

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1996] SGHC 282

DC Suit No 3474 of 1995

Between

Haller (Far East) Pte Ltd

... Plaintiff

And

Lim Choo Siong trading as
East Plan Marketing

... Defendant

GROUND OF DECISION

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**Haller (Far East) Pte Ltd v Lim Choo Siong trading as East
Plan Marketing**

[1996] SGHC 282

DC Suit No 3474 of 1995

Lai Siu Chiu J

06 December 1996

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Judgment:

2 **GROUND OF DECISION**

3 1. This was an action by the plaintiffs against the defendant

in the subordinate courts for the sum of \$63,031.96 being the

balance of the price of goods sold and delivered after deducting

amounts due from the plaintiffs to the defendant for goods and

supplies. The plaintiffs obtained summary judgment for the sum of

\$62,981.96 and the defendant's appeal to the High Court was heard by me. I dismissed the appeal and indicated that I did not wish to hear further arguments. I now give my reasons.

4 2. The plaintiffs are suppliers of window blinds. The defendant is their distributor and also manufactures or assembles some blinds for the plaintiffs. The plaintiffs and the defendant had a long standing business relationship since 1989. It had been the practice between the two parties to set off mutual debts in the course of their dealings.

5 3. The total amount of the plaintiffs' outstanding invoices and credit notes was S\$135,045.83. It was not disputed that this was the amount reflected in the invoices and credit notes. The defendant's invoices amounted to \$72,063.87. There was an inconsequential dispute over \$50 which the plaintiffs readily

conceded. The net amount was therefore \$62,981.96.

6 4. It was admitted by the defendant that the sum of \$22,771.25 was payable. However, the defendant claimed that the invoices and credit notes did not reflect deductions which he claimed he was entitled to for shortfalls in delivery and mistakes in the invoices. It was further alleged that the plaintiffs had delivered most of their surplus stocks to the defendant between December 1993 and April 1994 while a distributorship agreement was being negotiated, that some of these were unusable, that the plaintiffs had promised to clarify the monies payable after delivery of the goods and that payment was to be on a consignment basis.

7 5. In support of the allegation that the plaintiffs had not taken into account deductions which the defendant said he was

entitled to, the defendant gave evidence that the cheques made out to the plaintiffs matched with the invoices, after deductions. The plaintiffs' evidence was that the defendant often gave them cheques without indicating which invoices they were meant for payment. In such cases, the plaintiffs simply adopted the first-in-first-out principle.

8 6. In my view, there was no credible evidence at all of such alleged deductions. It was not contentious that the markings on the defendant's copies of the invoices were made by him. The evidence showed that often the cheques given to the plaintiffs did not indicate which invoices they were meant for. It was also clearly shown that when there were deductions, there were credit notes issued by the plaintiffs. There was no informal system of accounts between the two parties at all. The alleged deductions

were unilaterally and arbitrarily imposed by the defendant without any agreement on the part of the plaintiffs.

9 7. So far as the matching of the invoices and the cheques were concerned, it seemed clear to me that the defendant was trying to obfuscate a simple issue as it was clear that he had not given any indication to the plaintiffs on most occasions as to how the cheques should be matched with the invoices. It was therefore not open to him to complain about how the plaintiffs allocated the cheques to the invoices. The rather substantial arguments about the allocation of cheques and the plaintiffs' accounting system were not useful. In such circumstances, what was relevant was the total amount of the invoices and the total amount paid. The shortfall was as the plaintiffs alleged.

10 8. Secondly, it was alleged by the defendant that the defendant had agreed to take over the servicing of certain goods installed by the plaintiffs. The defendant alleged that there was an agreement that the defendant was entitled to retain monies for goods invoiced by the plaintiffs between January and April 1994 as security for these costs.

11 9. This allegation was rejected by the court below on the ground that there was no evidence of any such agreement apart from the bare allegation of the defendant. I agreed completely with this. There was no such term in the distributorship agreement and the defendant's affidavit evidence that he had refused to execute the agreement was plainly untrue as he did execute the agreement on 31 December 1993. For the same reason, the defendant's allegation that negotiations were still

continuing between December 1993 and April 1994 during which period the stocks were delivered subject to verification was not credible at all. These invoices were not on a consignment basis as the invoices clearly indicated that the terms were 30 days.

12 10. It was further alleged that the plaintiffs had not reimbursed the defendant the sum of \$5,000 being advertising fee due to the defendant and \$2,205 for bonuses and retrenchment payments made by the defendant to the plaintiffs' former employees.

13 11. There was similarly no evidence, apart from the bare allegation of the defendant, to show that these sums were paid on behalf of the plaintiffs. There was no evidence of advertising costs incurred nor any agreement as to such fees. There was also no evidence that the defendant had made any payment at all to the

plaintiffs' former employees on the plaintiffs' behalf. There was evidence from one of the employees that the defendant had paid him some bonus and retrenchment benefits when he went to work for him after retrenchment by the plaintiffs. I was unable to see how these alleged payments could be linked to the plaintiffs. At best, they were voluntary payments made by the defendant to his employees. In the circumstances, I agreed with the court below that these bare claims should not affect the plaintiffs' entitlement to summary judgment.

14 12. Lastly, it was alleged in the pleadings that the plaintiffs had been in breach of its distributorship agreement with the defendant by failing to supply him with aluminum tracks. The defendant counterclaimed for damages of \$25,778.45. The plaintiffs contended that they stopped supplying the defendant

with aluminum tracks because the defendant failed to pay them.

Nor could the defendant point to any term in the agreement which said that the plaintiffs were obliged to supply him the tracks.

On the contrary, it was indicated in Appendix A of the agreement that tracks could be purchased by the defendant from any source.

15 13. Be that as it may, the defendant had not in any way explained how the sum of \$25,778.45 was arrived at. There were no particulars as to how damages had been assessed by the defendant, nor any evidence at all of losses suffered by the defendant as a result of the alleged breach. I did not see how such a bare counterclaim could deprive the plaintiffs of their right to summary judgment on their claim.

16 14. In the circumstances, I could see no ground for disturbing the summary judgment granted to the plaintiffs by the court

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below. I dismissed the appeal and saw no need to hear further arguments.

17 Lai Siu Chiu

18 Judge

Lai Siu Chiu J

Gerald Chong (Seah Leong & Partners) for the plaintiffs
Winston Kwek (Joseph Tan Jude Benny & Scott) for the defendant
