IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 132

Suit 1870/1991

Between

P T Arjuna Maha Sentosa

… *Plaintiff*

And

Lip Guan Industries Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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P T Arjuna Maha Sentosa v Lip Guan Industries Pte Ltd

[1997] SGHC 132

Suit 1870/1991
Christopher Lau JC
23 May 1997

1 **Judgment:**

2 1. This action arose out of an agreement dated 26 July 1990 between the plaintiffs and the defendants ("the Agreement") for the sale, installation and commissioning of a used laminator machine with the brand name "Union Victory" ("the machine") for a sum of S$125,000.00 which amount was to be paid in the stages set out later in these Grounds. The plaintiffs' claim was for loss and damage amounting to S$1,230,624.48 and general damages. The defendants denied the claim in its entirety and counterclaimed the sum of S$15,000.00 being the balance of the agreed sale price. The counterclaim being on the basis that as the defendants had fully performed their obligations under the Agreement, this balance was therefore due and owing.

3 2. The plaintiffs described themselves as being in the business of importing, manufacturing and exporting of wooden products whilst the defendants carried on business as manufacturers of moulded wooden products.

4 3. The hearing essentially concerned the plaintiffs' claim since the plaintiffs conceded on the first day of the trial that they did owe the defendants

the balance sum of S$15,000.00 and agreed to judgment being entered against them in this sum. Judgment was accordingly entered for the defendants on the first day of the hearing on the defendants' counterclaim.

5 4. In the consideration of the plaintiffs' claim, it was common ground between the parties that the only issue for the court to determine was whether there had been a breach by the defendants of clause 5 of the Agreement. Clause 5 of the agreement was in the following terms :

6 "Upon arrival of the Machine at the Purchaser's factory in Tangerang, Indonesia, the Vendor will undertake the installation and commissioning of the said Machine within twenty-one (21) days from the date of arrival."

7 The "Vendor" referred to being the defendants.

8 5. The issue was an issue of fact, and it turned on the veracity and reliability of the evidence adduced by the parties. My conclusion, after having seen and heard the parties' witnesses, considered their evidence and the submissions of counsel, was that the defendants had not breached clause 5. The plaintiffs' claim was accordingly dismissed. These are my reasons.

9 6. The Agreement provided for the staged payment of the sale price by the plaintiffs and for the parties' obligations under the contract. It stipulated that the plaintiffs were to pay, following their acceptance of the Agreement, to the defendants an initial sum of S$20,000.00. Thereafter the defendants were to refurbish the machine, and the plaintiffs were to inspect the machine after its refurbishment and to pay, by way of letter of credit, a further sum of S$85,000.00 upon completion of the refurbishment works. It further stipulated that upon receipt of the letter of credit, the defendants were to ship the machine

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to the plaintiffs' premises in Tangerang, Indonesia, and within twenty-one days of the machine's arrival at the plaintiffs' premises, to install and commission the machine. Payment by the plaintiffs of the then balance sum of S$20,000.00 was to be made upon the defendants' completion of the installation and the commissioning of the machine at the plaintiffs' premises.

10 7. The plaintiffs' case was that, following their president/director's negotiations with the defendants and his viewing of the machine at the defendants' factory in Singapore, the plaintiffs and the defendants agreed the terms, as embodied in the Agreement, for the sale of the machine. It had been bought by the plaintiffs for the purpose of laminating boards of wood with coated paper which the plaintiffs would then either sell or use to manufacture furniture. It was said by the plaintiffs in their statement of claim that the machine was shipped by the defendants and arrived in Tangerang, Indonesia on 9 October 1990, that there was no installation and commissioning within twenty-one days thereafter as required under clause 5 of the Agreement, that it was not until 7 January 1991 that the defendants' technician arrived to install the machine, and that even then the technician had failed to install and commission the machine within twenty-one days of his arrival. It was the plaintiffs' allegation that the machine had not been properly installed or commissioned by the defendants' technician because :

11 (a) when it was tested, the paper laminated on the boards by the machine was creased;

12 (b) the defendants' technician Mr Tsai had allegedly told the plaintiffs' factory manager, Mr Hendra (PW4) and its president/director, Mr Azis Mustafa (PW1) that the machine lacked several important components and that the absence of these components was the cause of the creasing.

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13 The failure resulted, so it was said by the plaintiffs in their statement of claim, in their having to pay import duty of S$11,842.00, damages to their buyers of S$175,182.48, loss of profits of S$1,039,500.00, surveyor fees of S$500.00 and reinstallation costs of S$3,600.00 making a grand total claimed as loss and damages of S$1,230,624.48.

14 8. On the other hand, the defendants' case was that, apart from the initial payment of S$20,000 the plaintiffs failed to adhere to the terms of payment, that clause 5 of the Agreement only required the defendants to install and commission the machine within twenty-one days of its arrival at Tangerang, Indonesia, that the machine did not arrive in Tangerang, Indonesia on 9 October 1990 but on 27 September 1990, that the defendants were thereafter at all material times ready, able and willing to undertake the installation and commissioning, that no installation or commissioning had taken place between the machine's arrival whether on 27 September 1990 or 9 October 1990 and 14 January 1991 because the plaintiffs had not firstly, informed the defendants of the machine's arrival, secondly, had not asked the defendants to install the machine as the new factory building, which was to house the machine, was still being constructed, thirdly, that the plaintiffs only asked for the installation to be undertaken in January which was why the defendants' technician only arrived at the plaintiffs' premises in Tangerang, Indonesia on 14 January 1991 and finally, that the machine was completely installed and commissioned by the defendants' technician, in accordance with the Agreement, on 1 February 1991.

15 9. The plaintiffs called in all six witnesses.

16 10. The principal witness was Mr Azis Mustafa (PW1), the president/director of the plaintiff company. It was he who inspected the machine, negotiated and agreed the terms of the Agreement. He was to arrange

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for the staged payments, the housing and the facilities for the machine's installation and commissioning. He was, however, an unsatisfactory and unreliable witness. His convoluted evidence lacked candour, was riddled with contradictions and was unsupported by the documentary evidence. I will not refer to each and every occurrence of these in his evidence but by way of illustration, I refer to his evidence on where he intended the machine was to be installed at the plaintiffs' premises :

17 10.1 He admitted in cross-examination that he had acted dishonestly in passing the machine as new to the Indonesian authorities when in fact it was used (notes of evidence pages 23 to 27);

18 10.2 Despite his assertions in his affidavit of his evidence-in-chief that the machine was to be housed in an existing factory building, he admitted early in his cross-examination the machine had indeed been bought to be housed in a new factory building (notes of evidence page 30 A), the construction of which however had yet to be completed between September to late November 1990 (paragraph 24 of his affidavit of evidence-in-chief). The admission was itself then retracted when he realised its significance. Its significance was that the defendants could not have installed and commissioned the machine within twenty-one days of the date of its arrival if the construction of premises where it was to be installed had yet to be completed. By his own admission in his evidence-in-chief, the construction of the new premises had not been completed until late November 1990.

19 10.3 His evidence however on where the machine was actually to be installed did not however end there because his assertions that the machine was indeed to be housed in an existing factory building was then undermined by the evidence of one of the plaintiffs' witnesses, namely Mr Azis Mustafa's former

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business partner Mr Soelisto (PW2). Mr Soelisto had been called by the plaintiffs to verify the plaintiffs' claim that they had had to pay to him a penalty of Rp 192,000,000.00 damages or a "fine" for having breached their contract with him; the breach having been caused by the defendants' failure to install and commission the machine as required by clause 5 of the Agreement. He had been interposed as a witness in the course of Mr Azis Mustafa's cross-examination at the plaintiffs' request. What he said in cross-examination was that he had been a partner in the plaintiff company from January 1986 to March 1989, that Mr Azis Mustafa had in essence told him that he had intended to expand the plaintiffs' business by building new premises, by buying an additional paper laminating machine and that the machine was to be housed in the new premises (notes of evidence page 48 D - E, page 50 C). Confronted with Mr Soelisto's evidence, Mr Azis Mustafa admitted he had indeed told Mr Soelisto that he was building a new factory building to house the new laminating machine (notes of evidence pages 119 F to 120 B) and then maintained he had a change of intention and the machine was instead to be housed in an existing factory building following the machine's arrival. He explained this "change of mind" had taken place between 1989 and 1990 (notes of evidence page 122 E). When cross-examined further on this he then said that he had changed his mind yet again towards end 1990 and had decided to house the machine in the new factory building (notes of evidence page 123 A). But as his earlier evidence was that the new factory building was not ready in October 1990 and that in any event, the electricity cable to this new factory building had only been completed in December 1990 (see notes of evidence page 124 B), how could the defendants have been expected to install the machine within twenty-one days of 9 October 1990 which was the date the plaintiffs had alleged as the machine's arrival date in Tangerang ?

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20 10.4 Further, if the machine was to be housed in the old factory building, it was odd that despite all his assertions firstly, that he had called Clement Seah, the defendants' general manager, as soon as the machine had arrived on 9 October 1990 to send a technician to install and commission the machine, secondly, when the defendants did not do so, that he had asked a business associate and friend in Singapore, Mr David Ho to call on the defendants to remind them of their contractual obligations, that neither documentary evidence in corroboration was produced nor did Mr David Ho appear to give evidence in support.

21 10.5 Instead, Mr Azis Mustafa referred to a fax dated 29 October 1990 sent by the defendants to him. That fax which was marked as exhibit "AM-5" to his affidavit of evidence-in-chief, stated :

22 "The laminating machine you bought from us was shipped to you more than one month ago and until today we have not heard from you. We are anxious to know when you intend to have the machine installed. According to contract we are required to install and commission the machine within 21 days from the date of arrival in Indonesia.

23 We supposed to collect S$85,000.00 from you on 20.9.90 instead of S$80,000.00. We apologise for overlooking. Please remit the difference of S$5,000.00 either through Mr Tay or by T/T.

24 Please let us know as soon as possible the firm date you intend to have the machine installed."

25 This fax which had been sent by the defendants' managing director Mr Ong Hock Guan set out the defendants' case clearly. There was never a written

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response from the plaintiffs to this fax. Mr Azis Mustafa tried to explain the absence of a written response from the plaintiffs in his evidence-in-chief. He said that this was because he did not want to further strain his already strained relationship with Clement Seah. But the explanation lacked credibility as he subsequently retracted this allegation in cross-examination and admitted the allegation of a strained relationship with Clement Seah by 31 October 1990 as not being true (see notes of evidence page 37 B, page 38 A, page 39 F and page 40 A).

26 11. In any event even if the defendants were in breach in that they had not installed the machine within twenty-one days of 9 October 1990 when they could have, the plaintiffs must have accepted that breach because firstly, the plaintiffs' claim for damages only ran from 29 January 1991 (see paragraph 57 of Azis Mustafa's affidavit of evidence-in-chief), secondly, Teh Tiang Hock a former business associate of Azis Mustafa himself confirmed Azis Mustafa's acceptance of the alleged delayed installation (see paragraphs 10 and 11 of Teh Tiang Hock's affidavit of evidence-in-chief), thirdly, the plaintiffs confirmed and did not deny that S$15,000.00 was due and owing to the defendants (see notes of evidence page 43 D), and allowed judgment to be entered on the defendants' counterclaim. Further in allowing judgment to be entered, the plaintiffs had not only admitted that the machine was not required to be installed within twenty-one days of 9 October 1990 but also that it was completely installed and commissioned by the defendants at the plaintiffs' factory on 1 February 1991 in accordance with the terms of the agreement (see paragraph 15 of the Defence and Counterclaim).

27 12. As for the other witnesses called by the plaintiff company, in summary, I did not also consider I could safely rely on their evidence as proof of the defendants' alleged breach of clause 5. As with Azis Mustafa's evidence,

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I will not refer to each and every aspect of their evidence which led me to this conclusion but refer briefly to some :

28 12.1 with the exception of Hendra (PW4), each of the other witnesses called by the plaintiffs were not at the plaintiffs' premises either when the machine arrived or between the period 14 January to 1 February 1991 when it was being installed. What they each had to say on the commissioning and installation would not have been based on their own observations. Further it was the evidence of Miss Liliana Aminoto (PW3) - whom Azis Mustafa alleged he had contracted with to repair the machine - that she had sent a technician, a Mr Soo Hai Tong to attend to the machine only in or about May 1992, almost fourteen months after the defendants' technician, a Mr Tsai Lung Tzu (DW2) had undertaken the installation and commissioning at the plaintiffs' premises. There was also uncertainty over who actually in Liliana Aminoto's company attended to the machine. A Mr Sularto (PW5) who attended court alleged he was the technician sent by Miss Aminoto. He said that he did not know of a Soo Hai Tong being employed by Miss Aminoto. This was clearly contrary to Miss Aminoto's earlier evidence that the technician she sent was a Mr Soo Hai Tong (see notes of evidence page 77). Miss Aminoto, as the employer, must have surely known which technician she sent and whether he was employed by her.

29 12.2 As for Hendra's allegation that the paper was creased during the commissioning of the machine by the defendants' technician and as to what Tsai is alleged to have told him, if these allegations were true, why would the plaintiffs then have confirmed the balance sum of S$15,000.00 as owing and allowed judgment to be entered on the counterclaim ?

30 13. In contrast I saw no inconsistencies in the evidence adduced by the defendants' witnesses, Mr Ong Hock Guan (DW1), the chairman of the

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defendant company, Mr Tsai Lung Tzu (DW2), the technician sent by the defendants to undertake the machine's installation and commissioning, Mr Clement Seah (DW3), the general manager of the defendant company, and Mr Juang Chion Cherng (DW4), the managing director of Union Victory Machinery (S) Pte Ltd, the manufacturers of the machine. I was impressed by their candour and the straightforward manner in which they answered questions put to them in cross-examination. I had no reason to doubt the veracity of their evidence.

31 14. I accepted the evidence of Tsai Lung Tzu that when he tested the machine, the creasing of the coated paper was not caused by any defect in the machine but rather by the plaintiffs supplying him with damp paper, with glue which had too high a water content and with defective plywood. It was his evidence that the installation of a tension controller would resolve the problem, that this tension controller was not part of the machinery supplied by the defendants and that it was only necessary if the paper to be laminated was damp. The function of the tension controller was to spread out the damp paper evenly. It was his evidence that it was this item of equipment that Hendra and Mr Azis Mustafa had referred to.

32 15. Even if I had found for the plaintiffs, I would still not have accepted their claim that they had suffered the loss and damage alleged or any damage. There was no evidence or any satisfactory evidence of import tax having been paid by the plaintiffs, of damages amounting to S$175,182.4 having been paid by the plaintiffs to their buyers or Soelisto, and of the plaintiffs incurring loss of profits amounting to S$1,039,500.00. There was no evidence the repair works undertaken by Liliana Aminoto's company were as a result of the machine's not having been properly installed or commissioned on 1 February 1991. Even if these repairs were caused by Mr Tsai's defective installation or commissioning,

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there was no plausible evidence from the plaintiffs as to why such repairs could not have been undertaken much earlier. I accepted the defendants' submissions that the delayed repairs would have caused the machine's condition to worsen and that had the repairs not been unnecessarily delayed, that the plaintiffs would have been able to fulfill the alleged contract (if indeed there was such a contract) with Soelisto.

33 16. In any event the plaintiffs had not shown firstly, that they did have a contract with Soelisto and secondly that they had paid any alleged penalty in damages to Soelisto. Soelisto's claim was not for an inconsequential amount. Yet no mention was made of such claim by Mr Azis Mustafa at the meeting that he had with Ong Hock Guan in March 1991, in correspondence between the plaintiffs' solicitors and the defendants' solicitors, and in Azis Mustafa's affidavit of evidence-in-chief. Soelisto's evidence was also far from satisfactory. He produced no documentary evidence in support of his allegation of having entered into contracts with sub-purchasers, of his having sent reminders to Azis Mustafa (whom he admitted he had known for nearly twenty years) to fulfil his alleged contract with the plaintiff company despite Soelisto's assertions that he was desperate and feared for his life, and of fines having been paid by him to his sub-purchasers as a result of the plaintiffs' failure to fulfil their contract with him. These sub-purchasers after all were, as he had admitted, all government services (see notes of evidence at page 67 D).

34 17. It was in these circumstances I concluded the plaintiffs had not, on a balance of probabilities, proven their case either on liability or quantum and accordingly dismissed the plaintiffs' claim with costs.

35 Dated the 22nd day of October 1997.

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36 **CHRISTOPHER LAU JC**

Christopher Lau JC

Tng Soon Chye and Richard Lim for the plaintiffs
Tan Kok Quan, Audrey Thng and Lynette Leong for the defendants

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