

AUSTRALIA / JUDGMENT

Zou v Ji

[2026] NSWSC 762**COURT**

Supreme Court

DECIDED

31 August 2026

BEFORE

Slattery J

CASE / FILE NUMBER

2024/052017

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Zou v Ji [2026] NSWSC 762

Hearing dates:

30 June 2025; 1 to 4 July; 8 and 23 July 2025

Date of orders:

31 August 2026

Decision date:

31 August 2026

Jurisdiction:

Equity

Before:

Slattery J

Decision:

See paragraph [376].

Catchwords:

TORTS — Miscellaneous torts — Deceit — Damages - CONSUMER LAW — Misleading or deceptive conduct — Representations as to future matters — Evidential burden – the first plaintiff claims he or the corporate second plaintiff invested funds in contracts for export to the PRC of Australian-made infant formula – the plaintiffs contend these investments were induced by false, misleading and deceptive representations made by the defendants – the plaintiffs’ investments in these contracts were lost – the plaintiffs seek to recover damages from the defendants measured by these allegedly lost investments – whether the defendants engaged in false, misleading or deceptive conduct in making representations to the plaintiffs about the terms of the export arrangements for the infant formula – whether any such representations were contrary to Australian Consumer Law ss 18 and 21 – whether the defendants knew that any representations they made were false, or that they were reckless as to their truth – whether any such representations induced the plaintiffs, to make the investments in the export contracts – whether the plaintiffs are entitled to damages under the Australian Consumer Law or for the tort of deceit.

Legislation Cited:	Australian Consumer Law, s 18 Civil Procedure Act 2005, Chapter 6 Evidence Act 1995, s 140(2)
Cases Cited:	ACCC v Channel Seven (2009) 239 CLR 305 Amalgamated Television Services Pty Ltd v Marsden [2002] NSWCA 419 Australian Breeders Cooperative Society Ltd v Jones (1997) 150 ALR 488 Bathurst Regional Council v Local Government Financial Services Pty Ltd (No 5) [2012] FCA 1200 Bennett v Strauss [2016] NSWCA 324 Blackman v Grant (2010) 29 VR 29 Briginshaw v Briginshaw (1938) 60 CLR 336 Butcher v Lachlan Elder Realty Pty Ltd (2004) 218 CLR 592 CH Real Estate Pty Ltd v Jainrain Pty Ltd [2010] NSWCA 37 Dartberg Pty Ltd v Wealthcare Financial Planning Pty Ltd (No 2) (2009) 74 ACSR 373 Google v ACCC (2013) 249 CLR 435 Gould v Vaggelas (1985) 157 CLR 215 Henville v Walker [2001] 206 CLR 459 Hyder v McGrath Sales Pty Ltd [2018] NSWCA 223 In the matter of HIH Insurance Limited (In Liquidation); Smith v McGrath [2016] NSWSC 482 Mitchell Morgan Nominees Pty Ltd v Vella [2011] NSW CA 390 Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd & Ors (1992) 110 ALR 449 Palmer v Dolman; Dolman v Palmer [2005] NSWCA 361 Perpetual Trustee Co Ltd v Milanex Ply Ltd [2011] NSWCA 367 Quek v Chan [2004] VSC 394 Reinhold v New South Wales Lotteries Corp (No 2) (2008) 82 NSWLR 762 Richard v Gendore Enterprises Pty Ltd [2004] NSWCA 116 Rowe v B & R Nominees Pty Ltd (1964) VR 477 Stav Investments Pty Ltd v Taylor [2022] NSWSC 208 Yorke v Lucas (1985) 158 CLR 661
Texts Cited:	C Lockhart, The Law of Misleading or Deceptive Conduct, 6th Edition, 2023, LexisNexis, Australia, at [4.57] and [10.15]. G E Dal Pont, Law of Agency, 4th Edition, LexisNexis, Australia, 2020, at [2.23]
Category:	Principal judgment
Parties:	Tianyu Zou (First Plaintiff) Yaphy International Pty Ltd ACN 609 716 350 (Second Plaintiff) Zhen Ji (First Defendant) Yuqi (Kevin) Zhang (Second Defendant) Buyercamp Pty Ltd ACN 625 804 131 (Third Defendant)
Representation:	
Counsel:	D O'Connor (Plaintiffs) H Fielder (First and Third Defendants) A Rizk (Second Defendant)
Solicitors:	Origo Law (Plaintiffs) Longton Blackwell (Second Defendant) Lawside Lawyers (First and Third Defendants)

File Number(s): 2024/052017

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JUDGMENT

In 2008 many infants were hospitalised and some died in the People’s Republic of China (“PRC”) after ingesting milk formula said to have been contaminated by suppliers from within the PRC. Ever since, the PRC has been a deep market for the export of infant formula made in Australia and New Zealand. Demand from the PRC market is a prominent background factor in the disputed transactions the subject of these proceedings.

The first plaintiff, Mr Tianyu (John) Zou, and the second plaintiff, Yaphy International Pty Ltd (“Yaphy”), claim that in mid-2022 the defendants made representations to them about the defendants’ proximity to a reliable source of supply of infant formula, which induced the plaintiffs to invest funds in transactions to finance and facilitate the export of Australian infant formula into the PRC. These investments were mostly lost. Mr Zou dealt directly with his long-term acquaintance, Mr Yuqi (Kevin) Zhang, the second defendant, in arranging these export transactions. Mr Zhang in turn dealt with the first defendant Mr Zhen (James) Ji and Mr Ji’s company, Southern Farms Pty Ltd (Southern Farms) and another company associated with Mr Ji, the third defendant, Buyer Camp Pty Ltd (“BuyerCamp”), to obtain supply of infant formula. At all material times, Mr Ji controlled Southern Farms, which went into liquidation in 2024, after the events the subject of these proceedings. The parties addressed one another informally in text messages and conversation by their Anglicised names.

In summary, the plaintiffs complain that the defendants engaged in misleading and deceptive conduct (contrary to Australian Consumer Law ss 18 and 21) by making representations to them that Southern Farms had a special or commercial relationship with the Australian manufacturer of the infant formula proposed to be supplied, JBX Pty Ltd (“JBX”), and that Mr Ji could source large quantities of formula at a discount price. The plaintiffs also contend that the defendants knew that Southern Farms did not have a special or commercial supply relationship with the manufacturer JBX and that the defendants knew the representations made were false, or that the defendants were reckless as to their truth. The plaintiffs seek damages now to recover their lost investments either under the Australian Consumer Law, or alternatively in the tort of deceit, contending that because the defendants’ representations induced them to invest in these export contracts the plaintiffs suffered loss.

The defendants admit that they were engaged in transactions with the plaintiffs in relation to the export of Australian-made infant formula to the PRC, but they otherwise deny that they engaged in any fraudulent or misleading or deceptive conduct. Moreover, they deny that the plaintiffs suffered any loss by reason of their conduct. Mr Zhang answers the plaintiffs’ case broadly by not contesting that some of the representations were false or misleading but by saying that (a) he did not know the representations were false, and therefore the tort of deceit is not made out, and (b) that he did not adopt those representations when they were made to the plaintiffs, and so no

contravention of the Australian Consumer Law is made out. Mr Ji, on the other hand, says that to the extent that he put any misleading material in Mr Zhang's hands that was passed on to Mr Zou constituting the alleged misrepresentations, he did not know that Mr Zhang would ultimately use that material to mislead Mr Zou.

The proceedings were conducted over seven days commencing on 30 June 2025 and continuing from 1 to 4 July 2025, and then on 8 and 23 July 2025. The case had added complexity because of the need to translate written communications from Chinese characters into English and all three of the principal parties gave evidence in Mandarin. But the Court was well assisted by counsel and solicitors to meet these challenges. Each of Mr Zou, Mr Ji and Mr Zhang gave oral evidence and was cross-examined.

Mr D O'Connor of counsel instructed by Origo Law appeared for the plaintiffs. Mr H Fielder of counsel instructed by Lawside Lawyers appeared for the First and Third Defendants. Mr A Rizk of counsel instructed by Longton Blackwell appeared for the Second Defendant.

The proceedings were initially conducted on an Amended Statement of Claim (ASOC) but near the end of the hearing on 8 July 2025 the Court made orders permitting further amendments to the plaintiffs' claim and a Further Amended Statement of Claim (FASOC) was filed to which the defendants responded. Mr Zhang did not retain legal representation until shortly before the hearing. Before he was legally represented, he filed a defence making admissions. The proceedings were conducted based on the defence filed by his legal representatives.

It is convenient first to describe several corporate entities who are referred to frequently throughout the proceedings, but who are not parties.

The Corporate Entities Featuring in the Proceedings

JBX is an Australian company which distributes newborn infant and baby formula under the brands "Bio Island and "Maxigenes" and is the parent company of the manufacturer of those products. JBX features in these proceedings as an alleged source of the Australian-made infant formula that the parties were arranging to export to the PRC. The parties often use the expression "Blue Fat" or "Blue Fatty" to refer to JBX's product Maxigenes, because JBX's packaging for this product is branded in a distinct blue and white.

Identification of the PRC-related entities who were to purchase the exported infant formula is also necessary. The "Xingyun Group" is the commonly used name for Shenzhen Tianxingyun Supply Chain Co Ltd, which is a prominent global and cross-border supply chain service provider established in the PRC in 2015. Xingyun Group specialises in e-commerce. The "yun" in its name can be interpreted in English as "cloud", perhaps referencing the e-commerce theme of its business enterprise.

Tianxing Cloud (Australia) Supply Chain Pty Ltd (the name of which is generally abbreviated in these reasons as "TX") is the Australian subsidiary of Xingyun Group. Where it is necessary to distinguish between the two entities, the PRC parent company Xingyun Group, is referred to by

that name or by the abbreviation “XS” and its subsidiary, Tianxing Cloud (Australia) Supply Chain Pty Ltd, by the abbreviation as “TX” or by the name Tianxing Cloud. This terminology was used during the hearing of the proceedings. Often it is not necessary to distinguish between the PRC parent and the Australian subsidiary, and thus it is convenient for these reasons merely to refer to the PRC and Australian entities collectively as “Tianxing”, a word which is constituent part of the full formal name of both Xingyun Group (XS) and Tianxing Cloud (TX).

Observations on the Credibility of the Parties

The Court assessed the credibility of the three parties who gave oral evidence and were cross-examined in the proceedings on their affidavits. All the parties spoke fluent Mandarin as their first language and spoke English as their second language. The parties’ written evidence was in Chinese characters translated into English. Accredited interpreters were used for the documentary and oral evidence of all parties, which made assessing credibility considerably more difficult. Nevertheless, the Court can make the following general observations about the parties’ credibility. Other observations about their credibility are made throughout the narrative of findings in these reasons.

Tianyu (John) Zou. The first plaintiff, Mr Zou, was a calm and methodical witness. He fielded all questions to him, attempting to answer them as directly and simply as possible. He made several admissions against his interests, whilst giving reasonably frank answers. He freely confessed that he did not remember all the conversations with the other parties. But he could give a reasonable account of the conversations and events that he said he could remember. His concessions assisted his credibility and led the Court to gain an overall impression of him that he was not inclined to exaggerate to advance his own case. Although he was tested on all aspects of his account, no damage was done to his credibility or the general integrity of that account, except in minor respects. His evidence is generally accepted. His evidence is at odds in many places with that of the defendants and it often unnecessary to decide the detail of which version is correct.

Mr Zou was cross examined about minor differences between his affidavit evidence and his oral evidence and slightly different descriptions at different times of his level of understanding and experience of the milk formula export industry but none of this seriously undermined Mr Zou’s credibility. Criticisms was also made that Mr Zou omitted some details from his affidavit. But this was not to his discredit. In a case where affidavits were wholly prepared through Mandarin interpreters and where some of the detail in issue only became evident as the trial progressed.

Zhen (James) Ji. The first defendant, Mr Ji, was a puzzling witness. He gave answers that changed over time and which frequently contradicted one another on important issues. Remarkably, he did not seem troubled by these quite stark features of his answers. The Court gave him the benefit of the doubt with respect to some of these contradictions, on the basis that they may have arisen due to Mr Ji misunderstanding the questions being put to him. But that alone did not explain the contradictions in many parts of his evidence.

Despite this deficiency in the quality of his evidence, Mr Ji managed to maintain a superficial impression of being a frank and generally obliging witness. Many parts of his account were consistent with the contemporaneous documentary communications. But at times he falsely invented self-serving conversations and he was prepared to participate in the preparation of false documents, as the Court's findings show. Because of the self-contradictory nature of parts of his testimony the Court often was cautious about accepting Mr Ji's evidence, unless it was corroborated by other undisputed facts or credible testimony. That said, his evidence could not be rejected as wholly unreliable, and the Court accepted some parts of it.

Yuqi (Kevin) Zhang. The second defendant, Mr Zhang, gave evidence firmly and confidently. He was definite as to what he remembered and what he did not. His answers were generally consistent with the objective evidence and the more credible evidence of other witnesses. His answers were also internally consistent and considered. He had a good memory for relevant details of events in which he was involved. Mr Zhang was able to add spontaneous descriptive detail to his answers which showed he was mostly drawing on genuine memory of events, as the circumstances required. He readily made concessions against his interests, even on significant matters. This positive picture was marred by his tendency to draw artificial defensive distinctions in his answers, which were at times difficult to understand.

Mr Zhang's credibility suffered a significant blow from his description to Mr Ji of the role of Yaphy and Mr Zou as "the boss' friend" or sometimes "the chief". When cross-examined Mr Zhang admitted the obvious: that Mr Zou was not his boss' friend. Mr Zou had no prior friendship with any senior executive in any part of Tianxiang. During these transactions Mr Zhang was somewhat elusive about who "the boss' friend" was. Mr Zhang was seeking to mislead Mr Ji about the relationship between Mr Zou and Tianxiang. The motivation for this was obscure. Mr Zhang had agreed to receive a commission from Mr Zou. Whether that was disclosed to Tianxiang is unclear and was not seriously explored in the proceedings and the Court makes no findings about it either way. But giving the impression that Mr Zou was close to Tianxiang and able to be spoken for by Mr Zhang, reduced the probability that Mr Ji would seek to deal directly with Mr Zou. Mr Zhang agreed that he wanted Mr Ji to believe that someone in Tianxiang was part of the funding support for the transaction.

Another issue in the proceedings was whether Mr Zhang, who was an old acquaintance of Mr Zou, knew of Mr Ji's lack of a direct relationship from JBX. Mr Zhang said he thought Mr Ji was dealing directly with JBX. Under cross-examination he generally maintained his account that he was ignorant about Mr Ji's lack of a direct trading relationship with JBX about making any damaging admissions. But the objective materials indicate that he was very likely by about June 2022 to have realised that at least one other person probably stood between JBX and Mr Ji's company Southern Farms.

These observations illustrate that the Court makes some serious findings particularly against Mr Ji in part of these reasons. Such findings raise special considerations for the Court. In its consideration, the Court has applied the principles in *Briginshaw v Briginshaw* (1938) 60 CLR 336; [1938] ALR 334; (1938) 12 ALJR 100; [1938] HCA 34 ("Briginshaw") and has had regard to Evidence

Act 1995, s 140(2). The Court does not lightly make findings that, on the balance of probabilities, a party to civil litigation has been guilty of misconduct, and the Court recognises that the strength of evidence necessary to establish such findings may vary according to the nature of what is sought: *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd & Ors* (1992) 110 ALR 449; (1992) 67 ALJR 170; [1992] HCA 66 at 170 per Mason CJ, Brennan, Deane and Gaudron JJ; see also *Amalgamated Television Services Pty Ltd v Marsden* [2002] NSWCA 419 and *Palmer v Dolman*; *Dolman v Palmer* [2005] NSWCA 361.

The Parties' Arrangements to Export Australian Infant Milk Formula

The following is a more detailed narrative of the relevant history. This narrative represents the Court's findings on the matters covered, except to the extent that the context indicates that only the parties' allegations are being recorded in these reasons. This narrative of findings is detailed. The parties have often given competing versions of conversations and meetings, which are not always set out in these reasons. Often the court looks to the objective evidence of the parties' WeChat and written communications and other objective evidence. For reasons of economy this narrative does not always include reference to versions of the facts and conversations that have been rejected.

Introduction

The narrative of findings involving Mr Zou commences in June 2022, when he first met with Mr Zhang to discuss the possibility of investing in the export of infant formula to the PRC. During these discussions Mr Zhang gave Mr Zou a photoshopped invoice showing a direct supply transaction from the infant formula manufacturer, JBX, to Southern Farms.

It was common ground that this invoice (referred to in these reasons as "the questioned invoice") did not reflect an actual transaction between JBX and Southern Farms. The questioned invoice had been created in mid-February 2022 following communications between Mr Zhang and Mr Ji. A facsimile copy of the questioned invoice is Annexure "A" to these reasons. Whether the questioned invoice constituted a part of any misleading or deceptive conduct requires analysis of events over two periods of time.

The first period commences in mid-February 2022 when the questioned invoice was created and transmitted between passed from Mr Ji to Mr Zhang. This period is important for assessing Mr Ji's responsibility for Mr Zhang's subsequent dealings with Mr Zou using the questioned invoice. The second period commences in June 2022, when Mr Zhang passes on the questioned invoice to Mr Zou and make statements to him. This period is important for assessing Mr Zhang's knowledge and responsibility.

The narrative of factual findings in the first period is important in whether Mr Zhang and Mr Ji either knew or had suspicions about the provenance of the questioned invoice before it was later passed onto the plaintiffs in June 2022. The narrative in the second period commencing in June 2022 sets out the defendants' various dealings with the plaintiffs using the questioned invoice.

Mr Ji and Mr Zhang in Business – 2018 to 2021

Before Mr Zou was introduced into their dealings, Mr Zhang had started to do business with Mr Ji in exporting Australian infant formula into the PRC.

Much of Mr Ji's evidence of his early business relationships and his dealings with Mr Zhang before Mr Zou became involved is accepted. Mr Ji was born in the PRC, studied at the University of Adelaide from 2005 and moved to Sydney with his family in late 2010. Since about 2011 Mr Ji has exported primary produce or food products, including beef, nuts, beer, wine and milk formula, and other products. Mr Ji incorporated two trading entities to facilitate his export activities, Southern Farms in 2014 and BuyerCamp in 2018.

In about August 2018, Mr Ji was introduced to a businesswoman, Ms Lili Chen, ("Ms Chen") who was described to him as an exporter and supplier of milk formula. Ms Chen is an enigmatic figure on the periphery of the action in these proceedings. She did not meet Mr Zou until November 2022 when he was seeking to recover funds. She is not a party but some of the parties use their interactions with her to support their respective cases. Many of those interactions are evidenced by WeChat messages. These messages admitted into evidence only on the limited basis as evidence that they were the messages sent to the active parties. Despite that limitation much can be inferred from the timing and content of the interactions between her and the defendants demonstrated in those messages. In their written communications Mr Ji calls Ms Chen familiarly by the name "Lala". Mr Zhang used the same familiar name for her at times.

At a meeting with Ms Chen soon after August 2018, Mr Ji discussed with her joint ideas for exporting milk formula. Between August and November 2019 these discussions matured into a more concrete business arrangement between the pair. Ms Chen claimed to have access to "a big market" of overseas buyers of milk formula (it may be inferred in the PRC). She told Mr Ji that she sold through her company, Lilin International Pty Ltd ("Lilin"). Mr Ji indicated that his local sellers were not interested in giving credit to Ms Chen and that his "suppliers need to be paid up front".

From about November 2019 Ms Chen placed orders for milk formula with Southern Farms through Lilin. Ms Chen complained about the high prices of Mr Ji's suppliers. She then recommended some of her own, to whom Mr Ji then turned for supply. Between November 2019 and January 2020 Ms Chen had placed some 10 orders representing about 5000 tins of milk formula with Southern Farms. Mr Ji does not identify the suppliers that he was dealing with at this time.

In early 2020 Ms Chen suggested to Mr Ji that she become one of his suppliers. She told him that she was a distributor for the "manufacturers of A2 and Maxigenes" and that "if you could order milk formula from me, I guarantee you would have stable supply and also have a better price". The Court does not accept that Mr Ji was ever told that she was an authorised distributor. Had that ever happened it is likely that Mr Ji would later make inquiries about her to JBX but that is not how events unfolded. Mr Ji says that due to the depth of demand in the PRC for milk formula at the time he needed to secure a reliable supplier of milk formula, so he decided to place orders

with Ms Chen.

Mr Ji described operating in a “high demand sellers’ market” between early 2020 and early 2022. Over that time, he purchased approximately 20,000 cans of milk formula, placing approximately 20 orders through Ms Chen as his supplier. He was impressed that she could provide sufficient supply to meet such high demand and appeared to him to have extensive business connections.

But the relationship appeared to Mr Ji to have uncommercial features. Ms Chen was not only a supplier, but she also arranged customers to place orders with and to pay Southern Farms for infant formula. Sometimes these orders also came from Lilin. Ms Chen’s suppliers issued invoices for payment to Southern Farms or to BuyerCamp. Ms Chen arranged all the logistics to effect delivery of formula. But surprisingly the arrangement did not include Mr Ji having to pay Ms Chen anything for being the middleman between her as seller and buyer. Mr Ji admitted that he was sufficiently puzzled by this business model to ask Ms Chen how she made a profit from this arrangement, only for her to tell him, “I get paid from my clients directly. It is not your business.” Throughout his early business arrangements with Ms Chen in this early period, she was always able to secure a stable supply of infant formula.

Mr Zhang Meets Mr Ji – December 2021

Mr Zhang and Mr Ji first met through a mutual friend in December 2021. Mr Zhang introduced himself as the general manager of TX (Tianxing Cloud), the Australian subsidiary of XS (Xingyun Group). Mr Zhang explained to Mr Ji at their first meeting that Tianxing had not yet started business in Australia but had plans to do so. They first made informal Internet contact on WeChat on 12 January 2022 and met at a café in Burwood to talk about future business opportunities.

At this January 2022 meeting the pair had discussions about Southern Farms possibly exporting Australian agricultural produce to the PRC. Mr Zhang explained to Mr Ji that he was responsible for liaising between TX in Australia and XS’s headquarters in the PRC in relation to exports. The Court mostly accepts that in this conversation Mr Ji said to Mr Zhang words to the effect:

“While I have been operating milk formula business for some years, I have a business partner I engaged for the past 2 to 3 years to supply milk formula and there isn’t any drama so far.”

This conveyed to Mr Zhang that there was someone else involved in the supply chain facilitating Mr Ji’s capability to source the infant milk formula and that that person had been reliable up to that point. This was a reference to Ms Chen. Mr Ji had no reason to conceal Ms Chen’s involvement from Mr Zhang. If Mr Ji described her as a “business partner” he did so only in the loosest sense of someone he was doing business with, as her role as his supplier was not something he ultimately concealed from Mr Zhang. By early February 2022 Tianxing had become interested in importing infant milk formula from Australia. Mr Zhang explained to Mr Ji at the time, “our [Tianxing’s] primary focus now is to purchase milk formula from Australia because of the high demand in China”.

On 3 February 2022 Mr Zhang telephoned Mr Ji and confirmed that the headquarters of XS in the PRC had decided to engage Mr Ji as its local Australian business partner.

Origins of the Questioned Invoice – 14 to 16 February 2022

The questioned invoice was created during dealings between Mr Ji and Mr Zhang in mid-February 2022 but only passed on to Mr Zou in mid-June 2022. Mr Ji's and Mr Zhang's respective beliefs in mid-June 2022 about the provenance of the questioned invoice derive from their earlier dealings in mid-February which are analysed here before the narrative passes to Mr Zhang's contact with Mr Zou.

On 14 February 2022 Mr Ji had a conversation with Mr Zhang on WeChat in which Mr Zhang inquired whether Mr Ji handles the export of Maxigenes (described in these WeChat messages as "blue fatty"). After discussion about price Mr Zhang indicated on WeChat that the potential demand from Tianxing could be high, "Goods required for China would be 50 40-foot containers/month". On WeChat Mr Zhang asked Mr Ji for "the name of your milk powder company. I will go and make a report", indicating that he will be informing Tianxing about the information he is gathering from Mr Ji.

Mr Ji says that later during 14 February 2022 Mr Zhang told him on the telephone that TX would purchase 20 containers of Maxigenes milk formula per month on behalf of XS. One shipping container will transport 11,520 standard size tins of Maxigenes. Mr Ji says that the conversation proceeded with Mr Zhang as follows:

Mr Ji: "I am not the authorised distributor [of Maxigenes milk formula] and I'm not able to accommodate such a large quantity. I need to call my business partner to see whether she can carry out the supply and I can only do I can do Ex-works; Tianxing Cloud [TX] or Xingyun Group [XS]" need to arrange for transport and shipping".

Mr Zhang; "That's fine; we need to start it anyway."

The Court does not accept that in oral conversations at this time Mr Ji disclaimed being an authorised JBX distributor. Had a disclaimer occurred it is to be expected that Mr Zhang would have started asking questions about who was the authorised distributor, which does not appear in the evidence. But Mr Ji may have referred to Ms Chen broadly as his business partner but with a role as his supplier.

On 15 February 2022 by WeChat message Mr Zhang asks for information to authorise Mr Ji's company as a Tianxing supplier:

"Mr Ji, when available please could you send me the company name and the authorisation links and I will launch the procurement flow and let us get the ball rolling."

On 16 February 2022 at 12:31 PM, Mr Ji replied giving the name "General International Pty Ltd", as the "company name", not the name of his company, Southern Farms, that he ultimately used. Mr Zhang did not question this at first.

Mr Zhang replied on WeChat soon afterwards identifying the three “authorisation links” that a Tianxing required, and gave additional explanation about them in parentheses, as follows:

“Photo of legal person’s identity (driver licence)

Trademark Registration Certificate (both domestic and overseas)

Procurement link (Brand Distributors)”

Mr Zhang was seeking certification that Mr Ji’s company was an authorised distributor of the milk formula proving Mr Ji could purchase the product from the manufacturer, as “Procurement link (Brand Distributors)” implies.

Mr Ji agrees that he received these WeChat document requests from Mr Zhang. But before responding he says he telephoned Mr Zhang and said to him words to the following effect:

Mr Ji: “I am not the authorised distributor of ‘Maxigene’ milk formula, and I can only source this brand from local distributors or retailers, so I did not have Maxigene’s brand certificate and the supply chain information. I need to ask my business partner.

Mr Zhang: “This is fine”

The Court does not accept this conversation took place in these terms. Had this conversation occurred, it is odd that Mr Ji deposes to none of the follow-up conversations to be expected after it. Mr Zhang would have been keen to know the outcome of Mr Ji’s discussions with his business partner (Ms Chen) about the rather diffusely described “Maxigene’s brand certificate and the supply chain information”. The integrity of the supply chain was probably a factor in Mr Zhang’s decision to commit to this arrangement, as it was in Mr Zou’s later thinking. Moreover, it is not obvious what the words “Maxigene’s brand certificate and the supply chain information” means. But according to Mr Ji, Mr Zhang was incurious for an explanation of its meaning. But despite being unconvinced about this conversation, the Court considers that Mr Zhang is likely to have appreciated by soon after this time that Ms Chen was a supplier standing between Southern Farms and JBX.

Mr Ji Turns to Ms Chen for Help – 16 February 2022

A few minutes after Mr Zhang’s 12:31 PM request, Mr Ji consulted Ms Chen by WeChat, seeking supply chain information. He did not then have supply chain information that would satisfy Mr Zhang. He was looking to Ms Chen to provide it to him. Mr Ji communicated to Ms Chen through WeChat at 12:36 PM as follows

“Mr Ji: Could you provide me with blue fatty’s supply chain? I have a major client.

Ms Chen: I have it.

The questions is, client from where and how many he/she wants.

We may not be able to supply her with that many.

Mr Ji: It doesn't matter. We can start with one or two containers. A major supply chain company in (China). Oh yes, shall we meet up tomorrow?

Ms Chen: What is the name? I don't know if they are our client. From where?

Mr Ji: Jiangsu."

Mr Ji's claim of a "major client" refers to his recent discussions with Tianxing's representative, Mr Zhang. Ms Chen is expressing caution about the volume of "blue fatty" she can supply. Mr Ji seems less concerned about meeting order volume, because he sees starting with "one or two" containers as an option, allowing order volume to expand later. Ms Chen becomes mildly concerned that this "major client" might already be a client of hers.

Mr Ji says that shortly after 12:36 PM on 16 February Ms Chen telephoned him and said:

Ms Chen: "Maxigene' (sic) is manufactured by JBX and I am the authorised distributor. I will provide you with a JBX invoice which is the supply chain information required by the client. You need to tell the client that we can only provide two containers per week at the early stage, and I will ask JBX to adjust [the] manufacturing plan to satisfy your client's demand."

Mr Zhang contended that Mr Ji had invented this conversation. The Court accepts that contention. The conversation makes little sense for two reasons. First Mr Ji had already relied on Ms Chen for two years between early 2020 and early 2022 to obtain Maxigenes milk formula. Mr Ji's companies had then on-supplied this milk formula to other customers, some of whom included Ms Chen's own entities. Moreover, Mr Ji said he had already told Mr Zhang at their first meeting that he could source milk formula products for Tianxing. If this earlier evidence is to be accepted, the conversation Mr Ji here attributes to Ms Chen is artificial: why would Ms Chen be telling Mr Ji at this time what he already knew? Mr Ji thought Ms Chen was a useful, and until then quite reliable, supplier of Maxigenes infant formula but not one with official distributorship authorisation from JBX.

Mr Ji and Ms Chen have another WeChat conversation a few hours later, at 3:21 PM. This exchange implies that they were both conscious that they would have difficulty establishing an authorised milk formula supply chain to give to Tianxing. Ms Chen suggests delay by selling a small number of containers only at first and using Mr Ji's existing company, Southern Farms, and providing the supply chain details of the manufacturer "in due course" after a trade connection is established.

"Ms Chen: Well then sell two to him.

To establish a connection

Will give him the chain in due course

It is SF [a reference to Southern Farms] [emoji]

All of them are postproduction [emoji]."

But Mr Ji is not convinced; he knows that Mr Zhang has asked for quite specific information in the form of a procurement link back to the manufacturer. At 3:29 PM he writes back on WeChat to Ms Chen pointing out that a manufacturer needs to be identified:

“It needs to start with a chain of a manufacturer”

Mr Ji here redirects Ms Chen’s attention to what he sees as the immediate task: he needs to prove to Tianxing that his supply chain starts with a manufacturer. Southern Farms only at the beginning of the chain will not be enough to satisfy that requirement. Mr Ji never suggests going direct to JBX to solve the problem.

Some 14 minutes later Ms Chen provides a solution. She initiates three consecutive communications over WeChat to Mr Ji, the middle of which is the transmission of an image of the questioned invoice:

“Ms Chen: This one will do. I have been doing this for such a long time. I know what they want.”

[Photo of the questioned invoice]

The manufacturer issues it to you and you issue it to him.”

Ms Chen’s statement “the manufacturer issues it to you and you issue it to him” is her explanation to Mr Ji that the questioned invoice she has just sent shows JBX as the manufacturer, who is to issue the questioned invoice to Southern Farms (“you”) and then Mr Ji can issue the questioned invoice to Mr Zhang (“him”). It is not easy to ascribe any other meaning to this communication.

Many circumstances surrounding Ms Chen’s communication of the questioned invoice here, apart from its contents, provide compelling proof that both Ms Chen and Mr Ji were conscious that Ms Chen had falsely created it to suit Mr Ji’s purposes of proving a supply chain back to a manufacturer of infant formula.

First, Ms Chen’s languid, “[t]his one will do...I know what they want”, makes no pretence that she has found a genuine invoice. She does not attempt to explain how she has come by a genuine invoice. Rather she reassures Mr Ji that the questioned invoice will be convincing, because she is an expert in the art of creating such documents as she has been “doing this for such a long time”.

Secondly, Mr Ji must have appreciated it could not be a genuine invoice and that Ms Chen had just created it to suit Mr Ji’s immediate purpose. Mr Ji, not Ms Chen, controlled Southern Farms. He, not Ms Chen, had access to its business records. Southern Farms had not previously purchased Maxigenes directly from JBX. The questioned invoice was dated only two days earlier on 14 February. Had the transaction recorded in the questioned invoice taken place, Mr Ji would undoubtedly have remembered it and would have been in a better position to give it to Ms Chen than she to him.

Thirdly, given Ms Chen produces the questioned invoice within 14 minutes of what Mr Ji says that "it needs to start with", Mr Ji must have inferred that by 3:43 PM, Ms Chen had found an invoice with extraordinary speed (and requiring explanation). Her authorship is confirmed by the instructions that she issued with it, "the manufacturer issues that to you", more the language of a hypothetical transaction than an actual past transaction.

Mr Ji gives artificial evidence feigning being confused and that he "doubted the authenticity of the invoice", so he telephoned Ms Chen and asked her, "where did you get the invoice from?" He says that she told him that because this is the supply chain information the client asked for "just give it to them". Mr Ji was not confused. He was aware that the invoice was a fabrication and this evidence was an invention.

And he admitted he knew it was fabricated. When Mr O'Connor, counsel for Mr Zou drew Mr Ji's attention to this WeChat exchange in cross examination, Mr Ji agreed with the proposition that "this is the one where you got the document that you knew to be false". He also agreed that when he saw the document was fraudulent he was "alarmed to an extent".

So stark was this admission that the Court initially thought that Mr Ji might have misunderstood the question due to language difficulties. So, the Court asked him, "how quickly did you work out that it probably was a false document?" to which he answered, through the interpreter "straight away". The Court infers he did not misunderstand the original question, and he knew he was getting a false document from Ms Chen.

Counsel further challenged him in cross-examination as to why he did not call, or text Ms Chen back to say something to the effect "what on earth are you doing? You know that I don't have anything to do with JBX", to which he said in reply that he called Ms Chen. But the Court does not accept that he pressed his concerns with Ms Chen. Instead, he used the questioned invoice, sending it later to Mr Zhang.

The Court infers he was not alarmed at its falsity, but he knew of its falsity. He confirmed this conclusion in a series of answers as follows:

"Counsel: And I'm suggesting to you that when you received that document you instantly understood that it was false, but it was what you wanted. That's true, isn't it?"

Mr Ji: No.

Counsel: Because you had to show Mr Zhang some evidence that you had a relationship with JBX. That's true, isn't it?

Mr Ji: That's right.

Counsel: That document is in direct answer to what Mr Zhang asked you at CB 218, for the authorisation links.

Mr Ji: Yes, but I did realise that it's false.

Counsel: Yes. No, I've established that. You wanted to do business with Mr Zhang?

Mr Ji: Yes.

Counsel: So you, with Ms Chen, made up this document to make that happen.

Mr Ji: No.

Counsel: Because you knew that if you told Mr Zhang the truth at that point, that you couldn't get the milk supplies from JBX, it wouldn't work.

Mr Ji: But I thought I still should tell him. Him, it's him.

Counsel: Tell him what?

Mr Ji: Yeah, him.

HIS HONOUR: I should still tell him what?

Mr Ji: To tell him that I am not - I don't have the direct authorisation for being a, a distributor for that company."

The answers to these questions are contradictory in places. The Court should therefore be cautious in drawing inferences from it. But looking at all this evidence together in context, Mr Ji was saying he realised the questioned invoice was fabricated and that he should tell Mr Zhang. But he did not do so.

Mr Zhang Follows up His Supply Chain Request – 18 to 23 February 2022

Mr Zhang followed up on 18 February seeking the still outstanding supply chain information from Mr Ji. The following communications then take place between Mr Zhang and Mr Ji on 18 February 2022 with the time of each indicated:

Mr Zhang: Everything is ready except the authorisation, Bro. [10:56 AM]

Mr Ji: The supply chain is correct, right? [11:36 AM]

Mr Zhang: Yeah, yeah. [12:20 PM]

Mr Ji was here checking with Mr Zhang that it is the supply chain information he needed to provide. Another three days passed before Mr Zhang sent the most debated WeChat message in the proceedings. On 21 February 2022 at 11:57 AM Mr Zhang writes:

"James' chain, or you can just p one.

Those in China are pushing to have the process completed by this Wednesday."

Mr Zhang's choice of words in this message is significant. The expression "James's chain" probably means Southern Farms. And "p one" it was agreed was Mandarin shorthand for "photoshop one". But much turns on whether the "or" is a perfectly accurate translation from Chinese characters. If it does literally mean "or" then the communication might be an invitation

to taking a shortcut to extract the information from other records. It is not necessarily invitation to fraud as the plaintiff submit. On the other hand, if the “or” really means “and”, then the communication is perhaps merely an invitation to photoshop commercially sensitive information out of a Southern Farms invoice. The proper meaning of these words is discussed below.

21 February 2022 was a Monday. Mr Zhang was pressing Mr Ji to complete the documentation within the next two days. At 7:28 PM the same night Mr Zhang asks Mr Ji, “will you send the information regarding the purchasing company in the evening”. This increased the pressure on Mr Ji to send the requested supply chain information that evening.

Then at 11:34 PM Mr Ji sends an image of the questioned invoice to Mr Zhang unaccompanied by any descriptive text. Mr Zhang responds with an emoji of appreciation.

A WeChat conversation then continues between the pair with Mr Ji explaining to Mr Zhang the relationship between JBX and Maxigenes – that JBX is in fact the holding company of the manufacturer of Maxigenes:

“Mr Zhang: The company has agreed to make payment before the dispatching of goods.

Mr Ji: This JBX is the parent company of BIO ISLAND and the holding company of Blue Fatty as well.

Mr Zhang: Let’s get started.

Understand.

Mr Ji: Yeah.

But I asked about it for two containers per week, there won’t be that many goods available in the initial stage, but I have asked the manufacturer to issue a time schedule.”

Several aspects of this conversation should be noted. Mr Zhang by this time seems to have arranged for Tianxing to be able pay upfront before dispatch of the product. Mr Ji assumes Mr Zhang does not know of the relationship between JBX and Maxigenes, so he fills in this information. But no doubt conscious of what Ms Chen had said to him about potential near-term supply difficulties, Mr Ji conveys to Mr Zhang limitations on “initial stage” goods availability. He nevertheless implies he is close to the “manufacturer” for planning future delivery schedules.

Mr Ji does not expressly communicate to Mr Zhang that this is a recently created document between himself and Ms Chen. Mr Ji says nothing overt about where the questioned invoice came from. The implication behind Mr Ji’s transmission of the questioned invoice is that Mr Ji had obtained it as evidence of a recent transaction from the business records of Southern Farms.

Mr Zhang makes no enquiry about its provenance and seems to treat the arrival of the questioned invoice as more of a box ticking exercise because he wants, as he says, to “get started”. He showed no interest in scrutinising it. At that stage he was probably not contemplating passing it on to anyone but only entering it into Tianxing’s procurement systems. He therefore knew little

positive about its reliability. And Mr Zhang's submissions to point out, Mr Zhang was receiving other indications from Mr Ji that Mr Ji was close to the manufacturer because Mr Ji had said in his recent message, "I have asked the manufacturer to issue a time schedule." But despite this within a short period Mr Zhang had reason to suspect the provenance the questioned invoice.

Mr Ji's evidence was that Mr Zhang knew from this time that Southern Farms had no dealings with JBX. The Court accepts Mr Zhang's submission that these messages are inconsistent with such a finding. The Court does not accept Mr Ji's evidence that he told Mr Zhang as early as this that Southern Farms did not have a direct trading relationship with JBX.

Mr Ji and Mr Zhang communicated again over WeChat on the evening of Wednesday, 23 February 2022. Mr Zhang has still done no due diligence on what Mr Ji has sent him. Mr Zhang tells Mr Ji that Tianxing is prepared to proceed to signing a purchase contract and there is "no more issue with the legal affairs". All that remains to be sent is a company registration certificate to Southern Farms.

Mr Zhang's "You Can Just P One"

These reasons pause briefly to discuss a much-debated question in the proceedings: what Mr Zhang meant by "you can just p one".

Mr Zhang said that when he asked Mr Ji to "just p one" what he meant was "you are able to cover such information", namely sensitive information that he would not want Mr Zhang to see (including contact details of persons he had dealt with at JBX or the unit price of products). That could be an explanation for such a request, if that was what was asked. But Mr Zhang's messages do not in terms invite Mr Ji to cover sensitive information.

The Court does not accept Mr Zhang's explanation that "just p one" is a reference merely to using the blocking or blacking out function of photoshop, one of that proprietary software's functions. The context of the email exchange does not support that interpretation. And Mr Zhang's defence of this interpretation was unconvincing. Mr Ji is talking about whether "the supply chain is correct". Mr Zhang's reply, "James' chain or you can just p one" is dealing with the same subject matter - Mr Ji's supply chain. Nothing in the interchange suggests that Mr Ji is concerned about sensitive commercial information being disclosed or that Mr Zhang is content for Mr Ji to withhold such sensitive information. That subject matter is not being discussed. Moreover, if that was the meaning of the conversation one might expect some exchange about which information needed to be redacted on grounds of confidentiality and which information did not. But no such exchange took place.

Mr Zhang's submissions on this subject have force to the extent that they support the conclusion that he did not know that the questioned invoice was false to the extent it conveyed that Southern Farms had direct dealings with JBX. But Mr Zhang had reason by this time to believe broadly that Mr Ji could photoshop the invoices available to him to present something that would be acceptable to Tianxing. But by a few months later, about May 2022 Mr Zhang had reason to believe that the questioned invoice was potentially unreliable and should not be passed on

without further enquiries on his part about its provenance.

Mr Ji says that about this time he contacted Mr Zhang and said that he could not forge a document and it was impossible for his company to source milk formula directly from JBX. In the Court's view that conversation did not take place and is probably a convenient invention.

The contextual correspondence in February 2022 does support the inference that Mr Zhang did not know that the questioned invoice contained false information about the trading relationship between Southern Farms and JBX. Indeed, in mid-February Mr Ji was positively misleading Mr Zhang that Southern Farms dealt directly with the factory, as was demonstrated by a WeChat message between the pair on 15 February.

Mr Zhang: Okay I will pass on the feedback, and the other side was asking if your goods are factory ones or pharmacy ones?

Mr Ji: Factory goods, just factory, which we deal with directly.

Mr Zhang: (OK gesture emoji)

Mr Zhang: What is the name of your milk powder company? I will make a report.

It is understandable that Mr Zhang might have had an early impression of a direct trading relationship between Southern Farms and JBX. But over time Mr Zhang had reason to doubt this.

Mr Ji submits this was not the only time Mr Zhang requested him to photoshop invoices for Mr Zhang. Mr Ji refers to the alteration of three General International invoices into Southern Farm invoices in April 2022, discussed later in these reasons under the heading "Changes to General International Invoices - April 2002".

Southern Farms and Tianxing Trade – February to May 2022

On 28 February 2022 TX signed a procurement framework contract with Southern Farms for the supply of Maxigenes infant formula. TX immediately began ordering Maxigenes infant formula from Southern Farms, commencing what was a mutually successful and trouble-free trading relationship for about four months.

Between February and May 2022 TX placed eight orders for Maxigenes infant formula (some full cream and some skim milk) with Southern Farms. Two orders (each order for approximately one shipping container of tins of formula) were placed in the first week of March 2022 under the procurement framework contract.

It is not necessary to go to the detail of these orders although some features of them are noteworthy. First, as each of these transactions go through, Mr Zhang instructs Mr Ji to make regular commission payments to the bank account of a company he nominated, in the name of Fizzy International Pty Ltd ("Fizzy"), an account which Mr Zhang said belonged to his sister. Secondly, Ms Chen directs Mr Ji to pay monies onto her company Lilin, to secure the supply of infant formula, such that Mr Ji must have appreciated that she or someone she knew had a closer

relationship with JBX, the manufacturer of Maxigenes than he did. Moreover, Ms Chen was organising the supply of the infant formula and instructing him on the execution of the transactions.

On 24 March TX entered into a new sales and purchase agreement with Southern Farms to place orders for four containers of Maxigenes formula every week for 12 months. This agreement contained a payment provision paralleled in the later contractual arrangements between Southern Farms and Mr Zou. It required the buyer to make an upfront payment of 40% of the weekly total of orders and pay the other 60% upon receipt of the products. TX then increased its ordering intensity to align with this new contract. TX submitted further orders (each mostly for four containers) as follows: a third order on 24 March 2022, a fourth order on 29 March 2022, a fifth order on 5 April 2022, a sixth order on 14 April 2022 (eight containers), a seventh order on 18 May 2022 and an eighth order on 24 May 2022.

The first five orders were fulfilled by June 2022, as were four containers of the sixth order. Southern Farms arranged delivery of the product to a warehouse in Moorebank and then TX arranged for the formula to be delivered to XS in the PRC. The remaining four containers of the sixth order, and the seventh and eighth orders were never fulfilled by the delivery of containers to Moorebank. TX paid the 40% deposit on the sixth and seventh orders, but Southern Farms did not schedule delivery. TX later sued Southern Farms for recovery of these deposits. By late-June to mid-July emerging delivery problems between TX and Southern Farms must have been evident to Mr Ji and Mr Zhang.

Changes to Three General International Invoices – April/May 2022

Mr Zhang saw the transaction documents for some of the orders between TX and Southern Farms. This became necessary because delays in delivery of infant formula prompted Tianxing to seek more information about where the Maxigenes was coming from.

On 29 April 2022 Mr Zhang urgently requested Mr Ji for more JBX transaction records and to “send me JBX before going out okay”. About 15 minutes later Mr Ji sent Mr Zhang three invoices in PDF format. These were styled as JBX invoices for Maxigenes formula. These three invoices were sent on 29 April but they were addressed to a company by the name of General International Pty Ltd, with many of the pricing details redacted and dated 3, 8 and 15 November 2021.

These invoices puzzled Mr Zhang, who queried on 29 April why they were addressed to General International and not Southern Farms. Mr Zhang asked Mr Ji over WeChat, “[t]his is for general international, so that is for your company, right?” Strangely, Mr Ji replied to this question in the Thai language, and the reply was not translated by the official Court Mandarin interpreter.

Mr Zhang communicated to Mr Ji that he was not satisfied with the three invoices he had received. So, on 2 May, Mr Ji sent Mr Zhang three new JBX invoices to which Mr Zhang responded with an emoji indicating his approval.

The new invoices sent on 2 May were now addressed to Southern Farms and were dated later, 4, 5 and 11 April. They had all their relevant pricing information redacted, although even the unredacted information is still difficult to read. At one level the redactions were consistent with Southern Farms seeking to keep confidential its margins when reselling Maxigenes to TX. It is understandable that Southern Farms would wish to protect itself from TX going behind its back directly to JBX.

But these three April JBX invoices contained other date and addressee changes that had been requested by Mr Zhang in a voicemail message to Mr Ji. On 29 April 2022 Mr Zhang left a voice message in Mandarin on Mr Ji's phone about the first three invoices. This voice message was instantaneously rendered by an Artificial Intelligence (AI) algorithm into English as follows:

Mr Zhang: "This is a bit outdated. It is from November 2021. We need something more recent like March or April, ideally by March".

Mr Zhang: "Also the thing you gave me earlier was for Southern Farms, so our contract system recorded it under Southern Farms. Could you possible (sic) revise the way you sent earlier, just change the date and other things".

The interpreter indicated to the Court that for the AI algorithm's translation of the word "revise", the word "change" would be more apt, and then having heard the original Mandarin by having the voice message replayed, the interpreter said that the better translation of the word actually used in Mandarin was "photoshop".

This recorded message shows that Mr Zhang was prepared to prompt Mr Ji to use photoshopping functions to change the date and the identity of the invoiced addressee on PDF invoices previously sent to him. Mr Zhang gave context in the voice message why this was necessary. He said that "the thing you gave me earlier was for Southern Farms". That "thing" was probably a reference to the questioned invoice, which Mr Zhang had already input into Tianxing's systems. This was apparently a request to ensure that the invoices now being supplied were consistent with the questioned invoice.

Mr Ji complied with Mr Zhang's request by placing later dates on the invoices and changing the addressee from General International to Southern Farms.

This April 2022 episode is about two months after sending the questioned invoice between Mr Ji and Mr Zhang and about six weeks before Mr Zhang gave the questioned invoice to Mr Zou. Cross-examination about this invoice exchange by Mr Fielder, revealed the inadequacy of Mr Zhang's explanation of only using photoshop functions to "block" or redact information on invoices. Mr Zhang tried to explain away the 29 April 2022 voice messages by saying "what I asked him to do was to use the photoshop function to block the date, but I didn't, you know specify on other things".

But the request Mr Zhang made in the voice message was not to block the date but to change the date and the addressee to Southern Farms, which is what happened. Mr Zhang was sufficiently familiar with Mr Ji's editing capacity that he was able to ask Mr Ji to photoshop details in invoices

to suit Mr Zhang's requirements. Mr Zhang must have by then known that Mr Ji was quite relaxed about receiving instructions to photoshop past invoices to change them to make them consistent with earlier documents. If he gave it any thought, Mr Zhang should immediately have appreciated that this also threw real doubt on the provenance and reliability of the questioned invoice which had been generated by Mr Ji without an explanation of exactly where it came from.

If Mr Zhang was really asking Mr Ji on 29 April to go and find another genuine invoice, that is what could have been requested. Rather than, "could you possibly revise [photoshop] the one you sent earlier?" the question would have been "could you find me another invoice in your records addressed to Southern Farms?"

The evidence indicates that about the same time Mr Ji sent to Ms Chen a redacted and photoshopped screenshot of a Southern Farms bank account showing that on 29 April 2022 TX had made a payment to Southern Farms open presumably to buy Maxigenes) and on the same day Southern Farms had made a payment to JBX. Mr Ji seems to have generated this false and discreditable document for Ms Chen but what was done with it is obscure.

Tianxing Delays Payment and Conversations with Ms Chen – May 2022

In May 2022 Mr Zhang says, and the Court accepts, TX was delaying payments and missing order cut off dates. The evidence suggests that TX's payment delay was a response to Southern Farms' product delivery problems. Mr Ji asked Mr Zhang if there was a way to increase payment efficiency. Mr Zhang began to look about for a third party to provide funds upfront, buy the stock, and on-sell it to TX.

Mr Zhang had known Mr Zou since about 2013. Mr Zhang invited Mr Zou to a family social occasion in May 2022, where it became clear to Mr Zhang from informal discussion between the pair that Mr Zou was interested in being involved in the import and export business. Mr Zhang decided to progress this idea and set up a meeting with Mr Zou in early June.

Before involving Mr Zou, Mr Zhang had already met Ms Chen. The Court partly accepts Mr Zhang's evidence that earlier in February or March Mr Ji had told Mr Zhang that he had a business associate called "Lili" or "Lala". Mr Zhang says that Mr Ji variously described Ms Chen to him as a "business partner", or as Mr Ji's employee and that Mr Zhang, thought that Mr Ji and Ms Chen were "working together in the same company". The Court does not accept that Mr Zhang was led to understand that Ms Chen worked inside Mr Ji's company, Southern Farms as Mr Ji's employee, or even that they worked together in the same company as business partners. Moreover, Mr Zhang had regular direct WeChat communications with Ms Chen from mid-May 2022 which must have indicated to him that Ms Chen was a dominant figure who rather than Mr Ji was probably arranging and sourcing the supply of infant formula being provided to Tianxing.

When delays started occurring in May 2022 in the delivery of Maxigenes to TX, Mr Ji set up a group chat on WeChat among Mr Ji, Ms Chen and Mr Zhang ("the group chat"). Messages among the members of the group chat were in English. The available messages between 12 May 2022 and 26 May 2022 show Ms Chen taking charge of the supply and payment details for what was

required to meet JBX's requirements to ensure delivery against TX's orders. She is the voice speaking about issues of the logistics arrangements for orders to JBX, payment timing, payment reminders, payment receipt, order size, and JBX's response times. Mr Ji's role is both passive and minimal.

These group chat messages would have shown Mr Zhang that Ms Chen was as close as or closer than Mr Ji to JBX. Ms Chen speaks with authority about when the "JBX cut-off date" for orders occurs and the trading terms JBX expects TX/Mr Zhang to meet. Mr Zhang submits that these WeChat messages show that Ms Chen was a Southern Farms employee. They certainly infer she was dealing with JBX but not that she was working for Mr Ji's company or that she was in any way subordinate to Mr Ji.

Mr Zhang's submissions point to features of the group chat and of other messages that show that (a) Mr Ji described Ms Chen's role to Mr Zou as "the one who monitors the upstream" whilst he, Mr Ji, is "responsible for the downstream" (b) the group chat has a title with two parties, Tianxing and Southern Farms and (c) Mr Ji does describe Ms Chen as his "partner". Mr Ji was prepared to use these diffuse metaphors because they were convenient and Mr Zhang was not questioning them. But the Court's overall impression of the communications from Ms Chen in was that she comes across as an independent businesswoman who ran her own show and often told other people what to do.

Mr Zhang introduces a Business Opportunity to Mr Zou – Early June 2022

In early 2022 Mr Zou was studying for a certificate in building and construction at a TAFE College on a part-time basis. He and his wife also operated a cosmetics store in Goulburn Street, Sydney. This store closed in 2024, after the events the subject of these proceedings.

Mr Zou and his wife had registered Yaphy as a shelf company in 2015. They intended to use it to export Australian wine into the PRC. That ambition was thwarted by a combination of events. In March 2020 the Covid-19 pandemic adversely impacted the development of Yaphy's business. Then in November 2020, the PRC imposed tariffs of over 100% on some Australian primary produce, including wine, destroying the prospect of Yaphy being a corporate vehicle for the export of Australian wines into the PRC. In mid-2022, when the events the subject of these proceedings began, Yaphy was a dormant entity but available to Mr Zou and his wife to be used for their other business ventures.

In early June 2022 Mr Zhang contacted Mr Zou and arranged for them both to meet at a café in Zetland, an inner-city suburb of Sydney. Mr Zhang and Mr Zou had been acquainted for several years. Mr Zhang informed Mr Zou at the meeting on 7 June 2022 that he had "an old connection", a Mr Ji, who Mr Zhang had met when he had been working in an advertising company. Mr Zhang explained that Mr Ji could obtain infant formula products directly from an Australian company, JBX, which manufactured various baby formula and nutritional supplements such as "Bio Island" and "Maxigenes". Up to that point in June 2022, Mr Zou had not met Mr Ji.

Mr Zhang told Mr Zou that he was then working for the large online PRC wholesaler, Tianxing. Mr Zhang explained to Mr Zou that he had introduced Mr Ji to Tianxing and that Tianxing was purchasing baby formula from Mr Ji.

Mr Zou says, and the Court accepts, that Mr Zhang told him that Mr Ji had a commercial relationship with JBX. Mr Zhang explained to Mr Zou that he worked for TX, the Australian subsidiary of XS (Xingyun Group). Mr Zhang said that XS was now purchasing infant formula, following Mr Zhang making the connection with Mr Ji.

Mr Zhang presented a business opportunity to Mr Zou at this meeting. Mr Zhang told Mr Zou that despite the commercial success of the existing supply of infant formula to XS) through Mr Ji, a problem had developed between Mr Ji and XS. Mr Zhang explained that Mr Ji, the middleman, did not have sufficient funds to pay the necessary deposits to his supplier to acquire the stock to then on-sell to XS. Mr Zhang said Mr Ji lacked funds for the deposit to his supplier because XS had been slow to put Mr Ji in funds for the purchase of baby formula.

This funding gap seems partly to have opened because of a difference between the trading terms of Tianxing and Mr Ji's supplier. Tianxing would only pay upon delivery of infant formula to it in the PRC. Mr Ji's supplier would only release infant formula upon payment, at least of a deposit. Such disconformity between buyer and seller's terms is commonly solved in trade finance markets but Mr Zhang chose to bridge the gap by sourcing private lending from which he earned a commission.

Mr Zhang suggested that Mr Zou could fill that funding gap and invest profitably in this export business by paying a deposit to Mr Ji of 40% of the total order value. This would then put Mr Ji in funds to pay a deposit to allow an order to be placed with his supplier. Mr Zou was given the impression Mr Ji was either unable or unwilling to fund the gap himself.

The essence of the arrangement was that if Mr Zou could finance the supply of infant formula in this way, he would become another middleman (in addition to Mr Ji) in the supply chain between Mr Ji's supplier and TX. Once Mr Ji had secured an order from his supplier, then XS, through its Australian subsidiary TX, would purchase the order from Mr Zou at a higher price than Mr Zou had paid to Mr Ji. Mr Zou would earn a profit on the marginal difference between the price he had paid Mr Ji for the supply of infant formula and the price that XS would pay him through TX. Mr Ji would arrange all the shipping of the formula sold which was said to be on a F.O.B. (free on board) basis.

Mr Zhang gave an example to Mr Zou of how the proposal would work in practice, in relation to JBX's infant formula product, Maxigenes. Mr Zhang said Mr Ji was selling this product for \$15.50 per unit to XS, and XS would normally purchase consignments of 4 to 5 containers of this formula at a time. One container normally contains 11,520 units of formula. XS would purchase the formula for \$15.70 per unit. At a marginal profit of \$0.20 per unit for on sale, each container would therefore earn a profit of \$2,304. With 4 to 5 containers per consignment, Mr Zhang estimated Mr Zou would make a profit of approximately \$10,000 per consignment (although to determine the true profit that Mr Zou would earn from the transaction, the financing costs of

supplying 40% of the purchase price would need to be brought to account).

Mr Zou's projected profit on this transaction would arise from his financial capacity to reliably fund deposits to Mr Ji on these purchases. The proposal from Mr Zhang had odd features. It is to be wondered why Mr Zou really needed to be involved as a financing middleman. This was being presented to Mr Zou as a reliably profitable product line that Tianxing wanted to acquire and trade finance was therefore likely to be available to Tianxing.

Mr Zou was tempted by the offer of an arrangement that appeared to offer an opportunity to make approximately \$10,000 from regular export consignments for little additional work other than making the necessary finance available. Mr Zou requested Mr Zhang to send through documentation outlining the arrangements. The same day Mr Zhang sent Mr Zou an Excel spreadsheet outlining Mr Zou's potential profit from lending money to fund the deposits and giving the detail of the calculations Mr Zhang had described orally. Then they discussed the arrangements in more detail over WeChat.

Mr Zhang's account of his initial discussion with Mr Zou largely parallels the account given by Mr Zou. For example, Mr Zhang's account gives more colour to the potential shortfall in financing, namely that because XS in the PRC was delaying making international payments, TX would miss out on the cut-off date for milk formula to be ordered by the supplier, as the manufacturer sells stock to customers that have paid on a "first-come first-served basis". That meant that TX would in turn be late in supplying XS milk formula in the PRC. That account of the problem is largely consistent with the Court's findings about what had passed between Mr Ji and Mr Zhang between February and June 2022.

Mr Zhang's affidavit response to Mr Zou's affidavit is cautious. He makes clear that he does not necessarily agree with matters deposed to by Mr Zou to which he, Mr Zhang, has not responded. Bearing that in mind, although Mr Zhang does not deny Mr Zou's account that Mr Ji "could obtain products directly from JBX", Mr Zhang put that alleged statement in issue. Mr Zhang gave an account in his principal affidavit of his and Mr Zou's June 2022 conversations in which he says he described Mr Ji and Southern Farms as "the supplier", without conveying any indication to Mr Zou of the proximity of the supplier to the manufacturer of the infant formula.

On Mr Zhang's account, the subjects of the reliability of supply, or the relationship between the supplier and the manufacturer, did not arise explicitly but Mr Zou was content to accept Mr Zhang's description of Mr Ji as "the supplier". Apart from the Court's acceptance of Mr Zou's credibility on this subject and its preference for his version over that of Mr Zhang's, three matters lead the Court to favour Mr Zou's version of this conversation.

First, Mr Zhang made significant admissions in cross-examination that supported Mr Zou's version. Mr Zhang had said in his affidavit that he told Mr Zou that "a supplier had been supplying milk formula to Tianxing and that the arrangement "included Tianxing paying 40% of the total price as a deposit for each order" and "the supplier would arrange for the factory to start producing the milk formula" and that when the goods were produced by the factory and ready for collection "the supplier would notify me." Mr Zhang agreed that by "factory" in that statement he

meant JBX and that he had told Mr Zou that Mr Ji would make supply arrangements directly with the JBX factory:

Counsel: "So what you told my client was that Mr Ji would arrange for JBX to start producing the milk formula?"

Mr Zhang: "Yes."

Counsel: "You represented to my client that Mr Ji was going to obtain the milk product directly from the factory JBX?"

Mr Zhang: "Yes."

These admissions coincide with Mr Zou's summary of what was said to him by Mr Zhang: that "Mr Ji was a supplier for baby formula and could obtain products directly from JBX, a manufacturer" including Maxigenes. Therefore, Mr Ji made an oral representation to Mr Zou of a direct JBX-Southern Farms relationship, as well as what might be inferred from the questioned invoice.

Secondly, Mr Zou came across to the Court as businesslike, practical and reasonably astute. His decision to enter these transactions revealed real gaps in his business experience and acumen. But the Court judges him as an unlikely candidate to comfortably take on the financial exposure of promising to supply Tianxing that was to be created through these proposed transactions, without at least some understanding of Mr Ji's reliability as a supplier. Mr Zou was unlikely to be satisfied of Mr Ji's reliability without further enquiry into Mr Zhang's generic description of Mr Ji as "the supplier", which begs the question of the reliability of Mr Ji's supply.

Thirdly, neither Mr Zou's nor Mr Zhang's versions of these early conversations show Mr Zou questioning Mr Zhang in detail about the reliability of supply from Mr Ji. Both versions suggest therefore that something brief was said that convinced Mr Zou that supply was reliable.

Mr Zou Proceeds – 8 June 2022

On 8 June 2022 Mr Zhang confirmed with Mr Zou that Mr Ji would agree to sell infant formula directly to Mr Zou for on-sale to XS. Mr Zhang sent two written forms of agreement to Mr Zou over WeChat and requested an ABN from Mr Zou for billing purposes. Mr Zou told Mr Zhang that he would use the ABN of his wife's company, Yaphy. This implied that Mr Zou either did not have or was unwilling to use an ABN in his own name.

Mr Zou was here representing to Mr Zhang that he, Mr Zou, had the ability to use the corporate entity, Yaphy and its ABN in these transactions. Mr Zhang did not at any time question Mr Zou's use of the Yaphy name and its ABN. The transaction documents were executed on all sides using Yaphy's name. The point was taken in these proceedings on behalf of Mr Zhang that Mr Zou had not established Yaphy was his agent. But both Mr Zhang and Mr Zou dealt with one another on the mutual assumption that Mr Zou had practical control over Yaphy, as Mr Zou asserted that he did, Mr Zhang thereby accepting that Yaphy was Mr Zou's agent. Mr Zou did not have to prove

that agency again in the proceedings.

The two written agreements Mr Zhang sent were signed between the parties about a week later. Each served a different function. The first was what was described from time to time in the evidence as a “framework purchase agreement” shortened mostly in the evidence to the “framework agreement”, (although it is formally entitled “sales and purchase agreement”). The seller under this framework agreement was Mr Ji’s company, Southern Farms, and the buyer was Yaphy.

The other agreement was often described as a “purchase agreement” and is so described in these reasons, although it too is entitled “sales and purchase agreement”. This was a back-to-back agreement with the framework agreement, providing the terms on which Yaphy would sell to TX each consignment (of four containers) of the same Maxigenes infant formula described in the framework agreement but at a slightly higher price. These agreements provided contractual arrangements and terms for the issuing of the purchase orders for the supply of the same quantity of Maxigenes infant formula from Southern Farms to Yaphy then to TX.

The general terms of both these agreements were almost identical. The agreements differed slightly in a section titled “Section 2 – Product Information and Weekly Divisions” and in a section entitled “Section 3 – Payment Terms”. These differences were the following.

The framework agreement, provided in Section 2 – Product Information and Weekly Divisions for the following:

“Product information: Maxigenes Full Cream/Skim Milk Powder

Product Origin: Australia

Price per unit: AU\$15.50, or as discussed and confirmed in the tax invoice prior to each order

Quantity: 4x40 foot containers at 288 units x 40 pallets per order, or as advised prior by the seller

Total contract months: 12 consecutive months

Packaging: Original packaging of Maxigenes

Address loading TBA by the buyer

Trading terms Ex works – cost of products only excluding freight or any other fees”

In Section 2 – Product Information and Weekly Divisions the purchase agreement differed from the framework agreement only in the price per unit. The framework agreement price per unit of \$15.50 was increased by .15c per in the purchase agreement to \$15.65 for the resale to TX.

The framework agreement provided in Section 3 – Payment Terms as follows:

“The buyer shall make an upfront payment of 40% of the total order amount when order confirmed and pay the remaining 60% of the total order amount upon the seller’s confirmation of the relevant product delivery dates.”

This accorded with what Mr Zou had been told about the requirement to make an upfront payment of a 40% deposit to Southern Farms.

In contrast the purchase agreement, in Section 3 – Payment Terms provided more detailed terms, as follows:

“1. The seller shall make a 40% deposit to secure production once the seller confirmed and signed the buyer’s purchase order.

2. The buyer shall make an upfront payment of 40% of the total order amount within two weeks when received the seller’s signed purchase order.
3. The buyer shall pay the remaining 60% of the total order amount upon the seller’s confirmation of the relevant product delivery dates.
4. THE SELLER MUST NOTIFY ALL EARLY OR DELAY DELIVERY. THE BUYER IS ALLOWED TO CANCEL THE ORDER IN THE CASE OF THE GOODS CANNOT BE AVAILABLE 14 (FOURTEEN) DAYS AFTER THE SCHEDULED DELIVERY DATES. THE SELLER MUST FULLY REFUND THE AMOUNT PAID BY THE BUYER OF THIS ORDER.”

The payment terms of the two agreements appeared to mesh in the following way:

Yaphy was required to pay a deposit of 40% of the purchase price to Southern Farms upon Southern Farms’ confirmation of an order, which would be based upon a matching purchase order that Yaphy had received from TX.

Within two weeks of (1) occurring, TX would pay the 40% deposit to Yaphy to reimburse it.

The remaining 60% was payable both by TX to Yaphy and Yaphy to Southern Farms, upon confirmation of product delivery dates first by Southern Farms to Yaphy and then in turn by Yaphy to TX. Yaphy had the power to confirm delivery dates to TX simultaneously with the confirmation of delivery dates from Southern Farms to Yaphy.

These matching payment obligations meant that Yaphy would be financially exposed if TX did not for any reason, such as anticipated supply problems, (a) pay the 40% deposit within 14 days, or (b) pay the balance of 60% upon the seller’s confirmation of the relevant product delivery date/s.

The general terms in both agreements provided for the following other subject matters: contract procedures (Section 4), warehouse and shipping (Section 5), warranty of export destination (Section 6), weight and quality inspections (Section 7), cargo insurance (Section 8), seller’s documentation requirements (Section 9) and various other clauses generally consistent with such an export agreement.

Mr Zhang provided other documents to Mr Zou before Mr Zou committed to the first purchase order. Mr Zhang supplied Mr Zou with an image of Mr Ji’s New South Wales driver’s licence, and a copy of the certificate of registration of Mr Ji’s trading company, Southern Farms, dated 20 January 2014.

The third document that Mr Zhang supplied was the questioned invoice. It was in the same form as previously described in these reasons, a partially redacted document (see annexure A to these reasons). From its visible text it appeared to be an invoice issued by JBX to Southern Farms dated 9 February 2022 for shipment to Southern Farms of “MG full cream milk powder 1 kg” and “MG skim milk powder 1 kg” in specified quantities. All the unit prices and total prices for the shipments were redacted but the questioned invoice did require payment to JBX at an account with a bank account number of JBX.

At a glance, the questioned invoice appears to the reasonable reader to demonstrate that Southern Farms had a direct purchasing relationship with JBX. It also represents that Southern Farms had made such a purchase as recently as February that year of “MG full cream milk powder” a shorthand reference to Maxigenes milk powder, the same product then being discussed between Mr Zou and Mr Zhang.

Both the framework and the purchase agreements record they were signed on 13 June 2022, and the contemporaneous WeChat messages confirm that they probably were. This pair of 13 June 2022 agreements are the first in time of three groups of framework and purchase agreements connected with supply of infant formula between these parties. They will from time to time be referred to in these reasons collectively as “the first supply agreements” or the “13 June 2022 supply agreements”, to distinguish them from later framework and purchase agreements.

Mr Zhang and Mr Ji gave quite different accounts of their mutual discussions at the time that Mr Zou was introduced into the supply of Maxigenes but the Court does not need to decide on the differences between these versions.

Initial Purchase Orders and Payment – 15 to 20 June

On 15 June 2022 Mr Zhang transmitted a WeChat message to Mr Zou confirming that Mr Ji had signed the framework agreement and would be sending an invoice to Mr Zou by 16 June 2022. Mr Zou promised that he would “try to collect enough and pay for it tomorrow”. Mr Zhang replied stating “I’ll keep an eye on [TX] to pay you 40% within 14 days.” This assurance conformed with the terms of the purchase agreement.

On 20 June 2022 Mr Zhang forwarded an invoice to Mr Zou over WeChat. The invoice was for Maxigenes Full Cream Milk Powder and Maxigenes Skim Milk Powder at a unit price of \$15.50. Multiplied by the number of units sold it totalled \$714,240. Mr Zhang’s WeChat message said the invoice had come from Mr Ji and that Mr Zou should pay to Mr Ji’s company Southern Farms \$285,696, being 40% of the invoiced amount of \$714,240. Mr Zou paid the \$285,696 by bank cheque to Southern Farms on 21 June 2022. He borrowed money from RAMS Home Loans to fund this payment.

Events following the \$285,696 payment on 21 June

Yaphy's payment of \$285,696 on 21 June triggered events involving Mr Zhang, Mr Ji and Ms Chen. Mr Zhang contacted Mr Ji via WeChat on 25 June seeking commission that Mr Zhang claimed had become due to him from Southern Farms because of Yaphy's payment. Mr Zhang instructed Mr Ji to pay the commission into an account in the name of Fizzy. On 27 June Mr Ji caused \$9,216 to be paid by Southern Farms to Fizzy, a payment described in Southern Farms bank statements as "Maxigenes Commission". \$9,216 represents approximately 3.2% of \$285,696.

The making of this payment confirms that Mr Ji or Southern Farms must have engaged Mr Zhang to facilitate the completion of the agreement to TX. The terms of that engagement are obscure. This engagement and payments made under it would seem to place Mr Zhang in a position of conflict of interest with his duty to his employer, unless the engagement and payments were disclosed to TX – a matter not explored in the evidence.

It was submitted on behalf Mr Zhang that it is unlikely that Mr Zhang would have had any substantive reason to mislead either his friend, Mr Zou, or his then employer TX by deploying the questioned invoice to either of them. But these commission payments probably offered him some incentive to keep these transactions going and therefore to take a relaxed view about the quality of the documentary evidence that was available to him. He certainly had a basis by mid-June 2022 for doubting the quality of the documentation he was receiving from Mr Ji, given Mr Ji's invoice photoshopping in early May 2022 but he did not seek to verify its integrity or provenance before handing it on.

On 27 June Mr Ji caused Southern Farms to pay \$268,000 to Ms Chen's company, Lilin for the supply of the Maxigenes infant formula. Mr Ji said this was so that Ms Chen could place the orders. This shows Mr Ji was dealing with Ms Chen, not JBX.

Just before Mr Zhang received the payment of the \$285,696, he proposed by WeChat having a joint lunch with Mr Ji and Ms Chen. The messages show Mr Zhang keen to thank Ms Chen "for giving so much help". Mr Ji says, and the Court accepts that the three-way lunch took place on 30 June 2022 at The Eight, a Cantonese restaurant in the Haymarket district of Sydney's CBD. Mr Ji gives an account of it being made clear at this lunch that Ms Chen and Lilin were sourcing the Maxigenes for Southern Farms. Whilst the Court does not accept all the detail of the account that Mr Ji gives of the conversation at this lunch, the fact that Mr Zhang wanted the lunch to take place with Ms Chen means it is likely that the lunch took place and did so because Mr Zhang appreciated the dominant importance of Ms Chen's role in obtaining supply. Ms Chen's role as a supplier to Southern Farms, rather than just a business partner of Mr Ji within Southern Farms, could not readily have been concealed from Mr Zhang at such a lunch. Ms Chen is likely to have mentioned at this lunch that she has other clients in the PRC who were potential purchasers of infant formula, clients like JD.Com Inc (referred to in some WeChat messages simply as "JD").

The Court infers that Mr Zhang must have suspected for some time before late June 2022 that Ms Chen was a supplier to Southern Farms. He had probably acquired that information during his dealings with Mr Ji and Ms Chen before June 2022.

Meanwhile, Mr Zou was expecting Tianxing to reimburse him and to pay the \$285,696 to Yaphy within 14 days of 20 June 2022 (that is by 4 July 2022) in accordance with the purchase agreement. But the money did not come through. When the due date for payment had passed, on 6 July 2022 Mr Zou sent a WeChat message to Mr Zhang asking him when TX would be paying for the infant formula. Mr Zhang indicated that he would “log into their internal system tomorrow morning to check the progress”. It is unclear whether “their internal system” meant XS’s internal systems or TX’s internal systems or both. But Mr Zhang’s response implied that Mr Zhang had access to the Tianxing accounting systems to monitor performance of the first supply agreement.

The Second Supply Agreement Varies the First – mid-July 2022

By mid-July Mr Zou still had not heard anything positive from Tianxing or Mr Zhang about payment to Yaphy under the 13 June 2022 purchase agreement. Mr Zou decided to send an invoice to Tianxing under the purchase agreement for the same quantity of Maxigenes full cream milk powder and skim milk powder as in the framework agreement but at the marginally higher unit price permitted under the terms of the purchase agreement, namely \$15.65 per unit. This invoice totalled \$721,152. This represented a paper profit to Yaphy of \$6,912 (being \$721,152 less \$714,240).

Mr Zou says, and the Court accepts, that he had a conversation on 20 July 2022 in which Mr Zhang sought to explain Tianxing’s non-payment up to that point as being a result of declining demand in the PRC, following which he put a new proposal to Mr Zou:

“Mr Zhang: It was slow for TX to pay for Maxigenes formula as there was not much demand. We should be looking at selling A2 milk formula as the demand for A2 formula was high.”

Mr Zou: I have taken a loan of \$980,000 from RAMS home loans by mortgaging my home. I will have access to funding very soon. Instead of waiting for TX to pay, we should just purchase the whole container ourselves and sell them to purchasers directly.

Mr Zhang: I can ask around and see if there are purchasers who would be interested in purchasing the whole container from us.”

Here Mr Zou was inviting Mr Zhang to look at other options due to the changed market conditions in the demand for Maxigenes. Mr Zou disclosed that he was interested in investing more in this trade and had borrowed money to put himself in the financial position to do so. It must have been clear to Mr Zhang that Mr Zou still had substantial funds at his disposal. An idea beginning to emerge was for Mr Zhang to seek out other purchasers to take over the purchase of the Maxigenes formula for which Tianxing so far had failed to pay.

WeChat exchanges, including voicemail messages, between Mr Zou and Mr Zhang about the same time are similar in content to this conversation. Mr Zhang mentions doubts that the purchase agreement will be completed with TX and expresses a degree of surprise at finding out that Mr Zou had so much loan funding available.

Another WeChat conversation between the pair starts directly after Yaphy sent the 20 July 2022 invoice for \$721,152 to Tianxing. Some of the exchanges are voice messages. Relevant parts of the exchange and the times they took place are as follows:

20 July 2022 3.12pm

“Mr Zhang: Yes, apart from your end, there are still eight containers with unfinished balances, and they are also talking to me over there.

Mr Zou: There won't have willingness to cooperate after he [TX] does this, right?

Our loan was just approved today. The loan will be released immediately. We can use the full amount to do milk formula business. Can we sell the stock ourselves?

20 July 2022 3.24pm

Mr Zhang: Holy shit, that's awesome. Let me ask if there is a buyer who can take over the stock. Let me ask.

Mr Zhang: In fact, I can understand his side. The goods used to be worth 13 million yuan, but now they're worth 8 million yuan. They are stuck here and not sent back. I can understand it, but it is true that he dragged the other one even longer. I'll take a screenshot of that picture for you later. He insisted to start paying after the goods are shipped. Hey, there's nothing I can do about it. I'll just let you send you a screenshot to see on what date the process is.

Mr Zhang: Look this is of 1 million [yuan]. Plus the down payment of 1.2 million [yuan] from your side, we will have to wait for the goods to be shipped. I can understand it, but it will indeed make it difficult for him to do business in the future, I feel.

Full payment, available stock. Let me ask if I can sell it for 16.”

Mr Zou is conveying his general dissatisfaction with late payment of the earlier invoice on the purchase agreement, but Mr Zhang is explaining that the market value of the goods in the PRC has dropped and that has hardened Tianxing's position to only pay after the goods have been shipped. He appears to be apologising for Tianxing but asserting that timely payment to Mr Zou is out of his reach: “Hey, there's nothing I can do about it.”

The personal dynamic is important. Mr Zhang had invited his friend, Mr Zou, to provide financial assistance to facilitate Mr Zhang's employer to import infant formula. Now Tianxing was not honouring its side of the arrangement. If Mr Zou was annoyed at this, he did not show it.

Mr Zhang Proposes a New Agreement – Late July 2022

Mr Zou says, and the Court accepts, that in late July Mr Zhang called him and offered him an exit strategy through another product, A2 milk formula:

“Mr Ji would like to purchase more A2 milk formula from his suppliers but he does not have the required funding. Mr Ji would like to use your money to purchase the milk formula and then sell them to his connections in China for a profit.

In exchange, Mr Ji will provide a portion of his profit to you by buying back the milk formula at a higher price. He will buy back the milk formula that you purchased within two weeks from receiving your payment.

I will ask if Mr Ji wants to buy back the Maxigene milk formula as well.”

This seemed to provide to Mr Zou a solution to the current payment problem as well as an opportunity for further profit by assisting Mr Ji to fund the completion of a contract with A2 milk formula. This introduced the A2 product for the first time but offered the possible incentive of Mr Ji relieving Mr Zou of the burden of the existing Maxigenes contract. At this point Mr Ji buying back the Maxigenes contract that Tianxing had not yet honoured was only dangled as a possibility.

But soon after Mr Zhang spoke to Mr Ji, Mr Zhang (again as the middleman) put forward to Mr Zou a proposition from Mr Ji, involving (a) a solution to the problems with the existing Maxigenes purchase agreement and (b) funding for a new contract for the export of A2 milk.

On 25 July 22 Mr Zou says, and the Court mostly accepts, that Mr Zhang called him and put a proposal to him in the following terms:

“Mr Zhang: Mr Ji has agreed to buy back both the Maxigenes and A2 milk formula. However, as you only paid for the 40% deposit of the Maxigene formula, Mr Ji asks you to pay the 60% balance to him first and he will then be able to purchase both the Maxigene and A2 milk formula from us.

Mr Zou: Okay. Please provide me with a signed agreement from Mr Ji to record our agreement in providing funding and buying back both the Maxigene and A2 milk formula.”

The Court does not accept that Mr Zhang said Mr Ji had already agreed to buy back the “A2 milk formula”, as the 13 June 2022 supply agreements only involved Maxigenes. Tianxing had no outstanding obligations to pay for A2 formula at that stage.

The proposal was that Mr Ji (through his new corporate entity, BuyerCamp) would become the purchaser to take over the failing 13 June 2022 purchase agreement whereby Tianxing was meant to purchase the Maxigenes infant formula`. BuyerCamp would repurchase the Maxigenes infant formula Mr Zou had acquired from Southern Farms (but which Tianxing had failed to purchase). That proposal consisted of the following elements:

As Mr Zou had paid a 40% deposit under the first supply agreement, Mr Ji was proposing that Mr Zou would pay the remaining 60% of the order on the 13 June 2022 transaction and then Mr Ji said he would then be able to immediately on-sell the whole consignment to Mr Ji's buyers in the PRC.

Using the revenue from the sale of the goods by BuyerCamp to his sub-purchasers in the PRC, Mr Ji would repurchase the stock from Mr Zou two weeks after Mr Zou paid for the balance of the shipment.

Mr Ji would then pay Mr Zou a percentage of the profit from the sale of the shipment in the PRC.

This new deal was presented to Mr Zou as a package: he would invest further to complete the existing Maxigenes contract, which would also help Mr Ji to fund another contract to purchase A2 in which Mr Zou could also be involved and receive upside.

Two features of this proposed arrangement should be noted. First, Mr Ji and Mr Zhang seem not to have anticipated a fall in the demand and price of Maxigenes occurring, which seemed to be the reasons for Tianxing failing to complete the 13 June 2022 purchase agreement for Maxigenes. Their solution involved Mr Zou covering the whole purchase price for the Maxigenes, while Mr Ji sought other buyers for it in the PRC. In substance Mr Ji and Mr Zhang were proposing that Mr Zou fund a solution to a financial risk they had not foreseen in their existing arrangements.

Secondly, this proposed arrangement continued to depend upon the potency of the implied connection between Southern Farms and JBX: Mr Zou had to invest more into purchasing Maxigenes from Southern Farms, because Tianxing was not performing as a buyer, to allow Yaphy to on-sell the Maxigenes to BuyerCamp. This involved Mr Zou making a deeper financial commitment to acquiring Maxigenes formula. In the Court's view, in making this deeper financial commitment Mr Zou continued to rely upon the assumption of Southern Farms' commercial proximity to JBX (the distributor of Maxigenes) and believed that Maxigenes would therefore be more reliably delivered. Mr Zou was never offered an opportunity to invest in the A2 resupply arrangements on a standalone basis.

This analysis answers the defendants' challenge as to how the plaintiffs could have relied upon the questioned invoice, which implies a direct commercial relationship between Southern Farms and JBX, when purchasing other infant formula and related products such as A2, which were not manufactured by and had no manufacturing connection with JBX.

On 26 July 2022 at 9:30am Mr Zhang forwarded over WeChat a draft sales and purchase agreement to Mr Zou to reflect their new agreement. This agreement provided for Yaphy to sell Maxigenes and A2 to a new customer entity that Mr Ji had nominated, BuyerCamp. It had been signed by Mr Ji on behalf of BuyerCamp and was eventually signed by Mr Zou on 26 July 2022. This was a new purchase agreement to substitute for the 13 June 2022 purchase agreement. The parties (including TX) seem by their conduct to have abandoned the 13 June 2022 purchase agreement, although this new contract documentation does not expressly reflect that. This and related July 2022 agreements are referred to collectively as the "26 July 2022 agreements".

This 26 July 2022 purchase agreement between Yaphy and BuyerCamp provided for the sale (in A\$) of 46,080 units of Maxigenes at \$15.80 per unit totalling \$728,064 and for the sale of units of A2 formula milk appropriate for different stages of infant development (stages 1-4), with 5760 units of early-stage formula at \$36 totalling \$207,360, and 8640 units of later stage formula at \$34 totalling \$293,760. Thus, the total purchase price of A2 formula of \$501,120 (being \$207,360 plus \$293,760) was outweighed by the total consideration of \$728,064 which was 59.2% of the total invoice value of \$1,229,184 (being \$501,120 plus \$728,064). Payment arrangements under this contract were that “the customer [BuyerCamp] shall make full payments to the seller [Yaphy] within 7 days when received goods”.

The WeChat messages evidencing the signing of this purchase agreement show Mr Zhang sending a draft of the agreement to Mr Zou at 9:30am on 26 July. Mr Zhang suggests to Mr Zou that he should wait until Mr Ji signs the agreement. Mr Zhang introduces BuyerCamp to Mr Zou, explaining that Mr Ji had “said he would use his other company” in this contract. At one point Mr Zou says to Mr Zhang “how about you urge him, sign and pay”, showing that Mr Zou wanted this new arrangement expedited to resolve the cash flow issues that had arisen under the 13 June 2022 agreements.

Mr Zhang had facilitated the making of this 26 July 2022 purchase agreement by BuyerCamp. He sourced it and sent it to Mr Ji for advance approval on behalf of BuyerCamp. On the previous evening, 25 July 2022 at 7:03pm, he sent the draft to Mr Ji by WeChat, with a covering message “James, this is a simple contract for selling the goods back to you from the chief. Have a read of it tonight when you have time.” The language of this message indicates Mr Zhang is familiar with this agreement and is seeking to introduce Mr Ji to it. The agreement was the one Mr Zhang wanted Mr Zou to sign.

Mr Zhang’s conduct here answers one of the defendants’ arguments. Mr Zhang had placed Yaphy in the draft agreement and provided a signing block for Mr Zou to sign as the representative of Yaphy, describing the office that Mr Zou held as “Deputy General Manager”. As discussed earlier in these reasons, the defendants question whether Mr Zou can speak for Yaphy. This argument has little substance: here is another example of Mr Zhang crafting aspects of the transactions upon the assumption that Mr Zou can indeed act on behalf of Yaphy.

Mr Zhang’s conduct here shows he was heavily involved in orchestrating the 26 July 2022 purchase agreement by BuyerCamp. He brought Mr Ji and Mr Zou together again to solve the problems that had arisen from Tianxing’s failure to complete the 13 June 2022 purchase agreement. He did so ultimately without Tianxing appearing to bear any financial consequences from that failure.

But Mr Ji says Mr Zhang’s orchestration went beyond his dealing just with Mr Zou and Mr Ji, as the next section of these reasons shows.

Did Mr Zhang arrange the 26 July purchase agreement with Ms Chen?

Mr Ji says that Mr Zhang not only brought he and Mr Zou together to make the 26 July purchase agreement, but that Mr Zhang had also initiated this new arrangement with Ms Chen. Some of the objective evidence supports this account of these events.

Mr Ji says that about 25 July 2022 Mr Zhang told him that Mr Zhang and Ms Chen wanted to change the current business model. According to Mr Ji, Mr Zhang explained the new arrangement as one in which Ms Chen and Mr Zhang increased their profit margin but would keep Southern Farms profitably in the arrangement as well. Mr Zhang's more detailed explanation involved Ms Chen switching from the customer in the existing Maxigenes supply agreement to TX and substituting a new purchaser, another client of Ms Chen, JD.

According to Mr Ji the conversation between himself and Mr Zhang was as follows:

"Mr Zhang: JD will purchase Maxigenes milk formula and A2 milk formula ("A2") at from Lala, there will be a high price and large demand, but JD can only make payment after the shipment arrived at China. I discussed it with my boss in Xingyun Group, and he agrees to provide funds for Lala to buy A2 to supply JD and share profits with her, but we need [to] use your company as intermediary.

Mr Ji: "It sounds very complex, how can we do it?"

Mr Zhang: "We have to use your company as the intermediary. This new model will apply to the 'Maxigenes' milk formula already ordered by Yaphy to Southern Farms, Yaphy will place orders for Southern Farms to supply A2 as well, my boss and I will take 40 cents per can for A2 to be ordered by Yaphy, Lala will pay Southern Farms 10 cents per can as well. Yaphy will make payments to Southern Farms, and Southern Farms need to transfer the funds to Lala for her to complete orders for JD. Once Lala received the payment from JD, she will refund the money paid by my boss via your company. All you need to do is enter into another agreement with Yaphy to buy Maxigenes milk formula and A2 from Yaphy and transfer the fund to be paid by Lala to your company to Yaphy, Yaphy will issue invoice to your company shows Yaphy is the seller."

Mr Ji says he discussed the new arrangement directly with Ms Chen and that she confirmed steps involved in what Mr Zhang had said.

Mr Zhang would organise money from Mr Zou to fund Ms Chen to supply Maxigenes and A2 formula to JD. The Maxigenes to be sold to JD would require completion of the existing contract with TX.

Southern Farms would remain as an intermediary and would receive funds from a new purchaser on behalf of JD.

Mr Ji would follow Mr Zhang and Ms Chen's instructions to transfer money to Ms Chen and pay commissions.

Ms Chen would use the funds received to acquire milk formula to supply JD, which would only pay for the formula when it was received in the PRC.

Upon JD's receipt of the formula, when JD paid Ms Chen, she would repay BuyerCamp, which would in turn repay Yaphy.

In short, under this new arrangement Ms Chen would use Mr Zou's funds to complete the existing Maxigenes agreement and to supply a new customer, JD, with A2. Payments made to and from Yaphy would be made through two companies controlled by Mr Ji, BuyerCamp and Southern Farms.

How did BuyerCamp, a company Mr Ji controlled, become a purchaser from Yaphy in this new arrangement? It could not have happened without Mr Ji's consent.

Mr Ji's version of how this new arrangement came about is consistent with the contemporaneous documents and shows considerable control by Mr Zhang and the involvement of Ms Chen. The following events surrounding signing of the 26 July purchase agreement show this.

The night before the 26 July purchase agreement between Yaphy and BuyerCamp was signed, Mr Ji sent it to Ms Chen to check that she agreed with its pricing and terms and she replied "correct".

On the afternoon the 26 July purchase agreement was signed Mr Zhang sent Mr Ji by WeChat the final form of that agreement with a simple and blunt instruction "Sign it." And a few hours later Mr Zhang sent another message to Mr Ji, "remember to sign it, so they will be able to make the payment tomorrow morning." Mr Ji followed instructions and signed it.

Late in the evening of 26 July Mr Ji made a silly mistake in executing the new business arrangements, which is consistent with him trying to understand the directives of others, rather than being an initiator of the new arrangements. That evening at 11.06 PM Mr Ji sent an invoice from BuyerCamp to Yaphy for \$501,120 for payment for the purchase of A2 formula by Yaphy from BuyerCamp. But Mr Ji was confused: under the new arrangements Southern Farms was selling the A2 to Yaphy and then Yaphy was on-selling the same quantity of A2 to BuyerCamp. Mr Ji says that the next morning Mr Zhang instructed him to issue an invoice "from Southern Farms to Yaphy, not from BuyerCamp to Yaphy" with the same quantities but different unit prices. That Mr Zhang probably said something like this to Mr Ji is confirmed by Mr Ji conforming with the instruction and creating an amended invoice next morning, 27 July, in the name of Southern Farms with the same quantities and amended unit prices. Mr Zhang sent a WeChat message that morning, 27 July at 9:29 AM to Mr Ji giving him the amended unit prices. This WeChat message from Mr Zhang also instructed Mr Ji in the words "SF will receive the payment", that Southern Farms was to be invoiced.

About 50 minutes later, again on the morning of 27 July Ms Chen follows up Mr Ji, on WeChat showing that she knows all about Mr Ji's error in the invoice the night before. With her unmistakable firmness she pushes him quickly to issue an amended invoice before it causes any problems.

Change the invoice and give it to him.

They are going to the bank now.

And it's a check that are going to deposit.

I'm worried it won't be received before Friday.

Then the first batch of A2 will be delayed.

That won't be good.

You get it done and give it to him now as quickly as you can.

A few minutes.

Don't put them through the trouble twice.

Ms Chen's curt tone in this message is perhaps understandable given that she was waiting on news from Mr Zhang as to whether Mr Zou had deposited the cheque for \$922,464. But the tone and content of the communication also reveal her influential role in effecting this transaction and that she was well briefed from Mr Zhang with information about it.

The contemporaneous communications suggest Mr Zhang had a significant role with Ms Chen in creating the structure of the new arrangements reflected in the 26 July agreements.

Southern Farms Invoices and Mr Zou Pays – 27 and 28 July 2022

Mr Zou needed a supply of A2 infant formula to satisfy the Yaphy – BuyerCamp 26 July 2022 purchase agreement. Southern Farms agreed to sell the required formula to Yaphy. So, on 27 July 2022 Mr Zhang sent Mr Zou an invoice ("invoice 073002") from Southern Farms in the amount of \$493,920 for a further container of infant formula "as discussed". This was done without a formal matching framework agreement having been executed.

This invoice 073002 for \$493,920 was for the sale from Southern Farms to Yaphy of an identical number of units of A2 milk formulated to suit various stages of infant development. The invoice was for 5760 units of early stage A2 formula at \$35.50, totalling \$204,480. This allowed a \$0.50 profit to Mr Zou/Yaphy on the contract price to BuyerCamp of \$36, being a total profit of \$2,880 being (\$207,360 less \$204,480) on early-stage formula. It also invoiced 8640 units of later stage formula at \$33.50 giving a \$0.50 profit to Mr Zou/Yaphy on the contract price to BuyerCamp of \$36 for later stage formula, totalling \$4,320 (being \$293,760 less \$289,440). Thus, the total profit on the A2 side of this 26 July 2022 transaction for Mr Zou, through Yaphy, was to be \$7,200 (being \$4,320 plus \$2,880).

To complete the 26 July 2022 transactions, Mr Zou needed to fund both the completion of the 13 June 2022 Maxigenes transaction and to pay for the additional A2 infant formula. To do this, on 28 July 2022 Mr Zou transferred the \$922,464 to Southern Farms in conformity with Mr Ji's instructions. This amount of \$922,464 was made up as follows:

the balance of 60% to be paid to Southern Farms under the 13 June 2022 Maxigenes supply agreements being \$428,544; and

The amount of Mr Ji's A2 invoice 073002 for \$493,920 to Mr Zou.

Thus, Mr Zou had by this time paid away a total of \$1,208,160 (being \$285,696 plus \$922,464) to Southern Farms. This total sum paid of \$1,208,160 was for (a) \$714,240 to purchase Maxigenes from Southern Farms (being \$285,696 on 21 June and \$428,544 on 28 July) and (b) \$493,920 to purchase A2 formula from Southern Farms.

In the Court's view Mr Zou paid away the sums based on the earlier representations Mr Zhang had made to him about the JBX-Southern Farms relationship. Mr Zou continued to believe that the-then still unperformed Maxigenes component of these transactions was more likely to be performed in part because it was underpinned by the close commercial relationship between Mr Ji and JBX as the Maxigenes distributor.

Events following Mr Zou's transfer of the \$922,464 to Southern Farms.

On 28 July Mr Zhang informed Mr Ji that the \$922,464 had been paid and a few hours later Ms Chen instructed Mr Ji to pay \$900,000 to Lilin. Mr Ji caused Southern Farms to pay this sum to Lilin on 28 and 29 July. Later that day on 28 July Mr Zhang instructed Mr Ji to pay him \$10,656 as commission. Mr Ji caused Southern Farms to pay this commission again to the company Mr Zhang had nominated, Fizzy. The Southern Farms bank statement records this payment to fizzy as "Maxigenes Marketing Fee". The calculation of this commission is obscure but \$10,656 is close to 2.5% of the balance of the Maxigenes payment that had just been made of \$428,544.

Mr Zou Invoices for A2 and BuyerCamp Pays – 6 to 20 August 2022

On 6 August 2022, Mr Zhang and Mr Zou exchanged WeChat messages which resulted in Yaphy issuing two invoices to BuyerCamp in the total sum of \$1,229,184 for the on sale of the milk formula in the PRC that Yaphy had acquired through the 26 July 2022 transactions. These two invoices to BuyerCamp were:

a Yaphy invoice (invoice 2022-0008) dated 3 August 2022 for \$728,064 for one container of Maxigenes milk formula, and

a Yaphy invoice (invoice 2022-0009) oddly post-dated 7 September 2022 for \$501,120 for one container of A2 milk formula.

The expected profit of \$7,200 on the A2 component of the 26 July 2022 transaction was outweighed by the likely expected profit to Mr Zou on completion of the reworked Maxigenes transaction, which had now crystallised at \$13,824 (being \$728,064 less \$714,240), further supporting the inference that profiting on completing the previous Maxigenes transaction was a significant financial incentive for Mr Zou in entering into the 26 July 2022 transactions.

Mr Ji on behalf of BuyerCamp paid the Yaphy invoice for \$501,120 for one container of A2 milk formula in three tranches of \$200,000, \$200,000 and \$101,120 between 18 and 20 August 2022. Mr Ji seemed keen for at least this part of the 26 July transaction to proceed. BuyerCamp's payment of this precise amount of \$501,120 was a clear implied appropriation of the payment to BuyerCamp's payment obligations under the A2 component of the 26 July 2022 agreement.

This payment and the communications by which the invoices were issued to BuyerCamp are further evidence that the defendants were dealing with Mr Zou on the mutual assumption that he controlled Yaphy.

Mr Zou/Yaphy were still out-of-pocket for the \$714,240 paid away to Southern Farms for the Maxigenes formula. Mr Zou/Yaphy had not yet been paid the \$728,064 by BuyerCamp for that formula and neither Mr Zhang nor Mr Ji had yet confirmed to Mr Zou that the contracted Maxigenes had been delivered to BuyerCamp. Mr Zou was told in November that the Maxigenes had still not arrived in the PRC.

Mr Ji's payment of the Yaphy invoice for \$501,120 on the A2 component of the 26 July 2022 transaction left Yaphy out of pocket \$707,040 (being \$1,208,160 less \$501,120). This payment also appeared to renew Mr Zou's interest in investing further with Mr Ji and led to the final supply agreements between these parties. The Court infers that Mr Zou still expected that the outstanding Maxigenes agreement would soon complete and that BuyerCamp would pay \$728,064 to Yaphy, which would cover the \$714,240 Yaphy had paid to Southern Farms.

Ms Chen Funds BuyerCamp's payment of \$501,120 to Yaphy

Ms Chen funded BuyerCamp's payment of \$501,120 to Yaphy between 18 and 20 August. Ms Chen provided Mr Ji with Yaphy's invoice to BuyerCamp for \$501,120. Mr Zhang had obtained and sent this invoice to Ms Chen. She instructed Mr Ji to prepare an invoice for the identical A2 formula from BuyerCamp to Lilin for the sum of \$501,340 – the extra \$200 being for "packaging service fees payable by Lilin to BuyerCamp".

Mr Ji sent Ms Chen the requested invoice for \$501,340 to Lilin on 18 August, which was paid the same day. Mr Zhang instructed Mr Ji to pay Yaphy from the funds to be received from Lilin. That is what happened and these funds received were then used to pay Yaphy's invoice to BuyerCamp for \$501,120 over the next three days. BuyerCamp's bank records show that it had less than \$5000 in its bank account before receiving the funds from Lilin, which wholly funded its payments to Yaphy.

Mr Zou did not know of Ms Chen's role in funding this payment of \$501,120 to Yaphy. The evidence does not allow the Court to infer definitively whether Lilin used part of the \$900,000 that Mr Zou paid Lilin on 26 July to fund BuyerCamp in this way but is possible these funds were recycled.

Third Supply Agreement – 19 August 2022

Mr Zou remained interested in infant formula export transactions. BuyerCamp's non-payment of the \$728,064 was not yet cause for alarm on his part. In a WeChat conversation with Mr Zhang on 19 August 2022 at 8:26am Mr Zou said to Mr Zhang "by the way, let's keep doing A2...." They discussed a continuing relationship for the supply of A2 infant formula based on the contracting structure they had already used involving Yaphy and BuyerCamp. This matured quickly into another signed agreement.

Mr Zhang forwarded Mr Zou a further document entitled "Sale and purchase Agreement" for A2 formula, which was like the framework agreement made between Southern Farms and Yaphy on 13 June 2022. Mr Zhang explained that this new framework agreement was necessary because the previous framework agreement only provided for Southern Farms to supply Maxigenes, not A2.

Mr Zhang said that the terms of the new A2 framework agreement were the same as the Maxigenes framework agreement except for "the payment method". In fact, the proposed third supply agreements contemplated continuous rolling fortnightly supply and payment obligations between Southern Farms and Yaphy, and between Yaphy and BuyerCamp.

Mr Zhang explained to Mr Zou that Southern Farms would supply the infant formula within two weeks after Yaphy paid the purchase price. The payment terms were in Section 3 of this new framework agreement and provided as follows,

"The Buyers shall make full payment to the Seller within 2 business days after confirmed order; the Seller will have products delivered to Shipping Agent in Sydney in the 2 (TWO) weeks after the Seller received Buyer's full payment."

The Buyer is allowed to cancel the order in the case of the good cannot be delivered to shipping agent 28 days after the Seller received Buyer's full payment, and the Seller MUST fully refund the amount to the Buyer of this relevant order."

The idea behind this new framework agreement was for continuous fortnightly orders for A2 formula followed by supply every fortnight from Southern Farms. BuyerCamp's prompt payment of fortnightly invoices when purchasing from Yaphy would assist Yaphy to fund its regular fortnightly acquisitions from Southern Farms. Mr Zhang said Mr Ji would need to pay the money back fortnightly and that the terms meant that if formula was not delivered within four weeks Mr Ji would give Mr Zou a full refund. That such explanations were given is consistent with WeChat messages between Mr Zhang and Mr Zou on 19 August 2022.

Based on the various WeChat messages exchanged, Mr Zou signed a framework agreement for the supply of A2 formula from Southern Farms to Yaphy on 19 August 2022 and sent it by WeChat to Mr Zhang with the question "when will it start, in September?" To which the following WeChat answer came back in reply from Mr Zhang:

“No, it’s the payment for a2 next week. After the payment is completed, the new containers can be continued. Then it will be the order to Vipshop, and the payment will be a little more than two weeks, just like this container. As in September, just wait for me to talk to him. When we get payment of Blue Fat we’ll stop doing Blue Fat and turn to A2, right? So we’ll start supply A2 for Jingdong from September, just after we get the payment. 2 containers every 2 weeks, right? Roll it out once every two weeks, which is equivalent to making 4 containers of A2 in a month. You get profit of over 7000 per container, 7,200 right? My profit here is 2,800.”

As earlier indicated, the term “Blue Fat” used in this message is used colloquially to refer to Maxigenes because of its blue and white themed packaging.

Mr Zhang coordinated through WeChat messages with Mr Ji and Ms Chen the signing of this new framework agreement on 19 August. Throughout these messages Mr Zhang continues to maintain with Mr Ji the fiction that the figure on the other side of the transaction who is providing the funding should be described as “the chief”, even though he is talking about his friend Mr Zou, and not someone senior within Tianxing. Mr Zhang sends the new framework agreement to Mr Ji on 19 August 2022 at 12:21 PM and gives him the following instructions:

“James, lala asked me to have the purchase process of A2 between the chief and you signed. Will continue with A2 from now on.

Have a read of it and see if there is any issue.

If it is OK, you sign it first, then I’ll ask the chief to countersign it.”

Whatever Mr Zhang’s precise motivation was for describing Mr Zou to Mr Ji as “the boss” it had the effect of obscuring from Mr Ji the actual relationship between Mr Zou and Mr Zhang and causing Mr Ji to continue to assume that Tianxing, or someone at Tianxing, was on the other side of these transactions. This shielding of Mr Zou from Mr Ji continues right up until payment becomes an issue in November 2022 and Mr Zou wants to meet the other parties to these transactions.

Mr Ji also has WeChat messages with Ms Chen about signing the new framework agreement on 19 August. She is clearly driving the transaction forward and instructing Mr Ji about “Kevin’s contract” and to “give it to him as soon as possible, so that he can make the payment on Monday”, so she can order “another batch of goods on Tuesday”. Approximately 20 minutes later Mr Ji reported to her “it’s been done”. This context makes it probable that Mr Zhang had been having direct discussions with Ms Chen about the signing of this agreement.

Payment under the third Supply agreement – 23 August 2022

On 22 August, pursuant to the 19 August framework agreement, Mr Zhang forwarded Mr Zou an invoice from Southern Farms for the supply of a container load of A2 milk formula in the amount of \$493,920. This invoice billed for 5760 units of early-stage formula at \$35.70 per unit and another 8640 units of later stage formula at \$33.70 per unit. The unit quantities are approximately the same as the previous invoice as representing one container load, but the prices are slightly higher, producing a total invoiced amount of \$496,800.

The following day, 23 August, Mr Zou paid \$496,830 to Southern Farms (the additional \$30 being a bank fee). Mr Zhang closely monitors with Mr Ji whether Southern Farms has received the funds. So does Ms Chen, who is keen to get the money and rapidly instructs him by WeChat “transfer it to me right away”. Then she exhorts him several times to transfer the money to her “right away”.

But Mr Ji pays Ms Chen so quickly he forgets to deduct the commission payable to Mr Zhang. In the end Ms Chen pays the commission of \$5800 to Mr Zhang’s nominee company, Fizzy.

At this point Mr Zou was out-of-pocket from his outlays to Southern Farms on all three transactions, being a total sum of \$1,203,870 (being \$707,040 plus \$496,830).

The defendants argue that Mr Zou could not have relied in entering the 19 August 2022 transactions involving A2 formula and making payment thereafter, upon any implications from the questioned invoice, or earlier statements by Mr Zhang which related to the relationship between Southern Farms and JBX in relation to the supply of Maxigenes.

The Court accepts Mr Zou’s statements that he still relied on the questioned invoice at this stage and such reliance is likely. Under Mr Zou’s direction Mr Yaphy paid away the last \$496,830 for A2 milk in a context where Southern Farms’ obligations for delivery of Maxigenes, on which Mr Zou was relying, were still unperformed. Mr Zou continued to expect they would be performed in part because of what he had been led to believe about the Southern Farms – JBX relationship. The mere fact that Mr Zou was causing Yaphy to pay out funds for A2 milk, rather than Maxigenes, does not mean that the original Maxigenes – related representations were not still operative in his mind. Mr Zou was more confident in paying the \$496,830 for A2 milk because of his expectation of performance of the 13 June 2022 agreement.

Two matters should be mentioned before leaving the narrative of transactions. First, the Court’s earlier description of Mr Zou as “reasonably astute” relates to his general business outlook. But in the export trade he was an ingenu. At this point before committing through Yaphy to fund the export of more A2, a wiser middleman in his position would have sought evidence in the form of copies of bills of lading, or other objectively verifiable export documents to prove that the Maxigenes had been loaded for export to the PRC. But because of their friendship Mr Zou tended to trust Mr Zhang’s superintendence of his side of these transactions. And this case has proceeded on remarkably sketchy information about whether the 26 July framework agreement was ever performed.

Secondly once Tianxing had dropped out of the picture (after the reworking of the 13 June 2022 supply agreement through the 26 July 2022 agreement) Mr Zhang, the employee of Tianxing did not need to remain involved at all. His only continuing role was to collect a commission for arranging the funding from Mr Zou and otherwise helping to give effect to will the transactions.

BuyerCamp Default and Part Payment – September 2022

On 7 September 2022, Mr Zou caused Yaphy to issue an invoice to BuyerCamp in the sum of \$501,120 for the same container of A2 milk formula which had been ordered from Southern Farms on 22 August. Mr Zou's expected profit on this transaction was \$4,290 (\$501,120 less \$496,830).

BuyerCamp did not pay this invoice. Nor did Southern Farms refund the purchase price Yaphy had paid to it. Yaphy remained out-of-pocket \$1,211,070.

On 30 September 2022 Mr Ji made partial payment of \$22,752 to Yaphy on the outstanding invoices to Southern Farms. The same day Mr Zou caused \$6,912 (approximately 30% of \$22,752) to be paid to Mr Zhang in commission said to be owed to him in relation to these transactions.

From September 2022 Mr Zou sought payment from Mr Ji and Southern Farms. Pressure from Mr Zou led to several meetings between these parties in late in 2022 and early 2023. This resulted in some further payments being made by Mr Ji and others.

The Concord West Meeting – 14 November 2022

Mr Zou wanted to resolve the payment crisis at a meeting. Mr Zou said a meeting took place between the parties and Ms Chen on Friday, 11 November 2022. But he later accepted this was an error and that Mr Ji and Mr Zhang correctly recalled that the meeting occurred on Monday, 14 November 2022. Prior to this meeting Mr Zou had not met either Mr Ji or Ms Chen. Mr Zhang had been the sole communication link between the parties.

On Sunday 13 November Mr Zhang and Mr Ji arranged to meet at 11 AM the following day, 14 November, Ms Chen would join them at 12.30 p.m. and Mr Zou at 2 PM. This planning probably indicates that the three parties other than Mr Zou wanted to align a joint approach and resolve their differences before speaking to Mr Zou.

Mr Ji says, and the Court accepts, that in arranging the meeting Mr Zhang described Mr Zou as “my boss's friend who provided the money”. Mr Zhang was dissatisfied with Ms Chen's promises about the supply of infant milk formula and wanted to use the meeting to put pressure on Ms Chen, as did Mr Ji.

On Monday 14 November the parties arrived in that order and at the approximate times proposed. The Court generally accepts Mr Zou's account of this meeting. He says the following conversation took place.

“Mr Ji: This is my business partner Lili Chen. She will provide you with an update on the milk formula deal.”

Ms Chen: The milk formula has already been shipped out. However, the shipping was delayed. Due to the impact of Covid-19, the purchasers of the milk formula in China have changed the contract term from FOB to CIF and we now have to wait until the ship reaches destination to receive payment.

Mr Zou: When can I have my money back? When can you pay my invoice?

Ms Chen: As soon as the purchasers receive their container, we will have the money to pay you. The container is currently on a container ship called “YM Success”.

Mr Zou: I have taken out a home loan to fund my investment. I was told by Mr Ji that I would be getting the funds back within two weeks time. I’m now paying additional interest charges on a daily basis for your delay.

Ms Chen: We can offer to pay you interest charged by your bank.”

Objective facts support this account. The parties created a four-way WeChat group (of Mr Zhang, Mr Ji, Ms Chen and Mr Zou) directly after this meeting. In the four-way chat group Mr Zou sought payment of the monthly interest accruing to his bank and information about the arrival of the ship in the PRC. Monthly interest was paid to Mr Zou for a period.

Mr Ji’s account of the meeting when all four were present overlaps to a degree with that of Mr Zou. Some of his version is likely to be correct. According to Mr Ji, Mr Zhang introduced the parties and explained Mr Ji’s association with Southern Farms and BuyerCamp and that the conversation proceeded as follows:

“Mr Zhang: This is John, he is the investor of Yaphy, this is James, the director of Southern Farms and BuyerCamp, this is Lala, she is an expert in the milk formula export business, all orders placed for Tianxing cloud are organised by her, and your investment is for her to buy Maxigenes and A2 milk formula in Australia and sale to JD.”

Mr Ji: Hi John, Southern Farms paid the money from Yaphy to her [Ms Chen]. She is Southern Farms supplier for milk formula and my business partner. It is better for you to discuss with her directly. Let me prepare some tea for you.

Mr Zou: Hi Lala, I was impressed about the deal we completed in August for A2 but how about the sum of \$714,240 I paid in June and the \$496,800 I paid in late August. Have you shipped the milk formula to JD yet?

Ms Chen: There was a delay due to Covid-19 restrictions in China the port of Ningbo has been closed for quite a while. I was told it will be opened gradually soon, and they will provide you with a draft bill of lading this week and will keep you updated down the track.

Mr Zou: When will you receive the money from JD. There is a cost for the money I invested.

Ms Chen: JD will pay me as soon as the milk formula arrive at their warehouse in Ningbo. It will be showed on the bill of lading. Don't worry about the cost for your money, I will cover it.

Mr Zhang: Very good. I will set up a WeChat group for four of us to communicate. Lala, please make sure you will send the bill of lading to the WCT group for all of us to aware of the process."

This is the first time Mr Zou had met Ms Chen. Mr Zou did not know of Ms Chen until the Concord West meeting. Some such introduction was likely. But Mr Ji's version has him revealing here for the first time to Mr Zou that there was another intermediary between Southern Farms and JBX, Ms Chen. If this version is correct, Mr Zou did not react with the surprise that might be expected from this revelation. If this is what happened, it would not assist Mr Zou's case of reliance on the questioned invoice. Had he been told Ms Chen was the source of supply it is expected that he would have asked about her role and interrogated her about her relationship with the manufacturer and the reliability of her supply.

But the Court does not accept this aspect of Mr Ji's account. In June 2022 Mr Ji gave the questioned invoice to Mr Zhang and expected it was used by Mr Zhang to create the impression with TX of a direct relationship between JBX and Southern Farms. He did not spontaneously let slip to Mr Zou that this impression was incorrect and that there was another intermediary between Southern Farms and JBX. It is far more likely that he fudged the relationship with Ms Chen, calling her his "business partner" who could provide updates, so as not to arouse suspicions in Mr Zou. Moreover, Mr Zou's lack of surprise to the introduction to Ms Chen rather confirms his account of this conversation. And it is most unlikely that Mr Zou as seen by the Court would start complimenting Ms Chen about how "impressed" he was with her dealmaking prowess.

Mr Ji did not mention to Mr Zou at this meeting that Mr Ji had paid Mr Zou's funds to someone else or that Ms Chen was his supplier. Apart from stating that Ms Chen was his "business partner" and would be updating him on his deal, Mr Ji was not more specific about Ms Chen's role. Mr Zhang did not say words to the effect "your investment is for her to supply Maxigenes and A2 milk formula in Australia and sale to JD". When answering Mr Zou's questions Ms Chen used word "we" to describe her and Mr Ji's actions, confirming the false impression to Mr Zou Ms Chen and Mr Ji were just business partners.

Four-Way WeChat Communications – November 2022 to January 2023

Mr Zhang promptly set up the four-way WeChat chat group on the afternoon of 14 November 2022. In the second half of November Ms Chen responds in the four-way chat group to Mr Zou's questions about the ship transporting to the PRC the containers of infant formula under contract. Ms Chen gave copies of movement records for the vessel "YM Success" to Mr Zou in early December. They appear to be Internet sourced, showing that the YM Success was in the Taiwan Strait and due to call at anchorage for the port of Ningbo in the PRC on 11 December 2022. Mr Zou inquires of Ms Chen in the four-way chat group, on the assumption she is speaking directly to JBX, about the vessel's departure date, speed, navigation schedule, expected port calls and other

related matters. In these communications Mr Zou shows close interest in getting information from JBX.

In the four-way chat group, Mr Zou also follows up the payment of interest on his bank loan which had also been promised at the Concord West meeting. On this and other matters Ms Chen becomes more engaged in correspondence with Mr Zou than Mr Ji or Mr Zhang.

Approximately a week after the Concord West meeting Mr Ji or Ms Chen gave Mr Zou a redacted photocopy of what she said was a bill of lading for the milk formula that Mr Zou was funding. Mr Zou accepted it at face value.

The document is odd. It is headed up “Yang Ming Marine Transport Corp” adjacent to which in large letters are the words “draft only”. It purports to be issued in Melbourne on 19 November 2022 and is unsigned. The ship’s name is fully redacted. The consignee’s name is fully redacted. It refers to a single shipping container load of “milk powder” of 40 pallets. It does not specify whether it is Maxigenes or A2 or both. No forwarding agent reference appears on the document, and it contains no other information which would be objectively verifiable by independent enquiry for external sources. The booking number is partially obscured. The bill of lading number is partially obscured, and the export reference is partially obscured. The document appears to be deliberately constructed to be unverifiable through any shipping agency. The Court infers that Ms Chen gave this document to Mr Zou to placate him.

Interest Paid to Mr Zou – October 2022 to July 2023

Between December 2022 and July 2023 interest payments were made to Mr Zou roughly coinciding with the consensus reached at the Concord West meeting about funding Mr Zou’s interest payments obligations to his bank. These were all made by direct bank transfer.

The first of these in the sum of \$5,800 was in fact paid on 29 October 2022 before the Concord West meeting. WeChat communications among Mr Zhang, Mr Ji and Ms Chen between 25 and 27 October 2022 about funding this payment show Mr Zhang organised the \$5,800 to go direct to Yaphy’s account from BuyerCamp. Mr Zou described to Mr Ji that Yaphy’s account was “the account of the boss’s/chief’s friend” and “could you please pay him the November capital cost today? 5,800 in total.” Then Mr Zhang adds, showing a degree of responsibility for Mr Zou’s predicament, “we’ll share it among you, me and Lala. 1,900 each.”

These payments total \$47,600 over the period from 29 October 2022 until 16 July 2023 when they ceased. Mr Ji made the first two of these payments on 29 October and 11 December 2022, each of which was in the sum of \$5,800. Another eight payments were made in varying amounts between \$2,000 and \$10,000. Ms Chen made the largest of these payments for \$10,000 directly in cash at a face-to-face meeting in March 2023.

TX Threatens Litigation – January 2023

On 11 January 2023, acting on behalf of TX, Sajen Legal sent a detailed letter of demand to Southern Farms alleging Southern Farms had failed to deliver Maxigenes infant formula under contracts made between TX and Southern Farms for which TX had pre-paid 40% and similar deposits. The demand alleged non-delivery against prepaid deposits for invoice in April and May 2022 as well as the \$285,696 paid on 14 June 2022 being 40% of the purchase order in the total sum of \$714,420.

Sajen Legal demanded the repayment of a total of \$1,571,328 for payments made in respect of non-delivery good and threatened proceedings if the money was not paid by 18 January 2023. Mr Ji and Ms Chen could not agree on how to defend Southern Farms.

In April 2023 Mr Zhang foreshadowed to Mr Ji that TX would sue Southern Farms. On 8 May 2023, TX filed proceedings in the Commercial List of this Court, claiming \$1,392,568 together with interest. Inconclusive discussions continued between Mr Ji and Ms Chen.

Mr Ji says that he was told there was little prospect of successfully defending the action on behalf of Southern Farms and that he should consider appointing a liquidator. Southern Farms was ultimately placed into liquidation on 20 July 2023.

Mr Zou meets Ms Chen in Burwood – 13 March 2023

Mr Zou continued to press for payment. On 13 March 2023 Mr Zou met again with Ms Chen at a Hungry Jack's store at Burwood. Mr Zou says that Ms Chen said to him that "there was an issue with her business partner" and that Mr Zou "did not need to know the details" about that but that she would "resolve the issue and come up with the funds to pay [him] in 2 to 3 months". Ms Chen gave Mr Zou \$10,000 in cash on this occasion in further payment for the interest charged by his bank.

The Mascot Café Meeting – 6 July 2023

Mr Zou, Mr Zhang and Mr Ji also met by arrangement in a café in Mascot in July 2023. Ms Chen was not at this meeting. Mr Ji and Mr Zou each give detailed self-serving accounts of this meeting, laced with alleged admissions by other parties, statements designed to bolster each party's case, mutual recriminations, blaming the absent Ms Chen and warnings of future litigation. That is to be expected at this time, some eight months after the November 2022 meeting, and six months after TX had first threatened litigation. The Court places little weight on any of the parties' evidence about what was said at this meeting.

Mr Zou Commences Proceedings

Mr Zou commenced these proceedings by a Statement of Claim in early February 2024. Mr Ji says that he telephoned Mr Zhang on 12 February 2024 to tell him about the Statement of Claim. Mr Ji's account of this conversation adds a self-serving statement to Mr Zhang:

“Believe it or not, Lala is not a party in his claim. John [Mr Zou] knew the money was paid to her [Ms Chen]. Can you let him stop the legal action against us and we can instruct his lawyer to sue Lala together?”

This is an example of Mr Ji’s habit of inventing evidence to support his case. Such a conversation is unlikely. Mr Zhang created the impression with Mr Zou that Mr Ji and Southern Farms were dealing directly with the manufacturers of Maxigenes infant formula.

Neither Mr Ji nor Ms Chen has since confirmed the supply of any of the contracted infant milk formula to Tianxing nor to any other purchaser in the PRC, nor have they caused Mr Zou to be repaid any more of the funds he advanced.

Summary of the Plaintiffs’ Claim

It is useful to summarise the plaintiff’s gross and net claim in respect of Maxigenes and A2 infant formula before considering the various interest payments made to the plaintiffs between October 2022 and July 2023.

The plaintiffs’ gross claim on account of payments made in consideration of the supply of Maxigenes formula is \$714,240 (being the \$285,696 paid on 22 June 2022 and the \$428,544 paid on 28 July 2022). The plaintiffs have not received any payment for Maxigenes from TX or BuyerCamp.

The plaintiffs’ gross claim on account of payments made in consideration of the supply of A2 formula is \$990,750 (being the \$493,920 paid on 28 July 2022 and the \$496,830 paid on 23 August 2022). BuyerCamp paid \$501,120 to Yaphy on account of Yaphy’s supply of A2 formula between 18 and 20 August 2022. This left Yaphy out-of-pocket in respect of A2 sum \$499,630 (being \$990,750 less \$501,120).

Thus, the total amount claimed for the plaintiff before considering the various interest payments made to the plaintiffs between October 2022 and July 2023 is plus \$1,203,870 (being \$714,240 plus \$489,630).

The various amounts paid by the plaintiff principally on account of interest between October 2022 and July 2023 said to amount to \$47,600. Account will need to be taken of these sums when interest is being calculated on the capital amount claimed to be outstanding of \$1,203,870. The precise financial effect of the payment of these sums amounting to \$47,600 will depend upon the basis of any interest calculations undertaken on any principal amount found to be outstanding. So, it may be more convenient to deal with these amounts separately.

Mr Zou’s claim originally included compensation for alleged losses arising from the sale of various investment properties which have been mortgaged to provide the funds to invest in the export contracts are subject these proceedings. Several of these properties were sold. But this aspect of the claim was not pursued at the hearing.

Analysis

Mr Zou dealt solely with Mr Zhang before Yaphy entered into the three purchase agreements on 13 June, 26 July and 19 August 2022. This analysis commences with the Court's conclusions in relation to their direct dealings, considering first the Australian Consumer Law case brought against Mr Zhang and then the case in deceit against him.

Then Mr Ji's potential liability is considered, commencing with Mr Ji's contentions about the scope of the pleaded case against him. This section next considers whether Mr Zhang was Mr Ji's agent, or whether there is any other maintainable basis for Mr Ji to be liable to the plaintiff, on any combination of his and Mr Zou's conduct.

Finally, other ancillary issues are considered. Neither Mr Zhang nor Mr Ji brought cross-claims against one another. For convenience the first and third defendants will be referred to together in this analysis of their submissions as "Mr Ji".

The Plaintiffs' Case against Mr Zhang

The Oral Representation Case

Mr Zhang's closing written submissions are primarily directed to the provision of the questioned invoice rather than anything said between Mr Zhang and Mr Zou in June 2022. Mr Zhang submits in his closing written submissions:

"42. Here, the relevant pleaded representation is said to be the passing on of the JBX Invoice. But it is unclear what representation is said to have been made by Mr Zhang in his own right."

This approach sidesteps part of the plaintiffs' evidence and pleaded case that Mr Zhang made oral representations in addition to supplying the questioned invoice. Mr Zou's submissions placed emphasis on what Mr Zhang said orally. As the narrative of findings shows, Mr Zhang said to Mr Zou that Mr Ji could obtain products directly from JBX, which manufactured Maxigenes. The FASOC at [41](I) includes the contention that Mr Zhang "represented to the plaintiff" that Mr Ji "had a special relationship with JBX and could source large quantities of milk formula from them at a discount price".

This pleading is not limited to what was conveyed by the questioned invoice alone and was substantiated by the evidence of what Mr Zhang said to Mr Zou about Mr Ji obtaining products directly from JBX. Being able to obtain products directly from the manufacturer is sufficient to satisfy the pleaded claim of "a special relationship". These oral statements of Mr Zhang to Mr Zou (a) do not convey to him that Mr Ji was able to source large quantities of milk formula from JBX, but (b) they did convey that Mr Ji could obtain products directly from the manufacturer.

These oral statements were misleading because of the lack of a special relationship, in the sense of a direct relationship, between Southern Farms and JBX.

Representations made by the Questioned Invoice

The oral representations can be left to one side for the moment. Mr Zhang's defence case primarily addresses what representations were, or were not, made by Mr Zhang's supply of the questioned invoice to Mr Zou. That case is analysed here and is independent of the Court's findings about the oral representations made.

Mr Zhang denies that he engaged in misleading and deceptive conduct by passing on the questioned invoice. His denial is based on the contention that he did not adopt or endorse whatever representation the questioned invoice conveyed.

The applicable law may be shortly stated. Whether a corporation (or other person liable) which publishes, communicates or passes on the misleading representation of another or has itself engaged in misleading or deceptive conduct will depend on whether it would appear to ordinary and reasonable members of the relevant class of recipients that the corporation has adopted or endorsed that representation, and if the question arises it will be a question of fact to be decided by reference to all the circumstances of the particular case: *Yorke v Lucas* (1985) 158 CLR 661, at 666, [1985] HCA 65, *Butcher v Lachlan Elder Realty Pty Ltd* (2004) 218 CLR 592 at 605, [2004] HCA 60 [39]-[40] ("Butcher"); *ACCC v Channel Seven* (2009) 239 CLR 305 at 321, [2009] HCA 19, [43] and *Google v ACCC* (2013) 249 CLR 435 at 446, [2009] HCA 19 [15] ("Google"). This general statement has been applied in a wide range of situations. The relevant case law highlights some factors which can be relevant to whether courts infer adoption or endorsement of a representation, or not. Some of these authorities are discussed below.

The above authorities suggest the question is whether the circumstances show to the relevant section of the public that Mr Zhang was a mere conduit and not involved in making the representation, or whether he would be regarded by the relevant section of the public as adopting the representation. This will often require careful analysis of the conduct of the intermediary which is said to be misleading: *CH Real Estate Pty Ltd v Jainrain Pty Ltd* [2010] NSWCA 37 at [112]-[113]. As the High Court said in *Butcher*, characterising the agent's conduct requires consideration of "the nature of the parties, the character of the transaction contemplated, and the contents of the brochure itself": at [40] per Gleeson CJ, Hayne and Heydon JJ.

This case was conducted on all sides on the basis that Australian Consumer Law s 18 applied to the conduct of the defendants.

The Supply of the Questioned Invoice

The narrative of findings shows that Mr Zhang neither expressly disclaimed the authenticity of the questioned invoice, nor did he expressly adopt it or vouch for its accuracy. But such observations are of limited value on their own. Even in even a case based on representations rather than conduct, such as this one, the authorities require all the circumstances to be considered.

Mr Zhang's submissions correctly point out that on 8 June 2022 Mr Zhang sent without comment to Mr Zou three documents including the questioned invoice and that there was no immediate discussion between the pair about the questioned invoice or its contents.

Mr Zhang submits that Mr Zou understood at the time that what Mr Zhang was passing on was a document that came from Southern Farms. When he was cross-examined about the redactions to the invoice, there was the following exchange.

"Counsel: Did you seek an explanation from Mr Zhang as to why he had redacted even, for example, the balance due without the individual prices?"

Mr Zou; I didn't ask him, because I thought the document was not from him originally. Actually, it should be sent from Mr Ji to Mr Zhang."

Mr Zhang then made the following submission

"46. Here, Mr Zhang made no representation. This is not in the category of cases where an agent or intermediary adopts the relevant information as their own and then conveys it directly themselves but then otherwise seeks to disclaim the information. Rather, Mr Zhang simply forwarded on a document previously provided from him. It is clear on the face of the document that the principal (i.e. Southern Farms) was the source of the information and what Mr Zhang was doing was passing on information, that he himself had been provided with as part of his own company (TX) entering into commercial relations with Southern Farms."

Mr Zhang reasoned, based on the statements of principle in Google, that Mr Zhang could not engage in misleading or deceptive conduct because he made no representation himself but was merely passing on information from Southern Farms.

Mr Zhang's submission is correct in that it was obvious to both Mr Zou and Mr Zhang that (a) the questioned invoice was a business record of Southern Farms (b) conveyed information about its business and (c) probably had been provided to Mr Zhang by someone at Southern Farms like Mr Ji. This is what Mr Zou's answer, "I thought the document was not from him originally", appropriately concedes. But there is more to this situation than those bare facts.

More would have been conveyed to a reasonable person in the position of Mr Zou from the circumstances in which Mr Zhang supplied the questioned invoice. The circumstances support the inference that Mr Zhang did adopt or endorse the contents of the questioned invoice, when it was given to Mr Zou.

The first is the conversational context. Before he transmitted the questioned invoice, Mr Zhang had already told Mr Zou that Mr Ji could obtain products directly from JBX, a manufacturer of infant formula including Maxigenes. This statement was wrong due to the lack of a direct trading relationship between JBX on the one hand and Mr Ji and Southern Farms on the other. But the questioned invoice was being presented as ancillary proof of that oral representation. This inference is also strengthened by Mr Zou's recollection that "probably I asked, I wanted to have a document to prove that he has the ability to supply those goods, and also the ability to complete

the deal”. That oral representation had been made by Mr Zhang himself without any disclaimer and without referring to the questioned invoice, which was supplied separately. These events indicate that Mr Zhang was providing the questioned invoice to substantiate facts for which he was taking some responsibility. This situation was therefore unlikely to appear to a reasonable person in Mr Zou’s position as merely passing on third-party information.

These circumstances contrast with the mere provision without comment of a document which on its face was prepared by another, from which a failure to adopt or endorse would more readily be inferred: *Richard v Gendore Enterprises Pty Ltd* [2004] NSWCA 116 at [26] and [32].

Secondly, by the time the questioned invoice was provided, Mr Zhang had both expressly and by implication conveyed to Mr Zou that he had reasonable knowledge of Mr Ji’s business affairs. Mr Zhang was able to describe to Mr Zou the detail of Mr Ji’s recent business dealings relevant to the export of infant formula to the PRC. Mr Zhang speaks to Mr Zou with the familiarity and authority of someone who had been dealing with Mr Ji in the same export business that he (Mr Zhang) was discussing with Mr Zou. Mr Zhang never explained to Mr Zou why he selected this specific four-month-old invoice and in what circumstances he had received it from Mr Ji. It is implicit that Mr Zhang’s knowledge of it was from his prior dealings with Mr Ji. Such circumstances would imply to a reasonable person in the position of Mr Zou that Mr Zhang’s knowledge of Mr Ji’s business had probably aided Mr Ji’s selection of the questioned invoice for provision to Mr Zou.

The situation here contrasts with other cases where the conduct or communication in issue relates to something that would ordinarily not be a matter within the knowledge or expertise of the intermediary, a circumstance which more readily leads to the conclusion that the intermediary was merely passing on information: *Dartberg Pty Ltd v Wealthcare Financial Planning Pty Ltd (No 2)* (2009) 74 ACSR 373; [2009] FCA 1153 at 31 and *Hyder v McGrath Sales Pty Ltd* [2018] NSWCA 223 at [69].

Thirdly, Mr Zhang couched his approach to Mr Zou as offering a profitable financial opportunity for Mr Zou in a context where Mr Zhang had an existing friendship with Mr Zou. Raising an opportunity in the context of friendship conveys the impression that the opportunity (and the information being given about it) is reliable, like the friendship.

Fourthly, Mr Zhang describes Mr Ji to Mr Zou as “an old connection”, conveying implicitly some trust in Mr Ji, at least sufficient for Mr Ji to retain the status of “an old connection”. Mr Zhang’s word selection conveys more than a casual financial opportunity that Mr Zhang has seen in the open market.

Fifthly, Mr Zhang’s told Mr Zou he was an executive of Tianxing, dealing on its behalf as a purchaser from Mr Ji and importing infant formula into the PRC. This adds further authority to the information that Mr Zhang conveys to Mr Zou. Mr Zhang demonstrates his knowledge with the worked example of the potential profit to be derived from a consignment of 4 or 5 containers of Maxigenes infant formula sourced from Mr Ji and sold to Tianxing and the exchange of other documents with Mr Zou. In his role as a senior executive of TX, a party already transacting with

Southern Farms, Mr Zhang could be expected to have obtained enough reliable information about Mr Ji and Southern Farms to conduct that existing relationship.

Sixthly, both Mr Zhang and Mr Zou are each conducting their conversations in June, July and August 2022 on the basis that Mr Zou knows far less than Mr Zhang about the export of infant formula to the PRC from Australia and New Zealand. Mr Zou makes clear that he then knows very little about this market but is interested in becoming more familiar with it and investing in it. An intermediary will be more likely to be found to have adopted information which the intermediary communicates to a person with limited knowledge in the field to which the information relates: *Blackman v Grant* (2010) 29 VR 29; [2010] VSC 229 at [125].

Seventhly, from his prior involvement with Mr Ji and the receipt of the questioned invoice in February 2022, Mr Zhang has reason to believe that the information in the questioned invoice may not be wholly reliable. He makes no enquiries of Mr Ji about the provenance or selection of the questioned invoice and its redaction. He knows it has been photoshopped in a manner which includes redactions. He is unaware of the precise extent of the photoshopping that has occurred or what is underneath the redactions. He also knows Mr Zou has not made any inquiries of him about these matters and is equally unlikely to know. The case law suggests that these circumstances make a conclusion more likely that a reasonable person would regard the intermediary as adopting the information being communicated: *Bathurst Regional Council v Local Government Financial Services Pty Ltd (No 5)* [2012] FCA 1200 at [2891] – [3174] per Jagot J and upheld on appeal (2014) 224 FCR 1, 39 ALR 445; [2014] FCAFC 65 at [913] – [914] per Jacobson, Gilmour and Gordon JJ: see also C Lockhart, *The Law of Misleading or Deceptive Conduct*, 6th Edition, 2023, Lexis-Nexis, Australia, at [4.57] (“Lockhart”).

These elements contributed to Mr Zhang’s authority to speak knowledgeably about the relevant facts, when he (a) first says to Mr Zou that Mr Ji could obtain products directly from JBX, and then (b) transmits the questioned invoice to Mr Zou showing a false supply transaction of Maxigenes infant formula between Southern Farms and JBX. Mr Zhang must know enough about Mr Ji’s business to talk about the relationship between Mr Ji and JBX and to source the questioned invoice as proof of that relationship. In the Court’s view a reasonable person in the position of Mr Zou would regard Mr Zhang as adopting or endorsing the representation conveyed on the face of the questioned invoice: that Southern Farms has a direct supply relationship with JBX as the manufacturer of Maxigenes.

The Challenge to the Plaintiffs’ Reliance Case.

Both Mr Zhang’s submissions and those from Mr Ji and BuyerCamp challenge the plaintiffs’ contentions that they relied upon Mr Zhang’s representations. The plaintiffs’ reliance case and the defendants’ challenge to it is examined in this section.

The applicable law in relation to a plaintiff’s claim of reliance upon alleged misleading and deceptive representations may be shortly stated. It is well-established that a plaintiff does not need to show reliance solely on the claimed misleading and deceptive conduct when doing the acts said to have been induced by the alleged contravention: *Perpetual Trustee Co Ltd v Milanex*

Ply Ltd [2011] NSWCA 367 at [58]-[60]. Reliance will be established upon proof that a representation played “some part, even if only a minor part in contributing” to the impugned transaction or makes a material contribution to the plaintiff’s actions: *Gould v Vaggelas* (1985) 157 CLR 215 at 236; and *Henville v Walker* [2001] 206 CLR 459; [2001] HCA 52 at [60]-[61] and see *Lockhart* at [10.15]. Reliance can be inferred from the making of a false statement with an intention to induce entry into a transaction and where the statement is of a nature as would be likely to provide such an inducement and the plaintiff enters that transaction and suffers loss: *Gould v Vaggelas* (1985) 157 CLR 215 at 236.

The plaintiffs’ affidavit evidence in chief did not contain an express statement that the plaintiff had relied upon the questioned invoice. Counsel for the defendants initially indicated during the hearing that they might not cross-examine the plaintiff. The Court raised for the parties’ consideration the statements of principle in *Gould v Vaggelas* (1985) 157 CLR 215 at 236 (set out in the previous paragraph of these reasons) and that a decision not to cross-examine would still leave open a debate about whether the inference of reliance should be drawn in all circumstances. In the end the defendants decided to cross-examine Mr Zou about that and other issues.

Before Mr Zou signed the 13 June 2022 agreements Mr Zhang made the oral statement to Mr Zou that Mr Ji could source milk products directly from the supplier and then Mr Zhang supplied the questioned invoice to Mr Zou. Mr Zhang submitted that the plaintiffs’ reliance case was weakened because Mr Zou had adduced no affidavit evidence to the effect that he had reviewed the questioned invoice with any care at the time he received it.

But this contention overlooks the fact that the questioned invoice was submitted by Mr Zhang in support of the oral representation and its implications are not complicated. The questioned invoice did not arrive unannounced. A reader of the questioned invoice can immediately absorb that it proves a direct trading relationship between JBX and Southern Farms. A careful review or study of the document is not necessary for it to be effective.

Mr Fielder for Mr Ji cross-examined Mr Zou to suggest that before Mr Zou had received the WeChat messages, including the questioned invoice, he had already decided to proceed with the deal that Mr Zhang had presented.

The Court accepts Mr Zou’s evidence to the contrary. Mr Zou said in cross-examination that after receiving all the documents from Mr Zhang, including the questioned invoice, and hearing what Mr Zhang had to say, he “discussed it with my wife and that I made my decision a few days after”. Mr Zou and his wife together control Yaphy. They decided to proceed with the 13 June 2022 agreements based on information from Mr Zhang that included the questioned invoice.

Mr Ji submits that the only affidavit evidence on reliance in the plaintiff’s case is in Mr Zou’s affidavit (at [14]) where he said he “agreed to proceed with the deal”, after receiving an excel table from Mr Zhang, and this table was sent before Mr Zhang sent Mr Zou the questioned Invoice. The conclusion the Court has reached is that Mr Zou made the decision to proceed after receiving both the table and the questioned invoice from Mr Zhang which were sent only a few days apart.

Moreover, Mr Zou said several times in cross-examination, “I did need to rely on these documents (including the questioned invoice)”. He explained that “at least it tells me that it [from Southern Farms] can buy goods from JBX”. When challenged that the invoice did not tell him anything about what Southern Farms could do in the future he said “I thought if it [Southern Farms] can buy goods or products from the manufacturer before, it [Southern Farms] should be able to buy products from the manufacturers in the future”. The Court accepts this evidence.

Mr Zou asked Mr Zhang to “send through the documents for me to review”. Although Mr Zou did not ask Mr Zhang for the specific three documents which were later sent, they were part of a general request for information Mr Zou made about his possible investment in these transactions. The Court accepts that Mr Zou asked Mr Zhang for what he (Mr Zou) wanted, namely the “kind of documents to prove that he has the ability to supply those goods and also the ability to complete the deal”. This request on Mr Zou’s part, followed by the supply of documents including the questioned invoice, is an additional basis to infer reliance.

The Court accepts the evidence that Mr Zou and Yaphy relied on both the oral supply representation and the questioned invoice before entering the 13 June, 26 July and 19 August 2022 agreements. Nothing was said after the 13 June 2022 agreements to alter the effect upon Mr Zou of either the oral supply representation about the Southern Farms – JBX relationship or the questioned invoice.

Mr Ji submits that Mr Zou relied upon his friendship with Mr Zhang, rather than the questioned invoice. The correct analysis of events is that he relied upon both.

Mr Ji also submits that the plaintiffs’ reliance case is misconceived because the contracts made between Yaphy and Southern Farms resulting from any representations made contained an “entire agreement” clause that superseded reliance on all previous representations. But the law is clear such clauses do not displace the operation of Australian Consumer Law, s 18 where reliance is otherwise demonstrated, as it is here: *Butcher v Lochland Elder Realty Pty Ltd* (2004) 218 CLR 592; 79 ALJR 308; [2004] HCA 60. And here Mr Zhang presented the form of the purchase agreements as having been approved by TX’s lawyers such that it was unnecessary for Mr Zou to obtain his own legal advice or to look at the terms closely. It is not in contest that Mr Zou did not obtain his own legal advice before entering the supplier agreements. Mr Zou did not appreciate the potential effect of the entire agreement clause.

Mr Ji also submits the plaintiffs could not have relied on the questioned invoice because Mr Zou had no knowledge of JBX’s business, of the types of milk formula products JBX manufactured, or any other knowledge of who manufactured milk formula in Australia. Mr Ji submits that it follows someone such as Mr Zou, who knew so little about JBX, could therefore not have relied upon the questioned invoice.

This contention is not persuasive. The key message conveyed by the questioned invoice is simple: there is a recent direct trading relationship between Southern Farms and JBX. Mr Zhang told Mr Zou that JBX manufactures Maxigenes. Mr Zou does not need to understand any more than this about JBX's role in the infant formula industry for the questioned invoice to be influential on him.

The defendants also submitted that the questioned invoice contained odd features. But none of these were significant for the proceedings because such warranty should have alerted Mr Zhang as much as Mr Zou, and they probably would not have been noticed if the questioned invoice was taken in on impressionistic basis, as they probably were with Mr Zou.

Causation of Loss and Damages

Once the June July and August 2022 supply agreements were made, Mr Zou caused Yaphy to pay out the monies claimed by the plaintiffs and identified above in reliance upon the oral supply representation and the questioned invoice.

Mr Zou continued to believe right up until he made the last of these substantial payments that Mr Ji through Southern Farms had a direct supplier relationship with JBX. This meant he thought he was paying funds to an entity that was dealing directly with JBX rather than a chain of unknown intermediaries between Southern Farms and JBX. Each of the payments made by Yaphy and identified earlier in these reasons, and netting to a total of \$1,203,870, was made under the effect of this belief. This figure may have to be adjusted to account for payments made to Mr Zou on account of interest.

The Claim in Deceit Against Mr Zhang

Mr Zhang first says that any case in the tort of deceit against him can be put to one side because there is no evidence that he ever made the representation he is alleged to have made. This submission fails: the Court has found the pleaded representation was made.

Mr Zhang also adopts Mr Ji's submissions which contended that the plaintiff's pleading of fraud is deficient. The Court does not need to decide this because the claim fails on other grounds.

The elements of the tort of deceit are well known and were accurately cited by the parties in submissions. They need not be repeated in these reasons.

Finally, Mr Zhang submits that the Court should not conclude that Mr Zhang knew that the questioned invoice was forged or that he was reckless to as to this fact. But the narrative of findings shows that Mr Zhang knew that some photoshopping had occurred in relation to the questioned invoice and that he had reason to doubt its authenticity. Moreover, he had not made sufficient inquiries about its provenance to have any real confidence in its authenticity.

In the Court's view, Mr Zhang transmitted the questioned invoice to Mr Zou with little care and without considering its probable implications for Mr Zou's thinking when Mr Zou was contemplating committing to these transactions. Mr Zhang's submissions correctly emphasise that there was undoubtedly a friendship between the Mr Zhang and Mr Zou in June 2022. In that

context the Court does not accept that Mr Zhang deliberately set about deceiving Mr Zou by giving him a document which he knew to be false. It is also to be remembered that in June 2022 Mr Zhang, like Mr Ji, was not anticipating the major difficulties in the supply of Maxigenes that in fact followed and Mr Zhang believed he was offering Mr Zou a profitable opportunity and was not intending to leave Mr Zou with predictable losses.

The Plaintiffs' Case against Mr Ji and BuyerCamp

The Scope of the Pleaded Case Against Mr Ji

Mr Ji puts contentions about the scope of the representations relied upon in FASOC [41]. This section evaluates the contentions in respect of the contents of each representation. The conclusions reached are also relevant to the case against Mr Zhang.

Mr Ji had a Special Relationship with JBX- FASOC [41](i). Mr Ji contends the allegation of a representation about a "special" relationship is not substantiated. Mr Ji submits that the questioned invoice does not advance any special relationship. Moreover, it could not have been misleading because Southern Farms had recently delivered large quantities of milk formula to TX in the first half of 2022. None of these submissions are persuasive. The questioned invoice clearly implies a direct commercial relationship between Southern Farms and JBX. It bespeaks a delivery and payment relationship from which direct dealings, some priority in securing supply and some preferential treatment by the manufacturer can be inferred. The relationship is special in that sense.

Moreover, the fact that Southern Farms had successfully completed deliveries of large quantities of milk formula to TX does not make the representation other than misleading. The representation is not about past deliveries but about the closeness of the relationship between the manufacturer and Southern Farms.

Use of the Monies to Purchase Milk Formula – FASOC [41](ii). The full content of the representation is that Mr Ji would use the monies paid to Southern Farms to purchase milk formula for the plaintiffs.

Mr Ji did not represent that he would use the monies paid to Southern Farms for any purpose. The appropriate way to construe the communications of these parties is to infer that Mr Ji would cause Southern Farms to purchase milk formula. But that is not the pleaded representation. In the Court's view, the pleaded representation was not made by Mr Ji or indeed by anybody.

Mr Ji would Organise the Shipping of Milk Formula for the Plaintiffs to China – FASOC [41](iii). The representation pleaded here is that Mr Ji would organise the plaintiffs milk formula to be shipped to China where he would use his contacts to sell the milk formula for a profit. Mr Ji did not make this representation. The full picture here is that Mr Ji would undertake the relevant transactions through Southern Farms and that is at least partly what happened. If this representation was made it is difficult to see that it was misleading.

Mr Ji would Repay the Plaintiffs the Original Purchase Price – FASOC [41](iv). The plea here is that Mr Ji would “repay the plaintiffs the original purchase plus part of the profit from the sale in China”. For the reasons stated in respect of the previous representation, this is also not a representation made by Mr Ji about his own future conduct. He did not promise to repay any funds to the plaintiffs himself for these transactions either directly or through Mr Zhang. The context of the contracts made was that monies would be paid by Southern Farms to Yaphy.

The representations set out in FASOC [41](v) and (vi) were added in at the time of amending the Amended Statement of Claim to make the FASOC. They provide pleas more closely focused on the questioned invoice and are here set out in full:

“v. Mr Ji provided his agent Mr Zhang with an invoice that purported to document a previous purchase by his company Southern Farms from JBX. Mr Ji did so knowing that Mr Zhang would use that invoice to mislead the plaintiff into believing that Mr Ji had a commercial relationship with JBX and would be able to source large quantities of milk formula at a discount price.”

vi. In the alternative Mr Ji provided the plaintiff with an invoice that purported to show a previous purchase by his company Southern Farms from JBX. Mr Ji did so with the intention of misleading the plaintiff into believing that he did have commercial relationship with JBX, and would be able to source large quantities of milk formula at a discount price.”

The pleading in FASOC [41](v) should be properly construed as representations that arise from the provision of the questioned invoice. They are both grounded in the idea that Mr Ji “provided” the invoice which is the core element of representation. The plea is that the provision occurred either through his agent Mr Zhang or provided directly to the plaintiff.

Mr Ji contends that these pleas do not contain an allegation of a representation. The Court does not agree: they clearly plead a representation (see the chapeau) to a FASOC [41], Mr Zhang and Mr Ji “represented to the plaintiffs in trade or commerce”. Rather, the representation pleaded in FASOC [41](v) fails because it is not established Mr Zhang was Mr Ji’s agent.

The representation in FASOC [41](vi) remains in issue and raises the question whether “Mr Ji provided the plaintiff with” the questioned invoice, with intent to mislead.

The Court does not accept that Mr Ji can be said to have “provided the plaintiffs” with the questioned invoice. Such a conclusion might be available if it could be inferred that Mr Ji either knew or intended that the questioned invoice would find its way to a class of persons who might include the plaintiffs. But that conclusion is incompatible with Mr Zhang's indication to Mr Ji that the questioned invoice was going to be given to TX for their systems. Even though the Court has found that Mr Ji knew that it might mislead TX, he understood that was how it was going to be used. He expected its effect to be limited in that way and he was not informed that it would not be released more widely. From Mr Ji’s perspective it was part of a confidential business transaction. Mr Zhang gave Mr Ji little information about what he might do with the questioned invoice beyond the limited purpose communicated back to Mr Ji – to put into TX’s procurement systems. Mr Ji never had an opportunity to authorise or veto any additional uses.

Mr Ji submits that the questioned invoice does not contain the representation the plaintiffs allege and that what it showed was very limited. Mr Ji points out it was dated 9 February 2022, was apparently issued by JBX to Southern Farms and recorded two types of Maxigenes milk formula. Mr Ji emphasises that all the unit prices and dollar figures were completely redacted, as was how much Southern Farms were paying for the order or whether the milk formula had been delivered. The questioned invoice being 4 months old in June 2022, Mr Ji submits that at best it showed that JBX had issued a single invoice to Southern Farms for 1 order four months previously in an unspecified amount. Mr Ji submits that the questioned invoice therefore does not show any “special” or “commercial” relationship between JBX and Southern Farms.

This submission is not persuasive. Mr Ji’s emphasis on the questioned invoice being four months old blames Mr Zou for not asking for a more recent invoice. But in the context of the friendship and trust between Mr Zhang and Mr Zou, in which the invoice was supplied, Mr Zou was entitled to assume that Mr Zhang was giving him a document which reflected continuity with the current trading relationship.

Mr Ji also submits that the questioned invoice on its own does not substantiate the pleaded allegation that Southern Farms “would be able to source large quantities of milk formula at a discount price”. This submission is correct. Neither the oral representation nor the questioned invoice substantiates that part of the pleaded representation.

Mr Ji also submits that because the questioned invoice only refers to Maxigenes products it cannot make any representations about the purchase of A2 products or a relationship between Southern Farms and any manufacturer of A2 milk formula.

This is correct as far as it goes. But as the Court’s earlier analysis in the factual narrative has shown, the incomplete transactions for the purchase of Maxigenes formula were influential in the plaintiffs entering the subsequent transactions involving A2 infant formula.

Mr Ji also deals with an alternative plea in FASOC [44] which contends that “Mr Ji and Mr Zhang were involved in the misleading and deceptive conduct of Southern Farms and BuyerCamp for the purposes s 236 of the ACL”. Mr Ji submits this cause of action is misconceived because the FASOC does not allege Southern Farms and BuyerCamp engaged in any misleading and deceptive conduct or made any representations.

This contention is persuasive. A proper pleading that Mr Ji and Mr Zhang were involved in the misleading conduct of Southern Farms would require, for example, whatever misleading conduct that Southern Farms was said to have been engaged to be clearly identified, so that the knowing involvement of Mr Ji and Mr Zhang could be made clear. This plea is insufficiently clear to found any maintainable cause of action against either Mr Ji or Mr Zhang.

Was Mr Zhang the Agent of Mr Ji?

The plaintiffs allege that Mr Zhang acted as Mr Ji's agent, either expressly or by implication, due to his being employed by Mr Ji. Mr Zhang was a middleman in this transaction. But Mr Ji denies that Mr Zhang was his agent.

The applicable law may be shortly stated. The plaintiffs bear the onus of showing that Mr Ji appointed Mr Zhang as his agent and the scope of Mr Zhang's authority as agent or that Mr Ji was estopped from denying Mr Zhang was his agent: *Rowe v B & R Nominees Pty Ltd* (1964) VR 477 at 481. The plaintiffs' pleadings also allege agency by ratification. A principal may be bound by ratification by the conduct of an agent if the agent professes to be acting on behalf of the principal at the time of contracting and the principal later expressly adopts the contract: *Bennett v Strauss* [2016] NSWCA 324 at [22].

Mr Zhang is undoubtedly an intermediary between Southern Farms and Mr Zou. But that does not automatically make him an agent of either Mr Ji or Southern Farms. In *G E Dal Pont*, *Law of Agency*, 4th Edition, LexisNexis, Australia, 2020, at [2.23] ("Dal Pont") the learned author concisely summarises the applicable law in relation to what may be inferred about the scope of the agency of intermediaries who facilitate transactions.

"A person's position as an intermediary between two others who deal with one another may or may not mark that person as an agent. Some intermediaries bear the characteristics of agency, albeit usually for the purposes of finding a person willing to transact with the principal rather than having the authority to contract on the principal's behalf. A typical example is a commission agent, who is remunerated by way of commission upon the event of a transaction taking place. Even in this scenario, agency may not necessarily ensue, some judges distinguishing between an agent/broker from a 'finder' or 'introducer', who is engaged to introduce and bring the parties together, without any obligation or power to negotiate the transaction, in order to earn a fee. The latter may not necessarily be an agent at law, because the finder 'is charged with no responsibility and is not obligated to exercise any discretion' and, as a result, arguably lacks the authority of the kind essential to agency."

A role for Mr Zhang in facilitating a transaction – here the transaction of Mr Zou/Yaphy financing TX's acquisition of infant formula from Southern Farms - does not itself imply Mr Zhang is an agent for either transacting party: *Quek v Chan* [2004] VSC 394 at [149]. Nor is agency synonymous with being an "introducer of business" or receiving a commission for a service: *Dal Pont* at [2.23].

Mr Ji complains in final submissions about the quality of Mr Zou's pleading of the terms of the agency, when it arose, the scope of any authority of the agent, or what acts might amount to rectification of Mr Zhang's conduct as agent.

The plaintiffs have not established a relationship of agency between Mr Zhang and Mr Ji for several reasons.

Mr Zhang was undertaking the role of an intermediary in these transactions. Mr Ji and Mr Zhang represented commercial counter-parties, one of whom (Mr Zhang) was seeking funding of his own motion to facilitate a transaction. There is no evidence that Mr Ji appointed Mr Zhang to arrange funding to facilitate these transactions. Mr Zhang came up with the idea of approaching

Mr Zou. Mr Zhang did not assume any obligation to keep Mr Ji informed about his dealings with Mr Zou. Indeed, Mr Zhang treated Mr Ji on a need-to-know basis and kept Mr Zou at arm's length from Mr Ji. Moreover, Mr Zhang disguised to Mr Ji the lack of any relationship between Mr Zhang and Tianxiang.

The scope of any agency that could be inferred in the circumstances was narrow. The ultimate contracts were made between Yaphy and Southern Farms. The Court can accept that Mr Ji was an agent for Southern Farms and Mr Zou was an agent for Yaphy. But Mr Zhang did not claim to be acting on behalf of Southern Farms. Rather he presented Southern Farms to Mr Zou as a source of the infant formula to be acquired under contract. There is no evidence that Mr Ji engaged Mr Zhang to make representations on his behalf or on behalf of Southern Farms. The specific elements of an actionable relationship of agency would ordinarily involve (a) Mr Ji asking Mr Zhang to act on his behalf and vesting him with defined authority, (b) Mr Zhang telling Mr Zou he was acting on behalf of Southern Farms and/or reporting back to Mr Ji about what Mr Zhang was saying to Mr Zou, or (c) Mr Ji holding out to Mr Zou that Mr Zhang was acting on Mr Ji's behalf. The evidence does not show such conduct occurred here.

Nor was there any specific agency in relation Mr Zhang's handling of the questioned invoice. Mr Zhang agreed that Mr Ji did not authorise him to send the questioned invoice to Mr Zou. Mr Zhang did not tell Mr Ji later or seek Mr Ji's permission to send it on to Mr Zou in June 2022. This seems to have been a decision on Mr Zhang's own initiative.

This is not to say that Mr Ji should not have anticipated the sending on of the questioned invoice to a potential funder such as Mr Zou. This was on the cards once Mr Ji put the documents into circulation. But exactly who Mr Zhang sent the documents to was not specifically discussed by Mr Zhang with Mr Ji.

For whom was Mr Zhang an agent? Mr Zou's pleadings allege Mr Zhang acted as Mr Ji's agent. The pleading is not that Mr Zhang was acting as an agent for Southern Farms or BuyerCamp but just Mr Ji: FASOC at [40]. The various particulars to paragraph [4] are not made out on the evidence for the following reasons:

Mr Zhang did not say to Mr Zou that he (Mr Zhang) was acting on Mr Ji's behalf. Rather he represented to Mr Zou that Mr Ji was a supplier.

Nor did Mr Zhang act on behalf of Mr Ji in dealing with Mr Zou with Mr Ji's knowledge and approval. The mere conveying of documents from Mr Ji to Yaphy and Mr Zou does not establish Mr Ji's knowledge and approval. This was in the independent decision of Mr Zhang in his own interests, including to earn commission, to convey these documents to Mr Zou.

Mr Ji did not ratify any agency of Mr Zhang at the meeting on 14 November 2022, the Concord West meeting. Even on Mr Zou's own version of that conversation, Mr Ji and Ms Chen did most of the talking and neither of them said that Mr Zhang was Mr Ji's agent.

The WeChat group messages between Mr Ji and Mr Zhang between November 2022 and July 2023 do not establish either agency or ratification.

The plaintiffs rely upon several other matters to establish agency that are variously found in the plaintiffs' written and oral submissions in addition to the particulars of pleading in FASOC [40]. These do not find any greater support in the evidence because:

Mr Zhang's introduction of customers for Southern Farms is said to be a basis to infer agency. On its own this does not establish agency. To the extent that Mr Zhang introduced other customers to Mr Ji, he did so on his own initiative not pursuant to some appointment from Mr Ji to find customers.

Mr Ji asking Mr Zhang to find a third-party funder is said to be a basis to infer agency. But Mr Ji did not "ask" Mr Zhang to find a third-party funder. Mr Zhang initiated that idea.

Finally, the plaintiffs say that Mr Ji "employed" Mr Zhang or paid Mr Zhang to work for him. These allegations do not assist the inference of agency, which the plaintiffs seek to advance. Southern Farms did pay a commission to Mr Zhang but that on its own does not give rise to an agency and is consistent with merely rewarding Mr Zhang for finding customers with whom Southern Farms then dealt. There is no evidence that Mr Zhang was an employee of Mr Ji. Mr Zhang was an employee of TX, a customer of Southern Farms.

The plaintiffs' case is that Mr Zhang acted "as (a) agent for Mr Ji or (b) Mr Ji himself engaged in relevant misleading and deceptive conduct. The same representations are pleaded against Mr Zhang as Mr Ji's alleged agent and against Mr Zhang". The contention that Mr Zhang was Mr Ji's agent for the purposes of making representations is not made out for reasons discussed above.

These reasons now turn to the question of whether Mr Ji made representations himself. Mr Ji makes the following persuasive submissions in response.

First, Mr Ji did not participate in any of the conversations between Mr Zhang and Mr Zou in June 2022 and Mr Ji was not aware of the extent of Mr Zou's involvement, or indeed that he was unrelated to TX, Mr Zou became involved solely on Mr Zhang's initiative.

Second, Mr Ji did not deal directly with either of the plaintiffs. Mr Ji did not know the nature of Mr Zou's contract with Mr Zhang or TX until well after all three transactions had taken place.

Does Mr Zou Speak for Yaphy on Reliance?

Mr Ji (and BuyerCamp) submit that the plaintiffs impermissibly treat "both plaintiffs as one" especially on reliance, which it is submitted is incorrect in law and inconsistent with the evidence.

Mr Ji submits that the plaintiffs' allegations of reliance are centred wholly upon Mr Zou, not upon Yaphy but that all the supply contracts were entered into only by Yaphy, who paid money over to Southern Farms, not Mr Zou. The submission is that there is therefore no evidence of Yaphy's reliance.

This submission is not persuasive. The way that the case was pleaded by, opened by and conducted by the plaintiffs presented Mr Zou as able to speak on behalf Yaphy, both at the hearing and at the time of the transactions in question.

Mr Ji took this point in closing submissions. But that is not the way the Court perceived Mr Ji conducted the proceedings. Mr Zou was not cross-examined to suggest that he was unable to speak for Yaphy in the proceedings or at the time of the transactions so he could explain his relationship. Moreover, the factual narrative above identifies some of the many occasions in which throughout the transactions in question Mr Zou himself caused Yaphy to take actions and enter transactions consequent upon discussions that he had with Mr Zhang.

The Court did not appreciate that this point was being pressed on behalf of Mr Ji until it appeared in final submissions. It is unlikely that the plaintiffs appreciated that the matter was in issue either, until then. Even if the evidence did not support the inference that Mr Zou controlled Yaphy, it would not be forensically fair to allow the point to succeed, given the conduct of the trial.

The Court infers from the whole of the proven conduct of Mr Zou that he was able to act as a de facto controller of Yaphy. The company was set up by Mr Zou and his wife. It is a private company that responds to Mr Zou's directions to enter commercial transactions and make payments. There is no evidence that at any point the other shareholder of the company, Mr Zou's wife, disagreed with Mr Zou's apparent direction and control of the company. Nor was that issue explored in cross examination. This contention fails.

In a related submission, Mr Ji complains there is no evidence in relation to the "governing mind of Yaphy or its decision-making processes". This is not correct. The evidence identified by the Court in the narrative of facts shows countless occasions on which Mr Zou converses with Mr Zhang and then makes decisions, causing Yaphy to enter contracts and pay money. The relevant "governing mind" of Yaphy can be inferred from this conduct, and for relevant purposes findings about Mr Zou's reliance are findings about Yaphy's reliance. The Court accepts he was making decisions on behalf of Yaphy and behalf of himself when the narrative shows Yaphy acts consequent upon Mr Zou's decisions.

Reliance – Yaphy v Mr Zou

Mr Ji argues that there was "no detrimental reliance by Mr Zou because all three transactions were paid for by Yaphy and not Mr Zou and were paid in response to invoices issued by Southern Farms to Yaphy". This contention highlights the need for the plaintiffs to identify which of the plaintiffs suffered the plaintiffs' claimed losses. The Court has concluded that in entering the three supply agreements Mr Zou was acting on behalf of Yaphy and Yaphy paid out the funds in response to liabilities that Yaphy assumed to Southern Farms as a result of that reliance.

But it is not clear to the Court whether Mr Zou incurred any expenditure that was separate from the funds that Yaphy paid to Southern Farms. If Mr Zou cannot identify in the evidence already adduced in these proceedings that he incurred expenditure separately from Yaphy, his claim should be dismissed.

The costs consequences of such a dismissal, if any, will need to be dealt with at an ancillary hearing. Mr Zou's and Yaphy's claims were run together. Apart from the relatively short time occupied in putting submissions to the effect that Mr Zou's claim should be dismissed, it is at present difficult to see what separate costs would have been incurred on his claim.

An ACL Causation Case against Mr Ji?

Mr Ji submitted he had no intention to mislead the plaintiffs. But Mr Ji was prepared to mislead TX. Mr Zou financially facilitated TX's transaction, and the later release of TX from its obligations to deliver Maxigenes and the assumption of those obligations by Mr Ji's company BuyerCamp. In that sense, the questioned invoice can arguably be said to have been a cause of Mr Zou's loss, even though he did not rely upon the representation.

Merely because the transaction would not have occurred but for the misrepresentation does not make the representor liable to the person who suffers the caused loss, subject to the issue raised in the next paragraph. After closing submissions, the plaintiffs cited various authorities in relation to making misleading representations to classes of persons from the general public, but those cases were very different from the circumstances confronting the plaintiffs here.

The plaintiffs' FASOC pleads reliance and causation in paragraph [42] as follows:

"The plaintiff relied upon those representations. But for those representations the plaintiffs would not have paid over the funds to Mr Ji and the companies he controlled it."

The first sentence of this plea alleges reliance. The second sentence is capable of being read as an allegation of causation, as distinct from reliance and raising the question of what might conveniently be described as a case of "causation of loss without reliance". Such a case is maintainable under Australian Consumer Law s 18 based on authorities such as the following: In the matter of HIH Insurance Limited (In Liquidation); *Smith v McGrath* [2016] NSWSC 482 and *Australian Breeders Cooperative Society Ltd v Jones* (1997) 150 ALR 488.

Although the pleadings can bear this interpretation, the plaintiff's opening submissions and general approach to the case seem to be focused on reliance rather than the Australian Consumer Law authorities in relation to causation without reliance. The defendants did not obviously reply to the plaintiff's case on the basis that they were meeting a causation without reliance case. The Court has attempted to try this case on the pleadings and on the way the parties conducted themselves during the hearing. The Court is therefore cautious about making any determination on the issue of causation of loss without reliance based merely on FASOC [42] without asking for further submissions from the parties on the issue.

The plaintiffs may say that a causation of loss without reliance case is open on the pleadings. But the defendants may say that had they appreciated that such a case was being propounded they may have cross-examined or otherwise presented their cases differently. There is a potential for unfairness if the Court determines this issue without hearing short further submissions from the parties. But for those submissions the plaintiff's case against Mr Ji will fail but it will succeed against Mr Zhang.

The Case in Deceit against Mr Ji.

The plaintiffs' final closing written submissions summarise the case in deceit sought to be made against Mr Ji. The claim was put in various ways in the pleadings but these closing submissions captured the essence of the case the plaintiffs are arguing.

"22. The plaintiff's case as far as fraudulent misrepresentation goes is simple. Ji made the representation knowing it was false and was liable to mislead the class of people, being those who were looking to acquire milk products from the manufacturer JBX. The fact that he appears to have been trying to mislead TX in the first instance doesn't help Ji's case at all.

23. The evidence shows that he and Chen were regularly falsifying documents to make it appear as if they could acquire milk products from JBX. That was their business model. They knew the prospective buyers would not do business with them unless they could show the products were being acquired legitimately from the factory. It was never going to be much of a sales pitch that they could prospectively acquire the goods from shady back channels, which appears to have been what was actually going on.
24. The suggestion put forward by Ji that he believed [what] Chen did was purchasing the goods from JBX is an obvious lie. If the pair of them did have some kind of relationship with JBX, there would have been no need for the fraud. Nowhere did Ji assert that he had ever been given an invoice from Chen, that appeared to be from JBX except for the ones he knew were false."

The Court accepts that Mr Ji knew that the questioned invoice was false. But the plaintiff's contention is that Mr Ji also knew that the questioned invoice was likely to be deployed to mislead a class of people looking to acquire milk products from JBX.

This contention is contested. It is submitted on behalf of Mr Ji that all Mr Ji appreciated before he supplied the questioned invoice to Mr Zhang (from what Mr Zhang said to him) was that the questioned invoice was only going to be put into the office systems of Tianxing and no more. The Court accepts that this is all that Mr Ji knew and that he did not know that Mr Zhang was going to use the questioned invoice more extensively. Mr Ji cannot be said to have intended to mislead a class of people that included the plaintiffs.

A corollary of the Court's findings about Mr Zhang telling Mr Ji that the questioned invoice was just for TX, is that Mr Zhang must have known when he passed the questioned invoice on to Mr Zou that he was going beyond that self-imposed boundary of limited use for the questioned invoice with TX. This should have been a prompt to him to recheck the provenance of the questioned invoice document before distributing it more widely to Mr Zou, but he did not.

Apportionment

Each of Mr Zhang and Mr Ji submits that if the plaintiffs succeed and either of them is found liable in damages for any contravention of Australian Consumer Law s 18 that the claim is an apportionable claim under Competition and Consumer Act 2010 (Cth) Part VI. Each of Mr Zhang and Mr Ji submits that the other is a concurrent wrongdoer.

The applicable law is not in dispute. The Court's task in apportioning liability where an apportionable claim exists and concurrent wrongdoers are identified is guided by considerations of blameworthiness, causative potency, any benefits or profits obtained by one concurrent wrongdoer, the task wrongdoer is required to perform, and the degree of departure from the requisite standard of care by each wrongdoer: *Reinhold v New South Wales Lotteries Corp (No 2)* (2008) 82 NSWLR 762; [2008] NSWSC 187 at [50] and [61]; *Mitchell Morgan Nominees Pty Ltd v Vella* [2011] NSW CA 390 at [3] and *Stav Investments Pty Ltd v Taylor* [2022] NSWSC 208 at [548].

Mr Zhang submits that pursuant to Competition and Consumer Act 2010 (Cth) that his liability will be limited to zero, or such other amount that reflects the proportion of damage the Court considers to be just having regard to the extent of his responsibility. Mr Zhang submits the circumstances warrant a zero or low assessment of proportionate liability on his part because:

Mr Ji knew that the questioned invoice was false and misleading and Mr Zhang did not;

Mr Ji provided the questioned invoice knowing it was false;

Mr Ji misled Mr Zhang by telling him that Southern Farms had direct dealings with JBX;

Mr Zhang honestly and reasonably believed Southern Farms could source infant formula from JBX; and

Mr Zou always understood Mr Zhang was merely conveying information received from Mr Ji.

Mr Ji in contrast submits that his and BuyerCamp's liabilities should be limited to zero or such other amount that reflects the proportion of damage the Court considers just having regard to the extent of the responsibility. They contend that their liability should be zero because there is no evidence showing their knowledge or involvement in any of the representations alleged to have been made to the plaintiffs.

The Court has reached findings that differ from the assumptions behind Mr Zhang's submissions. Examples of those differences are the following: although Mr Ji knew the questioned invoice was misleading, Mr Zhang had reason to question its authenticity and believe that it may be misleading; Mr Zhang believed that Mr Ji was dealing with JBX through Ms Chen not directly; and Mr Zou did not see Mr Zhang as a mere conveyor of third-party information.

In these circumstances the Court has reached the view that Mr Zhang and the other parties should be afforded a short opportunity to put submissions as to whether any and if so what apportionment of Mr Zhang's liability should now be permitted.

Costs

Costs will be reserved at this stage. If the plaintiffs' case against Mr Ji ultimately fails questions are likely to arise as to whether a Bullock order should be made on costs on the basis that it was reasonable for the plaintiff to proceed against the successful defendant and that the conduct of the unsuccessful defendant made it fair to impose liability upon it for the costs of the successful defendant: cf *Gould v Vaggelas* at [230]. Here issues may arise as to whether insufficient was known about the dealings between the two defendants that it was reasonable for the plaintiffs to join them both and whether any part of Mr Ji's conduct of his defence warrants the making of a Bullock order.

Conclusions and Orders

Given the various findings that the Court has made and that some matters remained undetermined including apportionment issues and a precise sum for damages against Mr Zhang, it is appropriate at this stage of the proceedings for the Court merely to make a declaration and grant other necessary relief and make other orders later.

For these reasons the Court makes the following declaration, orders and directions:

DECLARE that:

the second defendant engaged in misleading and deceptive conduct in contravention of Australian Consumer Law, s 18 by providing to the first plaintiff on behalf of the second plaintiff in June 2022 an invoice purporting to be addressed by JBX to Southern Farms and dated 9 February 2022 ("the questioned invoice") as the questioned invoice purported to represent a special relationship, namely a direct trading relationship, between JBX and Southern Farms and the second defendant made an oral representation to the same effect but such a direct trading relationship did not exist between JBX and Southern Farms,

the plaintiffs relied upon the said representations as a result of which the first plaintiff caused the second plaintiff to pay away the net sum of \$1,203,870, and

the plaintiffs have by reason of (a) and (b) suffered damage in the provisional sum of \$1,203,870, but which sum is subject to adjustments being made after the Court hears submissions in relation to:

the proof of any loss or damage suffered by the first plaintiff that is separate from any loss or damage of the second plaintiff and whether the proceedings brought by the first plaintiff should be dismissed,

whether monies received by the plaintiffs from the defendants (or others) since 1 September 2022 should be treated as being paid on capital account or on interest account, and

any apportionment that may be ordered under the Competition and Consumer Act 2010 (Cth) Part VIA with the benefit of the Court's findings.

RESERVE for further consideration the matters identified in DECLARATION 1(c).

NOTE that based on the Court's findings, it is open to the Court to dismiss the plaintiffs' claim against the first and third defendants but whether the Court will take that course is subject to the Court hearing submissions from the parties about the scope of the issues raised by paragraph [42] of the Further Amended Statement of Claim and related paragraphs.

RESERVE for further consideration whether on the basis of paragraph [42] of the Further Amended Statement of Claim and related paragraphs and the parties' conduct of the proceedings the plaintiffs may claim damages against the first and third defendants for any loss caused by the first defendant's misleading conduct but without proof of their reliance on such misleading conduct.

RESERVE costs.

ADJOURN the proceedings for directions concerning any submissions in relation to costs and any other matters reserved for further consideration to Monday 14 September 2026 at 9:30 AM, or to such other date as is arranged with the Associate to Slattery J.

Amendments

01 September 2026

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Coversheet - hearing date

01 September 2026

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[7] FASC to FASOC

[320] FASOC

[329] FASOC

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