

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1992] SGHC 65

Suit No 2248 of 1989

Between

GROUND OF DECISION

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**CHEMET HANDEL TRADING (S) PTE LTD v V.M.
VALIBHOY TRADING PTE LTD**

[1992] SGHC 65

Suit No 2248 of 1989
Chan Sek Keong J
18 March 1992

1 **Judgment:**

2 **Cur Adv Vult**

3 This is an appeal against the decision of the Deputy Registrar giving unconditional leave to the defendants to defend the plaintiffs' claim for damages for breach of contract for the sale of goods.

4 On 5 October 1989, the defendants agreed to sell to the plaintiffs 250 metric tons of Polypropylene, film grade, Amoco 1088, at US\$760 per metric ton CIF Singapore, for shipment from an USA port to Singapore by 31 October 1989. The terms of the sale were incorporated in a Sales Order dated 5 October 1989 issued by the defendants. The mode of payment as stipulated in the Sales Order, which was signed by both parties, was "By T.T. to our account upon presentation of Bill of lading or Delivery Order."

5 On 6 November 1989, the defendants telexed the plaintiffs to inform them of the shipment of the goods from Houston, Texas on 29 November 1989

and the bill of lading number. The telex also requested the plaintiffs to arrange to remit funds to the defendants' bankers, Asia Commercial Bank, by 9 November to enable them to deliver the bills of lading to the plaintiffs.

6 At 11.06 on 15 November 1989, the defendants sent another telex to the plaintiffs in these terms:

7 We refer to the above and to our telex dated 6/11/89 and our several phone conversations. We have yet to receive funds into our account but instead we received phone call yestdy from yr Mr Syed Aljunied saying that payment will be made upon arrival of vessel in Singapore. This is contrary to our agreement. Kindly ensure funds are remitted to our account today, and pls tlx us by 2 p.m. today giving details of remittance, failing which we would be obliged to dispose the cargo due to non performance.

8 At 12.45 pm, the plaintiffs telexed their reply (a) that the trade practice in Singapore was that when cargo was sold CIF payment would be made one or two days before the arrival of the vessel in exchange for a delivery order, and (b) that they would pay against a delivery order if available.

9 At 16.20 pm, the defendants telexed the plaintiffs and denied that there was any such trade practice as alleged and that the contract had clearly stipulated that payment would be made by TT to the account of the defendants upon presentation of the bills of lading or delivery order.

10 At 17.16 pm, the plaintiffs replied that they were ready to pay upon presentation of the bills of lading.

11 On the following day, 16 November 1989, the plaintiffs telexed a reminder to the defendants to present the bills of lading. The defendants replied that since the plaintiffs showed by their last telex of the previous day that they had no intention of complying with the terms of the contract, the defendants had disposed of the goods.

12 In this action, the plaintiffs have claimed damages for breach of contract. The damages were US\$38,750 for loss of profit on a sub-sale of the goods and US\$6,250 being the additional sum the plaintiffs had to pay another supplier for the same goods in order to fulfil the sub-sale. The defendants denied liability, but surprisingly did not deny the amount of damages claimed even though the plaintiffs' two claims were compatible with each other.

13 The defendants denied that they were in breach of contract in failing to present the bills of lading on the grounds that (1) the plaintiffs had failed to make payment as requested and (2) the sale was subject to general condition 4 of the Sales Order that the sellers "shall have the right to demand cash before delivery notwithstanding any agreement to the contrary".

14 Both these defences have no merit. The terms of the contract are clear: payment upon presentation of the bills of lading or a delivery order. The defendants must present the documents called for before the plaintiffs were liable to pay. General condition 4 relied upon was overridden by the specific term of payment.

15 Before me, counsel for the defendants also contended that his clients had complied with the terms of the contract by inviting the plaintiffs to make payment to their bankers and collecting the bills of lading from or at the bankers.

This raises an issue as to whether in a CIF contract there is a sufficient tender in law if the sellers send the bills of lading to their bankers and request the buyers to call at the said bankers to pay for and collect them. There appears to be no direct judicial authority on this point: see the cases discussed in *Sassoon - CIF and FOB Contracts*, 3rd Ed 1984, para 244. This is not a case where payment was to be effected under a letter of credit.

16 However, the point does not call for a decision here as there is nothing in the telexes sent by the defendants to the plaintiffs which stated that the bills of lading would be available for collection at the defendants' bankers in exchange for payment of the purchase price. The plaintiffs had merely been asked to pay the purchase price to the defendants' account with their bankers.

17 There is no defence to this action. The appeal is allowed with costs here and below to be fixed and/or assessed on the applicable scale. There will be interlocutory judgment for the plaintiffs for damages to be assessed by the Registrar with interest at 6% per annum from the date of the writ to the date of assessment.

Chan Sek Keong J
