IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[1998] SGHC 94

Suit 1041/1996

Between

Gardner Smith (SE Asia) Pte Ltd

… *Plaintiff*

And

Jee Woo Trading Pte Ltd

… *Defendant*

GROUNDS OF DECISION

Commercial Transactions — Sale of goods; Contract — Contractual terms

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

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Gardner Smith (SE Asia) Pte Ltd v Jee Woo Trading Pte Ltd

[1998] SGHC 94

Suit 1041/1996
Warren Khoo L H J
31 March 1998

1 **Judgment:**

2 **WARREN LH KHOO J**

3 Cur Adv Vult

4 The plaintiffs and defendants purported to enter into a contract for the sale of 500 metric tons of copra at the price of $435 per metric ton C & F Chittagong liner terms. To ease reading, I shall refer to the purported contract simply as the contract. Neither party has admitted it, but ambiguity characterised their relationship from start to finish. Eventually, the transaction came to grief over whether the letter of credit established by the buyers (the plaintiffs) were `workable`, and the failure of the sellers to provide a performance bond required by the contract.

5 2.For a start, it is not certain whether the stipulation of a `workable l/c` was part of the contract. The contract is said to have been entered into by an exchange of telexes on 1 and 2 November 1995. While the buyers` telex of 1 November and their `Purchase Confirmation` dated 2 November required that

payment was to be `by irrevocable, unrestricted letter of credit at sight`, the sellers` telex of 1 November required the buyers to establish an `irrevocable, unrestricted, workable letter of credit acceptable to sellers` and their fax of 2 November headed `Sales Contract` required the buyers to establish `irrevocable, unrestricted workable l/c`. So, the buyers` terms did not contain the word `workable`, but the sellers` did.

6 3.There is no evidence as to which of the two documents, the buyers` `Purchase Confirmation` or the sellers` `Sales Contract`, was the later document issued. To add to the confusion and ambiguity, the buyers` statement of claim alleges (I do not know if one can say, quite unexpectedly) that the contract provided for a `workable` letter of credit. However, this is a phrase from the sellers` `Sales Contract`; it does not appear in the buyers` own `Purchase Confirmation`. The statement of claim then confuses the position even further by alleging that the contract provided that the sellers should inform the purchasers at least 20 days in advance of the intended vessel loading date. This is a clause found in the buyers` `Purchase Confirmation`, but not in the sellers` `Sales Contract`. The buyers appear to have simply married the two documents, an impossible situation as the two documents could hardly have been issued at the same time.

7 4.It bears noting that neither the `Sales Contract` nor the `Purchase Confirmation`, although signed by the party issuing it, was not signed by the other party.

8 5.Therefore although their own `Purchase Confirmation` did not refer to `workable l/c`, the buyers are content to go on the basis that the contract provided for it.

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9 6.Against this rather unpromising background, the parties attempted to implement the contract they thought they had entered into. The buyers applied for a letter of credit from the American Express Bank. They extended to the sellers a copy of their application and the sellers requested certain amendments, to which the buyers agreed. The letter of credit as thus amended was established and sent to the sellers. The sellers requested further amendments, and these were accepted by the buyers, who then requested the bank to amend the letter of credit accordingly. This was done on 14 December 1995. However, on 15 December, the sellers again requested amendments. These were the amendments that caused the breakdown of the transaction, and I should set them out. First, the letter of credit as issued provided that the bill of lading should be made out `to the order of the American Express bank`. But the sellers, who had not raised any question about this up to this point, now wanted the bill of lading to be made out `to shippers` order and blank endorsed`. Secondly, the sellers wanted the addition of words to allow `charterparty bill of lading` to be tendered. The amendments to the letter of credit and the difficulty in the matter of providing the performance bond became so protracted that the shipping dates had to be postponed.

10 7.The reason why the sellers required these amendments was because their own suppliers in Vanuatu required them. But the purchasers refused to agree. In regard to the first amendment proposed, they said that their purchase was financed by the bank, the bank had the right to hold on to the title to the goods, and could not accept such an amendment. As for the second amendment, they said they were not obliged to agree because the contract had provided for liner terms, and not for charterparty terms. In court, they say that there is a great deal of difference between liner terms and charterparty terms, especially in regard to liability for demurrage at the port of discharge (Chittagong). Whereas

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under usual liner terms, the carrier would be responsible for such demurrage, the terms of a charterparty, including the demurrage provisions, are subject to negotiations between charterer and owner. They say that the sellers, while proposing charterparty terms, did not offer to show them the charterparty which was proposed to be entered into. In any event, the purchasers say they could not accept charterparty terms as they had contracted with their end-buyers on liner terms. So, the parties reached an impasse, and the sellers on 2 January 1996 purported to cancel the contract.

11 8.Thereafter, the sellers at the request of the buyers provided the name and particulars of the sellers` Vanuatu suppliers in order for the purchasers to buy direct from the suppliers. To cap the ambiguity that started their relationship, the buyers` letter dated 5 March 1996 referring to the conversation in this regard ended by saying: `Rest assured your interest will be protected if anything comes about (sic) the meeting [with the Vanuatu suppliers]`. Mr Seaton, the buyers` managing director, who was not the writer of the letter, says the sentence only means that the buyers would not disclose to the Vanuatu suppliers the price at which the buyers had contracted to buy from the sellers. Mr Mayur, the buyers` employee who wrote the letter, refused to be drawn into saying what the sentence means. Mr Lee, a director of the sellers, who was also not the writer of the letter, says that what he understood was that the buyers would not make any claims from the sellers, and that in addition, the buyers would safeguard the profit which the sellers would have made on the original deal. Mr Karim, the sellers` employee, says that he understood that the sellers` `commission` would be paid.

12 9.The buyers subsequently entered into a direct contract with the Vanuatu suppliers for the purchase of copra allegedly in substitution of that which they had purportedly contracted to purchase from the sellers. They claim

damages represented by the difference between the price they had to pay on the new contract and that which they had contracted to pay on the original contract. The sellers, on the other hand, claim that the purchasers were in breach in not acceding to the sellers` requested amendments, and claim loss of profit. They also seek to defend the buyers` claim on the ground that by the letter of 5 March 1996 the buyers` had agreed not to pursue their claim.

13 10. **The `workable l/c` issue**

14 It is for the court to construe, if possible, what `workable` means. I emphasise the words `if possible`. The court should endeavour to give effect to an agreement rather than to strike it down. As Lord Wright said in **Hillas & Co Ltd v Arcos Ltd** [1932] 147 LT 503 at p 514:

> *Businessman often record the most important agreements in crude and summary fashion; modes of expression sufficient and clear to them in the course of their business may appear to those unfamiliar with the business far from complete or precise. It is accordingly the duty of the court to construe such documents fairly and broadly, without being too astute or subtle in finding defects; but, on the contrary, the court should seek to apply the old maxim of English law, verba ita sunt intelligenda ut res magis valeat quam pereat. [Words are to be understood in such a manner that the subject matter be preserved rather than destroyed.]*

15 11.However, his lordship went on to add an important rider:

> *That maxim, however, does not mean that the court is to make a contract for the parties, or to go outside the words they have used, except in so far as there are appropriate implications of law.*

16 12.The word `workable` was obviously inserted by the sellers against the background of their own dealings with the Vanuatu suppliers. But the transaction in question was between the sellers and buyers. Just as the sellers were not concerned with the contract between the buyers and their end-buyers,

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the buyers were not concerned with the contract between the sellers and their end-suppliers. The sellers never informed the buyers of their suppliers` requirements. In all probability, they themselves probably did not know them at the time. The meaning which the sellers seek to attribute to the word `workable` is that it had to be acceptable to the Vanuatu suppliers. But this is not what their `Sales Contract` says. It should be noted here that although the sellers` fax of 1 November had included the words `acceptable to sellers`, these words were omitted in their `Sales Contract` of 2 November. On the other hand, the buyers themselves also appear to have a rather ill-defined idea as to what `workable` means. In their pleadings, the buyers say, rather enigmatically, that workable means workable `according to the terms of the original contract`. In court, their representative is not able to articulate any coherent meaning to the word. It seems to me that it is a fair conclusion that the parties were not ad idem as to what they had contracted.

17 13.In construing the terms of a contract, the court, of course, is not bound by the meaning that either party seeks to give them. Indeed, for the purpose of interpreting the meaning of terms, the subjective intention of the parties is to be disregarded. The court assumes that the intention, that is to say, the mutual intention, of the parties is expressed by the words used. The court places itself in the position of the parties and attempts to ascribe a meaning to the words which the parties, placed in the circumstances in which they were at the time of the contract, would have intended to convey by the use of the words in question. In the instant case, however, the circumstances relevant to one party, ie requirements of the sellers` end-supplier, were not known, or were of no concern, to the other party. The evidence only shows that the parties were engaged in the sale and purchase of the commodity between themselves. Apart possibly from being aware of the fact that there was a chain of sales and

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purchases, there was very little that each party knew of the circumstances of the other party.

18 14.The word `workable` is not a term of art. The dictionary meaning of the word is not difficult to find, but it is of no assistance. There was no course of dealing which would help the court to give the word a tenable meaning, as this was the first time the parties had dealt with each other. Neither is there any trade usage proved which would be of assistance.

19 15.Payment terms are essential terms of a sale contract. In the circumstances, it seems to me that the parties had failed to agree on this important element of their contract. Reluctant as I am to come to such a conclusion, it seems to me that in fact no contract had been reached at all by reason of the failure to agree an essential term. Neither party has pleaded this, as each asserts claims of breaches against the other. However, since it is the court that has to interpret the contract, if it finds it impossible to give any sensible meaning to an essential term, the court is entitled, or bound, to find that no contract had been concluded even though neither party has pleaded the point.

20 16.In the circumstances, I would dismiss both the claim and counterclaim, each party to bear their own costs.

Warren Khoo L H J

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Harpal Singh and B Mahtani (Harpal, Wong & M Seow) for the plaintiffs
Cheong Aik Chye (Judy Loke & Cheong) for the defendants
