IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1982] SGHC 30

Suit 1178/1978

Between

Gan Kee Cheow trading as
Moh Seng Co

… *Plaintiff*

And

Peter & William Co (Pte) Ltd

… *Defendant*

GROUNDS OF DECISION

Commercial Transactions — Sale of goods — Breach of contract; Commercial Transactions — Sale of goods — Breach of contract

Version No 1: 11 Sep 2026 (01:05 hrs)

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Gan Kee Cheow trading as Moh Seng Co v Peter & William Co (Pte) Ltd

[1982] SGHC 30

Suit 1178/1978
Lai Kew Chai J
21 September 1982

1 In this case the plaintiff as seller of logs claim against the defendants, the buyers, damages for breaches of two contracts of sale, one made in early 1976 and the other in early 1977, and supplemental agreements thereto. He claims in total $95,994.20 being the aggregate difference between the contracted prices and the prices of the logs which the defendants failed to take delivery and which the plaintiff had re-sold to third parties.

2 The defendants assert that the plaintiff had short-delivered and counter-claimed the aggregate sum of $94,066.78 for loss of profits on the ground that the plaintiff had no logs to supply.

3 The facts I found on the contemporaneous documents and the oral evidence are these.

4 By a written agreement dated 19 March 1976 (the 76 agreement) the plaintiff agreed to sell and the defendants agreed to buy 2,500 m3 of Liew Aun logs of Sumatra on fob terms. For logs above the SQ grade (ie superior quality) exceeding 60 cm in diameter and above six metres in length, the agreed price

was US$37 per cubic metre FOB . In respect of Swampy Mixed and low sawmill quality logs, not exceeding 15% to 20% of the contracted volume, the agreed price was US$33 per cubic metre fob. Port of loading was Tanjong Beranak, Sumatra. The shipment date was April 1976. The defendant agreed to open irrevocable letters of credit.

5 Following the defendants` inspection of the logs, they opened the letter of credit in March 1976. Before the defendants nominated and sent a vessel to load, as they were obliged to do; the parties signed an agreement supplemental to the 1976 agreement (the 76 supplemental agreement). Under it, it was agreed, inter alia , that the shipment date of the 76 agreement was extended. In addition, the plaintiff agreed to sell and the defendants agreed to buy a further volume of 1,200 m3 to 1,500 m3 of Lew Aun logs. The prices for the two grades of logs which I have stated earlier were increased per m3 to US$40 and US$36 respectively.

6 In June 1976 the defendants provided a tug and barge to carry the logs. It had a carrying capacity of only 900 m3, with the master of the tug having the option to load plus or minus 10%. The defendants had agreed with the carriers that the master could shut out cargo. In the event, only 844.79 m3 of logs were loaded. The rest of the logs were shut out.

7 The defendants failed to provide another vessel to load the lot of 2,500 m3 under the 76 agreement and the balance of 355.21 m3 under the 76 supplemental agreement. They alleged the plaintiff had no logs of the type agreed. Tan Kim Joo, DW3, a log grader, said the visited the logging concession which the Plaintiff was working. He saw only a small quantity of logs. I was unable to accept his evidence. He was too anxious to help the defendants. On

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the other hand, the plaintiff proved that he had the logs and had resold them to a Taiwanese buyer in July 1976. The packing lists for these logs were couched in general terms for tax reasons at the place of export as the plaintiff explained, which explanation I accept.

8 In support of the defendants` allegation that the plaintiff had no logs, DW1 produced a copy of a letter dated 26 April 1976 which he alleged he had sent to the Plaintiff. The letter, marked DAB2A, purported to refer to a meeting and to record that the defendants could face problems in the production of the logs. Apart from this embellishment, the rest of the letter was an unnecessary letter as AB5, the 76 supplemental agreement, had recorded all the terms thereof. I am satisfied that the letter was concocted by the defendants to serve the interest of the defendants in these proceedings. It also referred to a meeting with the plaintiff `yesterday` which was a Sunday, a day of rest. DW1, Tho Kee Ping`s explanation that he had wrongly dated the letter was unacceptable to me. He was not a witness of truth. So the defendants` counterclaim fails.

9 I now turn to the second transaction. On 3 February 1977 the defendants agreed (the 77 agreement) to buy from the plaintiff 3,600 m3 of logs with a 10% variation. Delivery was to be by two shipments to be effected from March to April. Each shipment was therefore intended to be about 1,800 m3. The sale was on CIF terms. Payment was to be by letters of credit to be opened by the defendants.

10 On 11 March 1977 the defendants opened a letter of credit in favour of the plaintiff for S$185,000 to pay for a shipment of 1,800 m3.

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11 Again the parties entered into an agreement (the 77 supplemental agreement) supplemental to the 77 agreement. Under it the shipment was increased by 300 m3 of logs to 2,100 m3. Ramin logs were included.

12 In April the plaintiff arranged the tug boat Wallet and the barge Putri Sejati to load one of the shipments. As the barge`s carrying capacity was 2,000 cubic metre, the plaintiff requested the defendants to increase the volume and amount of the credit in the letter of credit. The defendants increased the quantity but not the credit amount. Only 1,200 pieces were loaded. When the logs arrived in Singapore on 23 April 1977 a dispute as to the measurement of the logs arose between the plaintiff and the defendants. The defendants alleged that the plaintiff then repudiated the agreements, indicating that he was not delivering the balance of the quantities under the 77 agreement and the 77 supplemental agreement.

13 Now, it was the duty of the defendants to open a second letter of credit. They never did. They again say that the plaintiff had no logs and had, in any case, wrongfully repudiated the agreements. I reject both these defences. In fact, the plaintiff had the logs which he resold to another party. The plaintiff also should have judgment in respect of the transactions in 1977.

14 The damages suffered by the plaintiff were not seriously challenged. They were documented and I need not say anything further.

15 Accordingly, I give judgment for the plaintiff in the sum of $95,994.20 with costs. ***Order accordingly***

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Lai Kew Chai J

Cheng Tim Pin (Yap & Yap) for the plaintiff
Lee Tow Kiat (Lee & Cheong) for the defendants

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