

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LIVERPOOL
CIRCUIT COMMERCIAL LIST (KBD)

Liverpool Civil and Family Court
35 Vernon Street
Liverpool
L2 2BX

BEFORE:

HIS HONOUR JUDGE CADWALLADER sitting as a Judge of the High Court

BETWEEN:

PHARMAPAC UK LTD

CLAIMANT

- and -

ELEV8 GLOBAL LTD

(1) DEFENDANT

AJAY PATEL

(2) DEFENDANT

Legal Representation

Mr Jac Armstrong (Counsel) on behalf of the Claimant
Mr Ajay Arvindray Patel (Second Defendant), on behalf of the First Defendant
Mr Ajay Arvindray Patel (Second Defendant), Litigant in person

Judgment

Judgment date: 7 September 2023
Transcribed from 14:00:37 until 14:38:50

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His Honour Judge Cadwallader:

Introduction

1. This is my extempore judgment at the trial of a claim arising out of two contracts made on or about 11 and 21 December 2020 between the Claimant and the First Defendant, for the First Defendant to supply to the Claimant respectively 100,000 and 300,000 3M 8833 face masks, which the Claimant, a pharmaceutical packaging company, intended to resell to the National Health Service of England and Wales.
2. The First Defendant is a limited company which was a wholesaler of face masks in this context, and the Second Defendant, Mr Ajay Arvindray Patel was and is its sole director and shareholder and, it is admitted, its agent.
3. It was, of course, the time of the Covid-19 pandemic, when demand for face masks was particularly high. The price for the first contract was £399,000 plus VAT and for the second contract was £1,197,000 plus VAT.
4. The First Defendant was unusual in the market in that it funded the acquisition of the product itself. Mr Patel dealt primarily with Mr Matthew Banks-Crompton, who was the Claimant's sales director at the time.
5. On 11 August 2023, before this trial, I gave summary judgment against the First Defendant for damages to be assessed and directed that the assessment take place at the trial of the claim against the Second Defendant.

The trial

6. Mr Patel and Mr Banks-Crompton were the only witnesses at this trial. Mr Patel represented himself and, with my permission, the First Defendant company. The Claimant was represented by counsel and solicitors and I had the benefit of both a skeleton argument and written opening from counsel.
7. Mr Patel told me he suffered from Asperger's syndrome, and also anxiety, and explained that it would assist him to take a full part in the proceedings if he might be allowed to take short breaks from time to time when he indicated, and that is what happened.
8. During the course of opening I took the opportunity to clarify the issues with the parties, to the extent they were not clear from the statements of case, skeleton argument and written opening. What emerged from that was as follows.

The issues

The Claimant's case

9. The claim against the First Defendant is for breach of contract on the basis that the contract had been for the supply of genuine 3M 8833 face masks, and the face masks supplied had not been genuine 3M 8833 face masks.

10. I was satisfied on the summary judgment application against the First Defendant that they were not and that there was no realistic prospect of its defending that allegation. The claim against the First Defendant for damages, as set out in the particulars of claim, was for £1,596,000 plus VAT, being the value of the face masks as represented and/or expressly warranted and the price paid, and loss of profit on resale of 400,000 units at £1.51, amounting to £604,000 plus VAT, and the cost of warehousing the face masks amounting to £14,000 plus VAT.
11. Now, the claim in respect of VAT was not pursued, since it was recoverable. The claim in respect of loss of profit was not pursued either. I was told that the masks in question had not been resold and remained warehoused in the premises of the Claimant. The basis of the claim for the price paid and the cost of warehousing was that there had been a failure of consideration because the face masks were counterfeit and so the NHS had refused to accept them on resale by the Claimant.
12. The Claimant's skeleton argument indicated a wish to claim a total of £26,426.40 in respect of warehousing, and two new claims, namely the cost of disposing of the masks in the sum of £5,445 and shipping costs, both to and from the Claimant, amounting in total to £12,000. I allowed the Claimant to make a late and informal application to amend, so as to introduce the increased sum for warehousing and to introduce the two new claims, none of which had been pleaded, and I gave permission for the increased sum in respect of warehousing to be pleaded by way of amendment, on the footing that it was evidently a continuing cost that was being alleged and that the Defendant made no objection. But I refused permission for the other amendments to which the Defendant did object for the reasons which I gave.
13. I raised the possibility that some provision might need to be made at the end of trial to ensure that the Claimant did not obtain both damages and the benefit of any resale value which it might achieve from the masks which it had retained, if they were not returned to the First Defendant in that event. At the close of the trial an undertaking was therefore offered, if necessary, that the Claimant would, within a reasonable time, safely destroy the masks supply by or through the First Defendant and then in the possession of the Claimant.
14. On enquiry, during the opening I was told that of the first 100,000 masks supplied by the First Defendant, the Claimant had provided some to the NHS and they had been disposed of by the NHS. Having noted from the papers that there was reference to a replacement of the first batch of face masks by another 100,000 face masks, supplied by the First Defendant for no additional consideration, I asked what had happened about them. I was told that the NHS had treated them all as counterfeit as well. They were all stored at the Claimant's premises. No additional claim was made in respect of those additional masks because they had not been paid for and because overall there were no more than 400,000 masks stored at the Claimant's premises, but the Claimant conceded that in order to account for the circumstances which I have mentioned in damages, it would reduce its claim for damages for warehousing by 20% to ensure it would not be over compensated. That is rough and ready, but I think acceptable in the circumstances and the Defendant has made no objection.
15. As regards the claim against Mr Patel personally, the Claimant accepted in opening that its claim against him was based on fraudulent misrepresentation and that he would not be liable if fraud on his part were not established. The representations relied upon were those set out in paragraphs 7 and 12 of the particulars of claim. That

is, that during the course of a telephone conversation, now accepted to have been made on 10 December 2020 rather than the 9th as pleaded, Mr Patel had represented that the First Defendant could provide supplies of genuine 3M 8833 face masks, that the First Defendant had already supplied various NHS trusts with genuine 3M 8833 face masks and that Mr Patel's father had a personal relationship with the owner of the factory which manufactured the 3M 8833 face masks under licence from 3M and had previously visited the factory, and that at a meeting on 18 December 2020 at a London hotel, Mr Patel had again represented that the First Defendant could provide supplies of genuine 3M 8833 face masks.

16. The Claimant's case was that the face masks which the First Defendant was able to supply and did supply were counterfeit and that Mr Patel either knew that the face masks which the First Defendant could supply were counterfeit, alternatively, that he was reckless as to whether or not they were. The basis of the allegation that he knew that was particularised as being that the First Defendant did not in fact supply genuine face masks, and that the factory which manufactured them did not manufacture genuine 3M 8833 masks under licence from 3M and that, having knowledge of the factory which produced them, Mr Patel failed to obtain confirmation from 3M that the factory was so authorised and he supplied fake documentation to support his false representations.
17. The basis of the allegation that he did not believe them to be true or was reckless as to their truth was, again, that having knowledge of the factory which produced them, Mr Patel failed to obtain confirmation from 3M that the factory was so authorised and he supplied fake documentation to support his false representations.
18. Now, it became apparent during the opening that the documentation intended to be referred to here and relied upon, but regrettably not particularised in the particulars of claim as it should have been, were inspection reports provided by a well known company in the field, called TÜV Rheinland, referring to inspection dates of 17 December 2020 and 26 January 2021, a document dated 10 November 2020, purportedly emanating from Nanchang RuiZhong Industrial Co Ltd of Nanchang City, Jiangxi Province, China and addressed to 3M, which purportedly contained the authorisation of the former company to HK Quan Gang International Trading Limited of Mongkok, Hong Kong to resell certain 3M healthcare particulate respirators and surgical masks (albeit apparently not 8833 masks),

“for government agencies, hospitals, medical clinics and healthcare end-users for the effort to combat COVID 19 during the period from 10 November 2020 to 31 December 2021”;

and the purported authorisation by 3M, heavily redacted, but on its terms appearing to authorise an unidentified special distributor of 3M personal safety protection products between 22 November 2019 and 31 December 2020 to do something unspecified, which document did, however, refer to a factory address and a market area, which were both redacted too.

19. The Claimant had formally confirmed, in about January 2023, that it no longer alleged that the TÜV documents were forged, and that remained its position at trial, but it did allege that the other documents were fake documents. As I understand it, it was not alleged the Mr Patel had himself created the fake documentation, merely that he had supplied it to the Claimant.

20. For the sake of clarity, the documentation itself was not relied upon as a representation founding a cause of action, but as supporting the proposition that Mr Patel had been reckless in making his representations.
21. Finally, the loss claimed in respect of the claim against him was the same as the loss claimed against the First Defendant.

The Second Defendant's case

22. For his part, the Second Defendant accepted making the representations alleged on the occasions described, save that he denied having represented that the First Defendant had already supplied NHS trusts with genuine 3M 8833 face masks: his case was that he had been referring to supplies made by his family and its business or businesses, not by the First Defendant itself. He denied that the representations were false, but accepted that the First Defendant had not previously supplied NHS trusts with such masks. In particular, he did not accept that the masks were not genuine. The Claimant accepted that the Second Defendant was not bound by the finding that they were not, which had been made against the First Defendant on the summary judgment application. The Second Defendant denied having made those representations fraudulently in any sense.

The First Defendant's case

23. The First Defendant accepted that if the masks were not genuine it would have to repay the purchase price and that it would be liable for the warehousing costs as claimed.

The law

24. So those are the issues. The law was uncontroversial. I was reminded that the burden lay upon the Claimant to establish the representations, their falsity, that they were made fraudulently with the intention that they should be relied upon by the Claimant, and that the Claimant relied on them and suffered loss in consequence.
25. I was taken to the quotation from the speech of Lord Herschel in *Derry v Peek* (1889) 14 App. Cas. 337 where he said:

“... fraud is proved when it is shown that a false representation has been made: (1) knowingly; or (2) without belief in its truth; or (3) recklessly, careless whether it be true or false.”

If the Second Defendant honestly believed that what he asserted was true, he was not fraudulent, but if the Claimant can show that he suspected that his statements might be inaccurate or that he neglected to enquire into their accuracy, that is enough. The Claimant does not need to establish that the Defendant knew the statement was false. As Cairns L said in the same case:

“If persons take upon themselves to make assertions as to which they are ignorant whether they are true or untrue they must, in a civil point of view, be held as responsible as if they had asserted that which they knew to be untrue.”

26. As to reliance, it is sufficient if there is evidence to show that Mr Banks-Crompton was materially influenced by the misrepresentation, merely in the sense that it had some impact on the Claimant's thinking, and for that I refer just to *Chitty on Contracts* 34th ed., at paragraph 9-47.

Witness evaluation

27. So I turn to witness evaluation. Mr Banks-Crompton gave the impression of a witness who took care to try and assist the Court with his genuine recollection. Mr Patel was more difficult to evaluate as a witness. In his demeanour he was mostly careful, clear and calm, even appearing relaxed in the witness box, but he was apparently unable to recollect some matters of which it might have been anticipated that he would have a clear or at least some recollection, substantial elements of his evidence were vague and unclear in substance, and he gave the curious impression on occasion of not caring very much about some of the important matters about which he was being asked.

The facts

28. So I turn to the facts. Mr Patel was not experienced in dealing with the supply of face masks, or it appears of other material. He was, or had been, an options trader. He said, and I accept, that his father had had 40 years' experience of business, including in the supply of face masks and similar material, in which he had developed a good reputation and that he had passed the business on to Mr Patel's brother.
29. Mr Patel's evidence did not go into the question of why he had decided to take up the business of supplying PPE, but he said, and I accept, that before December 2020 he had spent several months looking into the market and had decided that through contacts provided by his father, he could supply much needed PPE at a reasonable mark up. This was, of course, at a time when the demand for PPE was extremely high.
30. The Claimant, which was an established business in the field, had effectively an open order from NHS Wales to supply 3M 8833 face masks and, as I say, the demand was very high. Mr Banks-Crompton had heard that Mr Patel, or the Defendant company, might have masks available, and approached him directly on 9 December 2020 with a purchase order for 400,000 masks without, apparently, having had a conversation about the price, and emailed acknowledging that his direct approach was unusual and seeking to reassure Mr Patel that his client was an end-user with whom he had an open order and that he was not going to abuse the market but would act ethically. Mr Patel responded on behalf of the Defendant Company, suggesting a call the following day, having initially been reluctant to deal with the Claimant. That consultation took place by telephone and that was the conversation in which the representations complained of were made.
31. Some of those representations, as I say, are admitted, but I am not satisfied that Mr Patel represented to Mr Banks-Crompton and the Claimant that the Defendant company had previously supplied face masks to the NHS, which it had not. True, Mr Patel was speaking on behalf of the Defendant Company, not his father or his father's business. He was speaking about a potential contract to be entered into by that company, but I accept that he made it clear that he was also speaking to his

father about the potential deal. That appears from the emails in the bundle. It is possible, just about, to read the contemporaneous emails mentioning prior experience, as referring to his father's or his family's business, rather than to the First Defendant, and it was open to a person in the position of Mr Banks-Crompton to read them that way in context. Being told that another member of the family and another business had experience, when he was dealing with Mr Patel and the Defendant Company, might possibly have offered some, albeit limited reassurance, so it may not have been wholly pointless to make the representation in offering reassurance. I cannot go as far as accepting Mr Patel's evidence on this issue, because he may have given a misleading impression and he may have done so on purpose, but I am not satisfied that it may not have been simply an understandable misunderstanding on Mr Banks-Crompton's part.

32. On 11 December 2020 the Claimant issued a revised purchase order for 100,000 3M 8833 masks stating that payment was due upon collection and receipt of a TÜV report, and the purchase order was subject to product and document review. They had agreed to start gently. Mr Banks-Crompton submitted that purchase order. His email explained that he was looking forward to a TÜV report and arranging time for review and collection. The purchase order was accepted.
33. I find that the Claimant did indeed rely upon the representations made by Mr Patel and was induced by them to enter into that contract. It makes no difference that the Claimant had been the initiator of the transaction and that the Defendant had initially been reluctant. The representations were made to reassure the Claimant as to the Defendant Company's access and experience and the Claimant was intended to and did rely upon them. It makes no difference that the Claimant had submitted its original much larger purchase order without having had such assurances. That was, as I find, the Claimant's way of getting the Defendant's attention, and it would not have proceeded without the assurances which it was given. Even if I were wrong about that, I am satisfied that they acted upon the mind of Mr Banks-Crompton in entering into the first contract, and that is enough.
34. Mr Patel's evidence was that he had found his supplier as the result of being introduced by his father to one Sumedha Amarasinghe of Weskotec a company based in Sri Lanka, acting as an agent and through whom he had placed his order (although I understood him to say to me that Weskotec also manufactured masks and other PPE). The Defendant company ordered 100,000 3M 8833 face masks made in China from Jia Sheng (HK) Trading Co Limited, a Hong Kong company, and was invoiced US \$315,000, payable in advance. Mr Patel was not dealing directly with the factory or its owner, but through Mr Amarasinghe with people whom, as far as the evidence goes, he did not know at all, and the trail of dealings appears incomplete and confused on the evidence and documentation before me.
35. A TÜV report of an inspection of the goods on 17 December 2020, at a location in China, that is, of a sample of the goods, was prepared and submitted to the Defendant company. It had been readdressed at the request of the Defendant company, to the Defendant company itself. Originally it had been addressed to yet another company in China which was described by a TÜV email as the supplier.
36. The TÜV report made it clear on the face of the document that it did not verify the brand, but only the product quality by visual appearance and that, on that footing, it had passed. It stated that no detailed address was shown for the goods, or the origin

of the goods, because it was a trade secret, at the request of the Defendant company; and, curiously, it said that the goods had been made in the UK. Mr Patel in evidence said he had wondered about that himself, but had been told that although untrue it would help with Customs, and had accepted it on that basis. One might have thought that it had raised a question as to the source of the goods and the reliability of the TÜV report. Apparently it did not do so in the mind of Mr Patel, which makes me cautious as to his business probity.

37. On 21 December 2020 the Claimant submitted a further purchase order for 300,000 masks this time, again subject to product and document review. By that stage it is admitted there had been a further conversation at a London hotel at which the Defendant's access to genuine 3M 8833 face masks had been repeated. I find that that representation and the previous ones were still operative in the mind of Mr Banks-Crompton and that they induced the Claimant to enter into that second contract.
38. The Claimant paid the contract purchase prices. The second payment was made of a period.
39. Difficulties then arose over the face masks. NHS Wales raised concerns over their quality and over their genuineness. The Health & Safety Executive became involved and considered the matter over a lengthy period. In the meantime the masks were placed in quarantine and were not accepted by the NHS. They were then returned to the Claimant. Mr Banks-Crompton and Mr Patel attempted to cooperate in persuading the HSE and the NHS that the masks were genuine and to be accepted, but the masks were ultimately rejected.
40. It is now apparent, and I accept, that the masks in question were not genuine but were counterfeit. I have already made that finding in the context of the summary judgment application against the First Defendant. The primary reason for which I come to that conclusion is the letter dated 10 March 2022 from 3M to one Bilal Ahmed, Head of Commercial Procurement at King's Facilities Management in London. That was an organisation with which the Claimant had developed a relationship and through which it passed the information upon which 3M commented.
41. The letter comes from Christine L McCool, an advanced product development specialist in the 3M Personal Safety Division at Saint Paul in Minnesota. There is no suggestion that the letter is not genuine or that she is not qualified to express the view which she does. The letter reads as follows:

“3M Company has examined certain images of respirators bearing the “3M” brand that were provided to 3M by KFM. For at least the following reasons, 3M has determined that said respirators are counterfeit and did not originate from any 3M manufacturing facility.

1. The printing on the respirators does not conform to the known characteristics of printing present on authentic 3M 8833 respirators.
2. The construction of the products examined does not conform to the known characteristics of authentic 3M 8833 respirators.

Representative photographs of the respirators and packaging that we examined are included as Exhibit A to this letter.”

42. If 3M themselves conclude that the items are inauthentic on the basis of an adequate examination then this Court is entitled to reach the same conclusion for the same reasons. Mr Patel fairly pointed out that the photographs in the bundle do not include photographs of the packaging and that the packaging would have had product details on it. He pointed out, also, that the person who took the photographs had not been called to give evidence and he might have made a mistake about what he was photographing, and photographed face masks not supplied by the Defendant. It is also a fair point, as far as it goes, that the photographs are only representative photographs and not photographs of all the masks supplied by the Defendant.
43. However, I accept Mr Banks-Crompton’s evidence, which was not really challenged, that he had directed an employee, Mr Rogan the stock controller, to photograph the masks supplied by the Defendant for consideration by 3M and the packaging, that the masks supplied by the Defendant were in quarantine at a separately identifiable location on the Claimant’s premises, and that 3M had specified what photographs should be taken and from what angles. Mr Rogan must have met those requirements, as I find, because 3M provided its opinion on that basis. As a stock controller Mr Rogan would certainly have known which were the masks in question. He might possibly, or conceivably, have made a mistake, but it is much more likely that he did not. Mr Patel did not point to any differences between the masks photographed and those supplied by himself, although he faintly suggested that one looked as if the markings had been inked over. I accept that they had not been and that this was a fluke of the printing process. On the basis that 3M was in the best position to determine whether the masks were genuine products or not, I conclude that they were not.
44. In his submissions Mr Patel proposed that the company to which the 3M authorisation was directed might have been authorised to manufacture genuine 3M 8833 face masks, but only to sell them within a particular region and that it was likely someone had done his father a favour in procuring them for sale in the UK, but that that did not make them counterfeit. There was no evidence of that, and I cannot tell, but it does not address the point that the company so authorised appears to have been authorised as a distributor and not as a manufacturer.
45. It was submitted on the part of the Claimant that Mr Patel must have known that the masks which he was selling to the Claimant were counterfeit, simply because although he had made representations about a relationship with the producing factory, he had not actually been dealing with the producing factory. In my judgment, that does not follow. Mr Patel was utterly inexperienced in carrying out business of this kind. These may have been his first or almost his first transactions of this kind. Although he says he had been researching it for a number of months, he did not give any evidence about what he had learnt. In his oral evidence he sought to suggest that he had been more or less entirely reliant on the contact with whom his father had provided him, Mr Amarasinghe. The burden of his evidence was that he was entitled to rely upon the experience and probity of his father in that regard. I am not satisfied on the balance of probability that just because he knew he was not dealing directly with the factory he knew the masks must be counterfeit.

46. There was really no basis for the allegation that his father did not have a personal relationship with the owner of the factory and had not previously visited it, or that Mr Patel had known that this was untrue when he said it. I accept that his father had had such a relationship and had visited the factory, there being no evidence to the contrary and no inferential basis for a contrary conclusion. I am not satisfied that this allegation of fraud should have been made or pursued.
47. I turn to consider then, whether Mr Patel made his representations as to the genuineness of the masks without honest belief in their truth, or recklessly, that is without caring, whether they were true or false.
48. I remind myself that however negligent a person may be, he cannot be liable for fraud provided that his belief is honest. Mere carelessness is not sufficient, although gross carelessness may justify an inference that he was not honest. I take that from *Chitty on Contracts* at paragraph 9-056.
49. I bear in mind that while, with Mr Banks-Crompton, he had laboured his father's connection with the factory, this was not his father's deal and he himself would not be dealing with the factory at all, and that he had not disclosed that to Mr Banks-Crompton. Before he dealt with Mr Banks-Crompton and the Claimant however, I accept that he had been supplied with a heavily redacted photograph of a framed and glazed 3M authorisation hung on a wall somewhere. This had been in response, he said, to his request for confirmation that the factory was properly authorised.
50. What he would have seen was that it authorised the unidentifiable person to whom it was addressed as a special distributor of 3M personal safety protection products for a period from 22 November 2019 to 31 December 2022 at a factory address which was redacted and covering a market area which was also redacted. The QR code which it contained was partially covered up and, I take it, unusable for the purpose of verifying the authorisation.
51. As far as one can tell from the evidence, which was not clear, if the QR had been checked it would have revealed that the authorisation was given to Nanchang RuiZhong Industrial Co Ltd, based in Jiangxi; but it very much looked as if it was not an authorisation to manufacture but to distribute, and only to distribute in a specified area which might or might not, as far as Mr Patel was concerned, have included the UK. Mr Patel said in evidence that he had missed this, that is that he had failed to notice it. He told me, however, that he understood this company was a middleman or distributor, and that he could not trade directly with the factory but had to go through them. Oddly, he told me he was unable to remember which city the factory was in, which I find hard to believe. He had consistently declined to identify it throughout his dealings with the Claimant on the ground of commercial confidentiality.
52. His evidence about what he had seen in this regard however, was confusing. He also suggested that what he had seen was a document in Chinese, a language which he did not read. Certainly the bundle contains a photograph of such a document. Perhaps he was sent both. He said he had had someone translate it over the telephone, but he had no way of telling if the translation was accurate and, if it was, I take it he would have learnt that it was an authorisation to distribute rather than manufacture, but there was no evidence that if it had been accurately translated, he would have learnt who was so authorised and whether that was the person with whom he was dealing, whether

through intermediaries or otherwise. To rely on such a document and conversation would have been, in my judgment, grossly careless.

53. The TÜV documents arrived after the representations were made and could not have affected Mr Patel's belief at the relevant time. As he himself insisted, they do not, in any event, verify the brand or the authenticity of the goods to which they relate. So the arrival of the first TÜV report cannot have given him confidence on the basis in which to repeat his representation at the hotel in London. It is curious, therefore, that he should have asserted that the TÜV documentation was an absolute guarantee of authenticity in his emails to Mr Banks-Crompton, but he did. There was no basis on which he was entitled to say so, and to say that such documents were all anyone ever asked for is, I suspect, of doubtful accuracy, but does not address the question in any event. On the contrary, the TÜV documents raise questions as to the source of the goods.
54. There is, of course, his reliance upon his father, but his father seems merely to have put him in touch with an agent with whom he dealt. It is hardly an adequate basis upon which to form a belief that the goods which would be supplied, eventually, could be represented safely as being genuine.
55. Obviously, the authorisation from Nanchang RuiZhong Industrial Co Ltd, whenever the Defendants may have received a copy of it, does not assist either, because it merely authorises a third company, HK Quan Gang International Trading Limited, to resell 3M masks. It appears not to relate to 8833 masks. It cannot adequately have founded a belief at any time that the masks supplied to the Defendant were genuine, but it was this company, Mr Patel told me, that the Defendant company actually paid for the masks supplied to the Claimant.
56. Another document, evidently from the same company, addressed to the Defendant company, states that Nanchang RuiZhong confirmed and agreed to transfer 500,000 8833 FFP3 masks, made in the UK, to the Defendant from Hong Kong. Oddly, the year of the signature is dated as 2020 but that heading the document is 2021. Probably that is just an error.
57. But the managing director of Nanchang RuiZhong has confirmed in writing that the company did not supply 3M 8833 face masks to the Defendant company and that the authorisation document is a fake and was not sent by the company, and its purported signatory did not sign documents on behalf of that company. She was not called upon to give evidence, but there was no serious challenge to what she said in her email. The Court is entitled to conclude that what she said was true, and I do so.
58. Mr Patel appears to have taken no, or no substantial steps, to verify the genuineness of the 3M face masks which the First Defendant was going to supply and which were being offered for sale. The steps which he did take were wholly inadequate, and obviously so. In my judgment he was grossly careless.
59. I have given anxious consideration to whether it goes further than that, to fraud, and I have hesitated over my conclusion. To have represented that he was able to supply genuine 3M face masks in the context of a frenzied market for them and at a time when he was aware that counterfeit goods were being offered to the NHS, but knowing as he should have done (and although inexperienced in the market he is plainly an intelligent man and used to commercial dealings) that the steps he had

taken to verify the position did nothing of the kind, has nearly brought me to the conclusion that he can have had no honest belief in the truth of what he said about the genuineness of the face masks, having no basis for it, and that, having no honest belief in it, he cannot have cared whether it was true or false when he said that they were.

60. What has prevented me from reaching that conclusion is the impression which I have taken from his dealings, as evidenced by the documentation contained in the trial bundle, over the long period when the quality and genuineness of the masks was under suspicion. He did not then behave, as it seems to me, as a man might or would who had committed a fraud, even by recklessness, and who had been or was about to be found out. He behaved like a man who genuinely believed the masks were genuine and was puzzled by the problem. His approach in court, to which I give much less weight since there might have been a bit of advocacy, was consistent with that. Had I found him guilty of fraud I would nonetheless have accepted and taken seriously that he felt aggrieved and that he might have been the victim of fraud himself, but I would have reflected that it did not absolve him from having made those representations without an honest belief in their truth and without having cared whether they were true or false. But I do not so find.

Conclusion

61. Accordingly, I conclude that it has not been established that Mr Patel's representations to the Claimant on 10 December 2020, that the Defendant Company could supply genuine 3M 8833 face masks and that it already had supplied various NHS trusts with such masks, and his representation on 18 December 2020 that the Defendant Company could supply genuine such face masks, were fraudulent, and I conclude accordingly that Mr Patel is not personally liable.
62. Had it been otherwise I would have found him liable along with the Company for the total consideration of £1,596,000 and liable for the warehousing costs incurred by the Claimant in the undisputed sum of £26,426.40 in consequence, which falls to be reduced by 20% for the reasons I have already outlined, to the sum of £21,141.12. Given the conclusion to which I have come, these are the sums for which the Defendant company alone is liable.

This Transcript has been approved by the Judge.

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