IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 200

DCA 38/1997

Between

See Gek Choo Margaret t/a
Coconut Foods Trading

… *Plaintiff*

And

NCS Cold Stores (S) Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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See Gek Choo Margaret t/a Coconut Foods Trading v NCS Cold Stores (S) Pte Ltd

[1998] SGHC 200

DCA 38/1997
Amarjeet Singh JC
11 June 1998

Judgment:

GROUNDS OF DECISION

1. The Respondents(Plaintiffs) had claimed in their Suit in the District Court a sum of $27,588.55 being storage charges incurred by the Appellant(Defendant) for the cold storage of 3491 cartons of frozen coconut water ('the goods') at the Respondents' cold store facility at Fishery Port Road.

2. The Appellant counterclaimed under paragraph 9 of her *Defence and Counterclaim* that the goods had gone bad and claimed loss and damage:

(a) Cost of goods stored with Plaintiffs 1949 cartons x $28.00 $54,572.00

(b) Storage charges already paid to Plaintiffs for the defective goods (**1949** cartons) $21,270.00

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(c) Trucking charges for the 2 reefer containers trucked to Plaintiffs on 13/7/95 $ 255.44

(d) Claim for cost of defective goods shipped to Taiwan on 2/7/94 **1542** cartons x $28.00 $40,656.00

(e) Shipping and handling charges $ 4,000.00

(f) Custom duty imposed at Taiwan Port and handling charge $ 9,988.00

and in any case loss or damage not exceeding S$100,000/- being the District Court limit.

3. The learned District Judge:

(i) gave judgment for the Respondents (Plaintiffs) in the sum of $27,588.55 with interest thereon at 6% p.a. from date of the Writ to judgment; and

(ii) dismissed the Appellant's (Defendant's) counterclaim.

4. Having heard the appeal, I dismissed the Appellant's appeal and the said Appellant being dissatisfied, now appeals against the whole of my judgment.

5. The undisputed facts were that the Appellant imported the goods into Singapore from Malaysia for re-export overseas. The goods were packed in Malaysia into plastic bags each of 20 kg and each bag was in turn packed into a carton for export largely to Taiwan for processing and canning. It was the practice of the Appellant to send the goods thus packed into cartons in Batu Pahat without any chilling or freezing to the Respondents who have a very large and modern cold store facility in Jurong for cold storage. The Appellant had

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entered into an agreement for such a purpose on 23 June 1993. For the purpose of cold storage of the goods the Respondents had to provide a freezer room temperature of -18 C to -25 C. The Appellant in bringing in their goods had also transported the goods unrefrigerated by road and in open lorries. The goods normally arrived in the late afternoon and had a temperature on arrival at the cold store of between 40 C to 50 C. The journey to the Respondents' cold store could take from about several hours up to 12 hours giving due allowance for custom clearance and other delays. After storage in cold room No.1 (#1 cold store), the Appellant would cause to be taken out a specific number of cartons as and when the Appellants required them for shipment to Taiwan with the assistance of the Respondents. The Respondents provided shipment service to the tenants of their goods if they so opted for the service.

5.1 Between June 1993 to October 1993 the Appellants placed some **7,000** cartons of the goods in the Respondents' cold store facility each time bringing into Singapore more or less 100 of such cartons. There were four shipments to Taiwan in 1993. On 30 July 1993 alone some 800 cartons were exported to Taiwan. By 12 April 1994, more than 50% of cartons had been shipped to Taiwan. By July 1994 another **1542** cartons had been shipped to Taiwan leaving **1949** cartons in #1 cold store. These **1949** cartons were placed in #1 cold store on various dates between July 1993 to 12 October 1993.

5.2 It had been the Respondents' case that the Appellant became laggard in settling their bills incurred on account of the storage facilities of the remaining goods from about 1 June 1994. By 29 April 1995, the Appellants owed them a sum of $27,588.55 which she failed to pay resulting in their present claim being instituted.

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5.3 The Appellant's case was that in the delivery orders concerning the goods which the Respondents received they acknowledged that the goods were "Received in good order". The Appellant would sell the goods on credit to Harlen Enterprise Ltd ('Harlen'), for whom she also worked. Harlen would export the goods to Taiwanese customers and on receipt of monies pay her in due course. There had been no complaints from the Taiwanese customers after receipt of the earlier batches of goods sent.

5.4 However, in mid July 1994 she learnt from Harlen that their customers from Taiwan informed them the goods were bad. She then caused the goods stored with the Respondents to be examined. One Heng Hua Chin ('Heng') then Harlen's Managing Director went to examine the goods also. The Appellant was represented by her brother-in-law. Heng had described himself as Managing Director of Harlen up to 1995 when for some reason he ceased. Heng confirmed he was a customer of the Appellant and was in the business of exporting coconut and coconut based products abroad. Heng held himself to have extensive knowledge of coconut and coconut based products having done as he claimed, serious research into these subjects and had himself he said a 20 foot cold storage facility in Batu Pahat. He had also been previously consulted by interested parties from abroad on the subject.

5.5 Examination of a few samples of the goods showed that they were frozen except for a portion at the base of the plastic bag in the samples taken from the cartons which had turned soft and mushy brown. The Respondents accordingly informed their insurers to investigate and analyse and report on the goods. *Forensic Services (M) Sdn Bhd* carried out the investigations through their Managing Director Barry Dillon ('Dillon') a consulting scientist of 23 years standing with a M.Sc degree and a record of having investigated damaged goods

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including frozen goods. Dillon had also given expert evidence on the subject, amongst other countries, in the High Court, Singapore. He had attended a meeting at the cold store with officers of the Respondents' offices inspecting the cold store on 24 October 1995. On that date, he took random samples of the goods. He also examined the temperature records records in the #1 cold store for the years 1993 and 1994. Heng who had been invited to attend did not turn up.

Dillon's conclusion to his *Report in Vol IV Record of Appeal at pg 1079* was:

> "Examination of the NCS cold storage facility at Jurong revealed that the #1 cold room was well designed and maintained. A study of records indicated no evidence of significant departure from the nominal -20 C temperature maintained by the cold room, during the time September 1993 to July 1995.
>
> Examination of the frozen coconut water in the #1 cold room revealed that segregation had occurred because the water had been cooled too slowly. *The segregation had resulted in the formation of liquid with high sugar content, incapable of freezing at the temperature of the cold room.* Cold rooms such as are maintained at NCS are not designed to freeze goods, but to maintain already frozen goods in a frozen condition. *The freezing of food is the responsibility of the manufacturer of the food."*

5.6 The Appellant had independently requested *SGS Singapore (Pte) Ltd ('SGS')* to inspect the goods on 10 November 1995. In their report of an analysis done by a microbiologist, they stated the samples of the goods they took randomly had a visual yellowish appearance at the top and a yellowish brown colour at the bottom. This was when the goods were in a frozen state. The temperature of the said sample of frozen goods was also taken and recorded as

-20 C. In a thawed state, the liquid was yellow and cloudy and the odour rancid. Bacteria had also been found in the samples examined. Their conclusion was:

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> "Based on the organoleptic results, the sample was not suitable for human consumption."

6. The main issues in the appeal before me were:

> (i) were the goods in good order when delivered to the Respondents
>
> (ii) did the quality of the goods deteriorate rendering them unfit for human consumption under the bailment of the Respondents.
>
> (iii) if the answer to questions (i) and (ii) is in the affirmative, did the Respondents as bailee of #1 cold store breach their duty of care under their contract with the Appellant to keep the Appellant's goods frozen and free from damage and/or were negligent as such.

7. I shall first consider the Respondents' claim concerning the goods remaining in the #1 cold store i.e. 1949 cartons in the light of the issues I have outlined earlier.

7.1 Where there is a claim which is based on a breach of contract for cold storage of goods the onus is on a Plaintiff bailor to initially prove the contract and the difference concerning the condition of the goods between the time of the receipt of the goods by the bailee operating the cold store and the time the goods were redelivered to the bailor. The damage having been proved the onus thereafter shifts to the Defendant bailee to prove on a balance of probabilities that the damage to the goods was not due to any failure on the bailee's part to take due and proper care and precautions to ensure that the goods are safely and properly kept in their custody. The Appellant submitted three main points on the facts and law on appeal:

Firstly, the learned District Judge had erred in her finding that the 1949 cartons of goods had become contaminated before reaching the Respondents' custody.

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It was submitted by Appellant's Counsel that all the goods had been acknowledged as having been "Received in good order" by the Respondents in the delivery orders. The Respondents were bound by this acknowledgment.

Secondly, there was a delay by the Respondents in putting the goods after delivery into #1 cold room; further there was evidence from the Respondents' witnesses managing the cold store that when goods were moved out from the cold store other warm goods moving in would increase the temperature of the surrounding area a factor which very likely lead to the deterioration of the goods by thawing the Appellant's goods somewhat and which was not given any weight or sufficient weight by the learned District Judge.

Thirdly, that in any case, the goods having been delivered in sound condition but being found in a damaged condition in the Respondents' cold store without reasonable explanation the damage was caused by the Respondents' negligence.

The Respondents' Counsel countered all these submissions.

7.2 As to the **first** submission, the learned District Judge had in fact found:

> (a) the goods having come in open lorries and having been subjected to 50 C temperature during the long trip, it was probable that *deterioration would have set in* prior to the goods being placed in the Respondents' #1 cold store especially as Heng had stated in his Affidavit of evidence-in-chief that the goods can turn bad anywhere within one day.
>
> (b) although Heng had stated that he had pasteurised the goods in Batu Pahat no independent expert evidence was adduced in this regard which would show that the goods could be kept in a preserved condition for two days and in any case pasteurisation did not kill all the bacteria as admitted by Heng. The learned Judge further found that from this it could be further inferred that the goods *were already contaminated* before being stored in the Respondents' #1 cold store.

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> (c) as for the goods having arrived in "good condition" statedly on paper it was clear from the evidence that no one at the #1 cold store checked the quality of the goods as none of the cartons and plastic bags were ever opened and examined visually or otherwise. Indeed warehouse-men could not be expected to do so because they handled goods in quantity and bulk and therefore the Respondents did not know whether the contents were good.

7.3 Whilst the facts referred to above by the learned Judge were correct, I was unable to support the learned District Judge's conclusion by inference that the deterioration in the goods had set in to an extent that they had already become "contaminated" prior to their being placed in the Respondents' custody. It was simply not an irresistible inference that I could confidently draw on the evidence.

7.4 Although the Respondents had acknowledged receiving the goods in good order, it was clear from the uncontradicted evidence of the Prosecution witnesses that no plastic bags in the cartons were opened and checked. Notwithstanding this, the fair conclusion which I drew was that the goods could not have become contaminated in the 4 to 12 hour journey by road (including time for customs clearance) to the Respondents' cold store. There was no reason to doubt the veracity of Heng on the issue of pasteurisation that the goods had been pasteurised before being sent to Singapore. After all he wanted the goods to reach the final destination in Taiwan in good condition. To my mind, the contamination process would have taken a longer time to develop - a full day or two perhaps in the state the goods had arrived at the Respondents' cold store.

7.5 As for the Appellant's **second** submission, I rejected it. As for the first part of the submission, the records show that the goods were put into the Respondents' #1 cold room within the hour on documentation and temperature records being completed and as such, there was no delay. Appellant's Counsel's

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remaining submission was based on surmise, conjecture and theory. Appellant's Counsel had cross-examined PW3, Abdul Aziz bin Abdullah the Respondents' cold store worker as follows:

Q: Do you agree that when the goods are brought in from outside, in the place where they are located temperature may be higher because they are giving out heat?

A: Yes

Q: This may shift temperature around the area by 1 C or 2 C?

A: Yes

Q: At times stated at 0400 when not recorded temperature could be -18 C because you did not record it?

A: Yes

Q: So in theory if goods are brought in at +50 C and temperature is -19 C, temperature at that area could be pushed up to -16 C?

A: Yes

7.6 In fact in re-examination PW3 asserted that temperature was taken at constant intervals at 8.00am, 12.00, 1800 and 2000 during the day when temperatures were constant at -22 C to -23 C and further that when the goods enter and leave #1 cold store the doors automatically open and close so that the temperature in the cold room remained constant with a variation of 1 C or 2 C. It was also in evidence that *if* any goods were moved they would be moved

within the confines of #1 cold store. All the goods were in any case moved mechanically in view of the extreme cold temperature inside #1 cold store. The goods, according to PW3 were not be taken out of #1 cold store as suggested by the Appellant's Counsel in cross-examination.

7.7 Further, the Appellants' Counsel did not establish any reasonable basis for PW3 that the temperature could drop to -16 C other than to pick, as can be readily discerned, the lowest contracted figure of -18 C and take 2 C out on account of the higher figure of variation stated by Abdul Aziz. The Appellant was attempting to show deductively that it had risen to -16 C. The Respondents had, on the other hand, made all their temperature records available for inspection and their engineer had given evidence. Dillon in his report categorically had stated:

> "Examination of the N.C.S. cold room storage facility at Jurong revealed that the #1 cold room was well designed and maintained. A study of records indicated no evidence of significant departure from the nominal
>
> -20 C temperature maintained by the cold room during the time from September 1993 to July 1995."

7.8 Dillon had also stated the records kept by the Respondents to be meticulous. By mentioning 'nominal -20 C' in his report he simply took that number as a convenient middle figure between -18 C and -23 C. The records for the period showed constant temperature of around -22 C to -23 C as can be ascertained from the temperature records, Vols. 4 and 5 of the Record of Appeal. Even when the temperature was taken by the surveyors SGS Singapore (Pte) Ltd ('SGS') appointed by the Appellant, SGS found the temperature in #1 cold store on the day they took random samples to be -20 C. What is significant however, is that the Appellant's own Counsel could not say that the temperature in #1 cold store

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varied by more than a degree or two centigrade which confirmed Dillon's evidence that the Respondents' #1 cold store was well operated.

7.9 I therefore dismissed the Appellant's Counsel's submission that the goods could have deteriorated either by the Respondents leaving the goods too long outside the cold store after their delivery to the Respondents and before they brought them into #1 cold store and/or because the temperature in the said #1 cold store rose due to the Respondents bringing in warm goods and placing them next to their own goods i.e. the cartons of coconut water thereby partially thawing the Respondent's goods and leading to contamination. I might say that Dillon had remarked that the Respondent's Counsel's questions on the constant melting and refreezing of the goods by warm goods being placed next to the Appellant's goods were so hypothetical it could not happen because he had studied the condition of the cold store. He found that:

(a) it was a huge sized cold room (the whole facility being bigger than the Subordinate Court Building as one witness put it)

(b) the temperature was maintained between -18 C to -23 C;

(c) the goods represented only a small proportion of the goods;

(d) it was a well run #1 cold store

all of which reasons I accept. In this regard Dillon's evidence as an expert was not discredited. On the other hand, the report from *SGS* or their witnesses did not even touch on these matters.

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7.10 There now remains only the **third** and remaining issue of mixed law and fact as to the cause of the deterioration of the goods and whether the Defendants had on a balance of probabilities reasonably explained the deterioration and contamination such as absolved them from any liability in caring for the goods under their charge as alleged by the Appellant and hence negligence. To start with, I would like to observe that the expertise of Dillon (from *Forensic Services (M) Sdn Bhd*) and of May (DW4) and Lee (DW5) from *SGS* was in different fields. Dillon's analysis related to the cold room storage and freezing of goods and the cause or causes of the goods going bad - in this case going soft and mushy brown at the bottom whilst in cold storage. May and Lee, on the other hand, analysed the goods from the point of view of microbiology and determined that the goods were unfit for consumption as sufficient bacteria was found in them. Neither side's report or evidence contradicted the sphere of the other's expertise. Only Heng who had professed to be an expert had contradicted Dillon's evidence but I shall return to that later. It is sufficient to say at this stage that I found on the evidence of *SGS* that the goods had been inhabited by bacteria and had become unfit for human consumption.

7.11 The terms and conditions of storage of the Appellant's goods as stated in the contract with the Respondents was that the freezing room temperature would be -18 C to -23 C. The Respondents had shown on a balance of probabilities from its records and as confirmed by Dillon studying those records that a temperature in that range was maintained and provided for the Appellant's goods. Heng agreed that from the Appellant's records he could not prove that the temperature had fallen below -22 C. Indeed, I found Heng's evidence agreeing with that of Dillon on many other aspects. Dillon's conclusion was that the goods had not frozen at the bottom -most portion of the plastic bag, perhaps about 1% of the contents because:

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> (a) there was an average sugar content of 3.8% or 0.76 kg of sugar in the 20 kg bag of goods which was a lot of sugar. (On the other hand, Heng's off the cuff evidence that it was not a lot was just a bare assertion.)
>
> (b) this sugar during the cooling process in #1 cold room segregated from the coconut water because sugar crystals have a much lower freezing point than water or coconut water. The coconut water froze from top to bottom resulting in a sugary content of 49% which was like syrup migrating to the bottom which was not being frozen. The explanation was simply that when a liquid has some ***solute*** dissolved in it and begins to freeze, the first ice crystals will be purer than the overall concentration and the last portion frozen if it freezes will be very much concentrated.
>
> (c) the last portion in the instant case was a sugary portion of the goods and which was **incapable** of freezing at the cold room temperatures provided by Respondents. Heng had accepted that the 49% or so at the bottom of the bag was treacle when questioned by the Respondents' Counsel. **According to Dillon cold rooms such as at NCS were not designed to freeze warm goods that were brought in quickly but to maintain already frozen goods in a frozen condition.** The Respondents' case was that the Appellant by sending warm goods and asking them to freeze the same and thereafter to keep them frozen were simply transferring part of their manufacturing process to the Respondents in effect.

7.12 Heng's evidence had been that all the coconut water could easily freeze at -22 C i.e. in the big 20 kg cartons. This evidence was without basis. In the same breath, he had himself admitted that he was not an expert but only had basic knowledge of processing the whole coconut. Even this basic knowledge proved inadequate in view of Dillon's comment that a 20 kg bag containing the goods was too large and would allow the correspondingly significant amount of the sugar content in it to segregate which would then not freeze as compared against a small bag containing coconut water which would freeze completely. Heng's answers had been in reference to freezing the goods in small bags and as such I gave no weight to his evidence on the issue. Many of Heng's other answers were also speculative, contradictory and unsupported. For example, whilst having

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earlier said that the coconut water could freeze at -22 C easily he had also admitted that where there was a thin film of sugar or treacle at the bottom, that sugar would freeze at -165 C N.E,168 Record of Appeal Vol 1.

7.13 Dillon had stated that he expected coconut water with a homogeneous sugar content of say 5% to freeze in small quantities in the range of between -5 C to -8 C. I was satisfied and accepted Dillon's evidence that the temperature at which sugar crystals in the goods froze was far below the minus temperatures which the Appellant had contracted for the goods to be kept in #1 cold store and that pallet loads of the goods were simply incapable of freezing completely at the said contracted temperatures. Although the figure of -165 C quoted by Heng was unsubstantiated and I doubted its accuracy Heng no doubt at least was saying that he agreed with Dillon that a much lower temperature were required to freeze the residual sugar crystals that had formed in the goods. The Respondents did not provide any lower temperatures for storage. The Appellant's further evidence that she had seen some goods being left outside implying that her goods had been left outside when goods were being moved inside #1 cold store resulting in their melting and the goods becoming defective was also pure speculation.

7.14 From all the evidence and especially that of Dillon's scientific analysis and Heng's answers in cross-examination, I found that the Appellant's goods had become bad because they suffered from some ***inherent vice*** or ***peculiar characteristic*** consisting of sugar, coconut fibre and thread that sank to the bottom of the plastic bag as the pure ice crystals rose to the top in the process of freezing and the sugar crystals and particles sank to the bottom of the bag. This process had prevented the pallets of goods of the Appellant from being completely and effectively frozen at the contracted temperatures of -18 C to -23

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C in #1 cold room. That was why the colour of the residue like treacle was mushy brownish inhabited as it became by bacteria at some point of their long storage leading to the spoilage of the goods. The 1949 cartons of the goods after all had already been stored in the cold store for about a year. The ***inherent vice*** or the ***peculiar*** **characteristic** in the goods was a factor which the learned District Judge had failed to consider or consider adequately as being the cause of the spoilage of the goods. It was a factor, in my opinion, as appears from the evidence not within the specific knowledge or contemplation of either party. In ***Keck Seng & Co Ltd v Royal Exchange Assurance*** [1964] 30 MLJ 256, the Plaintiffs' claim was dismissed by the learned trial judge who held that part of a shipment of sugar that had gone bad was not covered by the insurance policy as it excluded liability on the shipment arising from an ***inherent vice***. The sugar had gone bad by becoming wet through absorption of moisture in the air during the sea journey. The Court held that this process being an ***inherent vice***, such damage by ***inherent vice*** was by the terms of the policy not claimable.

8. The ***peculiar quality*** of certain types of merchandise has sometimes necessitated specialist treatment by a bailee. I considered whether the Appellant's goods necessitated such treatment. In ***Liverpool Grain & Storage & Transit Co Ltd v Charlton & Bagshaw*** [1918] 146 dry corn in bins absorbed water vapor and gave off heat and it became bad because it had not been turned. It was agreed there that the bailees' elevator men were bound to know this and their attention had been drawn to the process of heating having begun in one of the bins. That should have warned them of the process in the other bins. The bailees had only therefore to open the lids of the bins and see the clammy and dull condition of the corn which also gave off a smell. However, the bailee did not do the slightest examination of the corn some of which then fermented. The Defendants were found guilty of negligence in not having watched and

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examined the condition of the corn under the circumstances. They were held liable to the Plaintiff for the loss.

8.1 The circumstances of the present case are entirely different and readily distinguishable from the above case as I shall now explain.

8.2 In fact, there was evidence which decisively negatived any liability on the part of the Respondents for spoilage of the goods while in their bailment. Dillon had testified that the food industry had a way of overcoming the problem of slow freezing and that was to cool the goods fast which results in many ice crystals forming at once which in turn lessens segregation in the sugar. Tng Hock Seng, PW2, the Respondent's Operations Manager, had stated that he had explained to Heng that the Respondent's cold store was to maintain a frozen product and not to turn his product into a frozen product and had suggested that he use the Respondents' additional facility to blast freeze which would blast freeze a product **from all sides** and freeze the product **within four minutes**: Vol. 1 Record of Appeal, pg. 35. **This process would have prevented the sugar from segregating and would have frozen the goods and the sugar content uniformly.** The Appellant's Counsel had failed to cross-examine and contradict PW2 on this aspect of his evidence and as such, I accepted Tng's evidence that he had conveyed this information to Heng who was representing or advising the Appellant. The only reasonable inference I could draw from this was that:

> (i) this special service would no doubt have entailed the Appellant in extra expenditure and
>
> (ii) Heng and hence the Appellant as he represented her, had refused or neglected knowingly or through ignorance to consider blast freezing as an optional extra.

The Respondents were obviously under no duty to provide this special service to blast freeze the Appellant's goods so that they could then be stored immediately as frozen goods and maintained as frozen goods in the cold storage, until taken away, without an agreement or acceptance of such service. The Appellant should have known the peculiar characteristic of her own goods advised or represented as she was by Heng. On the other hand, it was very likely that Heng too did not know about the segregation process of sugar when packing the goods *in bulk* of 20 kgs. Heng's illustration of coconut water freezing completely in his experiments in a domestic freezer or in his cold room in a small quantity in Batu Pahat belied his knowledge of the said product when submitting to the Respondents a large quantity of bags of 20 kgs. for freezing. The Respondents were, on the other hand, under no duty to know the extraordinary behaviour of goods that were required to be kept frozen. It was not the Appellant's case that this peculiar characteristic of coconut water and sugar to tend to segregate when slow frozen in bulk was generally known by cold store operators. It was therefore for the Appellant to know that and point the same out to the Respondents before the duty to take care of the Appellant's product arose or as Dillon from his experience of the industry pointed out: a cold room such as at the Respondents was not designed to freeze warm goods that were brought in but to maintain already frozen goods in a frozen condition. The goods were also not visible when delivered for storage and had been ready packed in cartons labelled "100% Frozen Coconut Water" and ready for shipping. There was no suspicion raised in the mind of the Respondents at any time of what was happening to the goods. In any case, the Respondents had discharged their duty to the Appellant, if they had any, as cold store operators to advise her to quick freeze her goods before storage. It was obviously a general safety precaution and helped guard against any unknown inherent characteristic that would spoil the goods by their slow freezing as contracted for by the

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Appellant. After all, Heng had admitted that not even pasteurisation at 85 C can kill all the bacteria.

9. Finally, I wish to touch briefly on the point raised by the Appellant that earlier some shipments of his goods were shipped to Taiwan and there had been no complaints from his customers that the goods delivered to them were bad and that the deterioration of the goods remaining in #1 cold store must have occurred simply through the Appellant's lack of care in storing them though temperature changes. **There was, to my mind, nothing to suggest that the Respondents had treated the earlier goods or stored them in any different manner from the present goods.** According to Dillon, his evidence was and I accepted it, that the goods to Taiwan must also have been delivered with a thin bottom layer of a mushy brown sugary content because that portion of the sugar would never have frozen even at -18 C to -23 C but no one may have paid attention to that. It may well have been that there was no complaint from Taiwanese customers of earlier batches of goods as having gone bad because four of the shipments had been made in 1993 i.e. within a short time of the goods being stored in the Respondents' cold store. Thus from 22nd June 1993 to 1st July 1993 some 800 cartons that had been placed in the cold store were exported on 30 July 1993. The lack of a complaint concerning these shipments could, in my opinion, as a matter of common knowledge and reasonable inference be due simply to the fact that the bacteria may not have had time to develop or develop sufficiently to render the goods bad within that short time and that a longer time was necessary for the bacteria to develop, thrive and multiply in the cold temperature resulting in the goods that remained longer or the longest in the cold room being affected.

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9.1 For all the reasons, I find that the Respondents had reasonably explained why the Appellant's goods consisting of 1949 cartons had become contaminated and had discharged the burden of proof placed on them by showing that they had not been negligent in their duty of care to preserve the Appellant's goods and were as such not in breach of any fundamental term of their contract.

10. As to the 1542 cartons of goods exported earlier to Taiwan and also the subject matter of the claim, I uphold the grounds of decision of the learned District Judge's finding against the Appellant in respect of that claim together with the incidental charges all totalling $54,644 that there was insufficient proof adduced by the Appellant that the said goods (1542 cartons) exported to Taiwan had become bad *before* they left the Respondent's #1 cold store. No documentary evidence was adduced in support of the Appellant's case especially by survey reports. Further, the goods were said to be found bad when unstuffed at the warehouse in Taiwan. Some 9 days had elapsed and there was no evidence of the condition under which the goods were stored during that period. I had therefore dismissed this portion of the claim concerning the 1542 cartons for the above reasons and in any case if these goods had gone bad before they left #1 cold store on the grounds that the Respondents had given a reasonable explanation as to why the goods had become bad and had exonerated themselves.

11. I find in conclusion that in as much as the deterioration of the goods and infection by bacteria was due to the ***inherent vice*** or ***peculiar characteristic*** of the goods as discussed and found, the Appellant was as much the author of her own misfortune and misadventure in not having made arrangements for rapid blast freezing of their said goods and storing them as already frozen goods be it through ignorance or a desire to cut expenditure.

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12. I therefore concur with the eventual decision of the learned District Judge, though not entirely for the same reasons, and I accordingly dismissed the appeal with costs.

Dated this 11th day of June 1998

AMARJEET SINGH

JUDICIAL COMMISSIONER

Amarjeet Singh JC

Tan Cheng Han with Tan Cheng Yew for the appellant
Low Thiang Hock for the respondents

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