

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 175

Suit No 546/90

Between

Ohyama Shomei Kabushiki
Kaisha @ Ohyama Lighting
Co Ltd

... Plaintiff

And

New Light Electrical (Pte) Ltd

... Defendant

GROUND OF DECISION

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**Ohyama Shomei Kabushiki Kaisha @ Ohyama Lighting Co
Ltd v New Light Electrical (Pte) Ltd**

[1993] SGHC 175

Suit No 546/90
Kan Ting Chiu JC
23 July 1993

1 **Judgment:**

2 Coram: Kan Ting Chiu JC

3 **GROUNDS OF DECISION**

4 This is an appeal from an application by the Plaintiffs for summary judgment against the Defendants. The application was heard before an Assistant Registrar who dismissed it with costs.

5 The claim

6 The Plaintiffs were suppliers and manufacturers of electrical equipment. The Plaintiffs claimed that between June 1985 and May 1986 the Plaintiffs sold to the Defendants goods to the value of 74,725,200 yen, or \$636,662, and that between 20 February and 2 March 1987 the Defendants made payment of \$386,662, leaving a balance of \$250,000.

7 The Plaintiffs referred to an agreement dated 13 August 1987 in which the Defendants agreed to repay the Plaintiffs \$250,000 in four equal instalments between 14 February 1988 and 14 February 1991, with interest at 5.75% p.a.

8 The Plaintiffs complained that the Defendants only made two instalment payments. They claimed the third instalment payment against the Defendants which was due on 14 February 1990, together with interest. The Plaintiffs did not include a claim for the fourth instalment because that payment was scheduled for 14 February 1991, and was not due when the Plaintiffs' action was filed on 22 March 1990.

9 The Plaintiffs also pleaded their claim alternatively on an account stated, relying on the agreement of 13 August 1987.

10 The documents

11 There were several documents which the parties referred to -

12 1) 21 December 1984 An acceptance of a joint tender of the Plaintiffs and Defendants for the manufacture, supply, delivery, installation and commissioning of light fittings to the Westin Stamford and Westin Plaza, which the parties referred to as the Raffles City project (exhibit YS-1 to Yasunori Seri's affidavit filed on 10.7.1990).

13 2) 8 May 1985 A "basic agreement" between the parties wherein the Plaintiffs appointed the Defendants as an agent of their products (exhibit TKT-1 of affidavit of Tan Koh Tiang filed on 25.4.1990).

14 3) 14 February 1987 An agreement between the parties providing firstly, that the Defendants complete payment to the Plaintiffs in respect of the Raffles City project by 28 February 1987 and secondly, that the Plaintiffs offer financing of \$250,000 to the Defendants (exhibit TKT-2 to affidavit of Tan Koh Tiang filed on 30.6.1990).

15 4) 2 March 1987 The Defendants' payment voucher recording a credit in the sum of \$250,000 utilised to pay the Plaintiffs in connection with the Raffles City project, enabling them to tender payment of \$102,662 for a sum of \$352,662 (exhibit TKT-3 to Tan Koh Tiang's affidavit filed on 5.9.1990).

16 5) 13 August 1987 Notes of Agreement signed by the parties providing for the repayment of \$250,000 by the Defendants to the Plaintiffs in four equal instalments on 14 February 1988, 14 February 1989, 14 February 1990 and 14 February 1991 with interest (exhibit TKT-1 to affidavit of Tan Koh Tiang filed on 30.6.1990).

17 The arguments

18 When counsel appeared before me, Miss Ramachandra for the Plaintiffs raised a preliminary point on the claim based on the accounts stated on 13 August 1987. She explained that she had not proceeded on this ground before the Assistant Registrar because he was of the view that an affidavit should have been filed in support of that claim. She informed me that a further affidavit had since been filed and the Plaintiffs wanted to argue the appeal on both causes of action. Mr Lee for the Defendants very properly confirmed that he did not object to the further affidavit.

19 In the affidavits filed on their behalf, the Defendants asserted that they were appointed as the Plaintiffs' sole agents. They contended the Plaintiffs had wrongfully terminated the sole agency, and said that they would claim damages from the Plaintiffs for the wrongful termination. However, these issues were not raised by their counsel before me.

20 The Defendants did not dispute any of the documents. They did not dispute that \$250,000 was owing to the Plaintiffs on 2 March 1987 or that they had only paid two of the four scheduled payments. Their contention was that it was not owing for goods sold and delivered. The Defendants based this assertion on the payment voucher of that date. Mr Tan Koh Tiang, a director of the Defendants, said in his affidavit filed on 5 September 1990 on behalf of the Defendants, "I produced ... the payment voucher to evident that in so far as the project at Raffles City, all outstanding sums had been paid in the manners as stated in the voucher."

21 Counsel for the Defendants submitted that the sum of \$250,000 referred to in the agreement of 14 February 1987 must accrue from a credit facility and not from goods sold and delivered, and that "The cause of action must be for the credit facility and not for goods sold and delivered".

22 My Findings

23 In their Amended Statement of Claim, the Plaintiffs had stated that by 1 May 1986, the Plaintiffs had sold to the Defendants goods to the value of \$636,662 and that by 2 March 1987, after taking account the Defendants' payment of an aggregate of \$386,662, a sum of \$250,000 was then owing to the Plaintiffs. The Defendants did not deny that they owed the Plaintiffs \$250,000

on that date. Their position was simply that it was not owed as a part of the price of goods sold and delivered but that it was owing under the credit granted.

24 The documents I have referred to reflect the parties' treatment of the account. The state of affairs between the parties that emerged is that -

25 (1) immediately before 2 March 1987, the Defendants owed the Plaintiffs \$352,662 for goods sold and delivered,

26 (2) the Plaintiffs agreed to give the Defendants credit of \$250,000,

27 (3) on 2 March 1987 the Defendants used the \$250,000 credit for the payment for the goods (without the \$250,000 actually passing from the Plaintiffs to the Defendants and back to the Plaintiffs), which together with the payment of \$102,662 made a total of \$352,662, and

28 (4) on 13 August 1987 the Defendants agreed to repay \$250,000 to the Plaintiffs in four instalments.

29 On these facts, the Defendants cannot say that they had paid for the goods on 2 March 1987. What happened was that they made payment except for the \$250,000 for which credit was given and was therefore not due for payment then. The Defendants cannot equate a payment that is deferred with a payment that is made.

30 The Defendants were also wrong on the facts to make a distinction between unpaid sale price and credit facilities that are not repaid. A simple illustration will show the flaw in that argument. Z orders a suit from a tailor. When the suit is ready, Z is unable to pay for it but he assures the tailor that he

will pay when he receives his salary at the end of the month, and the tailor lets him have the suit. In this situation, the tailor is owed the price of the suit and he has given Z credit for it to the end of the month. If Z fails to pay by that time, the tailor is entitled to sue for the price of the suit, either as the price of goods sold and delivered or as the debt due for repayment. There may be a difference in nomenclature, but there is none in substance and in law. The position between the parties here was essentially the same.

31 I also considered the issue of the account stated. The agreement of 13 August 1987 recorded that the Defendants agreed and the Plaintiffs accepted repayment of \$250,000 in four yearly instalments with interest. This was a formal agreement referring to sum to be repaid and setting a timetable for repayment and the amount of interest to be paid with each instalment payment. All the elements for an actionable account stated were there - see Halsbury's Laws of England 4th Edn, Vol 9, paragraph 698 and *Siqueira v Noronha* < 1934 > AC 332. Counsel for the Defendants did not reply on this issue.

32 I found that the Plaintiffs are entitled to plead their claim as one for the price of goods sold and delivered and as a sum due and owing on account stated, and the Defendants have not raised any issue in defence thereto which merits going to trial. I therefore allowed the Plaintiffs' appeal and entered judgment for the Plaintiffs for the sum claimed, with interest and costs.

33 Lastly, there was the question whether the judgment should be stayed pending the Defendants' claim. Counsel for the Plaintiffs referred to *Anglican Building Products Ltd v W & C French (Construction) Ltd* < 1986 > 16 BLR 1 and *A B Contractors Ltd v Flaherty Brothers Ltd* < 1986 > 16 BLR 8 to show that where a claim and counterclaim arise from different contracts, a judgment

on the claim should not be stayed. On the facts, the parties had dealt with one another in at least two ways, as principal and agent, and as buyer and seller. The Defendants alleged that they have a claim against the Plaintiffs for the wrongful termination of the agency. The debt claimed by the Plaintiffs arose from the goods sold in connection with the Raffles City project.

34 I found that the Plaintiffs' claim and the Defendants' claim arose from distinct matters and that it would not be fair and sensible to require the Plaintiffs to be kept out of their money pending the determination of the Defendants' claim, especially when the Defendants do not say or show that the Plaintiffs will not be able to pay their claim if that is successful. For these reasons, the judgment for the Plaintiffs was not stayed.

Kan Ting Chiu JC

Shantini Ramachandra (Wee Ramayah & Partners) for the
plaintiffs/appellants
Lee Mun Hooi (Lee Bon Leong & Co) for the
defendants/respondents
