IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1990] SGHC 14

Suit 971/1988

Between

Koshida Trading (S) Pte Ltd

… *Plaintiff*

And

Limco Products Manufacturing Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Contract; Contract; Civil Procedure — Summary judgment

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

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Koshida Trading (S) Pte Ltd v Limco Products Manufacturing Pte Ltd

[1990] SGHC 14

Suit 971/1988
Chan Sek Keong J
01 March 1990

1 The plaintiffs are suppliers of, inter alia, Mitsubishi RAM microchips (ramchips) of various specifications. The defendants are manufacturers of personal computers and have been buying ramchips from the plaintiffs from 1986. On 19 January 1987, the defendants signed an acknowledgment that they owed the plaintiffs the sum of $2,584,583.31 which they agreed to pay in six monthly instalments of various amounts. The defendants paid the first three instalments and another sum leaving a balance of $1,289,188.31.

2 In this action, the plaintiffs claimed against the defendants the payment of this said balance and interest thereon amounting to $66,208.68. At the hearing before the assistant registrar for summary judgment, the defendants admitted the claim for principal but denied the claim for interest. However, the defendants submitted that they were entitled to unconditional leave to defend as they had a set-off and counterclaim exceeding $16m arising from the plaintiffs` alleged failure to supply ramchips under five purchase orders, viz nos 3043 dated 14 September 1987 (JL2), 3146 dated 15 October 1987 (JL3), 3147 dated 15 October 1987 (JL4), 2786 dated 26 June 1987 (JL31) and 2700 dated 27 May

1987 (JL32). The assistant registrar gave leave to the plaintiffs to enter final judgment for the principal amount on the ground that the set-off and counterclaim was not related to and did not arise from the claim, but gave the defendants unconditional leave to defend the claim for interest.

3 Both parties appealed. The plaintiffs proceeded to execute on the judgment. The defendants filed an application for a stay of execution pending the hearing of the appeal but paid the judgment debt on 22 August 1988 before their appeal was heard. The stay application was dismissed on 29 August 1988. The defendants also appealed against the refusal to grant the stay. This appeal was withdrawn when it and the appeal against summary judgment came on for hearing before me on 17 May 1989.

4 The appeal of the defendants centred on two issues: (a) whether because of the counterclaim, the defendants should have been given unconditional leave to defend the whole of the claim, and (b) whether because of the set-off, the defendants should have been given unconditional leave to defend part of the claim to the extent of the set-off. The defendants confined their arguments on their claim to a set-off and counterclaim to three purchase orders only, viz JL2, JL3 and JL4.

5 I dismissed the appeal of the defendants and also that of the plaintiffs on the claim for interest. The defendants have now appealed against my decision.

6 The parties gave different versions as to how the business between them was conducted. According to the defendants, the parties would first negotiate on the amount of ramchips to be supplied, the price therefor and the delivery schedule, and on conclusion of which the defendants would send a purchase

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order to the plaintiffs containing the agreed terms. The plaintiffs would then return the duplicate copy of the order endorsed with the seal of the officer in charge of that order and a binding contract would then be concluded.

7 The defendants produced a copy of the standard printed form of the purchase order used by them. The form is addressed to the supplier and requests him to supply the goods described therein according to instructions, terms and conditions shown thereon and overleaf. Three columns of space with the headings `Item No`, `Quantity` and `Description` are provided for filling up before the purchase order is sent out. The front page also contains three spaces next to the headings `Authorized Signature`, `Latest Delivery Date` and `Payment Terms` to be filled up by the defendants.

8 The terms shown overleaf contain, inter alia, the following:

> *Acknowledgment*
>
> *This purchase order must be acknowledged by the seller within 14 days from date hereof by returning the attached duplicate duly endorsed to the buyer.*
>
> *Price*
>
> *No change to the price(s) specified in the purchase order shall be made without the prior agreement in writing by the buyer.*
>
> *Delivery*
>
> *Delivery of goods shall be made within the time specified to the buyer`s address or as otherwise instructed. If the seller fails to make delivery/deliveries within the time specified, the buyer reserves the right to buy from other sources and charge seller for any additional costs incurred thereon.*
>
> *Each delivery shall be construed as a separate order and failure to make or take any delivery shall not consider (sic) the order as a whole.*
>
> *Cancellation/Suspension*

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> *The buyer reserves the right to cancel or suspend this purchase order or part thereof before the delivery/deliveries are effected or, if the goods are not delivered according to delivery times as specified herein, or if the buyer is unable to accept delivery for any cause beyond the buyer`s control.*

9 Counsel for the defendants contended that in law the moment the plaintiffs acknowledged receipt of the purchase order by returning the attached duplicate endorsed to the defendants (in the present case, JL2, JL3 and JL4 bearing the chop imprints of the plaintiffs) a binding contract was concluded.

10 The plaintiffs` version of how the business was conducted was that whenever the defendants wished to obtain supplies of ramchips, they would send to the plaintiffs their purchase orders setting out the desired quantities, the prices and delivery dates, that the plaintiffs would acknowledge receipt thereof by returning a copy thereof to the defendants, that this was followed by negotiations on the terms of the orders. Even then there is no binding contract until the plaintiffs delivered the ramchips order, when invoices and delivery orders would be delivered to the defendants.

11 In my view, looking at the terms of the purchase order and the way in which JL2, JL3 and JL4 were endorsed and returned to the defendants, and also taking into account purchase orders JL5A-F dated 3 July 1987, 9 July 1987, 5 September 1987, 23 September 1987, 12 November 1987 and 14 January 1988 (all of which the plaintiffs had endorsed but did not supply and on which the defendants had made no claim), I formed the view that the plaintiffs` version was probably nearer to the truth than that of the defendants. As a matter of fact, the defendants` version was contradicted by JL2 itself in which delivery dates (which were an essential term of the purchase) were not given. The mere acknowledgment of JL2 by the plaintiffs on 18 August 1987 could not have

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resulted in a concluded contract in the absence of this essential term. Counsel for the defendants admitted that the delivery schedule was given by the defendants a few days later on another copy of the purchase order (see JL46). Additional evidence to contradict the defendants` version could be found in the purchase order dated 20 November 1987 (JL37) on which had been written which suggested that the acknowledgment of the order was what it purported to be, ie an acknowledgment, and not an acceptance.

12 In my view, as a matter of construction, the form of the purchase order was clearly an offer by the defendants to purchase the goods described therein on terms set by the defendants. There was no invitation to the plaintiffs to accept the order but merely to acknowledge it in the manner described. The form did not say or purport to say that the acknowledgment would constitute a binding contract. There was nothing in the form which suggested to a reasonable supplier that acknowledging the order would bind him to supply the goods on the terms stated therein. If that was the intention of the defendants, the form was wholly misleading. The purchase order was in law a unilateral offer to pay the price stated therein for goods delivered in accordance with its terms. Such an offer may, in law, be accepted by the supplier by performance or by return of promise: see 9 ***Halsbury`s Laws of England*** (4th Ed) para 252 n 7, and para 253. The nature of the purchase order was, in my view, consistent with the printed terms regarding delivery (that each delivery was a separate order) and cancellation (that until delivery, ie acceptance by performance, or in return of promise, the defendants were free to revoke or suspend the offer). In any case, I was satisfied from the documentary evidence that the order was meant and the parties understood it to be the starting point of negotiations on the terms of the offer.

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13 I turn now to the specific purchase orders that the plaintiffs were alleged to have breached. JL2 which was acknowledged on 18 September 1987 was for the supply of 200,000 pieces P-12 ramchips on delivery dates to be advised later. On 21 September 1987, the plaintiffs received advice of delivery from the defendants (see JL46) of 50,000 pieces per month from October 1987 to January 1988. The plaintiffs supplied 50,000 pieces in October 1987 on 60 days` credit and 10,000 pieces COD in December 1987. The defendants contended that the plaintiffs, in making these deliveries, must have accepted the terms of JL2 and in failing to make full delivery were in breach of contract which entitled the defendants to claim damages and to set off the same against the plaintiffs` claim. He referred to ***Hanak v Green*** [1958] 2 QB 9. As stated in their counterclaim, the defendants` claim under JL2 was for damages for short delivery of 115,000 P-12 ramchips. The defendants claimed to have purchased between February 1988 to July 1988 36,000 P-12 ramchips in the open market at an average price of US$6.70 per piece. However, the bona fides of these purchases was doubtful as the ramchips were allegedly purchased from companies controlled by or in which the managing director of the defendants had an equity investment. These alleged purchases and in such small quantities did not suggest that the defendants were taking serious steps to mitigate their loss timeously.

14 In my view, the plaintiffs` deliveries were consistent with the nature of the purchase order and the way the parties conducted their business. The requirement that payment for the second delivery be COD, which the defendants accepted without protest, was inconsistent with there being a concluded contract on the terms set out in JL2 or JL46. Also, if there had been a concluded contract in respect of JL2, the plaintiffs were already in breach in respect of the November delivery. Yet, the defendants have produced no documentary evidence or alleged that they had demanded delivery in and for the months

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following. Then on 29 March 1988, the defendants unilaterally agreed to amend the payment terms under JL2 to cash or letter of credit and requested that delivery be expedited. Since this was a unilateral and unconditional offer of better terms for delivery, it was not, in my view, consistent with there being an existing contract.

15 JL3 and JL4, both dated 15 October 1987, were acknowledged by the plaintiffs on 16 October 1987. On 23 October 1987, the plaintiffs wrote to the defendants to thank them for the orders and also to state as follows:

> *Per our telephone today [sic], we advised that we had discussed with Mitsubishi and regret to inform you that P/O Nos 3146 and 3147 cannot be accepted due to the following reasons: ...*
>
> *Based on the above factors, we are unable to accept P/O Nos 3146 and 3147. However, we are trying to assist without commitment to the exact quantity of D-Ram and prices of D-Ram and advised M/s Limco seek several alternative sources [named] rather than to depend on Koshida as only one source.*
>
> *Please be advised that although acknowledgment of purchase order Nos 3146 and 3147 may or may not be endorsed, we still reserve the rights to service this notice to supersede all correspondence written or verbal that P/O Nos 3146 and 3147 are not accepted due to reasons already explained in writing or communicated in earlier meetings and as such, please take notice that Koshida Trading (S) Pte Ltd is under no obligation and without commitment to comply with the delivery of D-Ram as stated in P/O Nos 3146 and 3147.*
>
> *However, Koshida Trading (S) Pte Ltd will try its utmost best help to find some quantity whenever opportunities exist on the supply situation.*

16 The defendants in these proceedings have disputed that they were sent or that they received this letter. They have maintained that they first had sight of this letter on 5 April 1988 when the plaintiffs produced it to them. The plaintiffs` version of this event was that they produced a copy of it to the defendants because the defendants denied receiving it. In view of my

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construction as to the legal effect of the form of the purchase order, whether or not the defendants received the said letter was irrelevant. Apart from the acknowledgments, there was no other evidence that there was a concluded contract in terms of JL3 and JL4. However, I thought the probability was that the defendants did receive the said letter as (i) they did not complain about the non-delivery of the ramchips ordered (which were scheduled to begin in November 1987) until 24 March 1988 and (ii) they unilaterally and unconditionally agreed to pay for delivery in cash or by letter of credit on 29 March 1988, and requested delivery be expedited. As I have already stated, this offer was inconsistent with there being an existing contract.

17 In so far as JL3 and JL4 are concerned, if I am wrong in my conclusions on the law and on the facts, the counterclaims based on these two orders had no relation to the plaintiffs` claim. They were separate transactions from those in respect of which the defendants admitted liability. These counterclaims would not entitle the defendants to a stay of execution, much less unconditional leave to defend: see ***Drake & Fletcher v Batchelor*** (1986) 83 LS Gaz 1232 and ***AB Contractors Ltd v Flaherty Bros*** (1978) 16 BLR 10.

18 I think it is necessary to refer to one more fact which cast doubt on the defendants` set-off and counterclaim. After the defendants defaulted in paying the fourth instalment of their outstanding debt, the parties met several times to discuss the settlement of the balance of the debt and also the continuation of their business relationship. At about this time, the defendants alleged that the plaintiffs were in breach of contract in failing to supply the quantity of ramchips ordered under JL2, JL3 and JL4 and threatened to sue the plaintiffs. The plaintiffs denied any breach. The parties could not agree on this dispute as well as the rescheduling of the balance debt, as a result of which the plaintiffs

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commenced this action on 14 May 1988. Then on 17 June 1988, the defendants wrote to the plaintiffs and confirmed that they would take no action against the plaintiffs under JL2, JL3 and JL4 and apologized for the misunderstanding between the two companies. A few days later, the defendants had a change of mind as on 20 June 1988 they wrote to the plaintiffs stating that their decision not to take action against the plaintiffs was conditional upon the plaintiffs agreeing to an out of court settlement as proposed by the defendants and that the plaintiffs had agreed not to disclose the defendants` letter of 17 June 1988 by way of defence in these proceedings. On 28 June 1988, the plaintiffs replied that there was no such agreement as alleged by the defendants but that if they were sincere in reaching an amicable settlement, the plaintiffs were prepared to accept a settlement on the terms set out therein. No settlement was reached.

19 Counsel for the plaintiffs relied on the defendants` letter of 17 June 1988 as a waiver. Counsel for the defendants contended otherwise. I do not think that the said letter had the effect of estopping the defendants from claiming against the plaintiffs. However, the defendants have given a satisfactory explanation as to why they had decided to withdraw what was, if true, a very substantial set-off and counterclaim (originally in excess of $16m and now reduced to US$3,858,115).

20 For the above reasons, I dismissed the defendants` appeal with costs and left them to pursue their counterclaim.

21 ***Appeal dismissed*** .

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Chan Sek Keong J

Lee Man Hooi (Lee Bon Leong & Co) for the plaintiffs
Harish Kumar (Chor Pee & Co) for the defendants

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