineering design and consultancy services. At all material times, the majority shareholder and managing director of Aegis was (and still is) Yeong Wai Teck ("the First defendant" or "Yeong").

3 Ong Beng Yong ("the Third defendant" or "Ong") is a representative of the plaintiff. While the plaintiff alleged that Ong was at the material time employed as a project manager with a limited scope of authority, Aegis and the

First defendant averred that Ong was more than just a project manager and did in fact have authority to enter into contracts for and on behalf of the plaintiff.

4 On 5 May 2017, the plaintiff commenced Suit No 412 of 2017 and Suit No 164 of 2019 (previously DC No 1214 of 2017) against Aegis for sums allegedly due under four construction projects, namely the Parklane Suites Project, the Changi Airport Project, the Bedok Project (collectively known as "the Three Projects") and the Punggol Project. For the Punggol Project, Aegis denied that it had contracted with the plaintiff. Instead, Aegis alleged that it was its related company, ASR Building & Conservation Pte Ltd ("ASR"), which contracted with the plaintiff. Accordingly, the plaintiff should be looking to ASR and not Aegis for the sums due. As for the Three Projects, Aegis averred that it had not instructed the plaintiff to carry out some of the works and as such the plaintiff was not entitled to claim for such sums; as for the remaining works for which sums were due, they were contra-charged, set-off and/or paid.

5 Despite Aegis filing a defence in respect of the Three Projects for Suit No 164 of 2019 on 26 May 2017, the plaintiff served payment claims under the Building and Construction Industry Security of Payment Act (Cap 30B, 2006 Rev Ed) ("the Act") on Aegis on 26 March 2018 for works it had allegedly done for the Bedok and Parklane Suites Projects. As Aegis did not serve a payment response before the due date prescribed under the Act, the plaintiff obtained a favourable adjudication determination in respect of the Bedok and Parklane Suites Projects on 30 April 2018 and 11 May 2018 respectively (referred to as "the Bedok AD" and "the Parklane Suites AD"). In May 2018, Aegis made payment to the plaintiff pursuant to the Bedok AD and the Parklane Suites AD. In Suit No 163 of 2019 (previously DC No 1461 of 2018) filed on 21 May 2018, Aegis sought to recover all the monies it paid to the plaintiff under the Bedok

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AD and the Parklane Suites AD on the basis of breach of contract (*ie*, set-off agreements mentioned at [11]) or restitution under the law of unjust enrichment.

6 At around this time, on 21 May 2018, the plaintiff commenced the present suit, Suit No 530 of 2018 ("Suit 530"), against all three defendants for *inter alia* unlawful means conspiracy between all or any of them. The plaintiff alleged that the three defendants conspired to cause losses to the plaintiff by fabricating written documents to unlawfully extricate Aegis from its obligation to pay for work done for the four construction projects. For Suit 530, the plaintiff obtained interlocutory judgment in default of appearance against the Third Defendant on 17 July 2018.

7 All four suits, namely Suit No 412 of 2017, Suit No 164 of 2019, Suit No 163 of 2019 and Suit 530, have been consolidated in Suit 530. In its consolidated Statement of Claim (Amendment No 1) dated 14 June 2019 ("SOC"), the plaintiff seeks *inter alia* sums due under the four construction projects, a declaration that certain documents are sham documents and damages for unlawful means conspiracy. In its counterclaim, Aegis seeks recovery of a sum of $153,872.14, which sum it paid to the plaintiff pursuant to the Bedok AD and the Parklane Suites AD.[1]

Background to the dispute

The Three Projects

8 On or about 24 June 2014, the plaintiff issued a written contract for the provision of electrical works to upgrade the Parklane Suites. On or about 30

1 Defence and Counterclaim (Amendment No 1) ("DCC") dated 28 June 2019 at paras 35 and 38; Reply and Defence to Counterclaim (Amendment No 1) ("RDC") dated 12 July 2019 at paras 35–36.

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June 2014, Aegis accepted the contract in writing.[2] It is not disputed that the plaintiff issued invoices totalling $146,551.76 to Aegis for the Parklane Suites Project. It is also not disputed that there were deductions and Aegis made payments by cheque totalling $74,278.00.[3] The dispute centres around the remaining $72,273.76. While the plaintiff avers that this sum remains outstanding, Aegis alleges that this sum has been fully accounted for.

9 Over a period between September 2014 and August 2015, the plaintiff carried out electrical works for Aegis at Changi Airport.[4] It is not disputed that the plaintiff issued invoices totalling $38,075.00 to Aegis for the Changi Airport Project. It is also not disputed that there were deductions and Aegis made payments by cheque totalling $24,147.85.[5] The dispute centres around the remaining $13,927.15 which the plaintiff alleges remain outstanding but Aegis claims has been fully accounted for.

10 As for the Bedok Project, it is not disputed that the plaintiff issued invoices totalling $137,074.55. For three of the invoices dated September 2014 to January 2015 totalling $94,963.93,[6] it is also not disputed that there were deductions and Aegis made payments by cheques totalling $91,447.80.[7] The dispute centres around the remaining $45,626.75 which the plaintiff alleges remain outstanding. Of that amount, Aegis disputes liability for the remaining invoice namely, Invoice AIX-I-1609542 dated 20 September 2016 for

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2 SOC at para 52; DCC at para 26.

3 SOC at para 53; DCC at para 27.

4 SOC at para 54; DCC at para 28.

5 SOC at para 55; DCC at para 29.

6 Yeong Wai Teck's affidavit of evidence-in-chief ("AEIC") dated 16 September 2020 at para 135.

7 SOC at para 51; DCC at para 25.

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$42,110.62 ("Invoice 9542")[8] on the basis that the plaintiff was not instructed to carry out the works and/or the works were not in any event carried out. For the remaining amount of $3,516.13, Aegis claims it has been fully accounted for.

11 In support of its position that the remaining amounts have been fully accounted for, Aegis relied on 5 set-off agreements purporting to set-off sums previously paid by Aegis against the invoices for the Three Projects (hereinafter referred to as "the 5 set-off agreements"); they are:

(a) An agreement dated 16 March 2015 to set-off workers' levies for $30,250.44 incurred from May to August 2014, against an invoice for the Parklane Suites Project;[9]

(b) An agreement dated 20 August 2015 to set-off a loan for $30,000.00 extended by Aegis to the Third defendant against an invoice for the Parklane Suites Project;[10]

(c) An agreement dated 9 September 2015 to set-off damages and fees for $25,686.45 incurred by the plaintiff during the Parklane Suites Project against invoices incurred for the Three Projects;[11]

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8 Agreed Bundle ("AB") Vol 16 dated 23 November 2020 at pp 32–33.

9 Plaintiff's Bundle ("PB") dated 23 November 2020 at p 205; 1st and 2nd Defendants' Bundle ("DB") dated 13 November 2020 at p 25; DCC at para 27(c).

10 PB at p 208; DB at p 30; DCC at para 27(d).

11 PB at p 209; DB at p 32.

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(d) An agreement dated 9 September 2015 to set-off the July 2014 salaries of two workers totalling $2,720.00 against an invoice incurred for the Bedok Project;[12] and

(e) An agreement dated 3 December 2015 to set-off costs of contractual works for $5,000.00 at Loyang incurred by the Third defendant's company, Matec Engineering Services Pte Ltd ("Matec"), against invoices incurred for the Parklane Suites Project.[13]

12 The set-off agreements, if found to be valid and binding on the plaintiff, would cover the remaining amounts allegedly due under the Three Projects. However, the plaintiff denies the validity of the above set-off agreements on the basis that the Third defendant, who signed as managing director of the plaintiff, lacked the requisite authority to bind the plaintiff.

The Punggol Project

13 Sometime in August 2014, Aegis signed a contract with Guthrie Engineering (S) Pte Ltd ("Guthrie") for the operation and management of carparks in Punggol.[14] According to the First defendant, as ASR was facing a lull period, Aegis decided to sub-contract the Punggol Project (awarded to it by Guthrie) entirely to ASR in September 2014.[15]

14 By a quotation dated 21 December 2014 addressed to Aegis (the "quotation"), the plaintiff offered to provide manpower and materials to manage

12 PB at p 210; DB at p 31; Ong Beng Yong's AEIC dated 17 September 2020 at paras 101–102 and pp 149–153.

13 PB at p 211; DB at p 33; Ong Beng Yong's AEIC at paras 104–105.

14 Yeong Wai Teck's AEIC at para 153.

15 DCC at para 6; Yeong Wai Teck's AEIC at paras 158–160.

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and install electrical and other works at carparks in Punggol. Before the quotation was signed, there was a meeting on 28 February 2015 pertaining to the Punggol Project. On the same day, a copy of the meeting's minutes were sent by Aegis to the plaintiff ("the 28 February 2015 meeting minutes").[16]

15 Thereafter, a series of emails were exchanged from 11 to 13 March 2015 between *inter alia* the Third defendant, the plaintiff's sole director and shareholder on record, Gan Kim Hui ("Gan") and ASR's managing director, Ong Jianlong ("Jianlong").[17] In the emails, it is not disputed that they discussed amendments to the quotation. It is also not disputed that in one of the emails dated 12 March 2015, Gan asked the Third defendant to "check with [Jianlong] to confirm which company is final for us to follow", *ie*, to confirm whether the counterparty is Aegis or ASR. Gan admitted in cross-examination that he was aware that Jianlong was the managing director of ASR.[18]

16 On 18 March 2015, Jianlong signed on the quotation and indicated his designation as "Director". Jianlong also affixed the company stamps of both ASR and Aegis on the quotation.[19] The plaintiff takes the position that the quotation constitutes a binding contract between Aegis and itself, while Aegis avers that the quotation constitutes a binding contract between the plaintiff and ASR.[20] Aegis also denies that Jianlong had the requisite authority to bind Aegis.

17 Subsequently, on 24 March 2015, Foo Tee Teck ("Foo"), the then-director of ASR, claimed to have issued a Purchase Order with number

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16 AB Vol 13 dated 23 November 2020 at pp 48–52.

17 AB Vol 13 at pp 123–124.

18 NE 24 November 2020 at p 28, lines 1–5 and p 29, lines 16–23.

19 Gan Kim Hui's AEIC at para 63 and pp 118–124; DCC at para 8.

20 SOC at para 7–8; DCC at para 8.

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00000280 from ASR to the plaintiff (the "Purchase Order") which purports "to supersede the quotation [with reference number starting "Q1412281"]".[21] The Purchase Order removed the profit-sharing arrangement present in the quotation. According to the Third Defendant, he signed the Purchase Order on behalf of the plaintiff.[22]

18 The plaintiff relies solely on the quotation to establish the presence of a contractual relationship with Aegis for the Punggol Project. As such, a finding that the counterparty in the quotation was in fact ASR and not Aegis or a finding that Aegis could not have been the counterparty in the quotation in any event due to Jianlong's lack of authority would be determinative of the plaintiff's claim against Aegis in respect of work down for the Punggol Project.

Unlawful means conspiracy

19 To establish its unlawful means conspiracy, the plaintiff avers that the 5 set-off agreements (at [11]) and Purchase Order (at [17]) were fabricated. While the plaintiff does not dispute that the First and Third defendants signed the 5 set-off agreements and that Foo and the Third defendant signed the Purchase Order, the plaintiff's case is that the three defendants back-dated the said documents to "retrospectively give legal effect to set-off monies owed by [Aegis] to [the plaintiff]" and to "retrospectively alter the contracting party from [Aegis] to ASR" respectively.[23]

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21 Foo Tee Teck's AEIC dated 16 September 2020 at para 36 and p 172.

22 Ong Beng Yong's AEIC at para 151.

23 Plaintiff's Closing Submissions ("PCS") dated 21 January 2021 at para 74 and 91; Plaintiff's Reply Submissions ("PRS") dated 4 February 2021 at para 40 and 42.

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Issues to be determined

20 The key issues that arose for consideration in this case are as follows:

For the Three Projects

(a) For the Bedok Project, whether Aegis owed the plaintiff monies for work done as set out in Invoice 9542;

(b) For the Three Projects, whether the Third defendant had authority to enter into the 5 set-off agreements on behalf of the plaintiff;

(c) Whether the three defendants engaged in an unlawful means conspiracy by backdating the 5 set-off agreements to deprive the plaintiff of payments for work it carried out for Aegis;

For the Punggol Project

(d) Whether the parties to the quotation were the plaintiff and Aegis or, in the alternative, the plaintiff and ASR;

(e) If the parties to the quotation were the plaintiff and Aegis, whether Jianlong had actual or apparent authority to accept the quotation on behalf of Aegis; and

(f) Whether the three defendants engaged in unlawful means conspiracy by backdating the Purchase Order to unlawfully extricate Aegis from its contractual obligations under the quotation.

Issue 1: Work done for Invoice 9542

21 Invoice 9542 are progress claims pertaining to work done on four carparks, namely B32, B33, B34 and B35 for $42,110.62 (excluding GST), for

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the Bedok Project. As the defendants' position is that the plaintiff was not instructed and did not in any event carry out such work, the burden of proof is on the plaintiff to show that it was instructed to carry out those works and that those works were in fact carried out. The plaintiff has not discharged its burden.

22 The plaintiff relied primarily on the evidence of its project engineer, Rajadurai Rajmohan ("Mr Rajmohan"). However, in cross-examination, Mr Rajmohan testified that there were no emails showing the plaintiff updating Aegis on the progress of work for the four carparks.[24] This was unlike other carparks for the Bedok Project where regular updates were provided.[25]

23 In addition, when questioned on the emails which purportedly supported the plaintiff's position, Mr Rajmohan conceded that those emails do not relate to whether works were in fact carried out on the four carparks.[26] The first chain of emails pertained to equipment requisition,[27] while the second chain of emails pertained to cable routing drawings.[28] Eventually, Mr Rajmohan admitted that he was aware that another contractor, Lucky Joint Construction Pte Ltd ("Lucky Joint"), took over the works for the four carparks and that the plaintiff did not complete the works there.[29] Despite the lack of supporting evidence, he nevertheless billed Aegis for those works some 1½ years later on Gan's instructions.[30] Mr Rajmohan's testimony at trial was supported by the testimony of Mr Loh Yew Fatt ("Loh"), who was the then Director of Operations

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24 NE 24 November 2020 at p 93, lines 3–5.

25 NE 24 November 2020 at p 92, lines 30–32.

26 NE 24 November 2020 at p 93, lines 13–19 and p 94, lines 1–6.

27 Gan Kim Hui's AEIC at pp 394–397.

28 Gan Kim Hui's AEIC at p 433.

29 NE 24 November 2020 at p 94, lines 7–26.

30 NE 24 November 2020 at p 95, line 19–p 96, line 4.

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(Technology Solution Division) of Guthrie. Guthrie had contracted with Aegis for the carrying out of works for the Bedok Project. Loh confirmed that he stopped the plaintiff from proceeding with the project involving the four carparks and engaged Lucky Joint instead.[31] In turn, their testimonies corroborated the testimony of the Third defendant who testified that the plaintiff did not complete the works on the four carparks,[32] and for the works they did, they had carried out the works before instructions were given.[33]

24 In view of the above evidence, I find that the plaintiff has not proven on a balance of probabilities that it was instructed to carry out the works on the four carparks or that the works stated in Invoice 9542 were in fact carried out.

Issue 2: Authority of the Third defendant

Plaintiff's changing position on the authority of Ong

25 As for the 5 set-off agreements (see [11] above), the position of the plaintiff on the scope of the Third defendant's authority has changed substantially from the time of its pleadings to the time of trial.

26 The plaintiff's position at the time of its pleadings was clear. It stated in no uncertain terms that save for the quotation with regard to the Punggol Project, "at *all* material times, for *all* other projects, as project manager the [Third defendant] was *never* given by the Plaintiff *any* authority, express or apparent, to single-handedly enter into any other contract, to solely make any decision and/or to unilaterally transact business for and on behalf of the Plaintiff *without*

[31] NE 27 November 2020 at p 17, line 32–p 18, line 8.

[32] NE 26 November 2020 at p 107, lines 24–26.

[33] NE 26 November 2020 at p 108, lines 13–20.

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prior authorisation from the Plaintiff and/or Gan" [emphasis added].[34] That the authority of the Third defendant was limited only to the quotation for the Punggol Project and that for all other decisions, permission from the plaintiff and/or Gan was required, was repeated on multiple occasions in its pleadings.[35]

27 By the time of trial however, the position of the plaintiff had shifted. At trial, the plaintiff drew a distinction between the signing of quotations and the signing of debts and averred that the Third defendant had authority to sign the former, but not the latter.[36] As explained by its director, Gan:[37]

> A: No, [the Third Defendant] does not have the authority to sign this---the set-off agreement because this is a debt.
>
> …
>
> A: I know you go through authority yesterday but what I mean is *[the Third defendant] had [authority] to sign the quotations*, okay, including the Aegis quotation. But he---the authority doesn't mean it's a blanket authority for everything. So it mean *[the Third defendant] doesn't [have] the authority to sign a debt for---on behalf of [the plaintiff]*.
>
> [emphasis added]

28 If there was any doubt that this was now the position of the plaintiff, it was removed by what the plaintiff stated in its Reply Submissions dated 4 February 2021:

> 81. As an employee, [Ong] had authority to sign for [the plaintiff's] quotations. After all, a quotation is often regarded as a business offer made by a company soliciting business from its prospective customers.

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34 RDC at para 7.

35 SOC at paras 18 and 39; RDC at paras 8, 20, 22, 23 and 25.

36 NE 24 November 2020 at p 14, lines 9–17; NE 26 November 2020 at p 116, lines 3–30.

37 NE 24 November 2020 at p 14, lines 9–17.

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> 82. A set-off agreement, however, differs totally from a quotation. Unlikely [*sic*] a quotation which if accepted by customer [*sic*], generates business and revenue for the company, a set-off agreement often has the effect of allowing debts owed to the company by a third party to be off set or deducted against the same debts.
>
> 83. At this trial, the 1st Defendant and [Aegis] have shown this Honourable Court many quotations in their bid to prove that [Ong] had the authority to sign the 5 alleged set-off agreements, just like [Ong] was given the authority to sign and issue quotations to [the plaintiff's] customers.
>
> …
>
> 97. It cannot be reasonably inferred from [Ong's] signing of quotations for [the plaintiff] that [Ong] had similar authority to sign for debts or loans for [the plaintiff], including set-off agreements.

29 I make several observations. From the above, it is clear that the plaintiff has completely moved away from its position that *all* contracts (save the quotation) entered into by the Third defendant on its behalf required the prior authorisation or approval of the plaintiff and/or Gan. Instead, the plaintiff accepts that the Third defendant had authority to bind the plaintiff for certain contracts, drawing a distinction between agreements that generate business and revenue and agreements that pertain to the setting-off of debts. Quite apart from the fact that this distinction in the type of contracts for which the Third defendant was given authority was completely absent from its pleadings, there is a paucity of evidence that the authority of the Third defendant was so limited.

30 It is in this context that I proceed with the analysis on whether the Third defendant had actual or apparent authority to enter into the 5 set-off agreements.

Ong was a de facto director of the plaintiff

31 In support of its position that the 5 set-off agreements were binding on the plaintiff, the First defendant and Aegis submitted that the Third defendant

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had actual authority to bind the plaintiff as either a partner within the meaning of s 1(1) of the Partnership Act (Cap 391, 1994 Rev Ed) or a de facto director.

32 As a starting point, the defendants' argument on the authority of the Third defendant to bind the plaintiff *qua* partner is misconceived. Taking the defendants' argument at its highest, even if I were to accept its submission that the Third defendant and Gan were in a partnership,[38] it would only mean that the Third defendant had actual authority to act on behalf of that partnership.[39] It is not the defendants' case that the Third defendant and the plaintiff were in a partnership. As such, I fail to see how the Third defendant's authority to act on behalf of the partnership (with Gan), if at all, would have a bearing on his authority to act on behalf of the plaintiff, which is an incorporated company.

33 The more compelling argument put forward by the defendants is that the Third defendant had the actual authority to bind the plaintiff *qua* director. Under s 4(1) of the Companies Act (Cap 50, 2006 Rev Ed), a director "includes *any person occupying the position of a director of a corporation by whatever name called* and includes a person in accordance with whose directions or instructions the directors or the majority of the directors of a corporation are accustomed to act and an alternate or substitute director" [emphasis added].

34 In *Raffles Town Club Pte Ltd v Lim Eng Hock Peter and others (Tung Yu-Lien Margaret and others, third parties)* [2010] SGHC 163 at [58] and *Cheng Tim Jin v Alvamar Capital Pte Ltd* [2019] SGHC 220 at [14], the High Court endorsed the following principles expressed in *Gemma Ltd v Davies* [2008] BCC 812 in the inquiry on whether there had been *de facto* directorship:

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38 1st and 2nd Defendants' Closing Submissions ("DCS") dated 21 January 2021 at para 117.

39 DCS at para 128.

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> From those cases I derive the following propositions material to the facts of this case:
>
> (1) To establish that a person was a de facto director of a company, it is necessary to plead and prove that he undertook functions in relation to the company which could properly be discharged only by a director (per Millett J. in *Re Hydrodam (Corby) Ltd (in liq.)* [1994] BCC 161 at 163).
>
> (2) It is not a necessary characteristic of a de facto director that he is held out as a director; such "holding out" may, however, be important evidence in support of the conclusion that a person acted as a director in fact (per Etherton J. in *Secretary of State for Trade and Industry v Hollier* [2006] EWHC 1804 (Ch); [2007] BCC 11 at [66]).
>
> (3) Holding out is not a sufficient condition either. What matters is not what he called himself but what he did (per Lewison J. in *Re Mea Corp Ltd* [2006] EWHC 1846 (Ch); [2007] BCC 288).
>
> (4) It is necessary for the person alleged to be a de facto director to have participated in directing the affairs of the company (*Hollier* (above) at [68]) on an equal footing with the other director(s) and not in a subordinate role (above at [68] and [69] explaining dicta of Timothy Lloyd Q.C. in *Re Richborough Furniture Ltd* [1996] BCC 155 at 169–170).
>
> (5) The person in question must be shown to have assumed the status and functions of a company director and to have exercised "real influence" in the corporate governance of the company (per Robert Walker L.J. in *Re Kaytech International Plc* [1999] BCC 390).
>
> (6) If it is unclear whether the acts of the person in question are referable to an assumed directorship or to some other capacity, the person in question is entitled to the benefit of the doubt (per Timothy Lloyd Q.C. in *Re Richborough Furniture Ltd* (above)), but the court must be careful not to strain the facts in deference to this observation (per Robert Walker L.J. in *Kaytech* at 401).

35 Reviewing the evidence, I agree with Aegis and the First defendant that the Third defendant is a *de facto* director of the plaintiff for several reasons.

Ong managed the plaintiff on an equal footing with Gan

36 At the onset, I do not think that it can be seriously disputed that the Third defendant exercised "real influence" in the corporate governance of the plaintiff,

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and participated in the management of the affairs of the plaintiff on an equal footing with Gan, the plaintiff's director on record. That the plaintiff acted as a co-equal to Gan was confirmed by Gan himself. In his cross-examination, Gan admitted that the Third defendant was a joint signatory to the plaintiff's bank account,[40] that he had regularly kept the Third defendant informed on all major email correspondences of the plaintiff,[41] including financial updates relating to the plaintiff,[42] and that the Third defendant had the authority to enter into binding contracts with the plaintiff's customers.[43] When asked directly whether the Third defendant took instructions from him, Gan explained that "[the Third defendant] is matured enough. Of course, instructions sometimes I will give him my advice or my opinions to him [*sic*]".[44] The overall import of Gan's testimony was that the Third defendant and him were in a relationship of equals, with the Third defendant given almost unrestricted authority to enter into binding contracts with the plaintiff's customers. As mentioned earlier at [25]–[29], Gan's testimony a trial represents a departure from the plaintiff's position in its pleadings that the Third defendant lacked any authority to bind the plaintiff.

Plaintiff's documentary evidence that Ong was a mere project manager were fabricated

37 Related to this point is the fact that the plaintiff's pleaded position that the Third defendant was a mere project manager appears to have been abandoned in the plaintiff's closing submissions and in any case, rests on shaky grounds.

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40 NE 23 November 2020 at p 112, lines 1–3.

41 NE 23 November 2020 at p 114, lines 6–10.

42 1st and 2nd Defendants' Supplementary Bundle of Documents Volume 1 ("1DSB") dated 23 November 2020 at pp 202, 210 and 223.

43 NE 23 November 2020 at p 32, line 26–p 34, line 17.

44 NE 23 November 2020 at p 64, lines 7–8.

38 Central to the plaintiff's evidence that the third defendant was employed as a project manager is an alleged employment contract between the plaintiff and the Third defendant and a name card of the Third defendant.

39 However, I find these documents to be fabricated. As pointed out by the defendants, in the plaintiff's SOC, as late as 14 June 2019, the plaintiff averred in no less than two paragraphs that the terms of engagement between the plaintiff and the Third defendant were "oral".[45] When Gan was asked why reference was not made to the employment contract in an earlier Statement of Claim, Gan could only offer a feeble reply that "[m]aybe we miss out for this".[46] Gan did himself no favours when he further vacillated in his explanation for the discrepancy in the commencement date of employment in the employment contract (*ie*, 1 April 2014)[47] and in his SOC (*ie*, in June 2014).[48] Gan initially stated that what was in his SOC were typographical errors and the start date should be in April 2014.[49] In re-examination, Gan explained for the first time that the discrepancy in the commencement date was because there was a probation period.[50] Having spent much effort to establish the authenticity of the written employment contract, the irony is that the confirmation of the Third defendant's employment was purportedly done orally. Similar issues plague the plaintiff's reliance on the name card of the Third defendant. There was a paucity of evidence that the name card was in fact used by the Third defendant, apart from the bare production of purported originals of the name card at trial. Even

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45 SOC at paras 36 and 40.

46 NE 23 November 2020 at p 132, line 21.

47 Gan Kim Hui's AEIC at p 185.

48 SOC at paras 3 and 34

49 NE 23 November 2020 at p 134, line 13–p 135, line 8.

50 NE 24 November 2020 at p 144, lines 4–13.

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if the plaintiff could provide an explanation for each of these issues, the combined effect of the various discrepancies warrant a finding, on a balance of probabilities, that the employment contract and name card were not authentic.

Ong was held out as a director of the plaintiff

40 Instead, I find that Ong was held out as a director of the plaintiff. In support of this proposition, Aegis and the First defendant relied on, *inter alia*:

> (a) A June 2014 meeting between Gan, Ong and the First defendant where it was made clear that Ong would be in charge of all the plaintiff's projects with Aegis while Gan would be a "sleeping partner";[51] and
>
> (b) An email sent by the First defendant to Gan and Ong in June 2015 which explicitly referred to Ong as the plaintiff's director.[52]

41 In response, the plaintiff pointed to the fact that the June 2014 meeting was not supported by any contemporaneous evidence including written record of the same. As to the June 2015 email, the plaintiff averred that Gan's silence ought not to be taken against him as a duty to speak could not have arisen.

42 Even if there was no contemporaneous evidence of the June 2014 meeting, I find that there was corroboration of the fact that Ong was held out as a director of the plaintiff from the testimony of Gan on how the business of the plaintiff was run. Gan admitted that he was new to the business of construction.[53] In contrast, Ong was more experienced, knowledgeable and had more contacts

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[51] DCS at para 147.

[52] DCS at para 153.

[53] NE 23 November 2020 at p 61, lines 28–32.

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than him.[54] Not only did workers from Ong's previous company join the plaintiff,[55] Gan acknowledged that Ong "brought significant value" to the plaintiff, including a "major business worth $133,000".[56] For at least three matters pertaining to the employment and remuneration of workers, Gan was quick to point his finger at Ong as the person who had advised him on these matters.[57] While Gan was initially evasive as to whether Ong had the authority to enter into contracts with customers on behalf of the plaintiff, he later agreed that Ong had the authority to do so.

43 The overall picture from the testimony of Gan himself was that Ong played a crucial role in setting up the plaintiff,[58] securing business for the plaintiff and entering into contracts on the plaintiff's behalf. Ong was also involved in the financial management of the plaintiff. All this is against the backdrop of the fact that Gan on the other hand was not working full-time for the plaintiff and held a full-time job elsewhere throughout the material period.[59]

44 Based on the above, I find on a balance of probabilities that Ong was held out as a director of the plaintiff. While holding out is not conclusive of the fact that Ong was a *de facto* director (see [34] above), Ong's active and influential role in the major corporate decisions and client-facing aspect of the plaintiff, with direct control of the running and affairs of the plaintiff, leads to the irresistible conclusion that Ong was a *de facto* director of the plaintiff.

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54 NE 23 November 2020 at p 67, lines 8–11.

55 NE 23 November 2020 at p 87, lines 14–23.

56 NE 23 November 2020 at p 88, lines 2–10.

57 NE 23 November 2020 at p 119, line 23, p 121, lines 6–12 and p 124, lines 17–30.

58 NE 23 November 2020 at p 151, line 9.

59 NE 23 November 2020 at p 52, lines 9–27.

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Authority of Ong to enter into the disputed set-off agreements

45 Given my findings above and in particular, the way in which Gan afforded Ong the latitude to run the business of the plaintiff, I find that there is no merit in the plaintiff's belated claim that Ong's authority was restricted to entering into contracts with customers on the front-end, but limited where it dealt with finances and the collection of monies on the back-end. At no point did Gan aver that he had sole and exclusive authority over the financial management of the plaintiff. On the converse, Gan explained that they were both in charge of managing the plaintiff's accounts[60] and in fact he wanted Ong to play a greater role in the financial management of the plaintiff:[61]

> A: Because [Ong's] the project manager, so I have to let [Ong] know how much fund or how much capacity the company have for the cash flow … That means, when [Ong] run the project, [Ong] must know how to collect money. [Ong] must know how to invoice and chase money, okay? Not just do and let it---leave the money part to me and keep on subsidise to the company.

46 As such, I find that Ong had actual authority to enter into the 5 set-off agreements (at [11] above) on behalf of the plaintiff. In any event, I was prepared to find that Ong had apparent or ostensible authority arising from representations made by the plaintiff to Aegis (see *Viet Hai Petroleum Corp v Ng Jun Quan and another and another matter* [2016] 3 SLR 887 at [33]).

Issue 3: Unlawful means conspiracy in respect of the set-off agreements

47 The final issue concerning the 5 set-off agreements is the plaintiff's claim that the defendants engaged in an unlawful means conspiracy by fabricating the set-off agreements after negotiations between the parties had

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60 NE 23 November 2020 at p 67, lines 5–6.

61 NE 23 November 2020 at p 69, lines 3–9.

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failed in November 2015.[62] In particular, the plaintiff averred that the dates of the set-off agreements could not have been signed on the dates indicated because if they were, the First defendant would have informed Gan of the existence of these agreements and further, there would be no point in further negotiations as the agreements would be "conclusive".[63]

48 The defendants' response was two-fold:

(a) The First defendant explained that it did not occur to him to send the set-off agreements to the plaintiff as Ong was the managing director and Aegis assumed that Ong would update Gan. In any event, he averred that Gan was fully aware of the issue pertaining to the set-off;[64] and

(b) Even though the set-off agreements were conclusive of the fact that Aegis was entitled to set-off certain sums against the plaintiff's invoices, Aegis and the plaintiff continued negotiating as there was a continuing business relationship between the parties. If the plaintiff needed more cash flow, Aegis might be prepared to defer repayment.[65]

49 At the centre of the dispute is the interpretation of an email sent by Gan to the First defendant on 19 November 2015.[66] While the defendants relied on the email as corroboration of the Third defendant's testimony that he had notified Gan of the set-off agreements and of Gan's knowledge that Aegis

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62 AB Vol 18 dated 23 November 2020 at pp 139–140.

63 PCS at para 84.

64 NE 25 November 2020 at p 60, lines 21–25.

65 NE 25 November 2020 at p 61, line 6–p 62, line 21.

66 AB Vol 18 at p 140.

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intended to set off certain amounts against invoices for the Three Projects,[67] the plaintiff appeared to rely on the email as evidence that negotiations had failed and the plaintiff was not agreeable to the set-off agreements.

50 I reproduce the relevant portion of the email as follows:

> Mr Yeong,
>
> As refer to your contra proposal, we [*ie*, Ong and Gan] are pleased to comment as follows:-
>
> a) Note 1: S$90,934.89
>
> (i) FWL - $30,250.44
>
> (ii) Loyang Backcharges - $5,000/=
>
> (iii) Derrick Ong Personal Loan - S$30,000/=
>
> (iv) Parklane Suite - $25,684.45
>
> * [The plaintiff] honour on the above charges as incurred by [Ong] and our team. However, we do not agreed on your deduction proposal by offsetting the invoice from Parklane, Changi Airport & Bedok EPS project. The deduction should be by instalment plan as per payment received from Aegis/ASR. We need to discuss in details on the repayment part.
>
> …
>
> Please help on payment and we should meet [to] discuss on how to settle the contra issue.
>
> …

51 In *EFT Holdings, Inc and another v Marinteknik Shipbuilders (S) Pte Ltd and another* [2014] 1 SLR 860, the Court of Appeal summarised the elements that must be satisfied to prove conspiracy by unlawful means, at [112]:

> To succeed in a claim for conspiracy by unlawful means of conspiracy, the [plaintiff] must show that:
>
> (a) there was a combination of two or more persons to do certain acts;

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67 1st and 2nd Defendants' Reply Submissions ("DRS") dated 4 February 2021 at paras 38–39.

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> (b) the alleged conspirators had the intention to cause damage or injury to the plaintiff by those acts;
>
> (c) the acts were unlawful;
>
> (d) the acts were performed in furtherance of the agreement; and
>
> (e) the plaintiff suffered loss as a result of the conspiracy (*Nagase Singapore Pte Ltd v Ching Kai Huat* [2008] 1 SLR(R) 80 at [23]; *Tjong Very Sumito v Chan Sing En* [2012] SGHC 125 at [186]).

52 In the present case, the unlawful act as pleaded was the fabrication of the set-off agreements by way of back-dating.[68] However, based on the evidence, I am unable to find, on a balance of probabilities, that the defendants had combined to fabricate the set-off agreements after 19 November 2015. The email on which the plaintiff relies (see [49]–[50]) is equally, if not more, consistent with the defendants' account that negotiations were still ongoing as to the best way to effect the set-offs. Even though there did not appear to be evidence of the defendants having sent the set-off agreements to Gan until sometime in 2017, I do not think that this is in any way determinative of the plaintiff's claim of an unlawful means conspiracy. As the defendants submitted, the emails show at the very least that Gan was aware of a proposal to set-off certain charges against invoices for the Three Projects. In fact, Gan was agreeable to the plaintiff being liable for those charges.[69] Gan's participation in the negotiations on the setting-off and his agreement that the plaintiff would be liable for certain charges reflected in the set-off agreements undermine his case that he was kept in the dark until the eleventh hour.

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68 PRS at para 42(b).

69 DRS at para 38.

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53 Given that the plaintiff could not even prove the unlawful acts to the requisite standard, I find that the plaintiff has not made out its claim in conspiracy to injure by unlawful means with regard to the 5 set-off agreements.

54 Coupled with my findings on Issue 1 and 2, I dismiss the plaintiff's claim with regard to the Three Projects in its entirety, including its claim of conspiracy. I also find for Aegis in respect of its counterclaim. Aegis is entitled to judgment in the sum of $153,872.14, with interest thereon at the rate of 5.33% per annum from 21 May 2018 (date of the Statement of Claim for Suit No 163 of 2019) to the date of payment.

Issue 4: The contracting parties to the quotation

55 As for the Punggol Project, the first question to be answered before the issue of authority is the identity of the contracting parties in the quotation.

56 In the Plaintiff's bundle of authorities, it cited the case of *Tienrui Design & Construction Pte Ltd v G & Y Trading and Manufacturing Pte Ltd* [2015] 5 SLR 852 ("*Tienrui Design*") which stands for the proposition that in appropriate cases, evidence of subsequent conduct could be admitted to discern the objective intention of the parties (see [52] of *Tienrui Design*).

57 In support of their respective positions, both the plaintiff and the defendants relied on extrinsic evidence in the form of prior negotiations and subsequent conduct to establish the identity of the contracting parties. The plaintiff relied on *inter alia* a letter by the defendants' previous solicitors dated 3 April 2017, the 28 February 2015 meeting minutes[70] and email

[70] AB Vol 13 at pp 48–52.

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correspondences from 11 to 13 March 2015.[71] On the other hand, Aegis and the First defendant relied on *inter alia* a Purchase order from Aegis to ASR dated 2 September 2014, the same email correspondences from 11 to 13 March 2015 and emails dated 23 March 2015 between Gan and third parties.[72]

58 Although I was mindful that both parties appeared to implicitly agree on the use of extrinsic evidence to aid in the determination of the identity of the contracting parties in the quotation, I was more circumspect on the use of such extrinsic evidence in the present case. In *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029 at [125] and [128]–[129] ("*Zurich Insurance*"), the Court of Appeal held that extrinsic evidence is admissible in aid of contractual interpretation if (a) it is relevant, (b) reasonably available to all the contracting parties, and (c) relate to a clear or obvious context. In addition to the fact that the extrinsic evidence relied on by the parties in the present case is likely to be inadmissible for non-compliance with one or more of the requirements set out above, I find the extrinsic evidence to be equivocal. For instance, the email correspondences from 11 to 13 March 2015 merely expresses on its face Gan's uncertainty as to whether the counterparty is Aegis or ASR. I find the emails to be of limited assistance, if at all, in proving what the parties, from an objective viewpoint, ultimately agreed upon (*Zurich Insurance* at [127]).

59 Instead, I look at the quotation itself and the terms of the quotation. While the quotation was directed to the attention of ASR's directors and the company stamps of both ASR and Aegis were on the quotation, it is not disputed

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71 AB Vol 13 at pp 123–124.

72 1DSB at pp 276 and 295.

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that the quotation was addressed to Aegis.[73] In addition, I note that the reference number on each of the four pages of the quotation reflects "Q1412281/AIXEC/SG/AEGIS". Three of the terms and conditions in the quotation also make reference to Aegis, with no mention of ASR. These terms were material terms relating to a profit-sharing arrangement.

60 Given the specific identification of Aegis in the quotation when it was signed, I find that Aegis, and not ASR, was the intended counterparty in the quotation. However, the plaintiff still has to prove that Jianlong had the authority to sign the quotation on behalf of Aegis.

Issue 5: Authority of Jianlong to act on behalf of Aegis

Jianlong did not have actual authority

61 As a starting point, I find that the plaintiff has not made out a case that Jianlong had actual authority, whether express or implied. There was insufficient evidence, if at all, to show on a balance of probabilities that Jianlong was given express authority to enter into the quotation on behalf of Aegis, or that he had such authority implied from the nature of his office or from the conduct of the parties and the circumstances of the case (see Lord Denning MR in *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549 at 583–584 ("*Hely-Hutchinson*"), cited with approval in *Banque Nationale de Paris v Tan Nancy and another* [2001] 3 SLR(R) 726 ("*Banque Nationale*") at [64]).

62 While the plaintiff took the position that Jianlong had implied actual authority "from the position he was in",[74] it is not at all clear to me what position

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73 DCS at para 10(e).

74 PRS at para 18.

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of Jianlong the plaintiff is referring to. Insofar as the plaintiff is relying on Jianlong's position as "representative of Aegis", the plaintiff has fallen far short in showing that the office of "representative of Aegis" in itself carried with it the authority to sign quotations without the sanction of the board (see *Hely-Hutchinson* at 584, cited with approval in *Banque Nationale* at [64]).

Jianlong did not have apparent or ostensible authority

63 I deal next with the plaintiff's submission that Jianlong had apparent or ostensible authority to sign the quotation on behalf of Aegis. The plaintiff submitted that the conduct of Aegis as a whole, by their actions and acquiescence, amounted to a representation that Jianlong had the necessary apparent authority to sign the quotation on behalf of Aegis.[75]

64 The evidence adduced by the plaintiff in support is as follows:

(a) In the 28 February 2015 meeting minutes, Jianlong was reflected as a representative of Aegis;

(b) Aegis' and the First defendant's conduct in involving Jianlong and Foo in the negotiation and finalising of the terms of the quotation;

(c) The First defendant's silence in the email correspondences from 11 to 13 March 2015 by failing to inform the plaintiff that the works for the Punggol Project had already been subcontracted to ASR and that the addressee in the quotation was wrong;

(d) Jianlong was personally involved in amending the terms of the draft quotation on or about 11 March 2015; and

[75] PRS at paras 26–27.

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(e) When Jianlong signed the quotation on 18 March 2015, he affixed the corporate stamp of Aegis on the quotation.

65 In *Banque Nationale* at [68], the Court of Appeal cited, with approval, the following passage by Diplock LJ in his judgment in *Freeman & Lockyer (a firm) v Buckhurst Park Properties (Mangal) Ltd* [1964] 2 QB 480 at 503:

> An 'apparent' or 'ostensible' authority … is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the 'apparent' authority, so as to render the principal liable to perform any obligations imposed upon him by such contract …

66 In *Viet Hai Petroleum Corp v Ng Jun Quan and another and another matter* [2016] 3 SLR 887 ("*Viet Hai*") at [33], Chua Lee Ming JC (as he then was) summarised some of the key principles of apparent authority as follows:

> Apparent authority arises from representations made by the principal to a third party. Representations may be express or implied from acquiescence or inactivity: *Viknesh Dairy Farm Pte Ltd v Balakrishnan s/o P S Maniam* [2015] SGHC 27 at [55]. The principal's conduct as a whole must be considered in determining whether it made any representation to the third party: *Sigma Cable Co (Pte) Ltd v NEI Parsons Ltd* [1992] 2 SLR(R) 403 at [29].

67 The difficulty in the present case is that even if I were to view Aegis' conduct as a whole, I disagree with the plaintiff that the evidence on which it relies (at [64] above) individually or collectively amounts to a representation by Aegis to the plaintiff as regards the authority of Jianlong. This is particularly so given the plaintiff's knowledge that Jianlong was the managing director of ASR. It was also not the plaintiff's case that the First defendant and/or Aegis by their conduct and actions had represented Jianlong as director of Aegis. In fact, Gan

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testified that he was unaware of whether Jianlong was ever a director of Aegis.[76] This context is crucial when evaluating the evidence adduced by the plaintiff.

68 Dealing first with the evidence at [64(b)] and [64(d)], Jianlong's involvement in the negotiation, amending and finalising of the quotation does not in itself assist in the inquiry of whether Jianlong had apparent authority as it does not speak to the capacity in which Jianlong was involved in the process.

69 It is no surprise then that the plaintiff in its submissions repeatedly point to the 28 February 2015 meeting minutes as evidence that Jianlong was involved in the process as a representative of Aegis, and not ASR. However, just as the plaintiff asks this court to view Aegis' conduct as a whole, the 28 February 2015 meeting minutes ought also to be viewed in its proper context. In his cross-examination, the First defendant explained that in the cover email in which the minutes were attached, Jianlong had an ASR email address, unlike the other recipients of the email from Aegis.[77] Moreover, as the defendants pointed out, in the emails sent by Jianlong at [64(c)] leading up to the acceptance of the quotation, Jianlong had sent the emails using an ASR email address and in his capacity as ASR's managing director.[78] The plaintiff's sole director and shareholder, Gan, acknowledged as much, *ie*, that Jianlong was emailing the plaintiff in his capacity as managing director of ASR.[79] Given the surrounding circumstances, the 28 February 2015 meeting minutes cannot be construed as a representation that Jianlong had the authority to act on Aegis' behalf.

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76 NE 24 November 2020 at p 29, lines 12–23.

77 NE 25 November 2020 at p 13, lines 24–32.

78 PCS at para 213.

79 NE 24 November 2020 at p 21, line 14– p 22, line 24.

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70 The plaintiff's reliance on the email correspondences at [64(c)] is also neither here nor there, given the plaintiff's acknowledgement that Jianlong was emailing in his capacity as managing director of ASR. As such, I find that there was no mistaken belief on which Aegis could be said to have acquiesced such that the First defendant's silence would count as a representation (see *The "Bunga Melati 5"* [2016] 2 SLR 1114 ("*Bunga Melati 5*") at [14] and [16]). If at all, the mistaken belief pertained solely to the identity of the counterparty in the quotation, and not to the capacity in which Jianlong was authorised to act.

71 As for Jianlong's affixing of the corporate stamp of Aegis on the quotation, the defendants referred to the case of *Sigma Cable Co (Pte) Ltd v NEI Parsons Ltd* [1992] 2 SLR(R) 403 ("*Sigma Cable*"). In *Sigma Cable* at [40], it was held that the fact that an agent made use of the principal's purchase order forms and rubber stamps could not be a representation of the agent's authority to act on the principal's behalf unless the principal knew and allowed the agent to use them, and the third party could prove as such. In the present case, the plaintiff has not established through the evidence adduced that Aegis knew and allowed Jianlong to use the corporate stamp of Aegis.

72 As the evidence adduced by the plaintiff was insufficient to clothe Jianlong with apparent authority to bind Aegis, I therefore find that the quotation was not binding on Aegis. Having found that the quotation was not binding on Aegis and given that the plaintiff relies solely on the quotation to establish a contractual relationship with Aegis, I dismiss the plaintiff's claim against Aegis for breach of contract with regard to the Punggol Project.

Issue 6: Unlawful means conspiracy in respect of the Purchase Order

73 As for the plaintiff's claim in unlawful means conspiracy, it fails again at the first hurdle. The plaintiff failed to establish by the evidence adduced that

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the defendants had combined to commit unlawful acts, *ie*, that the defendants fabricated the Purchase Order by way of back-dating. In fact, the evidence was that the Purchase Order was issued on 24 March 2015 to govern the relationship between ASR and the plaintiff in respect of the Punggol Project.

74 I accept the testimony of Foo who explained that the Purchase Order was issued after he had found mistakes in the quotation, namely, the quotation was addressed to Aegis instead of ASR, and included a profit sharing component when it should not have.[80] Foo's testimony was corroborated by the First defendant who explained that there was to be no profit sharing arrangement with the plaintiff in respect of the Punggol Project as the plaintiff was not able to do the entire scope of works.[81] The First defendant's explanation in this regard was not disputed by the plaintiff.

75 The circumstances before the signing of the Purchase Order also do not assist the plaintiff. In an email dated 12 March 2015, Gan asked the Third defendant to "check with [Jianlong] to confirm which company is final for us to follow" (see also [15] above). In two emails sent by Gan to third parties on 23 March 2015, Gan described the Punggol Project as being with "AEGIS/ ASR".[82] In cross-examination, Gan explained that he did so because there were two company stamps on the quotation, namely that of Aegis and ASR.[83] Even though Gan asserted that he was clear that the counterparty was Aegis after the quotation was signed,[84] the emails above point to the contrary. Rather than

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80 NE 26 November 2020 at p 16, lines 14–22.

81 Yeong Wai Teck's AEIC at para 157.

82 1DSB at pp 276 and 295.

83 NE 24 November 2020 at p 33, lines 10–17.

84 NE 24 November 2020 at p 33, lines 19–24.

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supporting the plaintiff's case that the Purchase Order must have been falsified as there was no doubt in the parties' minds as to who the contracting parties were after the quotation was signed, the evidence mentioned above appear to be more consistent with Foo's testimony that he issued the Purchase Order immediately after he had realised that the addressee in the quotation was wrong.

76 The parties' subsequent conduct also does not support the plaintiff's case that the Purchase Order was falsified to "retrospectively alter the contracting party from [Aegis] to ASR" (see [19] above). Even though the plaintiff pointed to an instance in June 2015 when Aegis made payment of $53,181.52 for the Punggol Project directly to the plaintiff, the First defendant explained that Aegis was paying this amount to the plaintiff on behalf of ASR.[85] According to the First defendant, such a practice of the main contractor (*eg*, Aegis) helping its subcontractor (*eg*, ASR) pay its subcontractors (*eg*, the plaintiff) was common.[86] This point was not disputed by the plaintiff. As such, the fact of Aegis making payment directly to the plaintiff is at best equivocal.

77 In contrast, the evidence advanced by the defendants in support of its claim that the plaintiff had always understood the counterparty to the Punggol Project to be ASR, and not Aegis, is compelling. For the actual works for the Punggol Project, the plaintiff acknowledged that it corresponded directly with ASR, and not Aegis.[87] Before making claims for the Punggol Project, the plaintiff also admitted that the works needed to be certified by ASR, and not Aegis.[88] The defendants rely on this latter admission to support its claim that the

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85 NE 25 November 2020 at p 34, lines 3–5.

86 NE 25 November 2020 at p 35, line 24–27.

87 NE 24 November 2020 at p 37, lines 15–19 and p 60, lines 21–24.

88 NE 24 November 2020 at p 37, lines 28–31 and p 60, lines 25–26.

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Purchase order is authentic as the Purchase Order contains such a requirement for certification,[89] unlike the quotation.[90] Further, in an email dated 19 May 2015, Gan agreed to amend an invoice with respect to the Punggol Project to bill ASR instead of Aegis, notwithstanding the plaintiff's position that there was no contractual relationship between ASR and itself.[91]

78 More importantly and unlike the Three Projects, the evidence showed that the plaintiff looked to ASR and not Aegis for payment for the Punggol Project. In two emails from Foo to the plaintiff dated 10 March 2016 and 10 July 2016,[92] it was plain on the face of the emails that the parties understood the plaintiff's claim with regard to the Punggol Project to be as against ASR rather than Aegis. When questioned as to why he did not correct this understanding, Gan claimed that he communicated with the defendants by phone call.[93]

79 As late as January 2017, the plaintiff was still chasing ASR rather than Aegis for payment. A series of emails between 13 and 18 January 2017 evidenced the plaintiff chasing a representative from ASR for payment on the Punggol Project.[94] In those emails, the plaintiff submitted an attachment titled "ASR_Inv_PC" (which Gan explained "PC" stood for payment claim) in response to a request by the accountant of ASR for supporting documents.[95] While Gan has attempted to explain these emails by alluding to the fact that the

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89 NE 24 November 2020 at p 38, lines 22–26.

90 NE 24 November 2020 at p 38, lines 6–8.

91 AB Vol 11 at p 257; NE 24 November 2020 at p 45, line 25–p 46, line 18.

92 AB Vol 18 at pp 142–143.

93 NE 24 November 2020 at p 55, lines 10–14.

94 AB Vol 15 at pp 170–172; NE 24 November 2020 at p 58, lines 17–20.

95 NE 24 November 2020 at p 59, lines 24–30.

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plaintiff chased ASR for payment as Aegis had asked them to,[96] this explanation falls flat when viewed in the broader context of how Gan was clearly aware of ASR's financial difficulties by that time.[97] As pointed out by the defendants, if Aegis was indeed the counterparty to the Punggol Project, it would make sense to pursue a claim against Aegis rather than ASR.[98]

80 Based on the foregoing, I find the plaintiff's claim of unlawful means conspiracy to be wholly unmeritorious. The plaintiff failed to prove to the requisite standard that the Purchase Order was falsified. Rather, the parties' conduct before and subsequent to the Purchase Order supports the defendants' case that the Purchase Order was authentic, the counterparty for the Punggol Project was ASR and not Aegis, and the plaintiff through this action is now belatedly looking to Aegis for payment due to ASR's insolvency.[99]

Conclusion

81 For the reasons set out above, I dismiss the plaintiff's claim in its entirety, including its claims of conspiracy. As for the counterclaim, Aegis is entitled to judgment in the sum of $153,872.14, with interest thereon at the rate of 5.33% per annum from 21 May 2018 to the date of payment (see [54] above).

Costs

82 The court was informed that the parties had each made an Offer to Settle ("OTS") to the other party in the course of these proceedings. This was done

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96 NE 24 November 2020 at p 58, lines 8–24.

97 AB Vol 15 at pp 170–172.

98 NE 24 November 2020 at p 58, line 25–p 59, line 4.

99 DCS at para 257.

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pursuant to O 22A of the Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("the Rules of Court").

83 The plaintiff's OTS to the First and Second defendants dated 4 June 2020 was for them to pay a settlement sum of $385,000 in full and final settlement of the plaintiff's claim and the Second defendant's counterclaim.

84 The First and Second defendants' OTS dated 24 June 2019 ("the 24 June 2019 Offer") offered the plaintiff (i) a sum of $150,000 in full and final settlement of the plaintiff's claim and (ii) the Second defendant's counterclaim would be discontinued if the OTS was accepted, (iii) with each party bearing its own costs. Should the plaintiff accept this offer after 8 July 2019, the plaintiff was to bear the First and Second defendants' costs in relation to Suit 530 and the related suits on an indemnity basis from 24 June 2019 up until the date of acceptance of the offer.

85 The First and Second defendants' OTS was followed by a Calderbank letter dated 29 May 2020 ("the 29 May 2020 Offer"). While this letter did not fall within the statutory regime of OTS under O 22A of the Rules of Court as it did not follow the form that an OTS must take, *ie*, Form 33 of Appendix A to the Rules of Court (see *SBS Transit Ltd (formerly known as Singapore Bus Services Limited) v Koh Swee Ann* [2004] 3 SLR(R) 365 ("*SBS Transit*") at [22]), it is a Calderbank letter of the type identified by *Calderbank v Calderbank* [1976] Fam 93, being a letter marked "without prejudice save as to costs" from the two defendants to the plaintiff setting out the terms of an offer to settle (see *SBS Transit* at [16]). The offer here was for payment of a sum of $100,000 from the two defendants to the plaintiff, with each party bearing its own costs. This offer was to expire on 5 June 2020.

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86 The First and Second defendants did not accept the plaintiff's OTS. The plaintiff also did not accept the 24 June 2019 Offer or the 29 May 2020 Offer. As the 29 May 2020 Offer was not accepted by 5 June 2020, it expired. However, as can be seen from the terms as set out at [84], the 29 May 2020 Offer could still be accepted after 8 July 2019. Unless the formal mechanism for withdrawal of an offer set out in O 22A r 3 of the Rules of Court is followed, the 29 May 2020 Offer can still be accepted by the plaintiff before the disposal of the claim (see *SBS Transit* at [19]–[20]).

87 Order 22A r 9 of the Rules of Court states:

> **Costs (O. 22A, r. 9)**
>
> **9**.—(1) Where an offer to settle made by a plaintiff —
>
> (a) is not withdrawn and has not expired before the disposal of the claim in respect of which the offer to settle is made; and
>
> (b) is not accepted by the defendant, and the plaintiff obtains a judgment not less favourable than the terms of the offer to settle,
>
> the plaintiff is entitled to costs on the standard basis to the date an offer to settle was served and costs on the indemnity basis from that date, unless the Court orders otherwise.
>
> …
>
> (3) Where an offer to settle made by a defendant —
>
> (a) is not withdrawn and has not expired before the disposal of the claim in respect of which the offer to settle is made; and
>
> (b) is not accepted by the plaintiff, and the plaintiff obtains judgment not more favourable than the terms of the offer to settle,
>
> the plaintiff is entitled to costs on the standard basis to the date the offer was served and the defendant is entitled to costs on the indemnity basis from that date, unless the Court orders otherwise.

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88 As the plaintiff's claim was dismissed, O 22A r 9(1) has no application. Instead, as the First and Second defendants succeeded in obtaining a dismissal of the plaintiff's claim and the Second defendant obtained judgment on its counterclaim in the sum of $153,872.14, O 22A r 9(3) comes into play. Based on the 24 June 2019 Offer, the two defendants are therefore entitled to costs on a standard basis for the claim and for the Second defendant's counterclaim up to 24 June 2019. From 25 June 2019 onwards, the two defendants are entitled to costs from the plaintiff on an indemnity basis. The 29 May 2020 Offer does not detract from the above analysis. In fact, it provides further justification for my finding above as both offers by the two defendants were considerably more favourable to the plaintiff than the outcome in this judgment.

Lai Siu Chiu
Senior Judge

Kris Chew Yee Fong and Isabel Su Hongling (Zenith Law Corporation) for the plaintiff;
Wah Hsien-Wen, Terence and Tan Chor Huang, Janet (Dentons Rodyk & Davidson LLP) for the first and second defendants.

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