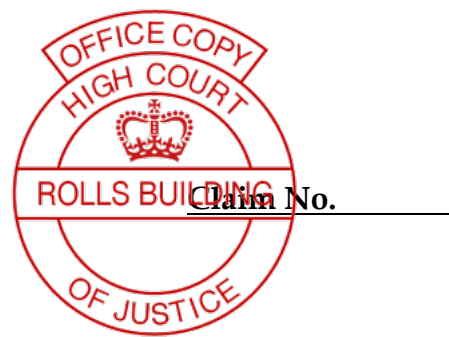


IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES



COMMERCIAL COURT (QBD)

B E T W E E N:

GLOBAL PLASTIC (UK) LIMITED

Claimant

-and-

INIVOS LIMITED

Defendant

PARTICULARS OF CLAIM

The Parties

The Claimant

1. The Claimant, Global Plastics (UK) Ltd. (“GP”) is a company registered in England. GP’s business was originally plastic recycling, and in the course of that business it developed business relationships with companies operating in China, and knowledge of business practises and regulation in China and of shipping and freight. At all times material to the claim, GP’s business included procuring personal protective equipment from or through its contacts and business relationships with companies in China.

The Defendant

2. The Defendant (“Inivos”) is a company registered in England specialising in infection prevention and control and providing hygiene solutions to hospitals.



Other Relevant Persons

3. At all material times, Ms Lin Qing (also known as Catherine Lin ("**Ms Lin**")) was the sole director of GP. Ms Lin manages GP with her business partner Mr Jian Feng Xu (also known as Andy Xu ("**Mr Xu**")) and her China-based business partner and agent Mr Zhao Ai Lei (also known as Allen Zhao ("**Mr Zhao**")).
4. At all material times, Mr Mark Fentiman and Mr Warwick Fentiman (known as "**Mr Rick Fentiman**") were directors of Inivos. Each of Mr Mark Fentiman and Mr Rick Fentiman had actual, alternatively apparent, authority to bind Inivos.
5. Henan Yadu Industrial Co., Ltd. ("**Yadu**") is a company incorporated in China, specialising in the research, development and production of medical disposables, including masks and gowns.

The First Masks Contract

6. By oral agreement made on 25 May 2020, in a telephone conversation between Catherine Lin acting on behalf of GP and Mark Fentiman acting on behalf of Inivos, GP agreed to supply Inivos with 12.9 million surgical face masks at a price of £0.45 per mask and a total price of £5,805,000. The masks were to be supplied in two tranches, of 6.9 million and 6 million respectively (the "**First Masks Contract**").
7. Pursuant to the First Masks Contract, on 8 June 2020 GP informed Inivos, by a phone call from Ms Lin to Mr Fentiman, that the first tranche of 6.9 million masks was available for collection.
8. On 8 June 2020, Mr Mark Fentiman on behalf of Inivos sent to Ms Lin Purchase Order No. 1284 in respect of the 12.9 million surgical face masks. The Purchase Order reflected the material terms of the First Masks Contract agreed orally as set out at paragraph 6 above, and in addition included the words "SUBJECT TO CONFIRMATION & PO FROM CUSTOMER" (the "**Special Instructions**"). The Special Instructions were not an agreed term of the First Masks Contract, and,



for the avoidance of doubt, the First Masks Contract was not contingent on Inivos receiving a purchase order from the National Health Service (the "NHS") for the same number of masks.

9. On 11 June 2020 GP sent Inivos an invoice demanding payment of £3,105,000 in respect of the first tranche of 6.9 million masks made available under the First Masks Contract.
10. In breach of the First Masks Contract, Inivos failed to collect the masks, or to pay the sum demanded, or any sum.

The Varied Masks Contract

11. By an oral agreement made on 17 June 2020, in a meeting at Inivos's offices at Maple House, Hamlin Way, King's Lynn, PE30 4NG, Ms Lin and Mr Xu, acting on behalf of GP, agreed with Mr Mark Fentiman, acting on behalf of Inivos, to vary the terms of the First Masks Contract (the "**Varied Masks Contract**").
12. The material terms of the Varied Masks Contract were as follows:
 - 12.1. GP would supply Inivos with a total of 6.5 million masks;
 - 12.2. Inivos would pay GP £0.20 per mask, amounting to £1,300,000 in total, such payment to be made immediately;
 - 12.3. Inivos would collect the masks from GP's warehousing facility as soon as possible.
13. At 12:09pm on 17 June 2020 Mr Fentiman on behalf of Inivos sent to Ms Lin by email a revised purchase order reflecting the terms of the Varied Masks Contract that had been agreed at the meeting earlier that day. A copy of the revised Purchase Order is attached to these Particulars of Claim. The revised Purchase Order did not contain the Special Instructions. For the avoidance of doubt, the Varied Masks Contract was not in any way conditional or subject to any conditions precedent.



14. Later that day, Inivos paid GP £200,000 in part performance of its payment obligations under the Varied Masks Contract.
15. On 18 June 2020, Inivos paid GP a further £160,200 and removed from GP's warehouse 801,000 masks in further part performance of its obligations under the Varied Masks Contract.
16. Between 18 June 2020 and 8 July 2020, Ms Lin on behalf of GP contacted Inivos and demanded on a number of occasions that Inivos collect the remaining masks, and pay the sums outstanding. Despite those demands, Inivos has failed to pay any further sum under the Varied Masks Contract, or to collect any of the remaining masks.
17. In the premises, Inivos has breached the Varied Masks Contract, as follows:
 - 17.1. it failed to pay GP the outstanding sum of £939,800, or any part of it; and
 - 17.2. it failed to collect any of the outstanding 5,699,000 surgical masks from GP's warehouse.
18. From 13 July 2020, in an attempt to mitigate its loss, GP started to sell the remaining 5,699,000 surgical masks to third parties. By 1 August 2020 GP had succeeded in selling all the masks, for a total sum of £534,300.
19. Further, as a result of Inivos' failure to collect the outstanding masks from GP, GP incurred warehouse fees for the ongoing storage of the masks, in the sum of £1,460, representing the costs incurred from 18 June 2020 until the remaining 5,699,000 masks were collected by the third parties.

The Gowns Contract

20. On or around 22 May 2020, in a meeting at Inivos's office between Mr Fentiman on behalf of Inivos and Ms Lin on behalf of GP, Mr Fentiman requested that GP source 24 million surgical gowns for Inivos to enable Inivos to meet the requirements of an order from the NHS for the same quantity of surgical gowns.



At that meeting, Ms Lin and Mr Fentiman agreed that GP would source the gowns for Inivos from Yadu (the “Gowns Contract”).

21. The express terms of the Gowns Contract were as follows:
 - 21.1. GP would negotiate with Yadu the supply of 24 million gowns meeting Inivos’ specific requirements;
 - 21.2. Inivos would pay £0.45 to GP for every gown supplied to Inivos by Yadu.
22. On the true construction of the Gowns Contract, Inivos agreed to pay £0.45 to GP for each of the 24 million gowns supplied to Inivos by Yadu, whether such gown was supplied directly by Yadu to Inivos, or whether the gown was supplied by Yadu to GP, and by GP to Inivos.
23. Alternatively, the Gowns Contract contained an implied term that Inivos would pay £0.45 to GP for each of the 24 million gowns supplied to Inivos by Yadu, whether such gown was supplied directly by Yadu to Inivos, or whether the gown was supplied by Yadu to GP, and by GP to Inivos.
24. In the alternative, from at least 22 May 2020 there was a common understanding between the parties that GP’s services in (i) identifying Yadu as a suitable supplier of gowns, (ii) introducing Inivos to Yadu, and (iii) negotiating the supply by Yadu of 24 million gowns meeting Inivos’ requirements, were being provided to Inivos in return for payment, such payment to be £0.45 in respect of every gown supplied by Yadu, alternatively a reasonable sum.
25. The Gowns Contract, alternatively the common understanding, is evidenced by the following:
 - 25.1. Emails from Mr Mark Fentiman and Ms Lin to each other on 8 June 2020 at 11.39 and 11.59 respectively, by which Mr Mark Fentiman stated he would raise purchase orders, and Ms Lin noted that “*below price is correct, but it need to add our profit (£0.45 for Global)*”. Mr Mark Fentiman did not dispute that statement.



- 25.2. An email from Ms Lin to Mr Mark Fentiman on 9 June 2020 at 09:59 in which Ms Lin stated “*Please see below update price from Yadu. All the below price doesn't include commission for Global Plastic.*” Mr Mark Fentiman did not dispute that GP was entitled to payment, or the amount of such payment.
- 25.3. In an attachment to an email to Mr Mark Fentiman on 10 June 2020 at 19:53 containing a quotation for the prices of surgical gowns supplied by Yadu, Ms Lin stated, in red ink and highlighted in yellow at the top of the attachment: “*BELOW PRICE doesn't include commission for Global Plastic £0.45 per item*”. Mr Mark Fentiman did not dispute that GP was entitled to payment, or the amount of such payment.
- 25.4. By an email to Mr Mark Fentiman on 11 June 2020 at 14:07, Ms Lin stated, in red ink and enlarged font, that the price of £3.80 ex work for the products supplied by Yadu “*doesn't include commission for Global Plastic*”. Mr Mark Fentiman did not dispute that GP was entitled to payment, or the amount of such payment.
26. In performance of its obligations under the Gowns Contract, GP provided services to Inivos in the period 22 May 2020 to 7 July 2020, including: arranging and attending meetings with GP's representative and Yadu's representative, in China; liaising with Inivos; supplying to Inivos information about Yadu and its facilities; obtaining details of Yadu's products, and seeking and supplying further clarification or details from Yadu as required by Inivos; obtaining a report on the technical performance of the gowns, in particular a hydrostatic pressure report; negotiating the price per gown and payment terms; negotiating and communicating the mix of sizes and types of gowns to be supplied; obtaining evidence of certification by national and supra-national organisations of Yadu's conformity to manufacturing standards and/or quality control in relation to gowns; negotiating and communicating the date on which the gowns could be made available to Inivos; liaising with transport companies in China for the freight and transport; and negotiating and taking steps to facilitate that the



information printed on the packaging for the gowns would include certification information and Inivos's logo.

Inivos' breach of the Gowns Contract/failure to compensate GP

27. On 7 July 2020 at 16:00, in a meeting at Inivos' offices, Mr Rick Fentiman informed Ms Lin and Mr Xu that Inivos:
 - 27.1. intended to enter into an agreement with Yadu directly for the supply of the 24 million gowns; and
 - 27.2. would pay GP only £0.12 per gown supplied by Yadu to Inivos.
28. Ms Lin and Mr Xu did not accept any proposed variation to the Gowns Contract. On 8 July 2020 Mr Mark Fentiman refused to communicate further directly with either Ms Lin or Mr Xu, telling them that any further communications between GP and Inivos would have to be carried out by their respective legal representatives.
29. On or about 7 July 2020 Inivos contracted directly with Yadu for the supply of the 24 million gowns, and GP infers that contract was on the same, or substantially the same, terms as those that had been negotiated by GP on Inivos' behalf. Inivos has not paid GP £0.45 per gown supplied, or any sum, in respect of the supply of gowns by Yadu to Inivos.
30. In the premises, Inivos breached the Gowns Contract with GP in that it failed to pay GP £0.45 per gown supplied by Yadu to Inivos.

Loss and damage

31. By reason of wrongdoing set out above, GP has suffered loss and damage:

Particulars of Loss

- 31.1. The sum of £406,960, being the amount lost by GP as a result of Inivos' breach of the Varied Masks Contract. That sum is made up as follows:



31.1.1. £405,500 in lost profit;

31.1.2. £1,460 for warehouse storage fees.

31.2. The sum of £10,800,000, being the sum owed under the Gowns Contract.

32. Alternatively, if (contrary to GP's primary case) there was no Gowns Contract between GP and Inivos as pleaded in paragraphs 20 to 23 above, or if the Gowns Contract did not contain (whether expressly or impliedly) the terms pleaded in those paragraphs or any of them:

32.1. At the request of Inivos, alternatively with the knowledge, encouragement and acquiescence of Inivos, GP carried out for Inivos amongst other things the services referred to in paragraph 26 above (the "Services") in anticipation of being paid.

32.2. Inivos freely accepted the Services, knowing that GP expected to be paid for them.

32.3. Accordingly, GP is entitled to payment for the Services at a reasonable rate. GP contends that the reasonable rate of payment is £0.45 per gown supplied by Yadu to Inivos. Such a rate reflects:

32.3.1. the extensive work carried out by GP as set out at paragraph 26 above; and/or

32.3.2. GP's expertise in sourcing a large quantity of high-quality medical disposables at short notice from China; and/or

32.3.3. the price Inivos agreed, expressly or impliedly, to pay GP for the provision of its services; and/or

32.3.4. the profit obtained by Inivos as a result of the provision of GP's services, which GP estimates to be approximately £26,000,000.



33. Further, GP is entitled to and claims interest on the amount found to be due to it under s.35A of the Senior Courts Act 1981 at such rate and for such period as the Court considers just.

AND THE CLAIMANT CLAIMS:

- (1) Damages in respect of the Defendant's breach of the Varied Masks Contract;
- (2) Damages in respect of the Defendant's breach of the Gowns Contract;
- (3) Alternatively to (2) above, the sum of £10,800,000 or such other sum as the court deems to be a reasonable payment for the rendering of the Services provided to the Defendant;
- (4) Further or other relief;
- (5) Costs
- (6) Interest.

VICTORIA WINDLE

Statement of Truth



The Claimant believes that the facts stated in these Particulars of Claim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised by the Claimant to sign this statement

Signed:..... LIN QING

Dated:..... 22/04/2021

Full name: LIN QING

Position or office held: Director