IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 33

S6059/1986

Between

PH Hydraulics & Engineering Pte Ltd

… Plaintiff

And

See's Engineering Company (Private) Limited

… Defendant

GROUNDS OF DECISION

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

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PH Hydraulics & Engineering Pte Ltd v See's Engineering Company (Private) Limited

[1994] SGHC 33

S6059/1986
Amarjeet Singh JC
14 February 1994

1 **Judgment:**

2 Coram: Amarjeet JC

3 **Cur Adv Vult**

4 J U D G M E N T

5 INTRODUCTION

6 The Plaintiffs and Defendants entered into two Agreements whereby the Plaintiffs would manufacture and sell and the Defendants would buy pursuant to Purchase Orders, P.O. No. 860131 made on 27.6.1986 and P.O. No. 800145 made on 25.8.1986 twenty-four pieces of N2A Hydro- Line Cylinders as follows:

7 P.O. No. 860131 1) 16 pcs - N2A - 8" Bore x 9" stroke x 5+" Rod - $2,302.95 $36,847.20 (As per drawing to be approved)

8 2) 6 pcs - N2A - 10" Bore x 11" Stroke x 7" Rod - 5,481.45 $32,888.70 (As per drawing to be approved) ---------- $69,735.90 P.O. No.800145 2 pcs - N2A - 6" Bore x 7" Stroke x 4" Rod - $1,424.00 $2,848.00 (As per drawing to be approved)

9 Each of the purchase orders had an identical note:

10 "As confirmed by PH Hydraulics, you will be responsible to ensure that all specifications and dimensions of your cylinder conform with the Parker cylinders we are currently using".

11 Delivery was to commence within 8 - 10 weeks from the date of the first Purchase Order.

12 Apart from the above order, the Plaintiffs also ordered 24 pieces of lock nuts and agreed to pay an agreed amount of shipping charges. The total value of the purchases made by the Defendants was thus $77,044.22cts.

13 After the cylinders had been manufactured, the Defendants refused to take delivery resulting in this Suit being brought against them in which they set up a Defence and an Amended Counterclaim for loss of profit of $59,588.89cts. as they had contracted to sell Parker hydraulic presses which they manufactured driven by the hydraulic cylinders to be delivered by the Plaintiffs under the Purchase Orders to Tanya Siam Trade Limited ('Tanya Siam') in Thailand.

14 The undisputed facts as characterising the activities of the Plaintiffs and the Defendants and the functioning and working of the hydraulic cylinders that were ordered will first be set out, followed by the facts in dispute and a statement of issues raised.

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15 UNDISPUTED FACTS

16 The Plaintiffs are licensee manufacturers of Hydro-Line Cylinders a brand name manufactured by their principles in the USA since 1976. They advertised their products and services in the Singapore Commercial/Industrial Guide in which apart from listing the product names they sold, one being the Hydraulic Hydro-Line cylinders, they stated that they specialised in "Custom Built hydraulic Cylinders, Power Pac hydraulic Design, Fabrication, Installation and Servicing".

17 The Defendants were an engineering company and were licensee manufacturers since 1984 of a company in the USA called Pacific Press and Shear Corp. ('Pacific'). They were licensed to manufacture hydraulic presses in Singapore. Their licence lapsed after 1987. These presses known as Pacific Presses could then be sold by the Defendants either back to the licensor in the USA or direct to the Asian market. The Defendants entered into the Agreements referred to earlier after seeing the Plaintiffs' advertisement in the Singapore Industrial/Commercial Guide.

18 The Pacific Press is a hydraulic press that bends and forms steel plates into different shapes when placed on a mould. The pressure required to do this is produced from a hydraulic cylinder - a separate component and each Pacific Press uses two identical cylinders. The hydraulic cylinder in a Pacific Press has a specific design. It is manufactured by the Parker Haniff Corp. USA and is commonly referred to as a "Parker Cylinder". Pacific used Parker cylinders in their Pacific Presses.

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19 It was common ground at the hearing that apart from the Hydro-Line and Parker brand of cylinders there were many other competing brands of such cylinders manufactured in the USA. Each brand name of cylinder could be slotted and mounted and work any brand of hydraulic press including a Pacific Press if it followed the external design and dimensions set by the National Fluid Power Association ("NFPA") in its standard language and pattern which is recognised by manufacturers and users of hydraulic presses. The internal design of the cylinder is not governed by the NFPA standard and any brand of hydraulic cylinder manufactured in the USA has its own unique feature which sets it apart from that of its competitors' brand and is its selling point.

20 As such, both the Parker and Hydro-Line had their own exact internal dimensions and its unique characteristics for its hydraulic cylinders amongst which were its own patented oil seals. It is important that the oil seal in the cylinder sits snugly in a groove on the circumference at the end of the piston and fit the cylinder bore exactly so that there is zero oil leakage from the upper compartment into which oil is fed and enormous pressure is built to drive the piston down the cylinder. The pressure creates a down stroke, resulting in a 'pressing' or 'bending' function. The oil seal is essentially designed to prevent zero leakage of oil to the lower compartment and thus to develop and retain the tremendous built up of pressure in the upper compartment.

21 The Parker Hydraulic Cylinder had a barrel or bore size or tolerance from the nominal value as follows:

22 i) Nominal 6" bore- 6.003" ii) Nominal 8" bore- 8.003" iii) Nominal 10" bore- 10.003"

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23 A patented Parker oil seal therefore matched the actual bore size of a Parker cylinder or the decimalised tolerance i.e. 6.003", 8.003" and 10.003" apart from any special feature incorporated in it.

24 The Hydro-Line cylinder barrel or bore in a field of micro measurements was larger and similarly stated was:

25 i) Nominal 6"- 6.03" ii) Nominal 8"- 8.03" iii) Nominal 10" - 10.03"

26 A Hydro-Line oil seal accordingly would have a size corresponding to the figures 6.03", 8.03" and 10.03" bore of its own make of cylinder.

27 It is clear that from the different internal dimensions of the Parker cylinder and Hydro-Line cylinder or their tolerances that the oil seal of the Parker hydraulic cylinder was not replaceable with the seal manufactured for the Hyrdro-Line cylinder and vice versa. Each other's oil seals would misfit the bores of their respective hydraulic cylinder causing oil to probably leak to the lower chamber which would in turn have the effect of reducing the optimum pressure in the cylinder.

28 It was also clear and undisputed that each category of Hydro-Line cylinder ordered by the Defendants which came with its patented Hydro-Line oil seal could be slotted and mounted on the Defendants' Pacific Press and work just as efficiently as if the same was run by a Pacific cylinder with a Pacific oil seal fitted into it.

29 The Defendants, however, rejected the Hyrdo- Line cylinders because they wanted to use and/or export the Pacific presses they manufactured under licence fitted with the Defendants' Hydro-Line cylinders that would use only

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Parker oil seals and since Parker oil seals could not be used for the reasons given, it was the Defendants' case that the Plaintiffs had failed to observe and comply with the terms of the Agreements referred to earlier.

30 THE DISPUTE

31 The Plaintiffs' Evidence

32 The Plaintiffs' case was that in early April the Plaintiffs' Sales Manager Clifton Leong Choon Peng, PW1, began negotiating with the Defendants' General Manager Cliff See DW2 and the Defendants' Managing Director See Fong Mun, DW1 who was also the father of DW2 over the manufacture and sale to them of hydraulic cylinders. The Defendants gave the Plaintiffs a copy of a drawing Exh. AB1 containing the external dimensions and measurements of hydraulic cylinders designed by the Pacific Press and Shear Company. The bore size of the cylinder was stated to be 6", 8" and 10". Following the discussions, the Plaintiffs sent to the Defendants the Plaintiffs' drawings, Exh. AB3 based on Pacific's drawings Exh. AB1 and a telex dated 10.4.86, Exh. AB2 containing the Plaintiff's quotation for Hydro-Line N5A series cylinders. The Plaintiffs' Managing Director Chua Chin Nam, PW3 took over the negotiations when DW1 left for reservist training. In further discussions with the Defendants, PW3 offered Hydro-Line Cylinders of the N2A series instead with a price quotation to the Defendants because they had a bigger tube seal and larger bush rod assembly whilst conforming to the same NFPA standard dimensions and specifications. Drawings in Exhs. AB3, AB6, AB9 and AB10 based on Exh. AB1 had also been sent to the Defendants. Eventually by their Purchase Orders made on 27.6.86 and 25.8.86 the Defendants agreed to buy the N2A series of Hydro-Line cylinders as stated in the Purchase Orders. It was the Plaintiffs'

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evidence that the phrase "As per drawing to be approved" in the two Purchase Orders was the identical phrase as contained in the Plaintiffs' telexes which the Defendants' clerical staff had simply retyped in the Purchase Orders after stating the items and their description and that as the Plaintiffs' drawings were submitted earlier to the Purchase Orders they had already been orally approved further impliedly approved when the two Purchase Orders were signed by the Defendants and that a separate approval of the drawings was not required nor was ever thought to be required by the parties as the Defendants' drawings were based on Exh. AB1, being Pacific's drawing. The Plaintiffs went ahead to manufacture the Hydro-Line cylinders on receipt of the Purchase Orders.

33 More specifically, the evidence each of PW1 and PW3 concerning the disputes may be stated as follows:

34 PW1

35 PW1 had stated in his first quotation dated 10.4.86, Exh. AB2, that "The Hydro-Line N5A series are exactly equal to the Parker as they are all NFPA standards. PW1 explained that he had the Defendants' drawings Exh. AB1 in mind and thus by using the words "exactly equal" meant that the outside dimensions and the mounting arrangement were the same as the Parker cylinder because they both conformed to NFPA standards. The Hydro-Line cylinders being only .03" larger than the nominal size fell within the nominal categories of 6", 8" and 10" cylinders. In referring to the drawing Exh. AB1 he said it showed the end, front and top views. The various measurements in the columinised table in Exh. AB1 were all of the NFPA external standard. The internal measurements were not shown. The exhibit also contained certain requirements one of which was that the mounting is NFPA style MS2. PW1 said

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DW2 also showed him an assembled Parker cylinder. He also stated categorically that his impression at the discussions was that the Defendants wanted an NFPA standard cylinder with all the external sizes and dimensions given and he then sent the Defendants' drawings Exh. AB3 similarly of the external sizes and dimensions and his telex dated 10.4.86. He also sent out Exh. AB11 to the Defendants which explained which components of the Hydro-Line cylinders were local content and which were imported from the USA. Amongst the imported components from their Licensor were the barrel, the piston and the seal kit. He explained that the barrel was of the bore sizes of the 6" or 8" or 10" cylinders. The Plaintiffs did not manufacture these and other items. They were imported from the USA as stated clearly in the said telex Exh. AB11. He said he sent the telex to the Defendants as DW2 must have asked what parts were imported and what were being locally made.

36 PW1 further stated:

37 i) there was no mention by the Defendants to him of the internal dimensions of the cylinders ordered. ii) the dimensions 6", 8" and 10" were to be interpreted as the sizes of the classes of cylinders and that in absolute terms the numbers meant the nominal internal diameter. iii) that it had never been mentioned to him that a Parker cylinder had to use Parker oil seal or that the cylinder the Defendants wanted the Plaintiffs to build had to use a Parker oil seal. iv) that the Plaintiffs' main business was to build Hydro-Line series of cylinders and in respect of the question by Defence Counsel that the Plaintiffs had undertaken to build a "custom built cylinder" for the Defendants, that when building a Hydro-Line cylinder the Plaintiffs were also at the same time engaged in custom building it according to the customers' requirements in this case based on the drawings. v) that if the Plaintiffs built a Hydro-Line cylinder with all its

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dimensions and specifications with reference to the internal specifications identical to the Parker cylinders, the Hydro-Line cylinders would be an exact replica of the Parker cylinder and it would infringe on the patent rights of the Parker cylinders and would no more be a Hydro- Line cylinder. vi) that a Miss See, DW3 a clerical staff of the Defendants sent him a proforma being Exh. P4, which document was a Sample Format Cost Statement for Export of a Product to the USA and told him to fill up the cost details of the Hydro-Line cylinders the Plaintiffs were going to supply as they were to be sold in the USA. The request was made before the first Purchase Order Exh. AB7 was signed. He had the form filled up, dated 28th May 1986 and signed by PW3, the Plaintiffs' Accountant and himself and sent the required information to Miss See of the Defendants whilst retaining the original photocopy of the proforma form duly filled up which was the Exh. P4 (and PB1 in the Plaintiffs' Bundle).

38 The Defendants' Counsel had objected to the admission of Exh. P4 stating that the Plaintiffs had not included this document in the List of Documents. The Plaintiffs' Counsel's reply was that the Plaintiffs had missed including the document in the List as its significance had not been realised. I overruled the Defendants' objection and admitted the document Exh. P4 in evidence. PW1 disagreed when it was put to him that the Defendants never gave him such a proforma form and pointed to the Model No.54940-301, 54940-302 and 54940-303 on Exh.P4 which referred to the drawing numbers shown on Exh. AB1 given to him by the Defendants. He further denied when it was put to him that Exh.P4 was an application by Plaintiffs for export to USA and not for the Defendants' purposes.

39 PW3

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40 PW3 gave evidence in similar vein as PW1 on the interchangeability of cylinders with the NFPA, MS2 standard relating to the outside dimensions, that the Defendants never specified the internal dimensions and that it was not necessary for him to even ask for internal dimensions from the Defendants as Hydro-Line's internal design was peculiar and exclusive to their line of cylinders and that whilst in theory if they wanted to build a cylinder with the internal dimensions of a Parker cylinder it could be done but the Plaintiffs could not infringe Parker's patent by making the same features as inside. He repeated that Exh. AB8 the Plaintiffs' quotation culminated in the Purchase Order made on 27.6.86 and received by them on 4.7.86 only after discussions. The Plaintiffs could not simply machine-tool identical Parker cylinders and thereby pirate them. He stated that just as the barrels of the specific class of 6", 8" and 10" bore came from their Licensor in the USA so did the oil seals which were an integral part of the cylinder. The seals depending on the size cost between $120/- to $200/- a piece. He further explained that by stating in the Singapore Commercial/Industrial Guide under the Plaintiffs' advertisement that the Plaintiffs' custom-built cylinders it meant that whilst selling Hydro-Line cylinders they could tailor make the stroke length that customers required in respect of the rod of the cylinder. Whilst using Hydro- Line parts and components, this rod could be made variable.

41 He emphasised that the nominal number for example a 6" Hydro-Line cylinder did not mean it was to be 6" i.e. that the internal diameter had to be 6". The number merely reflected the class of cylinder. In engineering terms if the Defendants wanted 6" precisely then they should have stated 6.00" i.e. by adding the decimal point and the two zeros. Thus he referred to Exh. AB1 supplied by the Defendants where column F gave measurements to three

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decimal points. As compared to that, the cylinder bore column merely stated 6", 8" and 10". When Defence Counsel put the Plaintiffs' case as:

42 "Q. Put: When Defendants said in heading Exh. AB7: N2A Hydro-Line cylinders they meant a N2A Hydro-Line cylinder with N2A features except for a cylinder bore whose internal diameter could be used to accommodate Parker oil seals?". PW3's answer was:

43 A. That is totally untrue. It cannot happen that way".

44 DW3 also stated that Exh. P4 had been signed by him as well as PW1 and the Plaintiffs' Accountant as DW2 had mentioned to him that the Defendants were re-exporting the manufactured cylinder by the Plaintiffs to the US to gain tax preference.

45 PW3 further testified on the events surrounding the rejection by the Defendants of the Hydro-Line cylinder when delivery was to be effected. Although the cylinders were completed in September, DW1 and DW2 only came to the Plaintiffs' factory on 16th October 1986 to inspect them. DW1 then complained the cylinder bush rod was made in grey iron whereas the Defendants had asked that it be in bronze. He told them that it was a standard bush that had been offered in the Plaintiffs' quotation. Both DW1 and DW2 left the factory with DW1 who did the talking telling him that they would let him know when they would pay up and take delivery. Telephone calls and telexes sent did not yield a response from the Defendants to take delivery until 18.11.86 when the Defendants alleged by telex that the cylinders manufactured by the Plaintiffs did not accord with Parker's specifications notwithstanding that they had asked their US principals to accept the deviance in specifications but without avail and

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that if the Plaintiffs were unable to supply the Defendants with appropriate cylinders the Defendants would seek an alternate source. The Plaintiffs replied stating that the Defendants' allegations were unfounded and had not raised the question of the deviation of the dimensions and specifications at the inspection on 16.10.86. In a telex sent on 5.12.86 the Defendants re-asserted their position and further added that the Plaintiffs had requested the Defendants to request their US principals, Pacific, to accept the cylinders and would provide two extra sets of spare oil seals to them but this was not acceptable as it was Pacific's policy not to be tied to one particular supplier for replaceables i.e. the spare seals in this case. PW3's answer to the offer of the free oil seals by him was that the Defendants had left him hanging by refusing to take delivery. The problems raised by the Defendants was over the future purchase of Hydro-Line oil seals as spare parts and since Pacific did not want to pay and carry Hydro-Line inventory in respect of the Hydro-Line oil seals as they had their own brand he was prepared to give away two free oil seals to enable the Defendants to take delivery of the cylinders as he would not be able to sell the cylinders to anyone else because it was specially made to fit the Defendants' press which had a certain size stroke to work the press. PW3 further denied he did not manufacture the cylinder according to the Parker's cylinders' internal dimensions because he subsequently wanted to sell the Hydro-Line oil seals as spare parts.

46 The Defendants' Evidence

47 DW1

48 DW1's testimony was that he entered into the Purchase Orders after seeing the Plaintiffs' advertisement in the Singapore Commercial/Industrial Directory and holding various discussions with PW1 and PW3 to source

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hydraulic cylinders locally because of the high cost of obtaining them from the USA. As the Plaitniffs could custom-built hydraulic cylinders he gave them orders to custom-built the Pacific type of 6", 8" and 10" cylinders. The Defendants gave the Plaintiffs Exh. AB1, the external design of the Pacific cylinders for use in a Pacific Press and told the Plaintiffs the hydraulic cylinder had to be manufactured according to "our" drawing and specifications.

49 DW1 admitted that Exh. AB1 was a drawing of the external dimensions of the Pacific Hydraulic cylinder and that whilst the mounting in Exh. AB1 was of the NFPA standard the rod end and oil parts were not of the NFPA standard. The rod end was also shown in Exh. AB1 and was peculiar to the Pacific Press. He however agreed that the Plaintiffs met with his requirements upon discussion to provide bigger tube seals and longer rod bush assembly in the cylinders upon their manufacture when the Defendants agreed to buy the N2A series of Hydro-Line cylinders instead of the N5A series.

50 DW1's major complaint was that the Hydro-Line cylinders eventually provided could not use Parker oil seals which Parker was manufacturing for their own cylinders and which were compatible and being used by Pacific in the Pacific cylinders since Pacific did not manufacture the oil seals. The bores of the Pacific and Parker cylinders was compatible although they had variable rod ends. As such, the Defendants' principals i.e. Pacific would not permit the use of any other make of oil seals. Further, Parker oil seals as spare parts could be easily brought in Singapore.

51 DW1's further evidence was that at the time of the negotiation and before the Defendants signed the Purchase Order Exhs. AB7 and AB17 he showed PW1 a Pacific cylinder and told him it is of Pacific design and used a Parker

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seal and that the internal measurement of the oil seal must follow the Parker specification i.e. the piston had to be assembled with Parker oil seals but that he left the internal style to the Plaintiffs. He then explained that the words "all specifications and dimensions of your cylinders...." in the terms of the agreement that the Plaintiffs were "to ensure that all specifications and dimensions of your cylinder conform with the Parker cylinder we are currently using" meant that he was referring to the oil seals as that was the main product inside. On the drawings DW1 admitted that Exhs. AB6, AB9 and AB10 were drawings of the Plaintiffs in respect of the external design of the cylinders submitted to the Defendants. The Defendants did not need to approve the drawings as they were based on the Pacific drawing Exh. AB1 sent earlier held by Defendants to the Plaintiffs. In his cross-examination, DW1 however stated that he never did approve the drawings Exhs. AB6, AB9 and AB10. On further questioning that he had already issued the Purchase Order Exh. AB7 for the N2A series and that such conduct involved approving the drawing he stated that he required drawings of the internal design of the cylinders from the Plaintiffs and that they never supplied the internal dimensions. He disagreed that the drawings referred to in Exh. AB5, AB7 and AB8 were those required of the external measurements. He then agreed with Plaintiffs' Counsel that if he had asked for the internal design he would not without receiving it have issued the Purchase Order Exh. PB7. He further agreed that he did not write to the Plaintiffs asking them for the internal drawings from June to October 1986. When Plaintiffs' Counsel further brought to his attention Exh. AB11 which was sent to the Defendants informing them of the parts of the Hydro-Line cylinders ordered from USA such as the barrel oil seal kits etc. to be used in the manufacture of the cylinders he stated that he had expected the reference to the seal kit to be that of a Parker seal kit.

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52 DW1 in his evidence referred to Exh. DB13 - 25 a Parker Polypak Seal Design Handbook. It showed a chart Exh. D17 which told an owner of a hydraulic cylinder having a particular bore diameter of exactly what type of oil seal to use (under column Polypak Part Nos.). The chart showed nominal value bores from 5.5" through to 11 inches including bores of 6", 8" and 10". It also showed the maximum tolerance size for a Parker oil seal against the bore size for e.g. if the cylinder was 6" bore diameter the maximum tolerance was +.003 to .009. When asked if the Exh. DB13 - 25 had been given to the Plaintiffs, DW1 said it had not been given. When further told that the Plaintiffs would therefore not know what tolerance was required for what spare part, his answer was that a designer would know. DW1 was also referred by Plaintiffs' Counsel to Exh. DB26 - 40 a brochure relating to cylinders produced by Hydro-Line which he admitted receiving from the Plaintiffs and which also showed the nominal value of the Hydro-Line cylinders in 6, 8, 10 inches etc. but to which he did not pay much attention to them.

53 Finally, DW1's evidence was that in respect of the inspection on the 16th October 1993 he rejected the cylinders built by the Plaintiffs as on measurement of the bores of the respective cylinders with a caliper he found them oversized by .03" contrary to Pacific cylinder dimensions. This led later to correspondence with each side maintaining its position and PW1 offering him two free oil seals to persuade him to take delivery of the cylinders but he could not because of his principals' rejection of the cylinders as they wanted to use Parker oil seals. He stated he had a solution for the Plaintiffs i.e. they could go to a company Watt-Ackermann to spray a thin layer of metal on the cylinder wall so that a Parker oil seal would fit the reduced bore. PW3 rejected the solution.

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54 On the Counterclaim of $59,588.89cts. DW1's evidence was that the loss of profit was based on Exhs. DB43 to DB52 being cost sheets for parts assembled by Plaintiffs into the hydraulic presses to be sold to Tanya. These exhibits were computer based. He admitted there were no original invoices of the parts bought to substantiate the figures.

55 DW2

56 DW2 as General Manager oversaw the daily administration, sales and purchase of engineering components of Defendants. He stated repeatedly that the Plaintiffs had been told several times that the cylinders used on Pacific presses carried Parker oil seals. The Plaintiffs must only manufacture cylinders that could only use Parker oil seals and that's what the Defendants expected and it would be the essence of the contract and the essence of the contract was made known to the Plaintiffs from day one. However, he agreed when it was suggested to him that that essence was not expressed in any document nor did he know why if the Defendants told the Plaintiffs so many times orally that Parker seals had to be used in the cylinders to be manufactured by the Plaintiffs, yet they went ahead and did not comply with what they were told. He further stated that he believed the reference to the seal kit referred to in Exh. AB11 sent after the Purchase Order was made referred to a Parker seal kit which was being ordered from the USA. As far as he was concerned, the phrase in the Purchase Order "specifications and dimensions" relating to the condition precedent to be satisfied by the Plaintiffs as to conformity could only refer to the specifications and dimensions of a Parker oil seal - that "specifications" referred to Parker oil seals and that "dimensions" referred to the respective sizes and tolerances of the Parker oil seals.

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57 He admitted that the statement in the Plaintiffs' first telex dated 10.4.86 'The Hydroline N5A Series are exactly equal to the Parkers as they are all NFPA standards" was a general statement and that it referred to external NFPA standards and not the internal specifications. The following questions and answers in cross-examination by Plaintiffs' Counsel in relation to the construction of the cylinders is revealing:

58 Q: In respect of the hydraulic cylinder would you say that all the specifications of the Licensor were contained in AB1 - the Pacific Press & Shear Co. diagram? A: No. This diagram AB1 only contains the cylinder assembly information and details. Q: Meaning the outer dimensions of the cylinder? A: Yes Q: What about the internal dimensions and specifications of Pacific hydraulic cylinder would there be another diagram? A: There is no other diagram containing the internal design. It was stated to us that the cylinders should use Parker oil seals. x x x x x x Q: None of the Parker blue prints mention about Parker oil seals? A: I am not certain about that. x x x x x Q: Was there any requirement in the licence agreement that specially stated only Parker oil seals were to be used in the cylinder? A: No Q: I put it to you the reason why Parker oil seals were used in Pacific Presses hydraulic cylinder was that they were Parker made? A: Yes.

59 DW2 also summarised the differences between a Parker cylinder and that of other makes by stating that:

60 i) the Parker cylinder had their own versions of N5A or N2A. ii) their cylinder bore had a tolerance of between .003 to .009 in respect of their nominal sizes 6", 8" and 10". iii) the oil seal is made to complement the cylinder.

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61 In further Cross-Examination, DW2 was referred to his Affidavits filed in the Order 14 proceedings and in particular to BA1 to 8 and BA35 - 45 filed on 4.5.87 where in the latter Affidavit (pgs 36/37 para.5) he had taken the stand that the Plaintiffs wanted duplication of Parker cylinders:

62 "The Defendants had never ordered cylinders which would be merely compatible with and not the exact duplicate of Parker cylinder".

63 DW2 confirmed what he said but explained what he meant by his statement as follows:

64 "....By such a statement, it is understood in this industry that you will make an exact duplicate in relation to the external dimension and according to the details of the drawing. It is only implicit that the internal design of a cylinder is not expected to be duplicated because that is the only area of a cylinder that has proprietory rights....."

65 DW2 when referred to a telex dated 5.12.86 sent to the Plaintiffs in reply to their telex dated 2.12.86 in which the Defendants had used another formula that "all your parts to be interchangeable with our Parkers" explained that that phrase referred to the oil seals as that part only needed servicing or replacement. He agreed however that the Plaintiffs had no authority to make Parker type cylinders as the internal style cannot be duplicated.

66 On the question of the inspection on the 16th of October 1986 of the manufactured cylinders at the Plaintiffs' factory, DW1's evidence was that he could not recall if the Plaintiffs made an outright rejection of the cylinders and that perhaps the conversation was about how the matter could be resolved of finding ways of using Parker seals. He agreed however that nothing had been

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stated in the Defendants' telex dated as late as 18.11.86 in reply to that of the Plaintiffs of the same date about oil seals. He could not say that up to 18.11.86 whether a dispute had already arisen arising from the inspection on 16.10.86. He then stated that the dispute only started when Plaintiffs wanted to go to the lawyers. Yet he agreed that in his Affidavit BA37 at paragraph 6 he had stated that the Defendants immediately told the Defendants they would not take delivery of the goods after inspection as the bore size of the goods was not in accordance with the specifications.

67 In respect of the Counterclaim, DW2's evidence was that on 22.5.86 the Defendants entered into a contract to sell Tanya Siam 10 pieces of Pacific Presses for a total of $403,612.44cts. with progressive delivery in November 1986, January, March and May 1987. Ninety percent of the pruchase price was to be paid upon notice of shipment (DB6). The presses were pre-sold in view of the impending order for the 8" and 10" hydraulic cylinders being negotiated and placed in June 1986 with the Plaintiffs. In view of the non compliance by the Plaintiffs of their term of contract and as no satisfactory delivery of the Plaintiffs' cylinders could be taken, the Defendants could not complete and deliver the Parker Hydraulic Presses by mounting the Plaintiffs' Hydro-Line cylinders on them. The loss of profit to the Defendants amounted to $59,588.89cts. as per the Amended Counterclaim. When asked if the ten Pacific presses had been completed save for the cylinders in October 1986 DW2's answer was 'No' but the work could be completed and that the presses were ready up to a stage. DW2 agreed that to comply with the contract with Tanya Siam, the Defendants could order the hydraulic cylinders from Parker in USA and that the delivery would only take 2 to 3 months and the cylinders would arrive in January 1987 to meet the progressive delivery to be made to Tanya Siam but this was not done. He further agreed that under DB7, 8 and 9 Tanya

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Siam was still prepared to accept delivery in January and February 1987 but the Defendants did not respond again. When asked why Tanya Siam was appointed a sole agent after a failed deal by letter dated 28.4.84 (DB1), DW2's answer was that that could not be the case as Tanya Siam had been appointed before May 1986. He also admitted that the agency contract did not become effective as the Defendants' licence to manufacture Pacific presses lapsed after 1987. No action had been brought by Tanya Siam against the Defendants for any breaches. DW2 also agreed that the Defendants could have avoided the loss of profit had the Defendants placed orders for the cylinders with Parker in USA although earlier he had said the Defendants might not end up with a profit if cylinders were ordered from USA. When pressed if Defendants could have avoided the loss, DW1 stated 'certainly appears that way'.

68 Asked in Re-examination if the Defendants had asked extension of time for delivery from Tanya, DW2's answer was he had on the telephone although they did not at first.

69 The Defendants' final witness See Seow Meng DW3 stated that she was aware of forms like the Sample Cost Format Statement Exh. PB1 (or the original copy Exh. P4) sent to the Plaintiffs. She denied she sent a proforma of Exh. P4 to PW1.

70 THE ISSUES

71 It will be seen that the issues before the Court centred around two terms contained in the Agreements which for convenience may be restated:

72 i) 'As per drawing to be approved' after the description of each of the nominal 6", 8" and 10" cylinders ordered and ii) "As confirmed by PH

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Hydraulics, you will be responsible to ensure that all specifications and dimensions of your cylinder conform with the Parker cylinders we are currently using".

73 The interlocking issues at law correspondingly therefore were:

74 i) whether the Plaintiffs manufactured the hydraulic cylinders "as per drawing" and whether the drawing was approved. ii) the construction to be placed on the term of the agreements: "As confirmed by P.H. Hydraulics you will be responsible to ensure that all specifications and dimensions of your cylinder conform with the Parker cylinders we are currectly using" in the light of all the evidence adduced and iii) if the Court found that the Plaintiffs' cylinders did not so conform whether the Plaintiffs were liable to the Defendants for the Defendants' loss of profits as set out in the Counterclaim.

75 THE DECISION

76 In dealing with the above issues, the Court had as Lord Wilberforce said in Reardon Smith Line Hansen- Tangen < HL > < 1976 >3AER 570 at p 575E to:

77 "place itself in thought in the same "factual matrix" as that in which the parties were"

78 < p 575F > and further:

79 "in a commercial context the Court should know the commercial purpose of the contract and this in turn presupposed knowledge of the genesis

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of the transaction, the background, the context and the market in which the parties are operating < p 574C > "

80 Issue I: The Drawings

81 It will be seen that the Plaintiffs and the Defendants had carried out negotiations on the Defendants' inquiries as to the possibility of the Plaintiffs' manufacturing certain hydraulic cylinders for them before 10.4.86. The Defendants had provided the Plaintiffs during the discussions with Exh. AB1 which contained:-

82 i) the end, front and top views of a Parker cylinder; ii) the tabular measurements of the external measurements of a 6", 8" and 10" Parker hydraulic cylinder; iii) the requirement that the mounting is of the NFPA style MS2.

83 In addition it is the Defendants' evidence that an assembled Parker cylinder with its external dimensions was shown to the Plaintiffs at the Defendants' factory.

84 The Plaintiffs accordingly in their first quotation by telex set out the prices of each of the various sizes of cylinders of the N5A series with the words "as per drawing to be approved" which drawing Exh. AB3 they submitted to the Defendants. It was substantially the same as the Defendants' Exh. AB1. Subsequently after further discussions by the time a substituted quotation for the N2A series was made by telex on 27.6.86, the Plaintiffs had submitted further drawings in relation to the external design and dimensions of each class of the latter cylinders to the Defendants. The quotations in the telexes continued to use the same phrase 'as per drawing to be approved' because the drawings had been sent to the Defendants. The Defendants' clerical staff in sending out the

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two Purchase Orders had, it is obvious, merely copied the phrase 'as per drawing to be approved' as well as the items as stated by the Plaintiffs the subject matter of the purchase.

85 The Plaintiffs stand and submission in the circumstances, was that when the Purchase Orders were placed by the Defendants, the Defendants had already studied their additional drawings Exhs. AB6, AB9 and AB10 in respect of the external design and dimensions of the cylinders based on Exh. AB1 and accepted them and the acceptance was clear from the act of placing the Purchase Orders. Their stand was also that no drawings were ever provided to them of any internal design or measurements of the 6", 8" and 10" cylinders and therefore no question or issue arose of any compliance with regard to the internal design or measurement. The internal style and measurements of the cylinders were left to them.

86 The Defendants' evidence on the other hand, was unclear and contradictory. DW1 had stated that the Plaintiffs had to manufacture the cylinders according to "our" drawing and specifications. The only drawing and specifications the Defendants gave the Plaintiffs were the external ones. He admitted that Exhs. AB3, AB6, AB9 and AB10 relating to the external dimensions of the cylinders were submitted to the Defendants. He went to the extent of saying at one stage that the Defendants need not approve the drawings as they were based on the drawings submitted by the Defendants. However, he later back-tracked and stated that the Defendants never did approve the drawings submitted by the Plaintiffs. When told that by his conduct of sending out the Purchase Orders AB7 and AB17 he had approved the drawings as otherwise he would not have placed the orders, he took a totally new position in his cross- examination which was that he required drawings of the internal

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design of the cylinders and the Plaintiffs had never supplied that. He however agreed with Defence Counsel that the Plaintiffs had never asked for any drawings involving the internal design of the N5A or the N2A cylinders. DW2 on the other hand, in his evidence confirmed that apart from Exh. AB1 which was in relation to the outer dimensions of the cylinders submitted by them to the Plaintiffs, there was no other diagrams submitted to the Plaintiffs containing the internal designs.

87 On the evidence therefore, I was satisfied that the phrase 'as per drawing to be approved' meant the Plaintiffs' drawings submitted to the Defendants which were very substantially based on the drawing Exh. AB1 submitted by the Defendants to the Plaintiffs which drawing referred to the external dimensions and design of the 6", 8" and 10" hydraulic cylinders. I was further satisfied from the documentary and oral evidence that the Defendants had approved such drawings by placing the two Purchase Orders Exhs. AB7 and AB17 with the Plaintiffs that the Defendants did not have in their contemplation the submission by the Plaintiffs to them of any drawings of the internal dimensions and style of the hydraulic cylinders they ordered in their Purchase Orders. Such a drawing could, in any case, because of the patented parts, only come from the Defendants and their Licensors. I may add that the phrase 'as per drawing to be approved' in Exhs. AB7 and AB17 was a superfluous repetition of the phrase contained in the Plaintiffs' quotations.

88 Issue II: The Term: Whether Plaintiffs' cylinders conformed with that of Parker's

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89 As to what was confirmed by the Plaintiffs in the first part of the term is a matter of evidence and the inference to be drawn from the evidence as will be discussed.

90 As to the phrase "conform with" and what it meant contextually, I was of the opinion that the meaning of the phrase was to be given its ordinary dictionary meaning. The new Shorter Oxford Dictionary on Historic Principles Vol.I < 1993 > Edn. gives the following definition ofthe word "Conform":

91 "Follow by to: form (something) according to (some model); make alike; Bring into harmony or conformity; adapt. "Follow by with (of things): follow in form or nature".

92 The Defendants submitted that the phrase "all specifications and dimensions of your cylinder conform with the Parker cylinders we (the Defendants) are currently using" meant that the hydraulic cylinders manufactured by the Plaintiffs had to correspond with the Parker cylinders that the Defendants were using. The 6", 8" and 10" Parker cylinders used by the Defendants had a bore no larger than 0.003" over the nominal sizes whereas those manufactured by the Plaintiffs had bores of 0.03" larger than the same nominal sizes and the bores being bigger, the cylinders did not correspond with the Parker cylinders the Defendants were using thereby occasioning a breach of the condition of the contract and the Defendants were entitled to reject the cylinders manufactured by the Plaintiffs. A pivotal part of the Defendants' evidence in Court was that the Plaintiffs were told orally many times that the hydraulic cylinders the subject matter of the two Purchase Orders must be able to use Parker oil seals and it was a crucial term of the contract.

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93 The Plaintiffs' main submissions were that under the licence held by them from Hydro-Line Cylinders of the USA. Hydro-Line manufactured their own line of cylinders with the external dimensions compatible with the other brand of cylinders such as that of Parker but they came with their own internal design and complementary patented oil seals. The bore of each cylinder internally was 0.03" bigger than the nominal sizes say of 6", 8" or 10". An order for cylinders of the 6", 8" or 10" size did not mean that the cylinders were being ordered for exactly that size but that size was only nominal expressing a class of cylinders in respect of which each manufacturer had his own tolerance or deviation. Thus Hydro-Line of USA had a tolerance or deviation of plus 0.03". It was their tolerance in respect of each class of cylinders and the tolerance extended to the internal design and parts of the cylinder such as the patented Hydro-Line oil seal. The Defendants it was submitted had clearly ordered as stated in their Purchase Orders Hydro-Line cylinders and not Parker cylinders. The Defendants in their Defence and Affidavits in the Order 14 proceedings had stated that under the terms of the contract, the measurements of the cylinders had to be exactly equal and to conform to Parker cylinders meaning that the external and internal measurements must be exactly equal. The Plaintiffs submitted that the Defendants could not have required that of them and the Plaintiffs did not understand them as such. If it was so, they would then be making identical cylinders with that of Parkers thereby breaching their patented internal parts. They further submitted that at the hearing realising the implication of their own stand as expressed in their Defence and earlier Affidavits, the Defendants made a marked shift in their position saying that they had told the Plaintiffs orally that Parker oil seals were to be used in the cylinders and they believed that the internal design would be designed by the Plaintiffs in order to use Parker seals as the cylinders were to be custom made. The Plaintiffs submitted that the Defendants had told them of no such thing and were not

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telling the truth. It was not possible, however, to design a cylinder bore and piston to match an oil seal but it was the oil seal which had to be made complementary to the bore and the piston inside and that this again told a lie to the Defendants' version of the case. PW3 also had explained what custom made meant. It meant for example as in this case, altering the stroke length that a customer required in respect of the rod of the cylinder. Thus, as stated in Exh. AB8, the Plaintiffs provided bigger tube seals and also a longer bush rod assembly which were identical to Parker cylinders. This was discussed, confirmed and the work executed as such.

94 I was in full agreement with the Plaintiffs' submission. The Defendants' evidence and stand taken in respect of their position on the terms of the contract was contradictory, unrealistic and totally lacking in credibility.

95 The two Purchase Orders make it abundantly clear that the Defendants ordered Hydro-Line cylinders and they ordered a brand which belonged to one of their competitors albeit to be manufactured in Singapore. The Defendants were in the business of manufacturing and assembling hydraulic presses which required hydraulic cylinder power to drive them. I drew the reasonable inference from the evidence that the Defendants knew that the different makes of cylinders had different tolerances in respect of their internal dimensions and when ordering 6", 8" and 10" cylinders from the Plaintiffs, they were communicating to the Plaintiffs the class of cylinders they were purchasing and that those values were nominal but which would have a tolerance which tolerance they did not mind as it was a matter of internal design which did not affect the external mounting and slotting of the cylinders on their presses and their eventual workability. Thus, just as the Defendants' brochures produced in Court Exhs. DB13 - 25 referred to the nominal values 6", 8", 10" etc. of the

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Parker cylinders from page DB13 onwards in respect of the cylinder bore in column J (apart from tolerances and other measurements) the Plaintiffs' brochures, Exh. DB26 - 54 at pg DB29 etc. also equally referred to nominal values of the hydraulic cylinders in whole numbers such as 6", 8", 10" etc. These brochures were evidence of a common language that the numbers were nominal values and not exact values. DW1 admitted receiving from the Plaintiffs these brochures. His explanation when asked if he had studied the Plaintiffs' brochures was "I just looked at style as I did not want to buy features of these goods...." Yet he never provided a drawing to the Plaintiffs of the internal features he wanted and had further given contradictory evidence in respect of the internal features. I disbelieved the Defendants' evidence given for the first time in Court on a matter regarded by them as the essence of the agreement that the Plaintiffs had been told several times that the cylinders they had to make had to be fitted with or accommodate a Parker oil seal. I am convinced that if the Defendants had told that to the Plaintiffs, there would be discussions in respect of the Parker seal and its different tolerance and the Plaintiffs would not have accepted the Defendants' Purchase Orders as the most important components of the hydraulic cylinders they manufactured i.e. the cylinder bore, piston and complementary and patented oil seal came ready made and precision tooled for total concentricity just as Parker's would be too. The internal parts of both manufacturers were protected by patents. The Plaintiffs clearly expressed they were not going to breach anyone's patent rights. The piston and oil seal kit as Exh. AB11 shows were known to the Defendants as coming from USA. Paragraph 3 of Exh. AB11 referred to the parts as "N2A Hydro-Line Cylinders Items Coming From The USA". Yet in the face of this evidence, the Defendants answered that they thought the oil seals were coming from Parker in the USA. I am further fortified in my opinion that the Plaintiffs were telling the truth in respect of their stand on the Parker seals when they refused to take up the

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Defendants' idea that perhaps the Plaintiffs having manufactured the cylinders of a large bore could coat them with a thin layer of metal so that a Parker oil seal would fit the reduced bore. Not only would this compromise their standards but it would involve them in patent infringements. The Defendants, on the other hand, it would appear cared little about this.

96 The Defendants, as it will be seen, wanted a locally manufactured cost-effective Hydro-Line cylinder to mount on their Parker presses and work them. As such, it was clear that only the external dimensions of the Hydro- Line cylinder were relevant as being equal to the Parker cylinder so that the cylinders could be slotted and mounted and would fit the Pacific presses. It was also reasonably clear therefore that from a reading of the evidence that this is what the Plaintiffs confirmed as stated in Exh. AB7 and AB17 (apart from the bigger tube seals and a larger bush rod assembly). Otherwise, the Defendants would not have placed the Purchase Orders. The internal measurements were of no concern. The Plaintiffs eventually manufactured the cylinders which did fit the Defendants' hydraulic presses and would work them just as effectively as the Parker cylinders.

97 Further, the evidence of the Defendants did not reasonably lead me to believe that the Defendants rejected the Plaintiffs' cylinders upon inspection on 16.10.86. DW1's evidence and that of DW2 was at variance. DW1 stated that he rejected the cylinders there and then because their bores were bigger than that of Parker cylinders after measuring them. DW2 who conducted the day to day business of the Defendants testified that he could not recall if there was an outright rejection and that perhaps the conversation was about how the matter could be resolved of finding ways of using Parker seals. He also could not say if a dispute had arisen on the date of inspection. He admitted that up to two

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months later even when Defendants had telexed the Plaintiffs twice by 18.11.86 the Defendants had not mentioned that the problem was in respect of the oil seals. The issue only developed in correspondence and discussions thereafter. PW3 on the other hand, had stated that after the inspection, all DW1 stated was that they would let him know when delivery would be taken and payment made. I was satisfied on the evidence, having already held that the Defendants had not at the time of placing their orders discussed about fitting Parker oil seals in the hydraulic cylinders to be manufactured by the Plaintiffs that the dispute only surfaced subsequently when the Defendants' Licensor would not take delivery of the cylinders not because they were Hydro-Line made and came from a competitor but because they did not wish to keep an inventory of spare Hydro-Line oil seals which was a servicable part for their customers. The Defendants were then unable to sell their Parker presses to Pacific and they in turn rejected the Hydro-Line cylinders manufactured by the Plaintiffs carrying the Hydro-Line oil seals. The subsequent offer by the Plaintiffs to give away two free oil seals was, in my opinion, an attempt by the Plaintiffs to overcome Parker's inventory problem and was made out of generosity and not because the Plaintiffs had breached their agreements and were trying to extract themselves out of a breach they had committed. I was satisfied on a preponderance of evidence adduced by the Plaintiffs that it was the Defendants who had breached their agreements. The Plaintiffs had built the Hydro-Line cylinders ensuring that all external specifications and dimensions of their cylinders conformed to that of Parker's externally i.e. all the external form and nature of the Parker cylinders. The phrase "all specifications and dimensions" did not mean external and internal measurements (much less DW2's explanation that "specifications" referred to Parker oil seals whilst "dimensions" referred to the respective sizes and tolerances of the Parker oil seals) but only the external ones as per the drawings Exhs. AB6, AB9 and AB10 which had been submitted to the

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Defendants before the Purchase Orders were made which drawings were based in fact on the Defendants' drawing Exh. AB1. The Plaintiffs were accordingly entitled to claim on their Suit against the Defendants.

98 As the Plaintiffs' claim succeeds, it is unnecessary for me to discuss the third issue relating to the Defendants' Counterclaim. I must however, state that had the Defendants succeeded in the action, I would have had serious reservations about the Defendants' Counterclaim in view of the nature of the evidence presented which has been discussed and as the Defendants' losses were of their own making as they had done nothing to mitigate their loss assuming DW1's version of the rejection of the cylinders on 16th October 1986 was correct. The Defendants had in these circumstances sufficient time and an understanding purchaser to source the cylinders from elsewhere even from their Licensor. It is unnecessary to repeat DW2's evidence here which is self-explanatory. Further their original invoices had been lost on the costing of their Parker presses. They had merely produced in Court some computer print outs of the costing on which to base their losses.

99 As such there will be judgment for the Plaintiffs in the sum of $77,044.62cts. and costs to be taxed or agreed.

100 The Defendants' Counterclaim is correspondingly dismissed.

Amarjeet Singh JC

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Teo Guan Teck (Winston Chen & Co) for the plaintiffs
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