IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 12

Suit No 1891 of 1987

Between

Lee Ah Yong t/a Comsign Agency

… Plaintiff

And

Kansai Paint (Singapore) Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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Lee Ah Yong t/a Comsign Agency v Kansai Paint (Singapore) Pte Ltd

[1992] SGHC 12

Suit No 1891 of 1987
Yong Pung How CJ
24 January 1992

JUDGMENT:

This is a claim in respect of an alleged breach of an implied term in contracts of sale. The material facts of the case are that by several contracts made orally between 14 October 1986 and 16 April 1987, the plaintiff agreed to purchase from the defendants paints and thinners for the purpose of fulfilling the plaintiff's contractual obligations to Shell Singapore Pte Ltd (`Shell'). Under the contract with Shell, the plaintiff undertook to make signboards for all 90 Shell petrol stations in Singapore. The products purchased by the plaintiff were:

(a) the defendants' Metalact H-5/Retan paints and thinners for application on Shell aluminium extrusion sign casings and on Shell mild-steel structural support inside the aluminium casings;

(b) the defendants' Platop paints and Platop thinners for application on Shell monolith signs, and entrance and exit signs made of acrylic materials intended for out-door display.

2 The Metalact H-5/Retan paints and thinners supplied were found to be satisfactory upon use. However, the Platop paints which were applied to Shell signs of acrylic material cracked about two weeks after application. When the plaintiff complained to the defendants, he was told that the cracking could be due to the acrylic panels not having been cleaned properly before the application of the paint. Thereafter, the plaintiff had all panels cleaned with the solvent Thinner no 2 which he had previously purchased from the defendants. Thinner no 2 was also used to dilute the Platop paint prior to application. The problem of cracking persisted, however, and the plaintiff again complained to the defendants, whereupon a sales representative from the defendants visited the plaintiff, together with two of the defendants' chemists, to conduct tests on some of the acrylic panels. Following the tests, the plaintiff ordered Thinner no 11 from the defendants, which he used in place of Thinner no 2 to dilute the paint before application on the acrylic panels. Similar cracks appeared on the surfaces, however, this time about six weeks after the application of the paint. By a telex dated 16 January 1987, Shell asked the plaintiff to replace these cracked acrylic signboards and the plaintiff complied with this request. The new signboards were painted with Union Ink paints instead of the defendants' Platop paints which were previously used.

3 The plaintiff now brings this action against the defendants claiming damages totalling $53,234 for breach of an alleged implied term in the contract of sale that the paints and thinners sold by the defendants would be suitable for use on acrylic surfaces. To succeed in this action, there are two elements essential to the plaintiff's claim which he must prove. The first is an issue of fact: was the damage complained of caused by the paints and thinners supplied by the defendants? Once the plaintiff gets past this hurdle, he will have to prove the second issue which is one of law: was there an implied term in the contracts of

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sale entered into between the defendants and himself that the paints and thinners supplied should be fit for the purpose of application on acrylic materials? -- s 14(3) of the UK Sale of Goods Act 1979, applicable here by virtue of s 5(1) of the Civil Law Act Cap 43.

4 As to the first issue, that of causation, the plaintiff has adduced evidence mainly in the form of two laboratory reports by Technichem Laboratory Services, dated 25 March 1987 and 18 May 1988. The most significant result to emerge from the reports shows clearly that both Thinner no 2 and Thinner no 11 had adverse effects on acrylic materials as they tended to attack such materials. Acrylic strips, which were taken from the allegedly damaged Shell signboards, showed signs of dissolution after being soaked in the thinner samples for varying lengths of time. The strips soaked in Thinner no 11 showed signs of dissolution after 24 hours whereas similar signs of dissolution were observed in the strips soaked in Thinner no 2 after four days. Thus, it is clear from the test that both thinners have a corrosive effect on acrylics. In his evidence, Yeo Guan Huah, the Managing Director of Technichem and a qualified chemist, testified that if paint diluted with either thinner were applied to an acrylic surface, then assuming such paint to be a neutral factor, the thinner would still have a harmful effect on the acrylic material. In my view, it is a reasonable inference that the thinner contained in the paint mixture attacked the acrylic materials to which the paint was applied and caused the acrylic to warp, thereby inducing cracks in the paint. I am satisfied that the plaintiff has proven, on a balance of probabilities, that it was the defendants' paints combined with the defendants' thinners which caused the damage and cracking he now complains of. The defendants have contended that unsatisfactory paint results could be caused by other factors such as an incorrect ratio of dilution. On that point, regard may be had to the words of Reynolds JA in Murray v Kickerman

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(1979) 1 NSWLR 414: '... once it is conceded that the appropriate standard of proof in a case such as this is proof on the balance of probabilities, that is a standard that allows of the co-existence of possibilities.' All that matters is that ultimately the plaintiff can satisfy the court (as he has done here) that it is more probable than not that the facts were as he alleges.

5 As to the second issue, the onus is on the plaintiff in the first instance to show that he did make known to the defendants the purpose for which the paints and thinners were bought, i.e. for application on Shell signboards of acrylic material. Once he can prove this, the presumption is that he relied on the defendants' skill and judgment in the recommendation and/or selection of the products suitable for such use, unless such reliance is positively disproved or if the defendants can show such reliance to have been unreasonable: see, for example, Ashington Piggeries Ltd v Christopher Hill Ltd < 1972 > AC 441.

6 There is little question that the plaintiff did make known to the defendants, when he first approached their sales representative Paul Low Chong Poh, the purpose for which he required the paints and thinners. The defendants were made aware of the various surfaces to be painted, i.e. aluminium, mild steel and plastic. This is admitted to in the evidence of Paul Low himself. Thus, the presumption of reliance arose in the plaintiff's favour, and I would hold that, having regard to the evidence before me, the defendants failed to rebut this presumption of reliance or to show that such reliance was unreasonable. Though it may be noted that plaintiff and defendants directly contradicted each other in several parts of the evidence, it would appear to be agreed by both sides that, far from disclaiming expertise in the matter of supplying paints fit for use on plastic materials, the defendants in fact represented to the plaintiff that they possessed the necessary expertise and experience. Paul Low testified that upon

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being informed by the plaintiff that he needed paints for application on acrylic panels, he assured the plaintiff that the defendants were `paint specialists' experienced in supplying paints for application on plastic materials and that their customers in this respect included large corporations. Eric Lam, the other Kansai sales representative involved, also testified that, when he took over the matter from Paul Low, he too assured the plaintiff that the defendants had experience in selling plastic paints; that the defendants' plastic paints were selling well; and that their customers included big electronics makers, like Matsushita, National, and Philips. In view of these assurances of the defendants' particular experience in the matter of paints for plastic materials and of their record of satisfied customers, it would hardly seem unreasonable then for the plaintiff to rely on their skill and judgement as regards the suitability of the Platop paints and thinners sold to him for application on the acrylic Shell signboards.

7 The defendants placed a great deal of emphasis on the fact that wet samples of the Platop paints were given to the plaintiff, ostensibly so that he could himself test their suitability, whereas no such samples were given in respect of the paints to be employed on aluminium and mild steel surfaces. In view of the words of s 14(3), the fact that the buyer of goods had an opportunity to examine the goods would not automatically refute the presumption of reliance. In the present case, I am of the view that the fact that samples were given to the plaintiff is insufficient to rebut the presumption of reliance, especially in view of the assurances given to the plaintiff of the defendants' expertise in the supply of paints for plastic surfaces. I would add, however, that contrary to what counsel for the plaintiff appeared to believe, the letter from the defendants to the plaintiff dated 14 April 1987 is of no relevance in this context, having been written after the contracts of sale were entered into.

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8 For the reasons given above, I hold that the defendants have failed to discharge the onus of disproving the presumption of reliance by the plaintiff or of showing such reliance to have been unreasonable. Accordingly, there will be judgment for the plaintiff with costs; and, since both parties have agreed beforehand on the figure for damages, the plaintiff will be awarded damages as follows:

(a) Costs of new acrylic materials replacing$30,760.00 the damaged materials (including costs of cutting and embossing the new acrylic materials) (b) Labour costs for removing damaged signboards, repainting new signboards, etc.$17,692.00 (c) Cost of replacing Platop paints and$2,982.00 thinners with Union Ink paints and thinners (d) Cost of extending the temporary leasing$1,800.00 of JTC factory space so as to complete Shell project on time _____ Total $53,234.00

9 Interest will be calculated at 6% per annum from the date of the writ to the date of judgment. The plaintiff will also have his costs to be taxed.

Yong Pung How CJ

James Teo and Christina Lee (Wong & Lim) for the plaintiff
Tan Hong Seng (Khattar Wong & Partners) for the defendants

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