IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 18

Suit No 2531 of 1988

Between

Hua Tong (Pte) Ltd

… Plaintiff

And

Stephen Law Wing Kit

… Defendant

GROUNDS OF DECISION

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

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Hua Tong (Pte) Ltd v Stephen Law Wing Kit

[1993] SGHC 18

Suit No 2531 of 1988
Karthigesu J
28 January 1993

1 **Judgment:**

2 Coram: Karthigesu J

3 **GROUNDS OF JUDGMENT**

4 At the end of the trial I gave judgment to the plaintiffs for $16,041.05 with interest at 8% per annum from the date of the writ (26 October 1987) to judgment (23 November 1992) and costs. I also dismissed the defendant's counterclaim with costs. The defendant has now appealed.

5 The plaintiffs are suppliers of marble and other building materials. The defendant was the owner of a dwelling house at 168 Coronation Road West which he had purchased in or about March 1987. It needed extensive renovation. So he engaged the services of an interior designer named Alan Crandon (DW-2) to design the inside of the house and also to do all the interior designing work like matching of colours and to advise on the use of suitable building materials for the flooring.

6 The defendant wanted marble flooring for the entire house, that is to say for the downstairs, upstairs, bathrooms and staircase. Alan Crandon suggested the plaintiffs. The defendant went with Alan Crandon to the plaintiffs' showroom and viewed the marble on display. In his evidence the defendant said:

7 `I had to choose that price range I could afford. I was also looking for a particular muddy colour. I saw a piece of marble. I liked it. I liked its surface. I liked the veins. I was introduced to PW-1 (Albert Lim Hwee Leng, assistant manager of the plaintiffs). He explained to me about the marble and the samples.'

8 The defendant was not aware that one could purchase polished as well as unpolished marble. He only became aware of this when he was viewing the marble displayed in the plaintiffs' showroom and discussing the matter with Alan Crandon. What he saw on display was polished marble. He had wanted to buy polished marble but Alan Crandon had advised him against it because of the unevenness at the joints when laid. He was advised by Alan Crandon that if unpolished marble was laid on the floor the process of grinding and polishing after laying would grind off the unevenness at the joints as well. There was also the price difference.

9 He went on to say in his evidence that he consulted PW-1 on the difference in price between polished and unpolished marble. He said that PW-1 had also told him of the uneven problem with laying polished marble. What the defendant was concerned with was whether unpolished marble could be made to shine as the marble he saw on display. This is what he said in his evidence:

10 `I said if I bought the unpolished marble and polished it after laying would I get the same shine and smoothness I had seen in the showroom. He

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(PW-1) said not to worry as he sold good quality marble. I then decided to buy the unpolished marble. Alan Crandon also said that unpolished marble could be polished to the same degree of what I saw in the showroom.'

11 An order was placed through Alan Crandon of the defendant's requirements, by reference to the different dimensions and the numbers required of each of the different dimensions, of the marble that had caught the defendant's fancy which in the trade is known by the name of Perlato Fiorito marble. The order consisted of both polished and unpolished Perlato Fiorito marble. The plaintiffs gave their quotation which was duly accepted by the defendant by him paying the required 20% deposit of $5,315.52 on 21 March 1987. It is pertinent to note that the plaintiffs' quotation, amongst other remarks (which are not material for present purposes) contains this particular remark which reads as follows:

12 `Buyer fully understand and accept that marble/granite being a natural product is likely to vary in colour and veins. The samples serve to give a general idea only. The materials delivered might vary from sample.'

13 The plaintiffs commenced deliveries to 168 Coronation Road West on 26 March 1987 and continued through to the end of April 1987. Each delivery was accompanied with an invoice for the cost of that delivery.

14 The plaintiffs' claim that there is still a balance of $16,041.05 due to them is not denied by the defendant. In fact it is admitted by the defendant, except for the claim for interest at 9% per annum on this sum. The defendant, however, by a counterclaim, originally for $70,886 but reduced at the trial to $60,236, claims the right of set off of the plaintiffs' claim and judgment for the difference.

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15 The counterclaim is based on the damages allegedly suffered by the defendant as a direct and natural result of the plaintiffs' breach of an implied condition to supply goods (unpolished Perlato Fiorito marble) that are of merchantable quality. In other words the defendant relies on s 14(2) of the Sale of Goods Act. Section 14(2) reads as follows:

16 `Where the seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality, except ...' (the exceptions are not relevant in this case)

17 The defendant engaged Dou-Li Tong Construction as his renovation contractor and also to lay the Perlato Fiorito marble purchased from the plaintiffs under the supervision of Alan Crandon. Tony Tan Choon Lim (PW-3) a director and manager of Dou-Li Tong Construction gave evidence for the plaintiffs. His evidence was that the Perlato Fiorito marble was laid, ground and polished according to standard procedure. The work was inspected and certified by Alan Crandon before handing over to the defendant. According to PW-3 the defendant was satisfied with his marble floors.

18 Indeed when the defendant moved into 168 Coronation Road West in May 1987 after all the renovation works and the laying of the marble floors had been completed he was well satisfied. In the defendant's own words that `marble was pretty nice when I moved in'.

19 However, within a month of his moving in powdery patches began to appear both on the upstairs and downstairs marble floors. He called in Alan Crandon who proffered the opinion that the defendant's domestic staff did not know how to maintain the floors. Mopping with clean water was suggested. When the floors were wet the powdery patches could not be seen. Rubbing with

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a dry cloth would remove the powdery patches but after a while they would return.

20 The plaintiffs (PW-1) and Dou-Li Tong Construction (PW-3) were called in. PW-1 gave evidence that sometime after 4 September 1987 Alan Crandon complained to him that the marble flooring was patchy and powdery. Alan Crandon summoned a meeting at 168 Coronation Road West. A meeting was held at 168 Coronation Road West on 12 September 1987 which he attended. PW-3 and Alan Crandon were also present. PW-1 said in his evidence that he suggested re-grinding. He also said the patches showed dullness and faintness in colour, `something like the unpolished surface'.

21 PW-3 also confirmed the meeting on 12 September 1987. He was able to recollect that re-grinding had been mentioned but could not remember who was going to do it. In any case he was certain that he had not been asked to and that he did not re-grind the floors. He was able to say, however, that the floors had not been re-ground after he had handed over 168 Coronation Road West to the defendant in May 1987 but between May 1987 and the meeting on 12 September 1987 he had been asked to re-polish the floors which he had duly done and that had removed the powdery patches and had restored the shine. After a while the powdery patches had re-appeared and that was when the meeting of 12 September 1987 had been called to find a solution.

22 After the meeting of 12 September 1987 the defendant tried talking to the plaintiffs. This is what he said in his evidence:

23 `I even try to settle with plaintiff company. Either they grind it or replace or do something. PW-1 suggested grinding and that they would get someone to do it but they wanted payment of their money first. I was not agreeable. I wanted

some guarantee. All they would do is to forgo the grinding costs if problem not solved.'

24 An impasse was reached. The defendant called in S.G.S. Singapore (Pte) Ltd to comment on the powdery surface of the marble flooring. The survey was done by Mitchell Lim (DW-3). It was a visual survey. He stated his findings and conclusion in his report dated 27 November 1987, in the following terms:

25 `4. Inspection findings

26 4.1 The general condition of the marble flooring at the time of our inspection are shown in photographs 1 to 6.

27 4.2 The marble flooring was observed to be not brightly and evenly polished. Powdery "dark patches" on the marble surface was found to be very prominent and apparent.

28 4.3 Some marble slabs were observed to be of even polishing and without the "dark patches" on the surface.

29 5. Conclusion

30 On the basis of the above, we are of the following general opinions:

31 5.1 The above defects could unlikely be caused by moisture content in the environment on the ground floor area, as the same defects were observed on the upper floor of the house with the same marble flooring.

32 5.2 The defects could unlikely be caused by chemical solution attack during the polishing process, as by comparison, some of the floor marbles on

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the same level were not affected within the same square areas of the marble surface.

33 5.3 The likely cause, in our opinion, is the composition of the marble itself which render difficulties in polishing to the desired level of finishing. There is a tendency that the marble slabs supplied from the manufacturer are from different batches as observed from the contrast (density of colour) of the marble flooring shown in the photographs.'

34 It should however be noted that the defendant had no complaints of the colour density or the colour tone or the matching of veins. His complaint was that powdery patches began to appear on the marble causing it to loose its shine. Before leaving the SES report I should mention that I did not consider DW-3 to be qualified to give expert evidence on the causes for the powdery patches appearing on the surface of the marble flooring or the causes for the marble not retaining its shine. This was his first survey of marble flooring and furthermore he is a mechanical engineer by training. His experience at the material time was limited to five years. In any case I get little or no assistance from his report.

35 Be that so, the defendant was now convinced that something was wrong with the marble. Without attempting another re-grinding of the marble flooring the defendant decided to tear up the whole flooring and re-lay it with polished marble which he purchased from another source. He tried to get Dou-Li Tong Construction to undertake the work but they refused. PW-3 however in his personal capacity agreed to be appointed the project manager.

36 In my judgment the defendant acted hastily in deciding to tear up the whole of the marble flooring and to re-lay it with new polished marble. In my view had he got the marble re-ground as suggested by the plaintiffs the problem

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may well have been solved. PW-3 was a contractor of 26 years experience. He has done lots of work with marble. He described himself to be `quite knowledgeable about marble'. He said in evidence:

37 `In my view possible that re-grinding would have solved the problem.'

38 When asked by me to explain this further he said:

39 `I have come across this kind of problem before once. This was to my own house. A few puffings and the problem was solved. The problem was the same as this i.e powdery patches.'

40 There was a divergence of evidence on the extent of the powdery patches. PW-1 assessed it at about 20%; PW-3 said it was about 20% to 30%; Alan Crandon thought it was between 65% to 70%; the surveyor DW-3 said it was more than 50%; whilst the defendant himself said that over 90% of the slabs had powdery patches. However everyone, except perhaps the defendant, was agreed that the powdery patches did not pervade the whole of the flooring.

41 The plaintiffs called as their expert witness, Wong Chung Wan (PW-2). He is a graduate of the National Technological University (1987). He holds the degree of M.Sc from National University of Singapore. At the time of giving evidence he was assistant manager in the building and technology department of Setsco Services Pte Ltd which is a subsidiary of the Singapore Institute of Standards and Industrial Research (SISIR). Testing and evaluating building material and products of which marble is one, is the work of his department.

42 Although PW-2 had not surveyed the marble flooring in situ I found his evidence most helpful. His evidence was a scientific explanation, put in

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layman's language, of what can cause powdery substances to appear when unpolished marble is polished. His evidence was that marble being a natural product cannot be talked of in terms of defect. It has the properties of limestone since it is limestone which has metamorphosed and crystallized over centuries under high pressure or temperature. The process of natural formation will leave it with some defect. However as building material marble becomes defective when it is badly handled. Then the building product, the marble, is said to be defective.

43 Marble is made to shine by grinding it with grinding stones. These stones have metallic substances in them. Marble is porous and therefore during the grinding process salts can get into the pores of the marble. This produces a powdery substance. The polishing or grinding can get the shine back but if the marble is badly contaminated the powdery substance will re-occur.

44 Another cause for powdery substances on the marble is the sulphur dioxide in the air reacting with water and the gypsum which will crystallize on the surface. This too can be removed by re-polishing or re-grinding when the shine will re-appear. It was also PW-2's evidence that there may be weak places in the marble which cannot be polished. This was due to the formation, that is to say that the crystallization of the limestone was not fully complete.

45 Having considered all the evidence, and taking account of the fact that the defendant's complaint was not that the unpolished Perlato Fiorito marble he had bought would not shine to the same degree as the same marble he had seen in the plaintiffs' showroom but that powdery patches kept recurring, I came to the conclusion that the unpolished Perlato Fiorito marble had been `badly handled' after laying in the process of grinding to bring out the shine. I also came to the conclusion that had the Perlato Fiorito marble flooring been re-

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ground (perhaps more than once) the problem of the powdery patches could have been solved. In saying this I am supported not only by the scientific evidence of PW-2 but also by the evidence of practical experience of PW-3.

46 Before leaving the facts it is important to mention one significant factor. The polished Perlato Fiorito marble supplied by the plaintiffs to the defendant did not exhibit this phenomenon of powdery patches, or dullness or anything of that kind.

47 I turn now to the law.

48 The defendant's contention was that he had suffered damage as the direct and natural result of the plaintiffs' breach of an implied condition to supply goods (unpolished Perlato Fiorito marble) that are of merchantable quality and reasonably fit for its purpose. In effect the defendant was relying on s 14(2) of the Sale of Goods Act.

49 I simply could not understand this contention and said so during the trial. I could not understand how s 14(2) of the Sale of Goods Act could apply to a natural product on which the seller had not worked on except to cut the marble to the dimensions required by the defendant. Had the Fiorito marble been delivered by the plaintiffs with the cut edges chipped or frayed or the corner broken, or the slabs of marble cracked then I could see s 14(2) of the Sale of Goods Act applying. For in that case the marble supplied by the plaintiffs were obviously not merchantable and fit for its purpose, that is to say for the purpose of being used as building material. Alan Crandon, the defendant's interior designer said in this evidence:

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50 `If cracks or chips the marble will be rejected. Will advise the client. Yes, supervised the laying. It was laid and ground correctly. Shone nicely. Material was good. No complaints.'

51 Had the defendant purchased polished Perlato Fiorito marble for the flooring instead of the unpolished marble quite conceivably s 14(2) of the Sale of Goods Act would apply. In this instance the plaintiffs would have worked on the unpolished marble to convert it to polished marble before delivery and if shortly after laying them down for the flooring powdery patches appeared then it could be said that the plaintiffs had not supplied the defendant with polished Perlato Fiorito marble of merchantable quality. In this case the polished Perlato Fiorito marble would not be fit for the purpose it was intended, that is for use as building material.

52 In my judgment the question of whether or not s 14(2) of the Sale of Goods Act applies to a natural product such as marble must depend on whether or not the seller was required to work on the natural product before the sale is effected. When a buyer buys unpolished marble he is buying the natural product but when a buyer buys polished marble he is buying a product on which the seller has worked on and by that very reason it is rendered into a product of a different description and of a different price from unpolished marble. This analysis fits in well with what is meant by `merchantable quality' in the Sale of Goods Act, s 14(6) of which reads as follows:

53 `Goods of any kind are of merchantable quality within the meaning of sub-section (2) above if they are fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all other relevant circumstances.' < Emphasis added. >

54 Defendant's counsel cited to me Hammond & Co v Bussey < 1887 > 20 QBD 79 in support of her contention that the Sale of Goods Act applies to a natural product such as coal. So she argued that the Sale of Goods Act should apply in the instant case and invited me to apply s 14(2). I could not agree. Hammond & Co v Bussey was a case of the sale of coal of a particular description. In the instant case the sale of the Perlato Fiorito marble was not a sale by description.

55 She also cited to me Wilson and Another v Rickett, Cockerell & Co Ltd < 1954 > 1 All ER 868 (CA) maintaining that it was a case of the application of the implied breach of warranty of merchantability to a natural product. I regret to say she was mistaken. That case dealt with Coalite. Coalite is not a natural product but a synthesized product of coal. It is a manufactured product. In any case the non-merchantability of the `ton of coalite' was the presence of an extraneous explosive piece. That is what made the `ton of coalite' unmerchantable. Wilson's case does not bear comparison with the instant case.

56 Quite clearly the sale of the unpolished Perlato Fiorito marble to the defendant was not a sale by description or a sale by sample. What was displayed in the plaintiffs' showroom was polished Perlato Fiorito marble.

57 I should nevertheless consider whether the plaintiffs had given a warranty, express or implied, that if the defendant bought unpolished Perlato Fiorito marble it could be polished to shine as the Perlato Fiorito marble displayed in the plaintiffs' showroom. The defendant did say in his evidence that he asked PW-1 whether if he bought the unpolished marble it could be made to shine as the marble displayed and PW-1 had answered `not to worry as he (PW-1) sold good quality marble'. The plaintiffs' evidence given through PW-1 was as follows:

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58 `All display samples have stickers on them giving price, size and other features.

59 I indicated that both polished and unpolished marble could be supplied but price would be different.

60 I also told them that if polished marble bought we will polish the marble at our factory before delivery.

61 Defendant wanted unpolished as well as polished marble. The polished marble was for walls and staircase. Unpolished for the floor.

62 No guarantee or promises given to defendant. None asked for. He only asked whether the colour tone and the veins will be similar to the samples displayed. I said could be similar but there will be variations as marble is a natural product.'

63 Considering this evidence on a balance of probabilities I found that no express or implied warranty had been given by the plaintiffs that unpolished marble could be made to shine as the marble displayed without any blemishes such as powdery patches. What was uppermost in the defendant's mind as stated by him in evidence to which I have already referred to was the price range; the colour; and the veins. If shine was mentioned, I think, it was peripheral. PW-1's evidence seems to me to address what the defendant had in mind before he decided to purchase unpolished Perlato Fiorito marble for the floor.

64 I am surprised that the defendant did not claim back all amounts paid to the plaintiffs for the unpolished Perlato Fiorito marble. That would have been

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consistent with the basis for the counterclaim, not just withholding the balance payment due.

65 On the question of law I concluded that the Sale of Goods Act and in particular s 14(2) did not apply to the instant case.

66 For these reasons I gave judgment for the plaintiffs and dismissed the defendant's counterclaim.

67 I awarded the plaintiffs interest on their claim at 8% per annum from the date of the writ (26 October 1987) to the date of the judgment (23 November 1992) in the exercise of my discretion under s 9 of the Civil Law Act. In my view the plaintiffs had been unreasonably kept out of the balance sum of the price of the polished and unpolished Perlato Fiorito marble they had sold to the defendant. I found that there was no agreed rate of interest for late payment. I settled on 8% because that is the rate of interest the plaintiffs would have got on the judgment. In my view there was no defence to the plaintiffs' claim apart from the counterclaim. In my view a summary judgment ought to have been entered for the plaintiffs' claim in the subordinate courts where the plaintiffs had commenced their action and execution stayed pending the trial of the counterclaim which on the defendant's application was transferred to the High Court.

68 Since the defendant has appealed against my decision it is only right that I should indicate what I would have awarded him had I found in his favour.

69 In her closing speech defendant's counsel still reduced the claim for damages to $58,347 made up as follows:

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70 (1) Rectification works ($27,650) The claim for the re-laying of the marble flooring was limited to $18,500 but she wished to add to it a sum of $5,100 being as $2,600 to construct the kerb and alter the aluminium doors to the living and dining rooms because of the altered floor level brought about by hacking out the Perlato Fiorito marble flooring; and $2,500 being works to the sub-soil drainage of the garden. It was said that the latter was necessitated by the hacked out marble being dumped in the garden awaiting removal. In my view the former ought to be allowed but not the latter. The defendant also wanted to add to this item of claim the sum of $4,000 paid to PW-3 as the project manager. I did not see the necessity of a project manager for the re-laying of the floors. If the defendant wanted this luxury then he should bear the cost of it. Accordingly the amount I would have allowed under this head of claim would have been $21,000.

71 (2) Cost of polished marble for re-laying at $16,782. I would have allowed this.

72 (3) Removal cost. It was contended that all furniture had to be removed to facilitate the work. Removal contractors were engaged for moving out and moving in. However the evidence was incomplete and accordingly this item of claim was limited to $1,435. I would have allowed $1,435.

73 (4) Rental The defendant claimed 3+ months rental at $3,400 per month for rented premises while the re-laying work was undertaken. The evidence however, was that more than the re-laying of the floors was done which it was reasonably estimated took 1+ months. A further reason for claiming 3+ months was because that was the shortest lease the defendant could get. I would have allowed the rental claim for only 1+ months. Accordingly I would have allowed $5,100.

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74 (5) Miscellaneous Survey fees of $330 and utilities of $250. In my view the SCS survey served no real purpose should not be allowed. The utilities of $250 was a bear estimate which in any event was also shared by the other work done at the same time. I must hold this item of claim, not proved.

75 Thus had I found in favour of the defendant the amount of damages I would have awarded him would have been $44,317 and as his falls within the jurisdiction of the subordinate courts the costs would have been on the subordinate courts scale.

76 < Merits reporting only if appeal not pursued >

Karthigesu J

Chia Seng Chiu with Vivienne Wee (Goh & Chia) for the plaintiffs
Serina Goh (Chow Peng & Partners) for the defendant

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