IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 320

DA 40/1996

Between

Teck Tai Hardware (S) Pte Ltd

… *Appellant*

And

Corten Furniture Pte Ltd

… *Respondent*

GROUNDS OF DECISION

Civil Procedure — Appeals; Contract — Remedies — Remoteness of damage; Contract — Remedies — Damages; Contract — Remedies — Damages

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Teck Tai Hardware (S) Pte Ltd v Corten Furniture Pte Ltd

[1997] SGHC 320

DA 40/1996
Lai Kew Chai J
01 December 1997

Judgment:

LAI KEW CHAI J

Cur Adv Vult

This appeal arises from a claim for damages by the respondents (buyers) against the appellants (sellers) under a written contract dated 24 April 1992 for the sale of 10,000 sets of front locks at the price of $18,250. Under this contract, the sellers, who had bought them from Italian manufacturers, agreed to deliver the front locks by four equal deliveries of 2,500 front locks each. This appeal is concerned with the last delivery which were faulty and defective.

2.Of these 2,500 defective locks, 1,600 were unused by the buyers and 418 were installed onto `pedestals` by the buyers who sold and delivered them to buyers in Singapore. The remaining 482 defective locks were installed on pedestals by the buyers who sold and delivered them to overseas buyers in Dubai, United Arab Emirates and Hong Kong.

3.1.I turn to the proceedings and will narrate only those aspects as are relevant for the purposes of this appeal. The buyers commenced proceedings in the district court and claimed, inter alia, damages for breach of implied conditions of merchantability, fitness for purpose and correspondence with description. The sellers denied the liability of a seller. They contended without success that the party who sold the front locks to the buyers were the Italian manufacturers. But they counterclaimed for the price of the 2,500 front locks on the basis that it was part of the agreement that, having paid the Italian manufacturers, they were entitled to be paid by the buyers. The sellers counterclaimed, inter alia, the sum of $18,250 being the price of the 2,500 front locks. Predictably, the sellers` rather unusual basis of claim was rightly rejected.

3.2.At the conclusion of the trial, the trial judge decided that the buyers were entitled `to the full costs of replacing the pedestals shipped to Dubai and Kong Kong amounting to $61,581.50.` The sellers appealed. Whether those damages are too remote is one of two issues in this appeal.

3.3.The sellers` appeal before me is limited to setting aside the award of $61,581.50 on the ground that on the evidence, when properly understood and analysed, the finding must be that the costs of replacing the pedestals in the buyers` sales overseas could not conceivably come within what has been categorised as the second rule in Hadley v Baxendale (1854) 9 Exch 341, namely, the loss `which may reasonably be supposed to have been in the contemplation of both parties.` The second rule is statutorily preserved in Singapore under s 54 of the Sale of Goods Act (Cap 393, 1994 Ed) which applies to this contract of sale: see s 1(1) of the Act and Bostock & Co Ltd v Nicholson & Sons Ltd [1904] 1 KB 725, at p 735 per Bruce J. Section 54 provides:

> *(n)othing in this Act affects the right of the buyer or the seller to recover special damages in any case where by law special*

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> *damages may be recoverable [Omitting the irrelevant parts dealing with interest and restitutionary claims, with emphasis added.]*

3.4.There is another ground of appeal which I will address at the end of this judgment.

3.5.By a respondents` notice dated 18 November 1996 the buyers set out the computations which the trial judge ought to have followed and contended that judgment in the sum of $53,587.29 ought to have been entered instead of $41,942.64 as set out in the grounds of decision of the trial judge. It was common ground before me that if the appeal failed, the computational errors would have to be corrected.

4. **The common ground**

The buyers are manufacturers of office and home furniture, as the sellers well knew. The sellers market hardware items, including locks and hinges.

5.On 24 April 1992 the buyers entered into a contract with the sellers to purchase, inter alia, 10,000 sets of front locks with 610mm bars. They were to be used to lock various chests of drawers (which in the trade are known as `pedestals`) for office tables.

6.As was known to both parties, the front locks were to be imported from a company in Italy known as Serrature Meroni Spa. Each of the locks under the design specifications was referred to as `Meroni 00133 Front Lock`. These front locks were uniquely different from other locks; their cylinders were longer than the casings. The cylinders therefore protrude from the casings and only the face of each cylinder showing the keyhole would be externally visible when installed onto a pedestal. This specific design of the front locks meant that the holes and

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grooves in the pedestals had to be drilled and/or made such as to accommodate the design of the locks.

7.The 10,000 sets of front locks were to be delivered to the buyers in four equal instalments of 2,500 each. The last instalment was due on March 1993. The last lot, which was defective, was delivered on 16 April 1993.

8.To meet the orders from their customers, the buyers installed 900 locks from the 2,500 locks onto 900 pedestals. Of these, 144 pedestals were shipped to Dubai on 29 April 1993 for the account of a buyer known as Uchida Yoko Singapore Pte Ltd (Uchida). The date of that sale contract was 28 April 1993. On 25 June 1993 Uchida complained that the locking system was faulty. The buyers replaced all 144 pedestals.

9.Another 338 pedestals fitted with the front locks were sold and delivered to Comer Co Ltd (Comer) in Hong Kong. That contract was entered into on 18 May 1993. Comer found the locks faulty too and, on their demand, the buyers replaced them.

10.The buyers sold and delivered 418 pedestals installed with the front locks to customers through Singapore. Many were rejected as faulty and the buyers spent substantial time and effort replacing the defective locks on the pedestals.

11.As to the remaining 1,600 front locks, they were also found to be defective.

12.To summarise, it was established that the 2,500 locks were faulty and defective. The cams on all the locks were not functional. Some of the locks did not turn at all and others turned by more than 180 degrees. They were supposed

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to turn by only 180 degrees. As a result it was not possible to use the 2,500 front lock unless the cylinders were replaced.

13. **Measure of Damages**

As liability for the faulty front locks was indisputable, the question is the correct measure of damages payable by the sellers for breach of warranty. Such measure is set out in ss 53 and 54 of the Sale of Goods Act and the two sections are adopted from the UK Sale of Goods Act 1979 s 54.

14.The object of awarding damages for breach of warranty generally is not to punish or to indemnify the party injured by a breach for all losses, all and sundry as it were, but by an award of money sufficient to put that party in such a financial position as if the contract had been duly performed.

15.The common law in England saw it as fair, reasonable and pragmatic that a contract breaker should only be liable for the loss actually suffered as, at the time of the formation of the contract, was reasonably foreseeable as a likely result of the breach. The case law is accepted in Singapore when interpreting the corresponding sections in the Singapore Sale of Goods Act. Alderson B stipulated the classic statement in ***Hadley v Baxendale*** :

> *Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered as either arising naturally, ie according to the usual course of things, from such breach of contract itself, or such as may be reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of it.*

16.In this appeal we are not concerned with what has often been referred to as the first rule in the formulation quoted above; the loss for breach of warranty

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`arising naturally`, which is widely accepted as encapsulated in ss 53(2) and (3): see ***Bostock*** `s case. All parties to a contract know, or are taken at law to know, the `ordinary course of things`. In the sale of goods which are available in the market, the loss, if any, naturally occurring will be the difference between contract price and the market price at the time of the breach.

17.We are concerned with the second rule, namely the loss `which may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract.` As noted, such special damages are encapsulated in s 54 of the Sale of Goods Act. The second rule caters for the situation where the contract breaker knows or ought in certain circumstances to have known more than what every reasonable man is presumed to know. If his contracting party tells him something outside the ordinary course of things before or at the time the contract is made, the second rule would apply. For example, hypothetically, in ***Hadley v Baxendale*** , if the millers had told the carriers that the mill would be stopped, could not operate and had to wait for the new crank shaft, the carriers could be said to have foreseen the five day loss of profit of 300 (a huge sum then) as the likely result. In fact, of course, in that case, the common carriers did not know that delay would cause that kind of loss.

18.**Koufos v C Czarnikow Ltd** [1969] 1 AC 350 is authority for the proposition that where there was wrongful delay in the delivery of marketable goods under a contract of carriage of goods by sea the measure of damages was the difference between the price of the goods at their destination when they should have been delivered and the price of the goods when they were in fact delivered. What is more pertinent in this appeal is Lord Reid`s observations at p 385F. Lord Reid, having lucidly analysed ***Hadley v Baxendale*** earlier, noted that in cases like ***Hadley v Baxendale*** or ***Czarnikow Ltd*** which he was considering it was not `enough that in fact the plaintiff`s loss was directly caused by the defendant`s

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breach of contract. It clearly was so caused in both.` His Lordship then pointed out at p 385F:

> *The crucial question is whether, on the information available to the defendant* ***when the contract was made****, he should, or the reasonable man in his position would, have realised that such loss was sufficiently likely to result from the breach of contract to make it proper to hold that the loss flowed naturally from the breach or that loss of that kind should have been within his contemplation. [Emphasis added.]*

19.An Australian case is a useful guide for comparative purposes: ***Spence v Duffield*** (1870) 1 VR(L) 49. In an action claiming damages for delivery of flour inferior to that described as `Duffield`s silk dressed`, the plaintiffs were awarded about 586 as the amount of expense incurred in exporting a portion of the flour to New Zealand. On appeal, the Supreme Court of Victoria, Australia, held that no special damages could be recovered for the transhipment of the flour to a foreign country and the freight paid for its shipment back after rejection unless both parties at the time of the contract had contemplated the flour being exported. Stawell CJ said at pp 52 to 53:

> *The last ground is, that the damages ought to be reduced by 586 15s 6d, which has been found as the amount of expense incurred in exporting a portion of the flour to New Zealand. There was nothing in the contract, or in the evidence, to show that both parties at the time of the contract, contemplated the flour being exported in this way, although there may be a strong suspicion on the point. It was no doubt purchased at a higher price than that ruling in the markets of Melbourne at the time, and was most probably intended for exportation, though purchased for delivery in Melbourne. But all that is a matter of conjecture, and not the necessary and fair inference to be deduced from the evidence. We therefore think the rule should be made absolute on that ground, and the damages be reduced by 586 15s 6d.*

20.Further, if the sub-sale is formed after the sale contract in question, any consequential losses suffered by a buyer in respect of the sub-sale contract by reason of the seller`s breach of the sale contract cannot be recovered from the

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seller because such loss could not have been within the contemplation of the parties at the time of the sale contract.

21.There is local authority to follow. In **Australian Master Builders Co Proprietary Ltd v Pal-Asian Services** [1987] 2 MLJ 573 [1987] SLR 346 , the plaintiffs on 22 June 1984 agreed in writing to sell grout to the defendants for $42,750.00. The goods were duly delivered but the defendants made partial payment leaving a balance of $22,799.60. On 20 July 1984 they entered into a second contract for the sale and purchase of another quantity of grout. Unfortunately, the plaintiffs supplied the wrong goods which the defendants shipped to their purchasers in Indonesia. Despite the plaintiffs` offer to pay for all expenses for the return of the wrong goods and to ship the grout as contracted, the defendants refused the offer and cancelled the second contract. The plaintiffs sued for the outstanding price under the first contract and the defendants counterclaimed for damages for breach of the second contract. One of the items claimed by the defendants was the loss of a contract for the sale of heavy duty pallet racks between the defendants and their Indonesian purchasers. That contract was made after the second contract and was later cancelled by Indonesian purchasers because the wrong goods had been shipped under the second contract. At the conclusion of proceedings for summary judgment, damages payable by the plaintiffs were assessed to be $49,313.73. That award included a sum of $30,000 in respect of losses suffered by the defendants as a result of the cancellation of their sale of heavy duty pallet racks. The plaintiffs appealed to the High Court.

22.LP Thean J (as he then was) allowed the appeal. He held, inter alia, that as the defendants` Indonesian purchasers had entered into the contract to buy the heavy duty pallet racks after the plaintiffs had breached the second contract, it

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`could not possibly had been contemplated by the parties at the time that contract was made` (p 575F).

23.Counsel for the appellant further relied on the decision of the Malaysian Supreme Court in **Eikobina (M) Sdn Bhd v Mensa Mercantile (Far East) Pte Ltd** [1994] 1 MLJ 553 . The appellants agreed to sell to the respondents 24 units of heavy construction equipment. After the agreement was entered into, but before delivery of the goods, the respondents sub-sold 15 units to sub-buyers. The appellants failed to deliver and the trial judge awarded damages which included sums for loss of profit on the sub-sale and loss of confidence in the respondents on the part of their customers. On appeal, the Malaysian Supreme Court ruled that the loss of profits in the sub-sale could not be recovered by the respondents against the appellants because the sub-sale was never communicated to the appellants at the time of the contract and could never have been as the contract for the sub-sale was entered into later. The judgment of Peh Swee Chin SCJ, if I may respectfully say so, repays study. At p 564 the learned judge said:

> *If the first rule of* ***Hadley v Baxendale*** *does not apply, we now examine the circumstances if they could qualify for the second rule; the actual knowledge of special circumstances, viz whether details of such potential loss were made known to the contract breaker before or at the time of the contract so that the contract maker can be said to have taken the risk of such loss into the bargain of the contract*
>
> *Here, the matter of sub-sales was not communicated to the said vendor at the time of the contract and this is beyond dispute from the evidence for the sub-sales were in fact transacted after the date of contract between the parties herein but before delivery. Thus the specific loss of profit on 15 units of the goods in question sold before delivery and after contract could not be claimed as it was too remote by virtue of both rules in* ***Hadley v Baxendale****.*

24.I come to the first ground of appeal. Counsel for the sellers contended that the sellers should not be held liable for consequential loss suffered by the buyers

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by reason of the shipments of pedestals to Dubai and Hong Kong because those shipments were not within the sellers` contemplation at the time the contract was entered into by the parties. In this connection, it was submitted that the trial judge`s findings were unsupported by the evidence. At para 29 the trial judge concluded that the sellers` witness in cross examination `agreed that the (sellers) had by their letter of 26 March 1993 (1 ABD 4) told the (buyers) that they (the buyers) were going to use the locks for their export products.`

25.At para 31, the trial judge made the finding that the sellers `knew that the pedestals were to be exported.` In making those findings, the trial judge relied on what the sellers` witness had deposed to in her affidavit affirmed on 10 April 1995 in a related DC Suit No 16831 of 1994 in which the sellers most unfortunately failed to recover from the Italian suppliers on merely a technical lapse.

26.The letter of 26 March 1993, which was wrongly dated 26 March 1992, referred to the delay of the shipment to 28 March 1993. The contract was, however, dated 24 April 1992, the previous year. In para 2 of that letter the buyers stated that if they did not receive their order by end March 1993, `all the export schedule that have been committed to our customers will be affected` and went on to ask: `Are you going to bear the consequences?`.

27.So far as the affidavit of 10 April 1995 is concerned, the witness, DW1 Madam Wong Poh Tze, merely deposed to the fact that Serrature Meroni SPA and therefore the sellers knew that the locks would be used for the purpose of installing or fitting them into pedestals for office tables and that the buyers were manufacturers of office and home furniture. In the affidavit, it was not stated that, at the time the contract was made, the sellers knew that the locks would be fitted into pedestals which would then be exported.

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28.I am therefore driven to the conclusion that the trial judge had erred in placing any reliance on the letter and the deposition in the affidavit. On the record of proceedings, the buyers` witness, PW2 Mr Eu Kok Khoon had also erred when he referred to the said letter and asserted that `(a)s early as 26 March 1993, (buyers) have put (sellers) on notice that furniture will contain locks supplied by (sellers)`: see NE 229.

29.It has to be noted that the two sales contracts to the buyers in Dubai and Hong Kong were made after the contract of sale between the parties to these proceedings.

30.Counsel for the buyers submitted that (i) the buyers had by para 10 of their statement of claim asserted that the sellers `well knew that the (buyers) required the said front locks for sale of the pedestals with the tables manufactured therewith to customers in Singapore as well as overseas for profit`; and (ii) that para 12 of the affidavit evidence-in-chief of Mr Cheng Lai Bok the buyers` production manager stated as follows:

> *At all material times, the (sellers) well knew that the (buyers) required the said front locks for the purpose aforesaid for sale of the pedestals with the tables manufactured therewith to customers in Singapore as well as overseas for profit. In this respect, I wish to refer to all the relevant correspondences between the (buyers) and the (sellers), all relevant conversations between myself and the (sellers`) representatives and the previous course of dealings between the parties.*

31.Now that evidence-in-chief is contained in affidavits, it is perhaps not inappropriate to dwell on the contents in such affidavits. Such affidavits, unlike pleadings, must contain evidence within the meaning of the Evidence Act (Cap 97, 1990 Ed) and they must have a bearing on or relevant to the facts in issue in a case. They should not consist merely of contentions and summaries, which are permissible in averments in pleadings, but must be supported by particulars of

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the evidential basis or bases. Even in averments, particulars are often required. A deponent, or in reality, the legal draftsman of an affidavit has to take careful and precise instructions on the evidence with the appropriate particularity as the facts in issue would reasonably require. A professional judgment has to be made. Without the evidence and sufficient particularity, a trial judge is in no position to, and in my view, should not generally accept the contentions or conclusions of the deponent, unless the propositions are self-evident for one reason or another. To do so would be to accept the conclusions without examining the basis or bases upon which the deponent has grounded his conclusions. The result may well be that the judicial process of determining the fact in issue may not approximate the truth. For example, in this case, para 12 of the affidavit, quite apart from repeating the averments in para 10 of the statement of claim, purported to prove the sellers` knowledge that the buyers would export the furniture fitted with the front locks by referring to `the relevant conversations`. What were they? When, where and between whom did these take place? And are they relevant? There was no evidence whatsoever on the conversations and the trial court was in no position to decide on the question of relevance. There was therefore nothing for the sellers` counsel to cross examine; he had no material evidence to meet. In these circumstances, it might well have been that he deliberately refrained from asking because (i) he would be probing in the dark and would be unprepared and therefore disadvantaged against the interest of his client; and (ii) it is not his function to cross examine and fill the gaps in the buyers` case. Then what of the `relevant correspondence`?

32.Well, the `relevant correspondences` turned out to be the said post-contractual letter of 26 March 1993. No evidence was led by the buyers on the contents of the `relevant conversations`. The so-called `previous course of dealings` was not relied upon by the buyers.

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33.In my judgment, there was nothing material known to the sellers before and at the formation of the contract for sale of the front locks that justify a finding that the sellers had realised that the losses in respect of the overseas sales were sufficiently likely to result from their breach. The sellers had no knowledge, actual or imputed, of any matter which would support the finding that it was within their reasonable contemplation that losses arising out of the overseas sales would be incurred if they were to break their contract. The appeal accordingly succeeds on this point.

34.Finally, I turn to the alternative ground that the sellers are not liable for the consequential losses suffered by the buyers by reason of the shipments to Hong Kong and Dubai because the buyers knew, or ought to have known upon reasonable examination of the locks, that they were defective before the shipments. The trial judge found that the `overturning` defect was not patent or an obvious defect. She was not wrong, in my view, in finding that the `overturning` defect was not discoverable by the buyers upon reasonable inspection. There was sufficient evidence to support her findings. I am not permitted, as an appellate court, to interfere with the findings of facts when there are credible evidence capable of supporting those findings. This ground of appeal must be rejected.

35.Accordingly, the appeal is allowed. The damages are limited to the cost of replacing the defective cylinders of the 2,500 front locks. The sellers are not liable for the losses arising out of the sales overseas. The parties are directed to work out the sum payable by the buyers to the sellers on which the buyers are further ordered to pay interest at 6% pa from 9 November 1993 (the date of this DC writ). The buyers are ordered to pay costs here and below. They are further ordered to refund to the sellers whatever sum that has been paid to them. The security for costs of this appeal is to be returned to the sellers.

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Lai Kew Chai J

Christopher Anand Daniel (Allen & Gledhill) for the appellants
Samuel Chacko and Sharanjit Kaur (Manjit, Samuel & Partners) for the respondents

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