IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1997] SGHC 86

Suit 182/1995

Between

Export Services Singapore Pte Ltd

… Plaintiff

And

Idemitsu Chemicals Southeast Asia Pte Ltd

… Defendant

GROUNDS OF DECISION

Commercial Transactions — Sale of goods

Version No 1: 20 Nov 2026 (00:35 hrs)

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Export Services Singapore Pte Ltd v Idemitsu Chemicals Southeast Asia Pte Ltd

[1997] SGHC 86

Suit 182/1995
Lai Kew Chai J
08 April 1997

Judgment:

LAI KEW CHAI J

Cur Adv Vult

The plaintiffs claim the sum of US$101,760 being the difference in the market price for 192 metric tons of Polypropylene Propelinas 6041 which admittedly the defendants under a contract of sale did not deliver. The defence is that this was a sale of goods by description, ie `Propelinas 6041`, and under s 27 of the Sale of Goods Act (Cap 393, 1994 Ed) the defendants in a sale of unappropriated goods were obliged to, and indeed not entitled, to deliver any polypropylene other than `Propelinas 6041`. It is further alleged that this specific class of polypropylene was in the whole world only manufactured by a Malaysian company and that the manufacturers were unable owing to shortage of the `feedstock` and mechanical breakdown to supply the goods. Accordingly, the defendants are invoking cl 6 of the contract to excuse them from delivering the

goods. Polypropylene (film grade) is a petrochemical resin used for making plastic bags for food and garment packaging and industrial usage.

2.In November/December 1992 the plaintiffs wrote to several manufacturers and suppliers of the goods, including the Malaysian company known as Polypropylene Malaysia Sdn Bhd (PPM), expressing interest in buying polypropylene (film grade) for the Myanmar market. PPM informed the plaintiffs that export of their products was undertaken by one of their shareholders, Idemitsu Petrochemical Co Ltd, Japan. The plaintiffs were further advised to refer their inquiry to the defendants as their representatives in Singapore. PPM were the sole manufacturers of Propelinas 6041 but there were other manufacturers and suppliers of similar products, ie the petrochemical resins known as polypropylene (film grade) for the manufacture of plastic bags for food and garment packaging and industrial usage. Although they had different brand names, the resin perform the same function and could be used to produce the particular type of plastic bags.

3.The plaintiffs established contact with the defendants and eventually they entered into a sales contract dated 3 March 1993. The defendants agreed to sell to the plaintiffs 560 metric tons of Polypropylene Propelinas 604 (the goods) at US$550 per metric ton FOB Singapore. Shipment was to be effected as follows: 240 tons in March 1994, 160 tons in April 1994 and 160 metric tons in May 1994.

4.I set out below the material terms of the contract dated 3 March 1994, noting in particular the description of `the commodity`:

Commodity:	Polypropylene Propolinas 6041
Quantity:	35 fcl x 16 mts = 560 mts
Shipment:	March 94 - 240 mts

	April 94 - 160 mts
	May 94 - 160 mts

In view of the decision set out later in this judgment, it is not necessary to recite cl 6 which is captioned thus: `Force Majeure, etc.`

5.The defendants delivered 240 tons. Thereafter difficulties were encountered. In late March 1994 the defendants informed the plaintiffs that their Malaysian manufacturer PPM was having some technical problems and would stop production for at least one month and that shipment would be delayed. The shipment date was accordingly rescheduled. By another letter two days later, the defendants informed the plaintiff that PPM was unable to supply the balance of the goods for April and May 1994. PPM had not been supplied with the raw materials (the feedstock) for the manufacture of Propelinas 6041 via the pipeline from a neighbouring plant owned by MTBE (M) Sdn Bhd (MTBE).

6.In fact, on the evidence, the market price for polypropylene suitable for making plastic bags for food and garment packaging was rising mercurially; it was established that the price went as high as claimed by the plaintiffs.

7.Dr Isa Mohd Tan was the marketing and technical services manager of PPM which is a member of the Petronas Group. PPM is a joint venture company between Petronas, Idemitsu Petrochemical Co, Japan, and Neste Oy. Petronas owned 80% of PPM. He confirmed that `there are polypropylene films which are similar to Propelinas 6041 on the market`, but he went on to say that Propelinas 6041 has specific technical specifications and is from a particular origin, namely, PPM. In my judgment, for a buyer like the plaintiffs who bought the goods for a buyer in Myanmar, the most important point about the goods was that the polypropylene resins could be used by the end-users who could

Version No 1: 20 Nov 2026 (00:35 hrs)

with some calibration adjustments in their machinery produce from the resins plastic packaging for food, garments and industrial use. As explained by the plaintiff`s witnesses, both Madam Kwan and Mr Oh Ban Ooi, the managing director of the plaintiffs, all that mattered was `the usage` of the goods. As long as the melt flow index and density allow the resins to be used to produce plastic packaging for food and garments, that would be sufficient. I accept this piece of evidence. In my view the plaintiffs could not `fairly and reasonably refuse to accept` polyprolene proffered to him by the defendants, other than Propelinas 6041, so long as such substitute goods could be used without any difficulty for the production of plastic packaging for food, garment and industrial use. The contract in question identifies the polypropylene with the functional attributes and that is all important: see **Christopher Hill Ltd v Ashington Piggeries Ltd** [1972] AC 441. On the evidence, there were several generic and contractual polypropylene substitutes on the market. Propelinas 6041, on the evidence, was not proved to have any `unique and specific properties that distinguish it from other polypropylene firm grade products`.

8.I come to the evidence on the reasons why the defendants could not supply the plaintiffs. Dr Isa told the court that his company had close to 100 purchasers. In 1994 the quantity of 6041 was 10,000 metric tons. The quantity of the other propelinas, for making other types of plastic films, was between 10,000 and 12,000 metric tons. The company was very short of Propelinas 6041. The company sold 608 metric tons to the defendants and 400 metric tons to Mitco, a sister company. Dr Isa referred generally to intermittent production difficulties. The company did not stop production: the rates of production were 3,000 m/tons for September 1994, 1,000 m/tons for October 1994 and 2,600 m/tons for December 1994. He was asked the question: `If you had wanted to, you could have supplied 192 m/tons to the defendants?` His answer was: `Yes,

Version No 1: 20 Nov 2026 (00:35 hrs)

logically.` Dr Isa told the court that he did not remember if the defendants had asked for delivery from October to December 1994. He said he could not remember but, he remarked, `there were other casualties`, meaning that there were others who were not supplied Propelinas 6041. He admitted that in June and August 1994 he supplied 128 m/tons.

9.He went on to explain that the Malaysian government introduced a ruling which amounted to the banning of importation of polypropylene except grades not locally produced. Arising from that he said his company `had social obligations to supply Malaysian industries. There was no legal obligation. Knowing of the shortage, the company had sold the goods at prices in excess of US$1,000 per m/ton. Unfortunately, his company was operational for only three months from March to September 1994. His company was `crippled`. He stretched his stock; he `had to give priority to local industrial end users.` Those therefore were the circumstances why PPM had failed to deliver the balance of the goods to the defendants.

10.In my view, the defendants were bound contractually to buy in the contractual substitute polypropylene or to pay for the difference. There will therefore be judgment for the plaintiffs in the sum of US$101,760, interest thereon at 8% per annum from 1 October 1994 and costs.

Lai Kew Chai J

Version No 1: 20 Nov 2026 (00:35 hrs)

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Vino Gopal Ramayah and Shantini Ramachandra (Wee Ramayah & Partners) for the plaintiffs
Philip Jeyaretnam and Christopher Chong (Helen Yeo & Partners) for the defendants

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Version No 1: 20 Nov 2026 (00:35 hrs)