IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 254

Suit 63/1997

Between

DP Computers Pte Ltd
(formerly known as DP
Computer Forms Pte Ltd)

… *Plaintiff*

And

Ateme Technologies (S) Pte
Ltd

… *Defendant*

GROUNDS OF DECISION

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DP Computers Pte Ltd (formerly known as DP Computer Forms Pte Ltd) v Ateme Technologies (S) Pte Ltd

[1998] SGHC 254

Suit 63/1997
Lai Kew Chai J
22 July 1998

Judgment:

Cur Adv Vult

In this action the plaintiffs claim against the defendants the sum of US$126,220.00 as damages which they allegedly suffered by reason of the defendants' failure to pay for and take delivery of 44,000 units of integrated TSOP DRAM memory chips with part numbers KM44C4100AS-7 ("the goods") under an agreement in writing dated 22 November 1996 ("the agreement"). Having considered the evidence, I have come to the conclusion that there should be judgment for the plaintiffs in the sum of US$126,220.00, interest thereon at 6% per annum from 10 January 1997 (the date of the writ) to the date hereof and costs.

2 The plaintiffs trade in computer components. Their director Mr Bai Guo Jin also known as Jack Bai ("Mr Bai") was directly involved in the negotiations which led to the transactions in question. The defendants also deal in computer

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components. Their managing director is Mr Leong Teen Keen also known as William Leong ("Mr Leong").

3 Mr Leong owns 99% of another company known as Astina Electronics (S) Pte Ltd ("Astina") which is in the same trade. Mr Leong was at all material times the mind and management of both the defendants and Astina.

4 The agreement over which this dispute has arisen must be viewed in the context of an earlier agreement under which Astina, the other company, had agreed to sell and deliver the same quantity of the same type of chips to the plaintiffs. According to the plaintiffs, Astina were late in their delivery of the chips. The plaintiffs cancelled that contract. Following the cancellation, William Leong and his brother, Philip Leong, a director of the defendants, approached Mr Bai.

5 They requested the plaintiffs to consider accepting late delivery of the goods to be tendered by Astina and in return the defendants would agree in writing to buy back the same 44,000 units of chips from the plaintiffs at a price which eventually included the banking charges and other expenses which the plaintiffs had incurred in connection with the opening of the necessary letter of credit. The plaintiffs issued the purchase order for the same goods at the price of US$409,239.60 inclusive of GST. In the purchase order, it was agreed that payment would be "L/C AT SIGHT" and there would be local delivery.

6 It was the evidence of Mr Bai that it was expressly agreed between him and Mr William Leong that the defendants were to make payment of the goods before the plaintiffs were obliged to deliver them to the defendants. But William Leong told Mr Bai that he was facing some cash flow problems. After further

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negotiations, it was agreed that the defendants would make payment of US$409,239.60 by handing over a Bank Bumiputra Malaysia Berhad cheque No. 154654 post-dated to 12 December 1996 and drawn by the defendants in favour of the plaintiffs. Mr William Leong handed over the cheque to Mr Bai on 23 November 1996.

7 Mr Bai reiterated that it was only after the plaintiffs had received the defendants' cheque that he signed the delivery order and that the plaintiffs proceeded to accept late delivery of the goods from Astina and agreed to the payment to Astina under the letter of credit.

8 From 11 December 1996 Mr Bai and his colleague Mr Goh Boon Hou tried to contact Mr William Leong. Mr William Leong was very evasive and did not give a definite answer as to when the plaintiffs could bank in the cheque. Finally, the plaintiffs banked in the cheque on 26 December 1996 but it was dishonoured and returned with the remark: "Refer to Drawer".

9 The price of chips was falling rapidly. On 7 January 1997 the plaintiffs sold 10,000 of the chips to Groupoint Electronic Ltd at the price of US$62,000. Two days later they sold 34,000 of the chips to Symotech Inc at the price of US$209,100. As a result, the plaintiffs suffered a loss of US$126,220.00.

10 The defendants' version was given by Mr William Leong. He said that on behalf of the defendants he negotiated with Mr Goh about the purchase of 44,000 IC chips. The agreement was formed. Under it, the payment term was "L/C AT SIGHT". He explained that this meant that the plaintiffs would receive the letter of credit issued by the defendants' bank before delivery of the chips. The credit could be drawn against the delivery order duly signed by the

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defendants and the defendants would sign the delivery order upon due receipt of the chips.

11 Mr William Leong pointed out that the delivery was on local delivery terms. He also pointed out that the date "27 November 1996" was stated in the defendants' purchase order under the column "RQT DD".

12 However, according to Mr William Leong, a few days after 22 November 1996 Mr Goh of the plaintiffs telephoned him to arrange for a meeting between Mr Bai and himself. At the meeting, Mr Bai, Mr Goh and Mr William Leong discussed the payment terms and they agreed that payment was to be made by a post-dated cheque. Payment by cheque would save both plaintiffs and defendants "a few thousand dollars each in bank charges and commission." They further confirmed that delivery would be made by the plaintiffs to the defendants on or before 12 December 1996. In contrast, the plaintiffs' case was that the defendants would pay first before delivery of the goods.

13 Mr William Leong further alleged that the plaintiffs did not provide any form of delivery advice or information to tell the defendants' the arrangements for the delivery of the chips. Neither did the plaintiffs make any attempt to deliver the chips before 12 December. As the plaintiffs failed to deliver the chips, Mr William Leong gave instructions to the bank not to pay upon presentment.

14 The defendants through Mr William Leong questioned the loss and damage suffered by the plaintiffs. He claimed that he could not tell if the chips sold by the plaintiffs to Groupoint and Symotech were those contracted to be sold to the defendants. He also claimed that Groupoint was in the habit of buying large quantities at very low prices, "much like a wholesaler". He said the market price

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still remained at about US$9 per chip, more or less the same as the contract price.

15 I will deal with the question of fact whether it was agreed between the parties that the defendants would effect payment by honouring the post-dated cheque on 12 December 1996 after which the plaintiffs would deliver the chips to the defendants, as the plaintiffs assert, or whether the plaintiffs had agreed to deliver the chips on or before 12 December 1996, as the defendants assert. In my judgment, I am compelled by the evidence and the credibility of the plaintiffs' witness Mr Bai to find that the plaintiffs' version reflected what was agreed.

16 It will be convenient if I first deal with the earlier Astina contract. The controversy was over the issue whether Astina had been in breach and that the plaintiffs had cancelled the contract in view of the falling prices of chips. Mr William Leong insisted that the last shipment date was the date of the last shipment as stated in the letter of credit opened by the bankers of the plaintiffs. This assertion was flawed, in my view, for a number of reasons. In the earlier, Astina transaction, it was a fact that the defendants were late in their delivery of the chips and that the plaintiffs had cancelled the contract. Under that contract, delivery was "LC at Sight" meaning at or as soon as reasonably practicable on Astina's receipt of the original irrevocable letter of credit. The date certain for delivery could be easily ascertained by reference to the delivery to and receipt by Astina of the letter of credit. As a fact, Astina received the letter of credit on 19 or latest 20 November 1996. It was also a fact that on 14 November 1996 after Plaintiffs had applied to OCBC for the letter of credit and was told the number of the letter of credit the same was conveyed to Astina.

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17 It would be rather unusual for a seller to allow a buyer to name the date of delivery in his application for the letter of credit. Mr William Leong is a very experienced trader in computer components and he would not have exposed Astina to such an open-ended date which the plaintiffs as buyers were free, as it were, to fix. Secondly, the date of latest shipment in the letter of credit was a date put in a post-contractual document. Thirdly, the date of latest shipment in the letter of credit governs the contract between OCBC as the issuing bank and the beneficiary of the letter of credit, Astina, and in that context, it is different from the agreement as to delivery in the underlying sale and purchase contract between Astina and the plaintiffs. Fourthly, the date 26 November 1996 was the result of the usual and standard practice of the plaintiffs, which was to provide for 10 to 14 days from the date of the application for the latest shipment date, a period flexible enough to take care of the period necessary for the processing of the letter of credit application and any contingency. Fifthly, a period of 10-14 days for the local delivery of chips in Singapore was very unlikely. Integrated Circuit chips (ie memory chips) were and are very prone to technological advances and their value rapidly drops with the passage of time which would usher in newer generations of chips. This explanation, which was given to me, was not seriously challenged by Mr William Leong. Indeed, it was common ground that the prices of chips were and are on the downward trend, with plunges and rare rises in prices in between. Delivery of the chips, even from Korea, only took 3 days from the date of the purchase order. In this case, Astina themselves placed a purchase order for the chips with Samsung, Korea on 12 November 1996 and, on the evidence of William Leong, Astina received the goods from Samsung 3 days later. The defendants failed to tell the court or produce contemporaneous documents relating to the shipment from Samsung, Korea. There was therefore no reason why the delivery date should have been that extended.

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18 I now turn to the controversial transaction itself. I am convinced that Mr William Leong on behalf of the defendants agreed that the post-dated cheque would be honoured on 12 December 1996 after which the plaintiffs were obliged to deliver the goods to the defendants. In fact, it was not agreed that the plaintiffs would deliver the goods on or before 12 December 1996, ie before clearance of the post-dated cheque. To the extent Mr William Leong asserted to the contrary I find his evidence unreliable. These are my reasons.

19 I accept Mr Bai's evidence that the plaintiffs would not have signed the Delivery Order in favour of Astina on 23 November 1996 but for the new agreement with the defendants under which the defendants agreed to buy back at a price just sufficient to take care of the costs and bank charges of the plaintiffs and under which the defendants delivered to the plaintiffs a cheque drawn on Bank Bumiputra which was post-dated to 12 December 1996. Why did the defendants do such an unusual thing and deliver to the plaintiffs a cheque post-dated to 12 December 1996? If it was agreed that the plaintiffs would deliver before and not against payment, why did the defendants issue the post-dated cheque? Why run the risk of the plaintiffs presenting the cheque on 12 December for payment?

20 If the defendants' version were to be believed, why did William Leong himself visit the plaintiffs on 22 November 1996 to get the plaintiffs to sign the Delivery Order in favour of Astina, following which Astina could draw on the credit? Why bring along with him on 22 November 1996 the post-dated cheque? If the agreement reflected a new deal, Mr William Leong could have phoned and arranged for the plaintiffs to on-sell to the defendants without all these unusual and unnecessary exertions.

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21 Mr William Leong is not to be believed when he said the defendants bought the goods because he had received a verbal order from Visionpack of USA to buy the chips from him at a price which he described, rather tentatively, as "should be US$9.10 to US$9.20". Such a price must be sure and certain and not be agreed within a range. No documents were produced.

22 Last but not least, Mr William Leong relied on the fact that the purchase order (AB7), which evidenced the agreement, contained the date "27 November 1996" under the column "RQT DD". The answers and explanation of Mr Bai, which I find credible, were as follows. He said that the date would apply provided the defendants furnished the "LC AT SIGHT". On 23 November 1996 Mr William Leong called on him and told him that he could not open the letter of credit and offered him the cheque post-dated to 12 December 1996. Mr William Leong agreed that the plaintiffs were to deliver the goods "upon clearance of the cheque".

23 Finally, I turn to the question of damages. These are payable as claimed under s 50(3) of the Sale of Goods Act which provides: "Where there is an available market for the goods in question, the measure of damages is prima facie to be ascertained by the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been accepted or (if no time was fixed for acceptance) at the time of refusal to accept." I accept that the sales to Groupoint and Symotech were conducted at arms length and the prices were those prevailing at that time. Despite what Mr William Leong said, the prices had dropped from about US$9 to about US$6.30 by year ended 1996. Exhibits P1 and P2 evidenced the plaintiffs' sales of similar chips to two companies on the last day of 1996; the unit prices were US$6.22 and US$6.30. I am satisfied that the marketing team of the plaintiffs had done

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all they could to get the best prices for the goods. They did not delay because Mr William Leong had told Mr Bai that he had a customer willing to buy the goods at US$9 plus per chip. Consequently, the plaintiffs waited for a little while before selling.

Lai Kew Chai J

Judge

Singapore

Lai Kew Chai J

Ling Tien Wah [Helen Yeo & Partners] for the plaintiffs
Tan Joo Seng [Chan Tan & Partners] for the defendants

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