

## SUPREME COURT OF SINGAPORE

29 April 2020

### Case summary

SIC/S 3/2018

*Michael A. Baker (Executor of the Estate of Chantal Burnison, Deceased) v BCS Business Consulting Services Pte Ltd and others* [2020] SGHC(I) 10

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### **Decision of the Singapore International Commercial Court (delivered by Justice Quentin Loh, Justice Carolyn Berger and Justice Dominique Hascher):**

**Outcome:** SICC declares that the defendants hold the rights to the patents of Ethocyn (“the Ethocyn Rights”) and the income and proceeds generated from the Ethocyn Rights on trust for the Estate.

### **Background**

- 1 The plaintiff is the executor of the estate of Chantal Burnison (“Chantal”), who was based in Los Angeles and passed away on 2 October 2016 in Los Angeles. Chantal was the co-inventor of a compound called “Ethocyn”, a skin product said to make the skin look younger and better toned.
- 2 The rights to the inventions and patents of Ethocyn (“the Ethocyn Rights”) were assigned to California-incorporated companies that were controlled by Chantal sometime prior to May 1982 (“the Chantal Companies”). In February 1999, the Chantal Companies entered into bankruptcy proceedings in the United States (“the Bankruptcy Proceedings”). The companies’ assets, including the Ethocyn Rights, were acquired by a New Zealand corporation, Renslade Holdings Limited (“Renslade (NZ)”) with the approval of the US Bankruptcy Court in October 1999.
- 3 Subsequently, the Ethocyn Rights were transferred from Renslade NZ to Renslade Singapore Pte Ltd (“Renslade (S)”) and then, in 2002, to the first defendant, BCS Business Consulting Services Pte Ltd (“BCS”). Renslade (S) and BCS are Singapore incorporated companies. The third defendant is a Hong Kong incorporated company, Renslade Holdings Limited (“Renslade (HK)”). The second defendant, Marcus Weber (“Weber”), is a Swiss national and a Singapore permanent resident. Weber controlled Renslade (S), BCS and Renslade (HK) and therefore indirectly the legal owner of the Ethocyn Rights. Renslade (HK), BCS and Weber are collectively referred to as “the Defendants”.
- 4 In June 2003, the Defendants entered into a supply and distribution agreement with Nu Skin International Inc (“Nu Skin”) whereby BCS agreed to supply Ethocyn to Nu Skin for its use and distribution. The payments made by Nu Skin to BCS formed the bulk of the proceeds generated from the Ethocyn Rights (referred to as the “Trust Monies”). In or around 2007, the bulk of the Trust Monies were transferred from BCS to Renslade (HK). In or around 2014, Weber withdrew a sum of CHF9.5 million from the Trust Monies.

### The dispute

- 5 According to the plaintiff, Chantal was the beneficial owner of the Ethocyn Rights. Chantal instructed a lawyer to use Renslade (NZ) to purchase the Ethocyn Rights on her behalf from the Chantal Companies during the Bankruptcy Proceedings. In or around November 1999, Chantal wished to relocate her place of business to Singapore. She entered into an agreement with Weber (“the Trust Agreement”), for Weber to acquire the Ethocyn Rights from Renslade (NZ) and hold any income or proceeds generated from the Ethocyn Rights on trust for her (“the Trust Assets”). Under the Trust Agreement, the Defendants are entitled to retain 5% of the proceeds generated from the Ethocyn Rights.
- 6 In support of the plaintiff’s case, he alleged that Chantal provided the funds for the purchase of the Ethocyn Rights from the Chantal Companies, directed the transfer of the Ethocyn Rights from Renslade (S) to BCS, and fronted the negotiations with Nu Skin. When she was diagnosed with metastatic colon cancer in September 2015, Chantal, together with her daughter, Heika Burnison (“Heika”), sought an account of the Trust Monies and the Ethocyn Rights. Chantal passed away without an account being rendered by Weber. The plaintiff brought the current suit in the light of the Defendants failure to account for the same.
- 7 In contrast, the Defendants denied there was any kind of agreement between Chantal and Weber. The Defendants’ case was that Chantal wished to sell the Ethocyn Rights held by Renslade (NZ), Weber saw a good business opportunity and agreed to purchase the Ethocyn Rights from Chantal for his own benefit through Renslade (S). Weber had all along been the legal and beneficial owner of the Ethocyn Rights. Weber denied the existence of the Trust Agreement and asserted that the Defendants did not hold the Ethocyn Rights and Trust Monies on trust for Chantal. Chantal worked for Renslade (S) as a consultant and assisted the Defendants with the exploitation of the Ethocyn Rights. The defendants also pleaded that on the plaintiff’s own case, the Trust Agreement was void for illegality as she hid her ownership of Renslade (NZ) from the US Bankruptcy Court.
- 8 As regards the CHF9.5 million that Weber withdrew from the Trust Monies, the plaintiff claimed that Chantal had agreed to loan Weber CHF6 million for a period of three years with interest at 3% per annum. Weber however, without Chantal’s knowledge or consent, took CHF 9.5 million from the Trust Monies. In contrast, the Defendants alleged that the sum of CHF9.5 million belonged to Weber and he used it to invest in bonds on behalf of Renslade (S).
- 9 At the trial, at the close of the Plaintiff’s case, the Defendants elected not to call any evidence and made a submission of no case to answer.

### The court’s decision

- 10 As the Defendants elected not to call evidence at the trial, the test was whether the plaintiff’s evidence at face value established no case in law or whether the evidence led by the plaintiff was so unsatisfactory or unreliable that its burden of proof had not been discharged (at [67]–[69]).
- 11 The Court found that the plaintiff had established, at least, on a *prima facie* basis the existence of the Trust Agreement. The evidence throughout each stage of the

- development of the Ethocyn business, to the date of Chantal's death, pointed to the same conclusion that Chantal had always been the beneficial owner of the Ethocyn Rights, the Trust Assets and Trust Monies. Weber had always been working for Chantal as her trustee and was obliged to account to her in relation to the Trust Monies and Trust Assets (at [187]–[188]).
- 12 The Court found that Weber unilaterally increased the commission due to him as a trustee under the Trust Agreement from 5% to 10% from 2016 to 2017 without Chantal's knowledge and consent (at [190]).
  - 13 The Court found that Weber had asked Chantal for a loan of CHF6 million for a period of three years, with interest at 3% per annum. Chantal had acceded to Weber's request. Weber however, without Chantal's knowledge or consent, took CHF9.5 million from the Trust Monies (at [194]–[199]).
  - 14 The Court held that Singapore law was the proper law that governed the Trust Agreement as there was an implied choice of Singapore law and it had the closest connection with the Trust Agreement (at [206] and [211]–[214]).
  - 15 There was a valid express trust under Singapore law as Chantal had the requisite intention to form a trust from the time that Renslade (NZ) purchased the assets in the bankruptcy sale (at [219]–[224]). The Trust Agreement was tainted by illegality because Chantal had made false declarations to the US Bankruptcy Court to hide her interest in the Ethocyn Rights (at [261]). Notwithstanding the illegality, the Court found that it was disproportionate to refuse to enforce the Trust Agreement and there was no reason not to enforce it (at [263]–[269]). Alternatively, the plaintiff had a valid cause of action against the defendants on a resulting trust as Weber acquired the Ethocyn Rights for no consideration (at [229] and [275]).
  - 16 The Court also considered the validity and enforceability of the Trust Agreement under California law and concluded that it would be recognised as a valid trust under California law (at [240] and [298]).
  - 17 In conclusion, the Court found that the Defendants had breached their fiduciary duties to Chantal by failing to provide an account of the Trust Monies and by unilaterally increasing the commission from 5% to 10% from 2016 to 2017 without Chantal's knowledge and consent. The Court declared that the Defendants held the Trust Assets and Trust Monies on trust for the estate and had to account for the same. The Court also entered judgment against Weber for the loan of CHF9.5 million together with 3% interest per annum (at [299]–[300]).

*This summary is provided to assist in the understanding of the Court's grounds of decision. It is not intended to be a substitute for the reasons of the Court. All numbers in bold font and square brackets refer to the corresponding paragraph numbers in the Court's grounds of decision.*