IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1999] SGHC 114

Suit 1416/1996

Between

Lim Kee Ban Heng Pte Ltd

… *Plaintiff*

And

Excel Advanced Technology Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 20 Nov 2026 (00:35 hrs)

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Lim Kee Ban Heng Pte Ltd v Excel Advanced Technology Pte Ltd

[1999] SGHC 114

Suit 1416/1996
Chao Hick Tin J
30 April 1999

Judgment:

GROUNDS OF DECISION

1 This is an action for breach of contract on the part of the defendants in the supply and installation of a water-jet marble cutting system on the grounds that the machine supplied was not of merchantable quality and/or was not fit for the purpose intended by the plaintiffs, and which purpose was made known to

the defendants

. The plaintiffs claim to be entitled to reject the machine and ask for a refund of the payment made and certain consequential losses. In the alternative, the plaintiffs claim for rescission of contract on the ground of

fraudulent misrepresentation on the part of the defendants.

The facts

2 The plaintiffs, (Lim Kee Ban Heng Pte Ltd) were and are engaged in the business of supplying and installing slate, ceramic, homogenous tiles, granite and marble (cut to design/size as required by customers) as flooring. The defendants (Excel) were and are engaged in the business of designing, manufacturing, trading and integrating systems of automation equipment, and providing factory automation training & consultancy.

3 The main complaint of the plaintiffs was that the cutting done by the machine was rough, uneven and irregular. The plaintiffs averred that the machine supplied was inherently defective. However, the defendants contended that there was nothing wrong with the machine. The cutting was not in order due to poor operation and maintenance of the system by the plaintiffs.

4 Simplistically put, the entire machine which constitutes the water-jet cutting system consists of three main parts: (i) the cutting head which is mounted on a gantry and which can move sideways and lengthwise and an XY table, which is a grating mounted on a tank, upon which the material to be cut is placed; (ii) an intensifier pump; and (iii) a software programme which will command the cutting head to cut the material to the required design or size.

5 Sometime in early 1994 the plaintiffs decided to upgrade the cutting machineries which they had for their business. Until then, they only had bridge-cutting and diamond-wire cutting machines. This was to be their first venture into the water-jet cutting system, which they understood could cut marbles into complex patterns and shapes with precision. They knew that a competitor, Tan Chiang Brothers Marble (S) Pte Ltd (TCB), had a reputation for cutting marbles using such a system.

Version No 1: 20 Nov 2026 (00:35 hrs)

6 Sometime in February/March 1994, through a friend, Evelyn Kong, the manager of the plaintiffs, Lim Mong Hock (Mong Hock) got to know Mr Steven Seow (Seow) of the defendants and learnt that TCB was using an Ingersoll-Rand water-jet cutting machine. In April 1994 Mong Hock went over to TCB's premises to see how the water-jet machine worked. He observed that very precise shapes, sizes and designs were cut to form a composite design, without gaps. Mong Hock spoke to Seow and told the latter what the plaintiffs needed. Seow indicated that he was the one who sold the system to TCB and said that if the plaintiffs purchased such an Ingersoll-Rand system the defendants would be able to provide the local support. That would be an advantage as compared to the case if the plaintiffs were to purchase some other brand of such a machine.

7 On 3 May 1994 Seow, on behalf of the defendants, gave a written quotation to the plaintiffs for an Ingersoll-Rand water-jet cutting system at a special discounted price of $227,080, as the set which was quoted was a demonstration set used by the defendants. This quotation was not accepted by Mong Hock because the Ingersoll-Rand pump that was to come with the system was a 25-horsepower pump whereas the pump used by TCB was a 40- horsepower pump. He also felt the price was too high.

8 On 28 June 1994, the defendants gave another quotation to the plaintiffs. This time it was with a 40-horsepower Hydro-Pac pump for a total sum of $200,000. The system under this quote was not an Ingersoll-Rand system but an integrated system, consisting of components of different makes and some fabricated by the defendants. When Mong Hock was asked sometime in November 1994 to take delivery of the machine at the defendants' premises, he refused as it did not look like the machine he saw at TCB.

Version No 1: 20 Nov 2026 (00:35 hrs)

9 On 5 December 1994, the defendants gave a third quotation for $230,000, which included a 40-HP Hydro-Pac pump and a Sign-Cam software and all other components were of Ingersoll-Rand make. Mong Hock objected to this quote as it was higher in price than the first quotation stating that this was "too high for this second hand machine." On 15 December 1994 this quote was revised by the defendants down to $215,000. It seems to me quite clear that the defendants were keen to make the sale, as they were anxious to dispose of their demonstration set – see an internal note to Seow (DB16): "Please discuss for a solution to achieve the sale." This quote was for the defendants' demonstration Ingersoll-Rand set, plus a 40-horsepower Hydro-Pac pump.

10 Under the terms of the quotation the defendants would, inter alia, provide or furnish the following :-

> (1) A 12-month warranty for the replacement of defective parts which do not arise from negligence or mishandling. This warranty would not, however, cover consumables which should be replaced by trained personnel of the customer; (2) "Training for equipment … would include up to three days for installation at customer's facility." (3) "Customer and seller can arrange for a service agreement to regularly inspect the water-jet components and replace consumables if necessary."

Oral terms

11 According to Mong Hock, Seow told him that the Hydro-Pac pump is an American product and it is the same, if not better than, an Ingersoll-Rand pump. Seow also told Mong Hock that the system he was providing would work as efficiently as that at TCB. Mong Hock said that in accepting the system/machine as set out in the revised third quotation he, being quite ignorant of the machine, relied entirely on the advice and expertise of Seow and of the defendants, who were supposedly specialists in the matter. He had made known to Seow that what he wanted was the same kind of machine as that at TCB, and although he

Version No 1: 20 Nov 2026 (00:35 hrs)

knew the pump would be different he was told that it would work as efficiently as an Ingersoll-Rand pump. Seow had assured him that the defendants were the sole agents of Ingersoll-Rand water-jet system, that they would be able to provide all the technical support and Ingersoll-Rand parts which plaintiffs would require following the purchase and that the machine/system the defendants would be supplying would be as efficient as that used by TCB.

12 Seow admitted that he knew the plaintiffs did not have any water-jet cutting machine and was seeking to upgrade by getting such a kind of machine. Mong Hock also told him that he wanted the machine to do in-lay cutting which would require precision. He said it was likely that at his first meeting with Mong Hock the latter said he wanted a water-jet cutting machine similar to that used by TCB. As far as software was concerned, TCB used one called Cab-CAM, which was also a sign-cutting programme adapted for cutting marbles. Seow was grateful to the plaintiffs for supporting him as a sales person.

13 I find that Mong Hock did inform Seow that what he needed in relation to the new machine was one which was able to do in-lay cutting with the kind of precision like the machine used by TCB. He was assured that the system set out in the third quotation (revised) would meet that requirement. Thus, this was a contract which was partly oral and partly in writing.

Problems arising

14 The machine was delivered to the plaintiffs' premises in late April 1995 but installation and setting up was only done sometime in July 1995. However, according to the plaintiffs' witnesses, from the time the machine was put into operation, it was giving trouble. In Mong Hock's words "we were trouble

Version No 1: 20 Nov 2026 (00:35 hrs)

shooting all the time." So much so that there was no time to consider the entering into a servicing agreement. In his mind, there was the 12-month warranty.

15 The plaintiffs' factory manager, Lim Boon Siew, said there were problems of accuracies in the cut marbles - disproportionate sizes and shapes, differences in the diameter and the edges were wavy and rough. As a result a lot of time was spent on touching up, and grinding had to be done to fit all the cut shapes together to form a composite design. In addition, the pump was frequently leaking. Whenever a complaint was made to Seow, the latter would say it was a software problem and the plaintiffs were asked to refer to the software company. However, Mr K K Tan of the software company (Thrive-Link Marketing Pte Ltd) said it was not a software problem, but a "compensation" problem to be rectified in the hardware. Seow asked the plaintiffs to replace the focusing tube. But when that was done the problems still remained. Seow left the defendants' employment in November 1995 and one Goh Mou Kit (Goh) took over.

16 Paramasivan (Param), the Maintenance Technician of the plaintiffs, told the court that in August 1995, Shaheen, the worker from Bangladesh who operated the machine, complained to him that the cut of the machine was defective as the "gaps" between the cut marble pieces were very wide. I should add that Shaheen did not testify because he had returned home upon expiry of his work permit. After some difficulty Param got in touch with Seow who attended to the repairs. Nevertheless the problems persisted notwithstanding the change of focusing tube as suggested by Seow. It was then thought that the grating platform was not in order and the water pressure was low. But even when these had been attended to, the problems remained. According to Param, from August 1995 the pump also broke down frequently. Param felt that the problems probably lay with the high pressure pump which broke down frequently and also leaked.

Version No 1: 20 Nov 2026 (00:35 hrs)

From his observation he felt that Seow and Goh did not really know what was the fault. Of course, that is not to say that Param knew anything much either. Param did not know how much abrasive was to be used per hour or the speed at which the cutting head was to be set. He did not know how often the focusing tube should be changed.

17 The problems were so severe that in November 1995 Teo Boon Hai, the Contracts Executive of the plaintiffs, was brought in because of his knowledge of computer software. He spoke to K K Tan. K K Tan told the court that at the request of Seow, the software was created for the first time for a water-jet cutting machine. K K Tan was a personal friend of Seow. He was made to understand by Seow that the defendants were selling a "package" to the plaintiffs and were looking for an appropriate software. K K Tan recommended a software known as "Sign-CAM" which Seow knew was usually used for cutting signs for advertising firms.

18 A meeting was called by Teo Boon Hai on 5 December 1995 at which Seow, Goh, John Tan (the most senior person at defendants), K K Tan and Lim Boon Pin (the Managing Directors of the plaintiffs) were present. At this time Seow had already left the employment of the defendants. He was specifically requested by the defendants to attend the meeting. At the meeting it was suggested, apparently for the first time, by the defendants that the problems could be due to a lack of maintenance and the incompetence of the plaintiffs' staff. K K Tan said that at the meeting the complaint was why was the machine unable to cut according to the profile intended. K K Tan explained that the Sign-Cam software would dictate the directional movement of the cutting head and it would not affect the quality of the cut. But he agreed that he was assuming the instructions of the software were understood by the machine controller.

Version No 1: 20 Nov 2026 (00:35 hrs)

19 Following the meeting on 5 December 1995 the defendants wrote to the plaintiffs (DB28) purportedly setting out the discussions:-

> "1. The water jet machine has been operating for more than 720 hours. We strongly emphasise the needs for preventive maintenance and daily maintenance. 2. In the past 720 hours, for the operation and maintenance aspects of the machine, we have, since installation, coaching and guiding your operators. However, the real difficulties encountered have been low understanding level of the operators due to problems of language and technical background on the part of operators. 3. Excel has previously conducted a two-day training on software and programming for two of your staff. Subsequently, we recommended that for your software and programming needs, you could, and in fact have been, in contact with the software specialist directly. 4. We have on several occasions demonstrated and instructed your operators on the requirements and actual procedures for changing parts. The operators or assigned staff must be capable of executing maintenance works. 5. We attach with this communication a Recommended Spare Parts List for your kind action. 6. We strongly suggest that m/s Lim Kee Ban Heng should keep stock of the recommended spare parts which are consumable. As a guide, most of these parts must be changed after the machine operates for 150 to 200 hours each. 7. In response to your request, we would arrange for an additional session of orientation."

20 The first written communication from the plaintiffs to the defendants came on 22 March 1996 and the relevant parts read (DB38):-

> "You will recall that we have complained at least 20 times during the past four months about the poor quality of cutting standard provided by the water-jet machine that we have purchased from your office. Since the day we bought the machine, it has been unable to perform to (its) expected standard. In actual fact, the downtime of the machine is more than the operation time. The problems are mainly:- 1. Inaccuracy in cutting. 2. Irregular sizes. 3. Out of shape. 4. Rough surface/cutting. 5. Frequent breakdown of the pump. 6. Unavailability of spare parts. 7. Extremely high costs for the parts. We note in particular the frequent breakdown of the pump which seem to be very often for which no satisfactory explanations (were) given by you. We should find it most helpful if you could explain the basis for these frequent breakdowns and clarify in detail whether the pump is compatible for such usage or not. You have attributed the cause of items 1-4 to wear

Version No 1: 20 Nov 2026 (00:35 hrs)

> & tears of the nozzle, we do not agree because from the beginning, these problems have been brought up to your representative then, Mr Steven. But he always gave excuses to avoid or delay the matter. Since then, the degree of accuracy has gone worst. Nevertheless, for the benefit of doubts, we are prepared to replace the nozzle with a new one. We must emphasize that, upon replacement, if the default still remain or the machine still cannot perform to expectation, we shall not pay for the replacement cost or made liable for any other cost incurred by your company. As for the sky-high cost of spare parts and ex-stock availability of normal wear & tear parts problems, we sincerely urge that you will look into this matter and propose suitable solution. Mr Goh, you surely don't expect us to buy hundred thousand dollars of machine and then we have to wait for several weeks for the normal wear & tear parts. Definitely your company is not that inefficient right?"

From February 1996, the defendants maintained a record of the occasions when the machine broke down.

21 As a month passed without any action on the part of the defendants, and inspite of the fact that during that period follow-up telephone calls were made, on 22 April 1996 the plaintiffs wrote a reminder to the defendants to complain of poor maintenance service support.

22 On 15 May 1996, the plaintiffs' solicitors wrote notifying the defendants that the plaintiffs would reject the machine on the ground that the machine was defective and ask for the refund of the purchase sum paid, plus consequential losses suffered. Later, on 17 June 1996, after receiving Park's report, the plaintiffs through their solicitors offered an opportunity to the defendants to make good as recommended by Park. The defendants refused.

23 Testifying for the defendants, Goh said that the staff of the plaintiffs had failed to notice or attend to wear and tear and the need to change consumable parts, resulting in inaccuracy of the cutting and sometimes in the breakdown of the system. On 9 December 1995 the defendants submitted to the plaintiffs a list

Version No 1: 20 Nov 2026 (00:35 hrs)

of recommended spare parts. A month later he notified the plaintiffs of the average life-span of each consumable. Later, when further complaints arose he attended to them and noticed that the focusing tube had worn out and the grating was damaged and became uneven and thus the cutting became inaccurate. He brought these to the attention of Shaheen, Param and Teo Boon Hai. The plaintiffs eventually agreed (in March 1996) to replace the focusing tube and asked the defendants to supply the parts.

24 It should be noted that Goh was trained by Seow and as will be seen later, even the training received by Seow was limited. So Goh could not really know much about Ingersoll-Rand water-jet cutting machine or the "integrated" system which Seow created. He was groping like everybody else. This was his first experience with such a machine.

Expert Evidence

25 Mr Harry Parks who was the Business Development Manager of Ingersoll-Rand until his retirement in December 1997, was called to testify as an expert for the plaintiffs. On 12 June 1996, on the invitation of the plaintiffs, he inspected the machine at their premises which consisted of (i) one model HS1,000 6 ‘x8’ overhead gantry cutting system bridge, inclusive of one model XL2000 abrasive cutting head, one Ingersoll-Rand PC-based CNC controller and one catcher tank of local manufacture (these parts are collectively referred to as the "cutting tool"); (ii) an ultra-high pressure intensifier pump which was not an Ingersoll-Rand product, but a Hydro-Pac product. Upon a detailed inspection, he found the following :-

> "(a) The system is NOT capable of operation as originally designed. The substitute pumping system is not compatible with the ‘cutting tool’. The original design requires the pump system to "talk to and take instructions from the cutting tool

Version No 1: 20 Nov 2026 (00:35 hrs)

> control". The current pumping system does not incorporate safety features of the original pump system or the capability to communicate with the 'cutting tool'. (b) The 'cutting tool' Model HS1000 inspection reveals that this equipment item was not correctly installed due to incomplete installation. This machine has not been leveled, squared and calibrated. The elimination of the level, square and calibration portion of the installation operation will result in the 'cutting tool' producing irregular, disproportionate, rough-edge parts. The operation of the cutting tool in this mode, not leveled, not squared, not calibrated, will induce rapid wear and possible major damage to the precision mechanical components of the machine."

26 In his view the HS1000 cutting system cannot, in general, be used with a non Ingersoll-Rand pump, except a "Flow" pump, which is another brand. This is because the Ingersoll-Rand pump and the "Flow" pump have in general the same design features.

27 Park told the court that Seow only received an abbreviated form of training in the Ingersoll-Rand water-jet cutting system. It was in conjunction with the installation of a system at the defendants' premises. He did not think that was sufficient to equip Seow to do the job. Four engineers of the defendants were in fact sent for training in the US head office of Ingersoll-Rand but the defendants could not retain them.

28 Park said that pump maintenance is required for every 400-600 hours of operation. For the cutting head, depending on the pressure and abrasive flow, maintenance may be required every 60-100 hours and that involves the replacing of the focusing tube. This is quite different from what Goh said in his note to the plaintiffs that the change of the focusing tube should take place every 300-500 hours. Park said when the focusing tube wears off the cutting margin becomes wider. To change the focusing tube requires no special skill or knowledge. All that needs to be done is to loosen a nut, release the focusing tube, replace it by sliding a new tube and then tightening the nut.

Version No 1: 20 Nov 2026 (00:35 hrs)

29 He agreed that cutting speed and abrasive delivery rate would affect the quality of the cut and they are set in the cutting programme. The programmer would decide on the appropriate programme for a particular piece of work. To a certain extent the cutting quality would depend on the size or the type of abrasives used. He also agreed that the alignment of the focusing tube and the orifice is important because if they are not properly aligned the kinetic energy of the water will be partially lost and that the alignment should be checked weekly. The re-alignment would be done by the machine operator or his supervisor. Another aspect which would affect quality of the cut is the distance of the nozzle from the surface of the material to be cut. The distance is controlled manually.

30 Park agreed that the levelling and squaring could be affected if a heavy item were to knock against the machine. There is no need for re-calibration unless there is a major component change. But Park also told the court that when the machine was at the defendants' premises, there was damage to the high pressure safety circuit, and a section was removed and never replaced. Other than this, he did not see any new damage to the machine. Neither was the grating table damaged. This would go to show that the improper levelling and squaring was not brought about by any knocks.

31 All considered he maintained that the reasons why the machine could not perform were as set out in paragraph 25 above. He disagreed that his report did not take into consideration matters such as the operator's skill, maintenance level and replacement of consumables.

32 I must, however, point out that Seow, who was subpoenaed to testify and refused to give an affidavit of evidence-in-chief because he wanted to remain neutral, said the Hydro-Pac pump did have a dual pressure compensator;

Version No 1: 20 Nov 2026 (00:35 hrs)

otherwise, it could not have pierced the marble without damaging the whole piece. He said that high pressure pumps from leading manufacturers have been integrated with cutting tool of independent manufacturers. On this point Park in his evidence added that even if there was a dual pressure compensator in the pump (Park said he did not see any there), there was no communication with control rendering it useless. In Seow's opinion, the integration of Hydro-Pac pump with the Ingersoll-Rand XL-2,000 cutting head and HS-1000 would perform just as well as a complete Ingersoll-Rand system.

33 However, Seow admitted that the defendants only started doing integration work after having lost the Ingersoll-Rand agency in March 1994. Furthermore, this combination of using Ingersoll-Rand machine with a Hydro-Pac pump and Sign-CAM software was being tried for the first time.

Findings

34 It seems to me this was a case where the defendants, having lost the agency of Ingersoll-Rand in March 1994, were anxious to dispose of the demonstration set which they had in their possession at the time. They did not at any time inform the plaintiffs that they were no longer the agents of Ingersoll-Rand. If they did, I have serious doubts that the plaintiffs would have agreed to buy over the demonstration set of the defendants as the plaintiffs were anxious that there should be after-sale support, both in terms of service and spare-parts. Mong Hock did make clear to Seow why the plaintiffs wanted to buy the system: to cut marbles, with precision, into complex patterns, shapes and sizes so that they would form a composite design. Seow knew this was the plaintiffs' first venture into this kind of machines and were relying upon the defendants' expertise.

Version No 1: 20 Nov 2026 (00:35 hrs)

35 Other than Seow, who was in charge of designing, assembling, installing and after-sale service of water-jet cutting systems, they had no one else who really knew anything of the machine and even in the case of Seow the training which he received was not wholly adequate. As Park said, he only received an abbreviated form of training in Singapore. I have no doubt that Seow thought, in all good faith, the Ingersoll-Rand machine could be used together with the Hydro-Pac pump. After all, the water-jet cutting machine installed at another place, Gintech at NTU, had a "Flow" pump. But it is clear that problems surfaced soon after the machine was used. Seow did his best to rectify the problems, whenever problems surfaced. But he really did not get to the root of the problems. Thus, he was constantly being called back as he admitted.

36 It was a term of the sale that the defendants would provide the necessary training to the staff of the plaintiffs. Shaheen, the Bangladeshi worker who was selected by the plaintiffs to receive the training was, in the view of Lim Boon Siew, a bright chap and a fast learner. As mentioned before, the only substantive defence is the assertion that the machine could not operate effectively because Shaheen was not competent and there was no proper maintenance. But the following points must be noted. First, Shaheen went through two days of training with Seow and there was no complaint then by Seow that Shaheen was slow or dense or could not comprehend. Second, even after problems surfaced in August 1995, it was not alleged that the machine could not operate effectively because of the operator. They were then looking at what was wrong with the whole machine, including why the pump broke down so frequently. No finger was pointed at the operator. If indeed the fault lay with the operator, and if in fact Seow knew what was the fault, he would have pointed it out, rectified it and demonstrated there and then that the machine could cut efficiently. And if it was a matter of maintenance he would have asked the plaintiffs to enter into a

Version No 1: 20 Nov 2026 (00:35 hrs)

servicing agreement. No such request was made in August/September 1995. The problems persisted. The pump often broke down or leaked. The first time a finger was pointed at the operator or to a lack of maintenance, would appear to be at the meeting of 5 December 1995. Third, why would there be a need to discuss the machine if the problems were just a matter of maintenance and replacing consumables. It would be recalled that problems surfaced soon after the machine was used. Fourth, Park said that there is no required educational qualification for the operator of the machine so long as he can read simple instructions and diagrams. Even Seow did not say that Shaheen was so incompetent that he could not operate the machine. Fifth, and more fundamentally, there is the opinion of Park that the system as integrated was not compatible and that it was not properly levelled, squared and calibrated.

37 Another contention raised by the defendants is that no written complaint was made by the plaintiffs until March 1996. That, therefore, suggested that there was nothing really wrong with the machine in 1995 and early 1996. This cannot be true. Goh who joined the defendants in October 1995 confirmed that there were numerous complaints by the plaintiffs upon looking at his company's file. Seow said that initially he was frequently called to the plaintiffs' premises. Even the plaintiffs' letter of 22 March 1996 stated that they made at least 20 complaints in the last four months and there was no demur. I should observe that the defendants also could not provide parts promptly - request made in March 1996 was not met until May 1996. This delay was probably due to the fact that the defendants were no longer the agents of Ingersoll-Rand, a fact not known to the plaintiffs at the relevant time, and presumably the defendants had to obtain them through some circuitous route.

38 Having carefully weighed the probabilities, I find that the likely cause of all the problems must have been what Park opined, namely, that the Hydro-Pac

Version No 1: 20 Nov 2026 (00:35 hrs)

pump is not compatible with the other parts of the system which are Ingersoll-Rand make and that the system was not properly levelled, squared and calibrated. This was the first time such a combination was tried out. This was Seow's first attempt at levelling, squaring and calibrating all by himself. The installation of the machine at Gintech (which was not the same model as the present) was done by Ingersoll-Rand Service Engineer Charles Mitchell, assisted by Seow. The troubles which the plaintiffs had encountered, soon after using the machine, have borne out Park's opinion. This was to be a very sophisticated machine which could cut marbles with a very high degree of precision. It never achieved that.

39 Much was made of the fact that in his twenty-one years' of experience, Park only saw four Hydro-Pac pumps and was therefore not in a position to comment on a Hydro-Pac pump. But if one were to compare him with Seow, who up to that point had not even personally installed an Ingersoll-Rand water-jet cutting system and there was no evidence as to the number of Hydro-Pac pumps he had seen, Seow would be in a much worse position than Park to comment on the compatibility of the Ingersoll-Rand cutting head with a Hydro-Pac pump.

40 The purpose of the plaintiffs' buying the new machine was to achieve precision cutting of in-lay marbles so as to obtain composite designs. This was made known to the defendants, through Seow, and Seow assured the plaintiffs that the system he was selling could achieve all that. The plaintiffs had relied upon Seow's (and thus defendants') skill and judgment in making the purchase. The system which was sold to the plaintiffs was not fit for the purposes made known to Seow. Accordingly, I hold that the plaintiffs are entitled to reject the machine, rescind the contract and ask for a refund of the payment made, there being a total failure of consideration. The machine was beset with trouble from almost the beginning. The defendants were told of the problems and tried to

Version No 1: 20 Nov 2026 (00:35 hrs)

attend to them. Nine to ten months' delay in rejecting the machine, in the circumstances, is not unreasonable. The plaintiffs were literally trouble-shooting from day one. The defendants knew of that and tried to correct the problems. The plaintiffs could not be considered to have accepted the machine or system.

41 The plaintiffs also claim for damages for $33,830.87, being the costs incurred in getting Automation Systems Pte Ltd to carry out certain works which the plaintiffs were unable to perform because of the failure of the machine. Having rescinded the contract, and rejected the machine, I do not see how the plaintiffs would be entitled to claim for these costs as damages. The plaintiffs would have been paid by the customer to do the cutting of the marbles. By farming out that work to Automation Systems, because their system could not operate effectively, it amounted to the plaintiffs never having obtained that piece of work. But as the plaintiffs are asking for rescission, they would not, in any event, be able to carry out that work. If I were to award damages on account of those costs, there would be double compensation.

42 For the reasons above, the defendants' counterclaim for $3,207.37 being costs of services rendered and goods supplied to the plaintiffs for the maintenance of the system, is dismissed.

Judgment

43 There shall be judgment for the plaintiffs in the sum of $221,450/- with costs (one set). The sum shall bear interest at the rate of 6% from the date of the Re-amended Statement of Claim.

Chao Hick Tin

Version No 1: 20 Nov 2026 (00:35 hrs)

Lim Kee Ban Heng Pte Ltd v Excel Advanced Technology Pte Ltd [1999] SGHC 114

Judge

Singapore

Date: 30th April 1999

Chao Hick Tin J

Robert Tock with Robert Yoong (Rodrigo Tock & Wilson) for the plaintiffs
Sreenivasan with Kasi (Raj Kumar & Rama) for the defendants

Version No 1: 20 Nov 2026 (00:35 hrs)