IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 59

Suit No 1293 of 1994

Between

Armstrong Engineering Pte Ltd

… *Plaintiff*

And

Swamex Food Service Pte Ltd

… *Defendant*

GROUNDS OF DECISION

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

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Armstrong Engineering Pte Ltd v Swamex Food Service Pte Ltd

[1998] SGHC 59

Suit No 1293 of 1994
Lai Siu Chiu J
28 February 1998

1 **Judgment:**

2 **Cur Adv Vult**

3 **The facts**

4 The defendants, Swamex Food Service Pte Ltd ('Swamex') are in the business of importing and distributing food and beverage products, with about 80% of its business relating to frozen products; it is a subsidiary of Lam Soon (Hong Kong) Ltd ('Lam Soon HK'). Their business premises at the relevant time were on the third floor of Lam Soon Industrial Building ('the premises').

5 Sometime in early 1988, in order to save rental and transportation costs, Swamex decided to install coldrooms in the premises. They had previously leased coldroom space at Keppel Road and Pasir Panjang Road, from where they would move their goods to and fro. Swamex's general manager, Eric Goh Wai Mun ('Goh'), approached Wong Mong Hong ('Wong'), the Works Director of what is now known as Lam Soon (Singapore) Pte Ltd, to draw up a 'Quotation

Specification' ('the Quotation Specification') for the coldrooms. This was intended to form the basis on which contractors would give a quotation for the cost of constructing the coldrooms. It is clear from the Quotation Specification that Swamex wanted to install two coldrooms; cl 4(c) thereof reads:-

6 Dimensions and temperatures of freezer and cold room:

7 Freezer at -20C +

8 Coldroom at + 5C +

9 The freezer is used to store fruit juice in rack system and the cold room is used as a buffer and defrosting areas. Separate sets of equipment for freezer and cold room are preferred. All assumptions used for the capacity calculation must be declared.

10 At about the same time, Goh asked Wong to recommend a suitable contractor. Wong named two contractors that had previously been used by the Lam Soon group of companies: Thiam Lee Engineering Pte Ltd ('Thiam Lee') and the plaintiffs in this case, Armstrong Engineering Pte Ltd ('Armstrong').

11 In the process of negotiations with the two contractors, Goh met Armstrong's chairman and engineering manager Ong Ser Huan ('Ong'). He also held several discussions with Armstrong's representative Tan Huat Thiam and project manager Ang Siak Hwa ('Ang'). For several months the parties negotiated on the quotations and contract price. Goh asked for and received more details of Armstrong's plans and made some changes to these, including a specification of 150 mm for the wall panel insulation. Finally, in a letter dated 26 July 1988, Goh on behalf of Swamex wrote to Ong offering Armstrong the

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job of installing the two coldrooms; Tan Huat Thiam signified Armstrong's acceptance to the terms by signing on a duplicate copy of the letter.

12 Work on the two coldrooms began sometime in July 1988. The preparatory groundwork was carried out by Jui How Renovation Contractor and Furniture Constructions ('Jui How'). Thereafter Armstrong began the installation process. On 31 August and 3 December 1988, they rendered their invoices for $52,950 and $88,250 as their First and Second Progress Claims respectively, amounting to 80% of the contract price; Swamex paid both invoices.

13 In January 1989 the coldrooms were completed and trial-tested. Swamex began using the coldrooms to store their products. On 20 February 1989, Armstrong requested Swamex to settle the outstanding 20% of the contract sum amounting to $35,300. On 10 March 1989, Armstrong rendered invoice no. 7750 for this amount. They also issued invoice no. 7915 for $2,900 in respect of additional work undertaken by Armstrong pursuant to the order contained in Swamex's letter of 2 August 1988 (AB33). On the same date, Goh replied with a list of complaints, expressing Swamex's stand that the project could not be deemed completed satisfactorily until the complaints had been attended to.

14 On or about 25 March 1989 during one of their visits to the premises, Armstrong's staff found that while loading frozen products into the coldrooms, Swamex's workers had been instructed to shut off the electricity supply of one of the two (2) compressors. In a letter dated 27 March 1989, they warned Swamex of the possible consequences of overloading the system by such an action.

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15 On 23 April 1989, Armstrong forwarded their invoice no. 8094 of $1,750 for work done relating to the modification of the swing door to a sliding door. By his fax of 2 May 1989, Goh referred to several outstanding matters that remained unresolved and requested that they be attended to immediately. He repeated Swamex's request for specifications of the equipment installed, a demonstration of some of the features of running the coldrooms and referred to several construction faults that had remained unattended. Armstrong's representatives attended at the premises for several months thereafter. On 24 July 1989, Swamex requested assistance to install a PUB water meter. On 28 September 1989 Armstrong issued invoice no. 8536 for $450 for reimbursement of the cost of such installation.

16 On 30 October 1989, the parties took a different step toward resolving their differences. Representatives of both parties conducted site visits to various coldrooms in Singapore. In these other coldrooms the presence of ice formation and water collection at the main sliding door due to condensation was observed. Following these visits, on 30 November 1989, Swamex wrote with further complaints of condensation, water leakage and seepage, saying they would not make any further payment until these problems had been satisfactorily resolved. Armstrong examined this complaint and was of the opinion that lack of ventilation was the cause of condensation. Consequently, sometime in early February 1990, Armstrong installed ventilation fans in the affected areas at a cost of $3,150. This appeared to stop the problem of condensation. However it was not a satisfactory solution to Swamex, who, through their insurers, Excelsus (Far East) Pte Ltd ('Excelsus') wanted Armstrong to provide a more 'permanent' solution. Further meetings were held during which Armstrong pressed Swamex for payment. Swamex, on its part, consulted a firm of surveyors, Tech-Mar Marine Services Pte Ltd ('Tech Mar'). Its managing director, Ronald Pereira

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('Pereira'), prepared a report (dated 6 February 1990) of the coldrooms. In response to Swamex's allegations, Armstrong sought the opinion of a professional engineer, Lum Chong Chuen ('Lum') of LAC Engineers and Associates (LAC). In a technical report dated 8 June 1990, Lum opined that the coldrooms had been constructed in accordance with the technical specifications given by Swamex in their offer letter of 26 July 1988.

17 In late 1990, Swamex engaged the services of DX Reefer Services Pte Ltd ('DX Reefer') whose Paul Wee ('Wee') was called upon to ascertain what measures should be taken to prevent further condensation. On Wee's recommendation, Swamex consulted structural engineer Vashdev Khialani ('Khialani') of C & V Engineering Pte Ltd. On the collaborative advice of Wee and Khialani, Swamex was advised that to rectify the problem of inadequate insulation of the coldroom floor, they would first have to dismantle the coldroom structure, before the recommended additional layer of insulation and concrete could be laid over the existing concrete floor.

18 **The claim**

19 By a writ dated 9 October 1991 (D.C. Suit No 7412 of 1991) Armstrong claimed the sum of $48,050.00 from Swamex for the supplies and services rendered in relation to installation of the coldrooms. By a defence filed on 30 November 1991, Swamex counterclaimed against Armstrong the return of their payment of $141,200 as well as damages, alleging negligence and breach in that (a) Armstrong had failed to advise on the suitability of installing coldrooms at Swamex's premises, (b) the works were not carried out with reasonable care and skill and, (c) incorrect materials and equipment were used. Because of the quantum of the defendants' counterclaim, the action was transferred to the High Court.

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20 **The issues**

21 There is no dispute that Swamex has not paid the outstanding 20% balance contract sum nor the other sums claimed by Armstrong. What needs to be determined is whether there is any merit to Swamex's defence and counterclaim so as to entitle them to a set-off which would completely extinguish the plaintiffs' claim. It seems to me that the principal question is whether, as the defendants have alleged, the coldrooms were so defective that they were useless and had to be dismantled such as to lead to the inescapable conclusion that the construction was not reasonably fit for its purpose.

22 Before I turn to the evidence, I believe it is relevant to note that from the last quarter of 1991 to the first quarter of 1992, Manulex (Swamex's landlord also of the Lam Soon Group) was involved in discussions for the sale of the premises. On 24 March 1992, according to searches made by Armstrong's lawyers, Zylon Technologies Pte Ltd lodged a caveat against unit #03-09 of the premises. These were followed by caveats lodged on 27 June 1992 by International Project Supplies Pte Ltd against units #03-10 and #03-11. In August 1992, having used the premises for a period of more than three and a half (3) years, Swamex dismantled the entire coldroom structure at unit #03-09 and moved out of the premises.

23 **Breach of term that the coldrooms would be reasonable fit for their purpose -- s 14(3) of the Sale of Goods Act 1979**

24 Counsel for Swamex had argued (citing *Hudson's* Building and Engineering Contracts 11 ed at p 551*)* that *'the contractor will be liable for the failure of the work notwithstanding that it is carried out in accordance with the plans and specifications'*. Further down the same passage, it is also stated that

'*such undertakings will however, be construed in cases of doubt in the light of a sufficient degree of reliance being placed on the contractor's skill and judgment...'*. Several cases were cited in support of Hudson's proposition: *Gillespie v Howden* (1885) 12 R 800, held, inter alia, that where a ship had been built according to an approved model but was deficient in its weight capacity, the shipbuilder was held liable in damages. It was further argued by counsel for Swamex that even in the absence of an express term of fitness for purpose, there was an implied term of reasonable fitness notwithstanding that specifications were provided to Armstrong: *G H Myers & Co v Brent Cross Service Co* [1934] 1 KB 46. I am prepared to accept that an express obligation to follow specifications does not exclude the possibility of an implication of a term as to reasonable fitness for purpose. However, this may be of limited application to the present case. In *Basildon District Council v JE Lesser* [1985] 1 ALL ER 20 (at p 27), the court proceeded to find an implied term notwithstanding the existence of agreed specifications, on the following basis :

25 'the reality is that the design of the dwellings was, apart from such small contribution as was made by the addendum to A3, the *exclusive* work of the contractors. As the contractors well knew, the council wanted dwellings, the contractors were the experts in their system and the council were relying on them to apply it properly, so as to produce habitable dwellings. *The case was quite unlike the usual standard contract case, in which the architect has ... designed the works*.' [Emphasis mine]

26 Turning to the present facts, it now falls to be considered whether it was Armstrong's *exclusive* responsibility to design the coldrooms, whether Armstrong built the coldrooms in accordance with the Quotation Specification and whether the completed coldrooms were reasonably fit for their purpose.

27 **The scope of the contract**

28 Wong gave evidence that Goh had sought his help as Lam Soon Singapore's works manager then, to draft the user specifications. This, he said, was a statement of what was required by Swamex as a user and was to be distinguished from technical specifications bearing engineering and design data. Pressed in cross-examination as to whether he expected Armstrong to provide technical advice on the project, he denied this, saying they only had to satisfy what was written in the user's specifications. He did not feel it was part of Armstrong's responsibility to give technical advice. This was the same practice with Thiam Lee, the other contractor managing Lam Soon Group's other coldrooms and compressors.

29 I did not sympathise with Wong's position. At the time of the trial, he was still a director of Excelsus and of MC Packaging, companies which were part of the Lam Soon Group. Goh had clearly relied on him to provide some technical expertise in drafting the user specifications. On the other hand, he was a witness for the plaintiffs. He had known Ong, Armstrong's chairman for some thirty (30) years from the time they were classmates. He had recommended Armstrong along with Thiam Lee, for installation of the coldrooms. His evidence was crucial -- although he had to straddle the pressures of either implicating his friend or disagreeing with his company, I found that he was an honest witness.

30 **The involvement of other professionals**

31 Leaving aside Wong's evidence, I turn to the roles played by the other professionals consulted by Swamex when planning for the construction of these coldrooms. In this respect, Swamex's failure to call Steen Consultants (who

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were their civil mechanical and electrical engineers) to testify, was a telling omission. It was Ong's evidence (and there was no dispute that this was common practice), that for projects such as these the team leader would be the architect. If he lacked certain expertise, he would engage the services of another consultant, presumably Steen Consultants (Steen) in this case. In fact, Steen's absence at the trial was made all the more significant because it was Steen who had prepared the Location Plan Drawing No. 4831/TW/F/03-09 to the Fire Safety Bureau (FSB) for approval of the installation of a sprinkler system for the premises. Chan Hong Meng ('Chan') a Senior Technical Officer with the FSB, verified the submission of this plan. It was noteworthy of his evidence that before such a plan could be approved, there must be an approved Building Plan from the architect. It was Armstrong's case that Steen was in actual fact the 'M & E' consultants for the project. Goh's evidence was that Steen was merely called in to look into putting up a false ceiling for the air-conditioning system he wanted to install in the offices. The defendants' case however was not helped by the admission of their architect Chua Ek Chew ('Chua') that there was no need to submit further plans for additions and alterations since he and Steen had submitted them, and that these plans included the construction of the coldrooms. Swamex did not call or subpoena a representative from Steen to refute the evidence that inferred Steen's involvement in the project. Chua also accepted that the location of the coldrooms was decided before Armstrong was approached for the construction.

32 **The two-hour fire-rated wall**

33 At trial Swamex contended (and which was denied) that Armstrong had undertaken but failed to construct a two-hour fire-rated wall (as well as the sprinkler system) and that this failure caused FSB to refrain from granting

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approval. Swamex relied on **the scope of work** in cl 2 of the Quotation Specification which stated:

34 The supplier shall be responsible for supplying the equipment, installation testing and commissioning including submissions and applying all permits and approvals from Competent Authority.

35 Goh voiced these complaints against Armstrong: they should have worked with Chua or used their own architects to obtain the necessary permits or approvals required by the FBS; when Armstrong denied responsibility, he had to attend to the problem personally by meeting with FSB representatives without Armstrong's participation (despite his request to them to be present) and he obtained a waiver of installation of a sprinkler system from FSB after they accepted his explanation that Swamex 'have mistakenly been misled into this situation by [their] supplier's wrong advice' (see letter from FSB to Swamex dated 12 December 1989 at AB129). As for the fire-rated wall, Goh testified that in December 1989 Swamex obtained a quotation to construct the same after his meeting with FSB. However, although he had given an undertaking to the FSB that he would do so in consideration of the aforementioned waiver, Goh admitted in cross-examination that the wall was never built. I am of the view that the failure to construct this wall can only be held against Armstrong after they were notified by Chua of the approved plans. This did not happen until 22 September 1989, well after the completion of the coldrooms. Furthermore, the construction of this fire-rated wall appears to have been held up owing to the timetable of plans submitted by the architect. In fact, Chua's evidence confirmed that the fire-rated wall was never constructed; he had written to the Building Control Division to say that Swamex was not building the fire-rated wall because they were moving out of the premises. As for the sprinkler system, it was outside the ambit of the Quotation Specification.

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36 I believe it is very unlikely that Steen played as limited a role as Swamex claims it did. In any case, the weight of the evidence strongly suggests that Armstrong was not involved in the process of submitting plans for approval and by implication, was not responsible for the design of these coldrooms. This would distinguish the present facts from those in *G H Myers v Brent Cross Service Co* (supra) because on this finding, the contractor (here, Armstrong) was not responsible for the design.

37 **Breach of duty of care: location on the third floor**

38 Notwithstanding the above, I have considered Swamex's allegations that Armstrong had breached its duty of care. Swamex made much of the fact, amongst others, that Armstrong as 'specialist contractors' should have informed them of the unsuitability of locating the coldrooms on the third floor of the premises. But was this Armstrong's responsibility within the agreed scope of works? I think not. There is undisputed evidence that from late 1987 when Plan Reference S 286/AA/1 was prepared by the building's architect Chua, that a freezer and chiller room had been proposed on the third floor of the premises. The part of this plan which related to the coldrooms was then reproduced and attached to the Quotation Specification prepared by Wong and issued to the prospective contractors Thiam Lee and Armstrong in March 1988.

39 It was only later, when Swamex consulted DX Reefer, that Wee brought it to their attention that, like other coldrooms such as that of NCS, the coldrooms should have been constructed not on the third floor but on the ground level. This, according to Wee, would have reduced the possibility of condensation posing a serious problem. Cross-examined, when queried as to who was responsible for locating the coldrooms as drafted on plan S 286/AA/1, Goh sought to make this Armstrong's duty. He said that 'they could have made

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suggestions' to locate the coldrooms elsewhere, since Armstrong had held itself out to be a specialist in construction of coldrooms. I find his contention to be an unreasonable application of the facts. Clearly the plan to locate the coldrooms was pre-determined before the contractors were even approached for their quotations. It is unreasonable to expect the contractors to intervene in a decision which Swamex obviously deemed to be by nature a commercial one. Up to that point, they had held discussions on the building plans not only with their architects and their engineering consultants Steen but, on Goh's evidence, '*we had asked several other people for their comments and present one appeared to have more agreement'* (N/E 180). It was Swamex's decision, made in reliance on consultations with other professionals, to locate the coldrooms on the third level just as much as they decided to designate certain other specific areas for office and warehouse space.

40 That Armstrong had little or no responsibility in respect of the coldrooms' design is also clear from the negotiation stage. When Armstrong issued their first quotation, Swamex returned with further technical requirements for the freezer room which were confirmed in a letter dated 16 May 1988, in reply to which Armstrong furnished a revised quotation dated 22 June 1988. The weight of this evidence leads to the irresistible conclusion that Swamex did not rely on Armstrong for technical specifications, least of all revisions to such specifications (such as to include for example the level on which the coldrooms would be built) as it relied on its own consultants or itself to provide the revisions as demonstrated in the events leading up to 16 May 1988. In essence, I am of the view that at the time of contracting, Swamex did not rely on Armstrong to give them advice in the nature of technical specifications.

41 **The condensation problem**

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42 This was a recurring complaint during the trial and Swamex contended that Armstrong failed to attend to the problem. However I note that even in counsel's submissions (for Swamex) it is stated this is 'a very basic and common problem in *all* coldrooms/freezers' (at p 60) and that what it really accuses Armstrong of is 'a failure to recommend suitable procedures and/or remedies to avoid or effectively reduce the said problem'. An important distinction has to be drawn here. The agreement Armstrong entered into bound them to: (1) construct the coldrooms and (2) maintain these coldrooms. The defence and counterclaim to non-payment of the contract sum is based on Armstrong's construction of the coldrooms, not its conduct in maintaining the coldrooms. Swamex is not justified in withholding payment just because it receives unsatisfactory after-sales service, for which Armstrong would not in any event charge, for the first twelve (12) months. To suggest that these problems were not adequately attended to is a far cry from making a well-substantiated claim that Armstrong's breach of duty caused a serious structural error damaging the quality of the construction such that it was unfit for its purpose.

43 **Condensation**

44 I turn now to the facts surrounding Swamex's complaint of condensation. In this respect Goh's version that water collected as a 'heavy pool' (N/E 145 and 173) is to be contrasted with the evidence of Wong (N/E 224) that there was some 'moisture' and Ang (N/E 83 and 71) that there was 'sweating of the walls/floors and the floor outside the coldroom was wet'. Pereira, from Tech-Mar, was of the opinion that due to inadequate insulation, the wall of the coldroom experienced a condensation problem. This, he admitted, did not apply to the outer walls of the coldroom facing the office because that section of the wall had adequate ventilation. This went some way to support the use of fans to increase ventilation and alleviate the condensation problem although he only

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inspected the coldrooms once in January 1990, and was therefore unable to testify to the effectiveness of the fans since they were installed later. However, he was of the view that it was not a permanent solution and that it removed the effect but not the cause, of condensation. Whilst I do not doubt his credentials, I must point out that Pereira's experience and expertise, as a marine engineer, is of coldrooms installed on board vessels, not landbased coldrooms.

45 On the basis that Swamex did not rely on Armstrong for the design of these coldrooms but only for the supply and installation, whereas they themselves provided the technical specifications, Armstrong cannot be held responsible for the cause of the condensation problem. In this respect, Swamex produced detailed expert and technical submissions as to what and how the problems arose. I am of the view that such evidence was useful for identifying that the problems were a consequence of bad design, not poor workmanship in the installation of the coldrooms. In my view, Armstrong installed the fans to facilitate ventilation and resolve the condensation problem as part of its obligation to maintain the premises. It was natural for Swamex to find fault with the contractors installing the coldrooms for the problem that met the eye. However, as Pereira has testified, the fans may have sufficiently reduced the condensation yet the cause remained -- the use of inadequate insulation was not so apparent. It was an inherent design fault and cannot be held to be Armstrong's responsibility given that they had adhered to the specifications stipulated in the 26 July 1988 offer letter.

46 **Density of material used**

47 At this juncture, I turn to the allegation that Armstrong used insulation material of insufficient density. Swamex called as their expert witness, Goh Kng Yan from Beca Carter Hollings & Ferner (SE Asia) Pte Ltd, who are a firm of

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consultant engineers. Goh Kng Yan relied on a standard textbook used by the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) to calculate the recommended thickness of insulation materials, based on average dry bulb and dew point readings of Singapore spanning 3-30 years for the month of June, in order to maintain the freezer room at -20C and the coldroom at 5C, per the Quotation Specification. Using ASHRAE's guidelines, he opined that Armstrong should have used insulation material of at least 225mm thickness (with density of 25 kg/m) for the floor instead of 100mm. Goh Kng Yan's testimony was flawed in one significant aspect -- he was told by Goh that Armstrong held themselves out to be coldroom specialists and his views were premised on that assumption. At the risk of repetition, Armstrong were recommended by Wong to Goh as one of two contractors who could carry out the coldroom construction, there was no evidence that they held themselves out to Goh as experts in that field. Although in cross-examination, Ong had admitted that Armstrong are specialist contractors, I read that admission in conjunction with his subsequent evidence to mean the company had prior experience in constructing coldrooms; indeed they only contracted **to supply, install and commission,** according to the Quotation Specification. An inordinate amount of time was spent on cross-examining Goh Kng Yan on the source of his figures (which turned out to be Carrier Corporation [Carrier]); in turn it necessitated the calling of a representative (Kenny Koh) from Carrier (S) Pte Ltd, who clarified that Goh Kng Yan had relied on data extracted from the Design Load User's Manual produced by Carrier, the parent of his company. Kenny Koh testified that engineers and consultants subscribed to Carrier's weather data base, which is used to determine the maximum cooling loads for buildings, in various countries. Armstrong had obtained somewhat different readings from the Meteorological Service Singapore (see P1) for temperatures as well as relative humidity. Kenny Koh had explained that the reason why

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Carrier did not use actual data recorded by the Meteorological Station was because to determine the size of cooling load plants, design not actual, data is required. Lum in his report for LAC had used a relative humidity value of 70% to calculate the minimum thickness of the floors and walls whereas Goh Kng Yan had used a relative humidity of 95% which figure Swamex's counsel submitted, should be the correct median, given that Lum had admitted that the relative humidity in Singapore can reach 100% when it rains and up to 85% inside a building and 95% for a covered outside area. I did not find either party's weather data or the testimony relating thereto particularly helpful as this issue must be determined in accordance with the terms of the Quotation Specification.

48 28. I accept that the plaintiffs failed in their duty to provide insulation of the contractual thickness, based on tests of samples (3) of the polystyrene used for the floor insulation. These tests were conducted by the Singapore Institute of Standards and Industrial Research (SISIR) at Swamex's behest and the results cannot be disputed, despite the valiant attempts made by counsel for Armstrong, in his cross-examination of SISIR's scientific officer Ng Kok Yau. The tests proved Armstrong failed to use insulating material of the density stipulated in the specifications of the contract -- they used material of density 14.5 -- 16.7 kg/m3 instead of 25 kg/m3, and thickness of 100mm instead of 150mm for the walls and ceiling. Armstrong in their defence said that the difference between the specified densities and what they actually provided was marginal and that there was no reason for them to use material of inferior quality since insulation material is cheap (according to Ong). This may well be true but it does not alter the fact that the materials used were not of the agreed density. It goes not so much to design as it does to Armstrong's duty to use the right materials in accordance with the agreed specifications and they must be held liable for this error.

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49 **Armstrong's performance**

50 29. The question that remains is whether Armstrong is entitled to payment for its performance of the contract. Construction was completed in early 1989 and the coldrooms subjected to a trial run. Very soon thereafter Swamex began using the premises and the coldrooms. Armstrong requested payment in their letters dated 20 February 1989 and 10 March 1989. Swamex issued a list of complaints, which began as minor ones, demonstrating their expectation that Armstrong would have to 'touch up' these minor defects before it 'considered the project successfully completed'. There was a long period during which both parties tussled over payment and service of the project. I was dissatisfied with Swamex's reliance on an expert opinion, obtained by their insurers Excelsus (another Lam Soon company) that bore no authoritative indication that it was written by anyone qualified, let alone *an independent firm of professional engineers* (see Excelsus' letter to Armstrong dated 26 February 1990 at AB156). The paper bore no author nor letterhead. With this opinion, Excelsus sought to press Armstrong for more action. I find this to be a highly discreditable attempt. In contrast, Armstrong appointed Lum who produced a well substantiated report affirming Armstrong's performance of the contract. This is the relevant report to be considered and relied on. It appears to me that the lengthy period that followed wherein Swamex refused to pay, began as a tactic to tie down Armstrong to ensuring the coldrooms operated successfully. Yet through it all, the coldrooms were running at a standard sufficient to satisfy the defendants for three and a half (3) years at least, from January 1989 to July 1992. Despite the use of substandard insulation material by Armstrong, the freezer and coldrooms achieved temperatures well below those stipulated in the Quotation Specification, according to Lum's report. Therefore, it is clear that the coldrooms were constructed such that they were reasonably fit for their

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purpose. It therefore did not lie in his mouth for Goh to say: '*...it was a lemon, we had to nurse them along and we did not get full use as one would have expected. It was constantly being repaired'* (N/E 162).

51 30. On the facts, Swamex should have paid the balance 20% sum. Any defects complained of would be covered under the later maintenance agreement with Armstrong, which initial twelve (12) months would have cost Swamex nothing. Only if the construction was so faulty that it resulted in structural errors that actually caused physical damage to the building would Swamex have a valid claim. Wong as works manager was called to examine the problem and dutifully referred the complaint to the structural engineer who verified that there was no structural damage to the building.

52 31. Probably the most serious of the complaints was the one alleging condensation. But on the evidence adduced before this court, I find that while Armstrong's installation of the fans was perhaps not the solution desired by Swamex nor the most satisfactory, it fulfilled the purpose insofar as maintaining the premises was concerned; it was also a cheap solution ($2 per month for electricity to run 4 fans continuously) according to the testimony (N/E 251) of Goh Hin Ngin, who is from the management corporation of Lam Soon Industrial Building. I dare say this was cheaper than installing and running a heater mat under the floor of the coldrooms, as was suggested by Wee of DX Reefer. Further, there were no fresh complaints of condensation problems after the fans were installed. It is also noteworthy that Swamex directly loaded their goods from the loading bay area into the freezer, ignoring the specific use of the chiller rooms as a buffer area. The evidence of Wee was that such direct loading would not have substantially contributed to the problem of condensation or affected the coldrooms' performance, given the use of air curtains; with respect, I disagree. If the chiller rooms were built specifically to be used also as a buffer

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area before products proceeded to the freezer, Swamex cannot ignore the practice and then turn around to accuse its contractors of causing the condensation problem.

53 32. Herein lies the difficulty with accepting Swamex's defence and counterclaim. There may have been certain aspects of this case where one sympathises with their unhappy experience but the facts never satisfied a standard of actually proving that fault or damage was so adverse that there was no choice left but for Swamex to dismantle the coldrooms. Taken at the highest, the complaints whilst posing some inconvenience and difficulty, never justified the excessive counterclaim put forward by Swamex.

54 33. I began with an observation on what happened to the coldrooms. Having had the benefit of hearing Goh in court and listening to his complaints, I find that he found himself in what he described as a 'sticky' situation but not saddled with a 'lemon' and sought to make the best commercial advantage out of the situation. He (or Lam Soon's representatives), found buyers for the premises, dismantled the coldrooms (for which entire cost they now claim against Armstrong) and proceeded to move their reduced operations elsewhere. I do not believe such a chain of events was substantially actuated by Armstrong's supposed below par performance of the contract. Further, I find that in the circumstances, Armstrong did all that could reasonably be expected of them to address the problems brought to their attention and that Swamex was not entitled to turn around and expect more than what they had told Armstrong to do at the time of contracting.

55 **The decision**

56 34. Therefore on Armstrong's claim for:

57 a. Balance 20% $ 35,300

58 b. Variation order 2/8/88 $ 2,900

59 c. Invoice 8094 (swing door) $ 1,750

60 d. Ventilation fans $ 3,150

61 e. LAC Engineering Report $ 4,500

62 f. Plumber's services $ 450

63 Total $ 48,050

64 I make the following findings:

65 a. they are not entitled to the full sum of $35,300 due to the inadequate density of insulation material used, but to a reduced amount (less 10%) of $31,770;

66 b. they are entitled to payment for the variation order of $2,900 as it was complied with although Swamex alleges item 4 was carried out by other contractors (Jui Lee);

67 c. they are entitled to payment of invoice no.8094 for the swing door which was installed;

68 d. they are entitled to be reimbursed for the ventilation fans as it was a solution for the condensation problem which has not been proved to have been caused by the inadequate insulation material;

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69 e. the cost of LAC's report should be borne by Swamex as the purpose was to establish the cause of the condensation;

70 f. they are entitled to be reimbursed the services of the PUB licensed plumber engaged pursuant to Swamex's request.

71 35. Accordingly, there will be judgment for the plaintiffs in the total sum of $44,520 with interest at 6% from the date of the writ, with costs on the subordinate courts scale. It was unnecessary for the claim to have been transferred to the Supreme Court merely because the quantum of the counterclaim exceeded the then jurisdiction of the district courts; parties could have signed a memorandum under s 23 of the Subordinate Courts Act (Cap 321) for the suit to be tried in the lower courts. The defendants' counterclaim is dismissed with costs on the High Court scale.

72 Lai Siu Chiu

73 Judge

Lai Siu Chiu J

Michael Kuah and Audrey Thng (Lee & Lee) for the plaintiffs
Indranee Rajah and Kareen Looi (Drew & Napier) for the defendants

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