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DISTRICT JUDGE TEO GUAN KEE
22 MAY 2026

IN THE STATE COURTS OF THE REPUBLIC OF SINGAPORE

[2026] SGDC 174

District Court Suit No 2114 of 2021

Between

Tah Li Thong Foam Industry

… *Plaintiff*

And

Furniture & Furnishings Pte Ltd

… *Defendant*

JUDGMENT

Contract — Contractual terms – Whether Plaintiff was obliged to deliver goods upon being notified by Defendant

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Tah Li Thong Foam Industry
v
Furniture & Furnishings Pte Ltd

[2026] SGDC 174

District Court Suit No 2114 of 2021

District Judge Teo Guan Kee

16-17 Jul, 1 Sep, 31 Oct 2025

22 May 2026 Judgment reserved.

District Judge Teo Guan Kee:

Introduction

Parties

1 The Plaintiff was at all material times in the business of manufacturing and supplying mattresses and bedframes.

2 The Defendant was at all material times in the business of retail sale of furniture and operated two showrooms (the "**Defendant's Showrooms**") as part of this business.

Background

3 In or around November 2014, a verbal agreement (the "**Agreement**") was entered into between representatives of the Plaintiff and the Defendant, pursuant to which the Plaintiff was allotted space by the Defendant to display its mattresses and bedframes (the "**Goods**") in the Defendant's Showrooms.

4 Visitors who visited the Defendant's Showrooms could, if they wished, place orders for the Plaintiff's Goods through the Defendant.

5 When orders were placed by customers, full or partial payment for the Goods ordered would be collected by the *Defendant*. These orders would then be communicated by the Defendant to the Plaintiff.

6 Delivery of the Goods ordered by customers would thereafter be carried out by the Plaintiff. Any balance payable for the purchase of the Goods would be collected by the Plaintiff's delivery team *on behalf of the Defendant*.

7 After the delivery of the Goods in question, the Plaintiff would invoice the Defendant for the Goods and the Defendant would eventually pay the Plaintiff for the same.

8 This arrangement continued until sometime in 2021.

9 On 9 July 2021, the Plaintiff, through its solicitors, issued a letter of demand demanding payment for Goods delivered by the Plaintiff to the Defendant's customers but for which the Defendant did not make payment, amounting to $149,173.88.

10 Thereafter, the parties engaged in discussions in an attempt to reach an understanding on the resolution of the Plaintiff's claim. However, by 21 July 2021, the parties were at an impasse and, as both parties averred in their respective pleadings, the Agreement was "terminated". That said, the parties disagreed as to whether the termination had been carried out by agreement or not, with the Plaintiff alleging that the Defendant had terminated the Agreement "unilaterally",[1] while the Defendant alleged that the termination had taken place "with consensus from the Plaintiff".[2]

11 As the Defendant ultimately did not make payment of the sum demanded, the Plaintiff commenced these proceedings against the Defendant for the sum referenced in paragraph 9 above.

Summary of the Plaintiff's claim and summary judgment on same

12 The Plaintiff's claim has been finally determined in summary judgment proceedings (and appeals therefrom) prior to the trial before me.

13 The summary judgment application was heard at first instance before a deputy registrar (the "**DR**"), who granted judgment in favour of the Plaintiff on its pleaded claim in the sum of $149,173.88 with interest and costs.

14 The Defendant appealed from the decision of the DR to a District Judge in Chambers (the "**DJIC**"), who upheld the decision of the DR. The DJIC's decision was published as *Tah Li Thong Foam Industry v Furniture & Furnishings Pte Ltd* [2022] SGDC 160 (the "**DJIC Decision**") and was upheld on further appeal to the General Division of the High Court.

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[1] Statement of Claim ("**SOC**") at paragraph 6.

[2] Defence and Counterclaim (Amendment No.1, "**DCCA1**") at paragraph 4(d).

15 I gratefully adopt the findings of the DJIC in relation to the Plaintiff's claim. In particular, the DJIC found that:

(a) Under the Agreement, a credit term of 60 days applied to the Plaintiff's invoices.[3]

(b) The Defendant had *admitted* in its Defence and Counterclaim (Amendment No. 1, "**DCCA1**") that the Plaintiff had "fulfilled" 187 orders (the "**Fulfilled Orders**"), in respect of which the amount claimed by the Plaintiff in its Statement of Claim (the "**SOC**") was outstanding.[4] In this context, "fulfilled" orders were orders in respect of which Goods ordered by customers had been delivered by the Plaintiff to the customers in question.

(c) The Defendant was liable to the Plaintiff for the Fulfilled Orders, in the sum of $149,173.88.

16 The Plaintiff's claim was thus not part of the trial before me, which was limited solely to a consideration of the Defendant's counterclaim, which I summarise below.

Summary of the Defendant's counterclaim

17 The Defendant's counterclaim pertained to what it called "unfulfilled orders", being orders for Goods that had been placed by the Defendant's customers, but for which the Plaintiff did not make delivery of the Goods ordered. In the DJIC Decision at [49], the Defendant's counterclaim was

[3] DJIC Decision at [9].

[4] DJIC Decision at [26].

characterised by the DJIC as being "separate and distinct" from the Plaintiff's claim for fulfilled orders with "no connection" between them.

18 To elaborate further on the counterclaim, in the DCCA1, the Defendant pleaded, *inter alia*, that:

(a) When a customer placed an order for the Plaintiff's Goods at one of the Defendant's Showrooms, the Defendant would collect payment (partially or fully) from the customer and issue a document confirming the order to the customer (the "**Order Confirmation**").[5]

(b) The Defendant would then convey the Order Confirmation to the Plaintiff, which would then be *obliged* to fulfil the order in question (the "**Fulfilment Obligation**").[6]

(c) In *performing* the Fulfilment Obligation, the Plaintiff was also obliged to deliver the Goods ordered to the customer by the requested delivery date, as time was of the essence under the Agreement (the "**Timely Delivery Obligation**").[7]

(d) From April 2021 to December 2021, the Plaintiff had failed to fulfil "at least 100 orders" (the "**Unfulfilled Orders**").[8]

(e) As a result of the Plaintiff's failure to perform the Fulfilment Obligation and "unilaterally suspending a significant portion of

[5] DCCA1 at paragraph 3A(b).

[6] DCCA1 at paragraph 3A(c).

[7] DCCA1 at paragraph 3A(d) and (e).

[8] DCCA1 at paragraph 4(c).

deliveries without any prior notice to the Defendant", the Plaintiff had repudiated the Agreement.[9]

(f) The Plaintiff's breach of the Agreement had occasioned loss and damage to the Defendant in the form of losses, *inter alia*, arising out of order cancellations, refunds to customers and substituted sales (i.e. when Goods ordered by a customer had to be replaced with products from other brands or suppliers).

(g) The Defendant's alleged loss of profits amounted to $70,006. In addition, the Defendant claimed damages for the loss of business reputation and/or goodwill and/or future profits to be assessed.

The Plaintiff's defence to the Defendant's counterclaim

19 By way of its Reply and Defence to Counterclaim (Amendment No.1, "**RDCCA1**"), the Plaintiff disputed its liability to pay damages to the Defendant.

20 In summary, the Plaintiff averred that:

(a) The conveyance of the Order Confirmation by the Defendant to the Plaintiff did not oblige the Plaintiff to supply the Goods ordered. Instead, the communication of the Order Confirmation amounted to an offer by the Defendant to purchase the Goods from the Plaintiff, and it was up to the Plaintiff to decide whether to accept and fulfil the order.[10]

[9] DCCA1 at paragraph 4(e).

[10] RDCCA1 at paragraph 3B(c) and (d).

(b) Even where the Plaintiff agreed to fulfil an order of Goods, the Plaintiff need only "endeavour" to deliver the Goods ordered by the requested delivery date on a "best efforts basis",[11] and delivery was subject to factors such as "availability of the said goods, output capacity, changes in the instructions of the [Defendant's] customers or the [Defendant]".[12]

21 As an alternative argument to the foregoing, the Plaintiff averred that it was an "express and implied" term of the Agreement that punctual payment of the outstanding sums owed by the Defendant to the Plaintiff was a precondition of the Plaintiff's obligation to continue selling Goods to the Defendant,[13] and that the Defendant had failed to satisfy this requirement when it failed to make payment for the Fulfilled Orders which were the subject matter of the Plaintiff's claim in this Suit.

22 However, even overlooking the contradictory nature of this averment in pleading a term that was both express *and* implied, insofar as this alternative argument is concerned, in the Plaintiff's Closing Submissions filed after the trial (the "**PCS**"), the Plaintiff's counsel did not highlight any evidence which showed that the parties hereto had *expressly* agreed to such a precondition as a term of the Agreement, nor did they engage in any analysis to show why such a precondition should be *implied* into the Agreement. In other words, the Plaintiff did not substantively pursue this alternative argument following the trial and it will not be further considered.

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[11] RDCCA1 at paragraph 3B(f).

[12] RDCCA1 at paragraph 3B(g).

[13] RDCCA1 at paragraph 4.

Bifurcation

23 Following an application made by the Plaintiff in DC/SUM 855/2023, the trial of the Defendant's counterclaim was ordered to be bifurcated.

24 On the first day of the trial before me, the parties also confirmed that the trial before me would address only issues relating to the Plaintiff's liability for the breaches alleged in the DCCA1, with issues pertaining to damages to be reserved to future tranches, if necessary.

Issues to be decided

25 In light of the foregoing, the following issues fall to be decided:

(a) Was the Fulfilment Obligation a term of the Agreement?

(b) If it was a term of the Agreement, did the Plaintiff fail to perform the Fulfilment Obligation in relation to the Unfulfilled Orders?

(c) Was the Timely Delivery Obligation a term of the Agreement?

(d) How did the termination of the Agreement on 21 July 2021 take place and what was the legal significance of such termination vis-à-vis the Defendant's counterclaim?

26 I will consider each of the foregoing in turn.

Issue 1: Was the Fulfilment Obligation a term of the Agreement?

27 One fundamental point of contention between the parties hereto was whether the Fulfilment Obligation formed part of the Agreement between the parties.

28 As framed by the parties, this was essentially a dispute of fact, to be answered by reference to the available evidence. The legal burden lay on the Defendant to show the existence of the Fulfilment Obligation, since this was a material fact which formed the basis of its counterclaim against the Plaintiff: *SCT Technologies Pte Ltd v Western Copper Co Ltd* [2016] 1 SLR 1471 at [17].

29 Both the Plaintiff and the Defendant agreed that the Agreement was entered into in or around 2014. However, neither side adduced any contemporaneous evidence from 2014 of any communication which took place between the parties when entering into the Agreement.

30 The evidence which was available to this court did not support the Defendant's account of how the Agreement had come to be entered into.

31 The Defendant's case, as disclosed in Further and Better Particulars to the DCCA1 dated 30 January 2024 (the "**1st FNBP**"), was that the terms of the Agreement were "orally agreed" between the Plaintiff's Tay Kong Shing (also known as "**Momen**") and the Defendant's Sng Yi ("**Sng**") in or about November 2014.[14]

32 Given the Defendant's own case, it was curious that Sng did not, in his AEIC, address how he had reached the Agreement with Momen in 2014 at all.

33 Indeed, not only was Sng's AEIC bereft of any reference to events which took place in 2014, he did not even address in his AEIC the question of what the terms of the Agreement were or explain why the Defendant asserted that the Fulfilment Obligation was a term of the Agreement.

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[14] See 1st FNBP at paragraph 1.

34 Instead, Sng's AEIC focused almost exclusively on communications between the Plaintiff and the Defendant in the period between 9 July 2021 and 21 July 2021, in an attempt to make an argument that the parties had concluded a settlement agreement of the disputes between them on 21 July 2021, the breach of which gave the Defendant a new legal basis for its counterclaim in this Suit.

35 This argument was not, however, properly pleaded and the Defendant has not taken steps to address this defect in its pleadings despite having been informed of the same by the Plaintiff as well as by this court at the beginning of the trial before me, following objections raised by the Plaintiff's counsel to an attempt by the Defendant's counsel to raise this in the Defendant's Opening Statement. In the premises, there is no scope to consider the same as the Plaintiff has not had the opportunity to properly address it.

36 In summary, Sng's AEIC did not contain evidence proving the terms of the Agreement, despite the Defendant's 1st FNBP identifying him as the person who had entered into the same on behalf of the Defendant.

37 The Defendant's other witness, Tong Jia Pi Julia ("**Julia**"), did give evidence regarding the parties' entry into the Agreement in her AEIC.

38 In her AEIC, Julia asserted that the parties had entered into an "oral agreement" in or around November 2014, pursuant to which the Plaintiff was allotted space by the Defendant to display Goods in the Defendant's Showrooms. She also repeated the terms of the Agreement as pleaded in the DCCA1.

39 With respect, Julia's evidence should be viewed with circumspection.

40 The Defendant's own pleaded case (as particularised in the 1st FNBP) is that the Agreement was entered into verbally between Momen and Sng. Julia was not mentioned anywhere in the Defendant's pleadings, much less in connection with the formation of the Agreement.

41 Julia also did not explain, in her AEIC, how she came to have personal knowledge about the formation of the Agreement, such that her evidence about the same should be given probative value. This is particularly important information, given that Julia was neither the person who had entered into the Agreement in 2014, nor mentioned in the Defendant's pleadings as someone who had been present when the Agreement had been entered into.

42 In fact, Julia confirmed, under cross-examination, that it was Sng who had represented the Defendant in reaching the "oral" Agreement and that she had not been the Defendant's representative for this purpose.[15]

43 It is telling that when it was put directly to Julia that she had no personal knowledge of the oral Agreement between the parties hereto, Julia's reaction was to obfuscate by asserting that:

> I'm the founder of the group, one of the founder of the group. All the business practices were implemented by me, but after 40 years, I think it is fair for me to say that I do not handle A to Z by myself, everything, okay. So, we will assign to the managers; managers will then, okay, follow the business practices. So, I have mentioned, and I think about three or four times, so long as it falls within the general practices and no material deviation, they don't need to come to me, I---I---no, I don't need to interfere.[16]

[15] NE 16 July 2025 60/5-12 and 60/24-61/8.

[16] NE 16 July 2025 61/16-24.

44 This long and rambling response would surely not have been required if Julia did have personal knowledge of the circumstances under which the Agreement had been entered into by the parties.

45 In contrast to the Defendant's evidence, the evidence of the Plaintiff was more convincing.

46 Momen, who the Defendant itself acknowledges was the representative of the Plaintiff who had entered into the Agreement, stated in his AEIC that in November 2014, he initiated a discussion with the Defendant's manager, whom he identified as "Vincent", about allowing the Plaintiff space in the Defendant's Showrooms to display the former's Goods, although eventually the terms of the Agreement were concluded between himself and Sng.

47 Whilst Momen's description of the manner in which the Agreement was reached was consistent with the Defendant's pleadings in that it had been reached verbally between Momen and Sng, Momen maintained in his AEIC that the Fulfilment Obligation was not a term of the Agreement. To the contrary, it was Momen's evidence that, under the Agreement, the Plaintiff had the right to decide whether or not to accept any order after it had received the Order Confirmation from the Defendant.

48 Momen's evidence was thus consistent with the Plaintiff's pleaded position on this issue. Given that this position would have been known to the Defendant well before the trial, it is therefore surprising that the very person whom the Defendant had identified as having entered into the Agreement on its behalf, namely Sng, did not give any evidence in his AEIC to challenge the evidence of the Plaintiff's representative. Instead, the witness who did give evidence on the Agreement on behalf of the Defendant, namely Julia, was

someone who would not even properly explain how she had personal knowledge of the same.

49 In these circumstances, Momen's evidence on this issue was clearly more credible than that of the Defendant's two witnesses.

50 Circumstantial evidence also supports the Plaintiff's contention that it did not become bound to supply Goods upon the receipt of an Order Confirmation.

51 To begin, as highlighted by Momen, the Plaintiff's ability to supply Goods depended on various factors, including external ones such as the Defendant's own payment track record.

52 Commercially, it seems unlikely that the Plaintiff would have agreed to an arrangement which obliged it to continue supplying a customer (the Defendant) who had fallen behind in payments.

53 This is especially so when the specific workflow for the supply of Goods ordered by customers of the Defendant is considered.

54 As mentioned earlier, under the arrangements practised by the Plaintiff and the Defendant for a number of years and as set out in Julia's AEIC, the Plaintiff only received payment for its Goods after it had delivered them to the Defendant's customers and after the Plaintiff had invoiced the Defendant.[17] This was despite the fact that the Defendant collected partial or even full payment for the Goods ordered before it had even conveyed the Order

[17] Julia's AEIC at paragraph 7(h).

Confirmation to the Plaintiff.[18] Even where payments were collected by the Plaintiff's delivery team, such payments were being collected on behalf of the Defendant and not the Plaintiff.[19]

55 Had the Plaintiff agreed to an obligation to supply Goods so long as an Order Confirmation was received, it could foreseeably have found itself in a situation in which it had to continue supplying Goods in circumstances where no payment was being made to it even though payment had already been made to the Defendant.

56 It is significant, in my view, that whilst Julia described the transactions between the Defendant and its customers, on the one hand, and those between the Defendant and the Plaintiff, on the other, as "back to back" transactions, there is evidence that the Defendant made a profit from the sales of the Plaintiff's Goods.

57 This can be seen, for instance, in the Defendant's claim for loss of profits in the Defendant's counterclaim. In Julia's AEIC, she exhibited a document which she described as an expert report purportedly quantifying the Defendant's losses stemming from the Plaintiff's breach of, inter alia, the Fulfilment Obligation.[20]

58 Without expressing a view as to the weight of this evidence, the report made it clear that one head of loss which the Defendant wished to seek by way of its counterclaim was the loss of profits in the form of alleged losses in the

[18] Julia's AEIC at paragraph 7(b).

[19] Julia's AEIC at paragraph 7(h).

[20] Julia's AEIC at page 259.

"gross margins" that the Defendant would have earned from selling the Plaintiff's Goods.[21]

59 This was consistent with Sng's evidence at trial, where he testified that the parties had agreed that the Defendant would take a "cut" or "margin cut" from sales of the Plaintiff's Goods.[22]

60 The fact that the Defendant enjoyed a profit margin from sales of the Plaintiff's Goods is significant because it supports the Plaintiff's contention that the two sets of transactions between the Plaintiff and the Defendant as well as between the Defendant and its customers were not purely "back to back" transactions as alleged by Julia.

61 First, it put paid to any possibility that the two sets of transactions mirrored each other to the extent that the Defendant was merely a "passthrough" for the Plaintiff's Goods. Secondly, it stood as a commercial motive for the Defendant to take on the risk of the Plaintiff not agreeing to supply Goods ordered.

62 Separately, the correspondence which ensued between Momen and Sng in July 2021 also lends weight to the Plaintiff's assertion that the Fulfilment Obligation was not a term of the Agreement.

63 On 6 July 2021, Momen emailed Sng to highlight the Defendant's delays in making payment and stated that the Plaintiff would not be able to deliver orders from 7 July 2021 onwards.

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[21] Julia's AEIC at page 277.

[22] NE 17 July 2025 67/14-26.

64 Instead of asserting the existence of the Fulfilment Obligation, later that same day, the Defendant's accounts department emailed Momen to inform him of an $18,000 cheque payment that would be ready for collection the following day.[23]

65 Thereafter, the Plaintiff, through its solicitors, issued a letter of demand for outstanding payments to the Defendant on 9 July 2021.

66 Again, the Defendant did not assert at that point that the Plaintiff was the party in breach of its contractual obligations. Instead, on 15 July 2021, Sng emailed Momen with a repayment proposal. Significantly, whilst the proposal was conditioned on the Plaintiff's resumption of deliveries, the email from Sng did not make mention of the Fulfilment Obligation as a term of the Agreement.

67 At trial and in the Defendant's submissions filed post-trial, the Defendant's witnesses attempted to support the Defendant's counterclaim by characterising the Agreement as a "consignment" contract:

> (a) Julia claimed, under cross-examination, that the contract between the Plaintiff and the Defendant was a consignment contract.[24] She asserted that the relationship between the parties hereto was that of "consigner and consignee" and "not buyer and seller".[25] She then claimed that under such a contract, the Plaintiff had an obligation to deliver Goods ordered, despite the termination of the Agreement,

[23] Julia's AEIC at page 26.

[24] NE 16 July 2025 49/20-50/1.

[25] NE 17 July 2025 41/19-30.

because "[a]s a consignor, they have full duty and obligation to deliver the goods sold".[26]

(b) Sng claimed that a "consignment agreement" was a "universally used term"[27] and described it, essentially, as a type of contract in which the Fulfilment Obligation would be a term.[28] Sng also gave evidence that a consignment contract was "different" from what he called a "sales and purchase agreement".[29]

68 With respect, I do not think that the Defendant's witnesses' invocation of the term "consignment contract" assists its case.

69 First, no authority has been furnished by the Defendant's counsel, in its Closing Submissions (the "**DCS**"), in support of the proposition that the Fulfilment Obligation is generally part of consignment contracts, or even to circumscribe the ambit of the term "consignment contract" in this particular context.

70 Secondly, whilst it has been asserted in the DCS that consignment contracts are a "common practice in the local furniture industry",[30] this statement is not backed up by any evidence beyond the Defendant's witnesses' self-serving statements that this is the case.

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[26] NE 16 July 2025 129/14-18.

[27] NE 17 July 2025 66/1-15.

[28] NE 17 July 2025 89/28-90/1.

[29] NE 17 July 2025 65/26-66/3.

[30] DCS at paragraph 4.

71 Thirdly, the Defendant's pleadings contain no averment that the Agreement was one in the nature of a "consignment" contract, much less any exposition as to why such contracts must be deemed to include a term in the nature of the Fulfilment Obligation. This term does not even appear in the body of Julia or Sng's AEICs and came to prominence only at trial.

72 Apart from the evidence, I would also record that the DCS did not focus on the question of whether the Fulfilment Obligation was a part of the Agreement. This question was simply glossed over in the DCS, which focused on the Timely Delivery Obligation instead.

73 In view of the foregoing, I find that the Defendant has not discharged its burden of proving that the Fulfilment Obligation was part of the Agreement.

74 To the contrary, I accept the Plaintiff's contention that it was free to consider, in relation to each Order Confirmation received from the Defendant, whether it was agreeable to fulfilling the order.

Issue 2: Did the Plaintiff fail to perform the Fulfilment Obligation?

75 Given my finding that the Defendant has not proven that the Fulfilment Obligation was a term of the Agreement, it follows that there is no need to consider a possible breach of the same.

76 The counterclaim, as pleaded by the Defendant, thus cannot succeed.

Issue 3: Was the Timely Delivery Obligation a part of the Agreement?

77 As I have found that the Defendant has not demonstrated that the Fulfilment Obligation was a term of the Agreement, it is strictly speaking not necessary to consider the Timely Delivery Obligation or potential breaches

thereof by the Plaintiff. In the absence of the Fulfilment Obligation, the Plaintiff was at liberty to decline to fulfil orders communicated to it by the Defendant. It follows that no obligation to deliver by a certain deadline, whether in accordance with the Timely Delivery Obligation or otherwise, would arise where there was no obligation to deliver at all.

78 That said, as substantive submissions were made in relation to the Timely Delivery Obligation in the DCS, I will set out my views in brief.

79 I accept the Defendant's counsel's submission that contracts between the Plaintiff and the Defendant for the sale of the Plaintiff's Goods would have been "mercantile contracts", within the meaning of this term as used in cases such as *Himatsing & Co v Joitaram P R* [1968–1970] SLR(R) 766 ("***Himatsing***").

80 In this regard, the Plaintiff itself stated in its closing submissions filed after trial that

> … the relationship between [the Defendant] and [the Plaintiff] is **purely commercial**. Just like any **commercial relationship**, [the Plaintiff's] decision to sell goods to [the Defendant] as a buyer is at [the Plaintiff's] sole discretion.
>
> (Emphasis added)

81 One general rule applicable to mercantile contracts, as set out in *Himatsing*, is that "in most mercantile transactions, as regards stipulations other than those relating to time of payment, time is of the essence of the contract".[31]

82 In the PCS, the Plaintiff's counsel has tried to argue that the facts in *Himatsing* can be distinguished from those before me, as in this case there was

[31] *Himatsing* at [13].

a dispute over whether an entry in the Order Confirmation entitled "Req. Delivery Date" meant "Requested Delivery Date", which would not have imposed a contractually binding deadline for the delivery of the Goods, or "Required Delivery Date", which would have imposed such a deadline.

83 This submission, however, misses the point. The value of *Himatsing* as an authority is in its pronouncement of a principle, applicable to mercantile contracts generally, that time was of the essence to stipulations in such contracts other than those relating to time of payment. As such, simply highlighting that the delivery date was worded in terms different from that considered in *Himatsing* does not adequately address, in my view, the question of why the general rule ought not to apply if the Plaintiff herein was contractually bound to effect delivery of Goods ordered.

84 In his AEIC, Momen suggested that time could not be of the essence because the Defendant's customers would at times agree to change the delivery date for Goods ordered after discussions between the customers and the Plaintiff's representatives.[32] However, a stipulation that time is of the essence in relation to a provision in a contract does not mean that the provision cannot be varied by the parties thereto; instead it means that the provision would be regarded as a condition of the contract. The fact that the Defendant's customers could agree to vary delivery dates for Goods therefore did not mean that dates agreed on were not of the essence to their orders.

85 As such, *had it been necessary* to consider the Timely Delivery Obligation, I would have been inclined to accept the Defendant's submission that time was of the essence in relation to the Plaintiff's obligation to deliver

[32] Momen's AEIC at paragraphs 37 and 38.

Goods ordered by the Defendant's customers, *if and when* the Plaintiff was under an obligation to do so in the first place.

Issue 4: What was the legal significance of the termination of the Agreement on 21 July 2021?

86 The Plaintiff and the Defendant are in agreement that the Agreement between them came to an end on 21 July 2021.

87 However, whilst the Plaintiff has pleaded that the Agreement was unilaterally terminated by the Defendant,[33] the Defendant's position is that the Agreement was brought to an end by the Defendant "with the consensus from the Plaintiff",[34] and that this consensus had been reached between Sng and Momen by way of their email exchanges between 15 July 2021 and 21 July 2021.[35]

88 As mentioned earlier, on 15 July 2021, Sng emailed Momen with a payment proposal for various sums owed by the Defendant to the Plaintiff,[36] conditioned upon the Plaintiff's agreement to a number of matters.

89 Apart from the resumption of deliveries mentioned earlier, under the Defendant's proposal, the Plaintiff was required to withdraw its letter of demand issued on 9 July 2021.

90 On 19 July 2021, Momen replied with an email accepting the proposal contained in Sng's email, subject to a further condition that the cheque for the

[33] SOC at paragraph 6 and RDCCA1 at paragraph 6.

[34] DCCA1 at paragraph 4.

[35] 1st FNBP at paragraph 2.

[36] See paragraph 66 above.

first instalment of the payments proposed by the Defendant be released to the Plaintiff before deliveries could resume.

91 On 21 July 2021, Sng replied to the email mentioned in the preceding paragraph, indicating that the cheque in question would not be released until the letter of demand had been withdrawn.

92 Ultimately, the Plaintiff did not withdraw its letter of demand and the Defendant did not release the cheque representing the instalment payment on 21 July.

93 Apart from Sng's email to Momen that day, both Momen and Sng also engaged in communications on 21 July 2021 by way of WhatsApp messages as well as at least one telephone conversation.

94 The WhatsApp exchange between Sng and Momen was adduced in evidence,[37] but merely contained exhortations by Sng and Momen to each other to, respectively, withdraw the letter of demand and release the cheque payment representing the first instalment proposed by the Defendant. There was no reference in this exchange to the termination of the Agreement.

95 Instead, both Sng and Momen gave evidence suggesting that the termination of the Agreement had taken place during the telephone conversation between them.

96 Both Sng and Momen agreed that this conversation took place in the "late afternoon" on 21 July 2021 but disagreed as to who had called whom as well as the contents of the conversation which took place.

[37] Sng's AEIC at pages 11 to 16.

97 Momen claimed in his AEIC that it was Sng who had first called him that afternoon,[38] although at trial this was finessed by the Plaintiff's counsel who, during his cross-examination of Sng, suggested to Sng that although he had initiated the first telephone call, Momen had not answered but thereafter returned Sng's telephone call.[39]

98 Momen claimed that during the call, Sng demanded that the Plaintiff remove its Goods from the Defendant's Showrooms by the end of that day and, further, that the Plaintiff's sales promoters cease working at the Defendant's Showrooms from the following day onwards.

99 In contrast, Sng claimed in his AEIC that it was Momen who had initiated a call to Sng that afternoon to inform him that the Plaintiff would not withdraw its letter of demand and that the Plaintiff would remove their Goods from the Defendant's Showrooms by the end of 21 July 2021.[40]

100 That being said, during the trial, Sng gave evidence that he had been the one who had called Momen,[41] thus also contradicting his AEIC slightly.

101 Whilst neither Sng nor Momen adduced contemporaneous evidence of their phone call on 21 July 2021, in an email dated 2 August 2021, the Plaintiff's Accounts Assistant, Seow Hway Siang (also known as "**Shandy**"), sent an email to a member of the Defendant's accounts department, Irene Toh, recounting a version of the conversation between Momen and Sng on 21 July 2021 which

[38] Momen's AEIC at paragraph 63.

[39] NE 17 July 2025 76/25-29.

[40] Sng's AEIC at paragraph 12.

[41] NE 17 July 2025 76/6-24.

supported Momen's version of events. This email was adduced in evidence[42] by Shandy, who gave evidence at the trial before me.

102 In my view, no meaningful weight can be placed on this email as a record of what took place during that conversation, because the source of the information contained in Shandy's email was Momen, who had told her about his conversation with Sng.[43] Shandy thus had no personal knowledge of what was discussed during that conversation and the contents of her email on this topic therefore amounted to hearsay.

103 Regardless of who had initiated the call, it is plain that both Momen and Sng disagreed, at trial, on which party had indicated that the Goods in the Defendant's Showrooms should be removed.

104 That said, it bears highlighting that, as of 21 July 2021, the two parties hereto were not on the same footing, contractually speaking.

105 As the outcome of the Plaintiff's summary judgment application in this Suit would demonstrate, as at 21 July 2021, the Defendant had failed to perform its payment obligations owed to the Plaintiff. This can be seen, for instance, from the DJIC's observation that the Defendant had "conceded" that the sum of $149,173.88, claimed by the Plaintiff in these proceedings as having been due as at 21 July 2021, was in fact "outstanding and owing to the Plaintiff".[44]

106 In contrast, I have found that the Fulfilment Obligation was not a term of the Agreement and the Plaintiff was hence entitled to decline orders

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[42] Shandy's AEIC at page 8.

[43] NE 1 September 2025 100/9-22.

[44] DJIC Decision at [30].

communicated to it by the Defendant. Accordingly, as of 21 July 2021, the Plaintiff was *not* in breach of a Fulfilment Obligation owed to the Defendant.

107 Equally, the Plaintiff was also under no obligation to continue promoting its Goods in the Defendant's Showrooms if it no longer wished to do so, in the absence of a binding obligation to such effect. To be clear, the Defendant has not asserted in these proceedings that the Plaintiff was under such an obligation.

108 In the premises, even if Momen had indicated that the Plaintiff would discontinue the sale of its Goods in the Defendant's Showrooms commencing 22 July 2021, that would not have amounted to a breach by the Plaintiff of any contractual obligation which has been pleaded and proven in these proceedings.

109 As such, the events of 21 July 2021 do not assist the Defendant in making out its counterclaim, which was premised on the breach of a contractual duty by which the Plaintiff was bound.

Judgment

110 By virtue of the foregoing, the Defendant's counterclaim is dismissed in its entirety.

111 Costs and disbursements are to be fixed by this Court if the parties are unable to agree on the same. The parties are to file and exchange their respective written submissions on costs and disbursements within 14 days hereof, limited to six pages, if required.

Teo Guan Kee
District Judge

Mr Lee Chay Pin Victor, Ms Isabella Ten [Chambers Law LLP] for the plaintiff/defendant-in-counterclaim;
Mr Clarence Lun Yaodong, Ms Sudha Rai Selvam [Fervent Chambers LLC] for the defendant/plaintiff-in-counterclaim.