IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 317

Suit 2043/1997

Between

Interface International B V

… *Plaintiff*

And

M & B Trading and Agencies Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Interface International B V v M & B Trading and Agencies Pte Ltd

[1998] SGHC 317

Suit 2043/1997
Choo Han Teck JC
24 September 1998

1 **Judgment:**

2 **GROUNDS OF DECISION**

3 1. The facts are not in dispute. The plaintiffs were at all material times the manufacturers of, inter alia, carpet tiles. The defendants were granted the exclusive distributing rights to the plaintiffs' products under an agreement dated 14 July 1978.

4 2. In this action, the plaintiffs sued for a sum of Nlg 2,678,656.59 being the unpaid price of goods bought by the defendants from them. The plaintiffs obtained summary judgment on their claim with an order that execution on a sum equivalent to $1,030,773.88 be stayed pending the outcome of the defendants' counterclaim.

5 3. The defendants' counterclaim was based on a breach of the agreement by the plaintiffs in that the latter appointed Jackson Carpet Pte Ltd as a distributor.

6 4. The plaintiffs' defence to the counterclaim was that the agreement had been terminated on 1 April 1997, a week before the appointment of Jackson Carpet Pte Ltd. The plaintiffs had been demanding payment for goods purchased by the defendants. On 21 March 1997 the plaintiffs wrote to the defendants referring to the outstanding debts which exceeded the payment terms under the agreement for the previous two years. The letter referred to a meeting between the plaintiffs' and defendants' respective representatives the day before in which the parties came to an agreement in respect of payment.

7 5. On 1 April 1997 the defendants wrote to the plaintiffs proposing to settle its debt over eight instalments. It also asked the plaintiffs to confirm that the defendants were still their sole distributor. There was no confirmation, but by letter dated 10 April 1997, the plaintiffs accepted the payment proposal by the defendants.

8 6. On 22 April 1997 the plaintiffs wrote to the defendants accepting purchase orders from the defendants but stated that the orders were subject to 100% pre-payment or, alternatively, by an irrevocable letter of credit. The defendants complied with the new payment terms.

9 7. Counsel for the plaintiffs submitted that by the exchange of correspondence set out above, the parties had, by their conduct terminated the agreement. He further submitted that under clause 18, the plaintiffs need not inform the defendants of the termination. The relevant portion of clause 18 reads as follows:

> "In the event of non-performance by either party under this agreement … the other party shall have the right to declare this agreement to be dissolved without any notice of default or judicial intervention being required."

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10 8. I do not accept counsel's interpretation of clause 18. It is only in rare circumstances (if at all) that an agreement may be terminated by one party without giving notice to the other. It also requires clear and precise drafting to incorporate such a term into a contract. Otherwise, a contracting party may continue to believe that the agreement was still in force and conduct its business accordingly. Clause 18 as it is worded, does not go as far as counsel suggested. I am of the view that it only gave the relevant party a right to declare that the agreement was at an end, but it must communicate that intention clearly to the other party.

11 9. The correspondence referred to by counsel for the plaintiffs fell short of such a declaration. Contrary to the submission of counsel, the correspondence did not indicate that the defendants knew that the plaintiffs had terminated the agreement. It merely showed that the conduct of the plaintiffs had baffled the defendants who were seeking clarification of their status. If the plaintiffs had confirmed that they had appointed another distributor, then they would have been in breach of the agreement. That is not the same as terminating it. The choice lay with the innocent party. I now refer to the argument by the plaintiffs' counsel that the plaintiffs were entitled to terminate the agreement by virtue of the defendants' failure to pay. That may be so, but it must expressly evince that intention. What it did, in fact, was merely to vary the terms of payment.

12 10. The correspondence show that the plaintiffs had exercised their rights under clause 5 of the agreement to alter the payment terms in the event of default.

13 11. I find, therefore, that the plaintiffs were in breach of the agreement by the appointment of Jackson Carpet Pte Ltd on 8 April 1997. By letter dated 20 November 1997 the defendants formally terminated the agreement.

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14 12. The defendants have prayed for a declaration that the stock in the defendants' possession be returned to the plaintiffs in exchange for $1,012,055. Clause 19 of the agreement reads as follows:

> "Upon termination of this agreement Heuga may, at its option buy back from [the defendants], the stock of products owned by the distributor on the effective date of termination, or part of it"

15 This provision clearly means that the option lies with the plaintiffs at the date of termination, that is, 20 November 1997. The plaintiffs had the option to buy back the stock owned (my emphasis) by the defendants at that date. Since the plaintiffs had not elected to do so, the court is not obliged to order that they do. The defendants are entitled to prove such damage as they may have suffered by reason of the plaintiffs' breach. They have to show that by reason of the breach the defendants were unable to sell the stock in hand and what steps they had taken to mitigate their loss. The onus is on them. The declaration under prayer 2 was, therefore, disallowed.

16 13. For the foregoing reasons, I give judgment to the defendants only on prayer 5 of their counterclaim with damages to be assessed.

17 14. Counsel for the defendants submitted that the previous order made during the order 14 proceedings that execution on the sum of S$1,030,773.88 be stayed should continue until the assessment of damages. Counsel submitted that the basis for the stay order to continue is that the plaintiffs are a foreign company which now faces a judgment with damages to be assessed. He conceded, however, that there is no evidence that the plaintiffs would be unable to pay any damages awarded against it.

18 15. The previous order for stay of execution was made under O 14 r 3(2):

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> "The court may by order, and subject to such conditions, if any, as may be just, stay execution of any judgment given against a defendant under this Rule until after the trial of any counterclaim made or raised by the defendant in the action"

19 16. In this case, the stay order was premised on the defendants' claim for a return of the stock-in-trade. The sum claimed under that head of claim was $1,012,055.00. That claim was not allowed and consequently, the defendants are left with a judgment with damages to be assessed.

20 17. I see no reason why the plaintiffs' judgment which had already been quantified, and from which there was no appeal should not be satisfied. In contrast, the defendants have not yet ascertained the quantum of damages. It may be that they may only be awarded nominal damages or none at all. Their application for a stay of execution in the circumstances, was in effect, an application for security for unascertained damages. There is no basis for such an order in this case.

21 18. In appropriate circumstances, a party may be awarded security for costs, for example, where the plaintiff is a foreign plaintiff, or where a party is a company and there is evidence that it would be unable to pay any costs awarded against it. Neither of which was the case here. The plaintiffs were effectively the defendant because only the counterclaim proceeded to trial. Counsel for the defendants conceded that there was no evidence that the plaintiffs would be unable to satisfy an order for costs or even damages. In the circumstances, the order for a stay of execution was rescinded.

22 19. Having heard arguments on the question of costs for the trial, and having considered that no oral evidence was necessary, and that the matter proceeded on the interpretation of a few short clauses of the said agreement as

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well as an exchange of letters, I am of the view that the award of $15,000 to be paid by the plaintiffs to the defendants is a fair amount and I so ordered.

23 - Sgd -

24 Choo Han Teck

25 Judicial Commissioner

Choo Han Teck JC

Tan Jee Ming and John Thomas [Tan Jee Ming & Partners] for the plaintiffs
Wan Eng Hock Eugene and S S Krishnasamy [E H Wan & Co] for the defendants

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