

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

[2022] SGHC 32

District Court Appeal No 25 of 2021

Between

Ten-League Corporations Pte
Ltd

... Appellant

And

Debenho Pte Ltd

... Respondent

JUDGMENT

[Commercial Transactions — Sale of goods — Implied condition of
satisfactory quality]

[Evidence — Proof of evidence — Onus of proof]

[Evidence — Proof of evidence — Standard of proof]

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Ten-League Corporations Pte Ltd

v

Debenho Pte Ltd

[2022] SGHC 32

General Division of the High Court — District Court Appeal No 25 of 2021

Philip Jeyaretnam J

17, 19 January 2022

16 February 2022

Judgment reserved.

Philip Jeyaretnam J:

Introduction

1 Goods sold must be of satisfactory quality. This includes fitness for purpose and safety: s 14(2B) of the Sale of Goods Act 1979 (2020 Rev Ed). When goods comprise equipment, the buyer must be able to operate that equipment safely for its usual purpose.

2 This appeal from a finding that a boom lift was not of satisfactory quality raises questions concerning the proper assessment and evaluation of technical evidence, as well as the incidence of the burden of proof.

Facts

The parties

3 The appellant, Ten-League Corporations Pte Ltd, supplied a boom lift to the respondent, Debenho Pte Ltd. I shall refer to the appellant as the seller and to the respondent as the buyer.

Background to the dispute

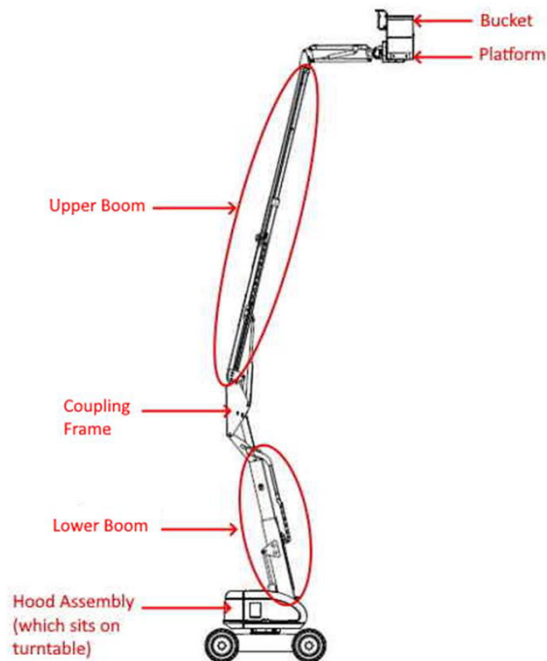
4 A boom lift is a mechanical device that enables workers to carry out tasks at height. It is a mobile elevating platform falling within the class of equipment for which Singapore Standard SS 616:2016¹ provides a code of practice for safe use. In this case, the boom lift had two booms, an upper and a lower one. I shall refer to it as the Boom Lift. Bearing model number GTZZ-25, it was manufactured by a company incorporated in the People’s Republic of China, Changsha Skyboom Heavy Industry Co Ltd.² Their literature describes the Boom Lift as a self-propelled articulated boom lift.³ I reproduce here the seller’s illustration of its main components:⁴

¹ Record of Appeal (“RA”) Vol V at p 236.

² RA Vol V at p 12.

³ RA Vol V at p 83.

⁴ Appellant’s Case (“AC”) at para 4.



5 For the Boom Lift to achieve its full working height, both booms would need to be used, as depicted in the illustration. The Boom Lift had a safeguard against the potential risk of toppling: a tilt sensor that would trigger an automatic shut off if the chassis of the Boom reached 3 degrees of inclination.⁵

6 At about the time of delivery, the Boom Lift had received a certificate of test dated 30 October 2017 issued by Mr Tan Geok Leng (“Mr Tan”), an examiner authorised by the Ministry of Manpower.⁶ It was delivered in November 2017 and fully paid for.⁷

⁵ Respondent’s Case (“RC”) at para 63 and RA Vol III (Part A) at p 9.

⁶ RA Vol V at p 12.

⁷ RA Vol V at p 13.

7 On 28 January 2018, during operation by the buyer, one of the wheels of the Boom Lift lifted off the ground, triggering shut off.⁸ The two workers on the platform were rescued by use of a scissors lift, another type of mobile elevating work platform.⁹

8 A photograph was taken and put into evidence during the trial. It is reproduced here:¹⁰



9 I shall refer to this photograph as the tilting incident photograph. It shows the Boom Lift after it had shut off and before the workers were rescued. Only the upper boom had been deployed. It had been elevated to an angle of about 45 to 50 degrees. One wheel had lost contact with the ground.

⁸ RA Vol III (Part A) at p 64, para 12.

⁹ RA Vol III (Part A) at p 64, para 17.

¹⁰ RA Vol V at p 24.

10 The technical data for the Boom Lift specified a maximum height for the platform of 24.5m and a lift capacity of 230kg (sufficient for two workers and some equipment). Its horizontal reach maximum was specified to be 16m. Its stowed length was specified to be 11.28m.¹¹ The difference between the horizontal reach maximum and the stowed length is explained by the fact that the upper boom can be telescopically extended.

11 Three days after the incident, and after the Boom Lift had been stowed, the buyer complained by email dated 31 January 2018 that the Boom Lift was “unsafe for use” and requested that the seller rectify the problem.¹² The email attached the tilting incident photograph, among others.

12 The seller’s customer service coordinator replied by email on 7 February 2018 to say that they had “specially arranged the service engineer from the headquarter to come to Singapore to do the thorough check on this boom lift” and cautioned that the buyer should not operate the boom lift due to “the safety reason”.¹³

13 The inspection by the service engineer, Mr Jia Lixin (“Mr Jia”), took place on 12 February 2018.¹⁴ The job card stated, *inter alia*, that to make sure the machine would work safely the manufacturer would add an angle sensor and rewrite the computer program controlling the operation of the Boom Lift.¹⁵ It also contained the suggestion that the buyer “operate the first boom up 1 to 50

¹¹ RA Vol V at p 170.

¹² RA Vol V at p 19.

¹³ RA Vol V at p 31.

¹⁴ RA Vol III (Part A) at p 5, para 5.

¹⁵ RA Vol V at p 51.

degree. If want to move up more, should lift up the floor arm”. On the day of the inspection, prior to installation of the angle sensors, the upper boom was lifted to an angle of 65 degrees and no wheel lifting was observed.

14 On 5 March 2018, two angle sensors were installed, and the computer program was modified, as recorded in the job card for that date.¹⁶ The job card also explained that going forward, the upper boom could only be operated on its own up to a maximum of 45 degrees whereafter the lower boom would need to be deployed. It is helpful to appreciate that the deployment of the lower boom not only increases the working height but also brings the centre of gravity of the lifting structure back over the chassis and so reduces the risks of tipping or toppling.

15 However, the buyer was not satisfied with the Boom Lift with the additional angle sensors. By an email dated 28 March 2018, the buyer raised a different concern, namely that the platform rocked severely when the boom was fully extended.¹⁷ Parties agreed that the seller would take the Boom Lift back and replace it with other equipment of equivalent value, but this compromise was not carried out.¹⁸ The compromise is not relied on in these proceedings. Thereafter, the buyer issued a solicitors’ demand letter dated 15 October 2018, seeking, among other things, a full refund of the purchase price.¹⁹ In this letter, the buyer asserted that at the time of the incident the Boom Lift was being operated to its maximum height of 24.5m.²⁰

¹⁶ RA Vol V at p 52.

¹⁷ RA Vol V at p 38.

¹⁸ RA Vol V at p 45.

¹⁹ RA Vol V at pp 54–56.

²⁰ RA Vol V at p 54, sub-para (b).

Procedural history

16 The buyer commenced proceedings in June 2019.

17 There was a mistake made by the buyer in its statement of claim. As asserted in its letter of demand, the buyer pleaded that during the tilting incident the Boom Lift was operating at its maximum height of 24.5m.²¹ During oral arguments on the appeal, I asked counsel for the buyers whether this was really the case, given that the lower boom had not been deployed at all.²² After consulting with her clients, counsel confirmed at the next hearing that the working height during the incident was in fact only around 15m, which would be consistent with the upper boom being raised to an angle of about 48 degrees.²³

18 As for the seller, it particularised one aspect of improper usage with the words “The main boom should be raised before the secondary boom.”²⁴ Without agreed or defined terminology this pleading was not completely clear. In the hearing before me, the terminology used has been that of lower and upper booms. The lower boom corresponds to the main boom as pleaded, while the upper boom corresponds to what was termed the secondary boom in the pleadings. Thus, the gist of the defence on this aspect was that before the upper boom was fully extended or elevated, the lower boom should be deployed both to achieve a greater height and to rebalance the centre of gravity. It does appear that the buyer understood this pleading to refer instead to the upper boom being

²¹ RA Vol II at p 10, para 9.

²² Hearing on 17 January 2022.

²³ Hearing on 19 January 2022.

²⁴ RA Vol II at p 15, para 12(b).

lifted before the lower boom, given that it confirmed in its reply that that was what it had done.²⁵

19 The trial took place over four days in March and April 2021. The buyer called three witnesses of fact and one expert. None of them were present during the incident. The witnesses of fact were Mr Low Teck Dee, a director of the buyers, Mr Low Teck Beng, a supervisor of the buyers, and Mr Khairul Izhan bin Yusoff (“Mr Khairul”), a workplace safety and health officer of the buyers. The buyer’s expert engineering witness, Mr Teng Chin Seng (“Mr Teng”), did not testify about the tilting incident but only about his inspections in November 2019. The inspections in November 2019 were also attended by the manufacturer’s representative, Mr Jia, who had carried out the inspections in 2018. Much of the inspections in November 2019 concerned the allegedly excessive nature of the shaking of the platform under certain conditions.²⁶

20 The seller called three witnesses of fact and an expert engineering witness. Its witnesses of fact were Mr Jia, Mr Tan, who had issued the pre-delivery test certificate, and Mr Jonathan Shien Chong Han, a sales manager of the sellers. The seller’s expert was Mr Jiang Deming (“Mr Jiang”).

Decision below

21 The district judge in *Debenho Pte Ltd v Ten League Corporations Pte Ltd* [2021] SGDC 199 found for the buyer and allowed its claim for a full refund of the purchase price. He held that the buyer had produced *prima facie* evidence that the Boom Lift was unsafe to use, namely the tilting incident photograph

²⁵ RA Vol II at p 18, para 6(b).

²⁶ RA Vol III (Part A) at p 205.

taken together with what he described as the seller's acknowledgment that the Boom Lift was unsafe to use in its email of 7 February 2018.²⁷ He then held that the seller had failed to prove its pleaded defence of improper usage, while its points about lifting procedure made at trial did not match its pleaded case.²⁸ Lastly, the seller had failed to prove that the rectifications were satisfactory.²⁹ In approaching the evidence this way, the district judge relied on the Court of Appeal's description of the shifting of the evidential burden between the parties in *Ma Hongjin v SCP Holdings Pte Ltd* [2021] 1 SLR 304 at [29].³⁰

22 The district judge noted that the buyer had also sought to rely on excessive shaking of the Boom Lift but held that he did not need to deal with this aspect as it was not pleaded.³¹

The parties' cases

23 The buyer accepted that it bore the legal burden of proof to show that the Boom Lift was not of satisfactory quality. It argued that the district judge had correctly held that it had established that the Boom Lift was unsafe to use on a *prima facie* basis by adduction of the tilting incident photograph taken together with the seller's email of 7 February 2018 cautioning that it not use the Boom Lift until further notice.³² It further contended that this caused the

²⁷ RA Vol I at p 26, para 28.

²⁸ RA Vol I at p 33, paras 42–43.

²⁹ RA Vol I at p 38, para 58.

³⁰ RA Vol I at p 27, para 30.

³¹ RA Vol I at p 25, para 21.

³² RC at para 29.

evidential burden to shift to the seller, and that the seller had failed to discharge that burden.³³

24 The seller contended that the tilting incident photograph showed that the upper boom had been used at, or close to, the maximum angle without deploying the lower boom.³⁴ Therefore, the tilting incident photograph did not of itself amount to *prima facie* evidence of any defect in the Boom Lift. As for the cautionary note sounded in the seller's email of 7 February 2018, this did not constitute an admission that the Boom Lift was unsafe to use or of unsatisfactory quality. It was just prudent and responsible advice.³⁵ When Mr Jia carried out his inspections, he did not find anything wrong with the Boom Lift. Installing the angle sensors did not impair the use of the Boom Lift, but only helped to ensure that the operator would not overextend the upper boom prior to deploying the lower boom.³⁶

25 The seller further contended that the buyer's failure to call any witness present during the incident, including the Boom Lift operator and the site engineer, taken together with the failure to disclose site records from that day, should lead to the inference that the ground was not level on the day of the incident.³⁷ Counsel for the seller complained that Mr Low Teck Dee, who testified second, said that Mr Khairul, who was to testify after him, was in charge of inspecting the ground before the use of the Boom Lift, but when Mr

³³ RC at para 34.

³⁴ AC at para 66.

³⁵ AC at paras 52–53.

³⁶ AC at para 19.

³⁷ AC at paras 59–61.

Khairul came to testify he revealed he was not even present then and that it was the site engineer's duty to check the ground conditions.³⁸

26 As for the November 2019 inspections, Mr Teng did not in fact opine that the Boom Lift was defective due to any fault of the manufacturer, observing that it was poorly maintained.³⁹ As for the fact that a full overload test was not carried out, this was the decision of Mr Teng.⁴⁰ That it was not carried out would not lead to the inference that if it were, the Boom Lift would not have passed.

27 Both counsels agreed that the issues on appeal related to the assessment of what was largely technical evidence, and how the legal and tactical burdens of proof were considered by the district judge. Both agreed that the appellate court is in as good a position as the trial court to consider inferences from and evaluations of evidence adduced, where no issue of credibility or veracity of a witness is in issue.⁴¹ The questions material to the appeal are largely technical and legal in nature, and do not depend on the credibility or veracity of any particular witness.

Issues to be determined

28 Parties have broadly agreed that the issues in the appeal are as follows:

- (a) whether the district judge was right to find a *prima facie* case that the Boom Lift was unsafe and of unsatisfactory quality;

³⁸ AC at paras 57–58.

³⁹ AC at paras 82–84.

⁴⁰ AC at para 85.

⁴¹ AC at paras 29–30; RC at para 30.

- (b) whether the district judge was right to find that the tilting incident was not caused by improper usage; and
- (c) whether the district judge was right to find that there was no satisfactory rectification.

29 While I adopt this list of issues, given that it has been agreed by parties and tracks the reasoning process adopted by the judge, I would make the observation that once all the evidence is in at the end of a trial, the court should consider it as a whole and in totality in order to determine whether the plaintiff has proven its case on a balance of probabilities. Speaking of an interim stage where the plaintiff has shown a *prima facie* case to which the defendant then has the evidential burden to respond is not necessarily helpful in analysing the evidence. Where the implied condition of quality is concerned, the court ultimately seeks to determine, on a balance of probabilities, whether the goods in question were of satisfactory quality. This requires looking at the evidence as a whole, including what inspections or tests at around the time of delivery showed, what any incident during operation revealed and any post-incident inspections or tests. It is insufficient for the buyer to show that the goods did not work properly on a particular occasion; the buyer must also prove that this is because the goods were of unsatisfactory quality when sold. It is possible to prove this directly by identifying a defect in the goods, or it may be proved indirectly by eliminating, on a balance of probabilities, any other potential cause of the goods' not working, such as adverse environmental conditions, improper maintenance or improper use. The seller for its part must identify in its defence what other possible causes it puts in issue, so that parties can then focus on those at trial, but this does not mean that the seller bears the burden of proving any one of those other causes on the balance of probabilities.

Issue 1: Whether the district judge was right to find a *prima facie* case that the Boom Lift was unsafe and of unsatisfactory quality

30 The buyer did not identify any particular defect in the Boom Lift, such as a manufacturing defect resulting in an unbalanced weight distribution during operation. It principally relied on the tilting incident photograph to show that during operation, one wheel lifted off the ground resulting in the tilt sensor shutting off the Boom Lift.

31 The starting point is to identify what the tilting incident photograph shows. It shows the following:

- (a) Only the upper boom has been deployed and the lower boom remains at rest.
- (b) The upper boom has been fully extended.
- (c) The upper boom's angle of elevation is about 45 to 50 degrees.
- (d) One wheel has lifted off the ground.
- (e) The Boom Lift is resting on multiple loose steel plates laid upon the ground.

32 Considering first the question of whether the ground was level, the tilting incident photograph does not show what the ground was like below the steel plates. The ground in a construction site can be churned up by the passage of heavy vehicles and become muddy. The buyer's witness, Mr Low Teck Dee, said that (as is common) hard core concrete was laid below the steel plates,⁴²

⁴² RA Vol III (Part B) at p 34, lines 10–15.

and there is no reason not to accept that evidence, although it is not mentioned by the district judge. However, the tilting incident photograph does appear to show that the steel plates themselves are not entirely level. This was acknowledged by Mr Khairul during cross-examination.⁴³

33 The buyer did not call the engineer who was said to have checked that the ground was level nor did it adduce any records of any measurements of the inclination of the ground or of the chassis of the Boom Lift prior to the start of the operation.

34 The conclusion that can be drawn from the tilting incident photograph in the light of the other evidence adduced is that the ground was generally level, such that the possible presence of any declivity under one wheel did not prevent the Boom Lift from commencing and initially continuing operation.

35 Turning to the question of how the booms were operated, the tilting incident photograph does not speak unambiguously for itself. A picture is worth a thousand words but without other evidence, including explanation and analysis, may tell more than one story.

36 It is helpful to consider an analogy. Take a photograph of a car stalled on a hill. The photograph would undoubtedly show a failure of the car to perform satisfactorily during operation. However, before concluding that the car was defective, one would need additional information. One would need to know whether the car has manual or automatic transmission. If it were the former, the next inquiry would be what gear the car was in when it stalled. One would also

⁴³ RA Vol III (Part B) at p 180, lines 2–10.

need to know the gradient of the slope. If it turns out the car had manual transmission, was in fourth gear when it stalled, and that the slope was steep, the circumstances would point to the driver's fault in not engaging a lower gear. The photograph alone would not compel the conclusion that the car is not of satisfactory quality. In order to establish that the car was not of satisfactory quality, other causes of the car stalling, such as how the driver had operated the gears, would need to be eliminated.

37 Similarly, it is not obvious from the tilting incident photograph, which shows one wheel lifted off the ground during operation, that the Boom Lift is of unsatisfactory quality. This is especially so given that the tilting incident photograph shows that only the upper boom was deployed, it was fully extended and raised to an angle of 45 to 50 degrees, contrary to what the seller contends is proper use. To establish that the Boom Lift was of unsatisfactory quality, there would need to be expert opinion to the effect that there ought to be no need for deployment of the lower boom before the Boom Lift was used for work at this height. The buyer did not adduce any expert evidence on the tilting incident. Its expert did not offer an opinion on it. He explained in cross-examination that he was only "briefly informed" about it but did not know the details.⁴⁴

38 Indeed, until the hearing of the appeal, the buyer had proceeded on the basis that the Boom Lift, despite only deploying the upper boom, was being used at the maximum height of 24.5m. The upper boom, even if raised to a 90-degree angle, could not reach that height, as it is only about 16m in length even

⁴⁴ RA Vol III (Part B) at p 154, line 7.

when fully extended. The lower boom would have to be deployed for the maximum height to be reached. This error was adopted by the district judge.⁴⁵

39 In considering the evidence in its totality, the district judge should also have considered the absence of evidence from the boom operator. He was not called as a witness and ought to have been called to explain why he had not deployed the lower boom at any point.

40 The district judge relied on the caution that the seller sounded in its email of 7 February 2018 after seeing the tilting incident photograph as an acknowledgement that the Boom Lift was unsafe to use. This was not a supportable inference to draw. First, even on its face, the email did not constitute an admission that the Boom Lift was unsafe or of unsatisfactory quality. It was simply a holding email sent by a sales staff pending the arrival of and inspection by the manufacturer's service engineer. Secondly, if a statement is to be relied on as an admission of a technical state of affairs, the person making it should have both the expertise and the information from which to give a technical opinion. Here the person writing the email was not an engineer but a sales staff. All he was doing was saying that something looked amiss and that pending investigation (which he was arranging) the Boom Lift should not be used.

41 There was also other evidence against which the contention that the Boom Lift was of unsatisfactory quality ought to have been tested.

42 First, there was the pre-delivery test. Mr Tan, inspected, tested and certified the Boom Lift on 27 October 2017. As part of this test, he conducted a

⁴⁵ RA Vol I at p 20, para 7.

load test with an overload of 288kg and the boom extended in the horizontal position to its maximum length.⁴⁶ He examined whether there was any lifting of the wheels and did not notice any lifting.⁴⁷ Of course, this was a different working condition from that of the tilting incident. However, this evidence remains relevant to the question of whether the tilting incident occurred as a result of the Boom Lift being of unsatisfactory quality, or whether there was a different cause. It is one of the working conditions that Mr Jiang analysed in his expert report, along with the highest position of 24.5 m, because it involves the greatest forces on the Boom Lift.⁴⁸ Mr Jiang's finite element analysis, which is not discussed by the district judge and was not seriously challenged during the trial, supports the structural and mechanical adequacy of the Boom Lift under the analysed working conditions.

43 Secondly, there were the inspections carried out by the manufacturer's service engineer, Mr Jia, and the work that was done on his recommendation. There are contemporaneous notes on the job cards for 12 February 2018 and 5 March 2018, which were seen and signed off by the buyer's staff. The buyer's witness, Mr Low Teck Beng, was present for both these inspections.⁴⁹ The notes for 12 February 2018 show that the upper boom was raised to 65 degrees without any wheel lifting (but presumably without there being any load on the platform). The notes of these inspections read together show that the problem was not one of mechanical stability of the Boom Lift but one concerning the importance of deploying the lower boom in addition to the upper boom at an appropriate point

⁴⁶ RA Vol III (Part A) at p 55, paras 6–7.

⁴⁷ RA Vol III (Part A) at pp 56–57, para 11.

⁴⁸ RA Vol III (Part A) at pp 26–42.

⁴⁹ RA Vol III (Part B) at p 105, line 7.

in its operation. While this could be a matter for the skill and training of the operator, the additional installation of angle sensors and the rewriting of the control computer program so that the main boom would not go beyond 45 degrees without the lower boom being deployed provided a further safeguard. The buyer did not suggest that rewriting the control program to compel or constrain the booms' movement during operations impaired or reduced the functionality of the Boom Lift.

44 Both of these items of evidence weighed against the conclusion that the wheel had lifted off the ground because of a defect in the Boom Lift, given that the Boom Lift had passed the pre-delivery test and that the manufacturer's service engineer's proposed solution of installing additional sensors appeared to be intended to address the importance of deploying the lower boom at an appropriate point during operations.

45 Therefore, the district judge was wrong to hold that there was *prima facie* evidence that the Boom Lift was unsafe to use. There was a moment of danger at which point the tilt sensor performed its function of triggering the shut off of the Boom Lift, but, in the absence of expert testimony (or even testimony from the operator) concerning the non-deployment of the lower boom despite the full extension of the upper boom, the evidence did not point to that moment of danger being caused by any defect in the Boom Lift. Instead, the evidence pointed to the cause being the failure to deploy the lower boom at an appropriate point during operation prior to the incident occurring.

Issue 2: Whether the district judge was right to find that the tilting incident was not caused by improper usage

46 Before considering the inferences to be drawn from the evidence as well as the district judge’s exclusion of the defence that the proper lifting procedure was not followed on the ground that it did not match the pleaded defence, I would observe that the district judge appears to have wrongly placed on the seller the burden to prove on a balance of probabilities that the buyer had used the Boom Lift improperly.⁵⁰ It is possible that what he had in mind was a tactical burden, sometimes also described as an evidential burden, but the use of the phrase “balance of probabilities” suggests that the legal burden had moved to the seller. A tactical burden is only a burden to marshal further evidence to rebut an inference that would otherwise be drawn from the evidence as it stands in the absence of that further evidence.

47 Turning to the two aspects of improper usage that the seller pleaded, the first concerned operating the Boom Lift on ground with more than 3-degree inclination. The district judge concluded that the gradient of the ground was not more than 3 degrees.⁵¹ The tilting incident photograph does not suggest that it was. I accept that it was unsatisfactory that the site engineer who checked the ground level was not called by the buyer. I also note that the district judge did not deal with this point made on behalf of the seller. However, I am not satisfied that the district judge ought to have drawn any adverse inference from this failure on the part of the buyer. Certainly, his conclusion is not against the weight of the evidence.

⁵⁰ RA Vol I at p 29, para 34.

⁵¹ RA Vol I at pp 29–30, paras 35–36.

48 The second plea of improper use concerned the raising of the upper boom before the lower boom was raised. At trial, the seller's point was that the tilting occurred because the lower boom had not been deployed notwithstanding that the upper boom was fully extended and elevated to an angle of about 45 to 50 degrees.

49 The district judge did not conclude that it ought to be safe to fully extend the upper boom and elevate it to such an angle without deploying the lower boom. It would not have been open to him to do so given that there was no evidence from the buyer to that effect, nor was any concession extracted from the seller's witnesses. Instead, the district judge rejected the point for two separate reasons. One reason was that in his view, this point went beyond the pleaded defence.⁵² The second reason was that reliance on it was misplaced because it was first suggested by the seller only in the job card of 12 February 2018, after the tilting incident, and Mr Jia did not make this point in his affidavit of evidence of chief.⁵³

50 As far as the pleading is concerned, it put into issue the need to deploy the lower boom during operations. That it could be read to mean that the lower boom had to be deployed before the upper boom was raised or extended *at all* does not mean that it cannot be relied upon for the point that it had to be deployed before the upper boom was fully extended and elevated to the extent that it was. The greater includes the lesser. Naturally, if the working height is low, such as 5 to 10 m, one could just use the upper boom. But as the working

⁵² RA Vol I at p 33, para 42.

⁵³ RA Vol I at pp 31-32, para 40.

height increases, it becomes desirable and eventually necessary to deploy the lower boom as well.

51 The second reason given by the district judge is, respectfully, beside the point. The question was whether the Boom Lift was of satisfactory quality. In particular, whether the lifting of one wheel when the upper boom was fully extended and elevated to an angle of 45 to 50 degrees without the lower boom being deployed at all signified a defect rendering it of unsatisfactory quality. If the lower boom ought to have been deployed, and if it is the case that had it been so deployed then the wheel would not have lifted off the ground, it would follow that the Boom Lift was not of unsatisfactory quality. This would be true regardless of whether the buyer knew that the Boom Lift should be operated in this manner. Moreover, the evidence does not support a finding that the seller suggested deploying the lower boom only after the incident occurred. The manufacturer carried out training in November 2017, and it is potentially significant that the operator of the Boom Lift on 28 January 2018 did not attend that training.⁵⁴ Mr Low Teck Beng confirmed in cross-examination that the buyer's operators would already have been familiar with the method of raising the booms in the manner suggested in the job card for 12 February 2018, namely deploying the lower boom before raising the upper boom beyond a certain degree.⁵⁵

52 Thus, one must turn to the questions left unanswered on the merits below, namely:

⁵⁴ RA Vol III (Part B) at p 107, lines 7–13.

⁵⁵ RA Vol III (Part B) at p 106, lines 6–31.

- (a) whether the tilting was the result of not deploying the lower boom at all, despite the extension and angle of the upper boom; and
- (b) whether it was reasonable for the boom lift operator not to deploy the lower boom.

53 The compelling inference from the evidence before the court is that the tilting would not have happened had the lower boom been deployed, because the immediate effect of its deployment would have been to move the centre of gravity back and restabilise the chassis. As mentioned earlier, the buyer has not adduced any evidence to show otherwise. Given this, should the operator have operated the boom lift to this height without deploying the lower boom?

54 Mr Jia did not expressly criticise the operator's failure to deploy the lower boom but he did explain that their technicians installed a sensor to ensure that the lower boom would be raised first, reducing the likelihood of any wheel lifting.⁵⁶ His language is somewhat loose as the lower boom is not necessarily raised at the start of operations, but it is clear from the job card what was in fact done, as explained at [14] above, namely that the additional sensors were installed to ensure that the operator deployed the lower boom once the upper boom reached a 45-degree angle. The implication of this course of action is that it was preferable not to use the upper boom alone except at a reasonably low height. The further implication is that if the boom lift could be used safely to the contractual maximum platform height with the deployment of the lower boom then it was of satisfactory quality. There is nothing in the contract that

⁵⁶ RA Vol III (Part A) at p 6, para 8.

suggests the boom lift was intended to be used to achieve the working height of 15m without deploying the lower boom.

55 I return to the point regarding the training in the operation of the boom lift conducted by the manufacturer in November 2017 which the operator did not attend.⁵⁷ Ultimately, like the driver of a car with manual transmission deciding when to downshift as the car ascends a slope, the onus is on the operator to decide how to combine the use of the lower and upper booms to achieve the desired working height safely.

56 I conclude on this issue by observing that the buyer bore the legal burden of proof. The buyer should have adduced evidence that the Boom Lift ought to have been safely operable at that height without deployment of the lower boom. Such evidence, if the proposition were supportable, should have come from an expert or from the operator (whom it did not call). It is not that any adverse inference should be drawn, but that the buyer did not prove unsatisfactory quality. It was also open to the buyer to adduce some evidence to show that the Boom Lift would have tilted even if the lower boom had been deployed. The buyer did not do this either.

Issue 3: Whether the district judge was right to find that there was no satisfactory rectification

57 As I have held that the Boom Lift was not of unsatisfactory quality and that the angle sensors were installed to ensure the operator deployed the lower boom no later than when the upper boom reached an angle of 45 degrees, the question of rectification is moot. Nonetheless, I deal with it briefly.

⁵⁷ RA Vol III (Part B) at p 107 lines 7–13.

58 The district judge accepted the buyer's argument that the seller had failed to prove that the rectification was satisfactory. His reasoning on this issue was that it was the seller who ought to have obtained a renewal of the certificate of test when it expired on 26 April 2018 and bore the burden to show that the Boom Lift complied with the Ministry of Manpower's requirements including the overload test. No renewal certificate was obtained. The district judge accepted the buyer's contention that the seller was under a duty to produce a document to certify that the Boom Lift was of satisfactory quality and had failed to do so.⁵⁸

59 There are three flaws in the buyer's argument. First, in the absence of an express contractual term, there is no obligation on a seller after delivery to obtain renewal of a certificate permitting operation of equipment even where the seller has undertaken a repair or modification of the equipment. There is no such contractual term in this case. Secondly, the fact that no test was carried out does not mean that the equipment would fail the test. It simply means that it has not been tested. I pause to note that the Boom Lift had been tested in October 2017 and had passed the overload test. Thirdly, the seller did not bear the burden to prove that the Boom Lift was of satisfactory quality after installation of the angle sensors. The burden was always on the buyer to prove that it was of unsatisfactory quality. As the buyer had both ownership and possession of the Boom Lift there was no impediment to its arranging inspections or tests with a view to gathering evidence to discharge its burden of proof.

60 There is a further point. It is the owner of equipment who must apply for relevant certificates or permits pertaining to its operation. The buyer was

⁵⁸ RA Vol I at pp 37-38, paras 55–56.

named as the owner in the original certificate.⁵⁹ Had the buyer arranged for a test of the Boom Lift in or about April 2018 by an authorised examiner, and if the Boom Lift had failed the test, that would have been evidence of unsatisfactory quality.

61 For completeness, I should add that even if the district judge had considered the buyer’s case of excessive shaking or bouncing occurring as of November 2019 this would not have established that the Boom Lift was of unsatisfactory quality when it was sold and delivered. The buyer’s own expert, Mr Teng, noted that its general condition was not good and that it had been “idling for a while without proper maintenance”.⁶⁰ Moreover, the evidence of Mr Jia that any bouncing movement was within reasonable industry standards and did not pose a safety risk, and that lack of maintenance would have an effect on the extent of any bouncing,⁶¹ was logical and supportable.

Conclusion

62 The legal burden of proof was always on the buyer to establish that the Boom Lift was of unsatisfactory quality. It was an error to effectively reverse that burden by requiring the seller to prove improper usage on a balance of probabilities. Further and in any event, the technical evidence established that it would have been preferable when working at the height of 15m for the lower boom to have been deployed. It is significant that the operator on the day in question had not attended the manufacturer’s training and was not called to

⁵⁹ RA Vol III (Part A) at p 59.

⁶⁰ RA Vol III (Part A) at p 205.

⁶¹ RA Vol III (Part A) at pp 7–9.

testify. Ultimately, the buyer did not prove that the Boom Lift was unsafe to use.

63 I allow the seller's appeal and set aside the judgment below. I will hear parties on costs if their incidence and amount cannot be agreed upon within 14 days of this decision.

Philip Jeyaretnam
Judge of the High Court

Koh Kok Kwang and Kenii Takashima (CTLC Law Corporation) for
the appellant;
Lim Kim Hong and Lim Teng Jie (Kim & Co) for the respondent.
