IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1994] SGHC 68

Suit 804/1993

Between

President Marine (Pte) Ltd

… *Plaintiff*

And

Kojima Singapore (Pte) Ltd

… *Defendant*

GROUNDS OF DECISION

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

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President Marine (Pte) Ltd v Kojima Singapore (Pte) Ltd

[1994] SGHC 68

Suit 804/1993
Lai Kew Chai J
18 March 1994

1 **Judgment:**

2 **GROUNDS OF JUDGMENT**

3 The plaintiffs purchased 93 pieces of valves from the defendants at the price of $330,000 pursuant to an agreement in writing. They required the valves for installation on a vessel which was then under their construction, Hull No. NB-089 ("the vessel") which was being built to carry jet/aviation fuel. The vessel was built for Ocean Tankers Pte Ltd ("the owners"). Delivery was to be at the plaintiffs' yard and defendants were to aim for delivery on or about 30 Oct 91.

4 After installation the valves were found to be seriously defective. In this action the plaintiffs claimed damages for breach of the condition of the sale contract in relation to the specification. It was specified that the paint coating shall be 300 um (or micro m) dry film thickness ("DFT"). It was the plaintiffs' main complaint that there was excessive coating of the paint on the valves which had exceeded the manufacturer's permissible thickness specifications. In the alternative, the plaintiffs claimed damages for breach of the condition as to

merchantability. At the hearing before me, the plaintiffs did not dwell on the allegation that the valves were not fit for the purpose for which they were bought to the knowledge of the defendants. Counsel for the plaintiffs also did not rely heavily on the alleged breach of the condition as to merchantability. The attack was concentrated on the breach of the DFT specifications which were in writing. The damages, as claimed, were principally the expenses of dismantling, rectifying and reinstalling the vessel's cargo valves; those expenses were claimed to be in excess of $400,000. The alleged damages additionally included the interest which was incurred by reason of the delay caused by the defective valves, plaintiffs' liabilities to the owners for liquidated damages and additional berthing fees and shipyard overheads.

5 In May 93 the plaintiffs applied for an order that they may be at liberty to enter interlocutory judgment against the defendants for loss and damages to be assessed, interest and costs. In July 93 the Assistant Registrar who heard the plaintiffs' application granted the defendants unconditional leave to defend. The plaintiffs appealed. At the conclusion of the hearing of the appeal in September 93 I allowed the appeal, set aside the orders below, gave leave to the plaintiffs to enter interlocutory judgment and ordered that the loss and damages be assessed by the Registrar. I also ordered costs against the defendants here and below.

6 The affidavit evidence were as follows. By an agreement between the parties and as evidenced in the plaintiffs' purchase order dated 25 May 91 and signed by the both parties, the defendants agreed to sell to the plaintiffs 93 pieces of valves at the price of $330,000; different prices were asserted in the statement of claim, in the affidavit filed on behalf of the plaintiffs and in the submissions of counsel for the plaintiffs. In the end, it mattered not as this was not in issue and I therefore took the price from the purchase order. The purchase

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order specified that the paint system required a coating with 100 um layer of primer, 100 um layer of intermediate coating and a 100 um layer of the finishing coat. The relevant specifications stated thus:

7 "Non-Submersible Cargo Valve Pure Epoxy (Sigma Coatings Coltruriet Phenguard coating 7435) Every coat to be 100 um thick. Coating 3 Times for inner face of valve. Final coat grey colour."

8 The purchase order, as was agreed, stated that the manufacturers of the valves who were named were to be Aikawa Valve Co Ltd ("Aikawa"). It called for the "Mfr's inspection certificate." By a handwritten note, it was also agreed that all valves with Sigma Coating were to be inspected before and during coating at the manufacturers' workshop in Japan by the owners' representative. At all times, a Mr Miyazaki of Sigma Shinto Coatings Co Ltd ("Sigma Shinto"), the paint manufacturers and suppliers, had acted as "the owners' representative" before and during the coating of the valves at the manufacturers' workshop in Japan. The valves themselves, however, were manufactured in accordance with the plaintiffs' specification and drawings and the valves thereafter would be painted by Aikawa.

9 In law, the defendants as sellers had to supply the valves which strictly conformed with the description as spelt out in the written specifications. The contractual specifications under consideration amounted to a condition and was not merely a warranty. Such conditions in the law of the sale of goods have to be performed or the buyers shall have the right to reject the goods which do not strictly conformed with the description or claim damages instead. What may be ignored are "microscopic deviations" but they must be those which a reasonably determined purchaser will undoubtedly ignore. Even here, the context in which such deviations is considered has to be carefully examined. Sometimes, a slight

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deviation is a miss by a mile, so to speak. Under s. 13(1) of the Sale of Goods Act 1893, as amended as to its numbering, it is provided that where there is a sale of goods by description, "there is an implied condition that the goods shall correspond with the description;..." An illustrative case law is Arcos Ltd. v E.A. Ronaasen & Son (1933) AC 470 where the sellers agreed to sell staves of + in. thick. 85% of the staves delivered were nearly all less than 9/16 in. thick. The rest, however, were exactly in accordance with the contract specification. It was found at the end of the trial that the staves were commercially merchantable under the contract specification and that they were reasonably fit for their purpose, namely the making of cement barrels. Yet the Law Lords held that the buyers were entitled to reject the goods. Lord Atkin stated at p. 479:-

10 "It was contended that in all commercial contracts the question was whether there was a "substantial" compliance with the contract: there always must be some margin: and it is for the tribunal of fact to determine whether the margin is exceeded or not. I cannot agree. If the written contract specifies conditions of weight, measurement and the like, those conditions must be complied with. A ton does not mean about a ton, or a yard about a yard. Still less when you descend to minute measurements does + inch mean about + inch. If a seller wants a margin he must and in my experience does stipulate for it." (emphasis added).

11 That strict conformity with the specifications was, however, really not in issue as a matter of law in this case. What was disputed as a fact was the cause of the failure of the paint, which was a question of fact. For the defendants, it was strongly canvassed that they or their manufacturers had fabricated the valves strictly according to the plaintiffs' drawings, that the owners' representative, Mr Miyazaki, had issued the letter confirming that the inner coating of the valves "was completed in order" and that there was the expert

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opinion that the Sigma Shinto paint, which the plaintiffs had prescribed, was less adhesive than Nippon paint and that the defect in the paint was arguably due to this. This contention deserves a more detailed elaboration later.

12 I should now refer to some relevant correspondence. On 15 Oct 91, Sigma Shinto faxed to the defendants and they stated that Sigma's Plenguard Standard Working Procedure showed "the minimum 300 um which means three (3) spray coating of each 100 um" but they confessed that they could not "follow" (i.e. comply with) this for a variety of reasons. First, they could not apply any spray equipment than by the use of brush in connection with the coating of "those small valves inside". Secondly, Sigma Shinto stated that it was "clearly hard to bring minimum 300 um DFT by brush even with several more coating than by spray equipment". Thirdly, the coating of the valves batch by batch would stress and tighten the delivery schedule of the factory. On the following day, the defendants by letter enclosed Sigma Shinto's letter of 15 Oct 91 to the plaintiffs and asked the plaintiffs to explain the matter fully to the owners. Subsequently, the defendants by their letter (which was a very important letter) bearing number 1365 which was dated with an illegible date of Oct 91 (as the date was typed over the word "SINGAPORE" in the letter) stated in the first paragraph thus:

13 "Referring to our letter ...dated 16 Oct and further conversation between Messrs Ko/Kojima, we have relayed your request to mfr and AIKAWA/SIGMA both have agreed to apply epoxy coating at 300 micron thick even they spend longer time." (emphasis added).

14 The defendants' performance of the contract of manufacture and sale may be described as follows. They obtained the valves from Aikawa and arranged for them to be painted at the manufacturers' workshop. Aikawa

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purchased the paint from Sigma Shinto who gave Aikawa the technical explanation of the paint and the standard application instructions. It could not be seriously disputed in the circumstances that Aikawa were Sigma Shinto's customers and not the plaintiffs'; Aikawa dealt directly with Sigma Shinto on their own account. The representative from Sigma Shinto who gave technical explanations and standard instructions to Aikawa was a Mr Miyazaki and the owners also instructed the same person to inspect the coating of the valves at the workshop of Aikawa. He issued inspection sheets of his inspection of the coating of the valves and these inspection sheets showed thickness of coating ranging from 115 um to 400 um. He also issued a letter dated 12 Dec 91 and addressed to the defendants and it stated:

15 "I am pleased to inform you that the inner coating on cargo valves for President Marine Hull No. NB 089 was completed in order at Aikawa Valve plant. Enclosed please find the report of 'cargo valve inners phenguard coating' for your future reference". It was beyond dispute that his inspection sheets and letter turned out to be seriously wrong.

16 The valves were delivered to the plaintiffs on 25 Oct 91, 5 Nov 91 and 15 Nov 91. On 5 May 92 the owners informed the plaintiffs that they had spotted paint peeling off and cracks of the paint coating on the valves. The plaintiffs faxed these complaints to the defendants on 6 May 92. On 8 May 92 the owners sent a complaint in writing. Three days later, and at the request of the plaintiffs, Tech Mar Marine Services Pte Ltd, who were cargo surveyors, attended the plaintiffs' yard and conducted a visual inspection. Their initial opinion was that the failure of the paint could probably be due to (a) improper surface preparation; (b) insufficient curing time between coatings; and/or excessive coating which exceeded manufacturers' permissible thickness specifications. On 13 May 92 a meeting was held. Those who attended were the representatives of

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the plaintiffs, defendants, the owners, Sigma Shinto and Tech Mar Marine Services Pte Ltd who were a third party surveyor agreed to by all concerned. They discussed the problems and sought a solution to rectify the problem. The owners pointed out, and this was only germane on the question of merchantability, that the flaking of the paint could or would jam/clog up the pumps in the tanks on board and also contaminate the jet fuel. These were obviously very serious consequences and unless rectified the valves were naturally and completely unacceptable to the owners. After the meeting, it was agreed that an independent third party be appointed to carry out the testing and investigation of the paint failure.

17 I come to that part of the affidavit evidence which was pivotal. On 26 May 92 Sigma Shinto in their letter to the defendants made the following admissions, in terms as follows:-

18 "Our Singapore office informed that reasons for problems on Aikawa Valves are:

19 1. Improper surface preparation. Areas were found with contamination (oil) beneath the paint system.

20 2. Too high d.f.t. applied ranging from 600-1,000 microns and too uneven d.f.t.

21 3. Stong solvent smell upon lifting of the paintflakes, clearly indicating insufficient ventilation for the curing process of the coating system."

22 The representatives of all the parties named earlier met again on 27 May 92. It was obviously a matter of considerable urgency. It was agreed that the

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well-known classification society, Det Norske Veritas ("DNV"), be engaged to carry out tests and investigations. All parties also agreed that "the defective valve painting will be reinstated/rectified locally and that the necessary reinstatement work should be carried out immediately." On 28 and 29 May 92 DNV surveyors carried out the inspection and testing of the valves. All parties were present. DNV's report dated 6 June 92 was clear and unequivocal. They concluded that the paint work failure was due to (a) over thickness of coating which caused the cracking; (b) poor surface preparation of the substrate probably due to difficulty in cleaning; and (c) negligence in proper treatment of the joint between stainless steel and cast iron which resulted in undercutting. On 9 Oct 92 Tech Mar Marine Services Pte Ltd also issued a report and they concurred with the views and opinion of DNV.

23 In the result, the court had the clear admission of Sigma Shinto who acknowledged that the thickness of the paint coatings was 600-1,000 um. Further, it was the undisputed finding of DNV that the thickness of the paint coatings ranged from 640 um to 1,560 um: see para 5 Hayashi's affidavit filed on 31 Aug 93 on behalf of the defendants.

24 On 3 Jun 92 Wecom Engineering were appointed to rectify the valves. By 24 Jul 92 the valves were rectified and duly installed. The paint was removed and, more significantly, the same Sigma Shinto paint was applied. The fact that the defects were rectified by the use of the same paint had serious implications against the defendants, as I shall further elaborate.

25 I now turn to the issues which the defendants claimed were triable. First, they claimed that they had, to the knowledge of the plaintiffs, entered into the contract as agents of Aikawa. This contention was quite unsustainable and it was quite properly abandoned before me. Secondly, the defendants claimed that

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the coating process was entirely without any fault, as Mr Miyazaki's contemporaneous documents recording the work on each valve would be capable of proving. I did not accept this contention because the subsequent tests and the successful rectifications subsequently carried out quite conclusively proved that his records were plainly wrong and wholly unreliable. Even Sigma Shinto, the employers of Mr Miyazaki, admitted as much.

26 Thirdly, it was contended that it was an arguable issue of construction whether or not the parties had in fact agreed to a tolerance of the DFT up to 500 um, as the defendants contended, although the same was not spelt out. If this was a triable issue, the defendants would then go on to rely on Mr Miyazaki's records which stated that the DFTs ranged from 115 um to 400 um. This submission was not at all viable because such a margin of tolerance was not supported by any evidence that this was the custom or usage in the industry or trade. The principle of law in Arcos Limited as set out above should apply. The defendants as the sellers could have stipulated the tolerance level if they had wanted to, as suggested by Lord Atkin in that case. In any case, Mr Miyazaki's reports were so hopelessly unreliable, as Sigma Shinto, his employers, had admitted that in the circumstances the findings of both independent surveyors in Singapore must be accepted as putting the issue of fact beyond dispute.

27 Finally, it was strongly argued that the paint work failure was due to the paint (ie Sigma Shinto paint) chosen and prescribed by the plaintiffs. It was pointed out that the viscosity of the Sigma Shinto epoxy paint was "high" and "hard" and this "prevent(ed) uniformity of film thickness by means of brush painting". The defendants produced a report prepared by Shiga Prefecture Institute for Machine and Metal Industry which supported the abovementioned proposition. It was further stated that "even where the film thickness is excessive, if the primer paint has normal adhesive properties which Sigma

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Shinto paint has not, it will not break and peel even if cracks occur on the surface."

28 Shiga's report was headed: "Report on Paint Adhesive Properties". It was described as a "Comparative Report on Adhesive Properties between SIGMA COLTURIET PHENGUARD Primer and NIPPON PAINT PC Primer". It then describes a number of cross cut adhesion tests. It expressed its "Viewpoint" and its "conclusion" in the following terms:

29 "Viewpoint: From this test, it is considered that since SIGMA paint is hard and high in viscosity, irregular brushing is easy to occur and paint is readily separated from its vicinity. In contrast to the above, NIPPON PAINT proved favourable: the paint has proper elasticity in a depressed condition if pushed by a nail even after perfect hardening, and complete adhesion is ensured.

30 As a conclusion, severer surface preparation is required for SIGMA paint from the fact that one side is separated in the cross-cut adhesion test for coating under the same conditions, and this SIGMA paint is not suitable for the casting surface with irregular interior as found in a valve, for example since it is higher in viscosity than NIPPON PAINT. The above is our report on comparative paint adhesive."

31 In my judgment the Shiga report did not assist the defendants at all. It merely and exclusively dealt with the relative adhesiveness of Sigma Shinto paint and Nippon paint and the fact that Sigma Shinto paint was less adhesive on irregular surface. True, the gates of the valves had irregular surfaces. But the Shiga report did not deal with over thickness of the paint coating nor state that over coating was not a cause of the paint failure. In fact, it did not even refer to DNV's report or Sigma Shinto's statements of admission that there was over

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thickness of the paint coating. What in the circumstances exerted conclusive influence was the significant fact that the valves were all fully and satisfactorily rectified by stripping the Sigma Shinto paint and repainting it again with the same Sigma Shinto paint. As the rectifications were satisfactory, the irresistible conclusion of fact was that there was faulty application of the paint the first time round. This was therefore not a case of two conflicting opinions over an identical issue which were firmly held by two opposing camps of experts, as there was in the case of European Partners v Goddard & Smith (1992) 41 EG 118.

32 For these reasons, I made the orders I did.

Lai Kew Chai J

Foo Soon Yien (Bernard, Rada & Lee) for the plaintiffs/appellants
Chan Leng Sun (Ang & Partners) for the defendants/respondents

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