IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 360

Suit 127/1998

Between

Intermarine Supply Company
(Private) Limited

… Plaintiff

And

VMD Pte Ltd

… Defendant

GROUNDS OF DECISION

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

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Intermarine Supply Company (Private) Limited v VMD Pte Ltd

[1998] SGHC 360

Suit 127/1998
Choo Han Teck JC
02 November 1998

1 **Judgment :**

2 **GROUNDS OF DECISION**

3 1. The plaintiffs are a company supplying marine equipment. The defendants are a company engaged in the business of reconstructing and repairing vehicles. The defendants entered into a contract with the Ministry of Defence to refurbish a number of amphibious military vehicles known as "LARC-V". By telefaxes dated 1 and 4 June 1996 the plaintiffs offered to sell various items to the defendants for the refurbishment of the LARC-V. The letters set out the number of units required for each item and the price. The defendants signed their acceptance to two telefaxes and transmitted their acceptance to the plaintiffs. It was not disputed that the items were to be delivered as and when the defendants submit a request within the period 1 June 1996 and 31 December 1997. Further terms were set out in a telefax dated 14 June 1996 from the defendants to the plaintiffs. Although this document was sent after the purchase contracts had been concluded, the parties accepted the terms set out there as binding on them.

4 2. This suit arose from the defendants' rejection of two items namely the Vetus windscreen wipers and the Vetus hand-held searchlight. The defendants say that these products were not of merchantable quality and not fit for their purpose. Consequently, the plaintiffs refused to deliver the remainder of the items under the contract on the ground that the contract required the defendants to accept all the items and the defendants' refusal to accept the two items in question thereby released the plaintiffs of their obligation to deliver the rest. They therefore sued for the sum of $264,746.12 including the sum of $201,821.00 being the price of goods. The balance consists of storage charges, bank interest and the surveyor's fees. The defendants counter-claimed for damages arising from the plaintiffs failure to deliver the goods.

5 3. I shall first deal with the issue whether the plaintiffs were entitled to treat the contract as repudiated by the defendants and were, therefore, no longer bound to perform their part of the bargain. The plaintiffs' counsel relied on the defendants' telefax of 14 June 1996 with the statement, "Validity of Blanket Order: From June 96 till 31 Dec 97". Mr Nair, counsel for the plaintiffs, argued that "Blanket Order" in this document meant that the goods were sold as a whole and that a rejection of any item was a repudiation of the entire contract. When the two items were rejected by the defendants various other items under the contract had already been delivered and paid for. The rest was to be delivered upon request. It was obvious, however, from the telefaxes dated 1 and 4 June 1996 that the contract was severable and the failure to deliver or accept any item does not affect the rest of the contract.

6 4. I do not agree with the plaintiffs' interpretation of the phrase "Blanket Order". In the context, it appears to me that the phrase in question refers to all the items specified in the two telefaxes dated 1 and 4 June 1996 and that the parties will take delivery and make payment within the period specified, namely

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1 June 1996 and 31 December 1997. I do not read this term as an "all or nothing" contract. The term "Blanket Order" must refer to the entire list of goods as opposed to the individual orders for the goods as and when a particular number is required. Even the plaintiffs' director, Lee Poh Lian alluded to this meaning in her affidavit of evidence-in-chief at paragraph 5. The case of *Rosenthal v Esmail [1965] 1 WLR 117* relied by Mr Nair is irrelevant to the issue. If a contract is not severable then there will be no question of accepting it in part and rejecting the rest of it. The circumstances in this case were different from those in the *Rosenthal* case. Here, the contract clearly envisaged that the buyers would be entitled to reject any item that did not conform to the terms of merchantibility or fitness for purpose, but that would not entitle them to reject the rest. Conversely, the rejection of some items would not permit the sellers to treat the rejection as a repudiation of the entire contract.

7 5. The buyers in this case did not intend to reject the rest of the goods but were prepared to take delivery of them. It was the sellers who demanded that the buyers accept all the goods including the rejected items. If the defendants had wrongfully rejected the searchlights and the wipers the plaintiffs were entitled to sue for damages for breach, but they were not entitled to refuse delivery of the other items. The argument that they did not refuse to deliver but merely wanted the defendants to accept all the goods is only superficially attractive. Although Mr Nair had not said so, he appeared to reason that the defendants ought to have accepted all the goods including the defective ones and sued for damages. I think that that would not be correct. If goods were defective and the buyer was entitled to reject them, he cannot be coerced into acceptance; otherwise, wither goest his right to reject? The law prescribes certain instances in which a buyer might lose his right to reject, but none applied to the defendants in this case.

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8 6. I now deal with the counter-claim. The defendants say that two of the items delivered by the plaintiffs were not of merchantable quality and unfit for their purpose. The first item was the Vetus hand-held searchlight which became too hot after 25 to 30 minutes of use. By consent, counsel tested the searchlight themselves and informed the court that the searchlight could arguably be held at 30 minutes depending on the tolerance of the user, but the user had to take care not to hold it in the full palm of the hand but only by the finger tips around a narrow circumference of the light. More importantly, the user must not touch the metal ring base surrounding the switch. It burns. The plaintiffs' director Lee Poh Lian, stated in her evidence that the searchlight was "not meant for long handling use" and that "if the defendants wanted a searchlight for extended non-stop use then they have ordered the wrong product". She stated that they made no representation other than the specifications from the manufacturer's catalogue. Contrary to what she deposed, the catalogue did not state that the searchlight could not be used beyond 30 minutes or that it was not meant for "long handling". It seems to me that a hand-held searchlight that cannot be hand-held after 30 minutes is of limited utility. Major Lim Beng Seng who was the assistant project manager to the LARC-V project at the Ministry of Defence gave evidence on behalf of the defendants. He testified that on one occasion he tried to use the search light but found that it could not be held in the hand for more than a few minutes as it became too hot to hold. Even the manufacturer admitted in a letter dated 4 November 1997 (AB161) to the plaintiffs, that the "searchlight is designed for use on boats and normally will not be used for more than 5 minutes continuously. If you want searchlights which can be used continuously then you will have to look elsewhere since we do not have such searchlights in our programme".

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9 7. Mr Nair submitted that the plaintiffs made no representation of any kind to the defendants, and it was the latter who selected the goods from the catalogues given to them by the plaintiffs. That might be so, but the defendants' case was not based on misrepresentation, but on breach of the implied terms of fitness for purpose and merchantability. There being no evidence that the defendants knew or ought to have known that the searchlight could be hand-held for less than 30 minutes the submission by the plaintiffs' counsel was irrelevant. The issue was whether it was reasonable to expect such a searchlight to be hand-held longer than 30 minutes. Contrary to Mr Nair's submission, the use of the searchlight was not a matter concerning a special purpose for which the plaintiffs as sellers were unaware. If a hand-held searchlight cannot be held for more than 30 minutes can it be said that it was reasonably fit for its purpose? That was the only issue. In my view, I think that the answer must be no. The standards expected of a 20th century product cannot be expected to be that of a 19th century one. 30 minutes, is only a fraction of the life span of the bulb, and it seems to me that all that was necessary to make the searchlight merchantable was to equip it with a handle and replace the metal ring around the switch with a heat-proof material. In the circumstances, I find that it was not unreasonable of the defendants to reject the searchlights.

10 8. The rejection of the windscreen wipers was more vigorously opposed by the plaintiffs. The defendants rejected this item because of the high failure rate. They claimed that the wipers either break at the pivot point during trial, or functioned in a jerky motion which was unsatisfactory because the wipers became ineffective, and that also led to an eventual breakage of the wiper arms. The defendants installed 12 wipers by 23 June 1997 and of these, eight wipers failed. On 2 July 1997 the defendants conducted tests on six wipers in the presence of representatives of the plaintiffs. Three of the six malfunctioned. The

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plaintiffs' defence to this counter-claim was that the wiper failure was due to poor installation and operation rather than any fault in the design or manufacture.

11 9. The defendants called Goh Teck Hoon their workshop supervisor to give evidence. He had been working for the defendants for seven years, but gave his evidence without appearing partisan or showing any hint of bias. He seemed to know his job. I accept his evidence that the installation of the wipers was not a difficult or unusual procedure and had been carried out correctly. He said that the Vetus wipers differed from the others that he had installed only in dimension and, therefore, presented no special installation problems. He had personally seen two of the wipers break. They occurred on the two occasions that he accompanied the vehicles for their sea trials. The defendants were not the only ones who found the wipers to be defective. Chong Wee Leong who was the Officer-In-Charge at the Singapore Armed Forces Transport Battalion at the material time also gave evidence that the army also found that the wipers were not functioning properly. He testified that after his drivers reported to him that the wipers were not functioning properly he checked and observed personally that the wipers on one of the LARC-V vehicles No. 62008 that the wipers were not sweeping smoothly. He saw that the wipers worked in a stop-and-start manner. He stated under cross-examination that the wipers failed after only five minutes of use.

12 10. Wong Kat Lum who was a service engineer and quality assurance engineer of the defendants from October 1996 to March 1998 testified that he found various problems with the wipers. These range from having a wiping angle set at 110 instead of 85. He also stated that some of the wipers broke and others could not function smoothly. The most lucid evidence came from the defendants' managing director Lee Boon Hock. He testified that when the

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plaintiffs gave him a quotation based on the Vetus catalogue he had a copy of the catalogue in his possession and was impressed by it. It had the specifications required by the Ministry of Defence. He was also aware that the material was made of plastic but he was pleased in a way because it would solve the problem of corrosion which metal wipers have. He explained that the wiper arm and the motor shaft must move in tandem at the same speed otherwise the arm would come loose, or if it met with resistance, break. He had applied the same quality control test to wipers of other suppliers and found no problem with them. Like Tan Yong Chuan the defendants' assistant workshop manager, Lee impressed me as a witness who had a sound knowledge of how the wipers worked. I am satisfied with their evidence that the components of the wiper arm assembly were not compatible, and the grooves in the softer material of the wiper arm wore out rapidly when rubbed by the harder knurl of the motor shaft. I find that that was the probable reason why the wipers sweep in an intermittent manner, become loose, and eventually, break. All these three problems were observed in the operation of the Vetus wipers.

13 11. The plaintiffs relied on the evidence of Zhang Lin Yun an engineer from Singapore Test Services Pte Ltd who was asked to evaluate some of the wipers. Miss Zhang was one of the plaintiffs' representatives present at the tests on 2 July 1997. Her report was not helpful in the determination of the cause of the breakage of the wipers although she stated that the "wear damage seen on the metal inserts on the driver arm suggests possibilities that (a) the fit of the wiper to the vehicle was not perfect resulting in rubbing between the teeth on the insert and its counterpart on the vehicle, and/or (b) excessive movements occurring from other causes during operation leading to the wear on the teeth of the metal inserts." This statement seems to support the explanation of the defendants' engineers. Thus, Miss Zhang's conclusion that "the premature

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failure of the wipers…was likely due to improper installation and/or operation of the wiper assembly" was misplaced and not supported by her own report. There was no evidence of improper installation. On the contrary, evidence showed that the wipers were not difficult to instal, and were installed by careful and experienced engineers. Mr Nair suggested that the engineers installed the wiper without first reading the instruction manual, but he did not adduce any evidence as to what the manual required, and what it was that the engineers did which did not comply with the manual's instructions.

14 12. In the circumstances, I am satisfied that the wipers probably failed because of inherent defects in its material and manufacture, and not to poor installation or operation. The defendants were entitled to reject the wipers and are entitled to judgment with damages to be assessed in respect of the searchlights and the wipers.

15 13. For the reasons above, the plaintiffs claim is dismissed. There will be judgment for the defendants in their counterclaim with damages to be assessed. Interests will be awarded to the defendants at the rate of 6% per annum from the date of the counterclaim. Costs to the defendants in the claim and counterclaim is to be agreed or taxed.

16 - Sgd -

17 Choo Han Teck

18 Judicial Commissioner

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Choo Han Teck JC

Prabhakaran N Nair [Ong Tan & Nair] for the plaintiffs
Christopher Chong and Vivienne Lim [Helen Yeo & Partners] for the defendants

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