IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1993] SGHC 34

Consolidated Suit No 2309/1988

Between

Saniva International Pte Ltd

… *Plaintiff*

And

Elite Holdings Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Version No 1: 29 Oct 2026 (23:45 hrs)

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Saniva International Pte Ltd v Elite Holdings Pte Ltd

[1993] SGHC 34

Consolidated Suit No 2309/1988
Warren Khoo L H J
17 February 1993

1 **Judgment:**

2 CORAM : Warren L H Khoo J

3 C A V Judgment

4 By a sale and purchase agreement dated 19 July 1982, Saniva International Pte Ltd contracted to buy from Elite Holdings Pte Ltd a flatted factory unit subsequently numbered as unit #8-12 in an 8-storey building known as the Citimac Industrial Complex at MacPherson Road at the price of $578,380. The building was in course of construction, and payment of the purchase price was by instalments pegged to the progress of works. On 26 March 1984, having paid instalments amounting to 75% of the purchase price, Saniva took possession of the premises, as they were entitled to do under the contract.

5 According to Mr Vasanmal, a director of Saniva, a few days after taking possession, water was found to leak from the wall. The leak was first noticed in the corner wall in the storage area, affecting goods stored there. It later spread to the wall of the director's room. Saniva brought the matter to the attention of

Mr Chia, Elite's site supervisor. According to Mr Vasanmal, attempts were made to attend to the problem by putting plaster around the window but the problem persisted. He felt it was necessary to put it in writing. On 29 October 1984, he wrote to Elite as follows:-

6 "Please note that water leaks into our unit during heavy rains.

7 The leak is from the corner wall. This was shown sometime back to your site supervisor, who informed us that the same will be looked into. The leak still persists causing damage to our stocks. Please take urgent action and oblige."

8 Mr Vasanmal said that after this letter, Saniva continued to complain regularly to the site supervisor but nothing effective was done to solve the problem.

9 On 19 November 1985, Elite gave notice that the strata certificate of title had been issued and in accordance with the contract they gave Saniva 14 days' notice to complete the purchase. Saniva did not comply with this notice, their solicitors informing Elite's solicitors that Mr Vasanmal was abroad.

10 On 31 December 1985, the Certificate of Fitness for Occupation having been issued, Elite requested payment of $28,919, the final 5% of the purchase price.

11 On 18 January 1986, Saniva's solicitors wrote to Elite's solicitors informing them that the leak from the wall still persisted, and was particularly bad during the then recent rainy season.

12 There followed inconclusive correspondence between the parties' solicitors. Saniva took the position that until the defects they had complained of

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were put right they would not make any further payment towards the purchase price. Elite, on the other hand, took the position that the defect which Saniva had complained of in their letter of 29 October 1984 had been put right. They said that the complaints now made by Saniva were all made after the expiry of the defects liability period, and that Elite was not responsible for these complaints. They also maintained that there was in fact no more problem.

13 The defects liability period referred to is the period of twelve months from (in this case) the date of taking of possession provided in cl 22 of the sale and purchase agreement. That period expired on 25 March 1985, possession having been taken on 26 March 1984, as stated above.

14 On 3 August 1988, Elite took out the writ in Suit 1558 of 1988 claiming specific performance of the sale and purchase agreement, interest on unpaid purchase price, damages and other remedies. On 11 November 1988, Saniva countered with a writ in Suit 2309 of 1988, claiming repair or cost of executing the repair, alternatively rescission and damages.

15 Elite's attention (or inattention) to complaints

16 It is not disputed that after Saniva's letter of 29 October, 1984, Elite's site maintenance man Mr Chia did attend to the complaint. It is also not disputed that there were two areas in the unit where there was water leakage. One was the wall at the corner of the storage area, and the other was the wall in the director's room. The storage area leak was attended to by men from the building contractors. The area below the window was hacked and re-screeded to prevent water from coming in. As for the director's office, Mr Chia thought that the problem was due to some modification work which Saniva had done to the

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window. He did not get the contractors' men to attend to that. He reported the matter to his office.

17 Mr Chia says that after this, he does not remember any further complaints from Saniva.

18 Mr Chan, then Elite's Assistant Property Manager, says that when he received Saniva's letter, he referred the matter to Mr Chia. He left the matter to him. Mr Chia did not report back. Mr Chan assumed that that was the end of the matter as he did not hear of any further complaints from Saniva. Mr Chan says it was only when Elite required completion of the purchase and asked for the remaining instalment of the purchase price that Saniva raised the question of defects again.

19 Mr Chan says that he then went to the site on 2 January 1987 with Mr Yeo from the project architects and Mr Chia the maintenance man. Mr Chan says that he saw no signs of leakage in the storage area, but he did see them on the wall paper below the modified window in the director's room.

20 There are two points to note about Mr Chan's evidence. First, neither Mr Chia nor Mr Yeo, who confirm that they visited the site on 2 January, mentions Mr Chan as being with them on that occasion. Secondly, in a letter dated 6 January 1987 from the architects to Elite reporting on the site visit, only Mr Yeo's and Mr Chia's names were mentioned as parties to the "joint inspection". It is no coincidence that in a telex from Saniva's solicitors to Elite's solicitors on 7 April 1987, albeit some three months later, reference was also made only to Mr Yeo and Mr Chia as the persons undertaking the inspection on 2 January.

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21 As Mr Chan was the senior man in Elite, in comparison with Chia, the omission cannot but be conspicuous. I would treat his claim to have visited the site on 2 January with considerable reservations.

22 Mr Chan also claims to have visited the site again in July 1988 with the architect (presumably meaning Mr Yeo), the contractor, Mr Chia and a representative of the management corporation. He noticed similar signs of leakage in the director's room due to the modified window. He said that it was not possible to look at the storage area because it was fully stacked with goods.

23 Unfortunately, like his visit of 2 January 1987, this visit of July 1988 was not put to Saniva's witnesses. It is also not referred to in any of the documents produced. A letter from the architects to Elite dated 7 July 1988 speaks of a discussion on 1 July 1988 involving Mr Chan - nothing about any site visit. Mr Yeo, who says he visited the site on that date, is singularly vague as to who was with him.

24 I thus find that Mr Chan as a witness is not very helpful. Except for this. It is his view that after the management corporation of the condominium was formed, any problem with the roof was its responsibility, not Elite's, as the roof was common property. The roof guarantee from the specialist roofing sub-contractors was handed over to the management corporation. He puts the date of the formation of the management corporation as April 1986. I presume by that he means the date of the holding of the first general meeting of the subsidiary proprietors.

25 This view of Mr Chan's that the roof was the management corporation's responsibility after April 1986 is shared by Mr Yeo and Mr Chia. I have no

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doubt it reflects the corporate view of Elite. It is a view that is also conveniently shared by the architects, as represented by Mr Yeo.

26 Mr Yeo, the "architect"

27 Mr Yeo, although only a draughtsman in the project architects' firm of Arkitek Regional, was, as he put it, "delegated" the job of personal supervision of the construction of the building, including the installation of the roof.

28 The architect himself, Mr Lim Chong Kooi, appears to have taken no active part in the supervision. He certified on the recommendation of Mr Yeo, and signed letters drafted by Mr Yeo. If he exercised any control at all, it looks as if he did it mainly from his office, visiting the site once every two weeks and sometimes impromptu on his own. He appears to have been more concerned with paper work. Even after proceedings had begun, Mr Lim did not feature in discussions with officers of Elite. All in all, Mr Lim was a rather remote figure. He also did not come forward to give evidence.

29 Even Mr Yeo was not involved in dealing with Saniva's complaint in October 1984. It was not brought to his specific attention. The project had been completed earlier in the year, and he had left the site. He did not again visit the site until 2 January 1987 with Mr Chia. They only went to the director's room. For reasons which he does not explain, he did not go to the storage area. He also did not go up to the roof, which is just above the unit. He then wrote the letter of 6 January 1987 to Elite reporting on the wrongly modified window in the director's room as the cause of the seepage there.

30 Mr Yeo says he next visited the site on 1 July 1988. I have already said that he is vague as to who he went with. He says that it was to look at the storage

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area. Like Mr Chan, he says that it was inaccessible because of storage of goods, but he also says that he could see around the corner that there was no sign of any water leak.

31 The comment which I have made above about Mr Chan's alleged visit of 1 July 1988 not being referred to in the documents applies here as well. I cannot resist the conclusion that either the visit did not take place at all, or that the report of the visit has been suppressed.

32 One thing that stands out from the evidence of all these witnesses for Elite is that if their evidence is to be believed, none of them went up to the roof, which was readily accessible. This would have been an obvious place to look as the unit was one immediately under the roof. This obvious step had to await Mr Chong, the witness for Saniva. Before I deal with his evidence, however, I must say something in layman's language about the roof and how this type of roof is constructed.

33 The roof The building has what is called flat panel roofing. At the bottom is the structural roof slab, which is made of reinforced concrete. There is then laid on it a screed of cement and sand. On top of this screed is laid a waterproofing membrane. There is then an optional insulation layer, depending on the thermal requirements. Finally, there is a layer of precast cement panels, which serve as the protective layer over the whole roofing. The joints between the cement panels are filled with bitumen.

34 The roof of this building is a near square. Along all four sides are scupper drains which are intended to carry water away into discharge pipes. The roof is surrounded by parapet walls.

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35 It is common ground, as should be obvious, that in a properly constructed roof, there should be provision for rain water to be efficiently carried away and discharged. This is achieved by laying the screed above the roof slab with a proper gradient. It is common ground also that stagnant accumulation of water on any part of the panel roof is undesirable, as it could give rise to the absorption of the water by the roof slab underneath and to seepage problems.

36 Mr Chong's inspection - 17 August 1988

37 Mr David Chong has a diploma in civil engineering from the Singapore Polytechnic, and has been employed in civil engineering consulting firms for 20 years. He is the engineering manager of a firm called Engineering Development Consultants Pte Ltd. He was asked by Saniva to investigate the cause of the leak and dampness on the floor of the unit. He went to the unit on 17 August 1988 after a rain. He made a report, which was produced in evidence. He stated in his report that he found seepage of water in the walls, especially in the director's room and the storage area. Although he seemed to contradict himself when giving evidence as to the state of the director's room, I rely on his report as representing what he in fact saw.

38 On the roof, Mr Chong found substantial accumulation of water in the area immediately above the unit where the roof panels had sagged. He also found that at the far side of the roof, the concrete beams supporting a large water tank had sagged and were almost touching the surface of the roofing panels. This had resulted in improper drainage and accumulation of water. He also found that the bitumen joints between some of the panels had disintegrated.

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39 Mr Chong's conclusion is that the water seepage was due to two things: the collection of water on the leaky roof and the defective construction joint between the wall and the floor slab in the unit. This combination enables the water to be absorbed into the roof slab and seep through any porous channel and find its way through columns and external walls to the floor slab.

40 Mr Goh's inspection 27 January 1992 Mr Goh York Lin, Elite's expert witness, is a graduate in Building Surveying. He was instructed by Elite to carry out a survey of the premises for the purpose of these proceedings. He carried out his inspection after a rain on 27 January 1992. Like Mr Chong, Mr Goh saw stagnant water on the roof above the subject unit. But he also saw that the roof panels above the unit had heaved. This he says has been due to thermal expansion of the entire roof forcing the panels off their bed. This obstructed the flow of water. He did not feel it necessary to see other parts of the roof. He was clearly unhappy with what he did see. He says : "I saw what I needed to see above the unit. It was in an undesirable state."

41 Within the unit itself, Mr Goh says he did not notice any sign of dampness on the floor of the storage area. Generally, he found no recent sign of water intrusion. However, there are signs of previous water intrusion under the window in the director's room, which he attributed to the inept modifications to the window. Mr Goh used a protimeter, an instrument which measures dampness in building materials. He found negative readings in all areas which he checked, including the walls of the director's room. However, he did not check the floor of the storage area.

42 Outside the unit, on the wall of the staircase leading up to the roof, Mr Goh saw water marks, indicating, according to him, water seeping from the roof, through the waterproofing membrane.

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43 Site inspection by court 12 February 1992 I visited the site on the morning of 12 February 1992 in the company of representatives of the parties and their respective counsel. Mr Chong and Mr Goh were also in the party. It was a fine day. The roof was generally dry. After the visit, evidence on what was found was adduced in court through Mr Goh. In setting out this evidence, I shall not repeat unnecessarily what Mr Goh had seen on his visit only some two weeks before, which I have set out above.

44 The cement screed along the scupper drain on the roof side had cracked generally along its whole length. There was also heaving of the panels along the scupper drain. There were cracks in the roof panels, though not in those above the subject unit.

45 Most of the bitumen joints between the roof panels had disintegrated. The bitumen in the scupper drains had also disintegrated.

46 The sagging water tank supporting beams which Mr Chong described in his report were still there, and there was stagnant water on the roof in that area.

47 There were water marks on the wall of the staircase leading to the roof which Mr Goh had seen earlier.

48 Inside the unit, there were water marks (although no discoloration) on the roof beam immediately below the roof slab along the top of the wall. However, there was no sign of water intrusion below that.

49 In the director's room, there was extensive peeling of wall paper under the modified window. There was no peeling of wall paper under the other

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windows. Generally, however, both in the director's room and in other parts inside the unit, there was no sign of dampness.

50 We saw evidence of recent repair or attempts at repair. On the roof, new strips of water-proofing membrane had been added around the bottom of the shoring of the parapet walls. New bitumen had also been applied to the edge of the scupper drain on the parapet wall side. Inside the unit itself, there was evidence of recent repair of the construction joint between the wall and the floor slab in the storage area. There is no evidence as to when or by whom all these repairs had been done.

51 What it all means I accept Mr Goh's evidence that the window in the director's room had been modified in a wrong way. Among other things, Mr Goh says that there was no provision for the drainage of water through weep holes on the outside of the window. I also accept his evidence that the peeling of the wall paper was due to water seeping through the window sill.

52 Apart from this, there can be little doubt that the source of the seepage problem in Saniva's unit is and has always been the roof.

53 When Mr Chong saw the roof in August 1988, barely four years after completion of the building, he already found that parts of it had sunk, allowing water to accumulate, particularly above Saniva's unit. This was confirmed by Mr Goh, who visited the premises in January 1992.

54 Mr Goh, however, found, in addition, significant heaving of parts of the roof, due, according to him, to inadequate provision for thermal expansion. This causes further gradient and drainage problems.

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55 Mr Chong explains that the stagnant water finds it way through the roof slab and seeps down through columns and walls to the floor slab. This explanation is aptly demonstrated by the presence of water marks on the staircase wall. Mr Goh agrees that these are from water seeping through the roof. It is also demonstrated inside the unit by the water marks in the roof beam. Although Mr Goh says that they could be due to leakage from the parapet wall or other causes as well as from the roof, in the absence of evidence of such other causes, the roof appears to me to be the best candidate. Water seepage in buildings being such an intractable thing, I am also not troubled by the fact that there is no sign of water intrusion on the wall below the roof beam. There is no direct evidence of the condition of the roof before Mr Chong's visit in January, 1988. I think that on a balance of probabilities the same problems of improper drainage and probably inadequate sealing had already started.

56 I accept Mr Vasanmal's evidence that after his letter of 29 October 1984, the problem was never put right.

57 I accept Mr Chong's evidence that on his visit in August 1988, he found dampness in the storage area and the director's room. It is exactly what Mr Vasanmal had been complaining of since he moved in.

58 I am not surprised that there were no signs of dampness on Mr Goh's visit in January 1992 and on the court's visit some two weeks later. The spot patching up with fresh membrane and fresh bitumen must have done its work of temporarily arresting the problem. It is probable that these stop-gap repairs to the roof and to the joint between the wall and floor slab were done after Mr Chong's visit but before Mr Goh's. It is obvious that these efforts do not begin to address the underlying problem.

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59 The evidence leaves no doubt in my mind that in the installation of the roof the quality of workmanship or material had been seriously compromised. The subsidence of the roof above Saniva's unit, the heaving of the roof panels and the cracking of the roof panels on a roof less than 10 years old, all point to something seriously wrong in the construction of the roof, bearing in mind that it carries a guarantee of 10 years. I exclude from consideration in this connection the disintegration of the bitumen joints. I accept the evidence of Mr Chong and Mr Goh that weathering contributes or causes the disintegration, and that the bitumen needs to be renewed at intervals of every few years. However, Mr Goh also says that waterproofing depends more on the membrane than on the bitumen, although I have no doubt the bitumen helps.

60 The cracking and sagging of the water tank support are a more serious matter. According to Mr Chong, a collapse of the support would have disastrous consequences. So far as its effect on the roof leak problem is concerned, Mr Goh agrees that if the level of the water-proofing membrane here is higher than that over the subject unit, there is a possibility of the stagnant water finding its way to above the unit, although it is more likely to flow to the scupper drain along the far side of the roof.

61 The deficiencies in the workmanship and material must have been made possible by a near total lack of professional supervision during the construction of the roof. It is rather disturbing that the architect of the project should have taken such scant interest in a project that bore his name.

62 It is also extraordinary that Mr Yeo, his alter ego, when told of Saniva's complaints in 1987, did not go up to the roof. It must have been obvious to anyone that that part of the building could be a source, if not the source, of the problems. Mr Yeo simply fastened the fault on the modified window in the

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director's room. He did not even investigate the complaint about dampness in the storage area with any seriousness.

63 Elite's attitude The same lackadaisical attitude has also characterised Elite's approach to Saniva's complaints.

64 I have already referred to the view held by all those who have spoken on behalf of Elite that Elite's responsibility for any defect ended with the formation of the management corporation.

65 I am driven to the conclusion that, from the start, as far as they applied their mind to the matter at all, Elite decided to do no more than a palliative job of meeting Saniva's complaints, to do just enough to keep Saniva quiet until the management corporation took over the responsibility. This is a mistaken view, and, I might say, a cynical one.

66 I find that Elite was in breach of their contractual obligation to deliver the factory unit constructed in a good and workmanlike manner, and they remain responsible to Saniva under the contract.

67 Clause 22 of the contract Clause 22 of the contract, on which Saniva rely, reads as follows : "Any defect, shrinkage or other fault in the said unit which shall become apparent within a period of twelve (12) calendar months after the date of delivery of vacant possession to the Purchaser ... and which shall be due to defective workmanship or materials or to the said unit not having been constructed in accordance with the said specifications and plans ... shall be made good by the Vendor at his own cost and expense within one (1) calendar month of his having received written notice thereof from the Purchaser."

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68 Approaching this case solely on the provisions of this clause, I find that the defective works due to defective workmanship or materials had been brought to the attention of Elite within the period of one year from the date of taking possession. I think that Saniva did all that they could reasonably be expected to do to bring to the attention of Elite the defect or fault within that period. The written notice given on 29 October 1984 was in sufficient terms. Although the source of the leak was in the roof, it was not incumbent on Saniva to specify it, any more than a person who goes to a doctor has to tell him the cause of the disease as well as the symptoms. The fact that further leaks were discovered after the one year period in my view does not assist Elite. It is only proof of the failure on the part of Elite to tackle the root of the problem in the first place.

69 I do not have to decide whether Saniva's rights under the common law in respect of the defects have been displaced by clause 22. I would hardly think so. Nor is it necessary for me to decide whether Saniva could make claims at any time within the normal limitation period and is not restricted by the 12-month period specified in the clause.

70 Saniva therefore succeed in Suit No 2309 of 1988, and Elite therefore fail in Suit No 1558 of 1988. Elite have chosen to contest Saniva's claim on their own, without joining others who might be responsible. They will have to bear the consequences themselves.

71 I wish to hear the parties as to the most convenient and appropriate orders to make in view of my findings, particularly concerning the question of repair.

72 Dated this 17th day of February, 1993.

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Warren Khoo L H J

M Rasanayagam for the plaintiffs in S 1558/88, defendants in S 2309/88
P Suppiah for the defendants in S 2309/88, defendants in S 1558/88

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