IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1995] SGHC 7

DCA 46/1994

Between

Everjoy Enterprises Pte Ltd

… *Plaintiff*

And

Combi (Singapore) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Everjoy Enterprises Pte Ltd v Combi (Singapore) Pte Ltd

[1995] SGHC 7

DCA 46/1994
Judith Prakash JC
11 January 1995

1 **Judgment:**

2 Coram: Judith Prakash JC

3 **Cur Adv Vult**

4 JUDGMENT

5 Background

6 This is a sale of goods case. The appellants and the respondents are both traders, dealing in, amongst other things, television sets. On 31 July 1993, the respondents sent the appellants an order for 320 pieces of Sony KV2185MT colour television sets at $605 per piece, which the appellants accepted. The appellants were aware that the respondents were purchasing the goods for export.

7 On 16 August 1993, the contractual delivery date, the appellants delivered the goods to the respondents' warehouse. Two days later, the

respondents' materials controller conducted a physical check on the goods. He discovered that the cartons in which the television sets had been delivered were not in their original condition. The serial numbers on the cartons had been removed. He also discovered that the cartons had been unpacked and the serial numbers on the television sets themselves had been removed too. The cartons had then been repacked. He checked about 10 cartons.

8 On 24 August 1993, the respondents sent the appellants a facsimile message referring to an earlier discussion and asking the appellants to send them a revised invoice for the goods at $580 per piece or to arrange to take the goods back. The appellants replied that, as explained, they were not in a position to revise their price and they asked the respondents to make payment of the full amount. The very next day, the respondents sent the appellants a further letter stating that on checking the stocks they were shocked to learn that all the cartons had been repacked and that the serial numbers had been removed. They stated that "since original packing and serial numbers is a mandatory pre-requisite < sic > for all our purchases we are unable to accept this consignment". They advised the appellants to treat the purchase order as cancelled and said that they were making arrangements to return the goods.

9 After some discussion the appellants took the goods back and then resold them to a purchaser in Hong Kong for $560 per piece. The appellants then commenced this action in the Magistrate's Courts. They claimed the sum of $14,400 being the difference between the contractual price of the goods and the resale price to the new purchaser. They also claimed transport and labour charges and the cost of a standby lorry. The respondents resisted the claim basically on the ground that the goods were not merchantable due to the removal of the serial numbers from the television sets and the fact that the cartons in which they were delivered had been unpacked and subsequently resealed.

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

10 At the trial, further facts emerged. The main witness for the appellants, Mr Yeo Boon Khin, denied that the goods were unmerchantable. His position was that the respondents were trying to get a reduction in the price of the goods as at that time prices of television sets were falling. This had been clearly indicated in a telephone conversation he had had with one Mr Hariharan, an employee of the respondents, prior to the respondents' rejection of the goods. He also conceded that he was aware that the goods were meant for export and not for sale in the local market. He knew this, first, because he had been told so by the respondents and, secondly, because the television sets were of a kind that were not sold in Singapore. He denied, however, that he knew that the respondents meant to export the goods to the Middle East in particular. Mr Yeo took the position that the removal of the serial numbers from the television sets and their cartons did not make the goods unmerchantable. He pointed out that he had had no problem reselling the goods to a purchaser in Hong Kong and that this person had not made any fuss after the goods had been delivered to him. It is also worth noting here that the invoice which the appellants sent the respondents stated "Goods are sold for export only" and "No guarantee". Mr Yeo explained the television sets were sold without the benefit of any guarantee because they had been intended for export and not for the local market.

11 Apart from the materials controller, one Mr Pawan Kapur gave evidence for the respondents. He was not the person who had spoken to Mr Yeo prior to the respondents' letter of 24 August 1993. He could not, therefore, say what had happened during that conversation. His testimony was that after the respondents had discovered that the serial numbers were missing from the goods, they had contacted their buyer in Dubai and he had cancelled the purchase. Mr Kapur said that he had no documents to show who the specific buyer in the Middle East who required the serial numbers was. He did not produce any documents

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

supporting either the existence or the cancellation of the respondents' contract with the Dubai buyer.

12 Mr Kapur also admitted that the television sets were genuine Sony products and that the sets themselves had not been tampered with. The cartons too were in order except for the missing serial numbers. He agreed that the television sets were functional and that the respondents would have been prepared to buy them at $580 each if the appellants had agreed to sell them at that price. He also agreed that even though they did not have serial numbers the sets were not completely unmarketable. Whilst he admitted that prices of television sets fluctuate, he denied that this was why the respondents had wanted a reduction in the price. His explanation for the price reduction was that the missing serial numbers meant that the items could not be sold to the buyer in Dubai but that the respondents were trying to sell them to another buyer for a lower price.

13 Mr Kapur did not explain how, given that the goods were genuine Sony products, the removal of the serial numbers made them unmerchantable. He did say that the quality of the goods was not affected by this removal but he also asserted that the respondents' specific buyer demanded serial numbers and was willing to pay a higher price for goods with such numbers. He did not, however, give any reason why that buyer should demand serial numbers.

14 The learned trial judge found that on delivery to the respondents, the goods were in the condition as alleged by them i.e. that the serial numbers had been removed from the sets and the cartons and that the cartons had been unpacked and repacked. He then found that these "defects" made the goods unmerchantable and not reasonably fit for their purpose. He further found that the appellants had been in breach of an implied condition in the contract of sale

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

and that the respondents had been entitled to repudiate the contract. Accordingly, he dismissed the appellants' claim and gave judgment for the respondents on their counterclaim for $273 being storage charges incurred in connection with the goods.

15 The appeal

16 Two main points were argued on appeal. The appellants, in the course of their submissions, basically accepted the finding of fact below as to the state of the goods on delivery. They contended, however, that this state was, at the most, a breach of warranty entitling the respondents to claim damages. It was not a breach of a condition of the contract in that it did not render the goods unmerchantable and thus the respondents were not entitled to reject the goods. The second point was that, even if the goods were unmerchantable, the respondents had lost their right of rejection because they had failed to exercise it within a reasonable time after delivery. In this connection, the appellants contended that the goods should have been rejected shortly after delivery and not 10 days later. This contention was met by the rejoinder that it had not been specifically pleaded and therefore could not be relied on in the appeal.

17 I will consider these issues in turn.

18 First, it was common ground that there was no express condition in the contract of sale that the goods had to be supplied with the serial numbers. The matter therefore fell to be decided with reference to ss14(2) and (3) of the English Sale of Goods Act 1979 ("Act"). Under these provisions, there is implied in every contract for the sale of goods, sold in the course of a business, that the goods supplied under the contract will be of merchantable quality. Further, if the buyer has made known to the seller any particular purpose for

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

which the goods are being bought, there is also implied a condition that the goods would be reasonably fit for such purpose.

19 Sub-section (6) of the Act contains the following definition of merchantable quality:

20 "Goods of any kind are of merchantable quality within the meaning of subsection (2) above if they are as fit for the purpose or purposes for which goods of that kind are commonly bought as it is reasonable to expect having regard to any description applied to them, the price (if relevant) and all the other relevant circumstances."

21 The above definition is a loose codification of several decades of judicial consideration of the term "merchantable quality". As has been judicially recognised, it has been "left in the widest possible terms in order to cater for the great variety of situations which may occur .... < and > any attempt to forge some exhaustive, positive and specific definition of such a term, applicable in all cases, would soon be put to mockery by some new undreamt of set of circumstances". See Bernstein v Pamson Motors (Golders Green) Ltd < 1987 > 2 All ER 220 per Rougier J at 222.

22 While it is not possible to give a precise definition of merchantable quality, it is quite clear that in every case the onus of proving that any particular goods are unmerchantable lies upon the buyer who asserts that fact. In this particular case, it was the respondents who had to establish on the balance of probability that the "defects" which the goods contained rendered them unmerchantable.

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

23 In my judgment, the respondents did not come close to discharging this burden. In their defence, having specified the defects, they stated only that by reason thereof, they had become entitled to repudiate the goods. They gave no particulars in the pleading of how those defects rendered the goods unmerchantable. No additional particulars were given by their witnesses. The evidence-in-chief of the materials controller did not touch on this point at all. In his evidence-in-chief, their second witness, Mr Kapur, merely asserted that in June 1993, the respondents required 320 television sets for export to a customer in the Middle East and that they had bought these goods from the appellants and that he himself had told Mr Yeo that the goods were required for sale to the Middle East. Then on 25 August 1993, he had written to the appellants telling them that the respondents were unable to accept the goods as "they were unfit to be exported".

24 It was only in cross-examination that Mr Kapur alleged that the Middle East buyer had refused the goods because of the missing serial numbers. Although the respondents' counsel had subjected Mr Yeo to searching cross-examination on the issue of the desirability of serial numbers with the apparent intention of establishing that these were needed for purposes of identifying a specific television set in order to invoke the manufacturers' guarantee, this point was not mentioned at all by Mr Kapur. In fact, it would have been quite silly for him to do so as the goods in question were clearly being sold without the benefit of any guarantee. He might have said that the serial number would help prove the authenticity of the goods. But this was not alleged. Instead, Mr Kapur freely admitted that the goods were authentic thus indicating that the presence of a serial number was not vital for proving authenticity. Further, he did not give any reason whatsoever why the buyer in the Middle East was insistent on the existence of serial numbers. A possible explanation like having to declare serial

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

numbers to the customs of the importing country in order to comply with licence requirements was not even suggested. Mr Kapur produced no evidence at all that there was any firm contract for the sale of the goods to a specific customer in the Middle East. Not only were there no documents in support of this, but when he was asked when the respondents were scheduled to deliver the goods to the customer concerned, his reply was "no specific date" which was quite inconsistent with his assertion in his affidavit of evidence-in-chief that "sometime in June 1993, the < respondents > required 320 television sets for export to a customer in the Middle East". No independent evidence was adduced to establish the respondents' allegation that the removal of the serial numbers from the cartons and the sets themselves made the sets unsaleable and unexportable except at a reduced price. It was significant that Mr Yeo had no difficulty reselling the sets.

25 Before me counsel for the respondents argued that the fact that the respondents were willing to buy the sets for $580 each could not indicate that the sets were merchantable. Decided cases indicate that saleability by itself is no indication of merchantable quality as practically anything can be sold at some price or other. Price is, however, one of the circumstances which has to be taken into account in assessing the merchantable quality of the goods. If a significant abatement in price is required before the contractual goods can be sold, price becomes an indication that they are not of merchantable quality. But the problem for the respondents here is that they would have bought the goods if they had been given a discount of about 5%. That to my mind is not a significant abatement in price.

26 Secondly, there was little evidence to support the respondents' contention that it was because of the removal of the serial numbers that the price reduction was necessitated. Mr Yeo's testimony that the substance of his

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

conversation with Mr Hariharan was a request for a discount in view of fluctuations in the market price of goods could not be directly contradicted by Mr Kapur. Mr Hariharan himself, though still in Singapore, was not called to give evidence. Mr Yeo's version of the conversation was also supported by inference from the fax of 24 August 1993 which merely asked for a reduction in price without any complaint about the condition of the goods. Also the respondents did not produce any documents indicating that any price which they might have been offered for the goods had been adversely affected by the alleged defects. All in all, the evidence before the trial court did not establish that the reduction in the price which the respondents wanted arose out of the condition of the goods or that the slightly lower price which respondents were willing to pay was offered because the goods were not saleable at the higher level. It appears to me that this offer by the respondents in fact lent credence to the appellants' assertion that the market price of television sets was dropping at the material time.

27 The defence of unmerchantable quality would have been established if the respondents had been able to show that the goods were not fit for the purpose for which goods of that kind were commonly bought or for any particular purpose which had been made known to the appellants. The first limb of the foregoing could not be satisfied as the goods were genuine Sony television sets and were functional. They therefore could be retailed to consumers as such. As regards the second limb, Mr Kapur testified that he had specifically made known to Mr Yeo that the goods were intended for export to the Middle East. He then said that the lack of serial numbers made this intended export untenable. As stated earlier there was no independent evidence to substantiate that assertion.

28 For the foregoing reasons, with respect, in my view there was insufficient evidence to support the finding below that the goods were not of

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

merchantable quality and that the respondents were entitled to reject them. On this ground alone, the appeal must succeed.

29 That being the case it is unnecessary for me to deal in much detail with the other argument raised by the appellants i.e. that the respondents had, by waiting till 25 August 1993 to reject the goods, lost their right of repudiation. The argument as it was developed was cogent in that it was clear from the evidence that the respondents' material controller had discovered the so-called defects in the goods by 18 August 1993 and had informed Mr Kapur and Mr Hariharan about this immediately. Yet the respondents did not notify the appellants of the defects nor indicate that they wanted to reject the goods until a further week had passed. The respondents had had, in my opinion, more than a reasonable period in which to examine the goods and should have indicated their decision to the appellants within, at the most, five days after delivery of the goods.

30 The difficulty which the appellants faced in regard to this issue was that, although it was brought up in closing submissions at the trial, it was not very clear from the pleadings. The statement of claim contained several paragraphs relating to the appellants' demand that the respondents pay for the goods as they had been delivered in good order and condition and had been "duly accepted" by the respondents. It also recited that since the respondents refused to accept the goods, the appellants had found a new buyer for them and had taken the goods back on the basis that they would claim from the respondents the difference between the contractual price and the price at which the goods were sold to the new buyer. In their defence, the respondents alleged that the goods were not merchantable nor fit for the purpose of overseas export and they had become entitled to reject the goods. They also stated that by their letter of 25 August 1993 they gave due notice to the appellants that they refused to accept

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

the goods. The appellants then filed a reply in which they joined issue with the respondents on their defence. Nowhere in the reply however did the appellants state expressly that the respondents had lost their right to reject the goods because their letter of 25 August 1993 had not been sent within a reasonable time. On this state of pleadings, it is my view that it was not open to the appellants to raise the issue of loss of the right to repudiate.

31 Conclusion

32 In the event, this appeal succeeds. The order below is set aside and judgment is entered for the appellants in the following sums:

33 (a) for $14,400 under para 17(a) of their statement of claim;

34 (b) for $501.50 under para 17(c);

35 (c) for $135 under para 17(d);

36 (d) for $100 under para 17(e).

37 The appellants are also awarded interest on the above sums at the rate of 6% p.a. from the date of the issue of the writ todate. The appellants are entitled to their costs below and in this court. The respondents' counterclaim is dismissed with costs.

Judith Prakash JC

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

P Suppiah with Elengovan (P Suppiah & Co) for the appellants
Scott Thillagaratnam with Shashidran Nathan (Khattar Wong & Partners) for the respondents

---