

Nuplex Industries Ltd v Panatron Pte Ltd
[2000] SGHC 208

Case Number : Suit 1971/1998
Decision Date : 11 October 2000
Tribunal/Court : High Court
Coram : Lai Kew Chai J
Counsel Name(s) : Gan Kam Yui/ Boey Swee Siang [Bih Li & Lee] for the plaintiffs; Anand K Thiagarajan/Ramesh Appoo [Anand T & Co] for the defendants
Parties : Nuplex Industries Ltd — Panatron Pte Ltd

JUDGMENT:

Cur Adv Vult

In this action the plaintiffs ("Nuplex"), a company incorporated in New Zealand engaged in the manufacture and sale of chemical resins, are claiming against the defendants the sum of US\$49,364.00 being the value of 48x200 kg drums of Chemical resins code-named PANVL and 144x200 kg drums of chemical resins code-named CHEMTEX which they had placed on quasi-bailment with the defendants ("Panatron"), a company incorporated in Singapore engaged in the manufacture and sale of chemical sealants and other coating products. Nuplex claim that the said sum has become payable under the terms of their agreement with Panatron.

2 Panatron, who obtained a licence from Chemtour, the sole-proprietorship of Eral Dettrick ("Dettrick") of Australia to manufacture the chemical sealants, deny that they are liable to pay for the chemical resins placed on quasi-bailment. They further assert that Nuplex had agreed to supply chemical resins in perpetuity for as long as they wanted the resins. In relation to the resins placed on quasi-bailment Panatron also claim that it was agreed that the agreement implementing the quasi-bailment could only be terminated if both parties mutually agreed. In other words, either party could under the alleged agreement keep the quasi-bailment afoot for so long as they choose to do so. Panatron allege that Nuplex were in breach of both agreements and they claim substantial damages against them.

3 By para 11 of their Re-Amended Defence and Amended Counterclaim Panatron advance the allegation that Nuplex had colluded with Dettrick to cause loss and damage to Panatron. They aver that Dettrick "had pressurised or influenced (Nuplex) to wrongfully and/or recklessly terminate (the agreement for) the supply of goods".

4 Panatron have also alleged civil conspiracy against Dettrick and other parties in Suit 2061/1997. That suit and this action were tried before me one and after another and it was agreed that evidence in one case may be used in the other. I have set out in more details the parties and the material background in a judgment in that action and issued on even date. Such parts as are relevant for present purposes are incorporated into this judgment by reference. On the evidence and for the reasons set out in that action, I rejected Panatron's allegation of a civil conspiracy committed by Dettrick and the defendants in the other suit. In this action, I shall set out the evidence which bear on the allegation of a civil conspiracy between Dettrick and Nuplex to injure Panatron and for the reasons hereinafter appearing I find that the allegation is entirely without substance.

The facts

5 In late September 1995 Panatron entered into a licence agreement with Chemtour, the sole-proprietorship of Dettrick, for Panatron to manufacture and market waterproof paints and coatings in Singapore and the region. Such paints and coatings use chemical sealants. Panatron were introduced to Nuplex by Dettrick. Nuplex's related company in Australia had been supplying the chemical resins, chemically known as "Viscopol 140" (code-named PANVL) and "Texicryl 13031" (code-named CHEMTEX, to Dettrick's companies.

6 Panatron started production in early January 1996. They also started to purchase the two chemical resins from Nuplex. Each shipment was carried out in the following manner. Panatron's plant manager or the Senior Vice-President, Peter Yin ("Yin") who gave evidence in this case for Nuplex and who was one of the conspirators named by Panatron in the other suit, would complete a purchase requisition for the amount of resins needed. It was usually a full container load ("FCL"). The President of Panatron, Phua Mong Seng ("Phua"), who gave evidence for Panatron, would approve and issue the purchase order. The purchase order set out the terms of each purchase, stating the mode of payment for the resins (which was usually by means of a letter of credit) at the prevailing quoted price, and the estimated time of arrival of the resins. The purchase order would then be faxed to Nuplex who indicated their agreement by signing at the indicated portion and faxing it back to Panatron. Nuplex would then ship the goods to Panatron CIF Singapore. At intervals of about every quarter, Nuplex would send to Panatron the revised prices for their products. On the face of it, each sale and purchase of the chemical resins was pursuant to a separate and discrete contract.

7 On 6 August 1996 Yin met the Export Manager of Nuplex, Tony Leggett ("Leggett") for the first time when the latter visited them in Singapore. Yin was instructed by Phua to arrange for Nuplex to place a "consignment" stock of the goods. The presence of such a stock of the resins would prevent any disruption of the manufacturing process, quite apart from not having to pay for them just yet. The terms of the agreement were indicated in a fax dated 7 August 1996 which Nuplex sent to Panatron. The Fax was in these terms:

"FURTHER TO YOUR DISCUSSION WITH MR LEGGETT HE HAS ADVISED THAT WE HAVE AGREED TO SEND 1 FCL TO YOU AS CONSIGNMENT STOCK. PLEASE BE ADVISED OF THE FOLLOWING TERMS FOR CONSIGNMENT STOCK;

CONSIGNMENT STOCK WILL REMAIN THE PROPERTY OF NUPLEX INDUSTRIES LTD UNTIL SUCH TIME AS IT IS MUTUALLY AGREED TO TERMINATE THIS ARRANGEMENT. AT SUCH TIME PANATRON PTE LTD WILL PAY NUPLEX INDUSTRIES LTD FOR THIS STOCK AT THE MARKET PRICE PREVAILING AT THE TIME.

CAN YOU PLEASE CONFIRM BY RETURN THAT YOU ARE AGREEABLE TO THE ABOVE TERMS..."

The fax then went on to discuss the arrangements for the shipment of the next three full container loads under apparently 3 contracts for the sales of goods.

8 By a letter transmitted on 9 August 1996 to Nuplex, Panatron referred to the fax and went on to state as follows:

"I confirm the following understanding:

1. The 1 x FCL consignment stock will remain the property of Nuplex Industries Ltd.
2. Panatron Pte Ltd will pay for the consignment stock at the prevailing market price at the end of this arrangement.

I will send you a P.O. for the abovementioned FCL and advise the desired shipment ETA date."

9 By a Purchase Order of 14 August 1996 Panatron specified the details of the consignment stock required. They required 24x200kg drums of PanVL (4.8 Mtons) and 72x200kg (14.4 Mtons). It noted as follows: 'CONSIGNMENT STOCK' and the further notation was: "No value or price attached as this shipment is for consignment only." Under the Terms and Conditions, the following were agreed:

"Prices : CIF Singapore, based on prevailing product prices at the time of the termination of the consignment agreement.

Terms : L/C 60 days from the consignment agreement termination date.

...

ETA : Singapore 20 September 1996"

10 By early September 1996 it became apparent that the 1 full container loan of chemical resins, which could meet Panatron's manufacturing needs for about a month, was insufficient. Phua then instructed Yin to obtain from Nuplex a second FCL buffer stock. Yin obtained Leggett's agreement and the second buffer 1 FCL buffer stock was sent.

11 On 23 August 1997 Dettrick terminated the Licence Agreement with Panatron for the reasons mentioned in the other judgment. After the cancellation of the licence Panatron were no longer authorised to manufacture the Chemtour products of Dettrick. Panatron therefore no longer had any need to use PANVL or CHEMTEX.

12 By a letter of 10 September 1997 signed by Yin, Panatron informed Nuplex of the amount of resins still held by the defendants and inquiring whether Nuplex wished to invoice Panatron for the amount of the buffer stock used to date. As for the balance of the stock, Yin asked whether he wanted to invoice Panatron for the balance, nominate a third party and assign them the rights to the stock, or dispose of it in any other way. He concluded by stating: "As the stock with Panatron rightfully belongs to and is the property of Nuplex, I await your feedback on how you (as the owner's representative) wish to proceed..." Yin explained in evidence that he wrote in this way, although Panatron was obliged to pay, because he was hoping that Nuplex would pick one of the other options he suggested. Nuplex's response was to request for the payment of US\$12,468 for the stock used. As for the balance of the unused stock, Nuplex said they would revert after they had found a warehouse. No payment was made by Panatron.

The factual issues

13 Phua in his evidence claims that the introduction of Nuplex to Panatron in August/September 1995 to supply of the unique chemicals was "part of the technology transfer" by Dettrick under the Licence Agreement for Panatron's manufacture of the products known as NewFlex, NewFlex R100, Flexicote, BlockFlex, Primer and Tuffcote. He further alleges that Nuplex (without naming anybody from Nuplex) and Dettrick "represented to Panatron at the time of the introduction that the chemicals were vital resin for Panatron's manufacture of the products" and also stated that (Nuplex) shall supply on a long term basis." Phua, as if to fortify his assertions, claims that the chemical resins "are unique in nature and substance" which Panatron would need on a long term basis to enable them to manufacture the products.

14 Both Dettrick and Yin gave evidence which contradicted Phua's version. Leggett in his evidence said that the 2 resins are not unique in nature and substance. In the manufacture of paints, coatings and similar products the practice of the industry is to have alternative raw materials of all components. This is a prudent measure to prevent disruptions or to prevent exploitation. He points out that similar resins are available from 9 other suppliers worldwide, including Hoechst AG, Eternal Chemicals, Taipei and so on. Yin confirmed that Panatron was free to source for the resins from other suppliers, after obtaining the approval of Dettrick who put in this contractual requirement to ensure that quality control of the Chemtour products was maintained.

15 I come now to the circumstances surrounding the cessation of supply by Nuplex. In early September, 1997, according to Dettrick, he received a telephone call from Leggett. Leggett informed him that he had received an inquiry from a certain David Kinsman for Nuplex products. That was the first time Dettrick had spoken to any employee of Nuplex. Other than this, Dettrick had never maintained any contact with any employee of Nuplex. It was also during this telephone conversation that Dettrick informed Leggett of the termination of the Licence Agreement with Panatron. Leggett confirmed this evidence.

16 As between Nuplex and Panatron, the payment for the consignment stock became a bone of contention between the two parties. Panatron, through Phua, declined to pay. He also declined to release the balance of the unused buffer stock of the two

resins. On 20 October 1997 Nuplex through their solicitors terminated the 'consignment' arrangements and demanded the return of the remaining unused stock from both Panatron and their warehouse keeper, Messrs KNT Transport Services. Panatron refused to pay for the portion used and declined to release the remaining buffer stock, alleging that Nuplex had agreed to the long term supply of the two resins and that the consignment arrangement was not terminable except with the consent of both parties.

My decisions

17 I turn to the first question: did Nuplex agree to supply the two resins in perpetuity for so long as Panatron wanted, as asserted by Panatron in paras 1, 2, 3 and 5 of their Re-Amended Defence and Amended Counterclaim? In evaluating the evidence, I am struck by the tenuous and tentative nature of Phua's evidence. He was unable to give direct evidence. Much of his evidence is without basis. He is wrong to assert that the two resins are unique in substance and in nature. He is wrong to say that they can only be obtained from Nuplex. While I appreciate that sometimes facts are stranger than fiction, I must say that in this instance, Phua has not convinced me that there are any convincing circumstances which make it likely that Nuplex would agree to what is, on the face of it, a rather burdensome obligation in perpetuity. I am driven to reject his evidence. Leggett, Dettrick and Yin are far more credible witnesses in contrast to Phua.

18 The next issue is a matter of construction of the two 'contractual' letters and turns on the circumstances, if at all, under which the 'consignment' agreement could be terminated. Panatron assert that it is terminable only and only if both parties agree. This is another way of saying that this was an agreement which could not be terminated without the consent of Panatron. This contention calls to mind the pragmatically wise dictum of Lord Reid in *Wickman Tools v Schuler AG* [1994] AC 235 at p 251 E: "The fact that a particular construction leads to a very unreasonable result must be a relevant consideration. The more unreasonable the result the more unlikely it is that the parties can have intended it, and if they do intend it the more necessary it is that they shall make that intention abundantly clear." Reading the two letters between Nuplex and Panatron and evaluating the conflicting oral evidence, there is, in my view, no justification to place too literal a meaning to the phrase "mutually agreed" in Nuplex's letter. That was an offer of a term which was left unanswered by Yin in his reply. The single phrase is far too narrow, and is certainly inapt, to express with sufficient clarity if the mutual intention was that the buffer stock agreement was to be terminable only with the consent of both parties. In my view, a reasonable construction is to imply the term that the agreement was terminable on reasonable notice. What is reasonable notice is in every case a question of fact. Panatron also fail on this part of their claim.

19 Finally, I will deal with Phua's allegation that Nuplex had colluded and committed civil conspiracy with Dettrick to injure the interest of Panatron. The allegation against Nuplex in the context of this case is so far fetched that I am driven to remark that this notion is a figment of Phua's fevered imagination. Dettrick was never in contact with anybody of any authority in Nuplex before the termination of his Licence Agreement with Panatron on 23 August 1997. There was no combination at all because the alleged civil conspirators had never been in touch in any way at all material times. The supply of the 2 chemical resins are easily available from many suppliers the world over and there was no basis or motivation for any sort of conspiracy.

Conclusions

20 Accordingly, there must be judgment with costs on the High Court scale for Nuplex in the sum of US\$49,364.00 together with interest thereon at 6% p.a. calculated from 28 November 1997, the date Nuplex commenced their suit in the Subordinate Court. Panatron's counterclaims are dismissed with costs.

Lai Kew Chai

Judge

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